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Joint-Stock Company Directors' Civil Liability For the Payment of Compensation Due To The Occupational Accidents or Diseases

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Abstract

Employees who suffer from an occupational accident or occupational disease as a result of practices contrary to the provisions of occupational health and safety can receive material and moral compensation from Social Security Institute and from their employers. Legal personality of a joint-stock company is deemed as employer for the people working for this company. The members of the board of directors manage and represent the company at the highest level. Transactions and activities of the board members, which are contrary to the provisions of occupational health and safety, may cause companies to pay compensation and suffer financially. In this article, the liability of board members of joint-stock companies for the compensation paid by the company due to violation of occupational health and safety provisions is examined.

Key Words: occupational health and safety, occupational accident, occupational disease, compensation, board member, joint-stock company, directors, liability.

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Introduction

Since the humanity started to live as a society, division of labor first emerged mechanically and then organically.[1] Thanks to the division of labor, various needs of the society were met quickly and effectively. At the same time, technological developments have gained momentum with the specialization. In this context, the history of civilization shows that the technological progress of humanity and the increase in the division of labor progress together. This progress has gained unprecedented momentum with the industrial revolution.

During the industrial revolution, working conditions have become more complicated with the emergence of mass production and general distribution. In the early days of the industrial revolution, where labor and class consciousness have not yet been acknowledged, the extreme conditions, especially for workers working in the factories of Western Europe, have been the subject of realistic novels[2]. As the wheels of history continued to spin, class consciousness and the struggle for labor emerged. Thanks to this struggle, working conditions have been gradually improved.

Besides, provisions of occupational health and safety help to realize the capitalist utility principle. According to this principle, "Prevention of

[1] For a more detailed examination on this subject, Emile Durkheim's "The Division of Labor" can be consulted. Durkheim, Émile, and W D. Halls, **The Division of Labor in Society**, New York: Free Press, 1984.

[2] The novels written under the influence of realism were depicting the heavy working conditions caused by the industrial revolution. E.g. Emile Zola's **Germinal**, Charles Dickens' **Hard Times**, and Jack London's **The Iron Heel**.

accidents and diseases is cheaper and more humane than paying compensation." and "Prevention starts at work."[3]

When all these developments are evaluated, the importance of regulations regarding occupational health and safety is understood. The objectives of occupational health and safety regulations will be mentioned below. Then the occupational health and safety regulations will be specified. Afterwards, the obligations of employers regarding occupational health and safety will be specified within the framework of its own legislation. The legal responsibility of employers will be explained in case of violation of these obligations. It will be discussed that company directors can be encouraged to make more active efforts to comply with the occupational health and safety provisions, thanks to the possibility of being held accountable through a lawsuit. The final statements drawn from all these discussions will be expressed in the conclusion.

1. Objectives Of Occupational Health And Safety Regulations

With the provisions of occupational health and safety, it is aimed to provide employees with the highest level of safety and health. Thus, employees will be protected from the negative effects of adverse working conditions. The losses that may arise from the risks in the workplace will either be completely eliminated or the losses can be minimized. The best possible harmony between the workplace and worker will be

[3] Fuat Bayram, "Yeni İş Sağlığı ve Güvenliği Mevzuatımıza Hakim Olan İlkeler", **İş Hukuku ve Sosyal Güvenlik Hukuku Dergisi**, Vol. 7, 2005, p.1123.

achieved. Eventually, the working efficiency will be improved. These measures will prevent losses such as injury, death, the cessation of business, loss of time, work loss, and psychological losses, etc. These costs can be expressed as social costs as well because of their societal effects. The followings are the results of scientific research conducted in England on how these social costs affect the commercial sectors. These results reveal the importance of the situation in terms of capitalist understanding of utility. According to the research, in the short and long term;

- 8% of the project cost of a construction company,
- 1.4% of the operating cost of a company that carries dairy operations,
- 37% of the profits of a logistics company,
- 14.1% of the potential profit of a company that does oil exploration,
- 5% of the annual operating cost of a healthcare facility may be spent on occupational accidents[4].

If companies comply with the occupational health and safety provisions, the social cost will be reduced.

2. Regulations Of Occupational Health And Safety In Turkish Law

The first regulations on occupational health and safety are encountered during the Greek and Roman civilizations. The first

[4] Özlem Özkılıç, **İş Sağlığı ve Güvenliği Yönetim Sistemleri ve Risk Değerlendirme Metodolojileri**, TİSK, 2005, p.10.

international studies on the subject with a modern perspective were conducted by the International Labor Organization (ILO), which was founded in 1919.

The first legal regulations for occupational health and safety in Turkish law can be listed as follows:

- Dilaver Pasha Ordinance dated 1865,
- The Maadin Ordinance of 1869,
- Law Regarding the Law of Ereğli Havza-i Fahmiye Mining Area dated 1921.

Additionally, Turkey is a party to the Universal Declaration of Human Rights and some other conventions arranged by ILO. These conventions and agreements contain provisions that directly or indirectly regulate the field of occupational health and safety.

In the era of Republic, it is seen that occupational health and safety regulations were made in the Labor Laws numbered 3008 in 1936, 931 in 1967, 1475 in 1971, and 4857 in 2003. Occupational health and safety regulations have gained an independent code along with the Occupational Health and Safety Code No. 6331. Under this code, it is aimed to ensure occupational health and safety in the workplace. It is also aimed to regulate the duties, authorities, responsibilities, rights, and obligations of employers and employees in order to improve existing health and safety conditions. The employee is the real person who is employed in public or private workplace, regardless of their status in their specific

laws. The employer is the real or legal person or institutions and organizations that do not have legal personality. A work accident is an event that occurs in the workplace or due to the conduct of the work, causing death or injury. Occupational disease is the term to express the diseases resulting from exposure to occupational risks[5].

In addition to the codes mentioned above, the Turkish Code of Obligations numbered 6098 contains provisions on the contract of service. These provisions apply to employees who fall outside the scope of the Labor Law. In addition, the Social Insurance and General Health Insurance Law Numbered 5510 contains provisions regarding the definition, elements, and conditions of occupational accidents and occupational diseases.

3. Obligations Of Employers In The Scope Of Occupational Health And Safety

Before the Occupational Health and Safety Code came into force, occupational health and safety were regulated by article 77 and the rest of the Labor Law. With the Law Numbered 6331, much more detailed regulations regarding occupational health and safety were made. According to Law No. 6331, employers' obligations to employees can be expressed as follows:

- Obligation to conduct a risk assessment, control, measurement and research related to occupational health and safety,

[5] Article 2 of the Health and Safety Code No. 6331.

- Emergency plans, fire fighting, provincial aid, and evacuation measures,
- Registration and notification of occupational accidents and diseases,
- Health surveillance
- Informing and educating employees,
- Obligation to create an organization related to occupational health and safety,
- The obligation to employ occupational safety specialists and workplace doctors,
- The obligation to employ occupational health and safety board,

4. Legal Liability Of The Employers For The Damages Occurred Because Of The Violation Of Occupational Health And Safety Provisions

It is envisaged the employee who has been subjected to a work accident or an occupational disease due to the absence of occupational health and safety measures, or the relatives of the worker who died due to these reasons will be compensated by the employer. If the worker who has a work accident or an occupational disease is insured, according to social security regulations, this worker is provided with health aid. However, these payments do not cover the real loss. Therefore, those who are deprived of her/his support in the event

that the employee loses her/his life can claim the damages, which are not covered by the Social Security Institute, from the employer[6].

In addition, the employers who fail to fulfill their duty to supervise the employee may obliged to make recourse payments to the Social Security Institute. Thus, the faulty employer compensates for losses caused by occupational accident or occupational disease both directly and through recourse.

Compensation items to be paid to the employee or relatives are material compensation, immaterial compensation and compensation for loss of support. Sub-items of material compensation are losses arising from the loss of working power, losses arising from the breakdown of the economic future, treatment costs and earnings losses[7].

5. Liability Claim For Company Directors' Liability Due To The Vioaltion Of Occupational Health And Safety Provisions

A. Determination Of The Employer Status

To determine the employer status, there are difficulties in the workplace belonging to legal personalities. Although the concept of the employer is included in Law No. 6331, it is necessary to use the definitions given in the doctrine to determine the qualification of the employer in legal entities. According to an analytical definition in this regard, the employer is a natural or legal person who employs the worker for a wage based on an employment contract and has the highest level of

[6] Kenan Tunçomağ, **İş Hukuku**, İstanbul, 1986, p. 274.
[7] Sarper Süzek, **İş Hukuku**, İstanbul, 2012, p. 443 ff.

authority to request the job to be carried out[8] Based on this definition, the criteria are the exercise of the right to management and the existence of an employment contract between the parties. Thus, in determining the legal status of the employer, the right of management over the employee will be investigated.

According to the abovementioned definition, the employer who is a party to the employment contract and the employer who has the highest level of instruction should be determined separately. Here, a distinction must be made between substantial and abstract employers[9]. There is no valid criterion for every event in making substantial and abstract employer distinction. However, decision-making power is decisive for the determination of the employer status. In other words, the substantial employer decides on the activities regarding the management of the business and does not receive orders and instructions from anyone about this issue. The abstract employer, on the other hand, can be a minor, inheritor or a legal entity who is a party to the employment contract but does not have direct power of giving instructions to the employees[10].

B. Employer Status In The Joint-Stock Company

Joint-stock companies are capital-based commercial companies. These companies are types of companies that are preferred mostly for large investments in the market economy. Due to their

[8] Murat Engin, **Türk İş ve Sosyal Güvenlik Hukukunda İşveren**, 1993, p. 40.
[9] Engin, p. 122.
[10] Engin, p. 116 ff.

increased efficiency and intensity in the market, they have been chosen as the scope of this study.

The board of directors or managers may appear as a concrete employer in joint-stock companies. They are bodies or individuals equipped with authority that are closely related to the interests of the company, shareholders, and creditors. Therefore, an effective, fair, and balanced system of responsibility is required. Thus, directors will provide maximum care[11].

Regulations regarding the board members of joint-stock companies are in article 365 and the rest of the Turkish Commercial Code. According to this provision, the board of directors manages and represents the company. The board of directors may set up committees and commissions to monitor the progress of the works, to prepare reports on the topics to be presented to them, to implement their decisions or for internal audit. The board of directors is authorized to make decisions about all kinds of works and transactions necessary for the realization of the company's business subject, except those left under the authority of the general assembly in accordance with the law and the articles of association. The board of directors has indispensable authority. These are the senior management of the company and giving instructions about them; determination of the company management organization; appointment and dismissal of principals and persons with the same function and those with signatory powers. It is the upper surveillance of

[11] Ersin Çamoğlu, **Anonim Ortaklık Yönetim Kurulu Üyelerinin Hukuki Sorumluluğu**, 2010, p. 2-4.

whether the persons in charge of management activities in accordance with the laws, articles of association, internal instructions, and written instructions of the board of directors.

According to the provisions of the Turkish Commercial Code, members of the board of directors or managers who have been given management and representation powers can be acknowledged as substantial employers.

C. Payment Of Compensation Because Of The Activities Of Directors And The Issue Of Damage To The Company

The main responsibility in the legal entities belongs to the legal personality as an employer. However, the legal persons carry out their work through the organs and the people in charge. Therefore, it should be investigated whether there is a personal fault in the occurrence of a work accident for the determination of responsibility[12].

The primary purpose of occupational health and safety regulations is to prevent occupational accidents and occupational diseases. The second objective is the compensation for the loss by the employer, who is generally stronger in economic terms. In this regard, the following two situations arising in practice should be examined: Firstly, the company suffered losses due to the faulty behavior of the directors and the compensation was paid, and the opportunity of the company shareholders or creditors to compensate for this loss from

[12] Supreme Court Assembly of Civil Chambers' Decision dated 08.10.2003, numbered 21/597-544. (Güneren)

the responsible directors. Secondly, the situation that the employee who has been in a work accident or an occupational disease can apply to the directors due to the insolvency of the company despite the right to compensation as a result of the lawsuit s/he filed against the company. Is it realistic to think that directors, whose personal responsibilities increased in these ways, will pay more attention to the implementation of occupational health and safety provisions?

There may be a violation of occupational health and safety provisions due to the fault of one of the company directors. In the event that the company pays compensation to the injured employee or her/his dependents, it can be claimed that the company was damaged. In this case, shareholders and creditors are able to request compensation for the damage company suffered. This possibility is an exception to the rule that a person who is not a party to the credit relationship cannot file a claim for compensation based on that credit relationship. This situation is also seen as an exception in terms of procedural law, which is made to the rule that no compensation can be requested in favor of the party who is not a party to the case[13]. According to this exemption, the shareholders or creditor may request compensation in favor of the company even if s/he does not have a representative power.

[13] Çamoğlu, p.124.

D. Liability Claim Against Company Directors

The lawsuit to be filed regarding the responsibility of the company directors may be based on the fault [14] or contractual liability [15]. The occurrence of damage in the liability claim must be demonstrated. The decrease in company assets due to the transactions or actions performed by the company directors with fault is sufficient for the formation of responsibility claim against the company directors. In this case, the company shareholders and creditors will be indirectly damaged while the company is directly damaged.

a. Claimants in the Liability Claim

In the liability claim to be filed, the claimants can be companies, shareholders, or creditors of the company. The essential right of action will also belong to the company, as it is the company that is directly damaged. According to article 555 of the Turkish Commercial Code, the company and each shareholder may request compensation for the loss incurred by the company. In the article 309 of the abolished Commercial Code, which corresponds to this article, this right of litigation was also granted to creditors. However, an important distinction has been made in this regard in the Turkish Commercial Code. Accordingly, while the right of the company and shareholders to file a liability claim is

[14] Halil Arslanlı, **Anonim Şirketler II-III, Anonim Şirketin Organizasyonu ve Tahviller**, İstanbul, 1960, p. 150; İsmail Doğanay, "Anonim Ortaklıkta Yönetim Kurulu Üyelerinin 'Hukuki' Sorumluluğu", **Batider,** Vol. XVII-3, p. 57 ff.

[15] Reha Poroy, Ünal Tekinalp, Ersin Çamoğlu, **Ortaklıklar Hukuku I**, İstanbul, 2014, p. 336.

preserved, the right of creditors to file a liability claim stipulated differently. It was stipulated that the creditors might file a liability claim only if the company goes bankrupt.

Another differentiation in terms of filing a liability claim is the situation that a general assembly decision is required if the claimant is the company itself. The High Court of Appeal previously acknowledged that in case the company files a lawsuit, the decision of the general assembly was the condition for the case to be heard. In recent years, in case the general assembly resolution is lacking, the Court does not recognize this as a requirement of the lawsuit, and gives the plaintiff time to complete the deficiency[16].

b. The Effect of the Discharge Decision on the Liability Claim

It is a significant situation where the decision to discharge was taken. The body authorized to give the decision of discharge in companies is the general assembly. This authority is among the indispensable and non-transferable powers of the general assembly. First of all, there is no dispute that the discharge decision eliminates the company's right to file a liability claim against its directors[17].

According to the regulation stipulated by article 558 of the Turkish Commercial Code, the discharge decision eliminates the shareholder's right to sue, regarding the material events disclosed, who vote in favor of this decision. Also, shareholders who acquired the shares by knowing the

[16] Çamoğlu (Poroy/Tekinalp), N. 601.
[17] Çamoğlu, p.329; Arslanlı, p. 196.

discharge decision are prevented to file a liability claim against those directors. The shareholders, other than the shareholders having the features in this provision, may file a liability claim. According to the regulation of the mentioned article, these persons' right to file a claim will time statute-barred after six months from the discharge decision's date. A discharge decision does not have any direct effect on creditors' right to file a liability claim.

c. Subject of Liability Claim

Compensation of the damages caused by the directors due to their faulty work, transactions, and actions constitute the subject of the case to be filed. Since the loss in dispute is the company's direct loss, the company will demand payment of the compensation to the company itself.

In the case that the shareholders or creditors file the claim since these persons are indirectly damaged, they are required the demand payment of the compensation to the company, as it is stated in the second sentence of article 555/I of the Turkish Commercial Code.

d. Can The Employee, Who Cannot Receive The Compensation From The Company, File Liability Claim Against The Directors As A Company's Creditor

The employee who has suffered a work accident or an occupational disease may direct her/his right to file a compensation claim against the company. Sometimes because of the financial inability of the company,

s/he may apply another way to realize her/his compensation right. First, it must be recognized that the employees who filed a claim against the company and succeed her/his action become a creditor of the company in terms of the compensation right. As stated above, article 556 of the Turkish Commercial Code provides company creditors the opportunity to take action for a liability claim after the bankruptcy decision is declared about the company. Based on this provision, it will be possible for the employee, who has become 'compensation creditor', to activate the mechanism of liability action. According to the road map that emerges when the systematic of the article is taken into consideration, the employee who cannot obtain compensation from the company will first request the company's bankruptcy. Following the decision of the bankruptcy of the company, the claim of the employee as a creditor may be put forward by the bankruptcy administration in the first place. If the bankruptcy administration does not file a liability claim for the employee's compensation, the employee will now be able to substitute the liability case. The sum obtained as a result of this case will be requested to be paid to the company. The sum obtained in accordance with the article 556/2 of the Turkish Commercial Code will be allocated to the payment of the receivables of the creditors who have filed a lawsuit in accordance with the provisions of the Execution and Bankruptcy Law. By following this path, the employee, who cannot obtain compensation directly from the company, will obtain indirect compensation from the managers.

e. Other Material and Procedural Issues Regarding the Liability Claim

The lapse of time for the liability lawsuit is two months from the time when the claimant learns loss and the person responsible, and five years from the occurrence of the act that caused the loss in any case. In addition, if this action requires criminal punishment and a longer time-lapse period is foreseen according to the Turkish Penal Code, this time lapse will be applied in the compensation case as well.

E. The Comparison Of Claims Arising From Wrongful Acts Of The Directors Or Arising From Corporate Liabilty Provisions

In the cases discussed above, company directors can be held accountable for the compensation claim filed by the employee. At this point, the question is why the employee will follow a claim of liability while there is another opportunity, which is filing a lawsuit directly against the faulty company directors, based on their wrongful act. Therefore there can be a compensation case based on the violation of the employment contract between the employee and the employer or a compensation case based on the wrongful act of the director. There will be differences in terms of the proof and time lapse between these two cases.

a. Differences In Terms of Proof of Fault

First of all, it is an obligation of the claimant to prove the fault of the wrongdoer according to article 50/I of the Turkish Code of Obligations. The employee who filed a claim based on the wrongful act, s/he will be obliged to prove the company directors' fault. On the other hand, in the case to be filed due to the violation of a contract- the debtor shall try to get rid of responsibility by proving her/his perfection in accordance with article 112/I of the Turkish Code of Obligations. In other words, the company will be deemed faulty in the contractual liability lawsuit. The company will be responsible unless it proves that no defects can be imposed on it. As a result, it will be more advantageous for the employee to file a claim based on a violation of a contract (liability claim) in terms of proof of the fault.

b. Difference In Terms of Time Lapse Periods

A similar result emerges when evaluating the said situation in terms of time lapse periods. The time lapse period in the compensation case, which is based on the responsibility arising from the violation of the employment contract is 10 years according to article 146 of the Turkish Code of Obligations. This period commences when the receivable is due in accordance with article 149/1 of the Turkish Code of Obligations. It is assumed that this period will start to operate in cases caused by work accident and occupational disease as of the occurrence of work accident or determination of occupational disease with a hospital report.

In cases filed on the basis of wrongful act, the time lapse period is 2 years from the fact that the injured learns the loss and indemnity liability in accordance with article 72/I of the Turkish Code of Obligations. Exceptionally, in the event that the wrongful act on which the compensation lawsuit is based is a crime foreseen in the penal laws, the duration of the criminal proceedings shall prevail. As a result, it would be more advantageous for the employee to sue for the liability arising from the violation of the contract, instead of the liability arising from the wrongful act in terms of time lapse periods.

Conclusion

Strict implementation of occupational health and safety provisions will have positive results for employers, employees, and society as a whole. Employers, employees, and occupational health and safety experts are responsible for the implementation of these provisions. At this point, the fulfillment of the above-mentioned objectives of occupational health and safety provisions should be considered. The assumption that company directors are not legally responsible for not complying with these provisions may have a negative effect. It may happen that the managers who do not face the possibility of paying compensation or who see this as a remote possibility would not be sensitive regarding violations of the occupational health and safety provisions. For this reason, company managers should be responsible for the damages paid by the company for the compensation payments made to the employees who suffer from an occupational accident or occupational disease due to the failure to

comply with the occupational health and safety provisions. The use of the rights of the companies, shareholders, and creditors against directors at this point can be realized within the limits and scope described in the article.

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