Occupational Safety Management Aspects and Institutions that Regulate Construction Industry

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Abstract. **The construction sector has one of the worst occupational safety and health records in Europe.**
The current situation in the construction sector can be a springboard for the establishment of a new system where private companies can be involved in control and surveillance, thus carrying out functions of the eliminated national construction inspectorate or Building Police reintroduced as a form of public building inspectorate.
The paper provides recommendations for the improvement of the situation.

Keywords: **construction, construction entity, construction control, safety, sustainable building, protection.**

I. INTRODUCTION

Traditional construction has addressed the environment in an imbalanced manner [1]. There is an accepted opinion in legal science that a state as a political and legal entity is characterised by a number of fundamental features – elements, which are as follows: a nation, a territory and power [2].

Applying this to construction law, the territory is the basis for development and a permanent lifestyle, the state power/authority implements public governance and the organisation of public life in *bonum publicum* objectives, resorting in certain cases to coercion. Therefore, to enable a new building or structure to be erected, a normative regulation is required that complies with public needs" [3].

At the time when the draft of a new Construction Law is being developed, a debate must be launched concerning institutions involved in/ regulating construction in Latvia. Construction has a vast framework of various normative acts, laying down objectives, tasks and duties of specific public administration agencies, representing both central and local government.

To this end we must understand a general definition of construction objectives given in the Construction Law, General Building Regulations, Labour Protection Law, State Labour Inspection Law, Regulation No. 75 of the Cabinet of Ministers, Regulations regarding the Construction Standard of Latvia LBN 303-03 "Regulations for the Supervision of Construction", Procedures for Investigation and Registration of Accidents at Work and other normative acts, correlation with real situation in the construction industry.

Construction operations are performed by various subjects: construction authorities, non-governmental organisations, private companies. In the aggregate, they constitute a system of construction operation subjects, where the key role certainly belongs to construction authorities as special institutions of executive power.

The implementation/application of administrative enforcement measures to tackle administrative violations is possible when the country has in place a system of institutions of executive power engaged in construction operations. As Head of the Architects' Collegium (*Rīgas pilsētas Arhitektu kolēģija*) of t Riga City, Jānis Dripe said: "Riga, thank God, is not either a dumping ground for modern architecture, or a pearl of Northern European architecture. We are somewhere in between the two."

In the author's opinion, construction law in Latvia also remains somewhere in between, not being allocated its proper place in the vast legal system. Law is also sometimes described as follows: these are compulsory measures felt by any individual, created and maintained by society for the purpose of ensuring a certain order. Most often this status is ascribed to the norms sanctioned by the state and various institutions that ensure that the mentioned norms are observed. This can also be called empirical, or traditionally, positive law [4].

The topicality of this paper is based on the authors' opinion that it is high time the construction sector was fitted out with appropriate legal framework. No theory has been produced yet that would form the foundation for formulating and adequately developing construction law, because no consensus has been established on a number of matters. A wise man once said that theory without practice is empty and practice without theory is blind [5].

Indicators of safety and health at work provide the framework for assessing the extent to which workers are protected from work-related hazards and risks. They are used by enterprises, governments and other stakeholders to formulate policies and programmes for the prevention of occupational injuries, diseases and deaths, as well as monitor the implementation of these programmes and signal particular areas of increasing risk such as a particular occupation, industry or location [6].

Workers have the right to receive information about the risks to health and safety, preventive measures, first aid and emergency procedures. All workers need to understand how to work safely [7].

II. A BRIEF CHARACTERIZATION OF THE SITUATION

Every day, 6300 people die as a result of occupational accidents or work-related diseases – more than 2.3 million deaths per year. Over 337 million accidents occur on the job annually; majority of them result in extended absence from work. The human cost of this daily adversity is vast and the economic burden of poor occupational safety and health

practices is estimated at 4 per cent of global Gross Domestic Product each year [6]. The construction sector has one of the worst occupational safety and health records in Europe, see Figure 1 and 2.

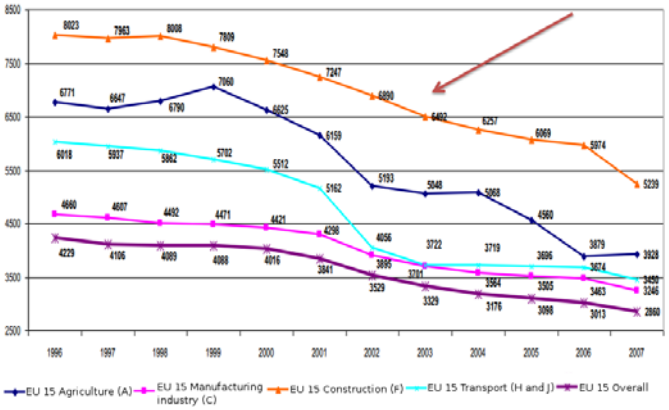

Fig. 1. Number of casualties at work in different branches in the EU countries per 100 000 employees (EUROSTAT data for EU 15)

The definition of construction is very similar in the two coding schemes except that, it includes the development of building projects, which now accounts for about 4% of the construction workforce. It makes rates slightly lower as real estate involves a much lower risk – at least in terms of health and safety [8].

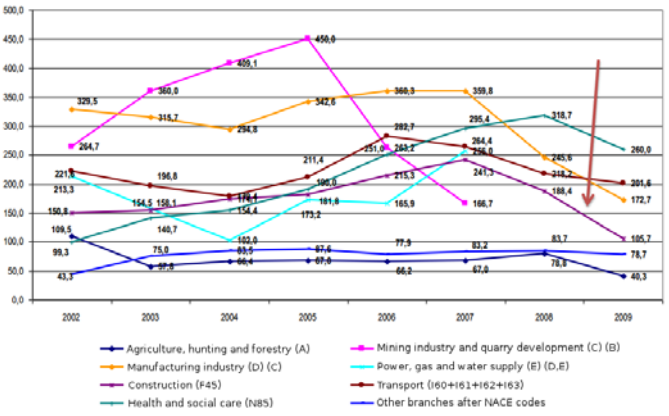

Fig. 2. Casualties at work, division by branches in Latvia per 100 000 employees.

Workers in the construction sector have greater exposure to biological, chemical and ergonomic risk factors, as well as noise and temperature. Around 45% of construction workers say their work affects their health. Construction is one of the most physically demanding sectors. The costs of accidents and ill health in the sector are immense to individuals, employers and governments. More than 99% of construction firms in Europe are small and medium enterprises [7].

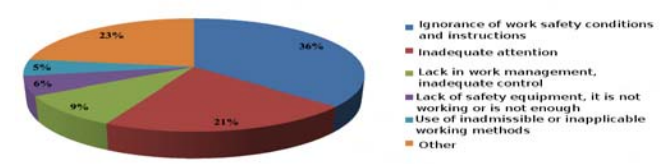

Fig. 3. Causes of accidents in the construction industry in 2010 [10]

In 2010, work safety efforts in 24.1% of companies (22.6% in 2006) are carried out by work safety specialists but only 15.7% of them work full-time, for example, decreasing amount of construction, the number of construction sites to inspect has also decreased [11].

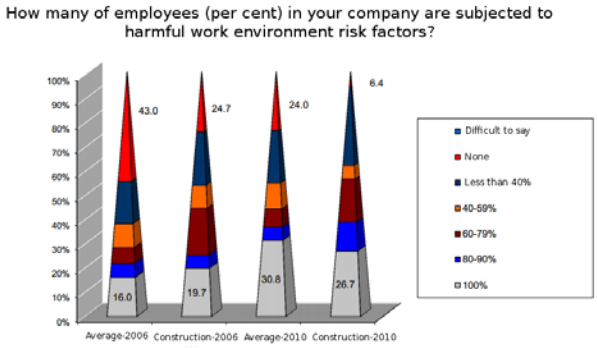

Fig. 4. The number of employees (per cent) in your company subjected to harmful work environment risk factors [11]

Employer inquiry shows that 25.5% of employees in construction are not informed about work environment risk factors. 9% of employees in construction think that respect for work safety demands decreases [11].

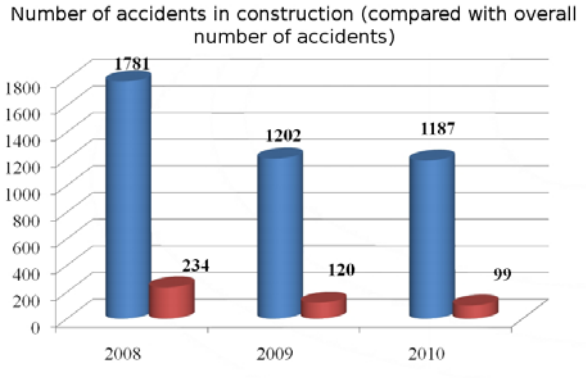

Fig. 5. Number of accidents in construction (compared with overall number of accidents) [10]

According to inquiry in 2010, a complete evaluation of work environment risks is most often carried out in the companies whose main operation branch is construction (46.0%).

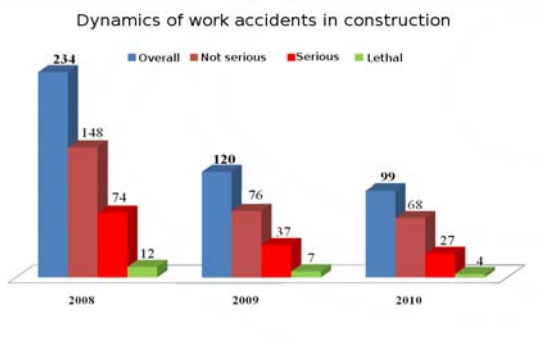

Fig. 6. Dynamics of work accidents in the contruction industry [10]

TABLE 1

RISK ASSESSMENT AND ACCIDENT PREVENTION MEASURES

Musculosceletal disorders (MSDs)	MSDs are prevalent across a range of trades and particularly so among bricklayers, plasterers and joiners. Avoid manual handling — where the risk of musculoskeletal disorders (MSDs) cannot be removed at the planning phase, employers should carry out a risk assessment to identify the hazards, assess the risks, and take action to prevent MSDs developing. If possible, manual handling should be eliminated by, for example, using cranes, hoists, vacuum-lifting devices or conveyor systems.
Exposure to loud noises	This can cause irreversible hearing damage and workplace accidents. Workers may be exposed not only to the noise that their work is making, but also to the background noise of other tasks on site. The main sources of noise include concrete breakers, explosives and engines. Where possible, the production of noise should be eliminated. This can be achieved by changing the construction or work method. Where elimination is not possible, noise should be controlled. Personal hearing protection should be used as a last resort.
Vehicle accidents in the workplace	Workers are struck or run over by moving vehicles, fall from vehicles, are struck by objects falling from vehicles and are injured by vehicles overturning. Safety measures: separate vehicle and pedestrian routes; signage to warn of hazards; checking reversing lights and sound on vehicles; moving routes away from vulnerable or potentially hazardous structures; and providing training to ensure workers drive safely.
Asbestos	All construction workers are potentially at risk from exposure. Asbestos fibres were used for many years in thermal insulating materials such as lagging and coatings, 'fireproof' textiles, paper and boards, asbestos cement products, electrical insulating materials and personal protective equipment. Asbestos fibres can have serious health effects if inhaled, including asbestosis, lung cancer and mesothelioma. There is no known safe exposure level to asbestos. Before starting work, ask if there has been a check for asbestos. Assume asbestos is present unless proven otherwise. Stop work and seek advice if you suspect there may be asbestos present. Remember, never remove asbestos material unless you have permission and have been trained to do so.
Vibration at work	This includes hand-arm vibration from hand-held or manually guided machines and whole-body vibration. The latter is caused by machines or vehicles that transmit vibration through the operator's feet, buttocks and back into his or her body. Employers have to conduct a risk identification and assessment study at workplaces where vibration is a hazard. If the exposure is too high, employers should consider: alternative work procedures; more suitable work equipment; personal protective and supplementary equipment; maintenance programmes; workplace design; information on the proper use of vibrating machines; limiting the duration of exposure; and appropriate shift schedules with breaks.
Scaffolds and ladders	Ensuring that openings, such as holes in floors, are fenced off with secure barriers or covered. Secure the cover or mark with a warning. Checking all scaffold elements for safety. Inspecting ladders to ensure they are in good condition and securely positioned. Using fall-arrest equipment when working on scaffolding, especially before guard rails and toe boards are fitted, and ensuring harness lines are attached to a firm structure and used properly. Not throwing equipment or materials to a lower level, the ground or onto safety nets.

In construction there is comparatively small number of companies where evaluation of work environment risk is not carried out at all (26.0%, compared with 50.5% – an average number in all branches together). 29.2% of employees in construction consider that their employer has provided the evaluation of work environment risk factors in their companies [11].

Research results can be explained by employers who better realize and understand how difficult it is to consider all work safety regulations and laws in such a dynamic branch as constitution industry, and employers evaluate their company's conformity to these term demands more critically. Besides, 7.3% of employers in construction have marked that they have used free evaluation of work environment risk (to receive *de mini mis* support), which is more often than average in Latvia (1.4%) [11].

A building supervisor shall be liable for:

- the overall supervision of the progress of construction work in accordance with the requirements specified in the Construction Standard and with the contract entered into for the supervision of construction;
- the commencement of construction works;
- the implementation of a construction plan in accordance with the requirements of these Regulations and regulatory enactments;
- that only quality construction products and construction products corresponding to the construction plan shall be utilised in construction work;
- unplanned interruptions of construction work if they have come about due to the fault of the building supervisor; and
- losses to the commissioning party or the building contractor caused by the inactivity of or due to the fault of the building supervisor [12].

In 2010 a new demand became effective, which says that if demands that are defined in Construction norms of Latvia and work safety regulating laws and regulations, construction must be suspended till imperfections are averted [13]

III. Construction institutions / authorities in Latvia

A. The legal authorities in Latvia

With the aim of specifying construction institutions/authorities in Latvia, legislative provisions need to be analysed, which lay down objectives, tasks and duties of specific public (state and local government) institutions. It should be noted that uniform terminology is not used in the legislation analysed; the very same content of a legislative norm is designated as „objective" or „task", or „obligation", or even „rights" [14].

In this respect, a primary task is to identify and analyse construction institutions/authorities in Latvia. A general definition of the objectives of construction should be understood as specified in the Construction Law, Regulations No. 112 of the Cabinet of Ministers "General Construction Regulations" and other normative acts.

Where the operations of public institutions fall within the scope of activities required, in order to achieve the overall objectives of construction, the institution can be regarded as performing construction functions.

Construction operations are performed by different subjects: [public] construction institutions/authorities, non-governmental organisations, private companies. In the aggregate they are parts of the system of subjects of construction operations, where the key role certainly belongs to construction authorities as special institutions of executive power.

The implementation/application of administrative enforcement measures to tackle administrative violations is possible when the country has in place a system of institutions of executive power engaged in construction operations.

Within the system of executive institutions, construction institutions are a group of specialist institutions which perform the functions of surveillance, control and also of enforcement.

B. Typology of construction subjects

Aristotle, when describing Athens in the 5th – 6th cent. BC, indicated that full civil rights were enjoyed only by those persons whose parents were both citizens [15]. This concept has long ceased to exist, and a subject of construction law can be any individual with legal capacity, both a citizen and a non-citizen of the state, and a foreign national.

When dealing with subjects of law from theoretical aspects of law, legal theory regards subjective rights as legal power envisaged to put into effect the interests of the subject of law, which exist on the grounds of objective rights and the application of which depends on the will of the subject. Objective rights in turn are a compulsory prerequisite for the existence of subjective rights, because subjective rights cannot emerge all by themselves or on the grounds of morality and customs [16].

The legislator in Section 1.13 of Construction Law has defined the subject of construction. Persons participating in construction are natural or legal persons who participate in the construction process with property, financial resources, work or services.

As construction is a regulated sector, the state has provided for a special procedure of certification and practice. Therefore, Section 8 of Construction Law lays down requirements for persons who wish to engage in specialist fields of the construction sector. Namely, persons engaged in engineering research, design, construction expert-examination, construction works management, construction supervision require practice certificates.

Construction subjects fall into public and non-governmental subjects. These institutions act on behalf of the state and they have broad public authority. Professionals inconstruction sector are educated at specialised institutions of higher education.

Non-governmental subjects in the construction sector are private companies, individuals etc. Objective reasons for the presence of non-governmental subjects are the inability of the public sector to cover all possible fields and functions, which are therefore entrusted to the private and non-governmental sector.

There is also a division of construction subjects between general and specialised construction subjects. The reason for that is the specific character of each part in terms of both responsibility and competence. For instance, not all the construction subjects can perform bricklaying or concreting works. Thus each of these specialist groups has its own characteristics to be complied with on a mandatory basis.

One of specialised institutions, which control construction operations on its administrative territory, is a municipal construction authority set up by a local government. Unfortunately, following the elimination by the Prime Minister's decree on a national construction authority (the State Construction Inspectorate) there is no such institution that would cover the whole territory of the country.

A subject of law is a person who in law has the capacity to realize rights and juridical obligations [17]. Therefore, influence on a subject is to be exerted by means devised especially for that purpose.

Like in administrative law where, for the performance of a regulatory function, certain means are applied to affect the participants' behaviour [18], also construction law contains ways and means to regulate relationship and conduct between participants of construction. The following regulatory methods exist in construction: suspending and ceasing construction works, suspending construction, cancelling construction works and repealing construction works [19].

Methods of regulating construction rights are manifested through development rights. Various countries pursue different principles concerning development rights, for instance, development rights as general subjective rights and, only on specific occasions, an obligation to obtain a relevant certificate from public authorities. Thus, the state of Victoria in Australia has gradually moved from a general principle of "subjective rights to development" and is issuing permits on an exceptional basis to a system of compulsory permits with an underlying wide discretion of local governments when assessing construction proposals. At present, however, a possibility is seriously considered to introduce a standardized system where it is allowed to build without a special permit if construction complies with the effective legislation, including spatial planning regulations.

Another type of practice requires obtaining a mandatory construction permit from competent public institutions for any

construction operations. This is the most widespread system existing also in Latvia, Lithuania, Estonia, Germany, the Czech Republic, Norway, Sweden, and other countries [20].

C. Control over construction rights in Latvia and its types

Any construction operation involves a large number of contradictory interests, which must be balanced during the construction process. Likewise, it is also required to exercise surveillance in the course of the construction process to ascertain whether the achieved balance of interests is sustained, and the legal and actual circumstances have not changed thus causing the necessity to readjust those interests [21]. This topic has also been dealt with in Latvian human rights.

A public administration institution is a structure specially established, recruited and empowered for the performance of public administration functions [22].

From a historical perspective, the structure of a construction authority included a municipality representative as a chairman and six co-chairmen.

The Construction Authority consisted of two divisions:

(1) Building Police;

(2) Municipal Construction Project Division.

In order to exercise control/surveillance over construction operations in the municipal territory, the following public servants – technical staff were accountable to the Construction Authority:

(1) Construction Projects' Auditor;

(2) Municipal Architect, Municipal Engineer and Assistant Municipal Engineer;

(3) Municipal Auditor (subordinate to the Economic Authority) and Assistant Municipal Auditor.

The Building Police should be underscored as the major institution enforcing control: it was this division of the Construction Authority that was put in charge of ensuring compliance with the city plan; approving construction design in accordance with building regulations; construction supervision; reporting violations of building regulations to competent authorities; suspending and, if required, with the help of Police, discontinuing operations on construction projects that violate building regulations.

The issues mentioned above lead to a conclusion that the Building Police not only had a formal but also a crucial function because it could partly perform a police function and its decisions had a much greater legal effect than those taken by a Construction Authority official.

The rights of a municipal institution to decide on specific matters within the construction process are stipulated under special provisions of the construction related legislation. If the provisions do not specify a particular agency, then the above institution can be both a municipal construction authority as an institution having an overall competence in construction or a municipal council being entitled to deal with any matter within local government competence [23].

Control is one of traditional functions of public administration [24]. As indicated in Latvian legal literature, control is a system of relationships among institutions under which an institution exercising control is authorised to strictly scrutinise the work of an institution under control and the results of such work [25]. The establishment of an effective control system is a legal obligation of the state under Article 1 of the *Satversme* (Constitution). The principle of good governance [26] implies an efficient and effective internal control of public administration over the way individual institutions exercise their competence and whether maximum effort is made to honour public interests in the administration process, public interests including a balanced adherence to the rights and legal interests of private individuals.

One of key aspects of construction law is control over the construction process [27]. For control to comply with the principles of good governance, it is necessary both for the legal framework and the practice of institutions exercising control to ensure a comprehensive character, regularity (systematic character), effectiveness and transparency [28]. In addition to construction control affected by the [National/State] local authority construction inspectorates and construction surveillance exercised by building inspectors, there is also prosecutor's surveillance over the operations by central local and government institutions in the field of construction. Section 19 of the Office of the Prosecutor Law [29] stipulates the institute of the Protest of a Prosecutor, which entitles the prosecutor to submit protests concerning legal documents adopted by the Cabinet, ministries, departments and other state administration institutions, banks, the State Audit Office, local government institutions, inspections and state services, undertakings, institutions, organisations and officials, which do not comply with law. However, following the entry into force of the Administrative Procedure Law, the Institute of the Protest of a Prosecutor is related to a number of major legal problems [30]. Practice leads us to conclude that even if the office of the prosecutor is granted such rights by law, they are seldom exercised, and the prosecutor usually rejects applicants and avoids taking any effective action.

The supreme legislative act laying down the rights of control is the Constitution of the Republic of Latvia. The Latvian Constitution stipulates general provisions concerning public administration. The next piece of legislation, without which legal functioning of public administration cannot be imagined, is the State Administration Structure Law.

In France these matters fall under the competence of the Ministry of Infrastructure, Housing and Transportation (*Ministère de l`Equipement, du Logement et des Transports: MELT*), which sets out the policy. The Housing Ministry comprises three different Directorates:

- Architecture and Urban Planning Directorate;
- Economic and International Relations Directorate;
- Housing and Building Directorate.

Procedures for control over construction process and for disputing and appealing against decisions taken as the result of this process are governed by Administrative Procedure Law. In jurisprudence the said norm has been interpreted by the Administrative Cases Department of the Supreme Court's Senate indicating: "Under Section 3.1 of the Administrative Procedure Law, the Administrative Procedure Law is applied to the extent that special norms of law in other laws do not provide otherwise. Section 3.2 of the same, in turn, stipulates that administrative proceedings in court take place in accordance with the Administrative Procedure Law. When

interpreting both paragraphs of the section in conjunction, it can be concluded that Administrative Court in its proceedings must only be guided by Administrative Procedure Law, disregarding special norms in other laws. In other words, the Administrative Procedure Law provides a comprehensive regulatory framework for administrative court proceedings fully replacing the earlier framework" [31].

III. RESULTS AND DISCUSSION

Labour inspection and monitoring are key elements of any institution and labour administration system for enduring the implementation of labour policies, providing feedback and allowing for a readjustment of these policies as necessary.
In recent years, the importance of labour inspection in promoting decent work has been widely recognized. Yet in many countries, the changing world of work with its new employment patterns has been accompanied by reduced government interventions in the workplace. Even where there is a general agreement on the benefits of labour inspection and monitoring, the real impact of labour inspectors has often been limited, especially among vulnerable or hard-to-reach groups and in the large informal economy.

VII. CONCLUSIONS

Currently construction law is only at the early stage of its development, as certain aspects of the Soviet law have been taken over and are still being applied. However, there is an emerging aspect being transposed, albeit rather slowly, into construction law, namely, the elements of the European law.

We must admit that construction law requires, in particular, knowledgeable and creative experts who are capable of understanding problems and finding relevant solutions.

A comprehensive regulation for all walks of life and all situations in construction can hardly be found; therefore, courts, non-governmental organisations and the general society should be involved so that a normative regulation could be sought in as an inclusive manner as possible, in line with contemporary requirements and suitable for Latvia as a whole. Specific consequences of work environment risk factor effect, occupational diseases and accidents in the construction industry should be analysed in a separate article.

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Jānis Bramanis, Dzintra Atstāja, Jānis Načisčionis. Darba drošības vadības aspekti un būvniecības nozares monitorings
Idejas, kas pasaulē pazīstamas kā "ilgtspējīgā būvniecība", kļūst arvien populārākas arī Latvijā. Pasaule mainās, mēs dzīvojam pārmaiņu laikā.
Būvniecības nozari no darba aizsardzības viedokļa raksturo gan ļoti augsts nelaimes gadījumu risks, gan arī plašs dažādu darba vides riska faktoru klāsts. Būvniecības nozarē esošo riska faktoru samazināšanai un vadīšanai ir noteikta zināma kārtība un atbildība (darba aizsardzības koordinatoru nozīmēšana, darba aizsardzības plānu izstrāde u.c.), kura praksē nereti netiek ievērota, novedot pie smagiem nelaimes gadījumiem, kā arī nodarbināto veselības apdraudējuma.
Temata aktualitāte saistīta ar situāciju Latvijā, kad dažādas pārbaudes organizācijas izdod savā ziņā pretrunīgus normatīvos aktus, bet būvniecības organizācijām tie savā darbībā jāievēro. Lai ilustrētu situāciju un parādītu nozares situāciju, rakstā sīkāk analizēta dažādu normatīvu - Būvniecības likuma, Darba aizsardzības likuma, valsts darba inspekcijas likuma, Būvuzraudzības noteikumu u.c. normatīvu darbības sfēra un atbilstošo institūciju monitorings.
Darba aizsardzības pasākumi jāplāno jau pirms praktiskas būvdarbu uzsākšanas (izpildes posma), tās laikā un arī pēc būvdarbu pabeigšanas. Darba vides riska novēršana un samazināšana ir ekonomiski izdevīgāka un vieglāka, pirms sākas darbi būvlaukumā. Atsevišķā rakstā vajadzētu analizēt arī konkrētu darba vides riska faktoru ietekmes sekas, preventīvos pasākumus un nelaimes gadījumus.
Līdz šim būvniecību kontrolēja dažādas valsts institūcijas, privāti uzņēmēji un nevalstiskās organizācijas. Pašreizējā situācija būvniecības nozarē var būt labs sākums, lai sakārtotu sistēmu, kur privātie uzņēmumi varētu tikt iesaistīti kontroles un uzraudzības procesā, tādējādi atvieglojot būvinspekcijas un darba inspekcijas darbu.

Янис Браманис, Дзинтра Атстая, Янис Начисчионис. Аспекты организации безопасности труда и мониторинг строительной отрасли
Идеи, которые известны в мире как «устойчивое строительство», становятся все более популярными и в Латвии. Мир меняется, мы живем в эпоху перемен.
Строительная отрасль с точки зрения охраны труда характеризуется высокой степенью риска несчастных случаев, а также целым рядом факторов, связанных с влиянием рабочей среды. В целях сокращения факторов риска и для управления рисками в строительных организациях устанавливается определенный порядок и ответственность (назначаются координаторы по охране труда, разрабатываются планы безопасности труда и др.). Однако на практике установленные правила нередко не соблюдаются, что приводит к несчастным случаям с тяжелыми последствиями и создает угрозу для здоровья работников.
Актуальность темы связана с ситуацией в строительной отрасли Латвии, вызванной тем, что различные проверочные учреждения издают противоречивые нормативные акты, которым должны следовать в своей работе строительные организации. Чтобы проиллюстрировать сложившуюся в отрасли ситуацию, в статье дается подробный анализ сферы применения различных нормативов (Закона о строительстве, Закона об охране труда, Закона о государственной трудовой инспекции, Правил о строительном надзоре и других документов), а также мониторинга, выполняемого соответствующими учреждениями.
Меры по охране труда необходимо планировать до начала практических строительных работ, принимать их во время проведения и после окончания работ. Принимать меры по предотвращению и уменьшению рисков воздействия рабочей среды до начала работ на стройплощадке экономически выгодней и проще. В отдельной статье следует проанализировать также последствия, вызванные влиянием конкретных факторов риска рабочей среды, превентивные меры и несчастные случаи.
В настоящее время строительную отрасль контролируют различные госучреждения, частные предприниматели и негосударственные организации. Сложившаяся ситуация может стать отправной точкой для упорядочения системы контроля и надзора путем привлечения частных предприятий, что облегчит работу инспекций по строительству и труду.