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TOPIC 3
OCCUPATION RISKS :
SOCIAL PROTECTION AND EMPLOYERS' LIABILITY

REPORT OF THE
CROATIAN SOCIETY FOR LABOUR AND SOCIAL SECURITY LAW

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INTRODUCTION

The question of the protection of workers vis a vis occupational risk is contemporary to the origins of the Labour and Social Security Law. Already in the last decades of XIXth Century and the first two decades of the XXth Century many countries adopted laws on the duration of work, work of women and children and workmen's compensation[1]. In 1921 the International Labour Organization adopted the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12), which was followed in 1925 by the Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (revised in 1964 by the Employment Injury Benefits Convention, 1964 (No. 121)), and the Workmen's Compensation (Occupational Diseases) Convention (No. 18) (revised in 1934 by Convention No. 42 and in 1964 by Convention No. 121).

The first schemes of compensation for industrial and occupational diseases established from start the impossibility of dissociating the labour law and the social security law. In a majority of countries the first laws on industrial accidents set out the *business risk* principle in order to establishing the employers' objective responsibility for industrial accidents and occupational diseases arising out of subordinate work provided by an employee to an employer. This resulted in the law departing from the traditional civil law approach whereby the obligation to compensate for damages must arise out of the employer's fault or negligence.

[1] Sometimes, like in Germany, the employment injuries mandatory insurance came into being well before most labour laws.

Some time later the originally employer's responsibility to compensate for industrial accidents or occupational diseases was taken up by the Social Security system or by compulsory private insurance schemes, which to a large extent meant that employment injuries begun to be considered a social risk rather than a business risk[2].

Last but certainly not least, increasing stress was laid on prevention, which became an employer's obligation arising out of the contract of employment.

Within the framework of the European Union health and safety at work are precisely the two fields which have been addressed by the greatest number of legislative instruments relating to social and employment questions. The ILO is not less active in this field since the relevant instruments regarding safety and health at work and labour inspection include no less than 19 conventions, 2 protocols and 26 recommendations, to which one may add some 37 codes of practices and technical guidelines

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This progress cannot however hide the survival of grey zones and dead angles in protection which raise new interrogations.

Grey zones

The use of new technologies and new products generate new health risks to the workers, which may appear long time after the end of their employment. It may therefore become very difficult to establish a link between the worker's previous occupation and his/her present state of health, which is further complicated by the fact that many illnesses (like some cancers) are often due to a combination of causes, some of which are work-related while some others are not.

The organization of work may involve effects on the worker's psychic health. Here again, the establishment of a causal link with the worker's occupation proves to be problematic.

More flexible and heterogeneous work careers throughout a worker's life-span result in many workers changing employers more frequently than they did in the past, or going from wage work to self-employment and back to wage work again. This may affect the establishment of a casual link between occupation and injury/health risk, thus having also some bearing on responsibility and compensation issues

Dead angles

Dead angles relate to the identification, (a) of the risks, (b) of the beneficiaries of protection, and (c) of the persons who may be made liable for damages arising out of occupational risks.

Technical and technological progresses often involve the use of materials and products whose effects on health may be difficult to assess in advance. One thinks in particular of the replacement of asbestos by materials of which the harmlessness is still to be demonstrated.

Many of the new forms of work organization, the externalization of tasks, recourse to precarious work, not to mention illegal or clandestine work cause to make difficult the medical supervision of the workers whose insulation accentuates the risks of being exposed to health hazards. They also raise hurdles to the effective intervention of the workers' representatives in respect to occupational health and safety issues at the plant level.

Lastly, the transformations of the companies and the increasing distance between the plant level and the decision-making centres cause to make delicate the identification

[2] This is, however, not applicable to all countries, most notably where the social security system does not provide for compensation for employment injuries and occupational diseases.

of the persons who are responsible for the formulation and implementation of safework policies at both the upper and the lower level.

Interrogations

The first of the interrogations relates to the question of the full compensation of damages arising out of an occupational hazard. Certain voices are made today hear in favour of full compensation of such damages, which would result according to them in the abandonment of the special mode of social protection of the victims to the profit of a return to the civil law, or to a combination of both the special mode of protection and civil law protection.

A second interrogation arises out of the establishment of "special funds" which are meant to compensate for certain risks (e.g. the asbestos risk). These funds are financed on the basis of national solidarity rather than social security principles. One may argue that such an approach might have demobilizing effects with regard to prevention.

A third interrogation relates to the concept of prevention. Led to the extreme, the logic of prevention could result in increasing the risk of discrimination at the time of recruitment, which might be justified on the need for preventing pathologies. For example, pre-hiring genetic testing and HIV/AIDS testing are increasingly used; this does not fail to pose serious problems of ethics, without speaking about discrimination against job applicants whose state of health may become a major ground for social exclusion.

A last interrogation relates to the role of the workers and their representatives as regards the workers' health protection. Behind this question lies that of the role of the experts.

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REPORT OF THE

CROATIAN SOCIETY FOR LABOUR AND SOCIAL SECURITY LAW

I. GENERAL QUESTIONS

1. Please give general information on your system of protection/compensation for employment injuries and occupational diseases. When was it created? Which modifications were introduced in the system since its creation?

The system of protection/compensation for employment injuries and occupational diseases is built around several normative source of law. Primary source is the Constitution of Republic of Croatia (Official Gazette of Republic of Croatia nos. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01 and 55/01). The following laws are also concerned: (1) Labour Act (Official Gazette of Republic of Croatia nos. 38/95, 54/95, 65/95, 17/01, 82/01, 114/03, 142/03, 30/04, 137/04 and 68/05); (2) Occupational Health and Safety Act (Official Gazette of Republic of Croatia nos. 59/96, 94/96 and 114/03); (3) Pension Insurance Act (Official Gazette of Republic of Croatia nos. 102/98, 71/99, 127/00, 59/01, 109/01, 147/02, 117/03, 30/04, 177/04 and 92/05); (4) Health Care Insurance Act (Official Gazette of Republic of Croatia nos. 94/01, 88/02, 149/02, 117/03, 30/04, 177/04 and 90/05); and (5) Health Care Act (Official Gazette of Republic of Croatia nos. 121/03 and 48/05). Based on these statutory sources of law substatutory regulation composed of several bylaws was passed.

All of these sources of law date from the period following the transition from the socialist to market-based economy and represent the regulation that is considered a

prerequisite for a functionning labour market and is as well compatible with the notion of welfare state from Constititon of Republic of Croatia.

After these sources were passed all of them were ammended. While the ammendments of Labour Act, Occupational Health and Safety Act, Pension Insurance Act in respect of the system of protection/compensation for employment injuries and ocupational diseases were not substantial, reform of system of health care and health care insurance is curently being considered.

In addition to the named sources of law Republic of Croatia is a party to a number of international agreements and conventions of International Labour Organization.

2. **How is the system organized? How it is financed?**

The system is organized within the employer, as a preventive system of occupational health and safety, according to the Occupational Health and Safety Act. In case of appearance of the case of occupational disease and/or employment injury the system of social security is applied (first within the health care and health care insurance, eventually within the pension insurance). In case of appearance of the case of occupational disease and/or employment injury additional rights of the employee are secured in form of specific protection of emplyoment rights in the employment relationship, according to the Labour Act.

The system is financed by the employer who finances the contributions towards health care and pension insurance. There also exists a specific contribution towards employment injury and occupational disease paid in by the employer to the respective social security insitution (health care insurance, pension insurance). In particular cases there may be an obligation of compensation of damages of the person causing the occupational disease and/or employment injury.

3. **What is the system's coverage[3]? What are the major exclusions from the system's scope (for example small enterprise, non industrial enterprises, home workers, domestic workers, casual workers)?**

The system of protection from employment injuries and ocupational diseases coveres the workers, and the term includes: (1) persons working for an employer on the basis of an employment contract, including also public services, (employees); (2) persons undergoing professional training with an employer without an employment contract (volunteers); (3) school and college students on apprenticeship with an employer; (4) persons serving prison or disciplinary sentences, ordered to work; and (5) self-employed persons. In particular cases there is also coverage of other persons, including persons present at employer's premises for whatsoever reason (e. g. business associates, government administration bodies' officials, users of services and other persons). The system of compensation for employment injuries and ocupational diseases coveres all the insured persons or if they are specifically included by the statutory norm and therewith insured from the employment injuries and ocupational diseases (and have thus been equalized with the insured persons).

Major exclusions from the coverage of the system of protection from employment injuries and ocupational diseases are focused towards the members of the armed forces and the police and the domestic workers. There are no specific exclusions from the coverage of the system of compensation for employment injuries and ocupational diseases through health care and pension insurance, as long as the

[3] In many countries the coverage does not include all the workers. For example, under ILO Convention No. 121 the following categories of workers may be excluded: (a) persons whose employment is of a casual nature and who are employed otherwise than for the purpose of the employer's trade or business; (b) out-workers; (c) members of the employer's family living in his house, in respect of their work for him; (d) other categories of employees, which shall not exceed in number 10 per cent of all employees other than those excluded under clauses (a) to (c).

persons have the status of the insured person or if they are specifically included by the statutory norm and therewith insured from the employment injuries and ocupational diseases (and have thus been equalized with the insured persons).

4. **What are the contingencies covered by the system?**

Contngencies covered by the system include the employment injuries, occupational diseases, other diseases related to work. Occupational Health and Safety Act has a preventive role, contingencies leading to temporary unabilty to work are covered in Halth Care Insurance Act, Health Care Act and Labour Act, and contingencies leading to permenent disability (or an immanent danger of its appearance) are covered in Pension Insurance Act and Labour Act.

5. **Are commuting accidents covered by the system? If they are, how is a *commuting accident* defined?**

Commuting accidents are covered by the system. They are defined as accidents appearing on a usual route from home to place of work and back and on a route undertaken to take a job that was secured, i. e. the job according to which the person is insured.

6. **What links exist, if any, between the employment injuries and occupational diseases protection/compensation schemes and the general sick pay/sick benefits compensation schemes?**

The employment injuries' and occupational diseases' protection/compensation schemes are organized within the the general sick pay/sick benefits compensation schemes.

7. **Can an employee be terminated because of absence from work due to an employment accident or an occupational disease? In case such is possible, please describe the procedure which must be followed.**

No. However, in case of a fixed-term employment contract it shall be terminated after the term has passed.

II. RESPONSIBILITIES FOR THE EMPLOYER

8. **Has the employer a general obligation of prevention? How it is sanctioned? Can he/she be prosecuted before a criminal jurisdiction?**

There is a general obligation of the employer to organize and implement the preventive actions aiming at insuring the occupational health and safety. In case that the employer does not organize and undertake these actions there exists his a responsibility for violation of the statutory obligation as a misdemeanor, and in certain cases this may also lead to criminal prosecution. Compensation of damages is also related to employers' responsibility.

9. **Which are the employer's obligations related to the protection of the workers' life and health? How are these implemented at the enterprise level and the plant level? What kind of control is made on their implementation?**

Employer is obligated to organize and implement preventive actions aiming at insuring the occupational health and safety. In doing this the employer has to apply various rules of occupational health and safety (general, specific and recognized).

Obligations of the employer in the above sense include: obligations in regulating and executing the measures of occupational health and safety; obligations regarding the specific working conditions; obligations when using the objects for work, machines and appliances and personal protective means and work processes; obligations when using and selecting dangerous work substances for production; obligations when testing the working environment, machines and appliances with increased dangers ; obligations in organization of temporary and joint temporary worksites; obligations

when conducting protection from fire, evacuation and rescue; obligations in assuring first aid and medical treatment; obligations in protection of non-smokers, in prohibition of consumation of alcohol and other addictive substances; obligations regarding documents and evidences; obligations in allowing its representatives to conduct measures of occupational health and safety on his behalf; obligations executing obligations towards the supervisory bodies.

In Republic of Croatia there is no differentiation between implementation of preventive actions aiming at insuring the occupational health and safety at the enterprise level and the plant level. Differentiation of implementation is related to number of workers, but even here only the person responsible for fulfillment of obligations is concerned (employer himself, particular person with the employer, special service with the employer) not the fulfillment itself.

Control is made by the relevant bodies of labour inspection and labour inspectorate and it includes inspection of substantial and procedural fulfillment of norms of respective statutory and substatutory regulation.

10. **Can the employer delegate his/her powers as regards occupation safety and health? To whom? With which effects?**

Employer is responsible for the organization and implementation of occupational health and safety measures irrespective of the fact that he may have employed an occupational safety and health specialist, or established an occupational safety and health service, or engaged a natural person licensed for the field of occupational health and safety, or an institution or company for occupational health and safety. Employer may also designate another person as his authorized representative in charge of occupational health and safety activities.

Employer employing up to 50 workers may carry out the occupational health and safety activities himself, or may put in charge his authorized representative by the employment contract, or may contract these activities from a natural person, an institution or a firm active in the field of occupational health and safety. If an employer or his authorized representative carries out these activities, he must receive the appropriate training for the said activities.

Employer employing more than 50 employees shall be obligated to hire one or more occupational safety and health specialists, depending on the number of employees and the level of risk found by the assessment. The term «occupational safety and health specialist» refers to a person hired by an employer to monitor the application of occupational safety and health measures and to provide professional assistance to the employer, his authorized representatives and workers' representatives for occupational safety and health.

Employer employing more than 250 employees shall be obligated to set up an occupational safety and health service in accordance with the number of employees and the level of risk assessed.

At the request of an employer, licensed institutions and firms registered for activities in the field of occupational safety and health may prepare a risk assessments, train employees to work safely, carry out the inspections of higher-risk machines and equipment and the work environment, and issue certificates about the inspections carried out.

By virtue of an authorization from the competent labour inspection body, legal entities referred to in the preceding paragraph may participate in procedure for issuing building permits and in the work of the commission for technical inspection of constructed work facilities.

At the request of manufacturers or importers these legal entities may carry out the inspection of machines and equipment, personal safety devices and equipment, and issue documents certifying that they have been manufactured in compliance with

international conventions, occupational safety and health regulations or applicable standards.

11. **Are there external bodies which can collaborate with the employer with a view to improving health and safety records at the enterprise or the plant level? If such bodies exist, please, explain their nature and competence.**

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12. **Which are the employer's obligations as regards safety and health of workers of third parties, for example workers placed at his/her disposal by a temporary work agency, or employees of sub-contractors who perform work within the employer's premises?**

Occupational Health and Safety Act and obligations thereout arising are applied to all natural persons or legal entities that employ one or more employees, public services, self-employed persons and legal entities when they engage other persons to work for them,

This includes all the persons working for an employer on the basis of an employment contract, also including public services employees; persons undergoing professional training with an employer without an employment contract (volunteer workers); school and college students on apprenticeship with an employer; persons serving prison or disciplinary sentences, ordered to work; self-employed persons persons present at an employer's premises for whatever reason (e. g. business associates, government administration bodies' officials, users of services and other).

13. **How is the prevention of risks organized when two or several companies operate on the same worksite?**

If two or several employers work at a same, joint, worksite, each of them shall be obligated to implement the occupational health and safety measures in order to protect his employees and organize the work and ensure that work is carried out in such a manner that his employees, in the course of carrying out their work, do not endanger the health and safety of other employers' employees.

For the case that, due to the nature of the process, the work cannot be organized in the manner described above, the employers shall be obligated to take turns carrying out the work, according to a prior agreement.

The way of implementing the occupational health and safety measures at a joint worksite shall be determined by the agreement between the contractor responsible for mutual coordination of work and other contractors. This agreement must contain all basic elements of safety and particularly the description of works, the reference to the safety rules in respect to hazardous or harmful conditions, obligations and powers of responsible persons, etc.

Head construction manager shall be obligated to coordinate with the work managers of other contractors the implementation of occupational health and safety measures. Head construction manager shall also be obligated to keep daily records of employers and employees present at a joint worksite.

III. PARTICULAR PROBLEMS

14. **Are psychic risks taken into account in order to determine the employer's responsibility (for example as regards the prevention of stress at work)?**

Yes. There is specific mention of mental and psychic abilities in the Occupational Health and Safety Act and its protection, and even though there is no specific mention of stress and other psychic risks they mad be derived to from the definitions in this act and other regulation concerning invalidity and disease.

15. **Is the employer required to take measures to guarantee that non smokers can work in a clean air environment?**

Yes. Employer is obligated to take adequate measures in order to protect non-smokers from the effects of tobacco smoke. Smoking during meetings is prohibited. Also, smoking in working premises and areas shall be prohibited, except in those in which the employer has permitted smoking and which must be clearly marked as areas where smoking is permitted.

16. **Does your national law restrict the employment of certain categories of workers in particularly hazardous works (e.g. the employment of minors or pregnant women, or of temporary workers)?**

Yes. In Labour Act there exist specific rules prohibiting employment of minors, women, pregnant women in specific, also hazardous, conditions.

17. **Can the employer be made liable for health damages suffered by his/her workers because of the use of products or substances whose harmfulness was not demonstrated at the time of their use, or whose harmful effects can be appreciated only on the long term (for example, the use of asbestos)?**

Yes. There exists employers' liability for every damage caused to worker at work and related to work, therefore also the health damages.

18. **Can the employer require from job applicants that they undergo genetic tests or HIV/AIDS tests in order to determine the worker's aptitude to be exposed to risks for which they would be particularly vulnerable?**

Employer may request the establishment of health, bodily and mental conditions, and psycho-physiological and psychological capabilities of a worker. Whether specific tests should be a part of such establishment pertains to particular situations and the rules of medical profession.

19. **Can the worker withdraw from a situation of work in respect to which he/she has reasonable grounds to think it presents a danger for his/her life or health?**

Yes, worker may decline to work in case of immanent threat to his health and work.

IV. COMPENSATION OF EMPLOYMENT INJURIES AND DISEASES

20. **Which are the benefits payables under your national system of employment injuries compensation? How are they managed? Can they be refused, and if they can, in which cases?**

Apart from right to claim damages from employer, worker is covered by specific insurance from employment injuries and professional diseases. Elements of this insurance exist within health care insurance and pension and disability insurance

scheme. Health care insurance is applied when the injury and disease is of a shorther duration while the establishement of (general or professional) invalidity in pension and disability insurance related to a long-term nature of injury or disease.

Benefits include coverage of cost of treatment and salary during the period of injury or disease (health care insurance) and invalidity pension and bodily disability compensation (pension and disability insurance)

General rule is that benefits may be denied in case that the worker has caused the injury or disease himself.

21. **Is compensation limited in any form or the worker can be compensated in full for the damage he or she has suffered? Can the employee profit from an option between asking for limited compensation within the employment injuries system or for full compensation in accordance with civil law/common law?**

Compensation for damages worker has suffered is related to the rules for compensation of damages in civil law. It is unrelated to the employment injuries system appearing in health care and pension and disability insurance schemes.

22. **Do you have any experience with regard to the establishment of special funds to compensate for damages to life or health arising out of the use of products or substances whose harmfulness was not demonstrated at the time of their use, or whose harmful effects can be appreciated only in the long term (for example asbestos)?**

No.

V. THE ROLE OF THE WORKERS' REPRESENTATIVES AS REGARDS PROTECTION OF HEALTH.

23. **How is the workers' participation organized in order to improve safety and health at work and to organize the prevention of accidents and occupational diseases at the enterprise level? Do you have ad-hoc committees established with a view to taking care of safety and health issues at the enterprise level or the plant level? How are they made up? What are their responsibilities and faculties? What rights and guarantees are granted to workers who are members of these committees? Do they receive training so as to better discharging their tasks? Can they be assisted by external experts?**

Workers working with an employer employing 20 or more workers shall elect or appoint from among themselves an employees' representative for occupational health and safety. The election and appointment of representatives, as well as the number of representatives, shall be in compliance with those provisions of the Labour Act that regulate the issues concerning the election of works councils, ensuring that all parts of the work process are represented.

Regardless of the number of workers, a representative must be chosen wherever the working conditions so require (higher risks for health and safety of workers, work at detached locations, etc).

Workers' representative shall be chosen for the duration of the collective agreement.

If several representatives have been chosen according to the criteria established with an employer, they shall appoint a coordinator from among themselves.

The same person may, at the same time, be workers' representative and a trade union representative for occupational safety and health, if all workers of an employer are members of the same trade union.

The task of this representative shall be to act in the interest of workers in the field of occupational health and safety and to monitor the implementation of regulations and ordained occupational health and safety measures in the work environment he has been chosen to represent.

This representative shall be obligated to inform the works council about his work at least once every three months. Employer shall be obligated to ensure the conditions for unhindered work of a representative, provide all the necessary information and enable access to all the regulations and documents related to occupational health and safety, and, during the term of the representative, must not transfer him to another position or another employer, terminate his employment, reduce his wages or discriminate against him in any other way, and initiate the proceedings for damages without the consent of the works council, if the representative has acted within the purview of his authority.

The conditions for the unhindered work of a representative shall be defined in detail by the collective agreement, particularly with respect to the part of the working hours the representative is entitled to use for his activities, the right to be compensated, the right to be absent from work for training purposes (courses, seminars, meeting, etc.), the right to have access to all positions etc.

Furtheron, occupational health and safety committee must be established as an advisory body to the employer, if the employer has 50 or more employees. This committee shall comprise the employer or his authorized representative, the head of the occupational health and safety service or the occupational health and safety specialist, the industrial medicine specialist, and the workers' representatives or their coordinators.

VI. OTHER QUESTIONS

24. **Please present any other question which in the law or practice of your country relates to this topic and which has not been addressed in the questionnaire above.**

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