XVIII WORLD CONGRESS OF LABOUR AND SECURITY LAW

Paris, September 5th to 8th 2006

TOPIC 3
OCCUPATION RISKS :
SOCIAL PROTECTION AND EMPLOYERS' LIABILITY

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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?

1.1. The Programme Declaration of the Government of the Czech Republic of June 2002 comprises the government's commitment to prepare "a draft version of a new continuously financed public accident insurance system, aimed at considerably strong motivation of employers and employees to encourage them for safe work conditions". Due to the fact that a new legal regulation of the accident insurance has still been in the state of legislative progression, we present here only the description of the existing legal regulation in general, as it is codified partly in the Labour Code (compensation for damages) and partly in the Pension Insurance Act (concept of invalidity and related claims).

The new accident insurance shall represent a social insurance enforced by law, which will provide the harmed person with the protection, since it will include the payment of compensation for damages and benefits, post-accident rehabilitation as well as prevention of damages in the field of safety and health protection at work. Therefore, the accident insurance, in the sense of the recommended legal modifications, shall fulfil also further social

and preventive protection functions that do not explicitly result from the institute of the employers' liability for damages but which shall be aimed at renewed work engagement and social association of the harmed person (rehabilitation) along with contribution to avoidance of damages (prevention) in the field of safety and health protection at work. The payments by employers to the benefit of the insurance system will support the implementation of these functions.

The process of development of the accident insurance as defined in the described manner started in the today's territory of the Czech Republic in 1887 (according to the Act No. 1/1888 E.L. on accident insurance of workers, which was declared after many adjustments once more in the complete wording in the form of an Order of the Protectorate Minister of Labour No. 195/1944 E.L.) and was completed in 1948 when the first act was abolished and replaced by the Act No. 99/1948 CoL on national insurance. This act, dealing with compensations for employment injuries and occupational diseases on the basis of social insurance, lasted up to 1956. Soon after the Act No. 581/1956 CoL on compensation for damages from industrial accidents, compensation for health care expenses, health care insurance and old-age pension insurance was adopted, which was later on replaced by the Act No. 150/1961 CoL on compensations for accident damages and occupational diseases. The modifications in the field of compensations for employment injuries and occupational diseases reflected the system of safety and health protection at work of those times, aimed at creation of preconditions for pre-accident prevention and preservation of healthy and hygienic unexceptionable environment.

In that time also the Act No. 65/1961 CoL on safety and health protection at work was adopted, which regulated the related field in detail. Ten years earlier, in a significantly concise manner, the Act No. 67/1951 CoL on safety at work summarized the same field. This act incorporated also the work inspection, which that time the trade organization was entrusted with. Those regulations, dealing with matters regulated by this act, were abolished - it was the case namely concerning the Sec. 1157 of the General civil code in the wording of the Emperor's Order No. 69/1916 E.L. (according to which the employer was obliged to "on own account be concerned about that life and health of his employees were protected"), furthermore relating to the provisions of the Sec. 170 through 172 of the General mining Act No. 146/1854 E. L., in the provision of the Sec. 74 through 74d of the Trade order No. 227/1859 E. L., regarding the Act No. 117/1883 E. L. on establishment of trade supervision, and with regard to other regulations.

In the past the field of safety and health protection at work was regulated also using a number of legislative standards of lower power. For our purpose it is relevant to mention in the first place the Government order No.53/1931 CoL on protection of health and life of workers in the process of civil works completed by trade performers, the Government order

No. 41/1938 CoL by means of which general prescriptions for safety and health protection at work of assistant workers were issued (both regulations were abolished by the Government order No. 47/1982 CoL), and furthermore, as an example, the Decree of the Central mining office F. No. 5000/1958 on safety regulations during survey, prospecting and mining works on ore and non-ore borne resources (No. 50/1959 O.B.), which later on was replaced by Safety regulations of the Czech mining office No. 1/1971.

Next legal prescription, which later on replaced the Act No. 150/1961 CoL, was the Act No. 30/1965 CoL on compensation for employment injuries and occupational diseases. In the same year this legislation was also incorporated in the Labour Code (Act No. 65/1965 CoL) that entered into force by 1 January 1966.

The principle of prevention, i.e. the obligation to prevent damages, represents the general principle by means of which the legal regulation of liability for damage within the Labour Code is governed. Early in the introduction of the chapter eight part two of the Labour Code (Sec. 170) it is stated that employers are obliged to ensure such working conditions for employees so that those can properly fulfil their working obligations without health endangerment.

On the principle of prevention also the whole chapter five of the same code is based, dealing with safety and health protection at work. According to the provisions of the Sec. 132 of the Labour Code the employer, in the first place, is obliged to ensure the safety and health protection at work with respect to potential risks relevant to performance of work. The employer is obliged to find out causes and sources of risks and adopt measures for their elimination. For this reason the employer is obliged to regularly supervise the level of safety and health protection at work, namely the state of technical prevention and the rank of risk factors relevant to work conditions.

By prevention of risks (Sec. 132a Para. 2 of the Labour Code) all measures resulting from legal and other prescriptions aimed at safety and health protection at work incl. employers' measures adopted are meant under condition that their objective is to prevent risks, exclude them or minimize impacts of unavoidable risks.

The employer has to collect data on employees with approved occupational diseases that originated in the working place of the same employer, and is obliged to remove working conditions causing the risk of origination or hazard of development of occupational diseases (Sec. 133c Para.6 of the Labour Code).

In case that in working places of the employer risk factors exist it is the obligation of the employer to determine, by means of measurements and supervision of values thereof, the situation and make sure that the risks are excluded or minimized to the smallest amount of reasonably achievable quantity. Among risk factors especially factors of physical, chemical, biological and adverse microclimate conditions can be named. In case that the occurrence of

biological agents and the progress over the highest acceptable limits for risk factors cannot be avoided the employer is obliged to reduce their impacts using technical, technological and other measures.

Trade unions acquire the right to take part in investigations of reasons for industrial accidents and occupational diseases or carry out investigations themselves, eventually. The employer is obliged to ensure relevant training in the field of safety and health protection at work for organs and representatives of the trade unions in order to support proper accomplishment of their functions as well as to make accessible documentation on reports and data collection concerning work accidents and approved occupational diseases for them.

It is the duty of the body of plant preventive care to ensure the prevention including protection of health of employees against occupational diseases, which is assured in cooperation with the employer (also defined in provisions of the Sec. 18a of the Act No. 20/1966 CoL on the care for public health, the contents of which is similar to the Sec. 35 sentence first of the Act No. 48/1997 CoL on public health insurance). The Czech Republic is bound by the Treaty of the International labour organization on plant health services No. 161 that was rectified and issued by the Ordinance of the Minister of foreign affairs No. 145/1988 CoL.

1.2 The fact that an employee suffered an injury when fulfilling his/her working tasks or in direct connection with them serves for the precondition of the employer's liability for damages. Only an injury of this kind represents an employment injury in the sense of the Labour Code. The Labour Code does not define the institution of injury during which health damage or death may be caused; a definition describing the process of injury caused by accident can only be found in the judiciary. In the sense of decisions of Czech courts it is supposed that in such a case a sudden and intense impact of external influence on the physical or psychical integrity of the employee or natural person occurred.

The principle of employer's liability for an employment injury, in case that this happened when the employee had been fulfilling working tasks or in direct connection with them, is aimed at prevention of risk transfer on the employee in connection with the performance of his/her work. This principle, taken over from earlier legal prescriptions, shall motivate the employer to arrange for more effective prevention of injuries and especially to pay higher attention to training of employees for the sake of safe work. For the potential case of employment injury the employer is ordered to provide evidence that such case was out of his liability; the cited act explicitly defines cases when and in what extend the employer can be relieved from this liability.

1.3 Occupational diseases are sicknesses cited in legal prescriptions for social insurance provided they occurred under conditions mentioned there. Such prescriptions can be found in the Government order No. 290/1995 Col containing the list of occupational diseases. These

are illnesses caused by harmful influence of chemical, physical, biological or other harmful impacts provided they originated under conditions stated in the list of occupational diseases, which makes an attachment of the cited Government order. An occupational disease also is considered an acute intoxication caused by a harmful influence of chemical agents.

In the same manner as an approved occupational disease also an occupational disease with origination before the time when it was incorporated in the list of diseases can be accepted provided it occurred not earlier then three years prior to its incorporation in the list.

Recognition and approval of occupational diseases happen in especially qualified medical institutions (listed in an attachment of the Ordinance of the Ministry of health No. 342/1997 CoL, which prescribes procedures for approval of occupational diseases and incorporates the list of medical institutions performing such approval acts), namely in medical institutions having departments or clinics specialized in occupational diseases or in work medicine.

1.4 The Labour Code ensures for employees suffering employment injury or approved occupational disease that they obtain compensation for the damage caused. The definition of employer's liability for damage suffered by the employee as a result of an industrial accident or occupational disease is incorporated in provisions of the Sec. 190 etc of the Labour Code and in the Sec. 25 etc of the Government order No. 108/1994 CoL that introduces the Labour Code, in the wording of later legislation.

1.5 in the former Czechoslovakia the insurance of industrial accidents was abolished in the middle of 50th of the last century and the claims of employees were transferred in the concept of compensation for damage. Damage represents the difference between the average earnings and the sickness benefit or eventual new earnings (achieved after suffered injury) along with adding of full or partial invalidity pension, in the end. The resulting sums did not represent huge expenses for former state own industry but today's private enterprises may be burden with high expenses. Therefore, the new version of the Labour Code introduced in 1992 the obligatory insurance for liability by law, which only apparently evokes the obligatory insurance for liability of car owners by law. The Act. No. 37/1993 CoL provided a new definition of the Sec. No. 205d of the Labour Code on obligatory and listed insurance institutions, which are acting as responsible companies for the obligatory insurance for liability by law, namely those listed in the Para. 1: "Česká pojišťovna, a. s." and "Kooperativa, pojišťovna, a. s.". Details are given in the Ordinance of the Ministry of finance No. 125/1993 CoL in the wording of later legislation (for details concerning financing see sub 2).

In relation with Pension insurance act (important for claims of full or partial disability pension, widow's/widower's pension or survivors' pension, eventually) as an employment injury such accident damage is taken in account if relevant labour law or service legislation identify it as an industrial accident or injury during service. Also some other listed employment injuries are

recognized (if occurred in the process of preparation of defence of the Czech Republic, during service in armed forces etc).

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

2.1 For an employment injury that employer is liable with whom, in the time of injury, the employee had a labour contract, regardless of the fact where the injury happened (in the home land or abroad). For an occupational disease that employer is liable with whom the employee had worked before the disease was recognized under conditions causing such occupational disease he/she has been suffering from.

2.2 According to Sec. 193 of the Labour Code the claim of compensation results for an employee suffering an injury or recognized occupational disease in the extend in that his/her employer is liable for resulting damage. It concerns following compensations:

a) Compensation for lost earnings, namely in the time of incapacity to work until the end thereof;
b) Indemnification of pain and impairment of social assertion;
c) Compensation for reasonable expenses in relation with medical treatment;
d) Compensation for material damage.

According to Sec. 194 of the Labour Code the compensation for lost earnings during employee's incapacity to work equals to a difference between his/her average or potential earnings gained before damage caused by industrial accident or occupational disease and the full sickness benefit. In case that the employee returns from the rank of incapacity to work and cannot perform his/her original work or such work does not exist any more or the workplace was abolished, all that with the result that he/she cannot earn so much as it was the case earlier before the employment injury or occupational disease, then according to Sec. 195 the employee is provided with compensation for lost earnings in such an amount so that this in sum, with the actual earnings after employment injury or occupational disease including potential full/partial invalidity pension granted for the same reason, reached an average of his/her earnings before the damage caused by this employment injury or occupational disease. In such a case no attention is paid to an increase of the pension due to disability, to a decrease of the pension according to prescriptions of social protection (insurance) or to earnings gained due to highly intensive working engagement. The compensation for lost earnings after the end of the incapacity to work is predetermined for an employee till the end of calendar month in which he/she reaches 65 years of age, at the latest.

As a rule, the last mentioned compensation (after 1 March 2004 also sustenance benefits of survivors) once a year is subject to valorisation with regard to changes occurred in the

development of level of earnings. The government by means of an order, based on the power by law, assures modifications of this kind.

Indemnification of pain and impairment of social assertion usually is paid once, based on a system of point evaluation and is free of tax. Indemnification of pain usually is established in case of pain caused by damage of health, medical treatment or rehabilitation of impacts thereof, all which is based on principles and taxes defined in the attachment of the Ordinance No. 440/2001 CoL on indemnification of pain and impairment of social assertion, in the wording of later prescriptions. In case that damage of health causes unfavourable impacts on life functions of the harmed person or on satisfaction of his/her life and social needs, also the impairment of social assertion is compensated.

The level of indemnification results from the basic number of points determined by the surgeon (the value of one point equals to 120 CZK). In case of complicated or highly complicated medical treatment the point evaluation correspondingly increases up to double level of the point sum, eventually. According to defined criteria, e.g. in case of extremely hard consequences, the actual point evaluation of the damage of health may increase by 50 % of the point sum as maximum. In unusual exceptional cases of special concern the court may increase the level of indemnification, suggested in harmony with cited ordinance, in an equivalent way.

In case of material damage caused in connection with industrial accident (e.g. damaged or lost clothing, broken wrist watch, etc) the indemnification is settled similar to compensations for other material damages.

2.3 If the employee died in consequence of industrial accident or occupational disease, the survivors obtain amounts as follows:

- Reasonably used expenses in connection with therapy of the employee;
- Appropriate expenses used in connection with funeral;
- Sustenance expenses of survivors;
- Unrepeated indemnification of survivors;
- Material damage.

The institution of reasonably used expenses in connection with therapy means costs of medicinal substances, medical treatment procedures, rehabilitation etc.

In consequence of employee’s death his/her claim for compensation for pain and impairment of social assertion expire.

Expenses in connection with therapy of the employee and expenses used in connection with funeral are reimbursed to that person who has paid the amounts. From the expenses used in connection with funeral the funeral contribution provided according to the act on state social support (Act No. 117/1995 CoL in valid wording) is deducted. Indemnification for erection of a memorial or instalment of a memory plate is provided up to 10,000 CZK as maximum.

Sustenance expenses of survivors are indemnified to those survivors whom the dead such costs covered or was obliged to cover provided those has not been covered by benefits within the pension insurance for the same reasons.

Unrepeated indemnification is granted to the husband/wife and the child/children who have the right to obtain orphan's pension, and in legitimate cases also to parents of the dead employee. Since the day of enforcement by 1 January 2001 such indemnification amounts to: for a child - 80,000 CZK, for husband/wife - 50,000 CZK and for parents – 50,000 CZK, eventually. Higher amounts can be arranged in the frame of a collective agreement.

2.4 Due to the fact that according to Sec. 205d of the Labour Code the employer is ordered to conclude insurance of liability for damage resulting from potential industrial accident the majority of indemnifications for damage of employees is covered by one of the two insurance companies by law (Česká pojišťovna, a. s. or Kooperativa, pojišťovna, a. s.).

Therefore, the employer has the right that instead of him/her the insurance company covered the damage caused his/her employee during industrial accident or due to occupational disease in the extend in which the employer is liable according to the Labour Code. The insurance company pays the insurance benefits from the amount of insurance fees paid. In case that an insurance company suffered any material detriment caused in the process of ensuring the indemnifications it has the right to require for compensation from the state budget; on the other hand any financial surplus gained in this process the company must transfer to the benefit of the state budget.

2.5 The obligation to pay insurance fee results for the employer in the case that he/she employs at least one employee. The insurance fee is calculated from a base defined in harmony with the determination procedure of calculation base for insurance fee in favour of social insurance and contribution for the sake of state employment policy. The base for insurance fee calculation is composed as the sum of all individual calculation bases of all employees in that calendar quarter in which the employer had the relevant employees on the pay roll. The tariff used in the calculation can be found in the Ordinance No. 125/1993 CoL, in the valid wording, with respect to relevant category that is derived from the prevailing economic activity of the employer's subject(s) of entrepreneur activity.

2.6 In order to fulfil their tasks and cover their needs the employers have the right to conclude with natural persons contracts for works done besides their working contracts (agreements on completion of a working task or agreements on working activity). If it is stated in the contract, such working activities can be assured with help of family members, eventually. Such employer is hold responsible for damage suffered by an employee according this kind of working contract and in connection thereof in the same manner, as it is the case of employees under working contracts otherwise; but in case of family members of that employee the employer is eligible according to the Civil Code.

2.7 According to Sec. 132 Para. 2 of the Labour Code, the obligation of the employer to assure safety and health protection at work relates to all persons, which with employer's permission occupy his/her working places. Nothing prevents the employer from contracting insurance for the case of health damage or death of such persons i.e. to conclude contractual insurance according to the Civil Code and the Act. No. 363/1999 CoL on insurance sector.

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

3.1 There are also some exceptions from the general system. In the frame of the described field it concerns safety and health protection at service engagement, and indemnification of service accidents and occupational diseases. These exceptions are stated in so called service acts regulating service engagement (e.g. Act No. 218/2002 CoL on service of state employees in administration offices and rewards of such employees and other employees in administration offices /service act/, Act No. 221/1999 CoL on professional soldiers, Act No. 238/2000 CoL on Fire Rescue Corps of the Czech Republic, Act No. 361/2003 CoL on service engagement of members of armed security corpses, etc). In the Labour Code a new provision 5a was inserted, which will enter into force by 1 January 2006, according that this code does not concern service engagement of armed security corpses.

As an example: a soldier or a member of an armed security corpse in case that he/she was approved temporally incapable to service for illness or (not service related) injury obtains his/her normal service income over 30 days as maximum and only then sickness benefit. But in case of incapacity to service for injury or other accident damage caused to a soldier or member of an armed security corpse in the course of service or in direct connection with performance of the service (service accident) or for occupational disease such claim for service income lasts for a time of 12 months since the origination of the incapacity to service as maximum.

Under armed security corpses the Police of the Czech Republic, Fire Rescue Corps of the Czech Republic, Customs Administration, Penology Administration, Security Intelligence Service and Administration of International Relations and Information are meant.

3.2 Aside of employees, according to Sec. 206 of Labour Code among claimants for indemnification of damage caused by industrial accident count also students of primary and secondary schools, students of universities, natural persons with health handicap without work engagement due to involvement in the process of preparation for employment according special regulations along with members of voluntary fire rescue corpses and mine rescue corpses who suffered injury during engagement in these corpses, natural persons

acting on call of state administration offices or community administration offices or when helping on order of intervention leader during works in case of natural accident or replacing impacts thereof, further also natural persons taking part in voluntary acts organized by community to fulfil important tasks in public interest while involved in an accident, members of cooperatives who got involved in an accident when performing their function or acting for the sake of the cooperative, health officers of the Czech Red Cross, donors of blood during extraction, members of Mountain rescue corpses or persons helping on call of them in the course of rescue operation, natural persons performing personal service in the frame of social care, and natural persons empowered by the employer to carry out certain function or activity in case that they got involved in an industrial accident during performing their working tasks in connection with that function or activity also count among claimants for indemnification of damage caused similarly.

The consequence of any damage from such an accident of enlisted natural persons takes the liable person for whom those persons carried out their working engagement or were otherwise acting.

1. What are the contingencies covered by the system?

4.1 Protection of employees is governed by the Labour Code. In case that during performance of a working task or in connection with it a damage of health or death of the employee as a consequence of an employment injury or occupational disease happened, the employer is liable for the damage caused.

4.2 Protection of employees is regulated by legislation in the field of social insurance. If the employee is approved temporally incapable to work due to employment injury or occupational disease, he/she is entitled to obtain sickness insurance benefits. In case that the employee is approved as fully or partially invalid in consequence of employment injury or occupational disease, he/she shall obtain invalidity pension benefits. If the employment injury or occupational disease caused death of the employee then his/her husband/wife and children obtain survivor's pension and the person having arranged for the funeral obtains indemnification form the state social insurance. In case of health damage the indemnification happens form the sickness insurance.

Accordingly, the main social events are as follows:

- Damage to health;
- Death;
- Incapacity to work;
- Partial invalidity;
- Full invalidity.

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

No. Damage to health during travel to work from home and back is not regarded as employment injury. Therefore, the employer is not liable for consequence of such an accident.

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

Links between legal regulation of liability for employment injuries and occupational diseases according to labour law and the system of sickness insurance are as follows:

The employee who suffered employment injury or occupational disease with the consequence that he/she is incapable to work is entitled to obtain financial benefits from the sickness insurance. The height of it does not depend on the reasons of the incapacity to work so that also in case of incapacity to work the insured obtains 25 % of the defined daily calculation base during the first through third days and 69 % of the defined daily calculation base starting with the 4th day.

The supporting period in case of sickness insurance generally last one 1 year (since the start of the incapacity to work). However it is reduced by the duration of any preceding period of incapacity to work within one year before the origination of the sickness. Such extend of the mentioned reduction will not come true especially in the case that the preceding or newly occurred incapacity to work was caused by an employment injury or occupational disease. In such a case more favourable alternative comes first.

The height of sickness benefit is a significant factor from the point of view of the Labour Code with respect to calculation of compensations in the frame of employer's liability for employment injuries and occupational diseases. Employee who suffered employment injury or occupational disease is entitled to obtain compensation for lost of earnings in the period of incapacity to work. This compensation represents a difference between the average wage earnings of the employee before origination of the damage and the full sickness benefit.

4. **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.**

Employer can terminate his/her employee's work contract due to reasons, among others, that the employee's long-term health conditions no more enable him to perform existing work in consequence of occupational disease or due to the endangerment by the same disease. In

the time concerned the employer is burden with obligation to help the employee in finding new job. In case that the employee cannot perform existing work as a consequence of an endangerment by an occupational disease the employer is obliged to find a new job for such an employee.

The work contract terminates by the end of termination period, which makes 2 months. If the employee is not allowed to perform existing work due to endangerment by an occupational disease it is possible to extend the termination period. This period will end not earlier then in the moment when the employer finds new suitable job, provided another agreement with the employee has not been concluded.

The above-mentioned does not concern so called “side work contracts”. It concerns situations when the employee, during main work engagement (for a given working time) performs also work according to another work contract using working time shorter then the given working time (so called working engagement besides the main one). In such a case higher protection of employee is not applied and the termination period makes only 15 days.

XX. RESPONSIBILITIES FOR THE EMPLOYER

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

Obligations in the field of risk prevention are based primarily on the Labour Code. The employer is obliged to create working conditions for safe, unexceptionable working conditions containing no harm to health by means of appropriate organization of safety and protection of health at work along with adopting measures for risk prevention. Further provisions can be found in the act on protection of public health, in the act on public sickness insurance and related acts and prescription for performance thereof. It is obligation of the employer to let the tasks in the field of prevention performed in the first place by professionally qualified employees.

In case of violation of provisions in the field of safety and protection of health at work the employer can be sanctioned primarily by means of penalty and surcharge to the insurance fee, eventually.

Liability prosecution in the Czech Republic is based on investigation of liability for caused illegal acts of natural persons. Therefore, in the field discussed, criminal causes would take place if the acting employee - natural person - namely an empowered leading employee or another accountable employee empowered by the employer fulfilled the character of a criminal act (especially concerning a harm to health).

6. 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?

9.1 Main employer's obligations

9.1.1 Search for risks, finding out their reasons and sources along with adopting measures for their removal represent the main obligations of employees. In case that it is not possible to remove the risks the employer is obliged to evaluate them and adopt measures for reduction of impacts thereof so that endangerment of safety and health of employees were minimized.

9.1.2 In cases defined by law the employer is obliged to provide employees with personal protection means, washing and disinfection agents as well as other means of similar character. The employer is ordered to place safety sings and arrange for safety signals.

9.1.3 The employer is obliged to assign work, which is in harmony with employees' abilities and health conditions. Activities, which represent higher endangerment of health and life, can the employer order only to employees with special health and professional abilities. The same applies to operators of technologic equipment marked with higher endangerment of health and life.

The employer is obliged to arrange works in the 2nd category and ask the regional hygienic station to arrange the respective work in the 3rd or 4th category (Rem.: with regard to the intensity of occurrence of factors, which may endanger the health of employees, and the rate of risk connected with the performance of a work task, works are arranged in four categories; not arranged works count among first category). The employer is obliged to inform employees about arrangement of works in respective categories. The employer is obliged to administer evidence of risky works.

9.1.4 It is employer's obligation to ask for initial examination by surgeon, preventive periodical and extraordinary examinations or further obligatory examination in cases defined by law prescriptions, eventually.

The employer is obliged to assure plant health care and inform the employees about it.

9.1.5 The employer is obliged to arrange for training on legal prescriptions in the field of safety and health protection, regularly examine knowledge of it and supervise fulfilment of these prescriptions.

9.1.6 As a consequence of employer's insurance for damage from employment injuries or occupational diseases ordered by law he/she is obliged to pay insurance fee to relevant insurance company, i.e. to Kooperativa, a. s. or Ceska pojistovna, a. s., and fulfil obligation of information transfer towards one of the two, along with further obligations.

9.1.7. If an employment injury happened the employer has to perform a record in the Book of injuries. This obligation of evidence applies regardless of the fact if incapacity to work came

true or not. Should in consequence of employment injury an approved inability to work in duration of more than 3 calendar days or death of employee occur, then the employer is obliged to elaborate the record about the employment accident, transfer it to defined offices and manage relevant documentation. He/she also is obliged to adopt measures against reappearance of such employment accidents.

The employer manages evidence on his/her employees by who occupational disease was approved and adopts measures to remove conditions that initiated endangerment by occupational diseases.

9.2. Managing mechanisms

9.2.1 The supervision of fulfilment of prescriptions valid for the field of safety and health protection has to be done by enterprise trade unions' organs. In case that trade unions do not exist at the employer's premises but the employer employs more than 10 employees, it is possible to elect a representative for safety and health protection supervision.

9.2.2 State organs supervise fulfilment of prescriptions valid for the field discussed also, in the first place it is the State office of work inspection, then district work inspection offices and in addition the Regional hygienic stations. Also non-government subjects are active in this field, namely the insurance companies.

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

The tasks in the field of risk prevention assure the employer's professionally capable employees. In case that such employees do not exist and the employer himself is not qualified in the field, then these activities have to be performed by external qualified persons.

8. **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. Powers of the State.**

11.1 Collaboration of the employer with other bodies acting in the field of safety and health protection

The employer collaborates with trade unions' organs and representatives designated for the field of safety and health protection, eventually. Further he/she has the right to ask the State office of work inspection and the district work inspection offices for cooperation. According to the act on work inspection the above-mentioned bodies are obliged to provide employers with basic information and advisory with respect to protection of working relations and working conditions incl. safety and health protection – all that free of charge.

11.2 Performance of authority of the state bodies and non-government subjects towards employers, namely:

11.2.1 The State office of work inspection and the district work inspection offices supervise fulfilment of legal prescriptions defining the safety and health protection, operational safety of industrial equipment with higher level of endangerment of health and life as well as safety of specified technologic equipment.

For example, in the frame of supervision activities, the district work inspection offices set measures for elimination of found failures and define terms of the implementation, they have the right to take part in investigation of employment injuries in the place of occurrence of an industrial accident, decide on violations and other false acts of administration concerning legal prescriptions in the field of safety and health protection. These bodies are also empowered to declare prohibition of use of an object, workplaces, production and working means etc. in any case it the above-mentioned represented a direct endangerment of employees' safety.

11.2.2 The district hygienic stations for example decide on arrangement of risky works in relevant categories (provided the decision is not assured by the Ministry of health), order preventive examination by surgeons after termination of risky works, perform the state health supervision on fulfilment of employers' obligations in the field of public health protection incl. health protection at work supervision (completing of obligations with respect of work categorization, fulfilment of obligation to assure plant preventive health care etc.), decide on violations and other false acts of administration etc.

11.2.3 The insurance companies are empowered to assess surcharge to the insurance fee paid by employers, in premises of which in the past calendar year repeatedly employment injuries or occupational diseases from the same reasons came true and therefore, as a consequence, the expenses for health care increased.

The insurance companies are empowered to claim financial damage indemnification caused by compensation of health care. The above-mentioned applies, among others, also in case that employment injuries or other damage to health happened due to illegal acts caused on the side of the employer.

11.2.4 The Ministry of health, for example, bounds the employers in the field of protection of public health by general obligatory legal acts (ordinances), on suggestion of the district hygienic stations it decides on arrangement of works in relevant categories, decides on corrective suggestions of employers against decisions of district hygienic stations and collaborates with social partners (i.e. representatives of employers and employees) in the field of protection of public health.

11.2.5 The Ministry of labour and social affairs, for example, bounds the employers in the field of safety and protection of health at work by general obligatory legal acts (ordinances), manages and assures the operation of the information system on employment injuries and

the information system on risks at work performance. These information systems contain, among others, data on employers in the premises of which employment injuries happened.

11.2.6 The company Kooperativa, a. s. (and Ceska pojistovna, a. s., eventually) has the right to claim compensation for paid out benefits, in the extend up to 100 %, against an employer in case that the employment injury was caused by especially hard violation of prescriptions on safety and protection of health at work on the side of this employer. The same is due with respect to occupational diseases (Rem.: the above mentioned relates to employer's insurance by law for cases of employment injuries and occupational diseases).

The Kooperativa, a. s. (and Ceska pojistovna, a .s., eventually) also applies surcharges to insurance fees in case of delay in insurance payments and further sanction payments as result of violation of obligations on the side of the employer.

9. 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?

12.1 The general modifications in the Labour Code define the obligation of the employer to assure safety and protection of health at work for all persons, which with his/her approval can be found in employer's workplaces. Further the code orders obligations for the case that in the same workplace employees of two and more employers perform work tasks. Such employers are then obliged to inform each other on risks and cooperate in assuring the safety and protection of health at work.

12.2 In case that the employer makes use of work agency and the agency temporally assigns its employee to another entrepreneur (in the following "client"), then the safety and protection of health at work has to be assured by the client. The liability for potential damage caused to the employee by employment injury or occupational disease is bound with the work agency. In case that the work agency compensated the employee for damage, it has the right to claim for a compensation for such damage from the client, if not agreed otherwise.

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

All employers are obliged to assure safe performance of work, inform each other on risks in the process of assurance of safety and health protection at work and cooperate (see also point 12).

Particular problems

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

It results from the Sec. 35 Para. 1a of the Labour Code that one of the basic obligations of the employer after conclusion of a work contract is to create suitable conditions for performance of work tasks, which motivate employers also to develop preventive measures connected with prevention of stress situations in workplaces.

In cases like that it is important to distinguish between psychic risks resulting from the type of performed work and potential stress, which may occur by employees in connection with behaviour of other employees and actions of persons empowered by the employer, and activities of the employers as natural persons themselves.

14.1 It is not allowed, without legal reasons, that the behaviour of participants of relations in the field of labour legislation governing execution of rights and fulfilment of obligations resulting thereof infringed upon rights and interests of participants of such relations or violated good manners (Sec. 7 Para. 2 of the Labour Code).

For the phenomenon of violation of good manners in the labour legislation also so-called mobbing may be the name. This label is given to dealings, whether they concern other employees, leading personnel or employers as natural persons, which mean that an employee has been systematically hunted or suffering from chicanery. Such an employee, under relations of this kind, often himself terminates his work contract. This employee can appeal against such acts at court. He/she can request that the employer with him alone or with employees' representatives on his/her request negotiates his/her complaint about violation of rights and obligations resulting from the relations resulting form the work contract (Sec. 25c Para. 7 of the Labour Code). The employer, in case of refusal to negotiate the complaint, can be sanctioned within administrative procedure up to the height of 400,000 CZK (Sec. 11 and 24 of the Act No. 251/2005 CoL on work inspection).

14.2 The labour legislation defines for the employer obligations for the case that in his/her working places such risk factors exist. Government order No. 178/2001 CoL, by which the conditions for protection of health at work are defined in the wording of further regulations, in Sec. 10 Para. 1 sets forth factors of psychic burden in connection of performance of work. The employer is obliged to follow and control risk factors and assure that at least their impacts on employees were reduced to the lowest reasonable level using, for example, modification of work conditions, change in duration of work performance, etc. In case that, in spite of adopting above-mentioned measures (or due to absence thereof), damage to health of an employee occurs, provisions governing employer's liability for damage come in effect. Should the employer not realize relevant measures, he/she may be sanctioned in

administrative procedure up to the height of 2,000,000 CZK (Sec. 17 Para. 1e), Para. 2d), and also Sec. 30 Para. 1e), Para. 2d) of the Act No. 251/2005 CoL on work inspection).

With respect to a broad concept of objective nature of employer's liability for damage in certain cases the employer could be liable for damage caused to an employee even in connection with psychic burden in the course of performance of work or in direct connection thereof. As an example serves the employer's liability for damage caused by employment injury and occupational disease. The judiciary registers cases when also an myocardium infarct, in consequence of notwithstanding psychic and physical burden of an employee, was approved to be an employment injury caused in connection of performance of work based on regular work contract. In this case the employer was found liable for damage in consequence of an employment injury caused, among others, by the extraordinary psychic onus.

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

The existing legal provisions do not prescribe general obligation of employers to adopt measures for work of non-smokers in an environment with clean air. The provisions of labour legislation protect the non-smokers in another way.

The employer only is responsible to assure that prohibition of smoking in the workplaces was kept as it is defined in special legal regulation in Sec. 133 Para. 1j) of the Labour Code. It concern mines, pyrotechnic and other dangerous workplaces, and controlled zones in the sense of Sec. 134c) of the Labour Code, etc.

The legal regulation burdens with obligations, with respect to smoking in workplaces, directly the employees. The employee is not allowed to smoke in such workplaces where also non-smokers perform their work (Sec. 135 Para. 4 of the Labour Code). This provision relieves the employer from the obligation to declare non-smokers' working sites and that is why it depends on the will of the employer whether he/she adopts such measures or not. Should an employee disobey such a ban the employer could punish him/her for a violation of work orders.

On one side the employer is obliged to assure safety and protection of health at work of his/her employees with respect to risk of potential endangerment of their life and health in relation with performance of work (Sec. 132 Para. 1 of the Labour Code), on the other side the employer is burden with the obligation to create conditions for safe, unexceptionable and health non-endangering working environment using reasonable organization of safety and protection of health at work, along with adopting measures for risk prevention.

Generally speaking, the struggle against smoking and protection of non-smokers in the Czech Republic has been developing vividly. The proof for that can be found in a Bill on measures aimed at protection from damages caused by tobacco produces and on

modifications of related acts, which has been undergoing the 1st reading in the Chamber of deputies of the Parliament of the Czech Republic. The provisions of the Sec. 8 of this suggested legal regulation contains prohibition of smoking. Among others, also in the premises used for consultations and in all workplaces with the exception of isolated psychiatric sectors or special therapeutic institutions serving the healing of drug addiction. In case that the employer enables smoking in places where smoking shall be prohibited he/she may be sanctioned within administrative procedure. Such sanction for natural persons – employers shall amount up to the height of 50,000 CZK or represent a ban of further entrepreneur activity in duration of up to 2 years, for legal persons the penalty may expand up to the amount of 500,000 CZK.

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)? Arduous and dangerous work:

With respect to certain works the Czech national law restricts the employment of groups of employees as follows:

16.1 Women in general

The Labour Code in Sec. 150 Para. 1 prohibits that all women perform works:

- Under the earth surface in the process of mining of minerals or during drilling of tunnels and galleries.

This prohibition is not of absolute nature and is not applied to women, which perform:

- Responsible and managing functions without performing physical work;
- Service activities in the frame of health and/or social care;
- Practice in operation during studies;
- Non-physical works, which might be done, time to time, under the earth surface, namely works connected with supervision, checking or studies.

16.2 Pregnant women, nursing women, and mothers until the end of ninth month after the birth of a child.

These women must not perform works endangering their maternity. Work types and workplaces, which are banned for this group of women due to objective reasons, are defined by a sub-law prescription of the Ministry of health of the Czech Republic. This prescription represents the Ordinance No. 288/2003 CoL, in the wording of further prescriptions, by which work types and workplaces banned for pregnant women, nursing women and mothers until the end of ninth month after the birth of a child as well as adolescents are defined under condition that adolescents are allowed to perform similar works during preparation for professional carrier.

Banned works

a) In environments where the air pressure is higher than surrounding atmospheric pressure by more than 20 kPa;
b) In places where the oxygen concentration in the surrounding atmosphere is lower than 20 volume percent;
c) In places where protective respiration appliances must be used;
d) In workplaces marked by physical load not appropriate to organism changes during pregnancy;
e) In places marked by noise, which are arranged in the third or fourth category of works according to the act on public health;
f) In workplaces with exposition to mechanical impulses;
g) In workplaces with exposition to vibrations;
h) In workplaces where, under normal conditions, the skin is exposed to reasonable impact of mineral oil;
i) In workplaces with exposition to carcinogenic and mutagenic agents and during operational procedures with risks of chemical carcinogenic agents under specific provision by law;
j) In workplaces with defined chemical agents and chemical substances;
k) In environments connected with exposition to lead and its ionised compounds;
l) In premises with production of medical and veterinary agents containing hormones, antibiotics and other highly active substances in cases that it is not possible to exclude, based on detailed evaluation of potential exposition and risks, that under unpredictable conditions a harm to health of the pregnant woman or the foetus could happen;
m) In production sites for cytostatics, during their preparation for injection application and in the course of real applications as well as treatment of patients under cytostatic medical cure;
n) In workplaces connected with exposition to quicksilver, carbon monoxide and other chemical substances not mentioned in points i) through k) provided the work with them is arranged in the second through fourth category of works according to the act on public health;
o) In controlled zones of workplaces with sources of ionising rays where the work conditions do not assure the same protection of radiation safety for the foetus as it is the case for any individual from the population;
p) In places where allowed highest levels of electromagnetic rays and electromagnetic fields are overstepped, as defined for the population by special legal regulation;

q) In workplaces marked as risk bearing by special legal regulation;
r) In worksites where works are performed under conditions when operation temperatures are overstepped as a result of heat load from the technology;
s) In worksites where the performance of work happens longer than four hours in total within working time under air temperature artificially kept at the level of 4 degrees Celsius and lower;
t) In worksites where the performance of work happens longer than one hours in total within working time under air temperature artificially kept at the level lower than –5 in total;
u) In workplaces with increased risk of injury.

Pregnant women, nursing women, and mothers until the end of ninth month after the birth of a child must not be employed with works, which according to surgeon's evaluation endanger their pregnancy and/or maternity for reasons of health condition of themselves.

16.3 Young persons (employees under 18 years of age)

It is prohibited for young persons to perform, in general, above-mentioned works but such prohibition is not of absolute character, as some works are allowed in cases of preparation for professional carrier under conditions that they perform such work under qualified supervision assuring sufficient protection of health of the adolescents.

16.4 Natural persons up to 15 years of age or elder until the end of their obligatory school attendance (in the following only „Children")

It is prohibited for children to perform any kind of work. Under conditions provided in Sec. 121 etc. of the Act No. 435/2004 CoL on employment, in the wording of later modifications, children are allowed to perform art, cultural, sporting or advertisement activities for a natural or legal person, provided such activity is appropriate to age, is not of endangering character, does not prevent the child from studies or attendance of school as well as of taking part in education programmes, does not cause any harm to child's development with regard to health, body, psyche, moral or social relations. Any kind of such working performance requires approval by the relevant Work office.

1. **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)?**

The concept of employers' liability in the Czech Republic has been very generally constructed because this kind of responsibility is of objective nature, which anyway does not mean that the employer is liable for any kind of damage happened in relation with

employment relation. Nevertheless, even if the employer has fulfilled his/her duties prescribed by law for work contracts he/she is liable for consequences thereof regardless the fact if he/she is innocent with respect to harm caused or not. The reason for that can be found in the prescription that employer is obliged to indemnify damage in connection with employment injury and occupational disease also if he/she fulfilled prescribed duties resulting from legal regulation and other prescriptions for safety and protection of health at work provided he/she is not relieved from the liability in cases defined in Sec. 191 of the Labour Code.

Should the harm to health, resulting from use of harmful substance, be approved as employment injury (intense short-time impact of external influence on the employee's health that could be caused by mechanical force and also by chemicals or other substances, which the employee may come into contact with), the employer would be obliged to compensate for the damage in harmony with Sec. 190 etc. of the Labour Code.

Theoretically it is possible that in case of health damage caused by harmful substance, the harmfulness of which was not demonstrated at the time of its use, that this anyway would be accepted as occupational disease regardless the fact if such disease was or was not incorporated in the list of occupational diseases; then the employer would be made liable for the health damage. The employer would be obliged to indemnify the employee according to provisions of liability for occupational disease if the employee had worked with him/her last time under conditions that might initiate occupational disease, and provided the disease was found in the course of three years before incorporation of such disease in the list of occupational diseases at the latest or after the incorporation thereof.

In case of health damage different from the reasons of employment injury or occupational disease, the way and extend of compensations govern the provisions for employment injury but in this case the unrepeated indemnification of survivors does not come in force. The employer is liable for different health damage according to Sec. 187 etc. of the Labour Code, which defines the general liability of the employer for damage. In case like this it is the obligation of the employee to provide evidence that the employer has violated his/her duty by law to inform on occurrence of accident with health damage during performance of work or in direct connection thereof including the interrelations between such violation and the accident on the side of the employer.

The key role with regard to request of employee against employer has the fact that the claims of employee for compensation for lost earnings due to employment injury or occupational disease (Sec. 194 and 195 of the Labour Code) or other health damage (Sec. 187 of the Labour Code) cannot be barred by the statute of limitation. But barred are claims for individual compensations resulting thereof under limitation to three years.

It results from the above-mentioned that, under certain circumstances in the frame of the Czech legislation, it is possible to make the employer liable for health damage in consequence of the fact that his/her employees made use of substances the harmfulness of which was not demonstrated at the time of their use, or whose harmful effects could be evaluated only in a long time period.

1. **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?**

The Act No. 435/2004 CoL on employment, in the wording of further legal regulation, sets forth obligations of employers to assure equal treatment of all natural persons making use of the right to perform a work. In the course of utilising this right any prohibition with regard to health relation is allowed, among others (Sec. 4 Para. 2 of the above-mentioned act).

According to Sec. 4 Para. 3 of the same act it is not discrimination if different treatments result from the type of the work or in connection with it and the reasons indicate substantial and deciding precondition for performance of such job for the person to be contracted, and if such reasons are unavoidable. This represents exclusions, which must be approved and found adequately responding to the kind of working activity.

It is forbidden in the Sec. 12 Para. 2 of the same act that the employer requested, during selection of potential employees, information on nationality, race or ethnic origin, political orientation, membership in trade unions, religion, philosophic standpoint, sexual orientation – provided no exclusion by law existed. As conclusion, the law assumes that the employer will require from the potential employee information on his/her health condition. In adverse cases the employer would not be able to fulfil the obligation to find out if the employee would not get entrusted with work not related to his/her actual health condition - Sec. 133 Para. 1a) of the Labour Code.

But the right of employer on information about the potential employee's health condition is limited. The employer is allowed to ask for information, which does not violate good manners and require personal data, which only serve to fulfilment of employer's duties set forth by special prescriptions (Sec. 12 Para. 2 of the Act No. 435/2004 CoL).

According to Sec. 28 of the Labour Code the employer is authorised, in cases defined by the offices of the state health administration, to ask the employee before conclusion of work contract to undergo entrance examination. The employee's obligation is defined in the Sec. 9 Para. III of the Ordinance of the Ministry of health No. 49/1967 Bull.MoH on evaluation of health condition to work, in the wording of later regulations.

It is possible to complete the above-mentioned so that, according to Czech legal regulations, the employer may ask the job applicant to undergo genetic or HIV/AIDS tests in cases that

must be justified by the relevant requirements concerning the job to be performed. Nevertheless, this relates to exceptional situations.

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?

The Labour Code defines in Sec. 135 Para. 2a) the right of the employees to refuse performance of work if they have reasons to assume that this work acutely and critically endanger their life or health or imperil life and health of other persons, eventually. The employer cannot regard such refusal of employee to perform work for above-mentioned reasons as violation of employee's obligations.

The law defines here that it must be a situation marked by acute and critical endangerment of life or health, which shall prevent from misuse of this provision by employees. Therefore, the employee is not allowed to refuse to perform any kind of work, which might potentially endanger his/her life or health but only in such case when his/her life or health is endangered in an acutely and critically manner. In case that the employer would not approve this right of employees under above-mentioned conditions he may be sanctioned within administrative procedure up to the height of 1,000,000 CZK - Sec. 17 Para. 1t), Para. 2c); Sec. 30 Para. 1t), Para. 2c) of the Act No. 251/2005 CoL on work inspection.

If such situation takes place the employee is obliged to inform the employer on failures and defects in the workplace, which could endanger safety or health at work – Sec. 135 Para. 2f) of the Labour Code.

If case that the employee refused to perform work for above-mentioned reasons he/she is allowed to depart from the workplace only if his/her further presence there would mean acute and critical endangerment of his/her life or health – in other cases the employee should remain in the workplace on disposition for the employer according to work contract and in harmony with legal regulations.

If the examination by surgeon finds out that the employee cannot perform the work without serious endangerment of his/her health the employer is obliged to shift him/her to another more suitable work. If the employer does not fulfil this obligation within 15 days after the examination results were presented to him/her the employee is empowered to terminate the work contract immediately. In such case the employee shall obtain compensation for wage in the height of average wage during termination time, i.e. double amount of the average monthly wage.

XXI. 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?

In the frame of employer's liability for employment injuries and occupational diseases the Labour Code defines following benefit payables:

- Compensation for loss of earnings in the period of incapacity to work;
- Compensation for loss of earnings after the end of the period of incapacity to work;
- Indemnification of pain;
- Compensation for impairment of social assertion;
- Reimbursement of reasonably used expenses;
- Compensation for material damage;
- Reimbursement of sustenance costs of survivors;
- Unrepeated indemnification of survivors;
- Compensation for material damage in connection with death of employee;
- Reimbursement of reasonably used expenses connected with medical treatment of dead employee;
- Reimbursement of reasonably used expenses connected with funeral.

(Rem.: on the side of employers the obligation to insure the liability for damage caused by employment injuries and occupational diseases as defined by law implies to have as partner company Kooperativa, a. s. or Ceska pojistovna, a. s. The above-mentioned insurance indemnifications, as a rule, are paid directly by one of the mentioned insurance companies.)

For cases when the employee is approved incapable to work the act on sickness insurance of employees defines:

- Sickness benefits.

For cases when the employee is approved partially of fully invalid the act on pension insurance defines:

- Partial invalidity pension;
- Full invalidity pension.

The act on pension insurance also defines claim of husbands/wives and children for:

- Widow/widower's pension;
- Survivor's pension.

In the frame of public sickness insurance legal prescriptions define for the filed of sickness insurance, in particular:

- Provision of ambulant and hospital medical treatment;
- Provision of medicine drugs, means of heals care technique and dental products;

- Provision of transport of sick persons, etc.

The act on of public sickness insurance enables the person taking care of the funeral to claim for

- Funeral contribution.

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?

Involvement in an industrial accident or impacts of approved occupational disease cause significant health and social consequences in the life of employee concerned, frequently also in the life of his/her family. Therefore, it is necessary not only to indemnify financial claims by law but also to contribute to a total restitution on the side of the harmed. This must happen in such a manner that could help the employee to the maximum extend again get engaged in working process along with come-back into entire social life, possibly in the same measure as if no health damage by industrial accident or by occupational disease might happen. The application of this principle requires medical treatment and rehabilitation aimed at the goal that consequences of the health damage vanished in the maximum possible extend. In the time period of incapacity to work used for medical treatment and stabilization of health conditions the employee must be given material help according to provisions for social care and in harmony with the Labour Code.

The liability of the employer for damage in consequence of industrial accident and occupational disease has been developed as a special type of liability for damage, dealing with responsibility for both material and nonmaterial impairment caused to the employee.

The liability case of employer towards employee for damage caused by industrial accident or occupational disease results only if following preconditions exist:

Industrial accident or occupational disease came true;

Damage on the side of the employee was caused;

Between the industrial accident or occupational disease and the suffered damage clear linkage can be found.

It results from the above-mentioned facts that no attention is paid to circumstances whether the employer or third party committed the violation of duties ordered by law (occurrence of an illegal act) or not.

The employer is liable for damage even if all obligations resulting from prescription for safety and health protection at work have been fulfilled, with the exception of cases defined by law (Sec. No. 191 of the Labour Code), under which the employer succeeded in getting partially or fully relieved from the liability. It concerns precisely defined list of deliberation reasons that, if evidence is provided by the employer, may cause partial or full relief of employer's

liability and, as a consequence, limitation of damage indemnification. The reason is that even a not guilty employer is liable also for health damages of the employee who suffered damage due to a case of “vis mayor”. Such a case represents an objective liability (responsibility for a consequence) in contrary with the liability in a civil case, which is based on precondition of violation of duties by law.

The power of subsidiary nature of provisions of the Civil Code cannot be applied here. The last occurrence of a supporting power of the provisions of the civil law can be found in the Czech or Czechoslovak legislation in the frame of “indemnification” acts valid in the years 1956, 1961 and 1965 (i.e. in the Sec. 18 of the Act No. 58/1956 CoL, Sec. 29 of the Act No. 150/1961 CoL and Sec. 22 of the Act No. 30/1965 CoL). Now the existing labour low of the Czech Republic comprises concept of provisions for indemnification of industrial accidents and occupational diseases in a complex and unified manner.

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)?

We have no experience with special funds to compensate for damages to life or health. In the field of occupational diseases often sicknesses are found the impact of which can be approved only after a long time, occasionally even after the employee no more has been working with the employer in who’s premises his/her occupational disease might have originated. The liability for an occupational disease is assigned to the employer with whom the employee had been working under conditions suitable for occurrence of such a disease last time before the occupational disease was discovered. The list of occupational diseases (in the Government order No. 290/1995 CoL) contains a number of diseases with a long exposition time. This concerns, as an example, diseases caused by ionic rays, silicosis, silico-tuberculosis, asbestosis, lung cancer cause by radioactive substances, etc. In the Labour Code (in Sec. 190 Para. 4) attention is paid also to cases of sicknesses that might be approved as occupational diseases. According to this section “also a sickness occurred before its incorporation in the list of occupational diseases is approved as occupational disease since the date of its incorporation in the list for and for the period of three years before incorporation in list, as a maximum”.

The novelised version of the Labour Code No. 46/2004 CoL newly forbade works with asbestos (Sec. 134d). The prohibition of such works does not concern cases of research laboratory works, performing of analyses, liquidation works on reserves or waste and equipment containing asbestos and works in the process of removal of civil objects

containing asbestos. Forbidden also are applications of asbestos in the process of spray painting as well as in working procedures incorporating asbestos containing materials used for isolation from lost of heat or penetration of noise with compactness less then 1 g/cm³.

III. The role of the workers' representatives as regards protection of health

1. 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?

In the filed of safety and protection of health at work the organs of trade unions have following rights, in particular:

- Supervise performance of employer's tasks in the mentioned field;
- Assure inspection on correctness of the employer's investigations concerning employment injuries and perform own investigations, eventually;
- Take part in dealings on problems in the field of safety and protection of health at work;
- Issue binding instructions by means of which they require from the employer elimination of failures in operation of machines or/end equipment and in operational procedures; in case of direct endangerment of life or health the organs of trade unions are empowered to forbid further performance of work (these instructions can be reviewed by relevant work inspectorate office);
- Prohibit overtime work and work at night in cases that such performance of work endangered safety and protection of employees' health at work (cited prohibition orders can be reviewed by relevant regional work inspectorate office).

In case that organs of trade unions do not exist at the employer's enterprise but it employs more than 10 employees it is possible to elect a representative for the field of safety and protection of employees' health at work. Nevertheless, such representative has only limited rights resulting from the right of employees for information and participation in dealings in the field concerned.

Members of the organ of trade unions who take part in decisions in cooperation with the employer enjoy higher protection against notice or immediate termination of work contract.

But the above-mentioned does not concern the field of safety and protection of health at work.

Relevant organs of trade unions and representatives for the field of safety and protection of health at work are obliged to cooperate with the employer as well as with qualified professional experts to enable the employer assure safe working conditions and fulfil further duties in the field concerned.

XXII. 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.

N.I.