УДК 349.2
DOI: 10.37635/jnalsu.28(3).2021.238-247

Віталій Леонідович Яроцький

Національна академія правових наук України
Харків, Україна

Кафедра цивільного права № 2
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна

Юрій Дмитрович Древаль

Кафедра охорони праці та техногенно-екологічної безпеки
Національний університет цивільного захисту України
Харків, Україна

Світлана Олександрівна Заїка

Харківський національний технічний університет сільського господарства імені Петра Василенка
Харків, Україна

СИСТЕМНІ ОЗНАКИ НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ОХОРОНИ ПРАЦІ У РЕСПУБЛІЦІ ПОЛЬЩА

Анотація. *Проаналізовано питання щодо сутності та структури нормативно-правового регулювання охорони праці у Республіці Польща. Актуальність обраної теми першочергово пояснюється тією обставиною, що в цій країні на фоні безсумнівних економічних успіхів відбувається інтенсивний процес вдосконалення правових та організаційних засад відповідного спектру соціально-трудових відносин. Вивчення даного питання першочергово важливе для тих країн, які мали з Польщею приблизно однакові «стартові умови» – рецидиви державного соціалізму, які знецінювали засади ринкової економіки та можливості повноцінного захисту людей праці. Метою статті визначено наведення та обґрунтування системних ознак охорони праці у Республіці Польща в складних умовах сьогодення. Дослідження спирається на розуміння методології як складної інтегральної системи сприйняття дійсності та наукового пізнання, і проведене на основі необхідного кола методів, а саме: методу системного аналізу, історико-правового методу, структурно-функціонального методу, методу порівняння, спеціального порівняльно-правового методу, а також крос-темпорального аналізу. Відзначено, що нормативно-правовому регулюванню охорони праці у Республіці Польща властиві всі ознаки системності. Першочергово це пояснюється гармонійним співвідношенням двох складових: суто нормативно-правового та організаційно-правового забезпечення відповідної частки соціально-трудових відносин. Слід відзначити і невпинне вдосконалення нормативно-правового регулювання сфери охорони праці залежно від сучасних викликів та загроз. Для країн, які об'єднані з Польщею недавнім минулим у вигляді державного соціалізму, важливим є і досвід налагоджування роботи тристоронніх учасників соціального діалогу (урядових структур, представників роботодавців та працівників). Наукова цінність статті першочергово полягає в необхідності та доцільності аналізу системних ознак нормативно-правового регулювання охорони праці. У такому разі важливим є як застосування методу системного аналізу, так і чітке розмежування категорій «системне дослідження» і «дослідження систем» (останнє у даному разі постає і як система нормативно-правового регулювання охорони праці, і як складна сукупність органів публічної влади та інших організацій, причетних до виконання важливого завдання щодо належного забезпечення безпеки і гігієни праці)*

Ключові слова: *Республіка Польща, безпека і гігієна праці, нормативно-правові засади, трудове право, соціальний захист, колективний договір*

Vitaly L. Yarotskiy

National Academy of Legal Sciences of Ukraine
Kharkiv, Ukraine

Department of Civil Law No. 2
Yaroslav Mudryi National Law University
Kharkiv, Ukraine

Yuriy D. Dreval

Department of Occupational Safety and Technogenic and Ecological Safety
National University of Civil Defense of Ukraine
Kharkiv, Ukraine

Svitlana O. Zaika

Kharkiv Petro Vasylenko National Technical University of Agriculture
Kharkiv, Ukraine

SYSTEM SIGNS OF STATUTORY REGULATION OF OCCUPATIONAL HEALTH AND SAFETY IN THE REPUBLIC OF POLAND

Abstract. *The study analyses the question of the essence and structure of statutory regulation of occupational health and safety in the Republic of Poland. The relevance of the subject under study is primarily explained by the fact that in Poland, against the background of undoubted economic success, there is an intensive process of improving the legal and organisational foundations of the corresponding range of social and labour relations. The study of this issue is of paramount importance for those countries that had approximately the same "starting conditions" with Poland – the recurrence of state socialism, which devalued the principles of a market economy and the possibility of full protection of working people. The purpose of this study is to present and substantiate the systemic features of occupational health and safety in the Republic of Poland in difficult present-day conditions. The study is based on understanding the methodology as a complex integrated system of perception of reality and scientific cognition, and conducted based on the necessary scope of methods, namely: method of system analysis, historical legal method, structural-functional method, comparison method, special comparative legal method, and cross-temporal analysis. The authors of the present paper noted that the statutory regulation of occupational health and safety in the Republic of Poland has all the features of systemic nature. Most importantly, this is explained by the harmonious correlation of two components: purely statutory and legal support of the corresponding share of social and labour relations. Notably, the statutory regulation of occupational health and safety is undergoing continuous improvement depending on current challenges and threats. For countries that have been united with Poland in the recent past in the form of state socialism, the experience of establishing the work of tripartite participants in social dialogue (government agencies, employers' and workers' representatives) is also important. The scientific value of the present paper primarily lies in the necessity and feasibility of analysing the systemic features of statutory regulation of occupational health and safety. In this case, it is important to use both the method of system analysis and a clear distinction between the concepts "system research" and "research of systems" (the latter in this case appears both as a system of legal regulation of occupational health and safety and as a complex set of public authorities and other organisations involved in the important task of ensuring due occupational health and safety)*

Keywords: *Republic of Poland, labour safety and hygiene, statutory bases, labour law, social protection, collective agreement*

INTRODUCTION

The use of world practices in standardising the corresponding share of social and labour relations is vital for improving the state of occupational health and safety in Ukraine, because it is an invaluable experience gained by many countries to improve the scope of social and labour relations. Admittedly, the world practices of many countries have long and successfully employed methods and approaches based on the principle of prevention of accidents and occupational diseases. In this sense, the Polish practices of streamlining labour relations deserve special attention. Over the past 30 years, Poland has gone from balancing on the brink of bankruptcy to one of the world's 20 largest economies, with its GDP quadrupled and its exports tenfold. Such changes are accompanied by continuous improvement of the occupational health and safety management system.

The issue of statutory and organisational principles of occupational health and safety in the Republic of Poland is analysed by K. Baran, P. Czarnecki, L. Florek, G. Goździewicz, Z. Hajn, K. Koldinská, M. Mielczarek, L. Pisarczyk, A. Reda-Ciszewska, M. Seweryński, B. Surdykowska, K. Skorupińska,N. Szewczyk, D. Skupiien, W. Szubert, A. Świątkowski, D. A. Wirth, M. Wujczyk, and some other researchers.

Therewith, in some in-depth analytical investigations, even against the background of numerous impressive economic successes, there are substantial miscalculations in the field of statutory support for occupational safety and social protection of workers. Thus, A. Sviatkowski and M. Wujczyk on the example of compliance of Polish legislation and law enforcement practice with international social and labour standards indicate that nowadays workers have considerable opportunities to actively defend their rights [1, p. 252-253]. At the same time, the statement of A. Dral should be considered. He performed a separate professional study investigating the legal innovations concerning the fixed-term contract in this country, and notes that "proposals aimed at lowering the standards of protection of workers on a permanent contract by reducing the notice period and their approximation are particularly concerning" [2, p. 155]. It is therefore clear that a "holistic system of occupational health and safety" has yet to be established in this country.

The studies of authors discussing particular proposals for the adaptation of Polish labour legislation to the corresponding innovations of the European Union are also noteworthy. Thus, the study by X. Shevchyk (N. investigates the implementation of EU Directive 2019/1937 on the protection of persons who report violations of Union law [3]). In particular, the author points out that the relevant representations of workers, trade unions, and post-trade unions should take an active part – within their statutory powers – in the process of drafting new Polish legislation resulting from the implementation of EU Directive 2019/1937 (in particular insisting that employee and employer representations must ensure a balance between the collective protection of the rights and interests of employees and the protection of the interests of the employer, for example, against the disclosure of company secrets and employee competition) [4, p. 10]. In this regard, the study by D. Schiek also deserves attention, who, proceeding from a risk-based approach, proposes measures to improve the social protection of workers in collective agreement relations in this country in accordance with European Union law (in particular in the part referring to the impossibility of collective bargaining based exclusively on economic feasibility and economic integration) [5, p. 387, 401-403].

The purpose of the present study is to present and substantiate the systemic features of statutory regulation of occupational health and safety in the Republic of Poland in challenging present-day conditions. To achieve this purpose, the tasks were identified as follows: to generalise modern theoretical approaches to the analysis of occupational health and safety in Poland, to clarify the features of the initial conditions for the establishment and development of national policy in occupational health and safety based on market economy and democratic governance; to describe the specific features of the legal regulation of social, labour and occupational health and safety relations, to outline certain solutions of topical issues in ensuring occupational health and safety in this country.

The composition of the purpose and objectives of the study is based on a modern interpretation of the essence of international labour and occupational health and safety standards. As substantiated in the previous article of the authors of this study, all four strategic objectives of the ILO Declaration on Social Justice for Fair Globalisation 2008 are fundamental to occupational health and safety: Promoting employment through an institutional and economic environment; development and expansion of social protection measures; promoting social dialogue and tripartism; observance, promotion, and implementation of fundamental principles and rights in the world of labour (the provisions of the Declaration are presented in abbreviated form, for more details on the authors' study of the outlined issues, see [6, p. 121]).

Therewith, the authors this study referred to the content of the ILO Centenary Declaration, which states that all workers must be guaranteed adequate protection in accordance with the Decent Work Agenda, considering the following factors: respect for their fundamental rights; adequate minimum wage (to be established legislatively or through negotiations); setting the maximum working time limit; occupational health and safety. Moreover, safe and healthy working conditions were recognised as a fundamental factor in ensuring decent work (see item D, Section II and Item B, Section III of the Declaration) [7].

1. MATERIALS AND METHODS

The study is based on the understanding of methodology as a complex integrated system of perception of reality and scientific cognition, which covers fundamental general theoretical concepts, general philosophical laws and categories, general and specific methods, etc. Accordingly, special attention is paid to the concept of "sectoral methodology" or "methodology of sectoral sciences", i.e., the selection of the general methodological arsenal of relevant starting points and principles of a certain scope of related subjects, phenomena, and processes (for the subject of this study, a particular emphasis on the concept of occupational health and safety from a complex set of social and labour relations, a comprehensive study of a set of legal norms aimed at regulating the field of occupational health and safety, accentuating the legal force of such acts and the specific features of their enforcement). Therefore, the methodology of legal science in this regard has great theoretical

and practical value (providing, among other things, general tools for formulating and substantiating conclusions that have practical significance and scientific originality in the field of labour law).

The method of system analysis or system approach is of paramount importance, being recognised as one of the main methodological areas of special scientific cognition. It allows joining all necessary structures and processes into a single whole (in this respect, a complex set of all public authorities and public organisations involved in ensuring occupational health and safety in this country, as well as all the necessary set of regulations of different legal force, which in the form of particular norms are aimed at regulating the corresponding scope of social and labour relations). Therewith, special attention is paid to the diversity of internal and external relations of the system, to the specific features of harmonisation of the Polish legal system with the occupational health and safety standards of the European Union.

Notably, the state system in the interpretation of Polish researchers (namely J. Kucinski) is "a certain systemic whole, comprising the fundamental principles that determine: a) the organisation and functioning of the state; b) the structure of the state organisation; c) the mechanisms of functioning of the state" [8, p. 14]. Therefore, agreeing with the above statement, the emphasis on "systemic integrity" should form a methodological framework for the analysis of any area of public and state-government relations, including in the field of occupational health and safety.

The elucidation of systemic features of occupational health and safety in Poland is also based on numerous other methods, namely historical legal method (to clarify the impact of the political and legal system of state socialism on occupational health and safety and the emergence of a modern national occupational health and safety system; the so-called "initial conditions"); structural-functional method (for full coverage of the importance of norms both for individual institutions and for the establishment and development of a unified national policy in the field of occupational health and safety); method of comparison (resulting in additional arguments on the achievements and gaps in the investigation of this issue, as well as highlight the essential and promising areas of development of the national legal system to ensure occupational health and safety; special comparative legal method (to find similar and different sources of labour law and law on occupational health and safety in Poland and the European Union, as well as to implement the risk-oriented approach in this country, inherent in the current activities of the International Labour Organisation in the field of occupational health and safety) and cross-temporal method (to compare protection of workers in this country at different times, as well as to establish the so-called "nodal" or strategically important solutions to improve the state of occupational health and safety in Poland). In this sense, the authors of this study highlight the importance of using a communicative resource, which not only indicates the coverage of all participants in social interaction by the subject area of analysis, but also allows emphasising the so-called "feedback", active involvement in ensuring proper occupational health and safety of the workforce members.

2. RESULTS AND DISCUSSION

In Poland, during the propagation of state socialism and the so-called communist ideology, any principles of civilised development and the organisation of social and labour relations were destroyed. Thus, national policy at that time was to guarantee people full employment and well-being. Strikes and other collective actions, although not prohibited by law, were not perceived as a legitimate element of trade union activity (in fact, trade unions were to play the role of a "mediator" between the ruling party and the workforce). According to present-day estimates, formulated by M. Seweryński and D. Skupień, "the general reform of Polish labour legislation after the Revolution of Solidarity has not been completed to this day, and many of its fundamental issues have yet to be resolved" [9, p. 122].

According to L. Balcerowicz, who is fairly considered the organiser and ideological inspirer of Polish economic reforms, "the economic consequences of socialism were extremely bad" [10, p. 6]. At the initial stage of reform, as emphasised by M. Lahiga and S. Yegorycheva, "workers' market" was transformed into "employers' market", who were guided primarily by economic calculations and efficiency criteria, which led to a substantial increase in unemployment (from 6% to over 20%) and lower social standards" [11, p. 151].

The undoubted economic success inherent in modern-day Poland has yet to be ensured by an adequate level of occupational health and safety. Admittedly, the process of improving the legal framework of the corresponding scope of social and labour relations should consider the general trend towards changing the structure of employment, which L. Arendt and A. Gajdos even described as "increasing tension in some segments of the labour market" [12, p. 13]. Most importantly, such changes include the growing number of employees with higher education and, at the same time, the demand for professions requiring low and medium qualifications, as well as the imbalance of the labour market due to strong labour migration processes. In fact, L. Arendt even considers it necessary to discuss the growing trend of increasing polarisation in employment,

which will continue in the near future [13]. All this once again testifies to the numerous issues and the complexity of reforming and developing labour policy in Poland.

The management system of occupational health and safety in Poland clearly distinguishes two components: purely legal and organisational. The first combines legal norms that establish criteria for occupational health and safety requirements for workers. The second is the actual organisation of occupational health and safety at all levels of social and labour relations.

The legal framework for occupational health and safety in Poland comprises the following regulations:

– Constitution of the Republic of Poland;

– Labour Code and sub-legislative acts adopted in accordance with the provisions of this Code;

– other laws with a related scope of regulation (e.g., the Law "On the State Sanitary Inspection" and the Law "On the State Technical Inspection");

– national and sectoral labour standards;

– regulatory documents that define working conditions in various spheres of activity (in mining, construction industries, etc.);

– employment agreements;

– local (corporate) statutes and rules.

The fundamental regulatory act establishing the right to safe and healthy working conditions is the Constitution of the Republic of Poland of April 2, 1997. Article 5 of the Constitution states as follows: The Republic of Poland guards the independence and inviolability of its territory, ensures the freedoms and rights of man and citizen, security of citizens, guards the national heritage, and ensures the protection of the environment, guided by the principle of balanced development. In accordance with the provisions of Paragraph 1, Article 66, everyone has the right to safe and healthy working conditions. The procedure for exercising this right, as well as the responsibilities of the employer, are determined by law. The content of Article 24 is also important for the subject of the present study: The labour is protected by the Republic of Poland. The state supervises the observance of working conditions [14].

A separate chapter (Chapter 10) of the 1974 Labour Code (Kodekspracy) covers occupational health and safety. Thus, in accordance with the provisions of Article 207 of this Code, the employer is responsible for occupational safety at work and is obliged to protect the health and lives of workers, ensuring safe and hygienic working conditions with proper use of scientific and technical achievements. In particular, the employer is obliged to: 1) organise work in such a way as to ensure safe and hygienic working conditions; 2) ensure compliance with the provisions and rules of occupational health and safety in the workplace, issue orders to eliminate deficiencies in this regard and monitor the implementation of these instructions; 3) respond to the needs in terms of occupational safety and adapt measures taken to improve the existing level of health and life of workers, considering fluctuating working conditions; 4) ensure the development of a consistent policy for the prevention of accidents at work and occupational diseases, considering technical issues, work organisation, working conditions, social relations and the impact of factors of the working environment; 5) consider the health of adolescents, workers who are pregnant or breastfeeding, and workers with disabilities as part of the preventive measures taken; 6) ensure the implementation of orders, statements, decisions, and directives issued by regulatory authorities on working conditions; 7) ensure the implementation of the recommendations of the inspector of social work [15].

Attention should also be paid to the articles of this chapter prescribing the rules of occupational health and safety of women, as well as establishing the basics of occupational health and safety of minors. The Labour Code also refers to other sources of labour law, namely the regulatory agreements concluded between the social partners (i.e., collective agreements) and other agreements, such as corporate acts, rules, and charters. Notably, in accordance with the provisions of this regulation, risk assessment is consolidated as one of the main responsibilities of the employer. Thus, in accordance with the provisions of Article 226, the employer has the following responsibilities: 1) to assess and document the occupational risks associated with the work performed, and to apply the necessary precautions to reduce the risk; 2) to inform employees about the occupational risk associated with the work performed, as well as about the measures to be taken to reduce these risks.

Among other things, the analytical material prepared by the International Labour Organisation (hereinafter referred to as "the ILO"), which is presented as a guideline for the implementation of ILO Recommendation No. 198 on labour relations, analyses and promotes the Polish practices of regulating the employer's responsibilities in the field of risk. It is stated, in particular, that all types of risk shall be borne by the employer: technical risk (e.g., the obligation to pay remuneration during periods when work cannot be performed for technical reasons), personal risk (e.g.,, employer's liability for employee actions), economic risk (e.g., the losses of the employer should not affect the right of employees to receive remuneration), and social

risk (e.g., certain benefits paid to the employee in case of temporary incapacity for work or absence from work for personal reasons). The transfer of risk to an employee would not, in principle, qualify such person as an employee [16].

As an example of the continuous improvement of the legal framework for occupational health and safety in Poland, it is worth noting the attempt to consider the latest trends in the world of labour, namely the growing demand for remote and temporary work. Thus, the so-called "telework" or "telecommuting" was legislatively regulated in 2007 – remote work or distance work, or work at home – work performed in a place remote from the places of use of its results (i.e., offices, warehouses, shops, etc.)In accordance with the provisions of the Labour Code, the conditions of use of telework are determined by an agreement between the employer and the trade union organisation (or several trade union organisations operating at the enterprise) (Article 67/5). Article 67/11 of the same regulation obliges the employer to import the necessary equipment for the teleworker, to compensate the funds relating to the installation, service, development, and maintenance of the equipment, to provide the teleworker with technical assistance, etc. and the necessary training in equipment maintenance, unless the employer and the teleworker decide otherwise in a special agreement [17, p. 279-280].

In this regard, the content of the European Framework Agreement on Telework of 16 July 2002, signed by the European Trade Union Confederation, the United Confederation of Employers of Europe, the European Small and Medium Business Association and the European Business Association, deserve particular attention. The said Agreement is based on the principle that telecommuting employees shall enjoy the same protection as employees working for employers [18].

At present, in connection with measures to counter the spread of the COVID-19 pandemic, the issue of remote work or "telecommuting" is of paramount importance. Thus, the law of March 2, 2020 introduced the possibility of instructing an employee to work remotely at the official order of the employer. However, K. Naumowicz draws the attention to the fact that the concept of remote work is not defined by the legislator. The corresponding provisions of labour legislation also do not define it, which causes difficulties in distinguishing remote work from distance work, which is referred to in Article 67/5 of the Code. According to Naumowicz, the question of the scope and form of permissible control over the employee also remains controversial. Remote work within the meaning of the COVID-19 Law means work performed outside the place of its permanent execution. This includes, but is not limited to, the ability to work from the employee's home, i.e., the home office. According to Naumowicz, it is especially problematic then to determine the limits of permitted control of the employer, considering the employee's right to respect for their private life and privacy of their household members, as well as the employer's need to apply personal data protection rules [19, p. 28].

One of the innovations of labour legislation was also a clearer regulation of the terms of a fixed-term agreement (a fundamental change in accordance with Article 25^1 of the Code was the legislative limit on the time for which this agreement can be concluded, which is 33 months). Moreover, in this case, both the legislator and experts appeal to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (the European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe, and the European Centre of Employers and Enterprises providing Public Services). This particularly refers to the part of the introduction stating that "agreements of indefinite duration are and will be the main form of employment relations between employers and employees. They also recognise that fixed-term employment agreements meet, in certain circumstances, the needs of both employers and employees [20]."

For example, L. Florek, noting the tendency to increase the demand for temporary work, points to the fact that the fixed-term agreement does not provide the employee with full social protection. The author also makes suggestions for clearer regulation of the termination of such agreements, as well as the number of fixed-term agreements with the same employee [21, p. 6]. Furthermore, A. Pysiak, interpreting the corresponding amendments to the Labour Code, argues that some innovations raise doubts about their compliance with European legislation (namely in the part where there is a possibility of abuse of employers in the field of concluding employment agreements) [22, p. 406]. As generalising conclusions concerning practice of current issues of realisation of contractual legal relations in the field of labour it is expedient to use developments of L. Pisarchyk, which are set out in a recently published article with the eloquent title "The Crisis of the Collective Bargaining System in Poland". Pisarchyk, citing the fact that the Polish market with almost 17 million workers is one of the largest in Europe, notes that only 15% of workers are covered by the provisions of collective agreements (according to him, the most impressive feature of the system of guaranteeing social and labour rights employees is a lack of collective agreements with several employers, including sectoral agreements) [23, p. 58-59, 61].

It is here that the study by B. Surdykowska and her colleagues becomes especially relevant, as these authors aimed at improving the regulation of trade unions in the field of industrial relations and additional

protection of workers' rights (it is noted, in particular, that such platform of common interests of trade unions in Central and Eastern Europe, allows achieving the so-called "convergence from below") [24, p. 321].

Apart from the Labour Code, the rules of general application in the field of occupational health and safety also include other regulations that specify the provisions of this document, as well as general rules relating to particular industries or types of work. Mandatory rules are established, for example, by the legislation on the establishment of supervision and control over working conditions (the material on this is provided below). Other provisions, which specify the above rules, can be divided into those rules that are established based on an agreement between the social partners (first of all – collective agreements), and internal rules that are set by the employer.

The first group includes provisions on occupational health and safety, which are included in collective agreements. Thus, the part of the Labour Code that was aimed at streamlining collective agreements determines the parties to such agreements, as well as occupational health and safety standards. In accordance with the content of Paragraph 2 §1, Article 238, a trade union organisation representing employees is a trade union organisation uniting employees with whom an agreement has been concluded. This also applies to an association (federation) of trade unions to which these trade unions belong, as well as to a national inter-union organisation (confederation) that unites such trade union organisations or associations (federations) of trade unions. It is also clearly stated below that the parties to the agreement may not introduce into the agreement the rules for employees less favourable than the provisions contained in the mandatory rules. Thus, collective agreements in the field of occupational health and safety can either establish additional powers of the employee, or clarify the powers arising from the mandatory rules.

Most frequently, collective agreements include the following rules in the field of occupational health and safety:

– providing additional benefits in the field of healthcare;

– providing additional guarantees for social protection;

– providing additional vacation for those categories of employees who work in hazardous or difficult working conditions, as well as financial compensation and reduction of working hours for them.

The analytical material prepared by the ILO, which has already been mentioned in this paper, cites the practices of Poland in terms of trade union involvement in the protection of working people as a positive example (with reference to Article 19 of the Law on Trade Unions). The local acts of the employer in this area are primarily internal rules. Such rules are defined in Article 104 of the Labour Code and include the following provisions:

– organisation of work, conditions of stay in the workplace during and after work, equipping employees with tools and materials, as well as clothing and footwear, personal protective gear and hygiene;

– systems and schedules of working hours, as well as the accepted periods of calculation of working hours;

– night work;

– date, place, time, and frequency of remuneration;

– lists of works prohibited for minors and women;

– types of work and a list of jobs allowed for minors for training purposes;

– a list of light work permitted for minors for purposes other than professional training;

– occupational health and safety obligations, including informing employees of the occupational risk associated with their normal work;

– the method of confirming the arrival of employees to the employer and presence at work, as well as justifying the absence from work.

The rules of procedure are set by the employer in agreement with the trade union organisation of the enterprise when hiring 20 or more people. However, if the employer cannot agree on the content of such Rules with the trade union or where there is no such organisation, they are established by the employer.

The issue of establishing a decent social dialogue to improve social and labour relations also deserves special attention. The right to collective bargaining is stipulated both by the Constitution of Poland and the international conventions ratified by this country. Article 20 of the Constitution proclaims solidarity, dialogue, and cooperation between the social partners, as well as freedom of economic activity and private property as pillars of the economic system in Poland. It is known that the beginnings of the formalisation of such relations date back to the restoration of democratic governance and the establishment of market relations. In general, this circumstance is also due to the creation of the Trilateral Commission (TC) in 2001 with the corresponding scope of regulation.

For example, J. Gardawski notes the fact that the creation of TC has led to a qualitatively new stage of cooperation between workers' and employers' organisations in the field of ensuring safe working conditions.

Therewith, the researcher insists that Polish trade unions still have limited opportunities to mobilise workers to protect their interests [25, p. 74-75]. According to Ł. Pisarczyk and D. Skupień, the practical significance of collective agreements in this country remains quite limited, and the lack of a developed system of collective bargaining distinguishes Polish labour legislation from the legislation of Western European countries. It is also a critical obstacle to social development [26].

The Polish practices of standardisation of various aspects of activity in the field of occupational health and safety is sometimes cited and analysed in the documents of international organisations, as well as in the labour practice of some foreign countries. In this sense, the activities of the ILO, which has been in charge of the protection of workers and the development of international labour standards for more than a century, deserve priority attention. At the same time, in times of transition, due to the instability of national legal systems, the issue of compliance of regulations with international labour standards, as well as the correlation of regulations of the highest legal force and sub-legislative with the corresponding area of regulation, becomes particularly acute [27, p. 105]. Moreover, the subject of such interest is increasingly often the regulation of non-standard forms of employment and the search for answers to questions about additional social protection of workers in challenging modern-day conditions.

In this regard, it is important to investigate and apply the Polish practices. However, what may seem paradoxical at first glance, most modern ILO analytical publications contain only sporadic references to the legal framework and the practice of standardising the share of social and labour relations (as a reverse example, the authors of this study cite the report "Legal Regulation of Labour Relations in Europe and Central Asia" of 2014, which has already been discussed). The organisational system of occupational health and safety management in Poland also covers the structures responsible for supervision and control over compliance with labour legislation and occupational health (State Labour Inspectorate, the Main Sanitary Inspectorate and its field offices). This should be supplemented with the activities of local authorities and management, which to some extent are responsible for maintaining the proper state of occupational health and safety at the local level.

CONCLUSIONS

Thus, the statutory regulation of occupational health and safety in the Republic of Poland has all the features of systemic nature. Most importantly, this is explained by the harmonious correlation of two components: purely statutory and legal support of the corresponding share of social and labour relations. Notably, the statutory regulation of occupational health and safety is continuously improving depending on current challenges and threats (e.g., considering various risks and threats in legislative activities, improving the regulation of "telecommuting" and temporary work, as evidenced by legislative amendments to the fixed-term agreement). The functioning of the national legal occupational health and safety system "at the entrance" (primarily as the impact of European Union legislation on legislative protection of occupational health and safety) and "at the exit" (primarily as an attempt to effectively integrate the national occupational health and safety management system with the corresponding European legal field) is clearly observed, as well as the dissemination and promotion of the Polish practices of statutory regulation of occupational health and safety). For countries that have been united with Poland in the recent past in the form of state socialism, the experience of establishing the work of tripartite participants in social dialogue (government agencies, employers' and workers' representatives) is also important. At the same time, there are some miscalculations and so-called "sore spots" in this area, which should deserve additional attention in the process of improving the legal regulation of occupational health and safety (most importantly, this refers to miscalculations in regulation of social contractual relations, as well as to some shortcomings in the relation between employers and employees).

The scientific originality of the provisions formulated in the present paper is primarily that based on a clearly stated methodology and the necessary range of sources, the authots of the study formulated and substantiated the concept of systemic features of statutory regulation of occupational health and safety. This is, most importantly, a complex set and a harmonious correlation between the two components of the regulation of the corresponding share of social and labour relations: purely regulatory and legal. The practical significance of the study primarily lies in the fact that the provisions substantiated herein can be used in the current work of public authorities, trade unions and other persons involved in occupational health and safety.

The scientific value of the present paper primarily lies in the necessity and feasibility of analysing the systemic features of statutory regulation of occupational health and safety. In this case, it is important to use both the method of system analysis and a clear distinction between the concepts "system research" and "research of systems" (the latter in this case appears both as a system of legal regulation of occupational health and safety and as a complex set of public authorities and other organisations involved in the important task of ensuring due occupational health and safety).

REFERENCES

[1] Świątkowski, A.M., & Wujczyk, M. (2015). Polish Regulations Concerning Settlement of Collective Disputes in the Light of European Standards, exemplified by the Right to Strike. *Studia Iuridica*, 60, 237-253.

[2] Dral, A. (2015). A fixed-term employment contract and the problem of the causality of its termination – the current state and trends of changes. *Studia Iuridica Lublinensia*, XXIV(3), 141-157.

[3] Directive (EU) 2019/1937 of the European Parliament and of the Council "On the protection of persons who report breaches of Union law". (2019, October). Retrieved from http://data.europa.eu/eli/dir/2019/1937/oj.

[4] Szewczyk, H. (2020). Whistleblowing in the workplace in the light of the new Directive 2019/1937 of the European Parliament and of the Council (EU) on the protection of persons reporting on breaches of EU law. *Work and Social Security*, 2, 3-11.

[5] Schiek, D. (2020). Collective bargaining and unpaid care as social security risk: An EU perspective. *International Journal of Comparative Labor Law and Industrial Relations*, 36(3), 387-408.

[6] Dreval, Yu.D., Zaika, S.O., Sharovatova, O.P., Bryhada, O.V., & Tsymbal, B.M. (2020). Fundamental principles of activity of international labour organization in occupational safety and hygiene. *Naukovyi Visnyk Natsionalnoho Hirnychoho Universytetu*, 6, 89-95.

[7] ILO Centenary Declaration for the Future of Work. (2019). Retrieved from https://cutt.ly/7EYMrd6.

[8] Kuciński, J. (2010). *Legislative – executive – judicative: Constitutional institutions and mechanisms for the balance of power in the Polish system of thirds*. Warsaw: Elipsa.

[9] Seweryński, M., & Skupień, D. (2107). The Martial Law and its impact on labor relations in Poland. *Studia Prawno-Ekonomiczne*, CII, 107-124.

[10] Balcerowicz, L. (2014). *Who is to blame – the market or politics? Economic growth after socialism*. Moscow: Liberal Mission Foundation.

[11] Lakhizha, M.I., & Egoricheva, S.B. (2020). Problems of labor market formation and regulation in the conditions of post-communist transformation: Polish experience. *Science Notes. Institute of Legislation of the Verkhovna Rada of Ukraine*, 4, 147-156.

[12] Arendt, L., & Gaidos, A. (2018). Shift of employment occupations in Poland by 2022 in the direction of polarization of the labor market. *Journal of European Economy*, 17(1(64)), 3-19.

[13] Arendt, L. (2015). Technological change favoring high qualifications or the polarization of the Polish labor market – an outline of the problem. *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu.* 401, 13-25.

[14] Konstytucja Rzeczypospolitej Polskiej. (1997). Retrieved from https://www.sejm.gov.pl/prawo/konst/polski/kon1.htm.

[15] Kodeks pracy. Ustawa z dnia 26 czerwca 1974 r. Dz.U. 1974. Nr 24. poz. 141. Retrieved from http://cirzem.pl/wp-content/uploads/Ustawa-z-dnia-26-czerwca-1974-r.-Kodeks-pracy-Dz.U.-1974-nr-24-poz.-141.pdf.

[16] Legal Regulation of Labour Relations in Europe and Central Asia: A Guide to Recommendation No. 198. (2014). Retrieved from https://cutt.ly/sEYMSVY.

[17] Parpan, T.V. (2016). The right to appropriate, safe working conditions for workers working from home. *University Scientific Notes*, 3, 275-282.

[18] ETUC, UNICE/UEAPME and CEEP Sign Agreement on Telework. (2002). Retrieved from https://www.businesseurope.eu/sites/buseur/files/media/imported/2002-04057-EN.pdf

[19] Naumowicz, K. (2020). Legal basis for controlling employees who work remotely. *Praca i Zabezpieczenie Społeczne*, 5, 28-35.

[20] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. (n.d.). Retrieved from http://data.europa.eu/eli/dir/1999/70/oj.

[21] Florek, L. (2015). Contract of employment on specified time. *Praca i Zabezpieczenie Społeczne*, 12, 2-7.

[22] Pysiak, A. (2016). A few reflections on the amended Art. 25^1 of the Labor Code. *Roczniki Administracji i Prawa*, XVI(2), 389-408.

[23] Pisarczyk, L. (2019). The crisis of the collective bargaining system in Poland. *International Journal of Comparative Labour Law and Industrial Relations*, 35(1), 57-77.

[24] Czarzasty, J., Adamczyk, S., & Surdykowska, B. (2020). Looking for European solutions. Trade unions in Central and Eastern Europe striving for cross-border solidarity. *European Review of Labour and Research*, 26(3), 307-323.

[25] Gardawski, J. (2015). 20 years of social dialogue in Poland. *Studia Iuridica*, 60, 53-75.

[26] Pisarczyk, Ł., & Skupień, D. (2019). *Collective Bargaining in Labour Law Regimes. Ius Comparatum – Global Studies in Comparative Law*, 32, 417-439.

[27] Dreval, Yu.D, Sychenko, V.V., Sharovatova, O.P., & Vilkhova, T.V. (2019). Methodological aspects of regulatory support of labor protection. *Naukovyi Visnyk Natsionalnoho Hirnychoho Universytetu*, 1, 104-109.

Vitaly L. Yarotskiy

Doctor of Law, Professor
Corresponding Member of the National Academy of Legal Sciences of Ukraine
61024, 70 Pushkinska Str., Kharkiv, Ukraine

Head of the Department of Civil Law No. 2
Yaroslav Mudryi National Law University
61024, 77 Puchkinskaia Str., Kharkiv, Ukraine

Yuriy D. Dreval

Doctor in Public Administration
Professor at the Department of Occupational Safety and Technogenic and Ecological Safety
National University of Civil Defense of Ukraine
61023, 94 Chernichevskaya Str., Kharkiv, Ukraine

Svitlana O. Zaika

PhD Economics, Associate Professor
Vice-Rector for Scientific and Pedagogical Work
Kharkiv Petro Vasylenko National Technical University of Agriculture
61023, 44 Alchevskich Str., Kharkiv, Ukraine

Suggested Citation: Yarotskiy, V.L., Dreval, Yu.D., & Zaika, S.O. (2021). System signs of statutory regulation of occupational health and safety in the republic of Poland**.** *Journal of the National Academy of Legal Sciences of Ukraine,* 28(3), 238-247.

Submitted: 07.05.2021
Revised: 21.07.2021
Accepted: 31.08.2021