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THE CIVIL AND CRIMINAL CONSEQUENCES OF FAILURE TO COMPLY WITH OBLIGATIONS IN OCCUPATIONAL HEALTH AND SAFETY

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Abstract

The principle of worker's protection in labour law requires to take precautions against any hazards that may occur in the workplace for workers healthy and safe work environment. Thus, maintaining physical and mental health workers provide more efficient work. Occupational health and safety of workers has a very important social and economic consequences and benefits. Occupational health and safety rights of the worker's health and the right to life is an extension of working life. Caused by the law and other regulations, it is supported by the state and is considered as a fundamental right protected by the various sanctions. There are civil and criminal consequences of failure to comply with obligations in relation to occupational health and safety.

Keywords: Occupational health and safety, civil consequence, penal consequence, Code of 6331

I. INTRODUCTION

Occupational health and safety has increased with industrialization as technical and legal concepts. Mechanization and technology transfer in the workplace, formerly led to the fight against business hazards and take precautions with protective measures and mandatory regulations in this area. The development of methods used in industry and thereby achieved mechanization has reduced the production of sovereignty over their own security people. At the end the increased incidence rate of occupational accidents, should be a new and effective measures have emerged as a serious problem.

Workers are faced with various damage and victims-sufficient after the occupational disease or work accident, Work accidents and occupational diseases may be required after the treatment process may occur during this period of loss of income and may lose the ability to work to a certain extent by injury. Preventing the occurrence of occupational accidents and occupational diseases, it is vital. Preventive and proactive approach to occupational health and safety must be taken preferably basis instead of remedial and reactive approach; this would be more effective in the realization of this objective it is clear. Occupational Health and Safety Act No. 6331 is essentially designed to ensure the protection of all employees in this approach. Article 4 of the Occupational Health and Safety Law were discussed tke liabilities in a comprehensive manner. Auditing employers on occupational health and safety, making risk assessments, ensure coordination between organizations and departments in the workplace, health

surveillance of employees, work accidents and making the recording and reporting of occupational diseases, informing the employees, there are obligations related to emergency situations and ensuring the training and participations. Employers failing to comply with the obligations of the legal, administrative and penal consequences will be analyzed in our study.

II. OCCUPATIONAL HEALTH AND SAFETY IN GENERAL

Occupational health and safety, represents effective protection of life and health of workers against dangers arising from work made by employees, working conditions and the tools and supplies used and providing healthy and safe work environment for the workers.

Ensuring the occupational health and safety requirement was understood with the adverse working conditions posed by the industrial revolution and the first legal arrangements were also made relating to occupational health and safety. (Çelik/Caniklioğlu/Canbolat, 252; Süzek, 889 and more; Mollamahmutoğlu/Astarlı/Baysal, 1358; Arıcı, 1-4; Aktay/Arıcı/Kaplan-Senyen, 141; The Ministry of Labour and Social Security, General information about the Occupational Health and Safety, 17; Kılıç, 19). For instance, working hours of women and children have been limited and they are prohibited from working at night or in some heavy and dangerous work. Today, occupational health and safety, is regarded as one of the most important issues of Labour Law.

Indeed, the protection of workers' policy prevailing Labour Law, requires protection of workers against accidents at work and occupational diseases, measures to be taken against any hazards that may occur in the workplace and ensuring healthy and safe working environment. (Tulukçu, 71; Süzek, İş Güvenliği, 9; Centel, 5; Ulusan, 34). Thus, more efficient work is ensured by maintaining physical and mental health of the workers. Except for personal benefits that occupational health and safety provides for workers, it has very important social and economic consequences and benefits. (Heymann, 215; Rantanen, 5; The State of Occupational Safety and Health in the European Union-Pilot Study-Summary Report, European Agency for Safety and Health at Work, 6).

Occupational health and safety right, worker's health and right to health and life is seen as an extension of the right to life and is recognized as a fundamental right, arising from the law and other regulations, supported by the state and protected by the various sanctions (International Labour Office, Encyclopaedia of Occupational Health and Safety, 30; Yılmaz, 7,8; Demirbilek, 8). Today, regulations on the protection of general occupational diseases and work-related accidents are located in many international documents, Convention of International Labour Organization and European Union Legislation.

Various provisions of our Constitution, constitutes a basis for the right to occupational health and safety of workers. The fact that the Republic of Turkey is a social law state is the fundamental basis of this right (C.2). About personal immunity, article 17 regulating the tangible and intangible assets; article 50 regulating the working conditions and the right to rest and article 56 regulating the health service are among other constitutional grounds of the right to occupational health and safety.

Obligations in relation to occupational health and safety and the consequences of violation of these obligations, is treated as limited to the employer within the scope of the Labour Code No.4857.

III. EMPLOYER'S OBLIGATIONS RELATED TO OCCUPATIONAL HEALTH AND SAFETY

1. Obligation of Ensuring Occupational Health and Safety

The employer is obliged to provide the employees with work health and safety, and in this context, makes efforts for prevention of occupational risks, taking all necessary measures including training and information, making organization, providing necessary tools and equipment, adapting health and safety measures to changing conditions and improving the current situation (OSHA 4/1,a). Article 4 of Occupational Health and Safety Act and obligations lay for employers have a mandatory nature (Sümer, 159 and more). Under this provision, the measures to be take and tools and equipment to be kept by the employer are organized in the various regulations in detail, primarily including Occupational Health and Safety Regulation.

Employer's obligation to provide occupational health and safety is within the scope of employer's liability of guarding the employee. (Kılkış, 75 and more; Centel, Yükümlülük, 6 and more; Demir, 675).

Measures to be taken in the workplace to protect the life, health and physical integrity of the worker are a requirement of employer's liability of guarding the employee (Piyal, 115,116; Yılmaz, 2,3; Ekin, 27,28; Arslan, 767).

In the provision, it stated that the employer is obliged to *take every precaution and provide all the necessary tools and equipment* and measures to be taken are not bound to a limit. Thus, the employer will not have fulfilled his or her obligation to provide occupational health and safety, by only taking the measures defined in the occupational health and safety legislation. If further measures are required by scientific and technological developments other than those mentioned in the regulations, the employer is obliged to take them as well. No reason, such as poor economic condition, lack of experience or knowledge about the developments, put forward by the employer will save him from responsibility. The employer can not reflect the cost of occupational health and safety measures to the employees (OSHA 4/4).

Within the scope of the employer's obligation to provide occupational health and safety, some of the obligations stipulated in the Occupational Health and Safety Act are as follows:

- Performing a risk assessment or having a risk assessment performed (OSHA 4/1,c).
- Considering the suitability of the employee in terms of health and security while giving tasks to employees (OSHA 4/1,ç).
- Taking the necessary measures to prevent entry into areas of vital and special danger except employees with adequate information and instructions (OSHA 4/1,d).

According to the provisions of Occupational Health and Safety Act, the employer, considering risk assessment reports, is obliged to develop an overall prevention policy, do necessary control, measurement, study and research in the working environment, monitor, supervise, solve the problems and ensure coordination if more than one employer share the same workspace (OSHA 4, 6, 10, 22).

2. Obligation of Supervision

Occupational Health and Safety Act is not only limited with obligation of the employer to take measures related to occupational health and safety, but it also envisages obligation of supervising whether the employees meet the measures taken. Accordingly, the employer "monitors whether measures taken in the workplace about occupational health and safety are complied or not, supervises and ensures solution to problems" (Article 4/1,b).

3. Obligation of Training

For workers, it is quite useful and necessary to be informed about the measures taken against the risks they may face in the workplace and the measures taken against the risks for the prevention of work-related accidents and occupational diseases (Tulukçu, Importance, 145 and more). A conscious employee complies more carefully with the measures to be taken against risks and minimizes the risk of work-related accident and occupational disease for himself.

Moving from this requirement, with the provision of "The employer provides employees with training of occupational health and safety. Training; is particularly given before starting work, changes of workplace or job, in the event of a change of work equipment or in case of the implementation of new technologies. Training is renewed in accordance with the changing and emerging new risks and repeated at regular intervals as needed", Occupational Health and Safety Act stipulates obligations of providing training and informing for employers (art. 17/1).

The cost of training to be given cannot be reflected to employees within the scope of Occupational Health and Safety Act. The time in training, is counted as working time. In case training time is over weekly working time, this period of time is considered as overtime work or extra work. (OSHA 17/7).

4. Obligation of Informing Employees

Employer's obligation of informing employees is also ensured in article 16 of Occupational Health and Safety Act.

The employer, in order to maintain and sustain the occupational health and safety in the workplace, immediately informs employees and employee representatives, taking the characteristics of the workplace into account, about health and safety risks that can be encountered in the workplace, protective and preventive measures, legal rights and responsibilities associated with them, first aid, extraordinary situations, fighting disasters and fire, persons appointed to evacuation affairs, employees who are exposed to or at risk of serious or imminent danger, dangers and measures taken or to be taken against the risks arising from them.

The employer will provide the employer of employees coming to the workplace from other workplaces with the necessary information, to ensure that they take the information specified in the first paragraph. He allows support personnel and employee representatives to reach information obtained from risk assessment, preventive and protective measures relating to occupational health and safety, measurement, analysis, technical inspection, records, reports and inspection (OSHA 16/2).

5. Obligation of Organization Regarding Occupational Health and Safety in the Workplace

Labour Law, in addition to the above-mentioned obligations, obliges employers to create some committees for workplaces of specific character and employ people. In this context,

employers are obliged to set up occupational health and safety committee; employ occupational safety specialist, workplace doctor and other medical staff and appoint employee representatives and support personnel.

a. Occupational Health and Safety Committee

In workplaces, where fifty or more employees are employed and more than six months of continuous work is done, the employer creates a committee to engage in work related to occupational health and safety (OSHA 22/).

b. Occupational Safety Specialist, Workplace Doctor and Medical Staff

For prevention of occupational risks and activities for the prevention of such risks, the employer appoints *occupational safety specialist, workplace doctor* and *medical staff* among employees for the provision of occupational health and safety services. If there is a lack of personnel with specified qualifications, all or part of this service can be fulfilled by the service of the common health and safety unit. However, in the event of having determined qualifications and the necessary documents, considering danger class and number of employees, he can undertake the fulfilment of these services (OSHA 6/1).

c. Employee Representative and Support Personnel

Occupational Health and Safety Act has opened the way for employees to participate in occupational health and safety management issues through *employee representative* and *support personnel*.

Provided that he pays attention to balanced distribution considering risks in different departments and the number of employees of the workplace, the employer is obliged to appoint *employee representatives* with election or appointment in case the election does not work, at the number specified below (OSHA 20/1). The number of employee representatives is determined by the number of workers in the workplace and a maximum of six employee representatives is foreseen in the law (OSHA 20/1).

According to the Occupational Health and Safety Act, the employer is obliged to appoint support personnel in the workplace. Law, has described the support personnel, beside his fundamental duty, specifically appointed for prevention, protection, evacuation, fire fighting, first aid and other issues of the occupational health and safety with the appropriate equipment and sufficient training (OSHA 2/1,ç). And issues that the employer is required to get prior opinions of the supporting personnel and employee representatives are specified in OSHA 18 / 2.

6. Obligation of Health Surveillance of Employees

Occupational Health and Safety Act is obliged to enable employees to be subject to health surveillance taking the health and safety risks that they may face in the workplace into account (OSHA 15/1). The Employer is obliged to ensure health inspection of employees in the following cases:

- At recruitment,
- Job change,
- In case of requests on their return to work after repeated removals from work due to occupational disease or health condition,
- During the continuation of the business, at regular intervals determined by the Ministry, according to the character of the employee and work and the danger class of the workplace.

The employees to work in dangerous or very dangerous class workplaces cannot start work without appropriate health certificate indicating that they fit to work (OSHA 15/2).

Health certificates that need to be taken within the scope of Occupational Health and Safety Act is taken from workplace doctor working at workplace health and safety unit or common health and safety unit in service of the workplace. Objections to the reports are made to the arbitrator hospitals determined by the Ministry of Health. In law, it is provisioned that the decisions are final (OSHA 15/3).

The cost arising from employer's obligation of health surveillance and all expenses sourced from the surveillance are paid by employers and cannot be reflected to employees (OSHA 15/4). Health care information is kept confidential in order for the protection of the private life and the dignity of the employee under medical examinations (OSHA 15/5).

7. Obligation of Receiving Opinions of the Employees and Ensuring Participation

With the regulations of the Occupational Health and Safety Act concerning receiving opinions of the employees and ensuring participation, important rights and obligations are stipulated to the employee representatives. The employer, about concerning receiving opinions of the employees and ensuring participation, is obliged to provide employees or in workplaces with two or more employees, the workplace trade union representative, if there is one, and if there are not any, employee representatives with the following facilities (OSHA 18/1):

- Obtaining the opinion on matters relating to occupational health and safety, the recognition of the right to offer and take part in discussions on these issues and ensure their participation.
- Receiving their opinions in terms of issues such as implementation of new technologies, work equipment to be selected, impact of working environment and conditions on workers' health and safety.

IV. CONSEQUENCES OF VIOLATION OF OCCUPATIONAL HEALTH AND SAFETY OBLIGATIONS

1. Legal Consequences

a. Compensation Payment

Work accidents and occupational diseases due to lack of necessary health and safety precautions that are under the responsibility of the employer, result in employer's liability for damages (Eren, 79,80; Oğuzman, 337; Akın, 657 and more; Akı, 3 and more; Yıldız, 8 and more). Death of the worker, damage to his physical integrity due to the violation of the law and the contract by the employer or compensation of damages depending on the violation of personal rights, is subject to the provisions of liability arising from the violation of contract (Article 417/3 of Turkish Obligation Law).

In case of physical or spiritual damage, the worker may request the compensation of pecuniary loss and intangible damages/ the material and moral damage, if not funded by Social Security Institution, from the employer (Article 54, 56 of Turkish Obligation Law). And in case of death of the worker, relatives of the worker have the right to be deprived of support or request compensation of spiritual damages (Article 53 and 417/3 of Turkish Obligation Law).

Lawsuits to be brought against the employer, relating to material and moral compensations and compensation for loss of support are subject to the limitation period of *ten years* (Article 146 of Turkish Obligation Law).

b. Employee's Right to Avoid Work

According to the Occupational Health and Safety Act, employees facing serious and imminent danger may require the identification of the case and the decision to take the necessary measures applying to the committee of occupational health and safety, or the employer if the workplace lacks the committee (İnciroğlu, 809 and more). The committee shall convene urgently or the employer makes an immediate decision and the situation is recorded in a minute. The decision is communicated in writing to the employees and employee representatives (OSHA 13/1).

If the committee or the employer makes a decision in favour of the request of the employee, the employee may avoid work until the necessary measures are taken. Wages of the employees in the period of work avoidance and other rights arising from the law and labour contract are reserved (OSHA 13/2).

Employees in cases where serious and imminent danger is unavoidable leave the workplace or danger zone and go to the safe place set before without having to apply to the occupational health and safety committee or the employer if the workplace lacks the committee. The rights of employees cannot be restricted due to this behaviour (OSHA 13/3).

c. The Right of Employee to Terminate the Employment Contract

In the workplace, where the necessary measures are not taken despite the decision of occupational health and safety board or the employer (when there is no committee in the workplace) and the request of the employee, workers may immediately terminate the employment contract of definite or indefinite duration within six working days in accordance with LA 24/I (OSHA 13/4). With regard to this regulation, termination of the employment contract by the employee is subject to application to the occupational health and safety committee and necessary measures not being taken by the employer despite the decision of the committee. Without following this path, termination of the contract directly by the worker is not possible. In case of suspension of work at the workplace, provisions relating to avoiding work are not applied (OSHA 13/5).

d. Suspension of Work

Occupational Health and Safety Act includes the suspension of work among the consequences of violation of occupational health and safety. According to the law, it is possible to suspend the work in the following two situations (Article 25/1):

- When a life-threatening issue for workers is detected on the premises, in working methods or work equipment of the workplace; work is suspended in a section or all of the workplace considering the nature of life-threatening danger, the area that the risks arising from the danger may affect and the employees until the danger is fixed.
- In very dangerous classification of workplaces where mining, metal, construction work and works with hazardous chemicals done or major industrial accidents are likely to happen, the work is suspended if the risk assessment is not fulfilled.

A committee composed of three labour inspectors qualified to inspect, carries out the necessary investigations upon the detection of the labour inspector authorized in terms of

occupational health and safety, and may decide to suspend the work within two days from the date of detection.

However, in case the issue detected requires an urgent intervention; the labour inspector who has done the detection suspends the work on condition that it is valid until a decision is made by the committee (OSHA 25/2). The decision of suspension is sent to the concerned local authority and provincial directorate of Labour and Employment Agency where the business file is kept within *one day*. The decision of suspension shall be carried out within *twenty-four hours* by the local authority. But, if the decision of suspension is made because the issue detected requires an urgent intervention, shall be carried out by the local authority on the same day (OSHA 25/3).

The law has recognized the employer the right to appeal against the decision of suspension. The employer may appeal the decision of suspension at the authorized labour court within *six working days* from the date of fulfilment. The appeal does not affect implementation of the decision of suspension. The court will discuss the appeal primarily and decide within *six working days*. The court decision is final (OSHA 25/4).

Whether the activities in the workplace can start again or not is subject to the permission by the Ministry. In case the employer informs the Ministry in writing about the elimination of issues that have led to suspension of work, an inspection is made in the workplace at the latest within *seven days* and the demands of employers is finalized (OSHA 25/5).

The employer is obliged to pay the salary of employees who have become unemployed due to suspension of work or employ them in other according to their professions or situations without a decrease in the salary (OSHA 25/6).

Administrative fine is applied to the employer who has ignored the decision of suspension made in a section or all of the workplace and continued the suspended work without fulfilment of the conditions set out in the regulation (OSHA 26/1,l).

2. Criminal Law Consequences

Criminal law results will be evaluated in terms of the misdemeanors and offenses. Whether the misdemeanors are in the scope of the criminal law (for misdemeanors Mitsch, 41; KKOWİG-Bohnert, Einleitung, 8 and more) is controversial in Turkish law. However, we will also make misdemeanor determinations about the subject because we assess this issue broadly under criminal law (Akbulut, Misdemeanors, 26 and more).

In Article 26 of Occupational Health and Safety Code, the misdemeanors about the violation of the provisions relating to the occupational health and safety are regulated and the administrative fines to be applied are included. The administrative fines responsibility in case of violation of the occupational health and safety provisions, is on the employer or the employer representative who is imposed by employer to take the health and security measures. The administrative fines stipulated in this code are given by stating its justification by the Provincial Director of the the Labour and Employment Agency; these administrative fines are paid within thirty days of notification (OHSC. 26/2).

If the elements are realized, there will be the criminal acts in terms of work accidents or occupational disease resulting in injury or death of worker. If the workers are exposed to occupational diseases or work accidents because of violation of the obligations by the employers, injury or killing crimes may be on the carpet for employers. In our Code, the acts which hurt the body or cause deterioration of health or ability to perceive constitute injury. These determinations

have been clearly stated in both articles regulated the intentional injury and negligent injury (for injury subject Tezcan/Erdem/Önok, 218 and more, 258 and more; Özbek/Kanbur/Doğan/Bacaksız/Tepe, Special Provisions, 193 and more, 233). Therefore, the injury crime will be in question if the workers are exposed to occupational diseases or some consequences occur in their body as a result of work accidents. If employees die because of the employer's failure to comply with the obligations, the killing crime will occur (for killing subject Artuk/Gökcen/Yenidünya, 123 and more, 221 and more; Tezcan/Erdem/Önok, 126 and more, 199 and more; Özbek/Kanbur/Doğan/Bacaksız/Tepe, Special Provisions, 101 and more, 179 and more; Koca/Üzülmez, Special Provisions, 24 and more, 127 and more). If there is intent of the employer, intentional injury or intentional killing crimes will occur, but if there is negligence of the employer, negligent injury or negligent killing crimes will take place.

There are two shapes of intent named as direct intent and possible intent, also two shapes of negligence named as conscious negligence and unconscious negligence and all of these concepts are defined in Turkish Penal Code (for intent and negligence subjects Akbulut, General Provisions, 303 and more; Özgenç, 232 and more; Zafer, 228 and more; Özbek/Kanbur/Doğan/Bacaksız/Tepe, General Provisions, 259 and more; Öztürk/Erdem, 254 and more; Koca/Üzülmez, General Provisions, 134 and more). If the crime, which occurs because the employer fails to fulfill his or her obligations, has been evaluated with regard to intent, there may be possible intent. If the employer has direct intent, there is not a condition related to the obligations that aren't fulfilled in the workplace, but there is an offense committed for any other reasons. Although the employer predicts that the person may be injured or killed because he or she fails to fulfill his or her obligations, if he or she endures or accepts or ventures the realization of these consequences, it means, he or she has possible intent in terms of the consequences indicated. In Turkish Penal Code, reduction in penalties is accepted if there is possible intent compared with the direct intent. This reduction in penalty is accepted compulsory, it which means, the discretion of the judge has not been granted in the point of whether the penalties are reduced or not (art. 21 of Turkish Penal Code). The penalty for the intentional killing crime is application of life imprisonment (art. 81 of Turkish Penal Code), if the qualified version of the crime is realized; the penalty is application of aggravated life imprisonment (art. 82 of Turkish Penal Code). If the intentional killing is actualized with possible intent, the penalties are application of life imprisonment instead of application of aggravated life imprisonment and from twenty to twenty-five years of application of imprisonment instead of application of life imprisonment.

The penalty of intentional injury is application of term imprisonment. It is necessary for reduction in the application of term imprisonment from one third to half if the act is actualized with possible intent. In the article 86, the basic form, the form that requires less punishment and more punishment requiring form of intentional injury; in the article 87, aggravated form of intentional injury by virtue of result and the provisions about the death which occur as a result of intentional injury are regulated. It is also necessary that the perpetrator at least has negligence in terms of these severe or other results. Intentional injury expressed in article 86, is within the scope of reconciliation except in case that it requires more punishment (art. 253 of Criminal Procedure Code).

In terms of the worker's injury or death due to the employer acting against the obligations, presence of negligence is mostly mentioned. The employer may have conscious or unconscious negligence. If the negligence of the employer is conscious, the penalty should be increased from

one third to half in accordance with article 22 which regulates negligence of penalty. This increase in penalties is compulsory and the judge does not have a discretionary power. Negligent killing is regulated in article 85 and reckless injury is regulated in article 89 in our Penal Code. In article 85, a special muster provision is given place beside the basic form of the crime and according to this provision, it is accepted that the punishment of the perpetrator has been accepted to be from two to fifteen years of imprisonment if the act causes death of more than one person, or the injury of one person or more than one person along with the death of one or more people (the penalty for the basic form of the crime is from 2 to 6 years). And article 89, which regulates negligent injury, includes basic form of the crime, aggravated form of intentional injury by virtue of result and a special muster provision. Except for their penalties, aggravated forms of negligent injury by virtue of result are in parallel with aggravated forms of intentional injury by virtue of result (with two exceptions). If more than one person is injured as a result of one act, penalty becomes greater. The penalty is imprisonment from six months to three years (the basic form is imprisonment from 3 months to 1 years or judicial fine). Proceeding of this crime is subject to complaint. However, in the case of conscious negligence, complaint is not required except for basic form of crime. Negligent injury regulated in article 89 is within the scope of reconciliation.

The employer's failure to comply with his/her obligations carries the character of failure to comply with legal obligations of actualizing a certain executive behavior. Thus, injury and killing crimes are committed in a neglectful way. The legislator has regulated the negligent killing in article 83 and the negligent injury in article 88 of Turkish Penal Code. In these articles, the legislator has acknowledged discretion of the judge for the reduction of penalties due to the negligence of the offender. If the penalty of the crime committed by the employer with possible intent is not reduced due to negligence, as mentioned previously, responsibility will be assigned by doing reduction of possible intent in life imprisonment. However, if the judge chooses the way of reduction of penalties due to the negligence, reduction for possible intent will be applied through the reduced penalties in accordance with article 83. The penalties of injury crime, in accordance with article 88, will be provided by reducing up to two-thirds of the penalties in articles 86 and 87. Intentional injury committed in a neglectful way is within the scope of reconciliation (art. 253 of Criminal Procedure Code). The discretion of reduction recognized for deliberately committed forms has not been acknowledged for the negligent injury and killing crimes committed in a neglectful way. However, committing the crime in a neglectful way may be taken into consideration in determining the penalty.

The legislator has made a determination regarding not crimes, but the security measures in Occupational Health and Safety Code. If it is determined that the employer has committed the act in mining workplaces where fatal occupational accidents have actualized, the employer may be prohibited from participating in public tenders for two years by the court. Also, the employer, convicted imprisonment because of his or her intent, is exposed to the measures of the deprivation of rights during the execution of the penalty which he or she has taken in accordance with our Penal Code. Besides, in the crimes committed by misusing of the rights and authorities, the deprivation of rights has been applied even after execution of the penalty from half to double of penalty. And in case of conviction due to negligent crime, the person is prohibited from performing the profession and art for not less than three months and not more than three years (art. 53 of Turkish Penal Code). If the duration of criminal conviction imposed on the employer doesn't exceed certain duration (2 years), the institutions of the suspension (art. 51 of Turkish Penal Code) and the deferment of the announcement of the verdict (art. 231 of Criminal

Procedure Code) may be applied. If the duration of criminal conviction imposed on the employer doesn't exceed one year, it is possible to convert imprisonment into the judicial fine or measure (but this provision can also be applied to the conviction of more than one year in unconscious negligence).

V. CONCLUSION

The employer is obliged to ensure the health and safety of employees about work and in this context; performs works or studies for prevention of occupational risks, taking all measures including training and giving information, making the organization, providing the necessary tools and equipment, adapting health and safety measures to changing conditions and improving the current situation (OSHA 4/1, a). Obligations set for the employer under the Article 4 of Occupational Health and Safety Act are of a mandatory character.

If the employer does not comply with obligations regarding the occupational health and safety and this leads to a work-related accident and occupational disease, employer's liability for damages will arise.

According to the Occupational Health and Safety Act, employees facing *serious* and *imminent* danger have the right to avoid work. In the workplace, where the necessary measures are not taken despite the decision of occupational health and safety board or the employer (when there is no committee in the workplace) and the request of the employee, workers may immediately terminate the employment contract of definite or indefinite duration within six working days in accordance with LA 24/I. In addition, the Occupational Health and Safety Act includes the suspension of work among the consequences of violation of occupational health and safety. In Article 26 of the Law on Occupational Health and Safety, administrative fines to be applied are regulated in case of violation of the provisions on occupational health and safety. And in work-related accidents and occupational diseases resulting in injury or death of the worker, it is possible for the employer to be punished in accordance with the provisions of the Turkish Penal Code.

BIBLIOGRAPHY

Akbulut, Berrin, Türk Ceza Kanunu İle Kabahatler Kanunu Genel Hükümlerinin Yaptırım Hükümleri Dışında Karşılaştırmalı Olarak İncelenmesi, 2nd Ed., Ankara 2014 (Misdemeanors).

Akbulut, Berrin, Ceza Hukuku, Genel Hükümler, Ankara 2015 (General Provisions).

Akı, Erol, 6331 Sayılı İş Sağlığı ve Güvenliği Kanunu ve Çalışma Yaşamına Etkileri, DEÜHFD., Prof.Dr.M.Polat Soyer'e Armağan, İzmir 2014.

Akın, Levent, İş Sağlığı ve Güvenliği Kanunu'nun İşverenin Hukuki Sorumluluğuna Etkisi, MÜHFD., Prof.Dr.Ali Rıza Okur'a Armağan, İstanbul 2014.

Aktay, Nizamettin /Arıcı, Kadir/Kaplan-Senyen, Emine T., İş Hukuku, Ankara 2006.

Arıcı, Kadir, İş Sağlığı ve İş Güvenliği Dersleri, Ankara 1999.

Arslan, Seda, İş Sağlığı ve Güvenliği Kanunu'na Göre İşverenin Genel Yükümlülükleri, MÜHFD., Prof.Dr.Ali Rıza Okur'a Armağan, İstanbul 2014.

Artuk, Mehmet Emin/Gökcen, Ahmet/Yenidünya, Ahmet Caner, Ceza Hukuku, Özel Hükümler, 13th Ed., Ankara 2013.

Bohnert, Joachim, Karlsruher Kommentar zum Gesetz über Ordnungswidrigkeiten, 3. Auflage, München 2006.

Centel, Tankut, İş Sağlığı ve İş Güvenliği Mevzuatı, İstanbul 1997.

Centel, Tankut, İşverenin İşyerinde Sağlık ve Güvenliği Sağlama Yükümlülüğü, Çimento İşveren Dergisi, 2013/3 (Yükümlülük).

Çalışma ve Sosyal Güvenlik Bakanlığı, İşçi Sağlığı ve İş Güvenliği ile İlgili Genel Bilgiler, Ankara 1993/30.

Çelik, Nuri/Caniklioğlu, Nurşen/Canbolat, Talat, İş Hukuku Dersleri, 28th Ed., İstanbul 2015.

Demir, Fevzi, İş Sağlığı ve Güvenliği Önlemlerinin Alınmasında İşverenin Sorumluluğu, MÜHFD., Prof.Dr.Ali Rıza Okur'a Armağan, İstanbul 2014.

Demirbilek, Tunç, İş Güvenliği Kültürü, İstanbul 2005.

Ekin, Ali, İş Sağlığı ve Güvenliğine İlişkin Yükümlülüklere Uymamanın Sonuçları (İşveren Açısından), Konya 2010.

Eren, Fikret, Borçlar Hukuku ve İş Hukuku Açısından İşverenin İş Kazası ve Meslek Hastalığından Doğan Sorumluluğu, Ankara 1974.

Heymann, Jody, Occupational Health Global Inequalities at Work; Work's Impact on the Health of Individuals, Families and Societies, New York, 2003.

International Labour Office, Encyclopaedia of Occupational Health and Safety, 4th Ed., Geneva, Vol.1, Part.IV, 1987.

İnciroğlu, Lütfi, İş Sağlığı ve Güvenliği Kanunu'nda Çalışanın Çalışmaktan Kaçınma Hakkı, MÜHFD., Prof.Dr.Ali Rıza Okur'a Armağan, İstanbul 2014.

Kılıç, Leyla, İşverenin İş Sağlığı ve Güvenliğini Sağlama Yükümlülüğü ve Sorumluluğu, Ankara 2006.

Kılkış, İlknur, İş Sağlığı ve Güvenliği, Bursa 2014.

Koca, Mahmut/Üzülmez, İlhan, Türk Ceza Hukuku, Genel Hükümler, 8th Ed., Ankara 2015 (General Provisions).

Koca, Mahmut/Üzülmez, İlhan, Türk Ceza Hukuku, Özel Hükümler, 2nd Ed., Ankara 2015 (Special Provisions).

Mitsch, Wolfgang, Recht der Ordnungswidrigkeiten, 2. Auflage, Berlin Heidelberg 2005.

Mollamahmutoğlu, Hamdi/Astarlı, Muhittin/Baysal, Ulaş, İş Hukuku, 6th Ed., Ankara 2014.

Oğuzman, Kemal, İş Kazası ve Meslek Hastalıklarından Doğan Zararlardan İşverenin Sorumluluğu, İÜHF. Mecmuası, Vol.34, No.1-4, İstanbul 1969.

Özbek, Veli Özer/Kanbur, Mehmet Nihat/Doğan, Koray/Bacaksız, Pınar/Tepe, İlker, Türk Ceza Hukuku, Genel Hükümler, 6th Ed., Ankara 2015 (General Provisions).

Özbek, Veli Özer/Kanbur, Mehmet Nihat/Doğan, Koray/Bacaksız, Pınar/Tepe, İlker, Türk Ceza Hukuku, Özel Hükümler, 9th Ed., Ankara 2015 (Special Provisions).

Özgenç, İzzet, Türk Ceza Hukuku, Genel Hükümler, 11th. Ed., Ankara 2015.

Öztürk, Bahri/Erdem, Mustafa Ruhan, Uygulamalı Ceza Hukuku ve Güvenlik Tedbirleri Hukuku, 15th Ed., Ankara 2015.

Piyal, Bülent, İş Sağlığı ve Güvenliğinde Türkiye'nin Avrupa Birliği'ne Uyum Sorunu, Ankara 2009.

Rantanen, Jorma, Basic Occupational Health Services, Ed.Suvi Lehtinen, 3rd Revised Edition, Helsinki, World Health Organization, Finnish Institute of Occupational Health, 28 September 2007.

Sümer, Haluk Hadi, İş Hukuku, 20th Ed., Konya 2015.

Süzek, Sarper İş Hukuku,11th Ed., İstanbul 2015.

Süzek, Sarper, İş Güvenliği Hukuku, Ankara 1985 (İş Güvenliği).

Tezcan, Durmuş/Erdem, Mustafa Ruhan/Önok, Murat, Teorik ve Pratik Ceza Özel Hukuku, 12th Ed., Ankara 2015.

The State of Occupational Safety and Health in the European Union-Pilot Study-Summary Report, European Agency for Safety and Health at Work, 2000.

Tulukçu, N. Binnur, İşverenin Risk Değerlendirmesi Yükümlülüğünün Hukuki Boyutu, Prof.Dr.Ali Rıza Okur'a Armağan, MÜHFD., 2014, Vol.20, No.1.

Tulukçu, N. Binnur, The Importance of Education in Occupational Health and Safety, IJAS, Volume 5, Number 1, 2012 (Importance).

Ulusan, İhsan, Özellikle Borçlar Hukuku ve İş Hukuku Açısından İşverenin İşçiyi Gözetme Borcu, Bundan Doğan Hukuki Sorumluluğu, İstanbul 1990.

Yıldız, Gaye Burcu, İşverenin İş Kazasından Doğan Hukuki Sorumluluğu, Toprak İşveren, Haziran 2010.

Yılmaz, Fatih, AB ve İş Sağlığı Güvenliği, Ankara 2011.

Zafer, Hamide, Ceza Hukuku, Genel Hükümler (TCK m.1-75), 4th Ed., İstanbul 2015.