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## NATIONAL OCCUPATIONAL SAFETY AND HEALTH POLICIES

*This paper provides a scientific overview on how to create effective and applicable policies for creating a system of safe and healthy workplaces. The author deals with general settings for creating labour policies in the field of occupational safety and health, while explaining the “soft” and “hard” elements of occupational safety and health policies.*

*The paper analyses the instruments of occupational safety policies from which stem normative acts as a basic instrument, and from the so-called “soft” instruments in labour, special attention is paid to strategies and goals for effective occupational safety and health policies, and dignified jobs. The author also studies international policies and normative standards for OSH, as well as steps leading to improper policies for protection at work. In this paper, concrete proposals and solutions are given through an analysis of what safety and health policy should be and how they should be implemented in the Macedonian system of protection at work.*

Key words: *Occupational. – Health. – Safety. – Policies. – Labour. – Norm.*

### 1. INTRODUCTION

Occupational safety and health in the workplace is one of the most important labour areas which, according to the analyses of the International Labour Organization is in the third place as being of most important interest for employees, in addition to the amount of wages and preservation of jobs. This unequivocally shows that the legal framework for regulating the issue of occupational safety and health is a particularly important part of the creation of the labour system in the country, as well as within the labour policy at the national level.

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Occupational health and safety, or in other words protection at work refers to the working conditions and safety at the workplace.<sup>1</sup> Providing healthy and safe working conditions, i.e. at the workplace, is the basis of every labour and social policy, as well as of society at large. The working conditions, i.e. the healthy working environment affect not only the employees, but the employers as well, the state and, finally, the society, i.e. all citizens of a country.<sup>2</sup> That is why policies aimed at improving working conditions are an important part of any national legislation, from the European Union (EU) law to the International Labour Organization (ILO)<sup>3</sup> as well.

Since the policies that are created in the field of occupational health and safety affect the three social partners, i.e. the state, the employers and the employees, or more precisely the unions, the creation of a policy of occupational health and safety, as part of the broader labour policy is actually a complex process that usually determines compromise solutions, expressed through the (mostly) different views of the three entities that are part of the policy-making process.

The tendencies within the European labour policies expressed through the normative framework of the EU are moving towards the creation of eco jobs, which in addition to the aspect of occupational health and safety, include elements of protection of the psychological integrity of the employee, as well as opening “green jobs” that aim to promote the “beauty” of the human person as part of the general system of universal human rights. Therefore, the basic approach is to create well-being for the person in the workplace.<sup>4</sup>

That is why, within the European policies for safe and healthy jobs, the central point is the approach of the so-called “Working environment – environment”. The approach is about the connection and overlap of policies for a healthy environment and a healthy work envi-

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1 L. Jovevski, *System of protection of occupational health and safety and protection rati-  
one personae-legal observations*, Skopje 2016, 12.

2 *Ibid.*

3 The protection of occupational health and safety is a subject of standardization and part of the labour policy in all legislations of the world. Within the EU over 50 directives in the field have been adopted, as well as conventions and recommendations within the ILO.

4 L. Jovevski, *op. cit.*, 19; B.Lubarda, *European Labor Law*, CID, Podgorica 2004, 264–269.

ronment. Thus, a healthy and safe work environment means a healthy and safe environment in general.<sup>5</sup>

Occupational safety and health policies at the national level should reflect the values that are part of the European paradigm for occupational safety and health, as well as the aspects of dignified jobs translated through the acts and policies of the International Labour Organization. National policy responsibility should produce safe and healthy jobs. That is why the creation of policies for occupational health and safety should be in social synchrony with the aim for safe, healthy, productive and dignified jobs that will create dignified people at work!

## 2. POLICY IMPLEMENTATION TOOLS

At the very beginning the following question arises: how to make safe and healthy jobs? This question does not have a single and unified answer, but we could say that there are a number of “tools” to come up with policies that will create safe and healthy jobs. On the one hand we can say that these are the so-called soft assets, which include a vision for the system, achieving goals and developing a strategy and implementation program. On the other hand, very important “tools” for creating labour policies are the legal acts, the compliance of the normative system with the European law and the international standards<sup>6</sup>, as well as control and supervision of the implementation of acts. . All these instruments of different nature compose the system of labour policies that need to be created in terms of content, so that it can be said that there is a policy for occupational safety and health (OSH policies).

### *2.1. Vision, goals, strategy and occupational health and safety program*

The national policy for safe and healthy workplaces must stem from the vision in which the system of occupational health and safety will develop and move. The vision, in this context, means understanding the internal regularities of the system and having an idea of how

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5 *Ibid.*

6 Here we primarily refer to the acts adopted by the International Labor Organization.

the system will work now and in the future. Without the aforementioned vision, all other elements or “tools” for building the OSH system cannot come to real light or be implemented. Within Macedonia, the vision would mean to create a system of safe and healthy jobs that are mid-term sustainable, (financially and organizationally) that will create dignified jobs and development of the economy (business). There are certain goals that are important and will be singled out. The first goal is to create an applicable system of occupational health and safety in Macedonia, which means the development of a strategically effective legal framework.<sup>7</sup> The next goal that could be singled out is continuous education for OSH encompassing multiple levels of education.<sup>8</sup> Furthermore, creating an unified system at a state level for data collection and disposal,<sup>9</sup> as well as expanding the capacity of OSH at a wider social level is a special strategic goal as well as developing the capacities of management within the system.<sup>10</sup> These strategic goals need to be implemented through a national strategy that will include an action plan and a time frame for their implementation, as well as auxiliary mechanisms for checking whether the goals are being achieved and what the obstacles are.

We believe that these are key starting points on which the so-called “Rigid OSH system” is based. Without vision, goals, a plan and a strategy for their implementation, in fact, we cannot think of creating a policy for occupational health and safety. In practice, often times it starts by building a legal system, which by its nature belongs to the so-called hard elements of the system and then afterwards, the implementation strategy and plans are discussed. This approach is not only methodologically, but also eschatologically wrong, because a legal norm cannot be created without having a general public goal that that norm should achieve, as part of the broader vision for the OSH system.

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7 L. Jovevski, M. Petkovski, *Regional occupational safety and Health strategy of the Western Balkan countries 2019–2023*, Macedonian Occupational Safety and Health Association, Skopje 2018, 10.

8 *Ibid.*, 11–12

9 *Ibid.*, 16

10 A. O. Benjamin, *Basic principles for health and safety at work*, ILO, Geneva 2011, 49.

### 2.1.1. Program and strategy for safety and health

Within the Government activities in the field of occupational health and safety in 2017, a Program for Occupational health and safety (POSH) was adopted.<sup>11</sup> This program resulted in the OSH Strategy 2020. This strategy was adopted for the period 2017–2020 and referred to the strategic priorities of the Government in the field of OSH. Namely, the Program determines the strategy for development of occupational health and safety in relation to the protection of life, health and work capacity of employees and prevention of injury at work, occupational and other diseases related to work and promotion of occupational health and safety<sup>12</sup>. The Program and the Strategy were adopted as a result of the fulfilment of the obligation contained in the Convention no. 155 (Article 4) and 187 (Article 5.1) of the International Labour Organization (ILO), the directives of the European Union (EU), and it forms a part of the activities related to the Euro-integration process of the Republic of Macedonia, being a candidate country for EU membership.

We can say that the Strategy for Occupational Safety and Health 2020 was built upon and based on the existing national legislation in the field of OSH, as well as the previous strategic documents in the field of occupational safety and health in the Republic of Macedonia, such as the National Strategy for Occupational health and safety 2011–2015, with the Action Plans for 2011–2012, 2013–2014 and the Strategy for Health, Healthy Living and Working Environment and Safety at Work in the Republic of Macedonia 2006–2010, which ensures continuous development and improvement of the national system of occupational health and safety as well as its adaptation to the current socio-economic trends in the country.<sup>13</sup>

The Strategy defined the basic strategic directions for the country development of occupational safety and health until 2020 and it was based on the fact that maintaining and promoting workers' health is one of the basic human rights and a prerequisite for successful work

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11 Program for Occupational health and safety (POSH), *Official Gazette of RM*, No. 15/17.

12 A. Shaqiri, M.Petkovski, "Proposed policies for reforms in the field of occupational safety and health", *MOSHA*, Skopje 2019, 10.

13 *Ibid.*

and optimal productivity in enterprises.<sup>14</sup> Having in mind the moment when this paper is written, we can say that the Strategy only partially achieved the goals and the program for which it was adopted.

## 2.2. Legal regulation and OHS policies in the Macedonian system for occupational health and safety

The Macedonian normative system encompasses several important legal solutions, having the Law on Occupational health and safety as its basis,<sup>15</sup> as well as a number of bylaws and regulations at the employers' level, which are in fact a legal reflection of the state general policy in the field of safety and health of workplaces. It is a basic legal instrument for creating a policy for safe and healthy working conditions, although it cannot be said that it is the most important one. According to the concept of "inverted pyramid", in labour policies the laws are most often only the basis on which other specific and concrete solutions are built, which are the expression of the Government, social partners, as well as employers activities.

The Law on Occupational health and safety determines the measures for occupational health and safety, the obligations of the employer and the rights and obligations of employees in the field of occupational health and safety, as well as preventive measures against occupational risks, elimination of risk factors for accident, informing, consulting, training workers and their representatives and their participation in the planning and undertaking of occupational safety and health measures. The provisions of this Law are applied in all activities in the public and private sector, for all persons insured against injury at work or occupational diseases according to the regulations for pension, disability and health insurance and for all other persons who are in any way involved in the work processes.

Also, the provisions provided by this Law do not apply on certain activities unless a special regulation regulates this matter (armed forces, police, in some special activities of the protection and rescue forces), as well as domestic workers.

One of the basic goals for safe and healthy jobs is the obligation of the employer to provide occupational health and safety for

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14 *Ibid.*

15 Law on Occupational health and safety, *Official Gazette of RM*, No. 72/07 and further.

his employees in every aspect related to work. Within his obligations, in accordance with the Labour Law,<sup>16</sup> the employer must undertake measures necessary for the occupational health and safety of employees, including protection against occupational risks, information and training, and appropriate organization and necessary means, i.e. to introduce such safeguards and choose such work and production methods that will improve the level of occupational health and safety, and will be involved in all activities of the employer and at all levels of the organization.

In addition to this Law, which is a *lex generalis* in this field, there are also other laws that regulate the matter and contain acts on occupational health and safety, so with this article we will cover almost all of them, but with more detailed approach envisaged for some of them in terms of content. One of them is the Law on Labour Inspection,<sup>17</sup> which regulates the organization and work of the State Labour Inspectorate, which inspects the implementation of laws and other regulations in the field of labour relations, employment, occupational safety, collective agreements, contracts for work and other acts through which rights are regulated and exercised, obligations and responsibilities of workers and employers in the field of labour relations, employment and protection at work.

Furthermore we single out the Law on Temporary Employment Agencies,<sup>18</sup> Law on Employment and Insurance in Case of Unemployment,<sup>19</sup> as well as the already mentioned Labour Law. This act is, as we already mentioned, a *lex generalis*<sup>20</sup> law in the field of labour relations and labour law, caring out the duty to regulate issues in the field of Occupational health and safety, and thus in certain provisions indicates the duties, i.e. the obligations of employers, but also the workers' rights and responsibilities regarding occupational safety and health.

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16 Labour Law, *Official Gazette of RM*, No. 62/05 and further.

17 Law on Labour Inspection, *Official Gazette of RM*, No. 35/97 and further.

18 Law on Temporary Employment Agencies, *Official Gazette of RM*, No. 49/06 and further.

19 Law on Employment and Insurance in Case of Unemployment, *Official Gazette of RM*, No. 112/14 (cleared text) and further.

20 Labor Law (LL) is a basic law and a legal platform on which the system of safety and health at work in Macedonia is built. The provisions of the Labor Law actually follow all other normative solutions, as well as the Law on Occupational Safety and Health.

The policies for safe and healthy places are envisaged in the Law on Volunteering,<sup>21</sup> Law on Employment of Disabled Persons,<sup>22</sup> Law on Employment and Work of Foreigners,<sup>23</sup> Law on Health Insurance,<sup>24</sup> Law on Health Care.<sup>25</sup> The Law on Health Care, based on the principles of equality, solidarity and reciprocity, provides health care for the entire population, defines the organizational structure of the health care system, the rights and obligations of individuals, employers and the state, in terms of providing health care at all levels, as well as in the field of occupational medicine and organization of the system of occupational medicine services.

The Law on Pension and Disability Insurance<sup>26</sup> in the field of occupational protection defines and provides the terms of imminent danger of occurrence of disability, disability pension – in case of general or occupational disability, family pension, bodily injury, and regulates the rights of insured persons, in the domain of pension and disability insurance, in case of injury at work and occupational disease.

All of the mentioned laws contain provisions in the field of occupational safety and health, which are in accordance with the Law on Occupational Safety and Health, but refer to the further regulation of the specific areas that they regulate.

### 2.2.1. Bylaws in the field of occupational health and safety

The policies referring to organization and regulation of occupational safety and health in the Republic of Macedonia from the aspect of bylaws, have more than 50 years of tradition. The current legislation provides a satisfactory framework for the implementation and improvement of the OSH system, but there is still a lack of continuous improvement as well as amendments to the bylaws and laws. Hence, although changes are needed in the bylaws regarding standards

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21 Law on Volunteering, *Official Gazette of RM*, No. 87/07 and further.

22 Law on Employment of Disabled Persons, *Official Gazette of RM*, No. 44/2000 and further.

23 Law on Employment and Work of Foreigners, *Official Gazette of RM*, No. 217/15.

24 Law on Health Insurance, *Official Gazette of RM*, No. 19/11 and further.

25 Law on Health Care, *Official Gazette of RM*, No. 62/05 and further.

26 The Law on Pension and Disability Insurance, *Official Gazette of RM*, No. 98/12 and further.

for occupational health and safety as well as in the directives in the field of occupational health and safety, our national legislation has a solid regulated legal framework. However, it is a completely different issue applying them, i.e. determining what policy should be pursued to improve the effectiveness of the norms in this area of practical application.

So far, a number of bylaws in the field of occupational safety and health have been adopted, which can be divided into two major groups. The first group includes rulebooks arising from the Law on Occupational Safety and Health, adopted by the Ministry of Labour and Social Policy and relating to the field of education, licensing and implementation of the procedure for risk assessment at the workplace.<sup>27</sup>

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27 The Ministry of Labour and Social Policy has adopted a number of rulebooks and other acts related to the implementation of the OSH system, including: Rulebook on the form and content of the certificate for passed professional exam for an occupational safety expert; Rulebook on the manner of scoring the first part (theoretical part) and the second part (practical example) of the professional exam for occupational safety; Rulebook on the form, content and manner of keeping a register of issued certificates for passed occupational safety exam; Rulebook on the form and content of the misdemeanour travel order; Rulebook on the amount of costs for performing the professional work for occupational safety; Rulebook on the manner of keeping records in the field of occupational safety and health; Rulebook on the conditions for the employees, the organization, the technical and other conditions that should be fulfilled by the legal or natural person for performing professional activities; Program for taking the professional exam for occupational safety; Rulebook on the manner of preparing the safety statement, its content, as well as the data on which the risk assessment should be based; Rulebook on the form and content of the notification form for starting a business; Rulebook on the form and content of the invitation for education, the manner of conducting the education and the manner of keeping records for conducting education; Rulebook on the minimum requirements for occupational safety and health of employees in the industry for extraction of minerals by drilling; Rulebook for professional development of professionals in the field of occupational safety; Rulebook on the amount of costs for issuing a license to perform professional work and taking a professional exam for occupational safety; Rulebook on the minimum requirements for occupational safety and health of young workers; Rulebook on the manner of scoring the active and passive participation in the trainings for professional development of the professionals for occupational safety and the form of the certificate for the obtained points for participation in the training for professional development; Rulebook on the minimum requirements for safety and health of employees from risks related to exposure to physical agents (electromagnetic fields); Rulebook on the minimum require-

The second group of bylaws adopted by the Ministry of Labour and Social Policy refers to the concrete implementation of European and international standards for protection of the workplace from specific risks. These are the following acts: Rulebook on screen protection,<sup>28</sup> Rulebook on Occupational health and safety when using work equipment,<sup>29</sup> Rulebook on personal protective equipment,<sup>30</sup> Rulebook on safety signs at work,<sup>31</sup> Rulebook on manual loading and unloading of cargo,<sup>32</sup> Rulebook on noise protection at the workplace,<sup>33</sup> Rulebook on protection against vibrations in the workplace,<sup>34</sup>

ments for occupational safety and health of fishing vessel employees; Rulebook on the amount of costs for performing professional work for occupational safety; Tariff for the amount of costs for taking the professional exam at work; Decree on the type, manner, scope and price list of the health examinations of the employees; Decree supplementing the Decree on the type, manner, scope and price list of the health examinations of the employees.

- 28 *Official Gazette of the Republic of Macedonia*, No. 115/2005 and in accordance with the Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC.
- 29 *Official Gazette of the Republic of Macedonia*, No. 116/07 in accordance with the Directive 89/655 / EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work.
- 30 *Official Gazette of the Republic of Macedonia*, No. 116/2007 in accordance with the Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace.
- 31 *Official Gazette of the Republic of Macedonia*, No. 127/2007 in accordance with the Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work.
- 32 *Official Gazette of the Republic of Macedonia*, No. 135/2007 in accordance with the Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers.
- 33 *Official Gazette of the Republic of Macedonia*, No. 21/2008 in accordance with the Council Directive 86/188/EEC of 12 May 1986 on the protection of workers from the risks related to exposure to noise at work
- 34 Published in the *Official Gazette of the Republic of Macedonia*, No. 26/2008, in accordance with the Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration).

Rulebook on temporary mobile construction sites,<sup>35</sup> Rulebook on the minimum requirements for safety and health of employees at the workplace,<sup>36</sup> The Rulebook on the minimum requirements for safety and health of employees from the risks related to exposure to asbestos at work,<sup>37</sup> Rulebook on the minimum requirements for occupational health and safety of employees from risks related to explosive atmospheres,<sup>38</sup> Rulebook on the minimum requirements for occupational health and safety of employees from risks related to exposure to chemical substances,<sup>39</sup> Rulebook on the minimum requirements for occupational health and safety of employees from risks related to exposure to carcinogens, mutagens and substances toxic to the re-

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- 35 *Official Gazette of the Republic of Macedonia*, No. 105/2008, in accordance with the Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites.
- 36 *Official Gazette of the Republic of Macedonia*, No. 154/2008, in accordance with the Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace.
- 37 *Official Gazette of the Republic of Macedonia*, No. 50/2009, in accordance with the Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (2nd individual Directive; Council Directive 91/382 / EEC of 25 June 1991 amending Directive 83/477 / EEC and Directive 2003/18 / EC of the European Parliament and of the Council of 27 March 2003 amending Directive 83/477 / EEC.
- 38 *Official Gazette of the Republic of Macedonia*, No. 74/09 in accordance with the Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).
- 39 *Official Gazette of the Republic of Macedonia*, No. 46/2010 in accordance with the Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work, Commission Directive 2000/39/EC of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work, Commission Directive 91/322/EEC of 29 May 1991 on establishing indicative limit values by implementing Council Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work; Commission Directive 2006/15/EC of 7 February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 200.

productive system,<sup>40</sup> Rulebook on the minimum requirements for Occupational health and safety of employees from risks related to exposure to biological agents,<sup>41</sup> Rulebook on the minimum requirements for Occupational health and safety of pregnant workers, workers who have recently given birth or are breastfeeding,<sup>42</sup> Rulebook on amending the Rulebook on the minimum requirements for occupational health and safety of pregnant workers, workers who have recently given birth or are breastfeeding,<sup>43</sup> Rulebook on the minimum requirements for occupational health and safety of employees in the industry for extraction of minerals by drilling,<sup>44</sup> Rulebook on the minimum requirements for OSH that refer to the risks of the employees in the industries for surface and underground exploitation of minerals,<sup>45</sup> Rulebook on the minimum requirements for occupational health and safety of employees from risks related to exposure to physical agents (electromagnetic

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40 *Official Gazette of the Republic of Macedonia*, No. 110/2010, in accordance with the Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

41 *Official Gazette of the Republic of Macedonia*, No. 170/2010, in accordance with the Directive no. 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work.

42 *Official Gazette of the Republic of Macedonia*, No. 119/2011, in accordance with the Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

43 *Official Gazette of the Republic of Macedonia*, No. 197/2017, in accordance with the Directive 2014/27 / EU of the European Parliament and of the Council of 26 February 2014 amending Directives 92/58 / EEC, 92/85 / EEC, 94/33 / EC, 98/24 / EC of the Council and Directive 2004 / 34 / EC of the European Parliament and of the Council.

44 *Official Gazette of the Republic of Macedonia*, No. 163/11, in accordance with the Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral- extracting industries through drilling.

45 *Official Gazette of the Republic of Macedonia*, No. 64/12, in accordance with the Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

fields),<sup>46</sup> Rulebook on the minimum requirements for occupational health and safety of the employees of fishing boats,<sup>47</sup> Rulebook on the minimum requirements for Occupational health and safety of employees from risks related to exposure to physical agents<sup>48</sup>.

All bylaws, most often in a form of rulebooks, are implemented and controlled by the State Labour Inspectorate, i.e. by the state labour inspectors. State labour inspectors carry out regular, control and extraordinary inspections, checking whether employers have complied with occupational safety and health measures for employees, in the public and private sectors, for all persons insured against injury at work or occupational diseases and also for persons who are on professional development, students of practical training and all other persons involved in the work processes, according to the regulations for pension, disability and health insurance.

It can be said that the national legal system expressed through laws and bylaws is the key instrument in the real creation of occupational safety and health policies that should result in prevention of accidents and injuries at work.<sup>49</sup> Of course, the system of collective bargaining completes the normative system, but given the nature of the collective agreements themselves, the state, with its normative activity, has a key role in Macedonia.

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46 *Official Gazette of the Republic of Macedonia*, No. 40/2014, in accordance with the Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields).

47 *Official Gazette of the Republic of Macedonia*, No. 79/2013, in accordance with the Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

48 *Official Gazette of the Republic of Macedonia*, No. 1  2012, in accordance with the Council Directive 2006/25/EC physical agents  artificial optical radiation<sup>19</sup> th individual directive.

49 A. O. Benjamin, *op. cit.*, 30.

### 3. COMPILANCE OF THE POLICIES WITH ILO AND EUROPEAN UNION ACTS

The right to health and the right to safety at work are universal human and labour rights. Therefore, the International Labour Organization (ILO) has adopted and published 187 Declarations and 198 recommendations in the field of occupational health and safety.

Occupational health and safety policy is based on relevant international regulations and documents such as the ILO Conventions, EU Directives and the EU Strategy: Improving the quality and productivity of work, Community Strategy for Occupational Safety and Health 2007–2012, as well as the WHO Global Workers' Health Action Plan 2008–2017.

Republic of N. Macedonia has ratified 74 Conventions of the International Labour Organization, and among them we would like to mention the Convention on Occupational Safety and Health No. 155 and the Recommendation No. 164, which directly relate to safe and healthy working conditions, and outline the general policies that national legislation should implement through the norms. Related to this Convention is also the 2002 Protocol to the Convention. In addition to these, there are other instruments such as the Convention on the Basic Framework for Occupational Safety and Health No. 187 and Recommendation No. 197, both from 2006, which have not been ratified by the Macedonian Parliament.

On the other hand, many of the European regulations for safety at work, and especially the standards, are implemented and applied in the Macedonian legislation. With more than 30 bylaws in the field of OSH, a good basis has been created for protection of employees from risks in the workplace (noise, vibrations, hazardous chemicals, work on construction sites, and work on screens).

However, the compliance, i.e. the harmonization of the Macedonian system for occupational safety and health with the European Union legislation and the international standards provided by the ILO can be considered from two aspects. First of all, it is through the prism of the harmonization of the general system of occupational safety and health envisaged in the Law on Occupational Safety and Health and the

bylaws with the European and international acts.<sup>50</sup> The second context of compliance check that we look upon is practical application of the system and implementation of control and supervision through the labour inspectorate. These normative solutions represent minimum legal standards creating their own authentic system and policies in accordance with national needs, i.e. according to the “Macedonian measure”, and not solely copying the provisions of the EU and ILO. This means that if a candidate country for the membership in the EU, such as R. N. Macedonia believes that higher standards for protection should be adopted, or if there are already in place, they should be adopted or continue to be applied. In no case, it should not be considered that the normative framework of the EU and the ILO is the legal maximum that should exist in order to “harmonize” with European standards.<sup>51</sup>

#### 4. CURRENT SHORTCOMINGS IN THE IMPLENETATION OF OSH POLICIES AND NORMATIV SOLUTION

In addition to everything previously stated, we should state that the Macedonian OSH policies and normative solutions (legal solutions, bylaws, Programs and Strategies) are, in certain areas, harmonized with the European and international standards, while somewhere they should be amended. The amendments are especially relevant for certain categories of employees, where there are no provisions for special protection of pregnant women, minors, parenthood based on gender equality, as well as for persons with disabilities. Also, the aspect of control and supervision is one of the basic challenges facing the occupational safety and health system in the country. This is due to the lack of sufficient number of OSH inspectors, the low awareness of the social partners, as well as due to the need to revise the existing legislation regarding this segment treating occupational safety and health system. This is clearly evident despite the existence of the Strategic Plan of the State Labour Inspectorate 2018–2020, which, even though adopted on the basis of the existing Program and Strategy of 2017, did not achieve the expected results by 2020 regarding the strategic plans that were

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50 L. Jovevski, *op. cit.*, 419.

51 *Ibid.*, 420.

provided, as well as in relation to the mission and vision, and the tasks and responsibilities that were set before this state body.

Therefore, in order to improve its performance, we consider that the labour inspector should have observation skills, creative approach to tasks, be responsible for time spent, be able to enforce safety rules, be able to identify and assess risks in the workplace, be able to communicate successfully at different levels, be able to accurately handle information about their activities, be independent of companies and individuals in performing supervision, be able to anticipate the consequences of his decisions, to be confident, strong, to raise his voice, but also to be polite, kind and to give professional help.<sup>52</sup>

When it comes to the regulation, it should be noted that the extensive regulation does not necessarily mean quality of legal and bylaw solutions. On the contrary, in Macedonia it turned out that many provisions in the laws and rulebooks did not pass the time test. Therefore, it is necessary to have a vision in which direction the OSH system in the country will develop and which strategic goals will have to be implemented in the short and medium terms. Some of the shortcomings of legal solutions and policies regarding occupational safety and health can be summarized in the following areas:<sup>53</sup>

1. The general approach and awareness on the importance of the occupational safety and health of employees is low;
2. There is insufficient legal awareness among employers and employees;
3. The relatively high unemployment rate contributes to the reduction of the awareness that man is the most important labour “resource”;

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52 A.Shakiri, M.Petkovski, *op. cit.*, 25.

53 The indicated shortcomings are the result of a large number of already conducted scientific research, comparative analysis and studies at the regional level and beyond, but of course the numerous organized workshops and conferences both nationally and internationally. All this leads to the conclusion that the existing system of safety and health at work in the R. N. Macedonia has numerous shortcomings and if they are not addressed in a timely manner and by appropriate experts, they will continue to generate and deepen certain deviations in the field of preventive culture, and thus will discourage the social partners – participants in the system to participate more actively and to invest personal capacities in creating a work environment adapted to man.

4. Employees have no awareness or knowledge of their rights and therefore pay no attention to the protection of their own health;
5. Employees due to job insecurity and low wages are willing to work outside the legal framework and in violation of legal provisions;
6. The employees are ready to suffer inadequate (dangerous) working conditions just to get employment, i.e. a job or in order to keep it;
7. Companies often do not have effective cooperation between employees and employers and the role of OSH employee representatives prescribed by the OSH Law is formal and non-functional;
8. There is no awareness among employers about the preventive role of the OSH system;
9. The managers of the companies do not participate in the OSH trainings and do not accept that OSH is an integral part of fulfilling their tasks and all changes;
10. Insufficient information of the employees about on OSH regulations;
11. In practice, security measures from risk assessments are not applied effectively. They are treated as a “dead letter on paper” and the necessary documentation only in cases when “an inspection comes”;
12. Many companies are in an unfavourable economic situation and faced with financial insolvency, which does not really allow them to allocate sufficient funds to improve safety at work and working conditions;
13. The state does not develop a system of prevention of injuries and occupational diseases;
14. There is over-legislation and relatively easy approach to amend the already existing solutions without vision and expected goals from the changes;
15. The social partners are not up to the tasks they have in accordance with the law in creating OSH policies;
16. Occupational medicine is on the margins of the system and does not play an active role in creating solutions, as well as in the control and supervision of the prevention of injuries and occupational diseases in the workplace;

17. The quality of services and counselling / consultations with certain authorized professionals, who provide professional services in the field of occupational safety, is not satisfying. It is the same with health organizations (occupational physicians) that offer services in the field of occupational health;
18. The education system is not focused and not enough attention is paid to the development of educational and study programs from the earliest school age to familiarize with and inform about the OSH system;
19. The insufficient valuation of occupational safety professionals and their position in the company is noticeable in comparison to the EU member states;
20. There is a lack of progressive insurance against injuries with bonus – malus system, economic interest to increase the level of ensuring OSH, other economic instruments to increase the interest of employers (ex. tax incentives);
21. There is a lack of financial incentives and assistance for companies in order to successfully implement preventive systems of occupational safety and health.

All of these shortcomings, as well as other aspects of occupational safety and health policies, unequivocally indicate that steps need to be taken as soon as possible to revise the strategic priorities, to improve the legal framework, and last but not least, to raise awareness to the importance of practical application of the OSH system by all actors in the process (Government, employers, trade unions, inspectors, professionals, educational institutions, citizens).

## 5. CONCLUDING GUIDELINES

Developing good OSH policies that will be effective and realistically applicable requires an appropriate methodology that can be set on several methods and principles. In fact, the whole system of occupational safety and health contains three basic parts that form its methodology: firstly, the normative framework that shapes the system; furthermore, the internal value system of consciousness which is actually a meta-legal part, while the third part is its application. The application is as important as the previous two parts, and even more so because without the application the previous two parts cannot come to the fore.

Hence, when it comes to creating policies for occupational safety and health, their implementation should inevitably be considered. On the other hand, the application is composed of two parts: namely the application *ex lege*, and the application *de facto*. .

In order to build a successful policy for occupational safety and health and protection of employees in the workplace, it is necessary to take into account several basic and additional principles of OSH policy. Above all, it is the principle of legality, i.e. law. Every OSH policy must be based on the rule of law concept. It is also necessary to establish and respect the principle of obligation, which implies mandatory application of the normative framework *ex lege*. That includes duality. On the one hand, the norms for protection of occupational health and safety are respected due to the punishment that follows, but on the other hand, there is the meta-legal dimension of the principle which is more important. It covers the observance and application of these norms primarily having in mind the importance of the system of protection at work. Respecting and applying the system of their protection should contain a conscious and valuable part that should be present in all participants in the process, ie employers, workers and the government. Thus, the system of protection of health and safety at work provides an application that relies not only on the norm, but also on the participant himself, the man in labour, the man as a labour being.

According to this principle we can emphasize that the very structure of the obligation does not imply flexibility in the application of the norms. They are applied as they are adopted and in no other way. This enables legal certainty and predictability in the application.

Finally, as a last principle, we would single out the economic appropriateness, i.e. the economic justification of the system of protection at work. This principle unites the previous ones and in fact makes the application of protection at work justified and necessary. Economic justification is perceived precisely in the application of the system of protection at work for all employees. By applying the protection norms, overall economic costs are ultimately reduced, both for the employer and the state, especially within the wider society. This is best seen within the country's social system. In that way, the overall system of safety and health at work becomes more efficient and more economical.

The humanity and ethics of the system stand out as additional, but not secondary principles within the occupational safety and health. In fact, the whole system since its very adoption, and even more so in terms of application, includes these values. Although the system of safe and healthy workplaces and the policies for its creation usually represent an increase in the content and scope of rights, i.e. greater protection in employment, this also represents an application of the principle of fairness, which is a mean of correcting the legal system in relation to the increased scope of protection of some employees in comparison to others, due to the existence of increased risk in their workplace. This is based on the humanization of labour and nurturing ethical values as metaphysical and essential components of labour.

Occupational safety and health policies are not part of a broader system for preventing illness and accidents at work, but rather policies that aim to manage processes *ad hoc* and solve current problems. It is necessary to know in which direction the normative system is moving and what goals should be achieved. In that sense, the need to redefine the normative aspects is inevitable, especially when we consider their application, as well as in strengthening the capacities of the labour inspectorate and the efficiency of the field in the control and supervision. It is necessary to work on building a unified practice of application of control and supervision provided by all inspectors throughout the country. It is also necessary to strengthen the educational system, to affirm the special educational syllabi, as well as to strengthen the general educational capacities of all actors in the system. It is inevitable to introduce a unified and unique system of recording accidents and occupational diseases at work in the R. N. Macedonia, and, of course, to strengthen and expand the competencies of professionals in companies, as well as in performing risk assessments at work from external (outsourced) companies.

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## NACIONALNA POLITIKA BEZBEDNOSTI I ZDRAVLJA NA RADU

### Rezime

Rad pruža naučni pregled načina kreiranja efikasnih i primenljivih politika za kreiranje sistema bezbednih i zdravih radnih mesta. Autor analizira opšte premise kreiranja politike rada u oblasti bezbednosti i zdravlja na radu, istovremeno objašnjavajući „meke“ i „tvrde“ elemente politike bezbednosti i zdravlja na radu.

Rad analizira instrumente politike bezbednosti zanimanja, gde su matični normativni akti osnovni instrument, a kod tretiranja takozvanih „mekih“ instrumenata u radu posebna pažnja se posvećuje strategijama i ciljevima efikasne politike bezbednosti i zdravlja na radu, kao i dostojanstvenim radnim mestima. Autor se takođe dotiče međunarodnih politika i normativnih standarda za OSH-a, kao i koraka koji dovode do nepravilne primene politike zaštite na radu. U ovom radu pružaju se konkretni predlozi i rešenja kroz empirijske dokaze o tome kakvu bezbednosnu i zdravstvenu politiku treba sprovesti u makedonskom sistemu zaštite na radu, ali i u budućnosti.

Ključne reči: *Bezbednost.* – *Zdravlje.* – *Politike.* – *Rad.* – *Norma.*

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