Occupational Health and Safety Committee in Turkey

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Abstract

The most important precaution of all the precautions regarding occupational health and safety is setting up a good workplace organization. By establishing such an organization in the best way possible, businesses can prevent potential occupational accidents and diseases.

Compared with the provisions of the earlier Labor Law No.1475, the current Labor Law No.4857 includes some important and progressive steps about occupational health and safety committees. According to the Labor Law No.4857, as a participative management model, the occupational health and safety committee is not only an advisory committee as it used to function under the earlier law. The employer has to abide by the decisions of the committee, otherwise he/she has to bear the consequences. For the committee to make sound decisions and to be effective, the job security of all the members of the committee must be ensured. Otherwise, it will be very difficult for the members to make the necessary decisions under the pressure of losing their jobs.

Keywords: Occupational Health, Occupational Safety, Occupational Health and Safety Committee, Labor Law

Introduction

Occupational health and safety committees constitute the most crucial element of the organization of a workplace to address the health and safety issue[1]. Occupational health and safety committee works as a participative management model[2]. While not enacted by the Labor Law, health and safety worker representation as another participative management

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[1] Sarper Süzek**, İş Hukuku (2008),** p. 802; Kadir Arıcı, **İş sağlığı ve güvenliği dersleri** p. 145.

[2]Sarper Süzek, "İş Hukukunda Katılım" **Çoşkun Kırca'ya Armağan**, (Ankara: Galatasaray Üniversitesi, 1996), 166.

model, was enacted in the Occupational Health and Safety Directive that was repealed by the State Council. According to Ekonomi, "Enactment of an institution or a relationship by a directive that is not specified by law does not give that relationship legal validity. Worker representation as a participative management model does not exist in the Labor Law. Ekonomi states that "the executive branch's conducting an action that is within the realm of the legislative branch, and thus establishing a new institution in the field of occupational health and safety, contravenes the fundamental legal rules and principles, especially the Constitution".[3]

In the relevant 76th article of the previous Labor Law No.1475, the authority of setting up worker health and occupational safety committees in workplaces was given to the Ministry of Labor and Social Security. According to the *Statute About Worker Health and Occupational Safety* that was put in effect in compliance with the Labor Law No.1475, "in the workplaces which are considered as industrial, employ fifty full-time workers and in operation for more than six months the employers are obliged to set up a worker health and occupational safety committee". Not having any sanction power, this committee acted only as an advisory organ[4].

According to the 80th article of the Labor Law No.4857, in the workplaces that are "considered industrial[5], employ a minimum of fifty full-time workers and operate for more than six consecutive months, each employer is obliged to set up an occupational health and safety committee". The employers are obliged to follow the decisions made by the occupational health and safety committees as per the occupational health and safety legislation". During the preparation stage of the Labor Law No.4857, there was a provision in the Draft stating that in the workplaces in organized industrial zones that employ fewer than fifty workers and operating for more than six months there was to be a common occupational health and safety committee. Unfortunately, this provision was not taken into account by the lawmakers and not enacted by the Labor Law. Given the fact that a significant number of the

[3] Münir Ekonomi "İş Sağlığı ve Güvenliği Kapsamında Hukuka Uygun Olmayan ve Bilinçsiz Düzenlenen Sağlık ve Güvenlik İşçi Temsilciliği" **Sicil İş Hukuku Dergisi,** Haziran 2006, S:2, p. 5 vd.

[4] Süzek,**ibid.(2008)**, s. 804; Gaye Burcu Seratlı, 4857 sayılı İş Kanununa Göre İş Sağlığı ve Güvenliği" **AÜHFD.** C.53, S.2: 2004, p. 217; Sarper Süzek İşçi Sağlığı ve İş Güvenliği Konusunda Somut Çözüm Önerileri" **Türk Sosyal Güvenlik Hukukunda Sorunlar ve Çözüm Önerileri,** İstanbul Barosu Yayını, İstanbul 2001, **Çözüm Önerileri)**, p. 313.

[5] What type of work is considered industrial is shown in the Appendix A of the "By-law on Work Considered as Industrial, Commercial, Agricultural and Silvicultural', RG. 28.02.2004, 25387.

businesses in Turkey are small businesses that employ fewer than fifty workers and the majority of occupational accidents occur in this type of small businesses, the lawmakers' not taking this provision into consideration has created an obvious gap.

Unlike the earlier Labor Law No.1475, the issue of in what type of workplaces this committee has to be established is specified both in the relevant law and the statute. Based on these, the By-law Regarding Occupational Health and Safety Committees[6] was published in the Official Gazette and thus became effective in 2004. This by-law[7], which was introduced according to the 3rd clause of the 80th article of the Labor Law No.4857, regulates the establishment, operation methods, duties, authorities and responsibilities of the occupational health and safety committees in workplaces that are considered industrial and employ more than fifty workers. According to this by-law, the occupational health and safety committees are to be formed by the employer or representative of the employer, an engineer or technical worker responsible for occupational safety, workplace doctor, a person responsible for the human resources, personnel, social affairs or a person responsible for the administrative and financial affairs, a civil defense specialist (if applicable), a worker who is chosen from among the union representatives, and if there is no such union representative at the workplace, a worker that is selected through open-voting by more than half of the workers in a workplace meeting. The president of the committee is the employer or the representative of the employer (Art. 5). As can be noted, the committee member profiles indicate a model for workers' participation in the management[8]. The function of these workplace committees is based on the idea that, occupational health and safety can be ensured in real terms not only by state supervision and efforts, but also with the contribution of workers and employers in workplaces. These committees were first established in 1892, at the workplaces in the UK[9].

The most essential difference between the Occupational Health and Safety Committee set up according to the 76th article of the previous Labor Law No.1475 and the Committee that has to be established now according to the 80th article of the current Labor Law No.4857 manifests itself very clearly in the 80/2nd article of the Labor Law No.4857. It states that;

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[6] RG., 7.04.2004, 25426, (İş Sağlığı ve Güvenliği Kurulları Hakkında Yönetmelik)

[7] RG., 07.04.2004, 25426, (Yönetmelikte yapılan değişiklik için bak. R.G., 04.02.2005, 25717).

[8] Mustafa Kılıçoğlu, **Tazminat Esasları ve Hesap Yöntemleri**, (Ankara: Turhan Kitabevi, 2. B., 2008), s. 306; Süzek**, ibid.(2008)**, s. 50.

[9] Cihan Selek, "İş Sağlığı ve Güvenliği Kurulları" **Tühis** (İş Hukuku ve İktisat Dergisi) C.19, S.1-2: Ağustos - Kasım 2004, p. 94.

"employers are obliged to follow the decisions made by the occupational health and safety committees in compliance with the occupational health and safety legislation". The employers who act in violation of this legislation are subject to administrative fines (Art.105/2). Failing to abide by the decisions of the committee may result in some other consequences as well (Art.83)[10].

1. Workplaces Obliged to Set up an Occupational Health and Safety Committee

The obligation of establishing an Occupational Health and Safety Committee as per the 80th article of the Labor Law No.4857 is not valid for all workplaces. In order for this obligation to arise, the conditions stated below have to be simultaneously met:

- The work at the workplace must be industrial,
- The duration of work at the workplace must be longer than six months,
- A minimum of fifty workers must be employed full time.

1.1. Consideration of the Workplace Work as Industrial

For a workplace to be obliged to set up an Occupational Health and Safety Committee, firstly this workplace must be a workplace where the type of work carried out is considered as industrial. Article 111 of the Labor Law stipulates that, in the application of this Law, whether a piece of work is to be considered as industrial, commercial, agricultural and silvicultural is to be determined by a by-law introduced by the Ministry of Labor and Social Security. This aforementioned by-law has been put into effect as "By-law About Work Considered Industrial, Commercial, Agricultural and Silvicultural[11]". The types of work considered as industrial are listed under a hundred specific subheadings in the Appendix (A) List of this by-law[12]. The Ministry of Labor and Social Security was authorized to determine how to classify

[10] Serkan Odaman, "Fransa'da ve Türkiye'de İş Sağlığı ve Güvenliği Kurullarının Yapıları ve İşlevleri" (İstanbul: **A. Can Tuncay' Armağan**, Legal, 2005) p. 598.

[11] RG.. 03.09.2008, 26986.

[12] Leyla Kılıç, **İşverenin İş Sağlığını ve Güvenliğini Sağlama Hükümlülüğü ve Sorumluluğu,** Yetkin Yayınları, Ankara 2006. p. 70 -71.

a certain type of work that is not listed on this list as industrial, commercial, agricultural and silvicultural (By-law Art.5).

1.2. Continuous Operation of the Workplace for More than Six Months

Considering the workplace activity as industrial is not sufficient by itself. The work activity in the workplace also has to continue for longer than six months. Casual work is defined in the 10th article of the Labor Law No.4857. According to this, "in terms of its qualities, the work that takes a maximum of thirty workdays is called casual work, and work taking longer than that is called permanent work". Therefore, in the workplaces where a certain piece of work is carried out for only less than six months in a certain period of the year, the employers are not obliged to set up an Occupational Health and Safety Committee[13].

1.3. Employing a Minimum of Fifty Full-time Workers at the Workplace

The final condition for a workplace to have the obligation of setting up an Occupational Health and Safety Committee is, the permanent employment of a minimum of fifty workers. According to Süzek, the rate of small-sized businesses is quite high in Turkey. According to the relevant statistics, the number of occupational accidents that occur in small-sized businesses is higher than the ones occurring in large-scale businesses. Therefore, the workplaces which employ fewer than 50 workers will be deprived of the contributions that these committees may bring in. Within this scope, although limited, some improvements have been introduced by the Employment Incentive Law No.5763 in the field of occupational health and safety[14]. These improvements will be elaborated especially with regards to the workplace doctor and occupational safety specialist[15].

In the justification of the relevant 80th article regarding the Occupational Health and Safety Committee, a huge amount of effort is spent on determining exactly what needs to be understood by the expression "fifty workers". If, at times, the number of workers dropped below fifty, would the establishment of Occupational Health and Safety Committee still be

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[13] Ömer Ekmekçi**, 4857 sayılı İş Kanunu'na göre İş Sağlığı ve Güvenliği konusunda İşyeri Örgütlenmesi Legal Yayınları İstanbul; 2005** p. 66.

[14] RG., 26 Mayıs 2008, 26887 (5763 sayılı Kanun İstihdamı Teşvik Kanunu)

[15] Levent Akın, "İş Sağlığı ve Güvenliğinde İşyeri Örgütlenmesi" **AÜHFD**. C. 54, S.1: 2005, p. 14. Süzek**, ibid.(2008)**, s.803; Ekmekçi, ibid.(**İşyeri Örgütlenmesi)**. p. 66.

mandatory? In my opinion, in such cases, the conclusion should be reached by analyzing whether any simulation is involved. This analysis should carefully focus on whether the workers were dismissed for justifiable reasons or the employer resorted to some tricks to reduce the number of the workers to below fifty. Some employers who worry about the extra financial burden on their business may want to shirk this obligation by periodically cutting down on the number of their workers. According to Ekmekçi, if the number of workers in a certain workplace fluctuates and drops below fifty in annual periods, such a workplace does not have to set up an Occupational Health and Safety Committee[16]. In the determination of the 50 workers needed for the establishment of the committee, all of the workers in the workplace have to be taken into account.

2. Duties and Authorities of the Occupational Health and Safety Committee

According to the 7th article of the Occupational Health and Safety By-law, the Committee is assigned the following duties regarding occupational health and safety issues;

- Preparing an occupational health and safety internal by-law draft,
- Guiding the workers,
- Assessing the hazards and precautions about occupational health and safety, and make suggestions to the employer on these issues,
- Reviewing each occupational accident and occupational disease and report the necessary measures to be taken to the employer,
- Planning occupational health and safety training in the workplace,
- Making decisions through short-notice emergency meetings about all types of issues involving occupational health and safety, especially regarding the demand to be filed by a worker before refraining from work who is faced with imminent, urgent and vital hazard risks[17].

[16] Ekmekçi, **ibid. (İşyeri Örgütlenmesi)**, p. 67.

[17] Ömer Ekmekçi, "4857 Sayılı İş Kanunu'nda İzinler ve İş Sağlığı ve Güvenliğine İlişkin Hükümler" **Türkiye, Toprak, Seramik, Çimento ve Cam Sanayi işverenleri Sendikası, Yeni İş Yasası Seminer Notları, 25- 29 Haziran 2003 Çeşme,** p.192 vd.(While the Science Committee text stipulated a period of 6 work days for the

The most important duty of the committee is making an assessment of the present situation and reaching a decision about the necessary measures to be implemented when an imminent, urgent and vital hazard risk arises. If the committee decides in favor of the worker demand, the worker may refrain from work until the necessary occupational health and safety measure is implemented. During this period of refrainment, the worker's pay and other rights are reserved" (Labor Law Art. 83). In the event that the necessary measures are not taken despite the worker's demand, the worker reserves the right to rescind the labor contract within six work days, as per article 24/I of the Labor Law[18]. There is a difference between the Labor Law No.4857 and the text prepared by the Science Committee regarding exercising the right of rescission. While the text prepared by the Science Committee stipulates that the worker has the right to rescind the labor contract due to non-application of the working conditions as per article 24/II, the article 83 of the current Labor Law requires the exercise of the rescission right within six work days, as per the Labor Law article 24/I. Such a difference in statutory basis creates some important consequences. When the statutory basis for this right of rescission is taken as the article 24/II provision, the worker who terminates his/her labor contract rightfully is also entitled to claim for indemnity as per article 26/II, but when the statutory basis for rescission is 24/I, the worker cannot claim for indemnity[19].

Ratified by Turkey, the 13th article of the International Agreement on Occupational Health and Safety and Work Environment dated 1981 with number 155 emphasizes the worker's personal opinion. The assessment of the worker's opinion is based on an objective criterion by requiring a reasonable cause. However, in Turkey, the regulation by the Labor Law No.4857 does not mention the worker's personal opinion regarding the presence of hazard risk. For the worker to have the right of refrainment from work, a committee decision is mandatory[20].

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decision to be made, during the law-making process it was modified to stipulate that the Committee has to meet and make a decision on the same day. This same day meeting obligation provides better regulation).

[18] Melda Sur, "İşçinin Çalışmaktan Kaçınma Hakkı" (İstanbul: **A. Can Tuncay'a Armağan**, 2005) ,s. 407 vd; Ekmekçi,**a.g.e**., (**İşyeri Örgütlenmesi)**, p. 72.

[19] Ekmekçi, "4857 sayılı Kanunda İzinler ve iş sağlığı ve güvenliğine ilişkin hükümler, 2003 Çeşme" s. 192 – 193.(Ekmekçi, makalesinde haklı nedenle fesih hakkı ile çalışmaktan kaçınmanın aynı prosedüre tabi tutulmasını eleştirmiştir).

[20] Sur, İşçinin Çalışmaktan Kaçınma Hakkı, İstanbul, 2005, (**Çalışmaktan Kaçınma)**, p. 405- 406.

The Committee is also assigned some obligations by the relevant by-law. According to the by-law, in their suggestions the committees have to take into account the status of the workplace and the resources available to the employer. The committee members are obliged to keep the occupational, technical and work methodology secrets that they have learned as part of their committee duties confidential. Furthermore, they are also obliged to facilitate and assist the inspection work conducted by occupational safety inspectors (Art.11)[21].

The Occupational Health and Safety Committee By-law stipulates that the committees are to meet a minimum of once a month and during emergency situations where severe occupational accidents or situations requiring special measures occur, the committee has to convene for an emergency meeting upon such request by a committee member (Art. 8). The time spent during the meeting is considered as daily work time. The Committee convenes with the absolute majority of its members and the decisions are made by the majority of votes. If the votes are equal, the president of the committee casts the deciding vote.

The workers are obliged to obey the rules, prohibitions, decisions and measures that are issued by the occupational health and safety committee aiming to maintain and improve health and safety (By-law Art.12).

When the job security provisions of the Labor Law No.4857 were not in effect, the committee members except for the workplace union representative were not covered by job security. Since these committees are to be set up in workplaces where a minimum of fifty workers are employed, the committee members benefit from the job security provisions of the relevant law.

Conclusion

What really matters in occupational health and safety is the prevention of accidents and diseases before they arise. In order for both the national economy and employers' businesses to survive and endure, the due attention should be paid to this issue. Unfortunately, incidents that can be warded off with very little financial loss by the prevention of accidents and diseases result in much deeper pecuniary losses and intangible damages. Compared to the earlier Labor Law No.1475, including more positive and up-to-date regulations, Labor Law No.4857 was published in the Official Gazette and thus became effective on June 10th, 2003.

[21] Sarper Süzek, "İşverenlerin İş Sağlığı ve Güvenliği Konusundaki Yükümlülükleri" (Ankara: **İş Hukuku ve Sosyal Güvenlik Hukuku Türk Milli Komitesi, 30. Yıl Armağanı**, 2006) p. 515.

In its present form, it is very difficult for the Occupational Health and Safety Committee to fulfill the duties it is expected to perform. This is because most of the Committee members work dependently on the employer and that they are selected from among the workers who are the least likely to make trouble. This raises questions about the objectivity of the committee decisions. Another issue is that "imminent, urgent and vital" are abstract concepts and this is open to interpretation. Indeed, applied and judicial decisions on this issue are extremely important in fleshing out these concepts.

References

AKIN, Levent. "İş Sağlığı ve Güvenliğinde İşyeri Örgütlenmesi" **AÜHFD**. C. 54, S.1: 2005, pp. 1-60.

ARICI, Kadir. **İş Sağlığı ve Güvenliği Dersleri**, Ankara 1999.

EKMEKÇİ, Ömer. **4857 sayılı İş Kanunu'na Göre İş Sağlığı ve Güvenliği Konusunda İşyeri Örgütlenmesi,** Legal Yayınları**,** İstanbul 2005.

EKMEKÇİ, Ömer. "4857 Sayılı İş Kanunu'nda İzinler ve İş Sağlığı ve Güvenliğine İlişkin Hükümler" **Türkiye, Toprak, Seramik, Çimento ve Cam Sanayi işverenleri Sendikası, Yeni İş Yasası Seminer Notları, 25- 29 June 2003 Çeşme**, pp.177 – 195.

EKONOMİ, Münir. İş Sağlığı ve Güvenliği Kapsamında Hukuka Uygun Olmayan ve Bilinçsiz Düzenlenen Sağlık ve Güvenlik İşçi Temsilciliği" **Sicil İş Hukuku Dergisi,** June2006, Number:2, p. 5- 18.

KILIÇ, Leyla. **İşverenin İş Sağlığını ve Güvenliğini Sağlama Hükümlülüğü ve Sorumluluğu,** Yetkin Yayınları, Ankara 2006.

KILIÇOĞLU, Mustafa **Tazminat Esasları ve Hesap Yöntemleri**, Turhan Kitabevi, Ankara, 2008.

ODAMAN, Serkan "Fransa'da ve Türkiye'de İş Sağlığı ve Güvenliği Kurullarının Yapıları ve İşlevleri" (İstanbul: A. Can Tuncay' Armağan, Legal, 2005) pp. 595- 621.

SELEK Cihan, "İş Sağlığı ve Güvenliği Kurulları" **Tühis (İş Hukuku ve İktisat Dergisi**) Volume.19, Number.1-2: August– November 2004, pp. 94-105.

SERATLI, Gaye Burcu. "4857 sayılı İş Kanununa Göre İş Sağlığı ve Güvenliği" **AÜHFD.** Volume.53, Number.2: 2004, pp. 197- 241.

SUR, Melda. "İşçinin Çalışmaktan Kaçınma Hakkı" (İstanbul: **A. Can Tuncay'a Armağan**, 2005) ,pp. 395–414.

SÜZEK Sarper**. İş Hukuku**, Beta Yayınları, 4th Edition, İstanbul 2008.

SÜZEK Sarper**.** İş Hukukunda Katılım" **Coşkun Kırca'ya Armağan**, Galatasaray University, Ankara 1996,**.** pp.161–168.

SÜZEK, Sarper. "İşçi Sağlığı ve İş Güvenliği Konusunda Somut Çözüm Önerileri" **Türk Sosyal Güvenlik Hukukunda Sorunlar ve Çözüm Önerileri,** İstanbul Barosu Yayını, İstanbul 2001, pp. 137–155.

SÜZEK, Sarper. İşverenlerin İş Sağlığı ve Güvenliği Konusundaki Yükümlülükleri" (Ankara: **İş Hukuku ve Sosyal Güvenlik Hukuku Türk Milli Komitesi, 30. Yıl Armağanı**, 2006) pp. 507-528.