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Development of labor inspection models in the context of international and European legal standards

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Abstract

The article analyzes the models of labor inspection according to the criteria of doctrinal classification and the requirements of international and European legal standards, in order to determine the trends and prospects for the development of organizational and legal support of labor inspection in the context of globalization. In the course of the research both general (dialectical) and scientific methods (analysis and synthesis, modeling) and special methods of legal research (comparative-legal, hermeneutic) were used. The broadest interpretation of Article 7 of Convention No. 129 of the International Labor Organization (ILO) allows the mediate application of the organizational models defined therein for all spheres of management. Moreover, the analysis of the experience of labor inspection organization in the 21st century shows the trends of integration, the common practice of applying a general model characterized by universal competence. In the conclusions, it has been found that, according to the criterion of enforcement policy, mixed models are often applied in practice, which presuppose the application of preventive and concomitant measures and sanctions.

Keywords: labor inspection; labor law enforcement supervision (control); labor inspection model; international legal standards; European legal standards.

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Desarrollo de los modelos de inspección laboral en el contexto de normas jurídicas internacionales y europeas

Resumen

El artículo analiza los modelos de inspección laboral de acuerdo con los criterios de clasificación doctrinaria y los requisitos de las normas jurídicas internacionales y europeas, con el fin de determinar las tendencias y perspectivas para el desarrollo del apoyo organizativo y jurídico de inspección laboral en el contexto de la globalización. En el transcurso de la investigación se utilizaron tanto métodos generales (dialéctico) y científicos (análisis y síntesis, modelación) como los métodos especiales de investigación legal (jurídico-comparativo, hermenéutico). La interpretación más amplia del artículo 7 del Convenio No. 129 de la Organización Internacional del Trabajo OIT permite la aplicación mediata de los modelos de organización definidos en él para todas las esferas de la gestión. Por lo demás, el análisis de la experiencia de organización de la inspección laboral en el siglo XXI muestra las tendencias de integración, la práctica común de aplicar un modelo general caracterizado por la competencia universal. En las conclusiones, se ha determinado que, de acuerdo con el criterio de la política de aplicación de la ley, en la práctica se suelen aplicar modelos mixtos que presuponen la aplicación de medidas y sanciones preventivas y consultativas.

Palabras clave: inspección laboral; supervisión (control) del cumplimiento de la legislación laboral; modelo de inspección laboral; normas jurídicas internacionales; normas jurídicas europeas.

Introduction

Under the influence of the idea of socialization of law, anthropocentric theories of humanization of labor, industrial democracy, and social dialogue, the new paradigm of the 21st century becomes the ideology of sustainable development, within which the concept of decent work is formed. The basic tool for implementing the latter, as defined by the International Labor Organization (hereinafter – ILO), is labor inspection as a component of the labor administration system.

A serious problem of the functioning of inspections in the modern labor market is the inability to cover with supervision and control the growing number of enterprises, most of them are small and medium with a small number of employees. The problem is exacerbated by the emergence of new employment forms, labor market diminution, and trade unions. Accordingly,

the practice of implementing the norms of labor law is accompanied by a significant number of violations. In this connection, there arises a question about organizational and legal models of supervision inspection, capable of meeting the new challenges of the labor market. It is no accident that the beginning of the 21st century was affected in most countries by reforms aimed at modernizing the inspection service and increasing its efficiency.

1. Reference Review

The issue of organizational and functional aspects for ensuring supervision and control over compliance with labor law was of interest to many scientists from different countries. For example, V. Richthofen, the chief specialist in the regulation of labor relations, and the coordinator for the development of labor inspection systems of the ILO, characterized the types of general and special labor inspection systems and determined the trends for their development (Richthofen, 2002). The evolution of national labor management systems through the provisions prism of ILO Convention No. 150 was studied by H. L. Daza (Daza, 2021).

Using historical-legal and comparative-legal research methods, international, European, and Polish experiences of legal support for labor inspections, their models were analyzed in detail by D. Makowski (Makowski, 2012; Makowski, 2017). David Walters characterized the main models of labor inspections in the states of the European Union (Walters, 2016). Graciela Bensusan raised the question of the advantages and disadvantages of different inspection models and strategies that are characteristic of Latin American countries.

The scientist substantiates the opinion that the main weakness of labor inspections in the region is the lack of a long-term, consistent, and reliable law enforcement model (Bensusán, 2009). Grettel J. Ostoich Davila investigated the inspection organization in the field of labor and social security in Venezuela. The author drew attention to the problem of lack of proper inter-institutional coordination and duplication of supervisory bodies' powers to hinder effective labor inspection (Ostoich Dávila, 2016). Philip De Baets compared law enforcement strategies of labor inspection ("compliance" strategy and "deterrence" strategy) of Belgium, the United Kingdom, and Sweden, he concluded about the trend of transition from the "command and control" model to the model of combining state inspection with mandatory partial self-regulation / internal control of labor protection directly at the enterprise (De Baets, 2003).

In the presence of a significant amount of scientific research, directly or tangentially dedicated to the characteristics of labor inspection models, there is a need to analyze their types in accordance with the criteria of

doctrinal classification and international standards requirements to determine the trends and prospects for the development of organizational and legal support for labor inspection in conditions of globalization.

2. Research methodology

The choice of methods was determined by the goal. During the research there were used: general (dialectical), general scientific (analysis and synthesis, modeling), and special legal research methods (comparative legal, hermeneutic). The method of dialectics is decisive for the analysis of the formation and development of labor inspections and the formation of their models under the influence of a set of socio-economic and political-legal factors in their globalization and differentiated (at the level of individual states) mutual influence.

The method of analysis and synthesis provided an opportunity to critically consider and synthesize scientific approaches to the classification of labor inspection models. It is worth considering the opinion expressed in the literature that tracing the differences between inspection/inspection models has mostly an analytical purpose, since these models are often not tested as such in practice (Bensusán, 2009).

The concept of an “inspection/supervision model” is an abstract construct that allows to classification of the systems that exist in each country into ideal types and according to different criteria (Bensusán, 2009). The understanding of labor inspection is delimited by institutional and functional characteristics. The term “labor inspection” in the subjective (institutional) sense means an “impersonal” institution (a set of institutions) that (which) carries out state supervision (control) over compliance with labor law. In the functional sense, labor inspection is understood as the actual function of state supervision (control), implemented in the process of carrying out such an inspection and aimed at ensuring legality and rule of law in the field of labor.

This dual understanding of labor inspection determines the main approaches to the classification of its models – based on institutional (organizational/system-structural) demarcation criteria, functional (procedural) and mixed, based on attempts to integrate them. At the same time, the modeling method provides an opportunity to single out the advantages and disadvantages of various types of labor inspections, to find out the reasons for discrepancies between the goal embedded in their “ideal design” and practice of implementation, to determine trends and prospects for their development.

The comparative-legal method in its diachronic and synchronous varieties became the basis for determining patterns, trends, and prospects for the formation of models of labor inspections. The hermeneutic method made it possible to apply the possibilities of systemic, literal, teleological/target, and extensional interpretation to clarify the nature of the labor inspection models defined in the ILO Convention No. 129.

3. Results and discussion

3.1. Formation and development of labor inspections and their models

Labor inspection is defined as a multidimensional activity that has political, economic, cultural, and social contexts (Common Principles for Labor Inspection in Relation to Health and Safety in the Workplace, 2015). Accordingly, socioeconomic, and political factors played a key role both in the model formation for state labor supervision and in the adoption for specific legal acts applied in this area in each individual country.

The latter, in turn, evolved along with successive stages of civilizational development, falling under the influence of legal standards developed by international and regional communities. The literature rightly emphasizes that the decisive factor for effective labor inspection is the political will to ensure compliance with labor law (Bensusán, 2009).

Having studied the state of industry and working conditions in Western Europe at the beginning of the 20th century, economist J. M. Kulisher reasonably concluded that the development of factory law went through similar stages in different countries, successively covering first one, then other working conditions, groups of the working class, creating essentially similar norms.

Such uniformity of factory law, interpreted by him as law on labor protection, he explained by the laws of social development common to all countries, determined by “economic science and life itself” and by “principles of morality and hygiene” uniform throughout the civilized world (Kulisher, 1923). This caused at the end of the 19th century an attempt at the international level to develop norms aimed at protecting the labor of workers.

In March 1890, an international conference was held in Berlin with the participation of representatives of fifteen European states. The important decisions reached by the participants were: 1) recommendation to subordinate the supervision for the implementation of labor protection law to inspectors independent of both entrepreneurs and workers; 2) provision

for interstate exchange of statistical information on working conditions (Kulisher, 1923: 231).

At the end of the 19th – at the beginning of the 20th century in European countries, there were two main models of state supervision in the field of action – French and English. If French was characterized by the presence of general labor inspection, according to law, extended its scope to all industrial sectors and types of activity, then English provided for various specialized inspections in accordance with the specifics of individual sectors of the economy (Andreeva *et al*, 2022).

In addition, in each individual country, inspections had specific organizational and legal support, determined by the entire set of socioeconomic and political-legal prerequisites. At the beginning of the 20th century, George M. Price distinguished the highly centralized organization form for factory inspection departments in England and the decentralized form characteristic for Prussia and Switzerland, he recognized that besides these forms there were many mixed ones (Price, 1914).

Another criterion by which models of labor inspection are distinguished is the nature of the policy for their intervention in social and labor relations. One of them is called the sanctions model or the “deterrence” model (for example, used in the USA), and the other is the “compliance” model (characteristic for Germany, and Japan).

If “the deterrence” model focuses on offenses detection and bringing guilty persons to justice, then “the compliance” model, ensures compliance with the law, not necessarily using the method of coercion in the form of prosecution, application of criminal penalties, or administrative fines (of course, the latter is used as a last resort) (Richthofen, 2002). In distinguishing such models, the literature recognizes that the basic policy of law enforcement under such models is often revised “for reasons of political rather than functional expediency” (Richthofen, 2002: 38).

According to a set of criteria (the scope of inspection by subject and its place in the system of authorities), the following models are distinguished: general, Anglo-Scandinavian, federal, and specialized.

The general model is characterized by: 1) wide scope for supervision of labor safety and hygiene and also over compliance with other labor laws, in some cases performing the function of conciliation, arbitration, and quasi-judicial functions; 2) as a rule, accountability to the relevant minister, centralized management, presence of a regional and local structure (most French- and Spanish-speaking countries, Japan, some English-speaking African countries). The Anglo-Scandinavian model has the following characteristics: 1) control over compliance with hygiene, labor safety and welfare of employees, general terms, and conditions of employment; 2) accountability to a bilateral or tripartite board or commission, or through

such a board or commission, inspections are indirectly accountable to the relevant minister (countries of Northern Europe, New Zealand).

The federal model is characterized by 1) wide scope of inspection powers in relation to supervision over labor safety and hygiene and of working hours and some other labor law norms; 2) delegation of powers regarding inspection supervision from central authorities to federal or local authorities (Australia, Brazil, Canada, Germany, India).

The model for specialized inspections is represented by countries where the practice of using inspection supervision has developed in certain branches of the economy: agriculture, forestry, maritime, railway transport, etc. (for example, Austria has labor inspections and a transport inspection). In addition to individual state inspectorates responsible for a particular industry, some countries have internal inspection departments or sectoral ministries to oversee labor health and safety in their respective fields (Richthofen, 2002: 38-40).

V. Richthofen singles out five main functional areas of inspection: 1) occupational safety and hygiene; 2) general working conditions; 3) labor relations, including conciliation, but, as a rule, excluding arbitration; 4) employment issues; 5) social security issues. At the same time, according to the functional criterion, V. Richthofen singles out the following models: 1) single-functional (USA); 2) dual-functional (Australia, Mauritius, New Zealand, Bulgaria, Germany, Japan, the Netherlands, most of the Scandinavian countries); 3) multifunctional (France, Spain, Belgium, Switzerland) (Richthofen, 2002: 41). The characteristic criteria for the classification of labor inspection models and their types presented in scientific developments are presented in Table 1.

Table 1: Doctrinal classification of labor inspection models

Classification criteria	Types of Labor Inspection Models
According to the subject scope of inspection supervision:	<ul style="list-style-type: none"> – General (French) model – Special (English) model
According to law enforcement policy:	<ul style="list-style-type: none"> – “Deterrence” model – “Compliance” model – Mixed model
By type of strategy used (organization method and resources management)	<ul style="list-style-type: none"> – “Sanctions strategy” model / punitive model – “Compliance” strategy model / consultative model – Mixed model
By the functional scope of inspection supervision:	<ul style="list-style-type: none"> – Single-function model – Dual-function model – Multi-function model
By centralizing functions:	<ul style="list-style-type: none"> – centralized model – Decentralized model
According to a set of criteria:	<ul style="list-style-type: none"> – General model – Anglo-Scandinavian model – Federal model – Model of specialized inspections

Source: completed by the authors.

3.2. Requirements for the organization of labor inspection according to the conventions and recommendations by ILO

The issue of labor inspection is directly related to the activities of the ILO since its inception. One of the ten principles enshrined in the ILO Statute as a component of the Versailles Peace Treaty of 1919 obliged the parties: “Each State shall provide for a system of inspection in which women shall participate, to ensure compliance with laws and regulations for the protection of workers” (The Labor Provisions of the Peace Treaties, 1920: article 427).

The ILO began its activities when in several countries there were already supervisory bodies for compliance over factory (labor, industrial) law. Therefore, lawyers, working on the development of international standards in the field of labor inspection, proceeded from understanding the expediency for standardizing general principles, which, being flexible enough to adapt to established national practices under historically changing circumstances, will at the same time contribute to increasing the efficiency of inspection activities in member states.

One of the first fundamental questions that arose during the development of ILO standards was whether to support the model of a single labor inspection or a model with a set of inspections specialized by industry.

The decentralized model with the subordination of inspections to local authorities caused many questions and doubts about ensuring the activities’ coordination. It was already stated in ILO Recommendation No. 20 dated 10/29/1923 that “the inspection must be under the direct and exclusive control of the central state authority and must not be under the control of or be in any way responsible to any local authority in connection with the performance of any of his duties” (Recommendation of International Labor Organization on General Principles for Organization of Systems of Inspection to Ensure Implementation of Laws and Regulations Concerning the Protection of Workers, 1923: Paragraph 10).

The recommendatory norm became mandatory in ILO Convention No. 81 of 1947 on labor inspection in industry and trade (with the clarification “to the extent that it is compatible with administrative practice for a member of Organization”) (International Labor Organization Convention on Labor Inspection in Industry and Trade, 1947: Article 4) this scope was expanded to include non-commercial services by ILO Protocol of June 6, 1995 (Protocol of 1995 to the Labor Inspection Convention, 1947). The model of labor inspection subordinated to local authorities was recognized as ineffective due to the inability to ensure the same application of legislation throughout the country, and the lack of coordination of inspection activities.

Instead, the subordination of the inspection to the central authority is a legal guarantee for the proper performance of inspection tasks in the conditions of independence necessary for this, it enables the establishment and application of a uniform policy and procedures of inspection all over the country (Richthofen, 2002). The requirement that inspections be subject to the control by central authority was, in fact, the only mandatory organizational requirement defined at the level of ILO Convention No. 81. By the way, this convention was ratified by 150 ILO member states (Ratifications of Co81 – Labor Inspection Convention, 1947), and the International Labor Conference included it in the ten most important ones.

The next step regarding standards in the field of organizational models of inspections is associated with the adoption of Convention No. 129 on labor inspection in agriculture in 1969. In addition to clarifying the status of the central body to control and supervise labor inspections in countries with a federal state system (“either the central body at the federal level or the central body at the level of one part in the federation”), Part 3 of Art. 7 of Convention No. 129 defined several models of labor inspection functioning in agriculture:

a) single department of labor inspection, which is responsible for all sectors of economic activity;

b) single department of labor inspection, which will ensure internal functional specialization through appropriate training of those inspectors who will be entrusted with labor inspection in agriculture;

c) single department of labor inspection, which will ensure internal institutional specialization by creating technically qualified service, its employees will be entrusted with labor inspection in agriculture; or

(d) specialized agricultural inspection service, its activities will be supervised by a central authority having the same powers for labor inspection in other branches such as industry, transport and commerce” (International Labor Organization Convention on Labor Inspection in Agriculture, 1969: Article 7).

Given the literal interpretation, the models defined in Convention No. 129 relate exclusively to the field of agriculture. At the same time, the systematic and targeted interpretation provides grounds for the possibility of applying the named model approach to a much wider field (Makowski, 2012). First, this is evidenced by the indication in the description of the first regulatory model version of labor inspection (paragraph “a” of part 3, Article 7, Convention No. 129) for a single department that is responsible for the entire sphere of economic activity. This gives reason to talk about the economic sphere in general, which is covered by such a general inspection, and not only about the agricultural sector.

Thus, in Ukrainian legislation there are several normative definitions of economic activity that give grounds for such a conclusion: 1) “activity

of economic entities in the sphere of social production, aimed at the manufacture and sale of products, performance of works or provision of valuable services, which have price determination” (Economic Code of Ukraine, 2003: Article 3); 2):

The activity of a person related to the production (manufacturing) and/or sale of goods, performance of works, provision of services, is aimed at obtaining income and carried out by such a person independently and/or through his separate divisions, as well as through any another person acting for the benefit of the first person, in particular under commission contracts, power of attorney and agency contracts (Tax Code of Ukraine, 2011: Article 36)

3) “any activity, including entrepreneurial activity, related to the production and exchange of tangible and intangible goods in the form of goods” (On Foreign Economic Activity: Law of Ukraine, 1991: Article 1).

Secondly, the fourth version of the inspection model (paragraph “d” of part 3, Article 7, Convention No. 129) is not only about specialized agricultural inspections but also about inspections in other areas: industry, transport, and trade. Regarding inspection models of functional and institutional specialization (paragraph “b”, paragraph “c” of part 3, article 7), as such, they can be created in other spheres of management. Such a conclusion, albeit indirectly, follows from the general requirement for all models to be subject to the control of the central authority (Part 1, Article 7). With regard to the functional model (paragraph “b” of part 3, Article 7), the reference to “those inspectors” gives reason to assume the presence, in addition to these (that is, inspectors in the field of agriculture), of other inspectors who can specialize in conducting inspections in other branches of economy.

Thus, the expansive interpretation of Art. 7 of ILO Convention No. 129 provides grounds for the possibility of indirect application for certain organizational models not only for the agricultural sector but also for other spheres of economic activity/management. In this sense, the provisions of ILO Convention No. 129 expand the provisions of ILO Convention No. 81.

The criterion for distinguishing models in the ILO Convention No. 129 is the scope of sectoral (special) competence, according to which there are two main types: 1) general inspection model (paragraphs “a”, “b”, “c” of part 3, article 7); 2) model of the branch (special) inspection (paragraph “d” of part 3, article 7) (Makowski, 2012: 173). In turn, the general inspection model provides for three types: a) universal general inspection model; b) model of general inspection with functional specialization (paragraph “b” of part 3, article 7); b) model of general inspection with institutional specialization (paragraph “c” of part 3, article 7).

Under the universal general model, one labor inspectorate operates, carrying out checks in all areas, and its effect extends to all employees. For models with functional specialization, the latter is provided by inspectors

who have special training and can, in accordance with it, carry out professional inspections in the relevant field. Institutional specialization involves the creation of special technical separate units that specialize in inspection in certain areas. Models of labor inspection, determined based on the expanded interpretation of Art. 7 ILO Convention No. 129, listed in Table 2.

Table 2: Models of labor inspection based on the expansive interpretation of Art. 7 of the ILO Convention No. 129

Classification criteria	Types of Labor Inspection Models	
By the scope of branch (special) competence	1) General inspection model	2) Model of industry (special) competence (paragraph "d" of part 3, article 7).
	a) model of universal general inspection (paragraph "a" of part 3, article 7);	
	b) model of general inspection with functional specialization (paragraph "b" of part 3, article 7);	
	c) model of general inspection with institutional specialization (paragraph "c" of part 3, article 7).	

Source: completed by the authors.

The organizational models proposed in Convention No. 129 are examples, as evidenced by the caveat "for example" (Part 3, Article 7) before the normative description of the models themselves. It follows from this that other models are also acceptable; they are subject to the control of the central authority. Such a flexible formula applied by the international legislator makes it somewhat timeless and able to remain relevant despite the years (Makowski, 2012).

The European Social Charter of October 18, 1961, which is considered the Social Constitution of Europe, enshrined in Article 3 the right to working conditions that meet the requirements of safety and hygiene, obliged the parties to issue regulations ensuring them and take measures to control the application of such rules (European Social Charter, 1961: Article 3).

The European Social Charter (revised) dated 03.05.1996, enshrining in Article 3 the right to safe and healthy working conditions, obliged to ensure the implementation of such rules through supervisory measures (European Social Charter (revised), 1996: Article 3). The scope of such rules and the corresponding control and supervision were not limited in any way in both the ESC and the ESC (r). Therefore, applying the possibilities of systematic

interpretation of the norms of the ESC, ESC (r), and ILO conventions No. 81 and No. 129, it is possible to confirm the conclusion about the need for the state to fulfill its obligation to create a labor inspection responsible for ensuring safe and healthy conditions in all spheres of economy.

The Resolution of the European Parliament on effective labor inspections as a strategy for improving working conditions in Europe dated January 14, 2014, defines the following principles:

- all categories of employees, whether employed or self-employed, regardless of their status, employment relationship, or origin, are subject to the responsibility of national inspection bodies and must enjoy the same degree of protection;
- creation of additional, tripartite, sectoral inspections representing the government, workers, and employers, and their introduction as a pilot initiative in the member states with the highest level of undeclared work (European Parliament resolution on effective labor inspections as a strategy to improve working conditions in Europe, 2014: point 4, 20). This proves the support for a wide scope of inspection supervision, which can be provided by models of general universal supervision for possible additional organizational tools to combat undeclared employment based on tripartism. Paragraph 53 of the Resolution, which calls on the EU Commission to develop a green book to establish EU labor inspection standards and uniform requirements for training in this area, considering the differences between national labor markets, deserves special emphasis.

3.3. Modern trends of organizational and legal provision for supervision and control/labor inspection

Experience analysis of labor inspection organizations in the 21st century certifies integration trends and widespread practice of applying a general model characterized by universal competence. The advantages of such a model are confirmed by the example of France to has had three labor inspectorates for a long time: labor inspectorate, which inspected most industries, services, and trade; labor inspection in transport and labor inspection in agriculture.

Each of these inspections was subordinated to a separate relevant ministry. By decree of the Ministry of Labour, Social Relations, Family and Solidarity of France dated December 30, 2008, the labor inspection services were merged into one general service (Decree relating to the merger of labor inspection services, 2008) to ensure proper coordination and increase the activities efficiency.

Similar processes took place in the Netherlands. In 2012, the Labor Inspectorate, the Labor and Income Inspectorate, and the Social Intelligence and Investigation Service of the Ministry for Social Affairs and Employment were merged into a single Netherlands Labor Inspectorate (Dutch Labor Inspectorate: History).

Spain is an example of a general inspection with elements of functional specialization. The preamble of the Spanish Law “On the Organization of the Labor Inspection and Social Security System” dated 07/21/2015 notes more than a century of experience in the operation of labor inspection and the need to adapt the legislation to the regulatory changes that have taken place in the social and labor system to combine necessary flexibility in human resources management with proper protection of workers’ rights. In this regard, it was stated: “The preservation and consolidation of efficiency improvement for Labor and Social Security Inspectorate requires institutional strengthening, integration, and better regulation” (Organizing Law of the Labor and Social Security Inspection System, 2015: preamble).

The State Labor Service of Ukraine (hereinafter referred to as the State Labor Service) was formed in 2015 because of reorganization through the merger of the State Service of Mining Supervision and Industrial Safety and State Labor Inspectorate. State Labor Service is vested with broad powers to supervise and control compliance with labor law and labor protection, population employment, and mandatory state social insurance (Regulations on State Labor Service of Ukraine, 2015). The transformation of legal status for labor inspection in independent Ukraine under the influence of international and European standards (in 2004, Ukraine ratified ILO Convention No. 81 and ILO Convention No. 129, in 2006 the ESC (r) ratified) demonstrates the acquisition of features for a general model.

The wide scope of inspection supervision caused several problems in its implementation, such as insufficient staff; problems in training specialists to carry out complex inspections; partly branched organizational structure caused by a wide range of activities; and failure to properly ensure coordination of activities. Recognizing the dubious usefulness of comparative legal studies for inspection models based on the criterion of inspection field supervision, lawyers emphasize the advantages of a model in which activities are aimed at improving the production environment, which provides a result based on the coordination of inspection activities, which, in turn, is the result of a balanced long-term inspection policy.

According to this model, the dominant tool of the inspection is preventive tools – the provision of information and advisory (consulting) services, which should encourage employers to independently solve problems in the field of safety and health care based on recommendations developed by social partners, preventive and control activities of the inspection (Makowski, 2017). For example, in the Strategy of the State Labor

Inspectorate of Latvia for 2021–2023 (the country has implemented a model of a wide field of supervision over compliance with labor and occupational safety law) the following strategic goals are emphasized: an effective and preventive process of company inspections and compliance; client-oriented consulting, provision of affordable and convenient services; targeted public information; development of human resources, modernization and improvement of internal processes (Operational strategy of the State Labor Inspection for 2021-2023, 2021).

At the same time, not all researchers unconditionally support the advantages of the law enforcement:

“Model of compliance” compared to the “model of deterrence”. As G. Bensusan notes, for the proper functioning of the advisory model/compliance model, a real threat of sanctions is necessary. In addition, such a model usually involves the wide application of “discretionary powers in inspection activities, a condition that is not appropriate in countries with high levels of corruption and fragility of the rule of law (Bensusán, 2009: 992).

On the contrary, strong traditions of respect for legality in rule-of-law states enable the application of the compliance model. The experience of Denmark, Norway, Finland, Sweden, and Germany (states with the highest Rule of Law Index in 2023 (Rule of Law Index) regarding joint measures of the state, employers, and employees to ensure a suitable working environment confirm the effectiveness of such a model.

Of course, the deterrence model is not excluded from the review of national traditions that were formed under the influence of the entire set of socio-economic and political-legal prerequisites. In practice, in their “pure form”, in modern democratic, legal, social states, such models are not applied, it is about the predominant application of informational and advisory measures in combination with internal labor compliance or sanctions, their complementarity.

The enforcement style of the compliance model is based on negotiations, agreements, training, and recommendations as means of achieving compliance with the law. The enforcement policy of the deterrence model relies on formal actions and the imposition of sanctions. The main issue is to find the optimal combination of methods that will lead to compliance (De Baets, 2003). It is worth agreeing with the opinion that the labor inspection can be both an expression of the police functions of the state and rely on its activities on cooperation with all interested subjects (Mustchin and Martínez, 2020). It is no coincidence that the ILO acts emphasize that safety in general and a safe and secure working environment, in particular, must be ensured by the active position of each person (Tsymbal *et al*, 2023: 229).

Conclusions

Thus, the understanding of labor inspection in the institutional and functional sense determines the main approaches to the classification of its models: organizational / system-structural demarcation criteria, law-enforcement / procedural-procedural, and mixed, based on attempts to integrate them.

The question of the optimal model for labor inspection is directly related to its compliance with international and European standards. The ILO began its activities when a number of countries already had supervisory bodies for compliance with factory (labor, industrial) law. Working on international standards in the field of labor inspection, their developers were based on the understanding of the expediency of standardizing general principles, which, being flexible enough to adapt to established national practices under historically changing circumstances, will contribute to increasing the efficiency of inspection activities in member states.

Expanding interpretation of Art. 7 of the ILO Convention No. 129 provides grounds for the possibility of indirect application for organizational models defined in it not only for the agricultural sector but also for other economic spheres. Such models are the model of general inspection (model of universal general inspection, model of general inspection with functional specialization, model of general inspection with institutional specialization) and model of branch (special) inspection.

Experience analysis of labor inspection organizations in the 21st century certifies integration trends and widespread practice of applying a general model characterized by universal competence. According to the criterion of law enforcement policy, mixed models are most often used in practice involving a combination of preventive informational and advisory measures and sanctions. The compliance model is effective in countries with a high Rule of Law Index.

Bibliographical References

- BENSUSÁN, Graciela. 2009. "Labor Inspection in Latin America: theories, contexts and evidence" In: *Estudios Sociológicos*. Vol. XXVII, No. 81, pp. 989–1040.
- COMMITTEE OF SENIOR LABOUR INSPECTORS (SLIC). 2015. Common principles for labor inspection in relation to health and safety in the workplace: adopted at the 69th SLIC Plenary. Luxembourg.

- GOBIERNO DE ESPAÑA (Cortes Generales). 2015. Law 23/2015 Organizing the Labor and Social Security Inspection System. Available online. In: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-8168>. Date of consultation: 12/08/22.
- COUNCIL OF EUROPE. 1961. European Social Charter, Turin. Available online. In: <https://rm.coe.int/168006b642>. Date of consultation: 12/08/22.
- COUNCIL OF EUROPE. 1996. European Social Charter (Revised). Strasbourg. Available online. In: <https://rm.coe.int/168007cf93>. Date of consultation: 14/05/22.
- DAZA, Jose Luis. 2021. Evolution of national systems of labor administration since the adoption of the ILO Labour Administration Convention, 1978 (No. 150). In: The Governance of Labour Administration: Reforms, Innovations and Challenges. Available online. In: <https://doi.org/10.4337/9781802203158.00009>. Date of consultation: 12/08/22.
- DE BAETS, Philippe. 2003. “The labor inspection of Belgium, the United Kingdom and Sweden in a comparative perspective” In: International Journal of the Sociology of Law. No 31. pp. 35–53. Available online. In: <https://www.sciencedirect.com/science/article/abs/pii/S0194659503000236>. Date of consultation: 10/12/22.
- DUTCH LABOR INSPECTION: History. 2023. Available online. In: <https://www.nlarbeidsinspectie.nl/nederlandse-arbeidsinspectie>. Date of consultation: 12/08/22.
- EUROPEAN PARLIAMENT. 2014. Resolution on effective labor inspections as a strategy to improve working conditions in Europe (2013/2112(INI)). Available online. In: https://www.europarl.europa.eu/doceo/document/TA-7-2014-0012_EN.html. Date of consultation: 12/08/22.
- INTERNATIONAL LABOUR OFFICE. 1920. The Labor Provisions of the Peace Treaties. Geneva. Available online. In: https://www.ilo.org/public/libdoc/ilo/1920/20B09_18_engl.pdf. Date of consultation: 14/12/22.
- INTERNATIONAL LABOUR ORGANIZATION. 1923. Ro20 – Labour Inspection Recommendation (No. 20). Available online. In: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:12100:5252575832848::NO::P12100_SHOW_TEXT:Y. Date of consultation: 12/04/23.
- INTERNATIONAL LABOUR ORGANIZATION. 1947. Co81 – Labour Inspection Convention (No. 81). Available online. In: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:Co81. Date of consultation: 12/04/23.

- INTERNATIONAL LABOUR ORGANIZATION. 1947. Po81 – Protocol of 1995 to the Labour Inspection Convention, 1947. Available online. In: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:Po81. Date of consultation: 12/04/23.
- INTERNATIONAL LABOUR ORGANIZATION. 1969. C129 – Labour Inspection (Agriculture) Convention (No. 129). Available online. In: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312274. Date of consultation: 16/03/23.
- INTERNATIONAL LABOUR ORGANIZATION. 2023. Ratifications of Co81 – Labour Inspection Convention, 1947 (No. 81). Available online. In: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312226. Date of consultation: 16/03/23.
- KULISHER, Joseph. 1923. *Industry and Working Conditions in the West in the 19th Century*. Petrograd, Russia.
- MAKOWSKI, Dariusz. 2012. “Models for organizing labor inspections in Poland and around the world in the light of Art. 7 of Convention No. 129 of the International Labor Organization”. In: *Studies in Law and Economics*. 2012. T. LXXXV. pp. 167–187. Available online. In: <https://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-e67978b8-a4ac-4e2c-88d2-1479e5b0840a>. Date of consultation: 16/03/23.
- MAKOWSKI, Dariusz. 2017. *Labor inspection as an institution of state supervision over compliance with labor law*. Łódź, Poland.
- MINISTRY OF LABOR, SOCIAL RELATIONS, FAMILY AND SOLIDARITY (FRANCE). 2008. Decree No. 2008–1503 relating to the merger of labor inspection services. Available online. In: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000020017841>. Date of consultation: 14/09/23.
- MUSTCHIN, Stephen; MARTINEZ LUCIO, Miguel. 2020. “The evolving nature of labor inspection, enforcement of employment rights and the regulatory reach of the state in Britain” In: *Journal of Industrial Relations*. Vol. 62. Issue. 5. pp. 735-757. Available online. In: <https://journals.sagepub.com/doi/full/10.1177/0022185620908909>. Date of consultation: 14/09/23.
- OSTOICH DÁVILA, Grettel J. 2016. “Comprehensive Labor Inspection in Venezuela: The 7 Pearls” In: *Sapienza Organizacional*. Vol. 3, No. 6, pp. 107–136.
- PRICE, George Moses. 1914. *Administration of Labor Laws and Factory Inspection in Certain European countries*. In: *Bulletin of the U.S. Bureau of Labor Statistics*. No 142. Washington.

- RICHTHOFEN, Wolfgang Von. 2002. Labor inspection: A guide to the profession. Geneva.
- RULE OF LAW INDEX. 2023. Available online. In: <https://worldjusticeproject.org/rule-of-law-index/global/2023/>. Date of consultation: 14/09/23.
- STATE LABOUR INSPECTORATE OF THE REPUBLIC OF LATVIA. 2021. Operational strategy of the State Labor Inspection for 2021–2023. Riga. Available online. In: <https://www.vdi.gov.lv/lv/media/2189/download?attachment>. Date of consultation: 14/09/23.
- TSYMBAL, Bohdan; DREVAL, Yuriy; PETRYSHCHEV, Artem; ANDREEV, Andrey. 2023. “Personal security and sustainable development at work: Individual security and stable development in the workplace” In: *Cuestiones Políticas*. Vol. 41. No 78. pp. 218–231. Available online. In: <https://doi.org/10.46398/cuestpol.4178.15>. Date of consultation: 10/09/23.
- VERKHOVNA RADA OF UKRAINE. 1991. On foreign economic activity: Law of Ukraine No. 959-XII. Available online. In: <https://zakon.rada.gov.ua/laws/show/959-12#Text>. Date of consultation: 10/09/23.
- VERKHOVNA RADA OF UKRAINE. 2003. Commercial Code of Ukraine: Law of Ukraine No. 436-IV. Available online. In: <https://zakon.rada.gov.ua/laws/show/436-15#Text>. Date of consultation: 10/09/23.
- VERKHOVNA RADA OF UKRAINE. 2011. The Tax Code of Ukraine: Law of Ukraine No. 2755-VI. Available online. In: <https://zakon.rada.gov.ua/laws/show/2755-17>. Date of consultation: 14/09/23.
- WALTERS, David. 2016. “Labour inspection and health and safety in the EU”. In: *HesaMag*. No. 14, pp. 12-17. Available online. In: https://www.etui.org/sites/default/files/ez_import/Hesamag14_EN-12-17.pdf. Date of consultation: 14/09/23.
- ANDREEVA, Andriyana; YOLOVA, Galina; DIMITROVA, Darina. 2022. “The labor inspectorate as a supervisory authority on compliance with labor legislation”. In: *Economics & Law*. Vol. IV, No. I, pp. 120–133.
- CABINET OF MINISTERS OF UKRAINE. 2015. “Regulations on the State Service of Ukraine on labor issues” In: Resolution of the Cabinet of Ministers of Ukraine. No. 96. Available online. In: <https://zakon.rada.gov.ua/laws/show/96-2015-%D0%BF#Text>. Date of consultation: 11/09/23.



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