

Chapter 51

Regulating Occupational Health and Safety in EU and China: From a Comparative Law Perspective

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ABSTRACT

Occupational health and safety (OHS) is an important aspect of the labour protection field. This chapter compares OHS legal regimes of China and EU. Comprehensive workplace health and safety legislations of the two systems are described, and the different aspects, including for example, legislative aim, the legislation structure, general obligation, OHS insurance, moral harassment, law enforcement, etc., are detailed. Based on the analysis, conclusions are made and policy recommendations from both legislation aspect and enforcement aspect are provided.

INTRODUCTION

The EU Workplace accident and disease prevention have been the focus of law-making activity in European Union (EU) since the creation of the common market in 1950 when the European Coal and Steel Community begins to unite European countries economically and politically in order to secure lasting peace. In more than half a century, the EU occupational health and safety (OHS) law grew from nothing into the present legal system (Liu & Liu, 2015), which centers on the Framework Directive 89/391 (see hereafter). The modern Chinese occupational health and safety law started from the foundation of the People's Republic of China in 1949 and has formed system centering on the Work Safety Law (WSL) and Occupational Disease Prevention Law (ODPL). This research is set to compare the two systems and see from what aspects the Chinese system may benefit from the EU system. To serve this purpose, the OHS rules and their application in the EU law and the Chinese law are compared in this chapter. The aim of the comparison is to investigate whether what convergences and divergences exist between the EU system and the Chinese system. Answering these questions might provide some clues to under-

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stand how the OHS are regulated respectively in China and EU, and as such is requisite for providing potential recommendations for improving the Chinese system. As commented by Örüci, the comparative lawyer must discover and describe uniformities and differences on the basis of the information s/he has collected and described. (Örüci, 2006). This comparative research is ordered in three topics: the convergences, divergences and the variables between OHS systems of the two jurisdictions. Among them, the variables concern the differences, as divergences do. However, variables concern the factors that are of either non-legal nature or legal nature but not OHS law nature. Based on the comparison, a conclusion would be drawn.

Before analyzing the legal systems, it is necessary to know some information about their economic and labour market contexts in order to better understand the differences between the two jurisdictions. Here three important economic labour market indicators are presented. Regarding EU, according to the data published by the EU's statistical agency --- the Eurostat, the total number of labour force was 218,375,000 people in 2016 (Eurostat, 2016), the unemployment rate was 9.6% (Eurostat, 2017), and the labour participation rate 72.9% (Organisation for Economic Co-operation and Development, 2015). Correspondingly, the data's of China are 806,460.14 (World Bank, 2016), 4.02% (People's Congress, 2017), and 71.0% (World Bank, 2016).

LEGAL SYSTEMS

The EU

EU's regulation of OHS was traced back to the foundation of the European Coal and Steel Community. (Hale, 1984; Liu & Liu, 2015; Majone, 1993). According to Liu and Liu, the evolution of the EU/EC has defined the progress OHS protection. Over the decades spanning from the beginning of ECSC, through establishing EEC and through several rounds of enlargements, to the final establishment of the EU, it can be observed that the technique of legislative intervention evolved from safeguards, based on detailed and highly technical normative acts, to a different kind of regulation which is more based on general protection duties and principles (Liu & Liu, 2015).

Nowadays, OHS has already become one of the key focus areas of law-making activity since the creation of the common market (Liu & Liu, 2015). The EU OHS system is built the landmark Directive 89/391. In general, the Directive 89/391/EEC lays down employers' general obligations to ensure workers' health and safety in every aspect related to work, 'addressing all types of risk' (Sabel & Zeitlin, 2008; Liu & Liu, 2015). It is also a Framework Directive that established general principles, including risk assessment, avoidance, substitution and prevention. The Directive served as a basis for later individual directives dealing with specific issues such as those on workplaces, personal protective equipment, work equipment, manual handling of loads and display screen equipment (Nicholson, 2002; Liu & Liu, 2015). The individual Directives define how risks are to be assessed, and the setting and measuring limit of values at the workplace. Article 16 paragraph 3 of the Framework Directive states that its general provisions shall apply in full to all the areas covered by each individual Directive (See Article 16, paragraph 3 of the Framework Directive). Until the day of writing, in total 19 directives have been adopted, which are compiled in the European Agency for Safety and Health at Work (EASHW) 's website (European Agency for Safety and Health at Work, 2017). According to EASHW, these directives are categorized into six topics: (a) Workplaces, equipment, signs, personal protective equipment; (b) Exposure to chemi-

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