

EVALUATION OF THE LEGAL BASIS IN THE PROVISION OF OCCUPATIONAL HEALTH AND SAFETY SERVICES BY COMMUNITY HEALTH CENTER UNITS

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ABSTRACT

When compared to other countries, our country has among the highest rates of fatal occupational accidents. In order to prevent this undesirable situation, the legal basis for providing occupational health and safety services as Community Health Center Units by authorizing the Community Health Centers providing first-level health services within the Ministry of Health, which is expected to become widespread in practice with the entry into force of all the provisions of the Occupational Health and Safety Law, has been evaluated in our study. Suggestions were made regarding the changes that should be made in the regulations.

Keywords: Community Health Center Unit (TSMB), Joint Health and Safety Unit (OSGB), Occupational Health and Safety Law (İSGK) and Occupational Health and Safety Services Regulation (İSGHY).

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INTRODUCTION

According to the number of fatal occupational accidents in a year in the statistics of the International Labor Organization (ILO), our country ranks 1st in the European ranking and 8th in the world ranking.¹ Even the statistical information in question sufficiently shows that the regulations in the field of occupational health and safety are of vital importance.

Bringing together the provisions that are scattered in the relevant legislation, including all the legal institutions in our country related to occupational health and safety, it has been argued for years that an independent occupational health and safety law that systematically regulates the duties, responsibilities and rights of the state, employers, workers, unions and other relevant organizations in a single text should be enacted.² However, the enactment of all provisions of the Occupational Health and Safety Law³ dated 20.06.2012 and numbered

¹ <https://ilostat.ilo.org/topics/safety-and-health-at-work>, (02.12.2021).

² Z. Gönül Balkır, "Occupational Health and Safety Management Responsibility of the Employer in the Occupational Health and Safety Law No. 6331", Registry Labor Law Journal, Issue 28, p.23.

³ Official Gazette dated 30.06.2012, numbered 28339.

6331, which were enacted as the basic law on such an important issue⁴, were postponed to 31.12.2023⁵ by being postponed four times.

The aim taken into consideration by the Occupational Health and Safety Law No. 6331 is to establish an occupational health and safety management system in the workplace in order to prioritize the regulations related to occupational health and safety.⁶ In this context, with the full implementation of the provisions of the Occupational Health and Safety Law, TSMBs, which are authorized to operate in the field of occupational health and safety, will gain importance incomparable with the current situation.⁷ Because, it is stated in the

⁴ Supporting the OHS services and OHS services to be applied in terms of public institutions and workplaces with less than 50 employees and in the less dangerous class, excluding those who work within the scope of HR article 81, which has been repealed, pursuant to sub-clause of article 38/(1) a 1 of the OHS. The effective date of the provisions of İSGK articles 6 and 7 is postponed.

⁵ The date of 30.06.2014, which is two years after its publication in the Official Gazette (OG), was determined in its initial state of being accepted in accordance with the İSGK article 38/(1)a.1, which will ensure the implementation of all the provisions of the Occupational Health and Safety Law. However, the said date was amended as 01.07.2016 with article 56 of the Law No. 6495 on 12.07.2013 on the Amendment of Certain Laws and Decree-Laws (OJ dated 02.08.2013, numbered 28726). Afterwards, the Law No. 6745, dated 20.08.2016, on Supporting Investments on Project Basis and Amending Certain Laws and Decrees with the Force of Law, article 71 and dated 01.07.2017 (OG dated 07.09.2016, numbered 29824), numbered 7033 on Industrial Development and Supporting Production. The Law on Making Amendments to Some Laws and Decrees with the Force of Law was extended to 01.07.2020 with Article 86, and to 31.12.2023 with the Law No. 7252 on the Establishment of the Digital Media Commission and the Amendment of Some Laws. When the dates are followed in order, it is seen that the provisions that were postponed within the scope of the Occupational Health and Safety Law from 01.07.2016 to 07.09.2016, according to sub-clause of İSGK article 38/(1)a.1, remained in effect. This situation shows that enough care is not taken in enacting laws.

⁶ Balkir, *ibid.* p. 24.

⁷ Aydın, Başbuğ, Mehtap Yücel Bodur, *Labor Law*, 6th Edition, Beta Publishing, İstanbul, 2021, p. 155; Erdem Özdemir, *Occupational Health and Safety Law*, Vedat

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doctrine that the target audience of TSMB is especially small workplaces and it was created to provide an accessible environment for them to receive services from outside in the field of occupational health and safety.⁸ Concretely, it is emphasized in the doctrine that in places where there is no joint health and safety unit (OSGB), there may be no other option than TSMB for workplaces to outsource occupational health and safety services, and thus, it will have a complementary function together with OSGB.⁹ In addition, in workplaces operating in the public sector, in accordance with İSGK article 6/(2), public institutions and organizations within the scope of the Public Procurement Law¹⁰ dated 4/1/2002 and numbered 4734 can directly receive occupational health and safety services from organizations with revolving funds belonging to the Ministry of Health. It is clearly seen

Publishing, Istanbul, 2014, p. 485 and 486; Faruk Andaç, Turkish Occupational Health and Safety Law Practice, Legal Publishing, Istanbul, 2022, p. 39; Haluk Hadi Sümer, Occupational Health and Safety Law, 6th Edition, Seçkin Publishing, Ankara, 2022, p. 117; Hamdi Mollamahmutoğlu, Muhittin Astarlı, Ulaş, Baysal Labor Law, 7th Edition, Lykeion Publishing, Ankara, 2022, p. 1429; İlhan Ulsan, Especially in Terms of Obligations and Labor Law, the Employer's Legal Responsibility for Observing the Worker, Kazancı Hukuk Yayınları, İstanbul, 1990, p. 20; Nuri Çelik, Nurşen Caniklioğlu, Talat Canbolat, Ercüment Özkaraca, Labor Law Lessons, 34th Edition, Beta Publishing, Istanbul, 2021, p. 412; Ömer Ekmekçi, Esra Yiğit, Individual Labor Law Lessons, 2nd Edition, Twelve Plates Publishing, Istanbul, 2020, p. 313; Ömer Ekmekçi, Ayşe Köme Akpulat, Ayşe Ledün Akdeniz, Occupational Health and Safety Law, Twelve Plates Publishing, Istanbul, 2021, 245; Sarper Süzek, Labor Law, 21st Edition, Beta Publishing, Istanbul, 2021, p. 899.

⁸ İlknur Kılıkş, Occupational Health and Safety, 3rd Edition, Dora Publications, Bursa, 2018, p. 129.

⁹ A. Murat Demircioğlu, Hasan Ali Kaplan, "A New Institution in Occupational Health and Safety Organization: Community Health Centers", Legal Journal of Labor Law and Social Security Law, Vol 12, No 48, p. 49.

¹⁰ RG dated 22.01.2002, numbered 24648.

that TSMB will play an active role as it is given the opportunity. With the entry into force of the Occupational Health and Safety Law in our country with all its provisions, it is understood that TSMB will be the common method to be applied in practice in order to provide services to workplaces on occupational health and safety issues. In our study, the developments in the regulations of the TSMB, which is considered to have a wide and vital application area in providing services to workplaces in the field of occupational health and safety, are presented and our opinions and evaluations are put forward in terms of its legal basis and suggestions are made regarding the changes that should be made in the current regulations.

1. Development of Community Health Center Unit Regulations

The provision of occupational health and safety services by community health centers¹¹ providing first-level health services within the Ministry of Health was first mentioned in the 7th paragraph added in 2013¹² to the 17th article of the Occupational Health and Safety Services

¹¹ Community health centers were established under the Ministry of Health, within the scope of primary health care services, in the Official Gazette dated 06.07.2005 and numbered 25867, which was issued in accordance with Article 8/f 1 of the Law on Family Medicine Pilot Implementation dated 24.11.2004 and numbered 5258 (Official Gazette dated 24.11.2004, numbered 25665) in accordance with the provisions of the published Regulation. Afterwards, the definitions of community health centers were made in the 3rd article of the provisions of the Family Medicine Practice Regulation, the first of which was dated 25.05.2010, numbered 27591, and the second, dated 25.01.2013 and numbered 28539, respectively. Finally, community health centers are regulated by a separate regulation with the implementation of the Regulation on Community Health Centers and Affiliated Units published in the RG dated 05.02.2015, number 29258.

¹² RG dated 31.01.2013, numbered 28545.

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Regulation¹³ issued by the Ministry of Labor and Social Security (MoLSS) in 2012. According to the regulation, community health centers authorized by the MoLSS have been given the opportunity to offer occupational medicine and other health personnel services, provided that they fulfill the physical conditions for OSGB in paragraph 12/(3) of OHSY, with the exception of the occupational safety specialist room.

If the community health center wants to provide occupational health and safety services, it is stated in the OHSY article 17/(7) that the OHSY article 12, which sets the conditions for OSGB, and the 16th article of OHSY, which contains the regulations regarding the application procedures in the establishment of the OSGB.¹⁴

With the change made in 2014, the definition of TSMB was made in the sub-clause of article 4/ (1) h of OHSY.¹⁵ Accordingly, TSMB is the unit under the Ministry of Health, which has the necessary equipment and personnel to provide occupational health and safety services to workplaces, and is authorized by the MoLSS. With the same amendment, the phrase “public health centers” in the paragraph of

¹³ RG dated 29.12.2012, numbered 28512.

¹⁴ In addition, a Directive on the Implementation Procedures and Principles of Occupational Health and Safety Services to be Carried out in Community Health Centers by the Public Health Institution of Turkey has also been issued (<https://mersinism.saglik.gov.tr/Eklenti/11277/0/toplum-sagligi-merkezsinde-yrutulecek-On-procedure-and-principles-of-work-health-and-safety-services-yonergepdf.pdf>, (10.12.2021) In the aforementioned Directive article 4/(1), the same unit is referred to as “Authorized TSM Unit”.

¹⁵ RG dated 18.12.2014, numbered 29209.

Article 17/ (7) of OHSHY was changed to “TSMBs”. Thus, community health centers that provide occupational health and safety services to workplaces were named TSMB by special naming.

While amendments were made in 2013 and 2014 in the Occupational Health and Safety Services Regulation¹⁶ regarding the TSMB, in the Law No. 3146, dated 09.01.1985, article 12(f) (1) (a) of the Law¹⁷ on the Organization and Duties of the MoLSS, Among the duties of the General Directorate of Occupational Health and Safety within its body, ensuring the implementation of the legislation on occupational health and safety issues and making legislative work are counted.¹⁸ In addition, in the 3rd sub-paragraph of article 30/(1)b of the İSGK, it has been decreed that a regulation will be issued by the MoLSS on the subjects of “Persons, institutions and organizations that will provide occupational health and safety services; duties, authorities and obligations, certification and authorization, health surveillance and health reports within the scope of the services to be provided, the physical conditions of the establishments and the personnel and equipment to be kept in the establishments”. According to the provisions specified in our legislation, the MoLSS is responsible and

¹⁶ RG dated 18.01.1985, numbered 18639.

¹⁷ Social Security Institution Organization Law dated 16.07.2003 and numbered 4947 (Official Gazette dated 24.07.2003 and numbered 25178) has been amended with article 17.

¹⁸ In today's regulations, there is the provision “carrying out standard studies, preparing and developing norms” in the article 90/(1)g of the Presidential Decree No. 1 on the Presidency Organization published in the Official Gazette dated 10.07.2018 and number 30474, regarding the entry into the duty and authority of the General Directorate of Occupational Health and Safety within the body of the MoLSS.

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authorized to issue regulations regarding the determination of the conditions of the service providers in occupational health and safety.

The community health center unit providing occupational health and safety services is in the provision of article 4/ (1) ö of the Community Health Center and Affiliated Units Regulation regulated by the Public Health Institution of Turkey¹⁹, a public legal entity²⁰ affiliated to the Ministry of Health, which is referred to as TSMB in the Occupational Health and Safety Services Regulation, is included as the TSM OHS (Occupational Health and Safety) unit. In the amendment²¹ made by the Ministry of Health after the Turkish Public Health Institution²² was closed, the TSM OHS unit took its place in the article 4/(1)p clause of the aforementioned Regulation. According to the definition made, the affiliated unit of the community health center authorized by the MoLSS to carry out occupational health and safety services is called TSM OHS.

¹⁹ It was established as a public institution in accordance with Article 26/(1) of the Decree Law on the Organization and Duties of the Ministry of Health and its Affiliates, dated 11.10.2011 and numbered 663, published in the Official Gazette dated 02.11.2011, with the repetitive issue of 28103.

²⁰ See footnote 11.

²¹ RG dated 25.05.2018, numbered 30431.

²² In accordance with subparagraph 1 of paragraph 1 of article 203 of the Decree-Law on Making Certain Arrangements Under the State of Emergency, dated 15.08.2017 and numbered 694, published in the Official Gazette dated 25.08.2017 and numbered 30165, public health centers were re-linked to the Ministry of Health. To be adopted as it is, article 189/(1) of the Law on the Adoption of the Decree-Law on Making Certain Arrangements within the Scope of the State of Emergency dated 01.02.2018 and numbered 7078 (Official Gazette dated 08.03.2018, 30354 Reiterated).

2. Evaluation of Legal Basis in the Community Health Center Unit Regulation in Education

It is specified in the Occupational Health and Safety Law system that the only means to obtain occupational health and safety services from outside the workplace is through OSGB.²³ By adding the 7th paragraph to the OHSY article 17 regulation in 2013, the authority to provide occupational medicine and other health personnel services or occupational health and safety services has been granted to community health centers as well as OSGB.²⁴ In other words, there are two options in front of community health centers, such as providing services limited to occupational health or providing occupational health and safety services, and they can provide the same services as OSGB²⁵, which provides occupational health and safety services from outside the workplace.

It is argued that the regulation brought by TSMB to provide occupational health and safety services by amending the Regulation on Occupational Health and Safety Services, without being explicitly

²³ A. Murat Demircioğlu, *Occupational Safety Expertise in National and International Law*, 3rd Edition, Istanbul, Beta Publishing, 2020, p. 141; Ömer Ekmekçi, “General Principles Regarding Workplace Health and Safety Units and Joint Health and Safety Units”, *Registry Labor Law Journal*, Issue 16, p. 63. It is also stated in the doctrine that the employer has no other option other than the methods determined by the Occupational Health and Safety Law (Nurşen Caniklioğlu, “Problems and Developments in the Field of Occupational Health and Safety - Comment”, *Labor Law and Social Security Law Academic Forum, Turkey Toprak, Seramik, Cement and Glass Industry Employers' Union*, Legal Publishing, Istanbul, 2014, p. 540).

²⁴ Demircioğlu, *ibid*, p. 139; Sumer, *ibid*, p. 156; Erdem Özdemir, *Occupational Health and Safety Law Courses*, Vedat Publishing, Istanbul, 2020, p. 83.

²⁵ For positive and negative opinions about the occupational health and safety services offered by OSGB, see Özdemir, 2014, p. 155 et seq.

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stated in the Occupational Health and Safety Law system in the doctrine, lacks a legal basis in terms of private sector workplaces; In order for TSMB to have a legal basis, it has been proposed to make an explicit regulation with the amendment of the Occupational Health and Safety Law.²⁶

In the evaluation of the legal basis of TSMB, which was made in line with the opinion stated in the teaching, article 12/3.f of the Law No.1219²⁷ on the Practice of Medicine and Medical Arts²⁸, “...Physicians and family physicians who work in public institutions and organizations and do not have managerial duties can practice as workplace physicians for a period not exceeding thirty hours per month, outside the working hours of their institutions and organizations, with

²⁶ Demircioglu, Kaplan, *ibid*, p. 49. Özdemir, 2020, p. 83.

²⁷ Occupational medicine was included in the 7th article of the Law No. 5947 dated 21.01.2010 on Full-time Work of University and Health Personnel and Amending Some Laws (OG dated 30.01.2010, numbered 27478). Then, with the Decree Law No. 6514 dated 02.01.2014 on the Organization and Duties of the Ministry of Health and its Affiliates, and the Law on Amending Certain Laws (OJ dated 18.01.2014, numbered 28886) with article 21 “including those with contractual status. The 4th sentence, which is working in local administrations and institutional doctors, especially those who do not receive revolving fund supplementary payment, can be a workplace doctor” has been changed and “Physicians and family physicians who work in public institutions and organizations and do not have a managerial role can perform thirty-two months per month out of working hours in their institutions and organizations, with the permission of their institutions.” He can practice as a workplace doctor, not exceeding one hour”. Thus, non-managerial physicians and family physicians working in public institutions and organizations were allowed to practice workplace medicine outside of working hours and with the permission of the institutions they work for. In addition, as the 6th sentence of the aforementioned paragraph reads, “Physicians can perform the duties of workplace physicians in less dangerous workplaces employing less than 10 workers without the requirement of receiving workplace doctor training and having a workplace doctor certificate”.

²⁸ RG dated 14.04.1928, numbered 863.

the permission of their institutions. Health institutions with revolving funds, on the other hand, can provide occupational medicine services institutionally. Physicians can work as workplace physicians in less dangerous workplaces employing less than 10 workers, without the requirement of receiving occupational medicine training and having a workplace doctor certificate. It is appropriately stated that the text of “The principles regarding the implementation of this article and workplace medicine are determined by the Ministry of Health” can form a legal basis for the services provided by TSMB, limited only to workplace medicine.²⁹

According to the opinion that there is no legal basis covering all the beneficiaries of the services offered by TSMB, an evaluation has been made on whether the “Public institutions and organizations within the scope of the Public Procurement Law dated 4/1/2002 and numbered 4734; Occupational health and safety services can be obtained directly from organizations with revolving funds belonging to the Ministry of Health or within the framework of the provisions of the Law No. 4734” regulation in Article 6/(2) of the İSGK can be considered as a legal basis.³⁰ The regulation of the said paragraph in the draft text of the

²⁹ Demircioğlu, Kaplan, *ibid*, p. 47. Regulation 12/f.3 of Law No. 1219 is also listed in article 3 of the Directive, which is mentioned in footnote 12 above, under the title of “Basis”. However, there is no article 12/f.3 of the Law No. 1219 in the OHSY article 3 regulation under the “Basis” heading.

³⁰ Demircioğlu, Kaplan, *ibid*, p. 47 and 48. Without explicitly mentioning the TSMB in the doctrine, occupational health and safety services are subordinated to the Ministry of Health by public institutions and organizations within the scope of the Public Procurement Law No. It is stated that it can be obtained directly from revolving fund organizations, or it can be provided within the framework of the provisions of Law No. 4734 (Teoman Akpınar, Occupational Health and Safety Law, Ekin Publishing House, Ankara, 2018, p. 344).

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Occupational Health and Safety Law provides that “Public institutions and organizations within the scope of the Public Procurement Law dated 4/1/2002 and numbered 4734 receive their occupational health services directly from organizations with revolving funds belonging to the Ministry of Health. They purchase occupational safety services and occupational health services in places where no service can be provided by the Ministry of Health, within the framework of the provisions of Law No. 4734”.³¹ Accordingly, in the draft, “occupational health services” and “occupational safety services” are handled separately. In terms of public institutions and organizations within the scope of Law No. 4734, it is obligatory to receive occupational health services from organizations with revolving funds under the Ministry of Health. However, in the accepted text, the aforementioned “occupational health services” and “occupational safety services” were abolished, and direct service from the revolving fund organizations of the Ministry of Health was no longer obligatory. The rationale for the change is stated in the Sub-Commission Report, “To expand the scope of the service that public institutions and organizations can receive from revolving fund organizations belonging to the Ministry of Health; and the addition of “occupational safety service” was done in order to eliminate the “occupational health service-occupational safety service” distinction to promote equality by providing the opportunity to choose between the methods of receiving; and the text, which was created by changing the

³¹ <https://www2.tbmm.gov.tr/d24/1/1-0605.pdf>, (09.12.2021).

last two sentences of the first paragraph, was used as the second paragraph in order to ensure justice.”³²

Although it can be evaluated that there is a legal basis for the provision of occupational health and safety services by community health centers based on the İSGK article 6/(2), which states that occupational health and safety services can be provided by the units belonging to the Ministry of Health, the provision of the said paragraph only applies to public institutions and organizations within the scope of Law No. 4734, a regulation which was made regarding the service provision of the revolving fund organizations of the Ministry of Health. However, with TSMB, occupational health and safety services are provided without any distinction between public and private. For this reason, it is appropriately stated that the provision of article 6/ (2) of İSGK cannot constitute a legal basis if TSMBs provide occupational health and safety services to the private sector.³³

3. Our Evaluation of the Legal Basis of Community Health Center Unit Regulations

First of all, it would be useful to reiterate that OSGB is defined in İSGK article 3/ (1) m and İSGHY article 4/ (1) f clauses as “The unit, which has the necessary equipment and personnel and is authorized by the Ministry, established by public institutions and organizations,

³² <https://www5.tbmm.gov.tr/sirasayi/donem24/yil01/ss277.pdf>, (09.12.2021).

³³ Demircioglu, Kaplan, *ibid*, p. 49.

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organized industrial zones and companies operating in accordance with the Turkish Commercial Code to provide occupational health and safety services to workplaces”. TSMB, on the other hand, is defined in paragraph 4/ (1)h of OHSY as “the unit under the Ministry of Health, which has the necessary equipment and personnel established to provide occupational health and safety services to workplaces and is authorized by the Ministry”.

In the definitions of OSGB and TSMB, the expression “the unit that has the necessary equipment and personnel established to provide occupational health and safety services to workplaces and is authorized by the Ministry” is found in the same way. In other words, OSGB and TSMB; does not differ in terms of activity fields, technical and personnel conditions and authorization.

The difference between OSGB and TSMB in the definitions is seen only in terms of their founders. It is stated that OSGB can be established by public institutions and organizations, organized industrial zones and companies operating in accordance with the Turkish Commercial Code. TSMB, on the other hand, can be established by public health centers affiliated to the Ministry of Health.

If we examine its founder, at the time TSMB was included in the Occupational Health and Safety Services Regulation, it was affiliated to the Public Health Institution of Turkey, which is a public institution,

according to the regulations in force.³⁴ Although there appears to be a difference in the expression in terms of the founders, in reality TSMB is established by the public institution, which is one of the founders listed in the definition of OSGB.

Essentially, TSMB, although its name is not OSGB, carries all the elements of OSGB and has no different structure from OSGB. As a matter of fact, in the doctrine, TSMB is also qualified as PUBLIC OSGB.³⁵ However, regarding OSGB, public institutions and organizations; it is possible that they can be either the founder of OSGB or a workplace that receives occupational health and safety services from OSGB. For this reason, when TSMB is also qualified as PUBLIC OSGB, it may lead to conceptual confusion. Moreover, with the removal of the definition of TSMB in the Occupational Health and Safety Services Regulation and the amendment to the OSGB regulation, which we will explain below, a more consistent structure will emerge in the occupational health and safety services offered outside the workplace. Since TSMB is not a legally different structure from OSGB, we consider that it has a legal basis in accordance with the hierarchy of norms in article 3/ (1) m of İSGK. However, within the scope of OHSHY article 3 under the “Basis” title, which has the definition of OSGB, there is a deficiency that the ISG article 3 has not specified.

³⁴ See footnote 19. For information following the closure of the Public Health Institution of Turkey, see footnote 21.

³⁵ Kilkis, *ibid*, p. 129.

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In addition, the fact that TSMB is defined in the Occupational Health and Safety Services Regulation leads to the misconception that it is a different unit from OSGB. However, the different aspect of TSMB lies in its power to choose whether it can provide occupational health services, occupational medicine and other health personnel services, or occupational health and safety services, pursuant to article 17/(7) of OHSY. If we look at the essence of the distinction made, there is no situation that can be considered as an obstacle in the consideration of occupational health and safety services under two headings as occupational health and occupational health and safety, in the light of the principle that most of them include less.³⁶ Although the Occupational Health and Safety Convention No. 155 of the ILO, which is one of the international documents, was dated earlier, the conclusion of the Convention on Occupational Health Services No. 161 made later is a striking example of the fact that occupational health can be handled separately. In our national laws, workplaces receiving occupational health and safety services are partially able to receive occupational health and safety services according to the regulation mentioned in the 2nd sentence of clause 6/(1)a of the İSGK which reads as “...can fulfill all or part of the service by getting service from the joint health and safety units...”. While the service recipient has the opportunity to divide the occupational health and safety services and provide only

³⁶ In toto et pars continetur (Gaius, quoted from libro tertio ad edictum provinciale; Alan Watson (Translation Edited by), The Digest of Justinian, Volume 4, University of Pennsylvania Press, Philadelphia, 1998, p. 477; Theodor Mommsen (Ercognovit), “Digesta”, Corpus Juris Civilis, Apud Weidmannos, Berolini, 1905, p.871).

occupational health from the OSGB, OSGBs should be able to offer the occupational health and safety services by dividing them into parts. In addition, instead of requiring OSGB to have conditions ready to provide all of the occupational health and safety services, with OHSY article 12, if OSGBs are allowed to provide only occupational health services when they meet the conditions, their spread throughout the country will be facilitated.

On the other hand, for the TSMB, it is considered sufficient to provide only the conditions for providing occupational health services, while for other OSGBs, seeking the elements for the complete delivery of occupational health and safety services pursuant to article 12 of OHSY is to grant privileges to TSMB, which is against the principle of equality expressed in article 10 of the Constitution. Moreover, the cost of TSMB to provide occupational medicine and other health personnel services, the necessary training of the personnel already present in its staff and the provision of physical conditions will be incomparably lower than the expenses of the OSGB, which will be formed by a private company. In addition to the aforementioned, it should not be forgotten that with the regulation of Article 6/ (2) of İSGK, the privilege of public workplaces to receive occupational health and safety services directly from TSMB. As we explained, the TSMB regulations in the Occupational Health and Safety Services Regulation, which are misleading and contrary to the principle of equality, and changes regarding the removal of the definition of TSMB by determining the conditions for providing occupational health and occupational health and safety services separately in the services to be

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provided by OSGB, enabling OSGB founders to make an election, it will ensure that consistency is established in the Occupational Health and Safety Services Regulation system. In this context, since it will be sufficient to make changes in the Occupational Health and Safety Services Regulation, it is not necessary to resort to legal regulation.

In terms of its legal basis, we should state that we agree with the evaluations made on the spot in terms of the Law No. 1219 12/f 3, which is limited only to workplace medicine, among the services provided by TSMB, and the regulations of İSGK article 6/ (2), which is declared not to cover the private sector in terms of occupational health and safety services. However, we would like to explain that the legal basis of TSMB and the services it provides is not limited to the Law No. 1219 and the Occupational Health and Safety Law.

While evaluating its basis, we consider the principle “International agreements duly put into effect have the force of law. It is not possible to apply to the Constitutional Court with the allegation that they are unconstitutional. In case of conflicts that may arise due to the fact that international agreements on fundamental rights and freedoms and laws that have been duly put into effect contain different provisions on the same subject, the provisions of international agreements shall prevail” in the Article 90/last paragraph of the Constitution before moving on to other laws. According to the article 90/final paragraph of the Constitution, even in case of conflict, international treaties have the force of law, which is superior to our national laws.

Apart from Law No. 1219, which is the only basis for workplace medicine, we have another comprehensive legal regulation on occupational health. While the Convention on Occupational Health and Safety Services, which is the international convention³⁷ of the ILO numbered 161, is in force in our country, amendments regarding TSMB have been made in the Regulation on Occupational Health and Safety Services. According to Article 7 of the translation text of the Convention No. 161 published in the Official Gazette, which is provided as follows:

“1. Occupational health services may be organized as a service to a single enterprise or as a general service for many enterprises, as the case may be.

2. Occupational health services, according to national conditions and practice,

- a) Businesses or business groups;
- b) Public authorities or official services;
- c) Social security institutions;
- d) Other bodies appointed by the competent authority;
- e) A combination of the above;”

³⁷ It was approved by Turkey with the Law No. 5039 dated 07.01.2004 and published in the Official Gazette No. 25345 dated 13.01.2004 and the related Council of Ministers Decision dated 02.03.2004 and numbered 2004/6958 was published in the RG dated 16.03.2004 and numbered 25404. It entered into force on 2005.

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Pursuant to article 7/f.1 of the Convention No. 161, it is possible to organize an organization that can provide occupational health services to more than one workplace. In the second paragraph of the article, those who can be a service provider in the field of occupational health are listed.

There is no contradiction between the articles of the Occupational Health and Safety Law and article 7 of the Convention No.161. In the 2012 Occupational Health and Safety Services Regulations issued by the competent authority MoLSS, with the amendments made in 2013 and 2014, the public health centers³⁸ with official duties, specifically called TSMB, can provide occupational medicine and other health personnel services in line with Article 7(2) b and d of the Convention No.161. Accordingly, in terms of occupational health services, we see the provisions of the Convention No. 161 as another legal basis in the regulation of TSMB in the Regulation on Occupational Health and Safety Services. The aforementioned provisions also form a basis for OSGBs to divide the occupational health and safety services they offer and to provide them only as occupational health.

While the Occupational Health and Safety Agreement No.155³⁹, another legal regulation to which our country is a party, was also in

³⁸ In addition, for the regulations of the Ministry of Health, which is responsible and authorized in the structuring of community health centers, see footnote 11.

³⁹ Approved by Turkey with the Law No. 5038 dated 07.01.2004, RG. It was published with the number 25345 dated 13.01.2004. The Council of Ministers Decision dated 02.03.2004 and numbered 2004/6958 is RG. It was published on 16.03.2004 and numbered 25404 and entered into force on 22.04.2005.

force, amendments regarding TSMB were made in the Occupational Health and Safety Services Regulation. Article 8 of the Convention No. 155 in the translated text published in the Official Gazette states “Each Member shall take the necessary measures to give effect to Article 4 of the Convention, by enacting laws or regulations or by any other method appropriate to its national conditions and practice, in consultation with the organizations representing the workers and employers concerned”. The text of Article 4 referred to also states that “1- Each Member shall, in accordance with national circumstances and practice, and in consultation with the most representative organizations of workers and employers, develop, implement and periodically review a coherent national policy on occupational safety, health and working environment.

2- The purpose of this policy will be to prevent accidents and injuries that are related to the work or that occur during the execution of the work, by minimizing the causes of danger in the work environment as much as possible.”

When Articles 4 and 8 of the Convention No. 155 are considered together, it is understood that through law or regulation, ILO member countries can make national regulations to take necessary measures on occupational health and safety issues. In this context, based on Articles 4 and 8 of the Convention No. 155, it is possible to regulate the TSMB with a regulation within the scope of necessary measures in occupational health and safety. Despite the fact that TSMB is not clearly regulated in the provisions of the Occupational Health and Safety Law, besides its being included in the Occupational Health and

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Safety Law as OSGB, Articles 4 and 8 of the Convention No. 155, which has the force of law, are another legal basis for TSMB. The stated situation does not create any conflict between the provisions of the Occupational Health and Safety Law and the Convention No. 155. Moreover, even if there is a conflict situation, the provisions of the Convention No. 155, which stipulates that a regulation can be issued in order to take the necessary measures in occupational health and safety, in accordance with Article 90/last paragraph of the Constitution, are held superior.

Although TSMB, which is actually OSGB, has more than one legal basis in accordance with the hierarchy of norms, as a result of the amendment to be made in the Regulation on Occupational Health and Safety Services, the distinction between occupational health and occupational health and safety in the services provided, as TSMB can offer, without making any difference between OSGBs. We reiterate our view that all OSGB's should be recognized and that the definition of TSMB, which causes misleading evaluations, should be abolished.

Finally, it is seen that the terminology is not given due attention while making the arrangements, by using different terms about the unit with the same field of activity. In the Occupational Health and Safety Services Regulation issued by the Ministry of Labor and Social Security, the community health center unit, which is a service provider in occupational health and safety, is specified as TSMB.⁴⁰ However,

⁴⁰ See information on footnotes 11 and 14.

after the changes regarding the TSMB regulations in the Occupational Health and Safety Services Regulation, the same unit is expressed as the TSM OHS unit in the Community Health Center and Affiliated Units Regulation⁴¹ issued by the Ministry of Health. In short, two Ministries use different denominations for the same unit. This situation indicates that there are problems in coordination in the legislative work.

CONCLUSION

TSMB, whose definition is made in article 4/ (1) h of OHSHY, is not explicitly included in the Occupational Health and Safety Law system. Considering that TSMB is actually OSGB, which is defined in article 3/ (1) m of İSGK, it is concluded that TSMB is not devoid of legal basis. However, the definition of TSMB within ISGHY leads to the misconception that it is a different unit from OSGB. For this reason, we recommend removing the definition of TSMB from the Occupational Health and Safety Services Regulation.

With the provision of article 17/(7) of OHSHY, which we can briefly call occupational health, a privilege has been brought in terms of TSMB regarding the choice of occupational medicine and other health personnel to offer all services or occupational health and safety services. The fact that the specified election does not cover all OSGBs is against the principle of equality, which is expressed in the article 10 of the Constitution. Considering the possibility that workplaces receiving occupational health and safety services can receive partially

⁴¹ See footnotes 11 and 22 for the amendment information of the regulation with its first version.

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or fully occupational health and safety services from OSGB, it should be ensured that they can choose between occupational health or occupational health and safety services in terms of OSGBs mentioned in the second sentence of clause 6/ (1) a of İSGK, with the rule of including less in the majority. In the Occupational Health and Safety Services Regulation, by eliminating the violation of the principle of equality regarding the provision of occupational health and safety services, it would be appropriate to divide the occupational health for TSMBs only and to change the Occupational Health and Safety Services Regulation so that the said opportunity covers all OSGBs. Thus, it will be easier to expand the occupational health and safety services offered by OSGBs.

If we list the legal bases of the TSMBs, which we have explained above, under two separate headings, occupational health and occupational health and safety, in terms of the services they provide:

1. Regarding occupational health;

1.1. Article 12/f.3 regulation of Law No. 1219, limited to occupational medicine,

1.2. Article 7/2 b and d clauses of the Convention No. 161 of ILO on workplace medicine and other health personnel,

2. Regarding occupational health and safety;

2.1. In case the service recipients are public institutions and organizations within the scope of the Public Procurement Law No. 4734, İSGK article 6 / (2),

2.2. İSGK article 3/ (1) m, where OSGB is defined without any distinction between public and private in terms of service recipients,

2.3. In terms of service recipients, we see the provisions of articles 4 and 8 of the ILO Convention No. 155, without any distinction between public and private.

We are of the opinion that the relevant articles of ISG article 3 and the Law No. 1219 mentioned above and the ILO conventions, which are left incomplete in the OHSHY article 3 regulations, where the legal bases are specified, should also be included.

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