DOI: 10.59560/18291155-2025.4-76

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EMPLOYEES' SAFETY AND HEALTH AT WORK: COMPLIANCE OF ARMENIAN LABOUR LAW WITH EU OCCUPATIONAL HEALTH AND SAFETY REGULATIONS

Annotation

The article focuses on the legal and organizational mechanisms for protecting employee safety and health at work within the Armenian legal system. It treats occupational health as a multi-dimensional structure involving legal, socioeconomic, organizational, technical, sanitary, and rehabilitative measures designed to protect the life and physical integrity of employees throughout their careers. Specifically, it examines Chapter 23 of the Armenian Labour Code in relation to the EU Framework Directive 89/391/EEC, which serves as the "constitution" for European occupational safety and health (OSH).

The primary objective is to conduct a comparative analysis between Armenian labour legislation and European Union standards to identify systemic gaps and contradictions. By revealing these differences, the authors aim to provide a roadmap for legislative approximation, bringing Armenian law into conformity with the more advanced EU human rights and labour standards.

The study utilizes a comparative legal analysis as its primary method, alongside systemic and scientific abstraction methods. The research finds a fundamental shift in philosophy between the two systems: EU law has moved from a reactive stance toward a proactive culture of risk assessment and prevention. A critical finding is that Armenian law lacks a clear mechanism for designated safety responsible persons, effectively transferring the burden of safety from the

employer to the employee. Furthermore, Armenian legislation is criticized for having unclear remedies and self-protection measures, such as the right to refuse work, which lack the predictability needed to ensure adequate protection or reparation for damages.
Keywords: occupational health, health safety and security, health policy, public health, health law, right to work.

Introduction

Property or labour serves as the material foundation of a person's life. As a source of economic income, labour aims to provide a basic living standard for an individual (1) and is a necessary prerequisite for self-fulfillment and personal growth (2), which in turn ensures the person's full participation and healthy development in society.

The state plays a responsible role in upholding labour rights, particularly, ensuring the normative regulation of employment relationships, promoting social partnership, providing mechanisms for the protection of labour rights, and in several other areas. The state's obligations to uphold labour rights gain further importance in the context of protecting human rights in employment relationships, which also form part of the state's international commitments under treaties.

The Comprehensive and Enhanced Partnership Agreement, signed between the Republic of Armenia and the European Union in March 2017 (hereinafter, the Agreement), was added to the list of treaties ratified by the Republic of Armenia. Its partial implementation commenced on June 1, 2018. To achieve the goals of the Agreement, the Parties have emphasized labour policies and collaboration on trade-related matters, and have specifically committed to cooperating in establishing effective remedies to uphold labour rights, including labour inspectorates (Article 284 of the Agreement).

Human rights in the European Union are guaranteed by the 2000 EU Charter of Fundamental Rights, although individual provisions securing key trans-border economic rights and protection from discrimination are envisaged in the founding treaties. According to Article 6(2) of the Treaty on European Union, the Union respects the fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and as they result from the constitutional traditions common to the Member States, as general principles of law.

First, EU norms of primary and secondary law shall be interpreted in light of EU human rights standards. Secondly, human rights restrictions at the national level

shall not breach the EU human rights standards. Thirdly, in the process of introducing EU standards at the national level, Member States are bound by the EU's conceptual framework on human rights.

As part of the commitments undertaken under specific provisions of the Agreement, the Republic of Armenia has also committed to approximating Armenian legislation to legal acts and specific provisions adopted by the institutions of the European Union. In terms of the legal acts of the European Union, this refers to the sources of primary and secondary law of the European Union, namely, the Charter of Fundamental Rights of the European Union, the Founding Treaties, as well as regulations, directives, and decisions taken by the Council, the Parliament, and the Commission.

The current Labour Code, which came into force on June 21, 2005, underwent a series of comprehensive legislative reforms following the 2015 Constitutional changes to ensure alignment with the new constitutional order. While initial actions in this process largely omitted specific regulations on occupational health, a significant turning point occurred in 2023. During this reform, Chapter 23, dedicated to the health and safety of employees, was revised to modernize the framework for occupational hygiene and safety standards, although the challenge remains to fully bridge the gap between these statutory provisions and their practical enforcement in line with EU standards.

The scope of issues covered in the analysis has been predetermined based on their priority and systemic nature. In terms of substance, labour rights include a wide range of issues; the targeted selection of issues in this analysis is necessitated by the need to address them in sufficient detail and depth, refraining from an abstract and generalized narrative on existing issues. Relevant assessments, conclusions, and recommendations have been provided for the solution of each issue to bring labour regulations into conformity with EU standards at the legislative level.

The problems identified in this analysis and the findings of legal reviews can serve as important milestones in the processes of legislative approximation in the area of upholding labour rights and their assessment. In the present article, we will focus on the issues related to the protection of employee safety and health. The safety and health of employees at work is a mechanism for protecting the life and health of employees during their career, which includes legal, socioeconomic, organizational, and technical, sanitary and hygiene, treatment and preventive, rehabilitative, and other measures. To ensure the safety and protect the health of employees at the workplace, conditions are created that are proper, safe, and harmless to health, which are defined by law.

Methodology of Study

The title of the study expresses the preference for method selection. The literature was studied from a comparative perspective to highlight the current state of occupational health from the perspective of the legal and health systems. However, other methods of study, which are familiar in social science, have been applied equally with the legal research methods. The use of the comparative method was important, the main purpose of which is to understand the patterns and features of legal regulations on occupational health in the Armenian legal system by comparing it with similar norms of a more advanced system. The systemic method allows us to understand, interpret, and describe the system in which a certain level of development of occupational health was possible, and due to which occupational health took a certain dimension of development. In addition to the ones listed, abstraction, generalization, induction, deduction, and other scientific methods were also used.

Within the framework of the Article, the authors carried out the following: a review of the scope and nature of commitments related to upholding and promoting labour rights envisioned by the EU-RA Agreement; a review of the existing labour legislation and legal initiatives envisaging amendments thereto; an analysis of RA labour legislation in the light of the standards existing in the labour law of the European Union, identifying differences between them, and causes of existing contradictions; an analysis of reports prepared by international and domestic human rights organizations related to labour legislation; development of recommendations on the steps necessary for bringing RA labour legislation into conformity with the requirements laid down in the Agreement.

Literature review

For the work, a study of theoretical and practical literature, materials, and publications available in Armenian, French, and English was carried out. Considerable monographs, articles, empirical studies, judicial precedents (case law), and publications were referenced. To increase the research value of the article, it was also important to study the existing positions, views, and opinions in related sciences and their comparison. Special attention was paid to the case law of the Court of Justice of the European Union (CJEU) and the practical and scientific commentaries provided to its jurisprudence.

Actuality

Ensuring safety and protecting the health of employees in labour law and legislation is both a principle and a goal. To reach the goal, the states have an

obligation to take measures aimed at improving working conditions. The actuality of the present article is reasoned in both political and legal processes of approximation of Armenia with the European Union. However, massive legislative changes were undertaken by the Armenian authorities that omitted regulations related to occupational health. A comparative analysis of Armenian legislation with EU human rights standards is a step forward in bringing Armenian labour legislation closer to EU human rights standards.

Overview of the EU sources of law on occupational health

The comprehensive basis for protecting the safety and health of employees in EU law was established back in 1986 under the European Single Act to provide minimum conditions for safety and health and ensure an equal level in Member countries of the European Community. Before that, only the issues of protecting the health of previously marginalized social groups (disabled people, elderly people, etc.) were treated as important in the European community.

The European Community was socialized by the Treaty of Maastricht (1992), which was followed by the adoption of the Agreement on Social Policy. As a result of the social dialogue and cooperation, this agreement expresses the willingness of Member States to fulfill the European Community Charter of 1989 on Fundamental Social Rights of Workers. The Charter provides for the adoption of appropriate directives on the conditions at work and the protection of safety and health at work.

The Charter on Fundamental Rights of the European Union guarantees fair and just working conditions. The Charter on Fundamental Rights made the protection of fair and just working conditions equal to fundamental rights and expanded the content of the concept of "working conditions".

According to Article 31 of the Charter of Fundamental Rights, every worker has the right to working conditions that respect his or her health, safety, and dignity. Under the principles of EU law, the following components of fair and just working conditions have been shaped over time:

- Protection of employee safety and health;
- Right to working conditions ensuring the dignity of the employee;
- Working hours and rest period.

The comparative analyses of regulations

In the Republic of Armenia, relationships for ensuring the safety and protecting the health of employees are regulated by Chapter 23 of the Armenian Labour Code. In the European Union, several directives, including Framework Directive

89/391/EEC on the safety and health of workers at work (hereinafter, the Framework Directive) serves as a regulatory framework on the matters of identifying, evaluating, and mitigating occupational risks to ensure a high level of protection for the health and safety of employees across all sectors of activity. The Framework Directive is the "constitution" of European occupational health and safety (OSH) that provides for general legal norms, which are of *lex generalis* nature compared to non-framework directives.[1]

The Framework Directive shows a more principal approach in selecting the means to achieve the goal of improving working conditions at work. As noted by the EU Court of Justice in the Judgement in the case *EU Commission vs the Netherlands,* the aim of the Directive is not solely to improve the protection of workers against accidents at work and the prevention of occupational risks; it is also intended to introduce specific measures to organize that protection and prevention.[2] Thus, in terms of ensuring employee health and safety, the state is required to ensure that both the appropriate technical requirements are met and the principal approaches aimed at protection and prevention are taken. In brief, it shifted the focus from merely reacting to accidents to a proactive culture of risk assessment.[3]

The Framework directive enshrines **general principles regarding the prevention of occupational risks**, ensuring health and safety, eliminating risks and incident factors, providing information, consultations with employees and their representatives, and ensuring balanced participation (part 2 of Article 2 of the Framework Directive). In addition, the Framework directive provides for minimum standards for ensuring safety and protecting health, meaning that it cannot be a basis for eliminating more favorable working conditions already envisaged in the legislation of Member States or be an impediment to setting higher standards in the future. Particularly, under Article 4 of the Directive, the States have positive obligations of introducing legal provisions to ensure that the requirements outlined in the Directive are in place for employers and workers, including workers' representatives, on the one hand, and mechanisms for their adequate controls and supervision over them, on the other. Hence, in contrast to the national law, the scope of measures provided for attaining the goals of the Framework Directive is broad, and they are necessary not only to ensure that the minimum necessary safety and health conditions exist, but also to encourage improvements to those conditions.

[1] ***Vokrri, Muhamet.*** *"Aspects of safety and health at work in the context of the EU and Kosovo." Sigurnost: časopis za sigurnost u radnoj i životnoj okolini 63, no. 4 (2021), pp. 419-433.*

[2] *Judgement of 22 May 2003, Commission v. Netherlands, Case C-441-01, § 38.*

[3] ***Vogel, L.*** *The Prevention System in the Framework Directive 89/391/EEC. European Trade Union Institute (ETUI), 1994.*

The Framework Directive has a broad scope; it applies to employees in both private and public sectors (manufacturing, agricultural, commercial, services, education, culture, etc.). A few service sectors, such as the armed forces, the police, and the civil protection services, are an exception. Furthermore, the exceptions provided are subject to narrow interpretation,[1] particularly when reference is made to actions taken by the legislator in those sectors.[2] The scope of the Framework Directive 89/391/EEC has indeed been effectively extended through judicial interpretation by the Court (CJEU). While the text of the directive remains the same, the Court has consistently ruled that the exceptions (armed forces, police, etc.) must be interpreted so narrowly that they only apply in truly exceptional circumstances.[3] Nevertheless, the directive is criticized for being "frozen in time" (1989) and not adapting its broad scope to the specificities of the digital age.[4]

In the EU legal system, in **connection with the term health**, the CJEU is guided by the definition available in the Constitution of the UN's World Health Organization, according to which health is a state of complete physical, mental, and social well-being.[5] It is difficult to arrive at an understanding of the semantics of the 'health' and 'safety' concepts used in Armenian labour legislation due to the absence of national judicial interpretation on the matter. While Armenian judicial interpretation remains limited, the Armenian legislator has explicitly aligned national law with international standards. Specifically, the WHO's comprehensive definition of health has been *mirrored verbatim* in domestic legislation, such as in Article 2 of the Armenian Law on Medical Care and Services for the Population. This demonstrates that the Armenian state has formally adopted a holistic view of health - recognizing it not merely as the absence of physical disease, but as a state of complete mental and social well-

[1] *Judgment of 3 October 2000, Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana, Case-303/98.*

[2] *Judgment of 12 November 1996, UK v Council, Case C84/94.*

[3] *In cases like SIMAP (C-303/98) and Jaeger (C-151/02), the Court ruled that the directive applies to public health workers and even emergency services during their "normal" activities. The exception only triggers during "extraordinary" events (natural disasters, major accidents, or military maneuvers) where "the requirements of public order" absolutely conflict with safety rules. More recently, the Court clarified that even military personnel are covered by the directive and the related Working Time Directive when they are performing tasks that are not strictly "operational" or "combat" related (e.g., administrative work or standard training). See The Slovenian Case (C-742/19).*

[4] ***Cefaliello, A.*** *Towards an improvement of the legal framework governing Occupational Health and Safety, 2020.*

[5] *WHO, CONSTITUTION, "World Health Organization." Air Quality Guidelines for Europe 91 (2020). Judgment in Case C84/94, § 12; See Weatherill, Stephen. Cases and materials on EU law. Oxford University Press, USA, 2014.*

being. By codifying this language, the legislator has paved the way for a broad interpretation of the 'right to health' within the Armenian legal framework, mirroring the approach taken by the CJEU.

The term "worker" is used in the Directive as "any person employed by an employer, including trainees and apprentices, but excluding domestic servants" (Article 3). Over time, the CJEU developed the term "worker" as an autonomous concept in EU law based on the argument that, in the absence of such a fundamental concept in EU Law, the provisions protecting worker rights would be distorted and would not serve the objectives for which those provisions had been developed and designed.[1] The CJEU has indicated that the concept 'worker' is not subject to restricted interpretation and must be defined per objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship, however, is that for a certain timeframe a person performs services for and under the direction of another person in return for which he receives remuneration.[2] The Court added that: "It is for the national court to apply that concept of a 'worker' in any classification, and the national court must base that classification on objective criteria and make an overall assessment of all the circumstances of the case brought before it, having regard both to the nature of the activities concerned and the relationship of the parties involved".[3] As a result, the following elements for qualifying the concept of 'worker' have been developed in the case law of the CJEU:

- the person acts under the direction of the employer, in particular, depending on choosing their timetable, and the place and content of their work;[4]
- the person does not share the commercial risks with the employer;[5]
- the person, for the duration of that relationship, is incorporated into the employer's undertaking[6].

[1] *Judgement of 1986, Deborah Lawrie-Blum v Land Baden-Württemberg, Case 66/85: Kountouris, N. (2018). "The Concept of 'Worker' in European Labour Law: Fragmentation, Autonomy and Scope." Industrial Law Journal, 47(2), pp. 192–225.*

[2] *Judgment of 14 October 2010, Union Syndicale Solidaires Isère, C-428/09, § 28.*

[3] *Ibid, § 29.*

[4] *Judgment of 13 January 2004, Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment, C-256/01, § 72.*

[5] *Judgment of 14 December 1989, The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Agegate Ltd, C-3/87, § 36.*

[6] *Judgment of 16 September 1999, Criminal proceedings against Jean Claude Becu, Annie Verweire, Smeg NV and Adia Interim NV, C-22/98, § 26.*

Both under the Framework Directive (Article 5) and the Armenian Labour Code (para 1 of Article 243), the duty of ensuring that the health and safety of workers are protected at work rests with the employer. According to the Armenian Law, the employer shall engage qualified occupational safety and health services, or shall perform such functions personally, taking into account the degree of risk or hazard associated with the production or the work performed.

The fundamental difference lies in the nature of the liability framework: the Framework directive establishes an absolute, non-delegable responsibility for the employer, where the engagement of external experts does not discharge legal liability, and worker obligations do not diminish the employer's primary duty. In contrast, the Armenian text (reflecting the 2023 amendments to the Labour Code) focuses on procedural compliance and the distribution of functions, even when the employer's duty to ensure safety exercised either personal management or the appointment of qualified services. While the EU Directive explicitly addresses the limits of "force majeure" (unforeseeable circumstances) to strictly define the boundaries of strict liability, the Armenian provision emphasizes the risk-based categorization of production and the legislative role in setting minimum safety thresholds, thus shifting the focus from a "principle of liability" to a "duty of provision."

The disagreement lies also in the nature of the employer's duty. Thus, to meet the requirements provided in Art. 243 of the Armenian Labour Code, the employer is only required to ensure that the conditions outlined in the law exist. The powers of the Armenian Health and Labour Inspection Body in terms of applying the norms of ensuring the safety and protecting the health of workers, and the limits of exercising them are also attributed to this. According to paragraph 10 of the Charter of the inspection body, it is the supervision of mandatory requirements outlined in the law, including the availability, maintenance, and operation of collective and personal protective measures for safety at work.

In the EU labour law, the employer's obligations are not limited to taking the necessary and sufficient measures to protect the safety and health, and providing the required conditions. The Framework Directive emphasises employers' obligations to ensure the safety and protect the health of workers in the following directions:

- risk assessment, prevention, and protection;
- first aid, employee evacuation, and firefighting;
- choice of preventive measures and equipment;

- record occupational accidents[1] and report to the competent public authority on occupational accidents;
- inform the workers of their duties and safety rules;
- ensure that workers participate in discussions on issues related to ensuring worker safety and protecting health, and are consulted with;
- training of workers, etc.

In fulfilling the obligations in specified areas of ensuring safety and protecting the health of workers, the Directive (Article 6) introduces the responsibility for the employer to take into account the following principles:

- avoiding risks;
- evaluating the risks which cannot be avoided;
- combating the risks at source;
- adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
- adapting to technical progress;
- replacing the dangerous with the non-dangerous or the less dangerous;
- developing a coherent overall prevention policy that covers technology, organization of work, working conditions, social relationships, and the influence of factors related to the working environment;
- giving collective protective measures priority over individual protective measures;
- giving appropriate instructions to the workers.

In terms of fulfilling its obligation of protecting employee health and safety, the domestic legislature imposes an obligation on the employer to either personally carry out the function or enlist qualified service providers to ensure the safety and protection of the health of workers, taking into account the degree of production hazard for the workers.

The provisions of the Directive in principle differ on the same issue. Given the fact that the Directive sets out the employee's obligations to take preventive measures[2], the Directive provides a new way of managing measures aimed at ensuring health and safety at work. According to the Directive, the possibility of carrying out this function by the employer on its own is an exception to the general rule. It is imperative in the Directive for the employer to designate, select,

[1] *The employer is required to keep records of occupational accidents resulting in a worker being temporarily unfit for work for more than three working days.*

[2] ***Junevičius, Algis, and Dainora Gelžinytė.*** *"Employees' health and safety requirements and regulations in the European Union." European Integration Studies 3 (2009).*

or organize selections of one or more persons responsible for ensuring the safety and protect the health of workers, and where impossible, the obligation to enlist qualified external services to take the necessary actions for protection from and prevention of occupational risk at work on behalf and to the benefit of the employer.

According to the Directive, the employer may only approach a qualified external service if it lacks able (competent) personnel. In addition, if a third-party service provider is enlisted, the Directive contemplates the duties of the parties - between the employer, employees, and the service provider - in light of the principle of mutual support and cooperation. In particular, the Directive indicates that the employer, worker, and service providers shall cooperate, where necessary, in enforcing the safety requirements: the employer has to ensure internal and external communication, coordinate the actions of all participants of the system, provide the necessary information to workers, their representatives, and provide the necessary information or access to it for service providers.[1]

Depending on the scale and nature of activities, the number of people responsible may vary. Given these circumstances, the Directive authorizes the Member States to define the categories of undertakings in which the employer, provided he is competent, may himself take responsibility for ensuring the safety and protecting the health of workers (Art. 7(7) of the Directive).

The Framework Directive has clarified the issues of rights and duties between the employer and responsible persons, as well as the responsibility to ensure the safety and protect the health of workers. If such a selection or designation is made, obviously, the duties of the employer to the worker must increase. According to the Directive, the employer has an obligation to designate responsible persons so that they:

- are not placed at any disadvantage because of their activities (Art. 7 (2) of the Directive);
- are allowed adequate time to enable them to fulfill their obligations arising from this Directive (Art. 7 (2) of the Directive);
- are entitled to proper training in their special role, which cannot be at the expense of the worker or his representative.

To deal with the organization of protective and preventive measures, the responsible person shall have (Art. 7 (5) of the Directive):

[1] ***Defossez, A.,*** *Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. In E. Ales, M. Bell, O. Deinert, & S. Robin-Olivier (Eds.), International and European Labour Law: A Commentary, 2018, pp. 677-692.*

- the necessary capabilities and aptitudes, with the obligation to define which rests with the state (Art. 7 (8) of the Directive);
- the necessary aptitudes, personnel, and professional means in case of external services;
- both designated persons and services must be sufficient in number.

When addressing matters of responsibility, the Framework Directive explicitly enshrines the principle of the employer's responsibility in ensuring the safety and protecting the health of workers, which he cannot be discharged from, irrespective of whether responsible persons are designated by the workers' representative, selected, or being selected, or enlisting an external service. Moreover, Art. 5 of the Framework Directive, the principle of autonomy of employers' responsibility, including the existence of employee duties, shall in no way have an impact on the responsibility of the employer.

The Framework Directive does not prohibit providing for the exclusion or the limitation of employers' responsibility where occurrences are due to unusual and unforeseeable circumstances, beyond the employers' control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all necessary measures.

The principle of **non-delegable and objective responsibility** under Article 5(3) of the Framework Directive establishes that the employer holds the ultimate, unshakeable burden for workplace safety, regardless of the individual actions or duties of their employees. This means that while workers are legally required to follow safety protocols and use equipment correctly, their personal negligence or failure to comply does not absolve the employer of legal liability. The law treats the employer's obligation as "autonomous," meaning it exists independently; even if an employer delegates safety tasks to specialized managers or if a worker ignores a known rule, the employer remains the primary guarantor of a safe environment. Essentially, the Directive ensures that the buck always stops with the organization's leadership, preventing them from using "human error" as a legal shield to escape their foundational duty to provide a risk-free workplace.

Some scholars argue that the law is too "structuralist" and ignores the psychological reality of human error. Professor of Work and Organizational Psychology at ETH Zurich, Gudela Grote, suggests that by placing almost all legal weight on the employer, the law may inadvertently discourage workers from taking "proactive" safety ownership. If the employer is always responsible, the worker may feel their personal choices matter less.[1] If a worker knows the employer will bear the full

[1] ***Grote, G.*** *Safety Management in Different High-Hazard Domains: All the Same? Safety Science, 50(10), 2012.*

financial and legal brunt of an accident regardless of worker carelessness, the incentive for the worker to exercise extreme caution is theoretically diminished. Besides, there is a conflict between Article 5(3) (Employer is always responsible) and Article 5(4) (Member States *may* limit responsibility for "unusual and unforeseeable circumstances"). Laurent Vogel, a leading OSH researcher at the European Trade Union Institute, notes that the "unforeseeable" clause is often used by Member States to water down the Directive. Critics argue the CJEU (Court of Justice) has to constantly step in to prevent employers from using "worker error" as a fake "unforeseeable circumstance."[1] Professor David Walters argues that in small businesses, where the employer is often working alongside the employee, the legal separation of "employer responsibility" and "worker duty" is practically impossible to distinguish, leading to "regulatory unreasonableness" where employers are held to standards they cannot physically monitor 24/7.[2]

According to the RA Labour Code, given the absence of a mechanism for responsible persons, the major part of the duties related to ensuring the safety and protecting the health of workers has been transferred from the employer to employees. Given the need to democratize the labour relationship, the Directive provides for the employer's duty and thus the employee's right to ensure that the employees participate in the discussions on matters related to ensuring safety and protecting health. The participation of the employees must be held on the means with a significant impact on the safety and health of employees, designation of responsible persons, selection or being selected, as well as enlisting an external service, risk assessment, and handling of occupational accidents. The consultations must be organized in advance or on time by providing the workers with a real opportunity to provide suggestions and a balanced participation of employees under the domestic legislation and/or developed practice.[3]

Scholars like Lord Wedderburn and Paul Davies have argued that labour law's primary function is to counteract the inherent inequality of bargaining power. Participation in Occupational Safety and Health (OSH) is seen as a "fundamental democratic right" because it concerns the physical integrity of the human person,

[1] ***Vogel, L.*** *The Framework Directive: A 'Constitutional' Act for Workers' Health. European Trade Union Institute (ETUI). Brussels, 2015.*

[2] ***James, P., & Walters, D.*** *Worker Representation in Health and Safety: Options for Regulatory Reform. Industrial Relations Journal, N 33(2), 2002, pp. 141-156.*

[3] *The two most important regulations on this matter are ILO Convention No. 155 and the EU OSH Framework Directive (89/391/EEC). Adopted in 1981, this is the global "gold standard" for workplace safety. In June 2022, the ILO upgraded this to a Fundamental Convention, meaning all 187 ILO Member States (including Armenia) are obligated to respect and promote its principles, even if they haven't formally ratified it.*

which cannot be left solely to the market or the employer's discretion.[1] This reflects the theory of collective autonomy. The most influential scholars in modern legal sociology and "reflexive" labour law, Ralf Rogowski and Gunther Teubner, suggest that the law should not just dictate rules but create structures for communication. By mandating "consultation in advance," the Directive forces a "reflexive" process where the employer must see the workplace through the eyes of the employee.[2] Laurent Vogel is the leading voice on the "social dimension" of EU safety law. He argues that Article 11 of the Framework Directive represents a "constitutionalization" of worker rights, moving safety out of the technical realm and into the realm of civil rights.[3]

Under the Framework Directive, the employer should ensure that each worker receives adequate safety and health training in the form of information and instructions specific to their workstation or job on recruitment, in the event of a change of job, in the event of the introduction of new work equipment, or any new technology.[4] Such an obligation of the employer in the RA Labour Code is introduced as a negative obligation to refrain from demanding that the employer cannot require that the employee assume performance of job duties if he/she has not undergone training and/or instruction in work safety. However, the employer must ensure that the employee is informed about potential risk factors existing in the establishment at the time of assuming work duties and receiving safety instructions specific to the workplace, only to employees who are on business trips. It is true that according to Article 250 of the RA Labour Code, the work is temporarily stopped according to the procedure defined by normative legal acts if the employee fails to familiarize himself with the work safety rules; however, again, the legal norm does not specify the issues of possible unfavorable consequences of offenses by either the employer or the employee.

According to Article 206 of the RA Labour Code, in the event of a failure by an employer to adhere to the rules for ensuring labour safety and health, the employee may refuse to perform their work duties as a protection measure. This measure of self-protection does not have a sufficiently clear formulation to allow the employee to form an understanding of grounds in the presence of which it

[1] ***Wedderburn, K. W.*** *The Worker and the Law (3rd ed.). Harmondsworth: Penguin; 1986, Davies, P., & Freedland, M., Labour Law: Text and Materials. London: Weidenfeld & Nicolson., 1993.*

[2] ***Teubner, G.*** *"Substantive and Reflexive Elements in Modern Law." Law & Society Review, 17(2), 1983, pp. 239–285; Rogowski, R., & Wilthagen, T. (Eds.). Reflexive Labour Law: Studies in Industrial Relations and Employment Regulation. Deventer: Kluwer Law and Taxation. 1994.*

[3] ***Vogel, L.*** *The Prevention of Workplace Risk: A Descriptive Analysis of Statutory Provisions in Member States of the European Union, 1994.*

[4] ***Hughes, Phil, and Ed Ferrett.*** *Introduction to health and safety at work. Routledge, 2011.*

would be sufficient and necessary to use his right to refuse performance of duties, and in case of abusing it, foresee possible negative consequences. Providing for such legal norms in Chapter 20 of the RA Labour Code instead of Chapter 23 of the same Code, which regulates employee safety and health protection issues, is by itself problematic. For legal predictability and thus stability considerations, it is necessary to consolidate the legal norms related to issues of protection of the safety and health of workers in one chapter, where legal provisions on both unfavorable legal consequences for failure to adhere to the rules and legal provisions on remedies will be included.

Regarding the mandatory health surveillance, Article 249 of the RA Labour Code provides for the employee's obligation to undergo health surveillance at recruitment and during employment. The existence of the employer's subjective obligations in the area of ensuring the safety and protecting the health of the employee is due to the employer's subjective right to ensure safety and protect health. Thus, the Directive rightly defines this as the worker's right rather than an obligation. Nevertheless, the Directive does not place the entire burden of ensuring the safety and protecting the health of employees on the shoulders of the employer by **introducing an obligation for employees to take care of ensuring their safety and protecting their health** by following the training and instruction given by the employer. In particular, in Article 13 of the Directive, it is stated that employees must:

- make correct use of machinery, apparatus, tools, dangerous substances, transport equipment, and other means of production;
- make correct use of the personal protective equipment and, after use, return it to its proper place;
- refrain from disconnecting, changing, or arbitrarily removing safety devices fitted, e.g., to machinery, apparatus, tools, plant, and buildings, and use such safety devices correctly;
- immediately inform the employer and/or the workers with specific responsibility for the safety and health of workers of any work situation they have reasonable grounds for considering represents a serious and immediate danger to safety and health, and of any shortcomings in the protection arrangements;
- cooperate, in accordance with established practice, with the employer and/or responsible workers, for as long as may be necessary to enable any tasks or requirements imposed by the competent authority to protect the safety and health of workers at work to be carried out;

- cooperate, in accordance with the established practice, with the employer and/or workers with responsible workers, for as long as may be necessary to enable the employer to ensure that the working environment and working conditions are safe and pose no risk to safety and health within their field of activity.

While the Framework Directive defines the employer's obligation to ensure that the health and safety of employees is protected, nevertheless, at legislative and practical levels, the state has an obligation to ensure the operation of the health system and its supervision. This, in turn, entitles the employee to request that health surveillance and/or its public oversight be performed. The Directive explicitly states that health surveillance may be provided as part of a national health system. Scientific literature indicates that this creates a "public health bridge" where the state must ensure that medical resources are available to assess workers' fitness and detect occupational diseases that employers might miss or suppress.[1] Because health is a public good, the law grants employees the right to demand intervention. This is scientifically supported by the concept of "Sentinel Health Events," where a single worker's request for surveillance can act as a warning signal for a broader public health crisis, triggering state-led engineering modifications or material substitutions.

Despite the theoretical benefits, scientific articles highlight several failures in how states supervise health systems. Many researchers argue that health surveillance is often fragmented between "occupational medicine" (private/employer-funded) and "public health" (state-funded).[2] This leads to a loss of data. If a state health system doesn't communicate with an employer's risk assessment team, the "oversight" becomes a hollow exercise that fails to prevent long-term chronic illnesses like cancer.

Based on Article 50 of the RA Labour Code, the Health and Labour Inspection Body acts as the superior administrative and enforcement authority within a multi-tiered safety escalation framework. Its role begins as an evaluative arbiter that is triggered when an employer refuses to comply with internal safety demands from employees or safety services; upon notification, the head of the inspection body must conduct a formal health and safety assessment to determine the validity of the risk. Once a hazard is confirmed, the authority shifts into a decision-making role, issuing a mandatory legal order that compels the employer to cease operations. Finally, the

[1] ***Colosio et al.*** *Workers' health surveillance: Implementation of the Directive 89/391/EEC in Europe. Occupational Medicine, 67(7), 2017, pp. 574–578.*

[2] ***Hassard, J., et al.*** *The business case for occupational safety and health: A systematic review. International Journal of Occupational and Environmental Health, Safety Science, N 120, 2019, pp. 206-225.*

inspectorate serves as an enforcement power with police-recourse, whereby the head of the body is legally authorized to involve the police to physically evacuate dangerous worksites and halt activities if the employer continues to resist state directives. By Article 263 of the Labour Code, State supervision and control over the provision of occupational safety and the health maintenance of employees is entrusted to the Inspection Body.

The object of our criticism in the current national legislation is for treating health surveillance as a "general check-up" rather than a targeted risk-based intervention. This dilutes the protective value of the surveillance. If the state oversight is too general, it fails to find the "subtle influences" of specific workplace toxins, rendering the employee's request for oversight scientifically ineffective.

The state's role is essentially to act as a referee. If the employer's "autonomy of responsibility" fails, the employee's right to request state oversight serves as a legal "emergency brake." However, critics argue that this brake is often disconnected from the actual mechanical parts of the health system.

The Framework Directive, specifically under Article 11, provides for the forms of potential cooperation between the competent public authority and those who have responsibility for ensuring health and safety, including that the latter have to be allowed to provide their comments to the competent public authority when inspections are performed. The Framework Directive formalizes the relationship between workplace actors and state regulatory bodies. This tripartite cooperation (State, Employer, Employee) is essential for moving safety from a theoretical legal obligation to a functional reality.

The Directive mandates that workers and/or their representatives must be allowed to participate "in a balanced way" in the oversight process. This includes specific rights during state inspections: Workers' representatives often have the right to accompany labour inspectors during site visits (The Right to Accompany); both employers and workers must be permitted to submit observations to the competent public authority, which ensures the inspector receives a "stereo" view of the workplace - the management's procedural record and the workers' lived experience (The Right to Comment); if workers believe the employer's measures are inadequate, they have the legal standing to appeal to the state authority to trigger an inspection without fear of retaliation - the "non-retaliation" principle (The Right to Request Intervention).

From a scientific and organizational perspective, this cooperation is analyzed as a tool to solve information asymmetry. Scientists in the field of ergonomics and safety note that workers possess "tacit knowledge" - the small, daily risks that don't appear in official risk assessments but are critical for prevention. Public authorities use cooperation to "calibrate" their enforcement. Instead of purely

punitive measures, the interaction allows for consultative supervision, where the state provides technical advice alongside enforcement.[1] Academic literature, particularly from the fields of Socio-Legal Studies and Industrial Relations, highlights several flaws in this cooperation model. Scholars like David Walters and Phil James argue that cooperation assumes a level playing field that rarely exists. In workplaces without strong trade unions or organized representation, the right to comment is often a silent one. Workers may fear that providing negative comments to an inspector will lead to informal punishments or job insecurity, despite legal protections.[2] Recent research into Labour Inspectorates (Cefaliello, 2020) highlights a structural failure in the state's ability to cooperate. Due to budget cuts across the EU, the frequency of inspections has dropped. "Cooperation" is impossible if the "competent public authority" is physically absent from the workplace for years at a time. This turns a proactive right into a reactive one that only triggers after an accident.[3] Gunther Teubner's theory of "legal irritants" suggests that formal cooperation can become a ritual. They argue that the requirement for comments and inspections often leads to "bureaucratic capture." Employers become experts at presenting the "correct" paperwork to inspectors, and the "cooperation" becomes an exchange of documents rather than a dialogue about physical hazards.[4]

Taking into account the foregoing, the need to bring the RA Labour legislation into conformity with the principles and standards of EU law, it is recommended to revise Chapter 23 of the RA Labour Code. To this end, it is necessary to expand the “conditions defined by law” provided for in Article 243 of the RA Labour Code by incorporating in it the existence, maintenance, and operation of protective means.

To ensure that the processes of ensuring safety and protecting the health of workers are democratized, the RA Labour Code will need to:

- provide for legal provisions and mechanisms guaranteeing consultation and balanced participation of workers and workers' representatives;
- define legal norms for provision and access to information, awareness-raising, liberalization, and responsibility enhancement.

[1] ***Grote, G.*** *Safety management in different high-hazard domains: All the same? Safety Science, 50(10), 1983-1992, 2012.*

[2] ***Walters, D., & Nichols, T.*** *Worker Representation and Workplace Health and Safety. 2007.*

[3] ***Cefaliello, A.*** *Towards an improvement of the legal framework governing Occupational Health and Safety. European Labour Law Journal, N 11(3). 2020.*

[4] ***Teubner, G.*** *Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences. The Modern Law Review, N 61(1), 1998, pp. 11-32.*

To increase the level of protection of safety and health of employees, it would be necessary to define the conditions and procedures for designating, selecting, or organizing the selection of responsible workers in the format provided for in the Framework Directive.

In carrying out legislative and regulatory activities, pay special attention to defining the rights and obligations of all parties, protection of rights issues, legal consequences arising out of a failure to perform obligations, and particularly, financial and procedural matters of personal liability. It is necessary to envision state oversight of the existence, maintenance, and operation of collective and individual protective measures for ensuring the safety and protecting the health of workers.

Irrespective of the degree to which the national legislation conforms to the standards of EU laws, the state must introduce a compensation mechanism for potential violations of rights guaranteed by EU law. Thus, to bring the RA labour legislation into conformity with the EU's legal standards, it is necessary to review the terms and procedure for providing annual leave by eliminating the preconditions for its use and by introducing simultaneously mechanisms for the protection of rights and compensation of losses in the event of a violation of the rights guaranteed by the Framework Directive.

Conclusion

The comparative analysis reveals that while the Republic of Armenia has formally aligned its definition of health with international standards - recognizing it as a state of complete physical, mental, and social well-being - the legislative application of this principle remains underdeveloped. The current Armenian Labour Code omits critical modern OSH regulations, particularly regarding the proactive risk management and the non-delegable nature of employer responsibility found in EU law.

A primary deficiency identified is that Armenian legislation fails to provide adequate reparation for actual damages caused, leaving workers vulnerable even in the event of employer negligence. By contrast, the EU system ensures that the "buck stops" with the organization's leadership, preventing the use of "human error" as a legal shield. Furthermore, the lack of a dedicated mechanism for safety-responsible persons in Armenia results in an unfair transfer of the duty of care from the employer to the employees.

To resolve these discrepancies and move toward a truly preventive OSH culture, Chapter 23 of the RA Labour Code must be fundamentally revised. Legislative updates must incorporate:

- The integration of the existence, maintenance, and operation of protective means into the definition of safe working conditions.
- The establishment of legal mechanisms for the balanced participation and consultation of workers to democratize workplace safety.
- Clear procedures for designating safety-responsible workers and enlisting qualified external services as mandatory under the Framework Directive.
- A comprehensive consolidation of safety-related remedies and legal consequences to ensure legal predictability and stable protection for employees.

Ultimately, bringing Armenian legislation into conformity with EU standards is not merely a technical requirement of international treaties but a necessary step toward the "constitutionalization" of worker rights, ensuring that prevention and proactive risk assessment become the bedrock of the Armenian workplace.

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3. Case C-3/87 *The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Agegate Ltd.* [1989] ECR 04459, ECLI:EU:C:1989:650.
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ԱՇԽԱՏՈՂՆԵՐԻ ԱՆՎՏԱՆԳՈՒԹՅՈՒՆԸ ԵՎ ԱՌՈՂՋՈՒԹՅԱՆ ՊԱՀՊԱՆՈՒՄԸ. ՀՀ ԱՇԽԱՏԱՆՔԱՅԻՆ ՕՐԵՆՍԴՐՈՒԹՅԱՆ ՀԱՄԱՊԱՏԱՍԽԱՆՈՒԹՅՈՒՆԸ ԵՄ ԱՇԽԱՏԱՆՔԻ ԱՆՎՏԱՆԳՈՒԹՅԱՆ ԵՎ ԱՌՈՂՋՈՒԹՅԱՆ ՊԱՀՊԱՆՄԱՆ ԿԱՐԳԱՎՈՐՈՒՄՆԵՐԻՆ

Ամփոփագիր

Հոդվածում ուսումնասիրվում են ՀՀ իրավական համակարգում աշխատողների անվտանգության և առողջության պահպանման իրավական մեխանիզմների խնդիրները: Ուսումնասիրվել է աշխատավայրում առողջության պաշտպանությունը որպես բազմաշերտ կառուցվածք, որը ներառում է իրավական, սոցիալ-տնտեսական, կազմակերպչական, տեխնիկական, սանիտարահիգիենիկ և վերականգնողական միջոցառումներ՝ ուղղված աշխատողների կյանքի և ֆիզիկական անձեռնմխելիության պաշտպանությանը նրանց մասնագիտական գործունեության ընթացքում: Աշխատանքի հիմնական նպատակն է իրականացնել համեմատական վերլուծություն հայաստանյան աշխատանքային օրենսդրության և Եվրոպական միության չափանիշների միջև՝ վեր հանելու համակարգային բացերն ու հակասությունները: Այս տարբերությունների բացահայտմամբ հեղինակները նպատակ ունեն տրամադրել օրենսդրական մոտարկման ուղեցույց՝ ՀՀ ներպետական իրավունքը ԵՄ մարդու իրավունքների և աշխատանքային չափանիշներին համապատասխանեցնելու համար:

Աշխատանքում որպես հիմնական մեթոդ կիրառվել է համեմատական իրավական վերլուծությունը՝ համակարգային և գիտական վերացարկման մեթոդների հետ մեկտեղ: Հետազոտությունը վեր է հանում երկու համակարգերի միջև առկա գաղափարական հիմնարար տարբերությունը. ԵՄ իրավունքը պարզապես պատահարներին արձագանքելուց անցում է կատարել դեպի ռիսկերի գնահատման և կանխարգելման պրոակտիվ մշակույթի: Առանցքային բացահայտումներից մեկն այն է, որ ՀՀ ներպետական օրենսդրության մեջ բացակայում է անվտանգության պատասխանատու անձանց հստակ մեխանիզմը, ինչն անվտանգության ապահովման բեռը փաստացիորեն գործատուից փոխանցում է աշխատողին: Բացի այդ, հայաստանյան օրենսդրությունը քննադատվում է իրավական պաշտպանության միջոցների և ինքնապաշտպանության եղանակների ոչ հստակ ձևակերպումների համար, որոնք չունեն անհրաժեշտ կանխատեսելիություն՝ պատշաճ պաշտպանություն կամ պատճառված վնասի հատուցում ապահովելու համար:

Հիմնաբառեր. առողջության պաշտպանությունն աշխատավայրում, անվտանգություն և առողջության պահպանում, առողջապահական ոլորտի քաղաքականություն, հանրային առողջություն, առողջապահական իրավունք, աշխատանքի իրավունք:

ОХРАНА ЗДОРОВЬЯ И БЕЗОПАСНОСТЬ РАБОТНИКОВ: СООТВЕТСТВИЕ ТРУДОВОГО ЗАКОНОДАТЕЛЬСТВА РЕСПУБЛИКИ АРМЕНИЯ РЕГУЛИРОВАНИЯМ ЕВРОПЕЙСКОГО СОЮЗА В СФЕРЕ БЕЗОПАСНОСТИ ТРУДА И ОХРАНЫ ЗДОРОВЬЯ

Аннотация

В статье исследуются проблемы правовых механизмов обеспечения безопасности и охраны здоровья работников в правовой системе Республики Армения. Охрана здоровья на рабочем месте рассматривается как многоуровневая структура, включающая правовые, социально-экономические, организационные, технические, санитарно-гигиенические и реабилитационные мероприятия, направленные на защиту жизни и физической неприкосновенности работников в процессе их профессиональной деятельности.

Основная цель работы заключается в проведении сравнительно-правового анализа трудового законодательства Армении и стандартов Европейского союза для выявления системных пробелов и противоречий. Посредством выявления данных различий авторы стремятся представить рекомендации по аппроксимации законодательства, направленные на приведение национального права в соответствие с передовыми стандартами ЕС в области прав человека и трудовых отношений.

В качестве основного метода исследования использован сравнительно-правовой анализ наряду с методами системного и научного абстрагирования. Исследование выявляет фундаментальное идеологическое различие между двумя системами: право ЕС перешло от простого реагирования на несчастные случаи к проактивной культуре оценки рисков и превенции. Одним из ключевых выводов является отсутствие в законодательстве Армении четкого механизма назначения лиц, ответственных за безопасность, что фактически перекладывает бремя обеспечения безопасности с работодателя на работника. Кроме того, армянское законодательство подвергается критике за нечеткие формулировки средств правовой защиты и способов самообороны, которым не хватает необходимой предсказуемости для обеспечения надлежащей защиты или возмещения причиненного ущерба.

Ключевые слова: охрана здоровья на рабочем месте, безопасность и гигиена труда, политика в области здравоохранения, общественное здоровье, здравоохранительное право, право на труд.

Հոդվածը հանձնված է խմբագրություն 25.12.2025 թ., տրվել է գրախոսության 26.12.2025 թ., ընդունվել է տպագրության 29.12.2025 թ.: