

Health and safety at work

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Abstract

Protection at work with regard to health and safety at work is an important part of Albanian Labour Legislation. Determination of general obligation of the employer aims at protecting the employees' health and security.

With regard to health security and protection, Albanian Labour Code foresees that the employer is responsible in cases of accidents and professional diseases considering that it should clearly define rules for technical security.

With the regard to employers' responsibility, it should be mentioned that this might be administrative or penal, depending on the violations occurred a few of which contain elements of criminal acts.

An important step forward in regulating labour relations is to strengthen inter-institutional cooperation and cooperation between employees, employers, trade unions and state and to further dialogue between those.

However, implementation of the Labour Law plays an important role in the stabilization of labour relations in general. An important role remains with institutions such as Ministry of Labour and Equal Opportunities, National Labour Council and State Labour Inspectorate.

Keywords: work, labour inspectorate, responsibility, security, employee.

Introduction

Albania is a democratic country that aims to build up a stable economy of free market. The road to integration in the big European family has not been easy at all. Although our country has undertaken a lot of commitments to build up a process of work worth of all active persons, away from discrimination, respecting the rights of employees, giving priority to cooperation between work-related subjects and state, as a third factor. The state in this trinomial has the essential role as a lawmaker, law observer for protection of interests of employees, as well as an employer.

Our entire society is in a process of transformation toward the market economy and consolidation of democratic order, in which the implementation of every law is the

most important part of lawmaking process and as such it requires knowledge, juridical training and professional qualifications.

The adequate amendments in the legislation of labor, which occurred after the democratic developments in our country, were implemented under the influence of the most advanced legislation of the Western European countries.

Albanian constitution and in general the Albanian legislation, are inspired and perceived in compliance with principles, goals and purposes of international acts proclaiming the protection of human rights and freedoms in general and the protection of employees' rights in particular as a corner stone of the Albanian legal system.

The high rhythm of economic growth that Albania has achieved during the recent years reflects the high requests for a qualified workforce. The creation of favorable working conditions and their adjustment to employers' and employees' needs are vital for increase of motivation of employees, which leads to a higher efficiency at work.

i- Legal obligation of employer to assure the health and life of employees at work

The determination of general obligations of the employer aims to protect the health and life of employees.

The employer is obliged to take care of conditions and hygiene of the workplaces. He should take the necessary protective measures against the special risks that present:

- substances and poisonous agents
- machineries and equipments used in the workplace
- transport of heavy weights
- air pollution
- noises and tremors
- and other risks in some branches of economy such as construction, mines, chemical industry etc.

The Council of Ministers or the body under its authorization defines the allowable limits for protection from air pollution, chemical substances, radioactivity, noise and tremors in the workplaces.

Dangerous substances are those substances that in small concentration in air are poisonous, disturbing, corrosive and flammable, explosive, cancerous, teratogenic and mutagenic capable to cause death, injuries and mass fire at work environments.

When works produce special risks, the employer should organize medical visits for and in the course of employment, periodically on his expenses.

In conformity with article 42 of the Labor Code of the Republic of Albania special measures of health insurance and protection are defined by decision of the Council of Ministers.

Pursuant to article 41 of this code, protective measures established by labor inspectorate should not bring disproportionate expenses in relation to the goal of activity. The title on qualification of employees and protective measures taken by the employers in the Labor Code of the Republic of Albania provides that the employer should inform the employees on risks related to work and he must qualify the employees for fulfillment of requirements in the field of health, insurance and hygiene. The training and information is rendered during the employment process and reiterated whenever needed. The employer should explain to employees exposed to risks the necessity of implementation of technical safety measures and hygiene. Pursuant to article 45 and 46 of the Code, it is provided that only the qualified persons may drive the machineries and transport means, both mechanical and electrical.

Provisions of the Labor Code thoroughly regulate the working conditions related to load transportation, displacement of materials in the workplace, techniques of raising platforms and gangplanks.

Pursuant to article 63 of the Labor Code, the employer must make an analysis of the fire or explosion risks and accordingly take the necessary measures for their prevention, taking into consideration the nature of the substances used and the work environment.

Following, it is envisaged that the employer should put at disposal of the employees individual equipments for protection from risks at work and necessary means to ensure the personal hygiene.

In every work environment, the employer is obliged to fix the first aid box supplied with necessary materials and items.

The obligations of the employer pursuant to law no. 9634 dated 30.10.2006 "On labor inspection and State Labor Inspectorate" are:

- Notification of Inspectorate on all work accidents
- Provision of necessary data relating to enforcement of labor legislation
- Annual reporting to Labor Inspectorate

ii- Accidents at work, occupational deceases and legal responsibility of the employer in case of work accidents and occupational deceases.

The national policies are implemented through legislative measures and assurance of applicability of the latter by the State Labor Inspectorate. The labor inspectorate

faces thus the challenges existing between the request for increasing more safety and health at work in industry and augmented requests for economic changes and change of the role of labor inspection.

According to records of the Ministry of Labor, Social Affairs and Equal Opportunities we can state that the employer's care of the safety and health at work is not at satisfactory level. The creation of appropriate working conditions for employees and in particular their life and health protection at work is not a priority for a part of employers.

Hence, according to an analysis made by the Labor Inspectorate for some years period, there are identified some problematic sectors such as construction, mines, enterprises of mineral digging and manufacture, some factory of bricks and cement manufacture, some lines of shoes manufacture, enterprises of oil and gas drilling and manufacture etc. In this sectors the concerning issues are the high number of work accidents and occupational deceases, which derive from insufficient measures of the employer. These measures relates to prevention of risks in the workplace, flaws in work organization, flaws in safety and health structures in work, usage of outdated technologies of production processes, lack or insufficiency of protective collective and individual measures, etc. These are factors which constitute a great and constant risk and cause the injury of health and loss of life of employees.

In addition, a factor that affects negatively is the low level of employees' awareness of the rights they enjoy according to law, so as to have a worthy, safe and healthy job.

Statistics attached to State Labor Inspectorate indicate that during the year 2007 we have an increasing number of injured persons in the sector of construction and road accidents.

The situation seems more sensitive and with consequences even due to informal, invisible economy.

Illegal work creates a social category of persons completely unprotected from the labor legislation. The accidents at work, occupational deceases, unpaid contributions in interest of the workers, are manifold higher compared to those of employees working under protection of labor legislation, thus do not work illegally. A direct reason of this is the fact that these kinds of enterprises have not the chance to be controlled by the relevant institutions and the fact they work illegally, in a way indicates their tendency toward failure to respect the state norms or the employees' rights.

Often the employers intend to increase at maximum their profits by not investing on creation of good working conditions for employees.

It is worth highlighting that employed women and children are provided with special protection by the Constitution, Labor Code and other laws in the field of employment.

Regarding safety and protection of health, it is provided in the Labor Code that the employer is held responsible for cases of accidents and occupational deceases, because he should define clearly the rules of technical safety.

The employer's responsibility may be:

- administrative
- juridical-civil or
- criminal depending on the defined violations some of which contain elements of criminal offence

Accident at work is the immediate injury of the employee while performing a process related to work, which leads to the temporary or permanent loss of ability for work or result in death.

Occupational deceases are called those deceases caused as a result of exposure to risks derived from work activity.

Occupational deceases should include not only those indicated in the list of deceases, but also the complications and their consequences.¹

In support of complete application of labor legislation, there are set up specific control institutions for permanent action.

There are four state institutions that are entitled to control and act toward the protection of rights of employees: Labor Inspectorate, Employment Office, Social Security Institute and Public Health Institute.

The objective of the law no. 9634 dated 30.10.2006, "On labor inspection and State Labor Inspectorate", is to ensure the application of labor legislation by employers.

In Albania the labor inspectorate is established in 1995 and as such it may be considered as a relatively new institution, which still needs a great deal to be developed.

The State Labor Inspectorate exercises its activity in all natural and legal subjects in different sectors of economy, excluding the activities where the introduction of labor inspector puts at risk the interest of national security and in all workplaces where inspection for working relations, safety and health at work are regulated by special laws.

The overall mission of the State Labor Inspectorate is control, consultancy, notification and training, mitigation of conflicts, prevention and penalization.² During the exercise of activity this authority assures the cooperation with the ministries and

¹ Kudret Cela: "Labor Law I", Tirane 2003, p209

² Law no.9634 dated. 30.10.2006, "On labor inspection and State Labor Inspectorate", article 6/1

their subordinated institutions, other state institutions, employers, employees, their organizations and private services.

In cases when the labor inspectors or controllers are impeded to exercise their duty they may be supported by State Police authorities.

Administrative Responsibility

During the process of inspection carried out in the subject on application of labor legislation, the labor inspector and controller drafts the expertise act. In cases there are verified violations of labor legislation, the labor inspector imposes one of this sanctions:

– Warning

If the employer has not applied the legal provisions on safety conditions and health at work, he is warned to take measures within the time limit set in the expertise act.

– Fine

The Labor Code and Law on Labor Inspection provides for imposition of fines to employers who violate the legal provisions on working conditions from 30 to 50 fold of the minimum salary.

Fine is one of the sanctions imposed for employers in cases when:

- Employer does not take measures to provide the working conditions within the time limit set by labor inspector or controller.
- Employer does not report to the Labor Inspectorate within 24 hours of serious accidents at work or of those resulting in death.
- Employer impedes the labor inspector to carry out his duty.

For violations repeated from the employer or verified previously, the labor inspector will impose fines twofold of the value foreseen in that case.

In imposing the extent of fine, the labor inspector should take into account:

- Repetition of violation
- Duration of violation
- Extent of damage
- Number of employees affected by this violation

An appeal can be made against the decision of inspector on imposition of fine at the relevant structures of appeal at central and regional level in conformity with provisions of Law “On Labor Inspection and State Labor Inspectorate“.

– Suspension of work

In cases of flagrant violations from employer of the legal provisions on safety and health at work, the labor inspector orders the suspension of work and reports to the General Inspector who within 48 hours should assert the duration of suspension of work³

When the employer does not suspend the work contrary to the decision of Labor inspectorate, Public Order Police authorities intervene in support of inspectors.

If the above measures are not sufficient for suspension of the activity, the labor inspector denounces the employer to the prosecutor's office.

Juridical-civil responsibility

Labor Code of the Republic of Albania defines the cases of responsibility of an employer. The employer has the duty to define clearly the rules of technical safety at work and this means that he is responsible in all cases of accidents at work, whereas in cases when the accident or occupational decease has been caused due to serious fault of the employer, the lawmaker asserts that the employer is obliged to pay the difference between the injury caused to the employee and compensation he benefits from social securities.

When the employer does not fulfill the obligation to register the employee in social security's, he should cover all expenses made by employee as a result of the accident or occupational decease and all injuries due to non registration.

Criminal Responsibility

If violations of provisions of this code constitute a criminal offence, the provisions of the Criminal Code of the Republic of Albania are applied. Article 289 of this code on violations of rules at work provides that the cause of death or serious injury of the person's health, happening as a result of disregarding the rules related to work, production, service as established by law, acts of the Council of Ministers or regulations of technical security, technical discipline, work protection, hygiene and fire security from persons in charge of observing the rules and taking measures for their implementation, is sentenced to fine or imprisonment up to ten years. When the criminal offence has caused death or serious injury of the health of some persons, the sentence of the responsible person is not less than five years.

The Criminal Code provides for other criminal offences which are related to the responsibility of employer in certain cases. Article 201 of this code provides for the air pollution through emission of smoke, gas and other tocsin radioactive substances which surpass the limits of eligible norms.

³ Law no.9634 dated 30.10.2006, "On Labor Inspection and State Labor Inspectorate", article 35

Transportation of toxic radioactive wastes is another criminal offence provided for in article 202 of the Criminal Code. This offence is sentenced to imprisonment up to five years and when serious consequences on person's health and life are caused, he is sentenced to imprisonment up to fifteen years.

In certain cases the employer may be responsible even for pollution of sea water, lakes, or cumulative and distributive network resources of water with toxic agents, radioactive or other substances that disrupt ecological balance. This constitutes a criminal offence according to article 203 of the Criminal Code and is sentenced to imprisonment up to five years and when this offence has caused serious consequences for human life and health, it is sentenced to imprisonment from five to ten years.

When the employer violates the rules set on possession, production, usage, preservation, transportation and sale of poisonous substance of severe effect, he is charged with responsibility according to provisions of the Criminal Code, precisely article 281, and sentenced to fine or imprisonment up to two years. The violations of rules set on possession, production, usage, preservation, transportation and sale of explosive, flammable or radioactive substances constitute a criminal offence according to article 22 of the Criminal Code and are sentenced to fine or imprisonment up to two years. When the criminal offence has caused death or serious injury of human health or serious material damages, the sentence is to fine or imprisonment up to ten years.

iii- Improvement of legislation and its application

One of the most important steps undertaken by the Albanian state recently in the field of working conditions and safety is the National Strategy of Safety at work 2009-2013.

In drafting this strategy there are taken into account the requests and directions provided in the strategy of European Union 2007-2012 "On safety and health at work".

This important instrument describes the drafting priorities of a national strategy of safety and health at work, so as to prevent the accidents and diseases caused or related to the workplace as well as minimizing the causes and risks in the workplace.

Thus, it may provide higher economic efficiency, while the institutional law on conditions worth of working is fully observed. These derive from international important documents in which it is required a responsible attitude for creation of a safe and healthy work environment.

This means that the State Labor Inspectorate, as one of the responsible authorities for enforcement of law in respect of safety at work, should face the formulation of a clear new vision in order to reorganize its services toward a new goal without leaving behind the development of many objectives, already existing, for efficient performance of all

activities of inspection at work improving the effectiveness, developing new policies, preventive strategies and methods.

The activities on prevention of accidents at work and occupational deceases require improvement of legislation, enhancement of control and creation of a contemporary statistical system making use of information sources from other institutions such as those of health system and social securities.

Recommendations

At the end of the study and the overall utilization of up-to-now achievements I would recommend:

- Approximation of the Albanian legal framework in the field of safety and health at work to international standards
- Increase of productivity and economic efficiency through improvement of working conditions and increase of motivation of employers and employees.
- Implementation of preventive measures for reducing the economic and social losses caused by injury of health at work and damage of property in the field of safety at work.
- The effective provision of enforcement of legislation of safety and health at work in every day practices.
- Strengthening of state inspectorate authorities by way of creation of satisfactory conditions at work, good equipments, right training, effective management, information systems, organizational structures and cooperation with other inspection authorities.
- Adoption of the relevant legislation which controls the prevention of accidents of high risk and transportation of dangerous substances.
- Adoption of specific rules of safety at work for sectors of high risk – such as: construction, transportation, chemical industry, agriculture etc.
- Enhancement of cooperation between institutions which act in the field of Safety and Health at work; in order to ensure a system for exchange of information.
- Further enhancement of cooperation between employers, employees and state in order to institutionalize the relations and ensure enforcement of laws in the actual conditions and in the future. To increase the cooperation and reciprocal assistance in a tripartite context in the National Council of Labor and in committees set up for this purpose and in control institutions and Labor Inspectorate in the center.
- Expansion and strengthening of syndicates, for the majority of employees working free of contracts, especially evident in the private sector.

Albania has officially stated its request to join the big European family. This request dictates the necessity of a multi-dimensional effort which will be developed in time. The approximation of our legislation to international standards and strict enforcement of law plays a vital role in the constant process of democratization of the country.

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