

University Doctoral (PhD) Dissertation Abstract

**PRACTICAL AND THEORETICAL ASPECTS OF LEGAL INSTITUTIONS OF
OCCUPATIONAL HEALTH AND SAFETY WITH SPECIAL REFERENCE TO THE
EMPLOYER'S LIABILITY**

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I. History, actuality and goals of the research

People spend most of their life in their workplaces with doing their duties. The working environment is the most dangerous "sub-environment"; the risk of harmful of the working environment is 1-3 times more than any similar risks of all the other ones of the "sub environment". The risks appear in various forms, from the dangerous machines through hazardous materials to mental and social factors of the working environment including the poor work organization, social and health care deficiencies and human factors of the workplace.¹

According to the data of ILO, the number of fatal accidents and diseases that happen in the workplaces are 6000 daily and this number seems to be increased. According to estimates, in addition, we have to count 270 million non-fatal workplace accidents annually (each of them involves at least 3 days absence from the work) in addition 160 million new occupational diseases. The costs of these accidents and diseases are 4 per cent of the world's GDP.

There were all together 18 454 registered accidents that happened in the workplaces in Hungary in 2009 from which 173 were serious and 99 people died. Average 4000 people got daily accident sick pay form The Health Insurance Fund which means approximately 6,8 billion HUF in a year. Their benefit in kind cost 4 billion HUF. The Pension Insurance Fund financed 62 000 people' early retirement - due to occupational diseases- which was 108,6 billion HUF.

Accidents that happen in workplaces and occupational diseases cause lot of afflictions and mean heavy financial burden for employers, employees and social insurance as well.

In my thesis I examined the operation of certain legal institutions of workplace safety and occupational health care and I also pay attention to the employer's liability in case of workplace accidents. I wanted to know how these legal institutions and the employer in case of accident, labor law, social security and criminal liability serve the occurrence, namely prevention of similar cases.

The task of the work protection is to promote the highest level of protection of workers' physical, mental and social well-being and retention of all occupations and to prevent health damage arising from working conditions among employees, and also to protect the health of

¹ WHO, 1994.

the workers from dangers against their health and to provide and maintain the working environment that adapts to the physiological and psychological endowments of the workers.²

Work safety was mentioned in the Bible when attention was called for the necessity of handrails in case of a building: „Ha új házat építesz, házfedeledre korlátot csinálj, hogy vérrel ne terheld a te házadat, ha valaki leesik arról.” (Mózes V. Könyve I. rész 8. verse).

However, we can only talk about work safety in modern sense from the outbreak of the Industrial Revolution. Work safety was formulated to protect the workers in the 18th century when large modern industrial factories were organized which employed lot of workers.

After the World War I, the League of Nations was established that was the predecessor of the United Nations in 1919 and its Statute was inaugurated in all peace treaties as the duty of the organization: 'they strive to ensure fair and humane working conditions for men, women and children and maintain them.'³ To implement this task ILO was set up which head office can be found in Genf and its Statute was accepted as the 13th part of the Versailles Treaty. Hungary has been the member of the ILO since 1922.⁴

ILO organised an international labour conference in Philadelphia in 1941 where employers, employees and government delegate from 41 countries accepted the Declaration of Philadelphia. In the declaration The Conference acknowledges the duty of the International Labour Organization that is to support programs between people of the world, which aim is all types of employment sectors, including adequate protection of workers' life and health. Nowadays, there are altogether 185 members of ILO. The organization accepted 189 pieces of agreements between 1919 and 2013 as well as 202 pieces of partly supplementary agreements and partly autonomous Recommendation and in addition, it also accepted many conventions as protocols which are about fundamental human rights, workforce management, labor conditions, employment policy, social protection and labor safety.⁵ Among general standards of ILO the most important agreements are the 155th number of 1981 which is about work protection and the 161st number of 1985 which is about occupational health services and the related recommendations. Among the sector-specific rules the 184th agreement and the related recommendation are very important which are about labor protection in agriculture.

In Hungary the of 155th agreement of ILO was announced by the 75th act of 2000 and its 161st agreement was announced by the 13rd act of 1988. The 184th agreement of labor protection in agriculture has not been ratified in Hungary.

² WHO, 1950.

³ 23rd article of League of Nations Covenant

⁴ the 13th part of 32nd of 1921 contains the basic charter of ILO in Hungary

⁵ <http://szef.hu/lapok/1839/csatolmany> (time of downloading: 22nd February, 2015.)

Essential element of the Founder (Roman) Agreement of the European Economic Community is the principle of free movement of people which was signed in 1957. All over the world the freely moving labor force has the right to enjoy the same safety in the workplace. The rate of change was different from country to country and significant discrepancies were noted among countries in occupational health and workplace safety measures which were created for workers. These justify the community rules on workplace health protection and safety. This is to prevent the distortion of competition of those countries which are in different stages of development.

Guidelines play a role in community legislation in the field of labor protection which fix general principles in forming of minimal requirements. The goals of these principles are compulsory for all the members but they are not directly applicable in national legal practice but the national authorities have the right to choose methods and equipment of implementation but the national regulation must not go under the minimal level of requirement which is signed in the directive.

The 39/391/89 European Economic Community framework directive arranges the general rules of workers' occupational health and safety in the member states. The general rules of labor protection and health at work that are in accordance with the directive were made by taking framework directive into consideration.

Hungary became an associated member of the European Community by concluding the European Agreement 16th, December in 1991. Its aim was to join to the Union. According to the 67th act of European Agreement Hungary was burdened by certain numbers of law obligation and as the result of it had to make its legislation compatible to the Community rules to the possible extent. This is the reason why the Hungarian legislation was permeated increasing extend by the harmonization activities such as Hungarian legal harmonization of the Community regulations (*acquis communautaire*). The first duty of this process was the transposition of EU directives relating to workplace health and safety into the Hungarian legal system.

The most important requirements of the number of 89/391/ framework directive of the European Economic Community were accepted by the Hungarian Parliament at 5th October in 1993 and the 93rd act of 1993 about work safety came into force at 1st January in 1994. The act covers only the organized work of employees in accordance with Directive framework. This means that the individual entrepreneurs and private farmers, whose number is nearly a million, need not comply with the law during his employment and with the related health and safety regulations either.

Hungary joined to the European Union in 2004. Legal harmonization of work safety and the community rules of the occupational health have been accomplished since the period of the joining.

The number of accidents at work and within that the number of fatal work accidents showed a declining trend in our country, in the past few years. According to the data of the year of 2012 Labour safety and Labour Directorate of National Labour Office adverse changes can be observed in work accidents but most of in all national data about serious accidents at work. Decreasing trend of the number of reported fatal accidents -without accidents that happens with workers while they are working on the road- stopped. Earlier the most fatal workplace accidents happened in the construction industry but in 2012 almost the same number of workers (22 people) died in their workplaces in the agriculture as in the construction industry (29 people).⁶ The number of reported serious workplace accidents are still very high. The number of concealed accidents is 25 per cent. Nearly the same number of workplace accidents happened in 2013⁷ as in 2012⁸ while in 2014⁹ the number of workplace accidents were drastically increased.

It is also concluded that more than a third of fatal workplace accidents happens in the micro-businesses. In most cases, the violation of work safety rules led to the tragedy.

Connection with the above the goals of my research are the followings:

- a.) Examination of the main steps of formation and development of work safety and occupational health in Hungary from the beginning to nowadays.
- b.) Analysis of the most important work safety and health conventions and offers of the ILO.
- c.) Introducing the European Union work safety and work health measures.
- d.) The exploration work safety and occupational health problems which are arising in the operation of certain legal institutions.
- e.) Introducing the actual problems which are arising in the rehabilitation of people who become reduced work capacity because of workplace accident and occupational disease.

⁶ In these two sections the rate of fatal workplace accidents was 11-14 in 2008, 15-30 in 2009, 12-25 in 2010, 14-18 in 2010, 13-18 in 2012

⁷ 17 222

⁸ 17 025

⁹ 19 661

- f.) Examination of the situation of work safety in agriculture among individual farmers and their families.
- g.) Examination of the responsibility of each employer in workplace accident and occupational disease in particular with regard their role in prevention.

My goal is to give a comprehensive picture of the labor safety and occupational health situation in Hungary. I would also like to introduce the institutions of work safety and health whose primary task is to prevent the occurrence of accidents at work and occupational diseases and to explore the occurring disorders in the functioning of these institutions. I also give an overview about the responsibility of the employer in case of prevention to reduce the number of accidents at workplaces and occupational diseases. At the same time I would like to make a suggestion for solving the indentified problems that occur in the function of certain legal institutions of work safety and occupational health.

II. The structure of the thesis

The thesis is divided into eight chapters.

In the **first chapter** I describe in detail the main stages of the Hungarian work safety and occupational health formation and development to the present day. At the same time I examine the organization and operation of the compulsory health and accident insurance and the activities of the insurance company in order to prevent work accidents and occupational diseases as well as cash and benefits in kind and supplies in case of work accidents and occupational diseases in framework of the insurance.

In the **second chapter** I deal with the effect of the International Labour Organisation on occupational safety and health in the work. Our country ratified the main ILO conventions of work safety and health over the past 100 years including the Convention No 155 which requires the preparation of a national strategy for health and safety for the Member States. Despite of it, the National Labour Protection Policy has been waiting for acception nearly for five years in Hungary. Convention No. 184 about Safety and Health in Agriculture has not been ratified even though more than a million people work in the agriculture and the number of work accidents are the highest here after the construction industry and here is especially high risk of developing occupational diseases.

In the **third chapter** I introduce the development of work safety in the European Union, the community rules of work safety and health and safety institutions of the European Union.

The subject of the **fourth chapter** of the thesis is the impact of EU legislation on the protection of our country's work protection. It introduces the EU labor safety guidelines and their harmonizing with Hungarian laws.

In the **fifth chapter** I show the institutions of work safety and health in the light of the health and safety act. I deal with risk assessment and risk estimation as they are the main and essential element of the employer health and safety activities and as they are the basic of prevention of dangers and hazards. Work safety organization of the European Union is the European Workplace and Health safety Agency which was organized to help and satisfy the information needs that occur in the field of work safety and health, with the help of campaign and giving professional materials and try to provide assistance for employers to carry out the proper risk assessment. Unfortunately, the majority of employers does not understand or does not feel the importance of risk assessment in the field of prevention.

I introduce the up-to-date system of work safety and health and show the problems which occur during their operation. So I specifically deal with the function of occupational health service which has key role in the prevention of work accidents and occupational diseases and I would like to draw attention to their several problems which occur in their operation. The state eliminated the funding of the occupational health networks in 1993 after privatization happened in Hungary. It is written in the 93rd act of 1993 which is about work safety that the employer has to ensure occupational health care for employees. The employer decides who among the almost three thousand service providers he enters into a contract. The quality and efficiency of occupational health has deteriorated because of the competitions that happen among service providers and because providers depend on employers. The feature of the accident insurance system - which was rebuilt after the World War II in the former socialist countries, including the Czech Republic, Estonia, Poland, Lithuania, Russia, Slovenia, Romania and Ukraine – is that they made processes which serve the prevention of workplace accident and occupational diseases and in this system the preventive task of the occupational health service has main role that is operated by the insurance.

In this chapter the activities of the safety representatives were examined in the realization of healthy and safe working conditions. The national legislation on occupational safety and health made it possible for the employees that their rights for safe and healthy working conditions are represented by a worker who is chosen among them by introducing the institution of safety representative. The representative survey ¹⁰ was made in 2007 shows that most of the employers and employees do not know exactly the legal regulations when they usually miss to choose their work safety representative. Wide-ranging of permissions themselves for work safety representatives were not sufficient for the successful performance of representation and what is more the possibility of centrally organized, regular training has not been solved and there are not any interactive forums for exchanging information.

The 4th topic of this chapter is to show the important duties of work safety professionals in cases of preventing work place accidents and occupational diseases during organized work. Although, the training of work safety professionals are solved in Hungary but their institutional training has not been solved yet. At the same time the duties of work safety services need more and more complex, multidisciplinary knowledge from the work safety professionals. In addition, since the regime was changed there has been an unfavorable trend in the field of supplying occupational safety specialist in companies. The employers do not

¹⁰ Főcze Lajos Foundation for Work Safety Representatives

comply the requirements which are prescribed by law that are about the minimal number and working hours and training of compulsory applied work safety professionals. The dependence of health and safety professionals from employers in many cases means that the employer will be partners in concealing working accidents.

The topic of the last chapter is to investigate the importance and current problems of occupational diseases and work accidents. Prevention plays important role in investigating work accidents and occupational diseases. Similar work accidents and occupational diseases can be achieved to happen by eliminating those deficiencies that occurred during the investigation. The number of reported work accidents and occupational diseases are dramatically reduced. However, the data should be considered with reservation because the employer againsts reporting the accidents. Due to the defenseless situation of the employee, he becomes 'the accomplice' of the employer and because the occupational health doctor depends on the employer, he reluctants to report the cases

According to professionals, the other reason of absence of reports can be that the modern technology (for example: the appearance of lot of workplaces where people work with computers) or psychosocial pathogenetic factor, the stress which is in the center of attention nowadays cause the labour diseases and they are not diagnosed, and consequently are not reported.¹¹

In the **sixth chapter** I introduce situation of occupational safety and health in agriculture is introduced mostly in private farms. More than one million people work in the agriculture but they are not be bound to respect health and safety law and the related legal regulations. In case of work accidents or occupational diseases a significant part of the workers are not entitled to social insurance accident allowance. At the same time there are very high number of risks in the agriculture because the machines are old, there are extreme weather conditions and because of the chemicals that are used.

In the **seventh chapter** I deal with the rehabilitation of disables workers and its current problems. Rehabilitation includes medical, social and occupational rehabilitation as well. The complex rehabilitation is still introduced among a more limited range of health-impaired people. However, some disturbances can be found in the operation of some elements of the rehabilitation. The main reason is that the rehabilitation is a very expensive process and the bearing capacity of social security and state budget do not allow that people who are concerned in it receive the necessary rehabilitation measures in all cases. Moreover, there is

¹¹ 44th National Work Safety Policy

the fact that a significant proportion of health impaired people rather prefer the safe social insurance and social services than the full value rehabilitation.

In the eighth chapter I examine the criminal responsibility of the employee for work accidents and occupational diseases and employer's repayment obligation towards the social insurance and compensation obligation claims against employees. All of the above mentioned forms of responsibility for workplace accidents and occupational diseases serve the prevention. In summary, the conclusion is that work accidents and occupational diseases represent heavy financial burden on the employer, employee and for the social security institution as well. However, claims for compensation which are one of the legal means of prevention of the two sectors of social security institution- health insurance and pension insurance sectors- do not work nowadays. The employer and the social security agency are adverse parties in the investigation of the accidents. This fact and the black economy are also significant nowadays and stimulate the employee and the employer to conceal accidents and write unreal facts in the "Work Accident Protocol". Notification of occupational diseases has been unsatisfactory for many years. All this leads that work accident statistic of work safety supervision authority does not reflect the real situation. Employers must be concerned not to conceal the accidents, and write down the real facts of the accident during the investigation in the protocol and it would also be good if the prevention becomes "business interests" and basic function of the insurance company. It must be achieved to cease independent, parallel compensation tasks of the two sectors of social security institution.

III. The method of research

I used analyses methodology for itemized current legal regulations and for exploring legal history and for introducing their integral relationship with the current system in my thesis.

IV. Summary of research results

Examination of legal institutions of workplace safety and health, rehabilitation, work safety specialists, safety representatives, workplace accidents and occupational diseases mainly play very important role in prevention

Agreements about work safety and occupational health of the ILO and occupational safety and health guidelines of the European Union only determine the minimum requirements and basic principles. The Member States are entrusted with working out the operational system of some institutions of labor safety and occupational health.

According to my research, de lege ferenda suggestions are summarized in the following to eliminate the occurring dysfunctions of the legal institutions of labor safety and occupational health:

Creating independent casualty insurance branch

Basic element of this system is a proportionate contribution payment system which adapts to the risk of workplaces. In my opinion the adequate risk assessments that were prepared for the workplace would be suitable to classify workplaces according to their risk factors which would be the basic of organizing occupational accident insurance risk of proportional contribution payment system. The accident insurance contributions would be payed only by the employer and it encourages employers to intensify their work safety activities through different systems of discounts and surcharges. In this system, the employer would be financially interested in making the development of work safety situation and both the employer and the employee have essential interests of reporting accidents at work and occupational diseases. It would be available with this that the statistics of accidents at work reflect the real situation. Establishing the compulsory accident insurance, the reimbursement task of the two parallel insurance would cease. The workplace accident insurance could be the forum of further trainings and information exchange for health and safety representatives and safety professionals.

Establishing occupational health services and rehabilitation that are operated by the accident insurance

The accident insurance contribution serves as collateral for establishing and operating a complex system of medical and occupational rehabilitation for occupational health, for people who have accident at work and for those who have occupational diseases that are managed and financed by the insurance company.

Thereby the dependency of the occupational health service would be lost from the employer and occupational health physicians would be interested in making and reporting occupational accidents and occupational diseases. At the same time it can also be achieved that the present formal role in many cases of occupational health service would become dominant in prevention.

In the current system of accidents at workplace and occupational diseases, injured patients do not receive special protection during rehabilitation. The accident insurance supply system could provide in addition to the medical rehabilitation, pedagogical, occupational and social rehabilitation for them through its contracted partners. Therefore their integration into the world of work and community life can be completely realized.

Extending the scope of the Labour Protection Act for the self-employed and individual businessmen

The safety of self-employed and individual businessmen is as important as those employees who work in the organized labor so the compulsory accident insurance must be covered them as well. For this purpose the scope of the labor protection law should be extended to self-employed as well. In this way the self-employed work safety situation can be arranged and in case of an industrial accident or occupational disease accident benefits can be granted to them under the compulsory accident insurance.

Strengthening the activities of safety representatives

In addition to the employers, the employees also have strong interest in preserving, maintaining and improving of workplace health and safety. The act of work safety does not state how many major health and safety representative have to be selected in case of those employers who apply different numbers of employees. Therefore it happens that only one work safety representative is elected in those business organizations that employ hundreds of people and the same thing happens where there are only 51 workers. Therefore it is necessary to regulate in the employment law that what numbers of work safety representatives have to

be elected in those cases where the employer employ different numbers of employees. A significant part of the elected representatives do not know the necessary work safety and occupational health knowledge. A 40-hour compulsory training time that is required by law in an election cycle is not enough to acquire the necessary knowledge which is necessary for their work so the time frame which is provided for training has to be increased.

Summarizing idea

If we want that the number of accidents at work and occupational diseases show a decreasing tendency in our country, it must be achieved that employers become interested in the prevention of them. Furthermore the disorders that occur in some legal institutions of work safety and occupational health should be eliminated. Particular attention should be paid to rehabilitation of those who suffer from workplace accidents or occupational diseases to ensure that more and more of them will able to return to the world of work. In my opinion, for realizing these goals it is inevitable to change the developed system of work safety and occupational health. I would like to show a possible way for these in my thesis.

V. Utilization possibilities of research results

1. The dissertation is the first monography in the Hungarian jurisprudential literature which deals with the operation of some legal institutions of occupational health and workplace safety. It examines the existing liabilities of the employment law, social security law and criminal of the employer for workplace accidents and occupational diseases and with these this topic provides a unique complex approach in Hungary.

2. The results of the research can be useful in the labor protection and social security legislation in particular with regard in the followings:
 - the activities of the safety representatives, health and safety specialists and occupational health specialists,
 - work safety situation of individual farmers working in the agriculture,
 - the rehabilitation of workers who became disabled because of the workplace accident and occupational diseases,
 - creating rules of organizing the accident compensation work of the social security institution



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Ph.D. List of Publications

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List of publications related to the dissertation

Article(s), studies (12)

1. **Mádi S.:** A Nemzetközi Munkaügyi Szervezet hatása a munkavédelem és munkaegészségügy fejlődésére.
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