

LEGAL ARRANGEMENTS OF THE OCCUPATIONAL SAFETY AND HEALTH IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract

Occupational safety and health in general is concerned with preserving and protecting human and facility resources in the workplace. The analysis in this paper are focused on helping people by preventing them from being injured or becoming ill due to hazards in their workplaces. According to the statistical data for the last couple of years there is a fairly high rate of fatal accidents at work in the Republic of North Macedonia. What is more concerning is that some of the accidents at work are not reported because the workers do not have a regulated employment status. The main reason for that is the content and non-implementation of the legal arrangements of the occupational safety and health. The analysis will be made more specifically to the Law on Safety and Health of the Republic of North Macedonia as the basic legal framework that regulate this matter. The main goal is to detect the shortcomings and provide necessary amendments to the legal framework for the occupational safety and health in order to increase the protection of workers in their workplaces. Some of the recommended amendments are the following: extension of protection to those categories of workers not covered by the legal acts; appropriate regulation of the employer's liability for the damage that the worker has suffered at the workplace and in relation to the work; adoption of provisions regulating the work under drugs that may adversely affect the physical and mental capability of the worker; introduction of provisions that oblige the occupational safety officer to cooperate with the authorized healthcare institution for performing health examinations of the workers; strengthening the supervision by the State Labor Inspectorate.

Keywords: *Occupational safety, risks, workers, accidents, Labor Inspectorate.*

Introduction

Occupational safety and health is multidisciplinary area-a mixture of technique, physics, medicine, organization, chemistry and more. As defined by the World Health Organization (WHO) “occupational health deals with all aspects of health and safety in the workplace and has a strong focus on primary prevention of hazards”. (WPRO Occupational health, 2015) The occupational safety and health is a constitutional category determined with a set of measures, norms and standards prescribed to create security conditions for work. The right to health and the right to safety jobs are universal human and labor rights. The legal framework that regulates the occupational safety and health measures include the obligations of the employer and the rights and obligations of employees in the field of security; and occupational health, as well as preventive measures against occupational health risks, removal of risk factors for accident, information, consultation, training of workers and their representatives and their participation in planning; and taking safety and health measures at work. (International Labor Organization, 2009)

Occupational safety and health has gone through several stages throughout history with the development of working tools and technology. Concern about workers' poor health, especially of women and children, and about workplace accidents and community health, drove a process of legislative change. Health and safety legislation became common place throughout the world. It was largely prescriptive, that is, it specified a series of ‘what to do’s’, and was generally limited to specific areas of work such as mining, construction, factories, shops and warehouses. It also relied on outside inspection of workplaces by a government agency. (Taylor, 2004:1-3) This paper provides analysis of preserving and protecting human resources in the workplace with a special review of the legal framework for occupational safety and health.

Paper's main aim is to provide analysis of the current state of the occupational safety and health in North Macedonia in order to detect the problems in this area and the possible solutions that would be beneficial not just for North Macedonia but also for the other countries who tend to join the European Union.

According to the European Commission report on the progress of the Republic of North Macedonia for 2019 in chapter 19 entitled: “social policy and employment” it is stated that efforts were made to improve the responsiveness of and cooperation between employers

and staff dealing with health and safety at work. But this work remains incomplete due to the lack of capacity of the State Labor Inspectorate responsible for supervising the application of laws and other regulations in the field of labor relations, employment, occupational health and safety. Implementation of the 2017-2020 occupational health and safety strategy remains deficient. Various awareness-raising activities were organized under the action plan for the 2017-2020 occupational health and safety strategy. According to State Labor Inspectorate data, in 2018 the construction sector had the highest number of fatal accidents per year. According to civil society organization data, there were 92 reported injuries at the workplace in 2018, of which 22 were fatal. (European Commission report on the progress of the Republic of North Macedonia, 2019: 78-80)

EU REGULATION FOR OCCUPATIONAL SAFETY AND HEALTH WITH OVERVIEW OF MACEDONIAN CASE

Member states of the European Union have all transposed into their national legislation a series of directives that establish minimum standards on occupational health and safety.¹ These directives follow a similar structure requiring the employer to assess the workplace risks and put in place preventive measures based on a hierarchy of control. This hierarchy starts with elimination of the hazard and ends with personal protective equipment. (European Agency for Safety and Health at Work, 2001: 2-4)

The basic directive that regulates this topic is the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. In December 2008, the European Parliament and the Council adopted the Regulation on statistical data in the area of public health and health and safety (Regulation EC - No 1338/2008), which establishes a common framework for systematic

¹ EU Directive 92/85/EEC of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding; EU Directive 94/33/EC - on the protection of young people at work (young workers); EU Directive 91/383/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work; EU Directive 2009/104/EC on supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship; EU Directive 89/656/EEC on the use of personal protective equipment; EU Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace etc.

collecting and analyzing statistics in these areas. The goal of this regulation is to ensure that health statistics provide

appropriate information for monitoring the activities in the area of public and occupational health and safety at work. After the establishment of the legal bases and methodological principles, the European Union has also established the strategic framework for occupational health and safety for the period 2014-2020. In order to achieve this strategic goal, it is necessary for each country to establish National system for reporting and collecting statistics in the area of safety and health at work. This system should provide relevant, accurate and comparable data, their evaluation and publication, which should serve to propose and create preventive policies and establishment and control of corrective measures.

After the adoption of the Law on Safety and Health at Work of North Macedonia new authorized legal entities and institutions for safety at work and occupational medicine were formed. In the very beginning they were focused at establishing new and modern principles in its practice, corresponding to the new legal regulations, and the notification of the work performed and established conditions remained on the margins of their professional activities. Although this system has given some results, it cannot replace the function of the National System for statistics in the area of safety and health at work. According to Article 5 of the Law on Records in the Field of Health of Macedonia and its amendments, The Public Health Institute of the Republic of Macedonia is the bearer of the healthcare statistics that are mandatory recorded in the healthcare institutions in the state. (Institute for Public Health, 2016) The insufficient healthcare statistics show that the Public Health Institute is not able to perform its duty completely and that different types of solutions are necessary.

There are a number of different indicators that can be taken into account when analyzing injuries at the workplace like for example, number of non-fatal accidents and fatal accidents at work (total or per 100 000 persons employed which is a more appropriate indicator of how often work-related injuries occur when comparing the countries), degree of severity of injuries, number of employees, injuries sorted according to the occupation of workers, according to the established reasons for the incurred injuries etc. The main issue in the Republic of North Macedonia is that different institutions provide different data about the accidents at work - fatal or non-fatal. The State Labor Inspectorate of Macedonia, Institute for Public Health of the Republic of Macedonia and Macedonian Association for

accidents at work to name a few, provide different even contradictory data for the accidents at work in the last couple of years. The reason for the incompatibility of these data is derived from the lack of an adequate system for collecting data of injuries in the workplace in the Republic of North Macedonia and because there are a large number of injuries of workers some with fatal consequences which are not registered since the workers worked without being registered as employees and without being paid for health and pension insurance, which hides the real image of the state in the occupational safety and health in Macedonia.

ANALYSIS OF THE LAW ON SAFETY AND HEALTH OF NORTH MACEDONIA

The Law on Safety and Health of the Republic of North Macedonia as the basic legal framework that regulates the occupational safety and health has many substantial deficiencies that need to be addressed. In the analysis of the Law, the comparative method will be used in order to find ideas to overcome the deficiencies in the Law on Safety and Health of the Republic of North Macedonia, by comparing the provisions with some countries in the region. In the Article 3 of the aforementioned Law there are explanations of the meaning of some of the main terms that are used in the Law, such as "risk assessment" and "responsible person". (Article 3, Law on Safety and Health at Work of North Macedonia, 2007) But, the content of these terms is not explained and it could create confusion in the implementation of the provisions of the Law. There are also ambiguities in the explanations of some other important terms like for example the terms "employee" and "employer". It's not clear whether these terms refer to domestic and foreign natural and legal persons or refers only to domestic natural and legal persons, thus creating uncertainty whether this Law regulates the rights of foreign natural persons employed in the Republic of North Macedonia., as well as foreign employers. In this respect, since the Article 17-a prescribes the conditions for taking an occupational safety and health exam and one of those conditions is that the person is a "citizen of the Republic of North Macedonia", (Article 17-a, Law on Safety and Health at Work of North Macedonia, 2007) it can be concluded that the Law excludes the rights of foreigners from its scope of application, unlike some countries in the

region that have special regulations for foreign workers, like Croatia for example. (Article 54, Law on Safety at Work of Croatia, 2014).

Foreign nationals or stateless persons may conclude an employment contract and have the right to work on the territory of the Republic of North Macedonia on the basis of issued work permit, as well as foreigners staying in the Republic of North Macedonia for study purposes and may perform short-term or ancillary work without a permit. However, they are not covered by the Law on Safety and Health at Work, which is a substantial disadvantage of this Law.

Article 3 of the Law on Safety and Health of the Republic of North Macedonia stipulates that "an occupational safety expert is appointed by an employer in order to perform occupational safety related tasks". The explanation of the term "occupational safety expert" lacks clarification about the conditions under which the employee is considered to be an expert, whether solely on the employer's assessment, without the employee to take a professional exam for confirmation of his/her practical skills, (Article 3, Law on Safety and Health at Work of North Macedonia, 2007) although Article 17 notes the conditions and the manner of conducting the professional exam for occupational health and safety. (Article 17, Law on Safety and Health at Work of North Macedonia, 2007) It is sufficient to supplement the definition like in the Serbian Law on Safety and Health at Work which stipulates that "an expert must pass an expert examination for practical training" (Article 4, paragraphs 1 and 2, Law on Safety and Health at Work of Serbia, 2005) or the Croatian Law on Safety at Work which stipulates that "an expert must fulfill the prescribed conditions for doing those things." (Article 54, Law on Safety at Work of Croatia, 2014) These minor additions and clarifications in the Law on Safety and Health of the Republic of North Macedonia are very important in order to avoid misinterpretation of the Law by the entities to which this Law refers.

The Law on Safety and Health at Work of the Republic of North Macedonia does not apply to pupils and students that have professional practice or practical lessons (except for those that work in a mine), professional rehabilitation, work while serving the prison sentence, volunteer participation in the work organized for the general interest, competitions within the work etc. In this context, these provisions should be amended with the categories of citizens entitled to protection under the Law on Safety and Health at Work, for example:

citizens who perform occasional seasonal work, volunteers, scientists, students who do practical work regardless of the type of work, etc.

The Law on Safety and Health at Work in the Republic of North Macedonia has no special treatment for young people and women that have high risk jobs, pregnant women, persons with disabilities and occupational diseases, although there are bylaws in the form of rulebooks that regulate the rights of some of these categories of citizens.² It is necessary to emphasize the rights of these categories of citizens in the form of special rights³ and special measures for the protection of their health at work in the Law on Safety and Health at Work, which is the case in some Balkan countries.

The issue that is not covered by the Law on Safety and Health at Work in the Republic of North Macedonia is the liability for workplace injury. It's necessary to implement provisions that exclude the liability of the employer in the event of an injury at work due to unusual and unpredictable circumstances beyond the control of the employer or due to other exceptional events whose consequences could not be avoided and provisions that directly outline the responsibility of the employer in the event of a worker's injury at work or occupational illness of the worker acquired during the performance of the work for the employer according to the principle of objective liability. The general provisions of the Law on Obligations of the Republic of North Macedonia regarding the liability of the employer in case of injury to the employee in the performance of his duties may be applied to some extent, although the Law on Safety and Health at Work of the Republic of North Macedonia does not refer to the application of other regulations in these cases, however, the establishment of a clear and precise provision on the responsibility of the employer for the injury of his/her employee at the workplace would enable more adequate protection of the employer and his/her employees.

² See Rulebook on the minimum requirements for safety and health at work of young workers, Official Gazette of the Republic of Macedonia no. 127/2012 and Rulebook on the minimum requirements for safety and health at work of pregnant workers, workers who have recently given birth or are breastfeeding, Official Gazette of the Republic of Macedonia no. 119/2011

³ Special rights related to the organization of working hours and use of rest, the manner of usage of appropriate protective equipment, exposure to harmful actions of workers and are brought into correlation with age, gender, degree on education, health condition, psychophysical abilities of workers, etc.

The lack of a provision prohibiting the performance of work duties under the influence of alcohol or the use of drugs or other addictive substances which may adversely affect the employee's physical and mental ability to work in workplaces with increased risk is another remark on the Law on Safety and Health at Work in the Republic of North Macedonia that may lead to lower level of protection of the workers and higher level of accidents at work. These type of provisions exist in the Law on Occupational Safety and Health of Slovenia (Article 51, Health

and Safety at Work Act of Slovenia, 2011) and the Law on Occupational Safety and Health of Croatia. (Articles 58, 59 and 60, Law on Safety at Work of Croatia, 2014)

According to the Law on Safety and Health of the Republic of North Macedonia the employer has the obligation to hire a legal entity with a license to carry out preventive and periodic examinations and check-ups of the work equipment, as well as examinations of working conditions and working environment. Article 17 of the Law on Safety and Health at Work is not sufficiently precise and provides that "the employer is obliged to provide periodic inspections and examinations of the working environment and equipment", (Article 17, Law on Safety and Health at Work of North Macedonia, 2007) without specifying who might carry out such examinations and at what time intervals these examinations should be performed, which is a serious disadvantage of the Law.

Some of the possible legal ideas that can be used from the countries in the region in order to improve the efficacy of the Law on Safety and Health of the Republic of North Macedonia are the following: impose an obligation of the occupational safety professional to work with a physician or health care provider authorized to perform health care; imposing an obligation for mutual cooperation between the safety professional appointed by the employer to perform professional work related to safety and health at work and the authorized health care institution for the performance of safety-related tasks and occupational health; obliging the doctor or health care provider performing the health check of the worker to cooperate with the employee's general practitioner to exchange data and information on the health status of the worker for the purpose of determining appropriate therapy in the event of illness, determining the reasons for the employee's temporary or

permanent absence from work, a more appropriate assessment of their ability to work, as well as to exchange information on workload and the type of working tasks; imposing an obligation for direct cooperation between the person responsible for occupational safety and health and the occupational medicine service.

There is certainly a legal possibility for the employer to hire more professionals who can respond to the obligations imposed by the Law, but the implementation of imperative norm to hire an appropriate legal entity to perform these examinations and inspections, similar to the provision of health examinations of workers from an authorized health care institution (Article 22, Law on Safety and Health at Work of North Macedonia, 2007), will improve the quality of performing the examinations of the work environment and work equipment for each job individually.

It is also important to give a critique to the legal standardization and to the inspection supervision, that is, the composition of the inspection that carries out the supervision of the work in the application of the regulations on labor relations and safety at work, which covers only the duties and conditions that should be fulfilled by the inspector for performing inspection supervision (Law on Labor Inspection of North Macedonia, 1997). A team must be assembled, that will conduct the inspection, and should consist of: a. an occupational health and safety inspection team coordinator b. a document control individual c. individuals to accompany the occupational health and safety inspector d. a media coordinator e. an accident investigation team leader (where applicable) f. a notification person g. a legal advisor (where applicable) h. a law enforcement coordinator (where applicable) i. a photographer j. an industrial hygienist. (Schneid, 2008: 23-25) The defect in the Macedonian regulation is that an inspector cannot perform inspection at the same level as a team of experts with shared responsibilities who have expertise in specific segments of occupational health and safety.

Conclusion

Based on the above analysis it can be concluded that the Law on Safety and Health at Work of North Macedonia needs to be amended in order to increase the protection of the rights of the citizens. The risk professional that checks the workplace and the authorized health care institution that checks the health status of the employee should work together, as

a commission and perform their assessments at the same time, not separately like it is the case now. Therefore, the commission would evaluate each job for each worker individually since the same job does not present the same risk to every worker, thus increasing the protection of the workers.

In short, some of the proposed amendments to the Law on Safety and Health at Work of North Macedonia with a view to its more appropriate application can be aimed at: more precise definition of certain terms in the Law; extension of protection to those categories of workers not covered by this Law; appropriate regulation of the employer's liability for the damage suffered by the employee at the workplace and in connection with the work; the adoption of provisions governing the operation of medicines which may adversely affect the physical and mental capacity of the worker; introduction of provisions obliging the Occupational Safety and Health Professional to cooperate with the authorized health care institution to perform health examinations of workers, strengthen supervision by the State Labor Inspectorate, etc.

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