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IMPLEMENTATION OF INTERNATIONAL STANDARDS RATIFIED BY UKRAINE TO NATIONAL LEGISLATION ON REDUCING THE RISK OF OCCUPATIONAL DISEASES AND OCCUPATIONAL INJURIES

Nahorna A. M., Ogorodnyk A. N.**State Institution «Kundiiev Institute of Occupational Health of the National Academy of Medical Sciences of Ukraine», Kyiv**

Introduction. After the signing of the Association Agreement between Ukraine and the European Union (EU), Ukraine is making significant efforts to implement international recommendations and standards on safety and health at work. In 2018, the Cabinet of Ministers of Ukraine approved the Concept for Reforming the Occupational Safety and Health Management System in Ukraine, which creates the basis for reforming and bringing the national system of occupational safety and health in line with EU and International Labour Organization (ILO) standards. In addition, EU directives on occupational safety and health (OSH), such as 2009/104/EC (2009), 89/656/EEC (1989), 89/654/EEC (1989), 89/391/EU (1989) and 92/57/EEC (1992) are enshrined in the current regulatory framework through the orders of the Ministry of Social Policy of Ukraine. However, high rates of work accidents and occupational diseases indicate that much remains to be done in Ukraine when it comes to preventing occupational hazards and promoting the safety, health and welfare of workers.

The aim of the study – analysis and determination of the state of implementation of international Conventions and Recommendations of the ILO, EU Directives to reduce the risk of developing occupational diseases and industrial injuries.

Materials and methods of research. Analyzed are international and domestic regulatory legal acts regulating the risks of occupational diseases and industrial injuries in Ukraine.

Results. The issues of implementation of international standards ratified by Ukraine in the national legislation in the field of OSH are considered, namely, reducing the risk of developing occupational diseases and industrial injuries. Ukraine has ratified the EU Conventions in the field of occupational safety and health, such as Convention No. 155 «On Safety and Health at Work and the Working Environment» (1981) and the 2002 Protocol to Convention No. 155, Convention No. 150 «On Labor Administration: the role, functions and organization» (1978), Convention No. 160 on Labor Statistics (1985), Convention No. 161 on Occupational Health Services (1985). However, Ukraine has not ratified the basic ILO Convention No. 187 on the Fundamentals Promoting Occupational Safety and Health and the corresponding Recommendation No. 197. The ILO directives have been implemented into national legislation through the orders of the Ministry of Social Policy of Ukraine. Thus, in order to implement the provisions of Directive 89/391/EEC Gostruda, a draft Law of Ukraine «On the Fundamentals of Ukrainian Legislation on Occupational Safety and Health» was developed. Based on the provisions of Directive 89/654/EEC, a draft order «On the Approval of the Minimum Requirements for Health and Safety in Work Areas» has been developed. In the process of agreeing on the draft order by the interested parties, it was determined that the implementation of Directive 89/654/EEC is possible only after the full implementation of Directive 89/391/EEC into national legislation, since it is the first directive within the meaning of part 1 of Art. 16 Directive 89/391/EEC. Directive 2009/104/EC has been implemented into national legislation by means of an order «On the Approval of the Requirements for Safety and

Health Protection in the Use of Production Equipment by Workers», Directive 89/656/EEC through the order «On the approval of the Minimum safety and health requirements for the use of personal protective equipment by workers in the workplace». Directive 92/57/EEC through the Order «On the Approval of Minimum Requirements for Occupational Safety at Temporary or Mobile Construction Sites».

Conclusions. 1. The main international legal acts in the field of labor safety, in particular the Conventions, the Recommendations of the ILO and the EU Directives, the implementation of the provisions of which in the national legal system is necessary for the effective regulation of relations to reduce the risk of developing occupational diseases and industrial injuries. 2. Today, it is necessary to introduce the principle of employers' responsibility for ensuring the safety and health of employees in all aspects related to work, including the prevention of occupational risks, their assessment, consultations with employees and the participation of employees, health monitoring, informing, as well as providing the necessary organization and means, with strict adherence to consistent and hierarchical general principles of prevention. 3. Ensuring that the scope of national legislation with BGP covers all areas of activity of the private, public, cooperative and social sectors, as well as all employers and workers with the exception of certain special branches of the public service and domestic workers; harmonization of the Ukrainian system of labor inspection with international labor standards and best practices, in particular with the ILO conventions «On Labor Inspection in Industry and Trade» 1947 No. 81 and «On Labor Inspection in Agriculture» 1969 No. 129. 4. Improving working conditions in Ukraine actually requires not only a perfect and modern legal framework, but also a system that ensures the application and compliance with regulations.

Key words: occupational diseases, occupational injuries, accidents, implementation, ratification, Conventions, Directives, Recommendations, Ukrainian legislation, International Labor Organization

Introduction

Protection of the life and health of the worker is one of the key standards of the International Labour Organization (ILO) in its standard-setting work. The preamble of the ILO's Constitution 1919 identifies the protection of workers against sickness, occupational disease and accidents at work among its objectives, and pursuant to Section III (g) of the Declaration of Philadelphia, the ILO undertook to promote the adoption of programmes by countries around the world to provide the necessary protection for life and health in all occupations.

One of the main legal instruments regulating safe working conditions is the instruments adopted by the ILO. Ukraine has ratified more than 60 ILO conventions of which approximately 30 relate to the promotion of decent work. A significant number of the conventions ratified by Ukraine concern the issues of creating safe working conditions and occupational safety at work in harmful and hazardous working conditions, protection of health and lives of workers employed in enterprises with harmful and hazardous working conditions. These acts include a large number of Recommendations and Directives of the European Union (EU) regulating the assessment of occupational risks and hazards, development of national legislation in the field of labour protection, including information, consultation and training of workers [1, 2].

Given that one of the main strategic directions of Ukraine's foreign policy is integration into the EU, harmonisation of national occupational safety and health (OSH) legislation is of great relevance.

The aim of the study – analysis and determine the status of implementation of international Conventions and ILO Recommendations, EU Directives to reduce the risk of occupational diseases and occupational injuries.

Materials and methods of research

International normative legal acts, regulating occupational diseases and occupational traumatism in Ukraine have been analyzed. The documents of ILO and World Health Organization (WHO) in the field of labor protection are examined in details: Convention No. 155 «About safety and occupational health and the working environment» (1981) and Protocol 2002 to Convention No. 155, Convention No. 150 «About labor administration: role, functions and organization» (1978), Convention No. 160 on Labour Statistics (1985), Convention No. 161 on Occupational Health Services (1985), Convention No. 187 on Freedoms to Promote Safety and Health at Work (2006) and Recommendation No. 197 thereon (2006). EC Directives 89/391/EC (1989), 89/656/EEC (1989), 2009/104/EC (2009), 89/654/EEC (1989), 92/57/EEC (1992), 90/270/EEC (1990), 92/104/EEC (1992), 92/91/EEC (1992), 92/58/EEC (1992), 91/533/EEC (1991), 2003/88/EEC (2003).

Results of the research and their discussion

The consequences of occupational injuries and diseases have prompted policy makers around the world to take action to promote improvements in worker safety and health and to prevent the occurrence of such accidents and diseases. As a result, international organizations – the United Nations (UN), ILO, WHO – have developed international guidelines, norms and standards in the form of international treaties, conventions, recommendations and directives, the implementation of which contributes to improving occupational health and safety. as a consequence, the reduction of occupational injuries and diseases [3].

Ukraine should adapt national OSH legislation to ILO requirements and EU directives. The state of implementation of the international standards ratified by Ukraine is represented in Tables 1 to 3.

Table 1

Directives of the European Parliament and of the Council, the main provisions of which have been incorporated into national legislation

Name	Order of the Ministry of Social Policy of Ukraine
Directive 2009/104/EU dated 16.09.2009	«On approval of the Safety and Health Protection Requirements during the use of production equipment by employees» dated 28.12.2017 No. 2072
Directive 92/57/EEC dated 24.06.1992	«On the approval of the Minimum requirements for labor protection at temporary or mobile construction sites» dated 23.06.2017 No. 1050
Directive 89/656/EEC dated 30.11.1989	«On the approval of the minimum safety and health requirements for the use of personal protective equipment by employees at the workplace» dated 29.11.2018 No. 1804
Directive 90/270/EEC dated 29.05.1990	«On Approval of Safety and Health Protection Requirements when Working with Screen Devices» dated 14.02.2018 No. 207
Directive 92/104/EEC dated 03.12.1992	«On approval of requirements for safety and health protection of employees of mining enterprises with underground and open mining methods» dated 07.02.2018 No. 943

Table 2

Directives of the European Parliament and the Council, which must be implemented into national legislation

Name	Content
Directive 89/391/EC dated 12.06.1989	On the implementation of measures to encourage improvement in the field of safety and health protection of employees during work
Directive 92/91/EEC dated 03.11.1992	On minimum requirements for improving the safety and health of workers in extractive industries using drilling
Directive 89/654/EEC dated 30.11.1989	About the minimum requirements for safety and health at the workplace
Directive 92/58/EEC dated 24.06.1992	About the minimum requirements for ensuring safety and/or hygiene markings at the workplace
Directive 91/533/EEC dated 14.10.1991	On the employer's obligation to inform employees about the terms and conditions applicable to the employment contract or labor relations
Directive 2003/88/EEC dated November 4.11.2003	About some aspects of working time organization

One of the basic ILO Conventions in the field of OSH is the Convention «On Safety and Health at Work and Working Environment» 1981 No. 155 [4], ratified by the Law of Ukraine dated 02.11.2011 No. 3988-VI [5], which defines the national policy framework and measures on the national and industrial levels aimed at saving the life and health of employees, to prevent accidents and harm to health arising out of work, minimizing the reasons

of work related hazards (Article 4 of the Convention). The competent authority shall ensure that procedures for the notification of occupational accidents and diseases by employers are established and applied; investigations into occupational accidents and diseases are carried out (Article 11 of the Convention).

According to articles 16 and 18 of Convention No. 155 [4], the employer shall ensure that workplaces, machinery, equipment and processes

Table 3

Conventions of the International Labor Organization ratified by Ukraine

Convention	Content
Convention No. 155 dated 22.06.1981 and the 2002 Protocol to Convention No. 155	On occupational safety and hygiene and the production environment, ratified by the Law of Ukraine dated 02.11.2011 No. 3988-VI
Convention dated 26.06.1978 No. 150	On labor administration: role, functions and organization, ratified by the Law of Ukraine dated 01.07.2004 No. 1967-IV
Convention dated 25.06.1985 No. 160	On labor statistics, ratified by the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR dated 03.05.1990 No. 9158-XI
Convention dated 26.06.1985 No. 161	On occupational hygiene services, ratified by the Law of Ukraine dated 10.03.2010 No. 1954-VI
Convention dated 15.06.2006 No. 187 and the corresponding Recommendation dated 15.06.2006 No. 197	Ukraine has not ratified the Basics of Occupational Safety and Health

under his control are safe and free from health hazards; provide, where necessary, appropriate protective clothing and equipment to prevent accidents or adverse health effects; provide for measures to deal with accidents and occupational accidents.

Protocol of 2002 to Convention No. 155 [6] details the system of registration and reporting of occupational accidents, occupational diseases and incidents, as well as establishes requirements to keep national statistics on the mentioned issues. An important standard is the need to provide for the responsibility of the employer to prosecute an employee who reports a work accident, occupational disease or accident.

In the ILO Convention No. 150 on Labour Administration: Role, Functions and Organization, 1978 [7] (ratified by Law No. 1967-IV of 01.07.2004 [8]) lays down the fundamental principles of labour organisation and provides for the obligation of each Member to ensure, in a manner consistent with national conditions, the organisation and effective functioning in its territory of a labour administration system whose functions and

responsibilities are properly coordinated, as well as the implementation of measures appropriate to national conditions to ensure, within the labour administration system, consultation, cooperation and negotiation between public authorities.

In ILO Convention No. 160 concerning Labour Statistics, 1985 [9] (ratified by the Decree of the Presidium of the RSFSR of 03.05.1990 No. 9158-XI [10]) contains general international requirements and recommendations on all main areas of statistical coverage. The Convention provides common approaches to a uniform understanding and interpretation by all countries of the definition of the most important labour statistics [11].

ILO Convention No. 161 on Occupational Health Services, 1985 [12] (ratified by Law of Ukraine of 10.03.2010 No. 1954-VI [13]), entrusts occupational health services with preventive functions and responsibility for advising employers, workers and their requirements to create and maintain a safe and healthy working environment conducive to optimal physical and mental health in relation to work activities.

However, Ukraine has not ratified the ILO Basic Convention 187 [14] and its accompanying Recommendation 197 [15]. Under Convention No. 187, each State party is required to continuously improve OSH in order to prevent occupational injuries, occupational diseases and worker deaths at work by developing national OSH policies, systems and programmes, adopted in consultation with the largest representative employers' and workers' organizations, and must consider the principles laid down in ILO instruments concerning the framework to promote OSH (Article 2). The Annex to Recommendation No. 197 provides a list of ILO instruments relating to the framework conducive to OSH.

In Ukraine, the development of the National List of Occupational Diseases and their Registration has taken into account Recommendation No. 194 of 2002 «On the list of occupational diseases, reporting of occupational accidents and occupational diseases and their registration», annexed to the Convention [16].

In order to improve the occupational safety management system in 2018, Cabinet of Ministers Decree No. 989-r approved the Concept for Reforming the Occupational Safety and Health Management System in Ukraine [17], which defines principles, directions and tasks of the OSH organisation system, taking into account the risk-oriented approach to ensure implementation of EU standards. The conceptual measures envisage the transition from the policy of reacting to hazardous accidents at work to the policy of prevention. The basis for the reform is the norms of the Directive No. 89/391/EEC [18] on the introduction of measures to promote improvements in the safety and health of workers at work, defining general principles of system formation (prevention of risks, assess-

ment of those that cannot be avoided; elimination of risks, etc.) [19].

Directive 89/391/EEC of the Council of the European Communities «On the introduction of measures to promote occupational safety and health of workers» (1989) [18] defines the principles of occupational risk prevention, safety and health, elimination of hazards and accidents, information, training, consultation and worker participation practices.

In order to implement the provisions of Directive 89/391/EEC, the State Labour Service of Ukraine has developed a draft Law of Ukraine «On the Fundamentals of Labour Safety and Health Legislation of Ukraine» [20], which introduces a risk-oriented approach to OSH. The draft law includes all norms stipulated by the Directive 89/391/EEC, aimed at ensuring the human right to adequate, safe and healthy working conditions, and introduces at the legislative level the principles of risk-oriented approach in the field of OSH. It defines the legal, organisational, economic and social framework for the operation of a national system of occupational risk prevention based on the introduction of measures designed to encourage the improvement of safety, health and life at work.

Directive 89/654/EEC on the introduction of measures to improve OSH of workers at work [21]. The State Labour Inspectorate has drafted an order of the Ministry of Social Policy of Ukraine «On Approval of Minimum Health and Safety Requirements in Work Zones» [22]. According to the order, the employer must conduct a study of working conditions in work areas and workplaces in order to assess the state of BHS of employees and its improvement; take the necessary measures to prevent and eliminate the risks identified by the study of working conditions, taking into account

their additional and/or joint impact; in case of accidents on the territory of the enterprise the employer must take urgent measures to evacuate workers, provide medical care to the injured, localize and eliminate the accident.

In the process of negotiation of the draft order by the stakeholders it has been determined that the implementation of the Directive 89/654/EEC will only be possible after full the implementation of the Directive 89/391/EEC as it is the first separate Directive within the meaning of Article 16/39, Part 1.

Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 [23] deals with minimum safety and health requirements for the use of work equipment by employees at work (the second separate Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). The aim of the implementation plan is to introduce measures to promote health and safety at work and to prevent accidents and injuries arising from work activities while using work equipment.

The Directive has been implemented in national legislation in the form of the Order of the Ministry of Social Policy of 28.12.2017 No. 2072 «On approval of Safety and Health Protection Requirements for the Use of Work Equipment by Employees» [24], registered with the Ministry of Justice of Ukraine on 23.01.2018 No. 97/3. Pursuant to section 2 of this order, the employer is required to take necessary measures to ensure that the production equipment used by employees is suitable for the work to be performed or is properly adapted for the work and does not pose a threat to their life or health; when choosing production equipment, take into account the specific working conditions, safety, health and life risks of employees present in the workplace; measures to minimise risks to life and health of employees.

If the production equipment provided to and used by an employee does not meet the minimum safety requirements for production equipment specified in Section III of these Requirements and the regulations on occupational safety and health, such production equipment shall be brought into conformity with these Requirements and the requirements of the current legislation of Ukraine on occupational safety and health not later than four years after the entry into force of these Requirements.

Directive 89/656/EEC [25] on minimum health and safety requirements for the use of personal protective equipment by employees at the workplace is implemented in national legislation in the form of the order of the Ministry of Social Policy «On approval of the Minimum Safety and Health Requirements for the use of personal protective equipment by employees at the workplace» of 29.11.2018 No. 1804, registered with the Ministry of Justice of Ukraine on 27.12.2018 under No. 1494/32946 [26].

Directive 2003/88/EC of the European Parliament and of the Council of 04.11.2003 on certain aspects of the organisation of working time [27] sets minimum safety and health requirements for the organisation of working time and is the main EU document regulating working and rest time.

Directive 2003/88/EC defines working and rest time without including any intermediate categories of time. One of the main principles of the Directive, enshrined in Article 13, is the «general principle of adaptation of work to the employee». According to it, working time should be organised around the needs of employees and not just employers. According to Article 6 of Directive 2003/88/EC, the average working time in each seven-day period, including overtime hours, must not exceed

48 hours in a reference period not exceeding 4 months. It is true that Member States may not use these limits if the worker has voluntarily agreed to such working conditions.

Furthermore, Directive 2003/88/EC allows certain exceptions to the 48-hour working week rule for certain specific types of work, in particular where it is not possible to normalise the work, to determine the working time in advance or where the working time is determined by the employee himself.

EU Directive 2003/88 also regulates certain night work issues: during night hours, during normal working hours, perform at least 3 hours of their daily working time; during night hours, perform a certain part of their annual working time if it is laid down in Member States' legislation or in collective agreements.

Article 8 of the Directive provides that the normal working time of night workers shall not exceed an average of 8 hours in any 24-hour period, which shall in any event include a period between 24 and 5 hours. Night workers whose work involves particular risks or considerable physical or mental strain shall not work for more than 8 hours in any 24-hour period during which they undertake night work.

One of the obstacles to the enforcement of night-time employment guarantees is the possibility for Member States to derogate from the provisions of Directive 2003/88 with regard to irregular working hours (Article 17 (1)), in the case of distant places of work from the worker's residence (Article 17 (3) para. «a»), in case of activities connected with guarding and surveillance which require constant presence in order to protect property and persons (Article 17 (3) para. «b»), in the case of activities which require continuity of service or production (Article 17 (3) para. «c»), etc. It is also possible to derogate from communitarian rules

through the adoption of collective agreements or contracts (Article 18).

EU Directive 2003/88 concerning work and rest times, the full 28 days of holiday, the health consequences of shift work, especially night shifts, is seen by Europe as a very important issue.

There is a need to introduce a category of night shift workers, among those subject to mandatory periodic preventive medical examinations, in the new draft order on medical examinations. The EU experts have strong disagreement with the Ukrainian legislation on payments for leave not used in full, etc. For Europeans, the priority of restorative work after the working day/week is indisputable and cannot be considered in the agreement of the employer's economic interest. There is hope in the new Ukrainian Law on Occupational Safety and Health.

Directive 91/533/EEC of 14.10.1991 [28] on the employer's obligation to inform employees of the terms and conditions applicable to the employment contract or employment relationship. According to Article 2 (1) of the Directive, the employer is required to notify the employee of the material conditions of the employment contract/employment relationship (in particular, to inform the parties to the contract, the place of work, the position and a short description of the work to be performed, the start date of work, the term of the employment contract, pay, duration of paid leave, the working day and week, the term of notice of termination of the employment contract); terms and forms of the employer's obligation (information is provided no later than two months from the date of starting work in written form (included in the contract, letter of agreement, written declaration of the employer on specifics); duration of business trip, currency in which work will be paid); employee's right to legal protection.

Directive 92/57/EEC [29] on the implementation of minimum OSH requirements on temporary or mobile construction sites has been implemented in national legislation in the form of the Order of the Ministry of Social Policy of 23.06.2017 No. 1050 «On approval of the Minimum Occupational Safety Requirements on temporary or mobile buildings» [30], registered with the Ministry of Justice of Ukraine on 08.09.2017 under No. 1111/30979.

Directive 90/270/EEC [31] on minimum safety and health requirements for working with screen devices from 29.05.1990 has been implemented in national legislation in the form of an order of the Ministry of Social Policy from 14.02.2018 No 207 «On approval of requirements for safety and health protection of workers when working with screen devices» [32, 33].

The standards contained in the above-mentioned ILO documents and EU Directives are determinative for the adaptation and development of national legislation to reduce the risk of occupational diseases and occupational injuries.

Conclusions

1. Implementation of the provisions of the main international legal acts in the field of occupational safety and health, in particular the ILO Conventions, the ILO Recommendations and the EU Directives in the national legal system is necessary for effective regulation of relations to reduce the risk of occupational diseases and occupational injuries.
2. It is now necessary to introduce the principle of employers' responsibility for ensuring the safety and health of workers in all work-related aspects, including prevention of occupational risks, their assessment, consultation with and participation of workers, supervision of health, information, as well as ensuring the necessary organization and means with strict observance of consistent and hierarchical general principles of prevention.
3. Ensuring that national legislation with OSH extends to all areas of the private, public, cooperative and social sectors as well as all employers and employees except for certain specific sectors of the civil service and domestic workers; aligning the Ukrainian Labour Inspection system with international labour standards and best practices, in particular ILO Conventions on Labour Inspection in Industry and Commerce 1947 No. 81 and on Labour Inspection in Agriculture 1969 No. 129.
4. Improving working conditions in Ukraine actually requires not only a perfect and up-to-date legal framework but also a system to enforce and comply with the regulations.

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ORCID ID of co-authors and their contribution to the preparation and writing of the article:

Nahorna A. M. (ORCID ID 0000-0003-3311-7523) – interpretation of data, writing the article, forming conclusions;
Ogorodnyk A. M. (ORCID ID 0000-0001-7756-7222) – literature search and analysis, primary data collection, article writing, text preparation.

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Contact person: Nahorna Antonina, MD, professor, Corresponding member of NAMSU, Department of epidemiological studies, State Institution «Kundiiev Institute of Occupational Health of the National Academy of Medical Sciences of Ukraine», 75 Saksaganskoho str., Kyiv, 01033. Tel. + 38 0 97 312 74 31.
E-mail: antoninagornaya@gmail.com