

An international conference on 'Labour Inspection and the Challenges of the Future', organised by the State Labour Inspection, was held at the SLI Training Centre in Wrocław on 27 and 28 October 2022. The event was attended by labour inspection staff from EU Member States, as well as representatives from the International Association of Labour Inspection (IALI), the International Social Security Association (ISSA), the International Labour Organisation, the Senior Labour Inspectors' Committee (SLIC) and the European Agency for Safety and Health at Work (EU-OSHA). In a special series, we present the most interesting excerpts from the conference participants' speeches.

# International Labour Organizations technical guidelines on general principles of labour inspection

**Joaquim Pintado Nunes**, Chief of the Labour Administration, Labour Inspection and Occupational Safety and Health Branch, Governance and Tripartism Department of the International Labour Organization

The environment in which labour inspections operate constantly changes and requires a regular adaptation of policies, strategies and activities in order to react efficiently to emerging challenges while respecting the labour inspections' DNA as specified in international labour standards. Joaquim Pintado Nunes from the International Labour Organization presented ILO's technical guidelines on the general principles of labour inspection which are the foundation for efficient management of labour inspection systems in a complex reality.

It is worth to note that the ILO has been established in order to set up and promote fundamental principles and rights at work, promote decent working conditions, increase opportunities in employment, strengthen social protection and promote social dialogue in labour-related matters. The most important legal sources concerning the

labour inspection are: Convention no. 81 on Labour Inspection in Industry of 1947 and Convention no. 129 on Labour Inspection in Agriculture of 1969. Both documents provide an international legal framework and reference points for the development and operation of the labour inspection.

## In the course of time

The ILO guidelines on labour inspection address contemporary challenges and are aimed at equipping authorities with relevant tools. Recommendations were developed in order to promote modern and efficient practices. Although the guideline are not a binding instrument, the organization hopes that they will be found useful in many fields. As Joaquim Pintado Nunes pointed out, ILO works on the guidelines were carried out in accordance with Conventions 81 and 129 and Recommendations: no. 81 on the organization of labour inspection of

1947 and no. 133 on labour inspection in agriculture of 1969.

The guidelines include six main parts: (1) scope and functions of the labour inspection system; (2) structure and organization; (3) policy, planning and monitoring; (4) labour inspector's status and careers; (5) powers and methods of inspection and (6) enforcement measures. In his speech, Joaquim Pintado Nunes discussed each of the chapters.

## Enforcement of the labour law

What do the guidelines say about the mandate of the labour inspection? It should apply equally to all workers and all workplaces in all sectors, private and public, rural and urban, formal and informal economies, in respect of which laws relating to working conditions and the protection of workers at work may be enforceable by labour inspectors. The ILO

representative recalled the functions of inspection, which include:

- ensuring compliance with legal provisions on working conditions and protection of workers while performing work;
- providing employers and workers with information and technical advice on the most effective measures to ensure compliance with the law;
- informing the competent authorities about deficiencies or abuses that are not clearly covered by applicable legal provisions.

Importantly, labour inspectors should not be involved in formal conciliation, arbitration, settlement or resolution of individual disputes due to potential conflicts of interest, which unfortunately still occurs around the world. The guidelines also mention efforts to modernize labour inspection systems and their use of technological progress to improve and expand the scope, availability, impact and efficiency of their services for employers and workers. The recommendations also emphasize that labour inspections do not operate in a vacuum, but are part of a larger structure. A strong emphasis was placed on cooperation with other public or private entities, employers and workers and their organizations.

### The profession of a labour inspector

The professional status and terms of exercising the function were also taken into account in the documents. Labour inspectors' powers must be clearly determined by the law and avoid ambiguity. The document also mentions the stability of employment, training of personnel and professional integrity. Joaquim Pintado Nunes emphasized many times that it is important to understand the role of labour inspection.



## Cooperation based on solid foundations

**Jakub Chojnicki**, dyrektor Departamentu Nadzoru i Kontroli w Głównym Inspektoracie Pracy

The International Labour Organization was founded in 1919 during the Paris Peace Conference. The ILO constitution adopted at that time formed Chapter XIII of the Treaty of Versailles. Representatives of 9 countries, including Poland, participated in the works of the International Labour Law Committee. There is no doubt that labour standards established by the ILO were the basis for Polish social policy in the interwar period. After the political system transformation in 1989, cooperation with the ILO was boosted and took place on many levels. The State Labour Inspection under its new management established contacts with the ILO, whose representatives closely followed the changes in the Polish system of supervision of working conditions. A new inspection structure was built, the organization of the Chief Labour Inspectorate was also changed. These reforms were positively assessed

by the ILO representatives (Mateusz Rzemek, "A century of the labour protection, 100-years anniversary of the State Labour Inspection"). To this day, cooperation with the ILO remains an important sphere of the SLI's international cooperation. Pursuant to Convention 81 on the labour inspection in industry and commerce, the SLI annually submits a summary of its report on the activities in the previous year as well as a report on activities in agriculture (in accordance with ILO Convention 129) with the Director General of the ILO, through the Ministry competent for labour issues. Moreover, representatives of the SLI take part in conferences and other meetings organized by the ILO, the topics of which are coincident with the remit and current priorities of the inspectorate. In five-year periods, we also submit reports on the execution of several ILO conventions relating to the occupational safety and health by Poland.

# Inspections of digital platforms in Denmark

**Annemarie Knudsen**, chief adviser, Danish Working Environment Authority

**Stine Hvid Bern**, special adviser, Danish Working Environment Authority

**A**nnemarie Knudsen began her presentation on Denmark's experience in the field of digital platforms with a description of the most important information about the Danish labour inspection, which includes: Inspection Centre North (Hadsten, Nørresundby); Inspection Centre South (Kolding), Inspection Centre East (Copenhagen, Slagelse, Bornholm, Greenland) and Occupational Safety and Health Centre (Copenhagen). She also presented the organizational structure of the authority.

## About the authority

The Danish Working Environment Authority is subordinate to the Ministry of Employment and is responsible for supervision of compliance with occupational safety and health provisions. The authority acts for safe and healthy workplaces by conducting inspections of companies, development of OSH rules and provision of OSH-related information. With the population of 5.5 million citizens, the Danish labour market consists of 2.3 million workers and 200,000 enterprises, of which

20% are large companies employing approx. 80% of workers.

The Working Environment Act, passed by the Danish Parliament, applies to work performed in the territory of Denmark, including loading and unloading of ships and shipyard work aboard ships. The act applies to work performed for the benefit of an employer with the exception of work performed in the employer's household and work performed exclusively by the employer's family members who belong to the same household, as well as work performed by armed forces, which may be counted as actual military service.

## Main criteria

In the absence of definitions of a worker and an employer, it is considered that a worker performs work for the benefit of the employer if a thorough evaluation shows that the following criteria are met:

- the worker is obliged to work (consequences of not showing up for work);
- the worker has to follow instructions from a leader and the leader controls how the work is performed;
- a workplace, machinery, tools, materials

are made available for the worker in order to him/her to perform the job;

- the leader bears the risk for the result of the work;
- in doubtful cases, the fact of receiving salary for work by the worker may be important.

These criteria have been used for many years and allow to resolve doubts as regards self-employment or platform work.

## Platform activities

Subsequently, Stine Hvid Bern raised the issue of work performed through digital platforms. Organization of such work is different than those in traditional companies, it also varies depending on the branch. This poses a challenge for the working environment inspection. Since the beginning of 2022, a campaign targeting courier services in Denmark was carried out. In order to describe this type of activity, DWEA considered the necessary presence of three parties: the customer who orders 'the service', one or more subcontractors/platform workers who deliver the service through the platform,

and a digital platform which mediates in contacts between them. Stine Hvid Bern also described how such relation works: the customer orders a parcel through the digital platform, the platform has an agreement with the haulier, the haulier hires couriers who deliver the parcel. In order to determine who is responsible for the working environment of couriers, it was necessary to answer the question who transfers the orders from customers to couriers – whether it takes place on the level of the platform of the haulier engaging the couriers.

The campaign was conducted in a few stages. It was launched with an invitation of representatives of platforms/enterprises to a meeting with the Danish Working Environment Authority. The meeting's objective was to get familiarized with different goals of the campaign and presentation of working environment-related problems in courier services. In the course of discussions, questions were asked about the organization of cooperation between hauliers and couriers. Subsequently, supervisory activities were started. Inspections were conducted in the terminal with the focus on loading of goods into vans and their delivery to customers (in Denmark it is possible to enter one's private house to conduct such inspection). After the completion of an inspection, if the inspector determined that the gathered evidence was insufficient, he/she could decide on another inspection. At the end of these activities, DWEA invited the representatives of platforms/enterprises for another meeting, in order to provide them with feedback on the detected issues and to discuss on how to improve the working environment of couriers. An important objective of the campaign was to establish who is responsible for the working environment. In order to determine this, labour inspectors used information received during the

inspections from the couriers, hauliers, platform representatives and then analysed in view of the criteria of work performance.

When the gathered evidence led to conclusions that platforms assign orders to couriers: plan itineraries, give orders and supervise the work of couriers, require an appropriate size of the van for delivery purposes, demands to remedy irregularities were sent to the platforms'

representatives. There were instances when a labour inspector would request a contract to be signed between the platform and the haulier.

What were the effects of the campaign? Of 52 issued demands to remedy irregularities, 47 were addressed to hauliers and 5 to Platforms. As Stine Hvid Bern admitted, it was the first attempt to conduct inspections in this field.

## Platform work – a challenge for labour inspectors

**Bartosz Kopeć**, Vice Director of the Legal Department at the Chief Labour Inspectorate

**B**artosz Kopeć, Issues relating to platform work constitute a significant challenge not only in Poland and Denmark, but throughout the European Union. For this reason, in December 2021, the European Commission proposed a directive on improving working conditions in platform work. This is the first legislative proposal aimed at regulating the developing electronic market of labour, which also sets the prerequisites for correct determination of the employment status of persons performing platform work.

Works on the final form of directive are still under way, but the adoption of new legislative solutions, either on national or EU level, is necessary. The absence of relevant legal provisions increases unfair competition between enterprises and prevents conducting efficient inspections by labour inspectors. In consequence, we witness circumventing legal provisions, for example as regards of inappropriate entrusting of work to persons performing platform work.

In Poland, the biggest inspection challenges involve cases where the

contractors were not entrusted with work on the basis of a mandate or employment contract, but the only concluded contract is the lease contract (e.g. lease of vehicle, scooter, bicycle, telephone). In such cases, it is difficult to establish the entity entrusting work since the contractors receive orders (e.g. transport of persons or goods) only through an app. In practice, the platform company which offers the app is usually not bound with the contractors through any contractual relationship entailing the performance of work. Also, the companies dealing with the lease of equipment for the purpose of execution of tasks avoid conclusion of contracts with persons performing platform work.

Establishing the entity entrusting work is also hindered by the place of registration of digital platforms, as their seats are often located outside the territory of Poland or even the European Union. This also prevents labour inspectors from conducting inspections. In result, it is often necessary to initiate time-consuming court proceedings.