

# ENVIRONMENTAL SAFETY, LABOUR PROTECTION

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## METHODOLOGICAL ASPECTS OF REGULATORY SUPPORT OF LABOR PROTECTION

**Purpose.** To substantiate methodological aspects and determine system characteristics within health and safety activities regulatory support (in particular, in the mining sphere).

**Methodology.** Labor regulatory support aspects are defined via system analysis methods (which allows examining such acts as a complex system with balanced, interconnected components), comparative methods (tracing certain canons legal force as well as interpreting approaches towards developing control/supervision means).

**Findings.** Applying these methods, legal acts analysis, we have substantiated a point that implementing legal standards procedure/peculiarities should primarily hinge upon understanding legal acts validity. Government programs while improving enactments aimed at Welfare and Safety have been examined and specified. Standardizing industrial enactments has been characterized; acts applying procedures/features (Ukrainian Constitution, ILO conventions, specific laws, subordinate laws) have been developed and structured. Thus, it has been proved if there are certain collisions, then one should adhere to system uniformity; further, one can consider complete or partial incompliance.

**Originality.** Welfare and Safety legal, regulatory framework has been determined first-ever: we could characterize it therewith as balanced combining, interacting enactments with different juridical force. This statement is substantiated regarding working environment authorities' privileges and developed into “Labor protection regulatory support”, which has been explained by the authors and recommended for common use by experts.

**Practical value.** The presented results may be used to improve qualification of occupational safety engineers or other appointed officials dealing with industrial safety issues; besides, these results will help information resource processing as well as preserving labor protection records at enterprises (with clear document gradation according to the criteria suggested in the work).

**Keywords:** *labor protection, occupational health and safety, working environment authority, regulatory acts/enactments, labor standards, coal industry, ore mining*

**Introduction.** Coal mining enterprises and other mining enterprises operate under extremely difficult conditions. Concerning this fact, danger rate for employees' lives/health could notably increase. Therefore, we can observe a high accident rate among workers, particularly in the coal-mining sector. Key reasons include ignoring legislative certificates, corporate governance tools.

Moreover, all participants amid occupational security and health relations must realize basic legal knowledge acquisition. Current knowledge obviously is to depend on officials' and workers' core competencies.

Special attention can definitely be given to vocational preparation occupational of safety engineers who regularly deal with such documents.

**Analysis of the recent research and publications.** Certain aspects within legislative environment are thoroughly revealed due to L. Amelicheva, S. Vavzhenchuk, S. Vyshnevska, O. Volokhov, V. Holinka, Y. Ivchuk, M. Inshina, P. Lutsiuk, S. Prylypko V. Shcherbyna, O. Yaroshenko along with other researchers. Generally, “labor protection” (work relief) may be interpreted regarding a specific or broad meaning, taking into account legislation regulation peculiarities, compliance, safety violation liability, health, security management. Therefore, Y. Ivchuk agrees with an established view: “law protection institution would definitely include rules

controlling welfare and secure at enterprises, work relief concerning certain workers' categories, monitoring regulations compliance" [1]. Meanwhile, modern researchers increasingly emphasize work relief regulatory affairs can precisely hinge upon well-balanced state interests, workforce plus individual workers. Specifically, U. Beck assuredly admits that Labor Protection Institute obligation must be congruent with constitutional norms invoking human life, health, security as social values [2]. Applying foreign management experience through working relations is definitely worth attention. Thus, V. Moroz actively sticks out for effective implementing of international standards, foreign experience within work relief which is primarily varied regarding management quality [3]. Moreover, they estimate, legislation norms should form a solid basis aimed at satisfying workers' (collectives') demands [4].

We should also emphasize that mining work relief legalistic regulation is repeatedly discussed. Comparing ILO practical rules plus Ukrainian security regulations at coal mines V. Zdanovskiy along with I. Podobed emphasizes that "ILO Code of Practice does not abrogate existing laws, norms, rules or accepted standards" [5]. Thus, we face so-called "soft law" across international regulation plus standards.

**Unsolved aspects of the problem.** However, we still observe a lack in methodological research aimed at disclosing regulatory legalistic essence at workplaces as a complex regulatory system. Consequently, we have definitely noticed confusion about legality, appropriateness using separate certificates implying legislation control while regulating work relief relations directly (taking into consideration mandatory normative, statutory, enactments, applying recommendatory, obsolete or completely abolished legislative certificates). This directly concerns mining relations sphere certainly characterized by numerous high-risk locations, sites, facilities.

**Objectives of the article.** The article aims at processing methodological aspects, clarifying legislative environment system characteristics (e.g., mining relations sphere).

**Research techniques description.** Various aspects are carried out via system analysis method (examining such acts as a complex system where individual components are harmoniously interconnected and interdependent), comparison method (tracing individual canons legal validity while explaining approaches over mechanism control and oversight within occupational security sphere).

**Presentation of the main research and explanation of scientific results.** Naturally, any employee's social-economic rights must be juristically protected. It certainly applies to rights for proper working conditions, workers' lives/health security. We must underline a common idea about protecting rights, legitimate interests which were traditionally understood not only due to relevant legislation availability, but also legislative methods, organizational, procedural means eliminating, preventing laws violations, restoration of citizens' violated rights, compensation of damages incurred.

Applying legislative norms of occupational health and safety must hinge upon legal effect of laws and regu-

lations, namely specific regulatory legal acts which reflect their relationship and interdependence regarding formal binding and are determined according to the rule-making body place implementing the state power. Regarding the research subject, we must underline the fact that subordinate acts should not contradict normative documents with supreme juridical force, namely, Laws of Ukraine and the Constitution.

The regulatory framework for occupational health and safety policy in any sphere of social relations involves the Constitution provisions which are direct force standards of supreme juridical force. Pertaining the labor occupational safety, the following constitutional standards have significant importance: guaranteeing work security, health preservation (Art. 43); essentiality of informing population on regulatory legal acts defining citizens' rights and duties (Art. 57); emphasizing the fact that only Ukrainian laws define human and civil rights and liberties (Art. 92) (abbreviated Constitutional Articles – authors [6]).

Citing Ukrainian Constitution (Part 1, Art. 9), existing international arrangements, compulsory after the Verkhovna Rada, constitute the Ukrainian legislation section. Meanwhile, documents with supreme juridical force state that if an international agreement, compulsory according to the Verkhovna Rada, establishes norms which are different from those provided for Ukrainian laws, one unequivocally practices international agreement standards (e.g. section 2 Art. 19, Acts "On International Treaties", Part 2, Art. 3; "On Occupational Safety", Art. 81, Labor Code of Ukraine).

Concerning the research subject, International Labor Organization's conventions, governing significant aspects have a paramount importance. Nowadays the state has ratified over 60 conventions. ILO Convention No. 176 on Safety and Health in Mines (1995), ratified by Ukrainian Law (February 15, 2011), could be likewise worth attention. Explanatory materials about global standard implementation are reflected via ILO recommendations, but they do not require ratification (e.g. ILO Recommendation contents (1947) 82 on Labor Inspection in Mining and Transport Companies).

Naturally, some conventions have obsolete or irrelevant provisions. Thus, this provides for reviewing such documents and changing their status. Therefore, technicians ought to be well-informed not only about ratification/implementation procedures, but also about special legislative aspects inherent in such documents. They are hardwired to mining relations sphere just as reflected in "ILO Conventions Status on Occupational Safety in Coal Mines or Underground Work" Table (Table 1).

Accident prevention Law of "Occupational Safety" (art. 3) includes "General Obligatory State Social Insurance against Industrial Accidents and Occupational Illnesses which Caused Disability" as well as Regulatory Acts taken in accordance with them [7].

The above provision requires not only actualization or enforcement, but also proper interpretation and grounding. A few significant circumstances must be noted. Firstly, work relations branch was regulated by different supreme juridical force acts including its own

Status of ILO Conventions on Labor Protection in Coal Mines and Underground Work

Convention number	Convention Name	Convention legal status
31	“Working Time Limitation in Coal Mines” Convention (1931)	Withdrawn
45	“Using female labor through underground work in any mines” Convention (1935)	Preparing denunciation process
46	Convergence (revised) “Working time limitation in coal mines” (1935)	Withdrawn, revised
123	The minimum age convention for underground work in mines (1965)	Revised
176	Occupational Safety and Health Convention	Valid, fully operational

object orientation. For example, Mining Law (06.10.1999) and Code of Ukraine on Subsoil (27.07.1994) have great importance for mining occupational security. Secondly, today, along with “work relief” [8] other related concepts or categories are being increasingly applied. It primarily concerns “labor security” concept. Moreover, foreign and some Ukrainian documents consider “occupational security” idea to be preferential (e.g. Ukrainian Standard DSTU OHSAS 18001: 210 “Hygiene and Safety Management Systems” Section 3.12).

Today we can observe ambiguous defining of legislative process subjects within any sphere of social-labor relations partly explained by Ukrainian Constitutional Court’s legal position clarifying “contract” concept within part 3, Article 21, Employment Law Code, considering it a special form of employment agreement (“The judgement of the Constitutional Court of Ukraine of 09.07.1998 No. 12-rp/98”).

Furthermore, we observe essential importance of providing National programs which reveal formal organizational legalistic policy principles. These programs, taking into consideration acceptance, regulation subjects, do not only clarify but also improve the legal basis of certain social-labor relation sphere.

Thus, we must pay special attention to “National Social Program for Improving the Status of Safety, Occupational Health and Work Environment for 2014–2018” (04.04.2013) No. 178-VII. The project aims are solving work relief issues, adjusting safe manufacturing process, reducing damages or accidents at work as well as occupational diseases, creating conditions for stable Ukrainian economic and social development, its potential preservation.

The Draft Concept of National Target Economic Program aimed at reforming coal industry by 2020 requires appropriate legal support, justifying a comprehensive goal, solving functional problems within coal mining (finalized by the Mining Authority using the Cabinet Council’s instructions (07.11.2015)). Not only direct practical implementation of the document should be noted, but also its legality acquisition, formalized by the Cabinet decree, creating proper legal grounds for sub-normative enactments within a certain part concerning workplace relation enforcement and positive development.

Moreover, regulatory legal acts and subordinate protection laws become very relevant due to government

initiatives introduction directed at their reconsideration and elimination. Par excellence, they are Social Policy Ministry’s orders No. 1231 “Avoidance of certain regulatory protection acts” (27.10.2016), No. 592 “Avoidance of certain USSR normative enactments across Ukraine” (03.05.2017), the Ordinance of the Cabinet of Ministers of Ukraine No. 166-p “On repeal of ministries’ other central executive bodies’ certain regulations” (10.03.2017),.

Ordinance No. 166-p canceled, specifically, the State Labor Protection Committee’s Ordinances No. 125 (23.07.1996), No. 232 (08.12.2003), No. 270 (06.12.2004); State Committee on Industrial Safety, Labor Protection, Mining Supervision’s Ordinances No. 41 (12.03.2007), No. 132 (18.06.2007), No. 308 (31.12.2008) [8].

Addressing this article issues, we will indispensably emphasize the Labor Protection National Committee’s Ordinance No. 270 “On Approval Procedure for Technical Condition of Maintaining Data on Machinery, Mechanisms, and High-threat Equipment” (06.12.2004).

As an alternative to the repealed acts, new ones are accepted, taking into account modern regulations (e.g. the State Labor Service of Ukraine’s Law No. 88 “On Regulatory Legal Acts on Occupational Safety Index Approval” (07.10.2017), which eliminated 153 NPLCs not effective within the country). In circumstances where there were gaps concerning regulation after certain acts abolition, consequently we could apply so-called “established behavior codes” (certain behavioral patterns applied voluntarily). However, Fedorenko correctly claims that an employer can use abolished rules only if they do not contradict the current law [9]. We must also admit compliance or non-compliance with such rules cannot have any legalistic consequences.

Some documents are supposed not only to supply each other, but sometimes regulate matters including ambiguity amid current regulatory acts, their divergence during moderating corresponding issues, controversial aspects between several formally valid legal standards, called “conflict of law”.

Lack of certain regulatory acts which have been discussed several times by the Verkhovna Rada has determined Ministry of Justice’s critical message “On Practice of Applying Legal Norms in Case of Collision” (26.10.2008), No. 758-0-2-08-19.

Thus, paragraph 1 determines that if one observes a discrepancy between norms issued by one normative

body, it is worth applying that act which was issued later, even if the act previously adopted has not expired. Some inconsistency arises as new norm adoption cannot be always accompanied by repealing obsolete rules.

Paragraph 4 content also reveals relevance towards the research subject. It states that special regulatory acts must be given priority substituting a general one; unless they are cancelled by a general act issued later [10].

Systemic unities, legal efficacy and harmonious interrelationship within regulatory work relief acts are apparently manifested under inspectorates' juridical regulation. This significance is explained by European integration intentions, democratizing social-economic relations, clarifying National Labor Organization control, oversight activities.

Thus, Industrial and Trade Inspection ILO Convention No. 81 (1947) contains general information about the control system subject-matter (especially controllers' general rights and obligations). ILO Recommendation No. 82 (1947) about work control at mining and transport institutions interprets monitoring specifics through more peculiar branches within social-working treatment. The Ukrainian Law No. 877-V "On Basic Principles for Economic Activity State Supervision (Control)" (05.04.2007) obviously defines law operation points: supervision or monitoring key approaches, relations which are not covered by law effect). The Ordinance of the Cabinet of Ministers of Ukraine No. 96 "On Approving the Regulation of Labor State Service" (11.02.2015) outlines National Labor Committee's powers towards state supervision achievement to comply with legislation touching occupational security aspect (in particular, in respect of safe work practices, occupational hygiene, industrial safety, work safety while handling explosives on industrial purpose); the Cabinet Council's Resolution on "Certain Issues of Implementation of Article 259 of the Labor Code of Ukraine and Article 34 of the Law of Ukraine No. 295 on "Local Self-Government in Ukraine" (29.04.2017) contains proceedings exercising control over compliance with the employment law (it determines monitoring over compliance with laws by legal entities and individuals using

hired labor). The table illustrates essence of basic laws and regulations, defining inspectorates' authority (Table 2).

Regarding this, it ought to be noted that this list just reflects system unity and heterogeneity of laws and regulations as well as reveals and specifies supreme legal effect of standards. Naturally, absolute harmonizing of certain legal standards, presented via different enactments, has not been obtained. This, in particular, concerns public inspectors' right to freely or unhindered access to objects under control. Some scientists admit total above-mentioned enactments inconsistency (partly explained by ignoring certain documents, poor legal validity knowledge). However, according to our assessment, priority must be given to systemic unity, enactments specific scope, only then total or partial inconsistency.

**Conclusions and recommendations for further research.** Regulatory and Legal Support within the work relief field is a complex unity, containing harmoniously combined supreme enactments of different legal forces. Moreover, bylaws have revealed and acquired basic rules and regulations. Presented unity systems are clearly reflected through regulatory environment within mining sphere: Basic Law provisions hinge upon constitutional and legal basis; the ILO Conventions include key definitions and approaches; chief security aspects as well as health management are disclosed through special legislative documents; some bylaws interpret implementing fundamental principles' procedure. System and multi-level approaches to regulation are also used while determining inspection powers, particularly inspectors' rights and responsibilities. Primarily, the subject of regulation must be clearly defined, which could specify any legislative act. Existing discrepancies can be explained as concertizing specifics as well as some contradictions or collisions which should be eliminated or corrected (it concerns inspectors' right to free or unhindered access to objects under control).

Taking into consideration the mentioned factual and analytical material, one could possibly explain "normative legislative work relief" (in this particular case, "leg-

Table 2

Basic Documents in Regulatory Provision Sphere for Labor Inspectorates

Legal act name	Output data	Topic area
ILO Industry and Commerce Labor Inspection	1947, No. 81	International inspection authority standards
ILO Recommendation on Mining and Transporting Enterprise Labor Inspection	1947, No. 82	Application of international inspection power standards in certain social-labor relation spheres
The Law "On Basic Principles of National Supervision (Control) in Economics"	05.04.2007, No. 877-V	Scope, main principles and directions for control of supervisory activity
The Cabinet Council of Ukraine's Resolution "On Approving the Regulation of Labor State Service"	11.02.2015, No. 96	Powers of State Labor organization in national supervision sphere (control) concerning industrial safety legislation observance
The Cabinet Council of Ukraine's Resolution "On certain issues of Article 259 (Labor Code), Article 34 (Law of Ukraine "On Local Self-Government in Ukraine")" implementation	26.04.2017, No. 295	The control algorithm over observing accident prevention legislation organization

islative regulation” is quite acceptable). Thus, we understand **labor protection legislative environment** as a systemic totality and harmonious unity through normative enactments marked by different juridical force as well as aimed at regulating certain work relation aspects.

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## Методологічні аспекти нормативно-правового забезпечення охорони праці

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**Мета.** Обґрунтувати методологічні аспекти та з’ясувати системні характеристики нормативно-правового забезпечення працезахоронної діяльності (на прикладі сфери гірничих відносин).

**Методика.** З’ясування різнобічних аспектів нормативно-правового забезпечення охорони праці проводиться на основі методу системного аналізу (що дозволяє розглядати всю сукупність таких актів у якості складної системи, в якій окремі компоненти гармонійно пов’язані та взаємозалежні), а також за допомогою методу порівняння (у результаті чого видається можливим простежити юридичну силу окремих актів, розтлумачити сутність підходів до формування механізмів нагляду й контролю діяльності у працезахоронній галузі).

**Результати.** На основі застосування зазначених методів та аналізу необхідного кола нормативно-правових документів обґрунтовано положення про те, що порядок і особливості застосування правових норм у працезахоронній сфері першочергово має ґрунтуватися на знаннях щодо юридичної сили нормативно-правових документів. Уточнено значення державних програм у процесі вдосконалення правових норм, спрямованих на забезпечення належного рівня безпеки й гігієни праці. Охарактеризована системна єдність нормативно-правових актів у сфері охорони праці, а також вибудовано логічно-структурний ланцюжок порядку та особливостей застосування таких актів (Конституція України, конвенції МОП, спеціалізовані закони, підзаконні акти). Доведено, що й при виявленні колізій першочергово слід говорити про дотримання системної єдності, а потім вже на цій основі – про повну чи часткову неузгодженість.

**Наукова новизна.** Уперше з’ясована сутність системних характеристик нормативно-правового регулювання у сфері охорони праці, якому властиві гармонійне поєднання та взаємозв’язок нормативно-правових актів різної юридичної сили. Це положення обґрунтовано на прикладі повноважень інспекцій і в концентрованому вигляді наведено в понятті „нормативно-правове забезпечення охорони праці“, що розтлумачено авторами та рекомендовано для широкого застосування спеціалістами.

**Практична значимість.** Представлені результати можуть використовуватися для підвищення рівня кваліфікації інженерів з охорони праці та інших посадових осіб, які працюють у працезахоронній галузі, а також сприятимуть вдосконаленню процесу використання інформаційного ресурсу й зберіган-

ня документації у сфері охорони праці на підприємствах (з чітким градуванням таких документів відповідно до критеріїв, що запропоновані у даній роботі).

**Ключові слова:** охорона праці, безпека та гігієна праці, інспекція праці, нормативно-правовий акт, трудові стандарти, вугільна галузь, гірничорудна галузь

### Методологические аспекты нормативно-правового обеспечения охраны труда

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**Цель.** Обосновать методологические аспекты и выяснить системные характеристики нормативно-правового обеспечения трудоохранной деятельности (на примере сферы горных отношений).

**Методика.** Выяснение разносторонних аспектов нормативно-правового обеспечения охраны труда проводится на основе метода системного анализа (что позволяет рассматривать всю совокупность таких актов в качестве сложной системы, в которой отдельные компоненты гармонично связаны и взаимозависимы), а также с помощью метода сравнения (в результате чего представляется возможным проследить юридическую силу отдельных актов, а также разъяснить сущность подходов к формированию механизмов контрольно-надзорной деятельности в сфере охраны труда).

**Результаты.** На основе применения указанных методов и анализа необходимого круга нормативно-правовых документов обосновано положение о том, что порядок и особенности применения правовых норм в сфере охраны труда в первую очередь должны основываться на знаниях касательно юри-

дической силы нормативно-правовых документов. Уточнено значение государственных программ в процессе совершенствования правовых норм, направленных на обеспечение надлежащего уровня безопасности и гигиены труда. Охарактеризовано системное единство нормативно-правовых актов в сфере охраны труда, а также выстроена логично-структурная цепочка порядка и особенностей применения таких документов (Конституция Украины, конвенции МОТ, специализированные законы, подзаконные акты). Доказано, что при обнаружении коллизий в первую очередь следует говорить о соблюдении системного единства, а потом уже на этой основе – о полной или частичной несогласованности.

**Научная новизна.** Впервые установлена сущность системных характеристик нормативно-правового регулирования в сфере охраны труда, которому присущи гармоничное сочетание и взаимосвязь нормативно-правовых актов различной юридической силы. Это положение обосновано на примере полномочий инспекций и в концентрированном виде приведено в понятие „нормативно-правовое обеспечение охраны труда“, которое разъяснено авторами и рекомендуется для широкого применения специалистами.

**Практическая значимость.** Представленные результаты могут использоваться для повышения квалификации инженеров по охране труда и других должностных лиц, причастных к охране труда, а также способствовать усовершенствованию процесса использования информационного ресурса и хранения документации в сфере охраны труда на предприятиях (с четкой градуировкой таких документов в соответствии с критериями, которые предложены в данной работе).

**Ключевые слова:** охрана труда, безопасность и гигиена труда, инспекция труда, нормативно-правовой акт, трудовые стандарты, угольная отрасль, горнорудная отрасль

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