

DISPATCH NO. 42–TURKEY

WHAT HAS BEEN DONE AFTER THE SOMA DISASTER AND IS IT ADEQUATE TO CREATE SAFE WORKING CONDITIONS IN TURKEY?

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INTRODUCTION

According to the ILO, almost two million people lose their lives due to work accidents and 2.4 million people suffer from occupational diseases every year.¹ This situation is particularly grave in developing countries. Due to many developing countries having chosen a labor-intensive production model, which relies on labor for production rather than capital, the issue has become more serious.² Furthermore, globalization, opening up economies and the ineffectiveness of trade unions to press for better working conditions are also essential problems in many developing countries.³ These effects have resulted in a dramatic increase in work accidents. In Turkey, the problem has reached an alarming level in recent years. On May 13, 2014, Turkey witnessed the worst mining accident in its history. The fire in the Eyzek mine operated by the SOMA A.Ş. resulted in death of 301 mineworkers. The reason for the explosion appears to be that the amount of CO₂ released during the fire.⁴ The Soma disaster was the worst mining accident in national history

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1. ILO, WHO/ILO: ALMOST 2 MILLION PEOPLE DIE FROM WORK-RELATED CAUSES EACH YEAR, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_819705/lang--en/index.htm (last visited March, 27, 2022)

2. EROL KUTLU & RANA EŞKİNAT, DUNYA EKONOMISI (2002).

3. Jorma Rantanen, *Grand Challenges for Occupational Health from Globalization*, 18 J. OF OCCUPATIONAL SAFETY & HEALTH 170 (2010).

4. Bige Açımız & Canan Ünal, *Systematic Violation of Right to Safe and Healthy Working Conditions as a Political Choice: Soma Mine Disaster*, in EUROPE'S SOCIAL RIGHTS UNDER THE TURIN PROCESS 189, 189-202 (2015).

and one of the worst ever in the world. However, it was not the first and unfortunately, it seems not the last.⁵

I. SOMA DISASTER AND RESPONSE

A. Legislative Changes Between 2014–2019

New legislation changed the Labor Law so that the working hours for people who work underground were reduced and many specific regulations concerning retirement age, minimum wage and compensation for mineworkers were put in place. These specific regulations are not directly relevant to work safety. These changes' aim is to improve the working conditions of mineworkers. After the Soma disaster, work safety and working conditions of mineworkers led to an outcry and public concern has grown. Specific regulations concerning retirement age, minimum wage and compensation for mineworkers are an important step. However, the lack of standards on occupational safety and health and their effective implementation is the core of the problem. Without necessary legal regulations, strengthening the labor inspection system and establishing occupational safety and health culture, these specific regulations will be meaningless.

1. Changes in Law No. 4857

Law No. 4857⁶ is the main law regulating employee and employers relations in Turkish law. Article 72 of Law No. 4857 prohibit woman of any age and men who has not 18 working in mines. After the Soma accident, there has an additional sentence in Article 41 which sets the rules on working hours of mineworkers and their overwork. According to Article 41.8, except Articles 42–43, mineworkers cannot be overworked. Article 42–43 has set out working in compulsory cases (such as fire, or to prevent accident etc.) and exceptional circumstances (such as war, state of emergency). As it can be seen, this regulation aims is to answer the criticism of in Soma workers overworked to produce more coals.

5. Although Soma was the worst mining accident in Turkey's history, the occupational fatal accident rate has always been high. Before the Soma disaster, according to the Social Security Institution (SGK), there were at least 1,171 fatal occupational accidents per year.⁵ After the Soma disaster, unfortunately, statistics show a rise in fatal occupational accidents. According to Health and Safety Labour Watch (İSİG), in 2020, at least 2427 fatal occupational accidents happened.⁵ Workers died in work accident in 2019 is 1736, 2018 1923, 2017 2006, 2016 1970, 2015 1730 and 2014 1886. Social Security Institutions statistics on fatal occupational accident is for 2020 1236, 2019 1147, 2018 1542, 2017 1633, 2016 1405, 2015 1252, for 2014 1626. <https://www.isigmeclisi.org> (Dec. 9, 2021).

6. TURKISH BUSINESS RULE LAW NO. 4857 (May 2003), at <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.4857.pdf> (last visited Dec. 9, 2021).

Another change in Law No. 4857 aims to set the working hours of mineworkers. According to Article 63 of Law No. 4857 mineworkers can work a maximum of 7.5 hours a day and 37.5 per week.

There is an addition to Law No. 4857 Article 18 that six-month severance is not required for underground mine workers. According to Turkish labor law, if the employee wants to benefit from job security, they must have six months of seniority. With this change, underground mine workers do not have to fulfill the six-month severance requirement. The last amendment was made in Article 53 of Law No. 4857. According to this change, annual paid leave periods of underground workers shall be increased by four days.

2. Changes in Law No. 6331

Law No. 6331⁷ set standards on occupational safety and health in Turkish Law. Law No. 6331 is relatively new, until 2012, standards on occupational safety and health were placed in Law No. 4857 and different regulations. Law No. 6331 covers all workers (employees, public employees, employer representatives, apprentices interns etc.) and workplaces. The issues related to occupational health and safety for workplaces which are classified as hazardous in terms of the quality of the work performed (according to the law on occupational health and safety) are approached through more detailed regulations.

According to Law No. 6331, a general obligation of the employer is to ensure the occupational health and safety of employees. The employer has to take all kinds of measures to prevent occupational risks, including training, providing necessary equipment and tools, carrying risk assessments. The employer has to monitor to ensure all occupational health and safety measures taken in the workplace are complied with. Some significant regulations such as “Regulations on Dust Control During Tunnel Constructions and Mines and Quarries,” “Regulations on Health and Safety Conditions in Underground and Open Mines,” “Regulations on Occupational Health and Safety in Mines,” can be mentioned as examples which are directly related to the context of this study. In addition to detailed regulations, the publication of information booklets that employers can easily understand and apply can be an essential step.

Law No. 6331 also clarifies that employers have to consult workers or their representatives and ensure their participation on occupational health and safety-related issues. According to Article 18 employers have to acknowledge workers’ or their representatives’ opinions on occupational health and safety decisions. Also, recognition of the right to participate in

7. TURKISH OCCUPATIONAL HEALTH AND SAFETY LAW, LAW NO. 6331 (JUN. 2012), at <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6331.pdf> (last visited Dec. 9, 2021).

decision-making is one of the general obligations of the employer. ILO Occupational Safety and Health Convention No. 155 is one of the main conventions on occupational health and safety. According to Convention No. 155, each member shall, in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety. Convention No. 155 requires that employers shall be required to ensure that, the workplaces, machinery, equipment, and processes are under their control and the appropriate measures are taken. Also, employers shall be required to provide, where necessary, adequate protective clothing and protective equipment. Law No. 6331 has a similar regulation on employers' general obligation to take all kinds of measures to prevent occupational risks. Convention No. 155 requires consultation on workers and their representatives to ensure their participation. However, Law No. 6331 regulations consultation and participation on workers in a rather limited way. In addition, Convention No. 155 requires that the enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection. As will be pointed out following sections, the labor inspection system is still underdeveloped in Turkey.

3. Changes in Law No. 5510

Before the Soma disaster, some regulations enabled mineworkers could retire easier than other workers in terms of age and period they need to pay social security contribution. After the Soma disaster, there were essential changes in Law No. 5510⁸, temporary Article 59 and 66 was added.

When we evaluate changes in Law No. 5510, firstly, if a worker who died in the Soma disaster has any social security contribution the debt to Social Security Institution (SGK) was cancelled. Also, if they have not fulfilled the requirement for survival pension, it will be paid by the Minister. It is also worth noting that this legislation had a specific social policy provision. Spouses, children, or siblings of the workers who died in mining accidents would be given a job in the public sector. However, this specific social policy provision did not include the workers who were rescued from mining accidents but lost their ability to continue their job. As far as I am concerned, it is not fair to distinguish between those who died and people who have lost their ability to generate income for their families in this policy.

In the Turkish social security system, when fatal occupational accidents happen, in order to obtain a social security grant for health expenditure, there is no need to pay any social security contribution before the accident happens.

8. TURKISH SOCIAL INSURANCE AND GENERAL HEALTH INSURANCE LAW, LAW NO. 5510, at <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5510.pdf> (last visited Dec. 9, 2021).

In addition, there is a pension for the worker who cannot work due to an accident. Also, if there is a disability (starting from 10% to), there is another pension.

4. Changes in Law No. 4447

Law No. 4447⁹ has been supplemented by Article 4 to Article 25 of Law No. 6645. Pursuant to the added Article, employer contributions to unemployment insurance of the employees will be charged as 1% from the employers with workplaces which are in very hazardous class within the scope of Occupational Health and Safety Law No. 6331, have more than ten employees and have not experienced occupational accidents resulting with deaths or constant unemployment for three years, as an incentive valid from the following calendar year.

B. Government Actions

One of the most critical changes was that on March 23, 2015, Turkey ratified the ILO Safety and Health in Mines Convention No. 176 and Safety and Health in Construction Convention No. 167. Article 90 of the Turkish Constitution declares that international agreements have statutory value, and if they are related to fundamental rights, they have priority over national laws. However, it is essential to remember that most international convention provisions are not self-executing. To be applicable, they need legal changes or regulations.

A Cabinet Decree has provided that personal accident insurance against accidents is obligatory in mines. Those engaged in underground and open-pit mining activities are obliged to ensure the personnel they employ in their facilities with personal accident insurance against accidents during production and production preparation activities. According to the decision of the relevant Minister, the natural and legal people wishing to carry out underground and open coal mining or other mining activities shall not be able to operate and continue their activities without having an insurance policy or an insurance policy in force. The supervision of the compliance of the workplaces to produce is consigned to the insurance companies with the decision of the relevant Council of Ministers. As a result of the risk examination, if it is determined that the facility to be operated has the minimum insurance requirement, an insurance policy will be issued for this facility. The same risk assessment will be repeated within six months from the beginning of the policy. If it is found out that the facility does not meet the minimum insurance requirements as a result of this examination, the

9. TURKISH UNEMPLOYMENT INSURANCE LAW, LAW NO. 4447 (Aug. 1999), at <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.4447.pdf> (last visited Dec. 9, 2021).

policy request will be rejected, and the insurance company will immediately notify the public authority authorized to issue the license in writing.

According to the Ministry, within the scope of Occupational Health and Safety, Programmatic Inspections in Underground and Aboveground Mining Workplaces and Mining Based Industrial Facilities between March and December 1.318 workplace was inspected in 2017.¹⁰

II. CRITICAL EVALUATION: WHAT HAS BEEN DONE AND WHAT HAS TO BE DONE TO CREATE A SAFE WORKING ENVIRONMENT

Statistics show that Turkey's fatal occupational accident rate is rising. According to Health and Safety Labor Watch (İSİG), in 2020, at least 2427 work-related fatal accidents happened, which is more than in 2014.¹¹ The question which needs to be answered is why Turkey's rate is far higher than the average. First, in general, globalization has an essential effect on occupational health and safety regulation in developing countries.¹² With the opening up of economies, due to the aim of obtaining a competitive advantage, developing countries have begun to make regulations on labour standards more flexible than in the past.¹³ The second important reason is that, since the 1980s, trade union membership has dramatically decreased in Turkey, weakening their capacity to demand better working environments.¹⁴ Last but not least, although the ILO and Committee on Economic Social and Cultural Rights warned Turkey to strengthen its national policy and labor inspection system, the efforts to do so have not been sufficient due to a lack of enforcement capabilities.¹⁵

After Soma, as can be seen, there were significant legal changes. Even though legal changes are welcomed, the law has a limit, and it cannot be the solution itself. The reduction of working hours, setting minimum wages for mineworkers are essential steps. Also, the ratification of two ILO conventions is significant. However, the labor inspection system is still underdeveloped in Turkey. The only information at the website of Ministry they have inspected a certain number of workplaces.¹⁶ If we cannot ensure

10. TURKISH MINISTRY OF LABOR AND SOCIAL SECURITY, at <https://www.csgb.gov.tr/> (last visited Dec. 9, 2021).

11. HEALTH AND SAFETY LABOUR WATCH TURKEY, at <https://www.isigmeclisi.org/> (last visited Dec. 9, 2021).

12. Rantanen, *supra* note 3.

13. Paul Mitchel, *The Impact of Globalisation on Health and Safety at Work*, <http://www.wsws.org/en/articles/1999/07/who-j23.html> (last visited Dec. 9, 2021).

14. Açımuş & Ünal, *supra* note 4.

15. *European Committee of Social Rights (ECSR), Conclusions 2014 Turkey* (2015); *ECSR, Conclusions 2009 Turkey* (2010), p.11.

16. *Supra* note 10.

the law is applied, the legal changes will be meaningless.¹⁷ That is why a labor inspection system is vital. According to the ILO, the labor inspection system improves working standards, increases accountability and productivity.¹⁸ Labor inspection has an importance on promoting decent work. Where the labor inspection system is weak, workers become unprotected, leading to violations of labor rights. A robust labor inspection system is also beneficial to the business. Workplaces where not invest safety and health standards their cost will be reduced, so it creates unfair competition. With a strong labor inspection system, every employer can ensure that safety and health standards are applied equally. It would be a mistake to think the labor inspection system's function is only punitive. The system can also help guide employers on how to comply with safety and health standards. More importantly, it serves to promote a prevention culture at the workplace.

After these explanations, it can be said there is no coherent national policy to reduce fatal occupational accidents. It is recommended that the government develop a national policy to combat occupational accidents. The complete understanding of the importance of occupational health and safety rules and their full implementation can only be realized through the joint work of the relevant units of the state, employers and employees. One of the fundamental principles of modern occupational health and safety law is that there should be consultation with workers and their representatives who may have the power to order work to cease if the employer fails to do so. In addition to that, the right of workers to leave a workplace where presents an imminent and serious danger to workers' life or health. A second fundamental principle is an obligation to conduct risk assessments.

CONCLUSION

After the Soma accident, there were significant legal changes in national law. Even though legal changes are welcomed, the law has a limit, and it can not be the solution itself. Reducing working hours, setting minimum wages and increasing the annual leave period for mineworkers are essential steps. Additionally, ratification of ILO Safety and Health in Mines Convention No. 176 and Safety and Health in Construction Convention No. 167 are significant. Article 90 of the Turkish Constitution declares that international agreements have statutory value, and if they are related to fundamental rights, they have priority over national laws. However, it is essential to remember

17. Merve Kutlu, *81 sayılı Sanayi ve Ticarette İş Teftişi Hakkındaki Uluslararası Çalışma Sözleşmesi ve Türkiye'de İş Denetimi*, 5 Çankaya Üniversitesi Hukuk Fakültesi Dergisi 2307, 2322-3 (2020).

18. INTERNATIONAL LABOUR OFFICE, *LABOUR INSPECTION: WHAT IT IS AND WHAT IT DOES: A GUIDE FOR WORKERS* (2010), https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/instructionalmaterial/wcms_141403.pdf.

that most international conventions' provisions are not self-executing. To be applicable, they need legal changes or regulations. Despite the fact that legal changes are welcomed, the labor inspection system is still underdeveloped in Turkey. Government should strengthen the labor inspection system and provide career development and appropriate training to labor inspectors.

Preventive safety and health culture can only be built with national government, employers, and employee organizations. So that Turkey, needs a national policy to establish safety and health culture with the help of social partners. Although legal changes have been made, the steps to create a culture of education and occupational health and safety are not sufficient.