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ILO Legislation Concerning Occupational Safety and Health

1. General observations on ILO legislation concerning occupational safety and health

All the European States are members of the International Labour Organization (hereinafter called ILO), a specialized agency of the United Nations. An important field of the standard-setting activity within the framework of the organization is occupational safety. According to point 7 of the work programme laid down in the 'Philadelphia Declaration' appended to the Constitution of the ILO: a proper organization of occupational safety and health is to be instituted in every branch of activity.¹ Among the membership, which is rather heterogeneous as to social system and economic development, there is not much chance of adopting standards or conventions binding on all, unless within a restricted circle.² The reason why this is so can be found in the strict regulation of the compliance with and the sanctioning of these standards, combined with the abovementioned economic and social discrepancies.

1. The general ILO Convention concerning occupational safety and health

On studying the ILO Conventions concerned with occupational safety and health, we find that it was only once that a general Convention was passed (in 1981, Convention NO. 155, concerning occupational safety and health and the working environment).³ Of the States of Western Europe, only Norway and Sweden have ratified it up to now.⁴ Despite this fact, it is worth to study it in detail as, on the one hand, it reflects a certain international minimum standard and, on the other hand, the very fact of its adoption has expressed the will on the part of most member States to try to adapt their national legislation to its

¹ Constitutions and Rules of the International Labour Organization, ILO Office, Geneva, 1948. pp. 30.

² Classified guide to international labour conventions and recommendations, ILO Office, Geneva, 1986.

³ International Labour conventions and Recommendations, ILO Office, Geneva, 1988. pp. 350-380.

⁴ Chart of Ratifications of International Labour Conventions, ILO, Geneva, 1991.

provisions. The national reports sent to the ILO by the governments which have not ratified the Convention as yet, give an account of the difficulties of the ratification and the measures adopted to overcome them. These may be of assistance in codifying occupational safety and health in Hungary, as well as in the course of implementing safety regulations in practice.

Below, the author is going to give an outline of the structure of the above Convention, and the main points of its contents. The specific issues regulated by it will be treated later, in subsequent chapters of this paper.

First, the scope of the regulation is outlined, though only from the aspect of personal scope. According to this, the standard applies to all the employees, irrespective of the branch of economic activity where they are employed, or rather it offers a chance for the exclusion from its application particular branches of economic activity or categories of workers, but only under obligation to give the reasons for the exclusion. (For a more detailed discussion of the problem of personal scope see II.1).

Thereafter, the Convention makes clear the meaning of certain notions and expressions, with a view to uniformity of interpretation. Among others, the meaning of the following are clarified:

1. the term 'branches of economic activity' covers all branches in which workers are employed, including the public service;

2. the term 'workers' covers all employed persons, including public employees;

3. the term 'workplace' covers all places where workers need to be or to go by reason of their work and which are under the employer's direct or indirect control;

4. the meaning of the term 'health', in relation to occupational safety, indicates not only the absence of disease or infirmity, but it also includes the physical and mental factors affecting health, which are directly related to safety and hygiene at work.

The author will also adopt the above interpretation of these terms in this paper.

The second part of the Convention discussed here deals with the principles of the national policy of occupational safety and health. It is stated here that all the member States of the ILO should evaluate at appropriate regular intervals the current national practice of occupational safety and health. The evaluation should be preceded by a consultation with the employers and workers' most representative organizations. The aim of this consultation is to lay down uniform guidelines with a view to prevent or at least to minimize the occurrence of industrial accidents and injuries, as well as the hazards inherent in the working environment.

The next paragraph analyses in detail the spheres of action falling within the scope of national policy. The concise, clear descriptions given by it may be of help in defining the content of the occupational safety regulations. (For a detailed treatment of the subject see II.1).

Convention No. 155, following the above analysis, under the heading 'Action at national level' discusses the national policy and programmes concerning occupational safety (see II.2), then the content of occupational safety regulations (II.3), the personal conditions of occupational safety (II.4), and the objective conditions of occupational safety (II.5).

The last chapter of the Convention, under the heading 'Action at the level of the undertaking' deals with the employers and employees' personal obligations when creating the objective and subjective conditions for occupational safety and health.

2. ILO conventions concerning specific aspects of occupational safety

As already mentioned above, the ILO passed only one general convention concerning occupational safety and health. As concerns the specific conventions confined to specified areas of occupational safety, the situation is more promising. This applies to both their number and the rate of ratification by individual countries. The improved situation can be explained by the fact that in the legislative practice relating to the occupational safety of a State the conditions for the elimination of a particular hazard will presumably be present sooner than those for the adoption of a comprehensive standard covering the domain of occupational safety and health in its entirety. This statement holds true even if the above-mentioned standard reflects merely a particular international minimum standard.

When classifying the conventions concerning non-general subjects, two areas of major importance can be distinguished first.⁵ The one covers the protection against specific risks, the other the protection required by a given economic sphere or, eventually, by branches of activity.

The break-down by specific risks — based on the conventions adopted — is the following:

1. Toxic substances and agents,
 - a) white lead
 - b) radiation
 - c) benzene
 - d) carcinogenic factors causing occupational cancer,
2. Guarding of machinery,
3. Maximum weight,
4. Air pollution, noise and vibration.

⁵ Cf. 2. White lead (painting), conv. No.13., Radiation protection, Conv. No.115., Benzene, Conv. No.136., Occupational cancer, Conv. No.139., Guarding of machinery, Conv. No.119., Maximum weight, Conv. No.127., Working environment (air pollution, noise and vibration) conv. No.148., Safety provisions (building), Conv. No.62., Hygiene (commerces and offices), Conv. No.120., Marking of weight (packages transported by vessels), Conv. No.27., Protection against accident (dockers), Conv. No.28., Occupational safety and health (dock work), Conv. No.152.

Break-down by the given economic spheres and branches of activity is as follows:

1. building industry,
2. commerce and offices,
3. dock work.

It does not follow from the above classification that labour safety and health covers only these fields; it is, however, an indication of the fact that, within this sphere, the need for regulation has been so urgent in every country as to result in the emergence of an international standard. Thus the above can be considered as the most frequently investigated fields of occupational safety and health.

On examining the ratification of the recommendations broken down by countries,⁶ we have found that those concerning only one toxic substance or agent (in this connection: benzene and white lead) have been promulgated in every country of Western Europe. Protection against these substances is such a basic problem of public health, and their toxic effect is so evident, that in an advanced industrial country with a high standard of health care the regulation of the problem is bound to meet at least the standard international requirements. The same could be told of the protection against radiation; yet the convention regulating this problem has not been ratified as yet except by Norway and Sweden. The reason why this is so may presumably be found in the fact that the detrimental effect of radiation to health is not so easy to detect, unless in the long run and 'only' in general terms, except for extreme cases. Considering this, the provisions of the convention (No.115) are too strict, though there is no doubt as to their well-foundedness; on the other hand, it would be difficult to adopt them, owing to the widely differing technical conditions in the countries concerned. For the machinery and equipment in contact with radiation, each country has stringent safety regulations; however, the international standard was set so high in 1960, as to be too high even for the present conditions. This conclusion is implied by the extremely small number of ratifications.

A further examination of the enactments by countries shows that the number of countries where the agreement concerning the safety and prevention of accidents in the construction industry and the agreement concerning hygiene in commerce and the offices could be adopted has been relatively large. The ratification of agreements regulating the safety of dock worker — except for England, where not even one of these has been promulgated as yet — has taken place in the countries, where dock labour represents a branch of work essential for its high proportional share in the economy.

The number of countries, where the agreements concerning the prevention of occupational cancer, the guarding of machinery and air pollution has been ratified can be regarded as middling. The ratification of the 'maximum weight' agreement is restricted to a rather narrow circle of countries.

⁶ Cf.4.

Summing up the above, one can come to the conclusion that the conditions for the enforcement of the international standard of occupational safety and health are the best in the national legislation of the Scandinavian countries, and they are almost as good in the GFR, Ireland and Spain.

3. ILO recommendations concerning occupational safety and health

Another important field of the standard-setting activity of the ILO is the adoption of recommendations. These standards are more like recommendations, the governments are given discretionary powers in deciding, whether to put them into force in full or only in part. The existence of the agency of recommendations, in the issues where the Conference is not able to conclude an agreement binding for all parties, owing to the differences in the attitudes and opinions, can give rise to some kind of international standard, all the same. They are not binding for the member States, some kind of obligation, nevertheless, devolves on them. At stated intervals, they are obliged to submit a report to the International Labour Organisation and to record, to what extent the provisions laid down in the recommendations can be found in the national legislation. These reports — just like the measures adopted for having the recommendations ratified — can have a stimulating effect on the national legislation, in so far as they call the attention to the wide gap between some progressive arrangements and the national situation. The more so as the standard set by the recommendations is not the minimum standard, it is not required that all the provisions should be acceptable for and realizable by all of the member States. Experience shows that recommendations are usually made in matters already regulated by agreements, and include provisions, to the adoption of which, under the form of a convention, there is not much hope.

The above statement applies, of the specific recommendations concerning occupational safety and health, to both the protection against specific risks, and the protection focussing upon particular economic branches and lines of activity.⁷

The situation is different for general issues; in this field, the adoption of only one convention could be managed (the above-discussed No.155), and even this has hitherto not been ratified by more than two countries; on the other hand, four recommendations have been made. This points to the fact — as already indicated by the author — that the conditions for adopting a comprehensive international standard covering all the areas of occupational safety and health are still absent from the national legislation of the member

⁷ Cf. 2. Anthrax prevention, Rec. No.3., Lead poisoning, Rec. No.4., Radiation protection, Rec. No.114., Benzene, Rec. No.144., Occupational cancer, Rec. No.147., Guarding of machinery, Rec. No.118., Maximum weight, Rec. No.128., Working environment (air pollution, noise and vibration) Rec. No.156., Safety provisions (building) Rec. No.53., Co-operation in accident prevention (building) Rec. No.56., Hygiene (commerces and offices), Rec. No.120., Occupational safety and health (dock work) Rec. No.160.

States. General safety provisions are included in the recommendations concerning the prevention of industrial accidents, the protection of workers' health, the occupational health services and occupational safety and health.⁸ The latter already follows the line implying that soon after the adoption of a convention a recommendation is bound to be made, as well, to settle the matters where no standard binding to all parties could be set, because of the differing views held by the parties concerned.

Proceeding with the investigations into the ILO recommendations concerning occupational safety and health and in line with the considerations affecting the grouping of the conventions, the author will discuss first the recommendations concerning specific risks. Of these, within the problem complex of toxic substances and agents, recommendations were made concerning an issue that had already been regulated by a convention, with two exceptions, anthrax prevention and the protection of women and children against lead poisoning. Similarly, the conventions concerning radiation protection, the use and utilization of benzene, occupational cancer, guarding of machinery were also followed by recommendations, and the conventions concerning maximum weight, as well as air pollution, noise and vibration were likewise followed by such recommendations.

The other major group of non general conventions include the conventions concerning specific branches and lines of occupation, e.g. those concerning safety provisions in building and co-operation in accident prevention in building, as well as the convention concerning hygiene in commerce and offices. On the other hand, on the vocational education in building there is only a recommendation in existence.

Dock work is the sole field, where the number of conventions is higher than that of recommendations. The reason why this is so can be found in the identical working conditions and the relatively similar composition of this stratum of workers. In addition to the three conventions concerning dock work, there is only one recommendation concerning occupational safety and health.

II. Some important problems of occupational safety and health regulation based on ILO Convention No.155 (and the attached recommendations)⁹

II.1. The personal scope of occupational safety regulations

The ILO Convention No.155 (and the attached recommendations) state that this rule applies to all workers, in all the economic branches concerned. (Still, the economic branch falls into the scope of the object of economic regulation.) The Convention equally contains a provision as to the possibility

⁸ Cf.3. Prevention of industrial accident, Rec. No.31., Protection of workers' health, Rec. No.97.Occupational health services, Rec. No.112., Occupational safety and health, Rec. No.164.

⁹ Cf.8.

open to the member States ratifying the convention – after consultation with the representative organizations of the employers and workers concerned – to exclude from its application, in part or in whole, limited categories of workers. The reasons for such exclusions have, however, to be stated, and the measures taken for a wider application should also be reported on.

The persons under the scope of the occupational safety regulations fall into two groups:

1. persons protected,
2. persons obliged to ensure protection.

Those falling into group 1 are basically entitled to have rights, while basically obligations are imposed on those falling into group 2.

II.2. National policy and programmes concerning occupational safety and health

The general ILO Convention concerning occupational safety and health (and the attached recommendations) state that each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers formulate, implement and periodically supervise a coherent national policy on occupational safety, occupational health and the working environment.

The aim of the above provision shall be to develop a coherent national line of action or policy in order to prevent accidents and injury occurring in the course of or arising from work, or to minimise, as far as possible, the causes of hazards inherent in the working environment. The line of action shall take account of all spheres of action affecting occupational safety and health and the working environment.

This policy shall indicate the respective functions and responsibilities – in respect of occupational safety and health and the working environment – characteristic of the national conditions and practice.

The situation regarding occupational safety and health and the working environment shall also be supervised at appropriate intervals – either over-all or in respect of particular areas – with a view to identifying major problems, the effective methods of dealing with them, and priorities of action, and evaluating results.

II.3. The object of occupational safety regulations

Convention No. 155 records the spheres and fields of action, to be covered by the regulation of occupational safety, health and the working environment:

1. the design, testing, choice, installation, arrangement, use and maintenance of the material elements of work (workplaces, working environment, tools, machinery and equipment, chemical, physical and biological substances and agents);

2. the work process itself;
3. the relations between the material elements of work and the persons carrying out or supervising the work, as well as the adaptation of working time, organisation of work and the work process to the workers' physical and mental capacities;
4. training (further training), qualifications and motivations of the persons concerned;
5. co-operation and communication at the levels of working groups and all appropriate levels upwards (from the level of the undertaking to national level);
6. guarantees and the protection of persons performing duties of occupational safety.

With regard to workplaces, mentioned in the first place among the material elements of work the regulation shall concentrate on the following matters: cleanliness, overcrowding, temperature, ventilation, noise, safety regulations, emergency exits, removal of dust or fumes, lighting, sanitary installations and facilities, maximum weight, medical supervision. It voices the requirement that not only factories would qualify as workplaces, but the statute or parts of it should also apply to electric power stations, places for welfare and recreational purposes, docks, wharves, warehouses, stores, dockyards and repair workshops, construction sites and engineering construction workshops, as well as offices.

II.4. *The personal conditions of occupational safety*

II.4.a) *Medical examinations*

The Convention and the attached recommendations call the attention to the fact that it is by means of statutory regulation that medical examinations should be ensured for workers employed at workplaces endangering health, in every country. At workplaces liable to give rise to specific hazards, on employing workers, shortly before or just after their taking up work, medical examinations should be prescribed, which should be repeated, at regular intervals, during employment.

Through national legislation a competitive organ should be instituted which, after consultations with the workers and the employers' organisations should lay down the following:

- a) the hazards and conditions in the workplace necessitating medical examinations,
- b) the kinds of danger necessitating the prescription of initial or periodic medical examinations or both,
- c) the maximum length of the intervals between the periodic medical examinations, with reference to the nature and degree of hazards and the special conditions.

The examinations should take the following into consideration:

a) to disclose the symptoms or suspected symptoms of occupational diseases at the earliest possible stage,

b) if an occupational disease is involved, to get to know, whether anyone objects to employment or the particular worker's employment at that place.

If an occupational disease is involved, and if there is no medical objection to the worker's employment at that particular place, a certificate should be issued of the detrimental effect of the hazard, duly signed by the competent organ. The employer should keep a file of certificates of this kind, to be accessible for the officials of the labour inspectorate or other authorities concerned. The certificate should also be accessible to the worker concerned.

The medical examination should always be made by a specialist in occupational safety.

Provisions should be made for professional secrecy, and for the registration and completing of documents on the examinations.

The medical examination cannot involve any expense for the worker. The worker should also be paid for the time spent on the examination, while he or she is absent from work.

II.4.b) *The role of the occupational health service*

The role of the occupational health service should primarily be preventive. It should not be expected of it to issue documents for the certification of the workers' absence from work because of illness and to collect information on the progress of the illness. Its main task is to detect the hazards, risks at the workplace and to submit proposals for their prevention, and to offer suitable workplaces for those still working but already injured or those returning to work after a long period of occupational illness.

The following factors should be taken into account when developing the occupational health service:

a) each factor affecting the workers' health should be monitored, and the management, the workers or their representatives should be advised in this respect;

b) a work analysis should be conducted by taking into account hygienic, physiological and psychological considerations and, based on the findings, guidance and information should be provided for the management as well as for the workers;

c) together with another competent institution or body, participation in the activity for the prevention of accidents, the supervision of individual protective equipment and guidance and advice on its use;

d) the inspection of hygienic and sanitary facilities and equipment, and other welfare facilities, such as kitchens, canteens, rest rooms etc. should be ensured;

e) periodic and specific medical examinations should be made on employment and, where necessary, also biological and radiological examinations, to prevent occupational disease;

f) supervision of the adaptation of work to workers, especially to disadvantaged workers, in agreement with their physical capacities; participation in the rehabilitation of workers, the retraining of such workers and providing guidance and advice to them;

g) the workers should be advised on every functional disorder that may occur during work, or may worsen;

h) emergency care should be provided for the victims of accidents or indisposition and, in certain cases, with the consent of those concerned, including the medical attendant of those taken ill, out-patient treatment should be given to those at work or having returned to work;

i) the initial and continuing training of first-aid personnel, the supervision and maintenance of first-aid equipment should be organised in cooperation, where possible, with other units and agencies concerned;

j) the training of personnel in matters of the preservation of health and hygiene, should be organised;

k) report and evaluation should be made on the sanitary conditions of workplaces, with special regard to the statistical data of sanitation;

l) researches should be conducted into occupational safety and health.

Where an occupational health service have been instituted, having taken into account the above functions, the safety specialist should be provided with any relevant information required by him or her.

The occupational health services should have close ties with each unit and organisation concerned with the workers' health, safety and welfare, with the welfare, social, safety and personnel departments, and the trade union, safety and health committees. They should also be in touch with external organisations and institutions concerned with health, safety, rehabilitation, reemployment and the workers' welfare.

The safety service should keep a personal medical record for each worker of the medical examinations they underwent during their former employment and of their later visits to the doctor, and these records should be kept up to date.

All safety services should be placed under the supervision of one doctor, directly responsible for the work of the organisation both to the management and to the superior authorities. The doctor should not attend more workers than he or she is adequately able to, with special regard to the specific problems arising from the character and nature of industry. The doctor of the safety service should enjoy complete professional and moral freedom, both from the employer and from the workers.

The doctor running the safety service should be given special training in industrial hygiene, emergency care and occupational pathology. He or she should be allowed to undertake further studies and to get further training in this field.

The nursing staff attached to the occupational safety service should have the qualification prescribed by the competent authority.

Each employer should institute a first-aid organisation, with the following two considerations in mind:

- a) only adequately qualified personnel should be employed,
- b) they should be easily accessible during working hours.

The equipment of the safety service should meet the requirements prescribed by the competent authorities.

In order to function efficiently, the entire personnel of the health service should

- a) have open access to all parts of the workplace,
- b) pay periodic visits to each place of work, at regular intervals,
- c) reliable information should be available to them on the work processes, manufacturing processes and the material and substances employed, with a view to safety and health,
- d) be authorized to ask the organisations concerned to investigate and study the potential occupational hazards to health (e.g. sampling and analysis of the air in the workplace, the assessment of detrimental physical substances).

Each member of the staff of the occupational health service should be requested to observe not only the professional secrecy but also the secrecy concerning technical information they are likely to have access to in the course of their work.

II.4.c) *Occupational safety education and propaganda*

The Convention and the attached recommendations call the attention to the fact that the workers' interest in preventing accidents should be awakened and kept alive, and their cooperation should be ensured with the aid of lectures, publications, films, visits to factories and by other means, as well.

It is suggested in the Convention that the member States should start foundations for the purpose of organising standing exhibitions on safety where, by putting on display the best devices, equipment and methods as well as by providing guidance and advice, they could contribute to the development of occupational safety.

It is also proposed by the Convention that the member States should publish monographs on the causes and prevention of accidents, industrial accidents in particular, or rather accidents in each branch of industry. The monograph should be prepared by the supervisory authority or another competent agency, because they can rely on their experience in the prevention of accidents.

If figures among the proposals that it should be incorporated in the curriculum of elementary and secondary education, how to prevent accidents and how to provide first-aid treatment, and it should be taught in every school, irrespective of educational level, how to prevent industrial accidents.

II.5. *The objective conditions of occupational safety*

In Convention No. 155, of the material conditions of occupational safety, the workplace and working environment, as well as the rules of conduct applying to them are discussed.

The responsibility for ensuring the material conditions rests mostly with the employer. The employer is obliged to ensure the proper conditions for the protection of the workers' health, especially in respect of the following:

1. rubbish and dirt should not accumulate so as to be detrimental to health;
2. in the rooms where work is actually done the floor surface and the volume of air should be sufficient to prevent overcrowding by the workers;
3. adequate lighting (natural or artificial or both) should be installed;
4. the right atmospheric conditions should be kept, in order to avoid insufficient ventilation and movement of air, air pollution, draught, sudden changes in temperature and, as far as it is practicable, excessive heat or cold, damp or objectionable stinks;
5. there should be an adequate number of appropriate sanitary installations, washing facilities, an adequate supply of drinking water;
6. if the workers need to change clothes, there should be a dressing room or other convenient place for changing and storing clothes;
7. if the workers are prohibited to eat or drink in the place where they actually do work, a room suitable for this purpose should be available to the workers;
8. measures should be taken to lessen or stop the noise and vibration detrimental to workers' health;
9. arrangements should be made for the safe storage of dangerous substances.

For the prevention, minimization or elimination of risks detrimental to health all the appropriate measures should be taken:

1. to minimize the risks of dangerous substances, processes and technologies or their replacement by other ones;
2. to prevent the release of dangerous agents or to protect the workers from radiation;
3. installation of dangerous procedures into a separate room or building, where only a very small number of workers are employed;
4. to handle dangerous substances in a closed system, in order to prevent personal contact with them, and especially the discharge or release of dust, gases, fibres, vapours, fumes in an amount detrimental to health;
5. to provide a mechanical outlet or ventilation system to remove noxious fumes or the above-mentioned dangerous substances from the air;

6. to provide the workers with the necessary protective clothing, protective equipment and individual protective devices and to instruct them in their use.

Where special protective clothing or safety device is needed, the employer is obliged not only to provide the worker with this, but also to keep it clean or to maintain it. This should be stored in rooms where it will not make dirty the workers' other clothes.

The workers should be informed of the necessity of all above-listed forms of protection. They should be reminded of their duty to cooperate and that they must not render the functioning of the safety apparatus disorderly by any means and, with this view in mind, that they should use the safety devices and equipment properly.

The air of workplaces, where dangerous or offensive substances are produced, handled or used should be tested at frequent regular intervals, with the aim of ensuring that toxic or irritating gases, vapours, dust and fumes should be removed from the air, at least to an extent that the air should not be detrimental to health. The competent authority should state what the admissible maximum concentration of noxious substances is supposed to be. The authority concerned is entitled to test the workplaces in this respect. The tests should be controlled by qualified personnel. The authority concerned should call the workers and employers' attention to the safety regulations, e.g. with warning notices or by other means.

By way of conclusion, it should be observed that there is a close connection between the personal and material conditions, because the development and raising at a higher level of the material conditions of work is the principal guarantee of the physical and mental efficiency of the work done.

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Familiarity with the legislation by the ILO concerning occupational safety has a particular importance in present-day Hungary, because the preparation of an occupational safety code is in progress now. This code will unify the statutory regulation hitherto partitioned off (because of settling matters at different levels of the sources of law), while allowing a larger margin to the regulation of occupational safety at the level of the undertaking. It is indispensable for this work that the codifiers should be familiar with the international regulation of occupational safety and health; in the present paper the author has chosen for review the sources of the regulation, the principles of the regulation, the scope and object of the regulation as well as its personal and material conditions.