



Consequences Of Violations Against Obligations Regarding Occupational Health And Safety In Offenses Of Willful Injury

Dr. Haluk ÇOLAK*

*Judge, Ankara Justice Palace/Ankara-Turkey Email: haluk.lk@gmail.com,
ORCID ID: <http://orcid.org/0000-0002-1914-6208>

Abstract:

The constitutional social right referred to as the "right to worker's health and safety" is concurrently an extension of the right to safeguard the lives and physical integrity of employees. In parallel with the advancements in industrial and technological sectors, the risk of occupational accidents that may result in bodily harm within workplaces is increasing. Mitigating these risks for employers solely through the dimension of punitive measures is challenging. With the advancements in automation and the information technology industry, reducing risks in the realm of occupational environment has become an imperative, necessitating the reevaluation of the concept of social penal law and its reinforcement through regulations aligned with the demands of the era.

In case of the violation of precautions, determining liability and wrongfulness contents within the framework of general criminal theory, based on principles of criminal justice and the gravity of culpability, and applying suitable and proportionate penal or security measures in accordance with the actions of the perpetrators, will facilitate the implementation of deterrent protective and preventive measures against occupational accidents in the realm of labor.

Key Words: Workplace safety, worker health, negligence, sanction

I. INTRODUCTION

The need for the protection of workers, which gave rise to labor law, has been accompanied by numerous safety and health issues due to the industrialization process, technological advancement, and acceleration of the industry, leading to workers laboring in unhealthy working conditions. The source of the obligation to implement occupational health and safety measures is constitutional regulations. At the forefront of these is the "**right to life**." According to the first paragraph of Article 17 of the Constitution, "*Everyone has the right to life, to protect and improve their corporeal and spiritual existence.*" Fundamentally, ensuring occupational health and safety is a requirement of the principle of the "welfare state." Indeed, in Article 56 of the Constitution, it is stipulated that individuals have the right to live in a healthy environment and that the State is obligated to take the necessary measures to enable everyone to sustain their life, bodily and mental health.

One of the fundamental objectives of occupational health and safety is to prevent workplace accidents, protect the lives and health of employees, and mitigate risks and hazards to their physical integrity. Moreover, it is an imperative derived from the principle of the welfare state to establish and maintain working conditions that are dignified to human dignity. This aspect of the welfare state concurrently defines the scope of social security and, as a manifestation thereof, social penal law.¹

In contemporary societies, the advancements in information and technology have imparted momentum to changes in both private and public law domains concerning occupational health and safety, albeit introducing new production models, technological developments, alienation, and mechanization have concurrently created novel risk domains for workers. Hence, the significance attributed to the concept of occupational health and safety is rapidly escalating.²

¹ AKIN, Levent, "Criminal Liability of Employers and Employer Representatives Arising from Occupational Accidents and Occupational Diseases", TBB Journal, no. 68, 2007, p. 2.; BAŞBUĞ, Aydın, "Right to Occupational Health and Safety and its Enhancement," Occupational Health and Safety Writings, Ankara, Seçkin, 2016, pp. 28-29.

² According to ILO data, one worker dies every 15 seconds due to occupational accidents, and 150 workers are exposed to occupational accidents. This figure implies that approximately 313 million workers suffer from occupational accidents each year. According to Social Security Institution (SGK) data, on average, 205 occupational accidents occur in our country every day. Two people lose their lives, and six people become unable to work. www.csgeb.gov.tr, Access Date: 22/06/2023.

The core of our study is to analyze the structural elements of the offense in the context of employer's non-fulfillment of occupational health and safety obligations leading to injuries from occupational accidents, focusing on the "*crime of negligent injury*" within the framework of the generally accepted final (purpose) theory principles in material criminal law, through synthesis of its theoretical aspects and judicial precedents.

II. PROTECTED LEGAL INTEREST

The legally protected interest safeguarded by the offense is bodily integrity and inviolability. Bodily integrity can be impaired both physically and psychologically. As the offense is a freely movable offense, damages to mental health should also be considered within this scope.³

III. ELEMENTS OF THE OFFENSE

A. OBJECTIVE TYPICALITY ELEMENT

1. The Legal Object of the Offense

In the second book, second section, second chapter of the Turkish Penal Code, the material subject of the offense, organized under the title "*Crimes Against Bodily Integrity*," pertains to the body of a person who is alive other than the principal offender.

2. Victim

In the offense of injury resulting from the violation of normative regulations related to occupational health and safety, the victim of the crime is the "*employee*" who sustains direct bodily harm due to the breach of such regulations and is employed under an employment contract according to Article 2 of Law No. 4857. Additionally, despite not being classified as employees under the meaning of Article 2 of the Labor Law in terms of occupational health and safety law, apprentices, interns, and temporary workers can also be considered victims of the offense.

It should be immediately clarified that non-conformance of the employment contract with the formal requirements defined in the law will not affect the victim's status as an employee or the criminal liability of the perpetrators.⁴

3. Perpetrator

In the offense of negligent injury, anyone can be the perpetrator of this crime. There are no specific characteristics regarding the perpetrator. Since it is not one of the "*specific offenses*" that can be committed by individuals with certain qualifications, the perpetrator of the offense, in the context of taking occupational health and worker safety precautions, is the employer or employer's representative.

Perpetrator actions can be either negligent acts involving the failure to fulfill occupational health and safety obligations imposed on them with regard to the outcome, or actions carried out, such as assigning an employee to tasks outside their area of expertise. Whether obligations have been violated or not should be examined on a case-by-case basis, considering the provisions of legislation in accordance with the specific nature of each concrete incident. On the other hand, the employer or employer's representative must oversee whether workers comply with occupational health and safety measures. The scope of oversight may include providing information to employees, conducting occupational risk analysis, and providing training in accordance with legal provisions.

For instance, in a decision rendered by the Court of Cassation regarding "*Construction Works*," it has been emphasized that "...In case it is determined that there is no site manager with technical competence properly assigned in accordance with the procedures at the construction site where the accident occurred, or in case it is determined that despite the official appointment of a site manager for the purpose of surpassing the relevant legislation, there is no actual site manager present at the construction site, the overall responsibility should be attributed to the employer representative in charge of the entire construction, along with the employer who has employed inadequate personnel. The determination of the employer's negligence should be made by establishing whether a site manager with technical competence, such as a construction engineer, has been assigned and is actually working at the construction site. Furthermore, in cases where contractual obligations have not been fulfilled and legal or practical building inspection personnel have not been appointed at the construction site, or in cases where they have been

³ ÖZBEK, Veli Özer/DOĞAN, Koray/BACAŞIZ, Pınar. *Special Provisions of Turkish Criminal Law*, 15th Edition, Ankara, Seçkin, 2020. Pages 203-204.

⁴ YİĞİT, Onur. "Mine Accidents as a Type of Negligent Crime." *Uyusmazlık Mahkemesi Dergisi* (Journal of the Disputes Settlement Court), Issue 1, April 2014, pages 371-372. (www.uyusmazlik.gov.tr-Access Date: 02/04/2023).

 appointed but actual building inspection has not taken place, the building inspection company shall be held accountable.”⁵

4. Act

In terms of material criminal law, for the legal definition and characterization of an action, as well as the determination of liability and culpability, due consideration must be given to Law No. 6331, the Regulation on Occupational Health and Safety Services, and the relevant legislation. It is important to note that neither in the Turkish Penal Code nor in special laws containing penal provisions is there a distinct and standalone offense definition and regulation under the title of "injury resulting from a work accident." The normative regulations concerning the offenses of injury in the Turkish Penal Code are utilized for the characterization of the action and the determination of culpability.

a. Action

The action encompassed within the objective element of the offense can manifest either as an overt or negligent act. Indeed, within Article 89/1 of the Turkish Penal Code, actions are delineated as “*causing physical pain to another person, or impairing their health or perceptual faculties.*”⁶

The behavior of the employer or the employer's representative occurs in the form of failing to fulfill obligations related to occupational health and safety, as assigned to them according to normative regulations.

In the face of a causal series initiated without fault, the perpetrator is not responsible for the consequence arising due to their inaction. However, if the legal norms prescribe specific duties or obligations to the perpetrator in terms of the expected behavioral model, then the perpetrator is held accountable. Even if the duty of care and diligence is fulfilled, if an undesired outcome is still to occur, in such a case, the perpetrator cannot be held liable for negligent offense.⁷

b. Result

It is the occurrence of an injury resulting from a workplace accident as a consequence of the employer or representative's non-compliance with obligations stipulated in the law or secondary regulations. The severity of the resulting injury does not influence the formation of the offense; rather, it holds significance solely in determining the basic penalty and individualizing the punishment (Turkish Penal Code, Article 89/1, 2, 3, 4, 5).⁸

c. Causal Relation (Causality)

For an act to be considered in conformity with the type of the offense, in order for the attribution of the crime to be possible, it is necessary for the consequence to be a result of the perpetrator's action, in other words, there must be a cause-and-effect relationship, also known as a causal link, between the perpetrator's action and the ensuing result. In order for the causal link between the action and the result to be established, the absence of the action should lead to the non-occurrence of the result, which must be foreseeable and possible. For example, in a specific case, the Court of Cassation has determined that if necessary occupational safety measures have been undertaken by the employer, along with training and warning activities in the workplace, and if an employee still climbs onto the roof, steps on lighting fixtures made of polyester, falls to the ground despite being warned, and sustains injuries, the employer would not be held responsible due to the absence of a “*causal link and fault.*”⁹

⁵ Court of Cassation, 12th Criminal Chamber, Decision No: 12/01/2016, Case No: 2015/2722, Decision No: 2016/163 (www.uyap.gov.tr - Access Date: 29/05/2023).

⁶ APAYDIN, Cengiz, 'Crime of Negligent Injury,' Ankara Bar Association Journal, Issue 63, No: 2011/1, pp. 63-65.

⁷ APAYDIN, Crime of Negligent Injury... p. 68.

⁸ “It is observed that the reason for the annulment is the verdict reached without considering the established negligence of the defendants in the death of F. Canpolat, where they were tasked with preventing the reconnection of the voltage in any way after disconnecting it from the TR-2 transformer station until the work was completed, performing grounding at both ends of the line to be worked on, failing to ground the line that feeds the common line, leaving the initiative to the unauthorized employees of the contractor Ayel Elektrik, and not supervising the contractor company's work, despite the established negligence of the defendants and the established fact of the crime of negligent manslaughter attributed to them.” (Court of Cassation, 12th Criminal Chamber, Decision Date: 20/12/2011, Case No: 2011/4776, Decision No: 2011/8973), KAYA, Asım, “Employer's Legal and Criminal Responsibility in Work Accidents,” TAAD, Year: 5, Issue: 17 (April 2014), pp. 353-354.

⁹ Supreme Court of Appeals, Decision Date: 24/03/2015, Case No: 2013/12-654, Decision No: 2015/75.



In the event of an injury resulting from a workplace accident due to non-compliance with measures related to occupational health and safety, the primary consideration should be whether an obligation is imposed on the employer. A causal link must exist between the workplace accident and the breach of obligation. In other words, the injury resulting from the workplace accident must have occurred due to the violation of obligations within the scope of occupational health and safety measures. If the injury has occurred for reasons other than the violation of obligations related to occupational health and safety, the perpetrator shall not be held responsible.

In cases of injuries resulting from non-compliance with norms or measures related to occupational health and safety, where the consequence arises from the combination of the victim's or a third party's action with the perpetrator's action, the determination of negligent liability is crucial to ascertain whether the causal link between the perpetrator's intentional action and the outcome has been severed. Generally, the causal link is severed when the outcome results solely from the victim's or a third party's action or another cause, or when the injury arises solely from the faulty actions of these individuals. However, when the perpetrator's negligent action combines with the negligent action of the victim or a third party, and the outcome results from the accumulation of various faulty actions, the causal link remains intact. In such cases, due to the impossibility of complicity in cases of negligent offenses according to Article 40 of the Turkish Penal Code (TCK), each perpetrator will be individually responsible for their own negligence and its degree of severity, as stipulated in the fourth and fifth paragraphs of Article 22 of the TCK. For example, during the demolition of a building that violates zoning regulations, necessary preventive measures aimed at averting harm to pedestrians or vehicles must be taken. If these measures are neglected and an employer's worker carelessly tosses a sack of debris from the demolition onto the street, injuring two passersby, both the employer and the worker would be held accountable for the resulting outcome.

In our perspective, for the determination and establishment of a causal link, a crucial requirement is that the resulting injury must primarily stem from a "workplace accident." Therefore, it is essential that the failure to implement necessary occupational safety or health measures by the employer or employer's representative has a preventive effect on the occurrence of the outcome. Additionally, a suitable causal link must exist between the behavior attributed to the defendants as negligence in the incident causing injury and the occurrence of the injury itself. Without this, the resulting outcome cannot be objectively attributed to the employer, and hence, the presence of a causal link will not be recognized.

In cases where a worker acts negligently, leading to the occurrence of the outcome, this circumstance does not constitute a reason for reducing the penalty for the employer. However, depending on the degree of negligence, the worker's fault may impact the existence of the causal link.

B. CULPABILITY (SUBJECTIVE ELEMENT OF TYPICALITY)

1. In General

Culpability signifies the judgment that the perpetrator of a wrongful action should be reproached and censured due to their execution of said action, implying they should be held accountable for their conduct. Culpability consists of the judgment rendered against the perpetrator in relation to the wrongful act committed. The essence conveyed by the notion of culpability is as follows: the perpetrator has not acted in accordance with the law; despite having the ability and capacity to act in line with the dictates of behavioral norms, they have chosen to engage in unjust conduct, thereby forsaking the option of acting rightly. Culpability comprises two elements: 1) Perception Capacity, 2) Volitional Capacity. "Perception capacity" refers to an individual's ability to comprehend the legal meaning and consequences of the act they have committed. For an individual to be considered culpable due to their committed act, they must be aware that the act constitutes an injustice and is legally unacceptable. "Volitional capacity" signifies an individual's ability to direct their actions according to legal requirements concerning the act they have committed. Even though an individual knows that the act they have committed violates behavioral norms and thus constitutes an injustice, they have chosen to commit the act rather than refrain from it.

Regarding occupational health and safety, if actions that constitute wrongdoing also qualify as offenses under substantive criminal law, the primary form of liability will be the offense of negligent (ordinary or conscious) bodily harm. Given the scope of our study, the focus will be placed on the modes of committing the offense with regard to occupational health and safety, rather than the general ways in which these offenses are committed.

2. Concept of Negligence

In social life, due to technological advancements, breaches of the duty of care and diligence or the occurrence of hazardous and harmful outcomes resulting from increased risk factors manifest as a form of

culpability. In the context of preventing undesirable outcomes, sanctions aligned with criminal and punitive policies have found a place in the laws. It's important to note that these sanctions exhibit a relatively milder nature compared to offenses committed with intent..¹⁰

Negligence is the objective attribution to the perpetrator when an unforeseen yet undesirable outcome occurs due to a breach of the duty of care and diligence. The prerequisite for attributing the unforeseen outcome to the perpetrator is that the crime type violated by the act must be specifically and explicitly defined in the law.¹¹

Negligence is the occurrence of the outcome defined in the crime type due to an individual's failure to exhibit the expected and obligatory care, even though they do not intend for it to happen. If the perpetrator had exercised the required care, the outcome would not have occurred. Negligence is essentially a form of recklessness or indifference. The perpetrator does not intend to commit the offense. However, they also disregard the requirements of the legal order. The perpetrator, either failing to foresee or foreseeing but not preventing harmful or dangerous consequences that concern social order, breaches security obligations or allows undesired outcomes to occur due to recklessness or negligence. (French Penal Code, Article 121-3/3)¹²

According to Özgenç; *“Negligence is not a simple form of faultiness; it is a way in which wrongfulness is realized. Intent is directed towards a consequence that does not have legal significance. However, due to the violation of the legal obligation of care assigned to an individual, another consequence to which the law attributes importance is also brought about. Therefore, when crimes are committed through negligence, the deliberateness of the action is discussed. However, this non-deliberate action can manifest in either an overt or negligent manner.”*¹³

All the material elements contained in the statutory definition should be interpreted within the framework of the concept of negligence. When defining negligent offenses, individuals are expected to act more cautiously, be more diligent in avoiding violations of the legal order, and make efforts to comply.¹⁴

When considering the employer and the employer's representative, it is necessary to determine their responsibilities as the employer, the employer's representative, or both. Moreover, in cases where the employer engages subcontractors, the employer's contractual responsibilities and the obligation to oversee should be identified to establish liability. Determining fault should not occur without evaluating the authorized members of the board of directors or the authority of the board of directors regarding occupational health and safety, as defined in the company's articles of association.

In French law, liability for bodily harm arising from actions contrary to labor regulations is established according to the concept of culpable negligence..¹⁵

In judicial practice, the *Court of Cassation* establishes liability after thorough evaluation of aspects such as contractual provisions defining responsibility for occupational health and safety, the party responsible for providing the materials that caused the accident, and whether the incident occurred within the employer's domain. In a workplace accident, it is crucial to investigate whether the employer's obligations have been violated in relation to the behavior that caused the accident, leading to the determination of the material element. It is important to note that even if harm arises from the concrete action of the worker, if it is established through this investigation that the employer has not fulfilled their obligations, the path of holding the employer accountable should be pursued..¹⁶

3. Elements of Negligence

In the second paragraph of Article 22 of the Turkish Penal Code, negligence, defined as “committing an act with a result specified in the legal definition of the offense without foreseeing it due to a breach of the duty of care and diligence,” is an exceptional form of faultiness. In crimes committed through negligence, the intent of the perpetrator is directed towards a consequence that does not have legal significance. Due to

¹⁰ LARGUIER, Jean, General Criminal Law, 16th Edition, Paris, Dalloz, 1997, pp. 44-45.

¹¹ PRADEL, Jean, General Criminal Law, Paris, Cujas, 2001, pp. 457-458.

¹² LARGUIER, pp.43-44.

¹³ ÖZGENÇ, İzzet, General Provisions of Turkish Criminal Law, 11th Edition, Ankara, Seçkin, 2015, pp. 255-256.

¹⁴ ÖZBEK/DOĞAN/BACAŞIZ, General Provisions, p. 473.

¹⁵ LARGUIER, pp.45.

¹⁶ KAYA, pp.351.

the violation of the duty of care and diligence assigned to the individual, other consequences to which the law attributes importance also occur. In cases of wrongfulness committed through negligence, the deliberateness of the action is generally acknowledged. This action can manifest either as an overt act or as a negligent act.

One of the fundamental characteristics of negligent offenses is the “*unforeseen nature of the outcome.*” However, this element alone is not sufficient to attribute fault to the perpetrator; additionally, the “*required duty of care and diligence*” is sought. The distinctive feature of wrongful acts committed through negligence is the presence of behavior contrary to the objective duty of care related to the protected legal value. In cases of wrongfulness realized through negligent behavior, the determination of this duty is guided by objective principles, regardless of the perpetrator’s personal abilities. The duty of care and diligence is a manifestation of the necessity judgment that extends beyond a specific individual. Depending on the circumstances, the perpetrator should be capable of foreseeing and fulfilling the objectively existing duty of care. When determining this matter, the perpetrator’s personal abilities, perception capacity, experience, and level of knowledge should also be taken into account.

a. The Act Being a Crime that Can Be Committed Through Negligence

Since the primary form of faultiness is intent, the punishment of the perpetrator due to negligence has an exceptional nature (Article 22/1 of the Turkish Penal Code). Therefore, in order for the perpetrator to be held accountable for negligent actions, the presence of an explicit provision in the law is necessary. In cases where there is no explicit provision in the law, punishing the perpetrator due to negligence is not possible, and the contrary would violate the principle of legality. Indeed, this matter is regulated in Article 22/1 of the Turkish Penal Code as follows: “*Acts committed through negligence shall be penalized only in the cases explicitly specified by the law.*”¹⁷

b. Volitional Nature of the Action - However, Lack of Volition in the Outcome

The perpetrator must carry out the action directed towards the outcome knowingly and intentionally. In other words, if the action is not intentional, negligence is not present. The action can be either overt or negligent. In negligent offenses, the perpetrator does not desire and, at the same time, does not foresee the outcome. In other words, the element of intent, which arises from intent-based faultiness, is absent in negligence regarding the aspects of knowledge and intent.

c. Failure to Fulfill the Duty of Care (Objectivity)

1) In General

Individuals in specific positions or roles are entrusted with the duty to adhere to certain rules, exercise care, and pay attention within the framework of legal norms. The perpetrator who fails to fulfill this duty will be held responsible for potential risks or harmful outcomes that may arise. However, the only required condition for this is that it should be feasible for the perpetrator to comply with the duty of care.

“The duty of care and diligence possesses an *objective* nature. Negligent behavior gives rise to the element of *wrongfulness*. The wrongful attribute of an act committed through negligence involves actions contrary to the objective duty of care related to the protected legal value. These obligations can be reflected in positive legal norms, as well as originating from shared life experiences. However, the duty of care and diligence does not necessarily have to be based on a written legal norm.”¹⁸ In determining the duty of care and diligence, even in the absence of a written legal norm, recourse can be made to “*general principles of experience.*”¹⁹

The duty of care and diligence, which forms an unwritten element of typicality, will be determined based on objective standards, considering the behavior of an average person. If the perpetrator possesses knowledge above the average, they are obliged to utilize these specific knowledge and skills to prevent the outcome of injury. On the other hand, the perpetrator’s place of residence, lifestyle, and social environment should also be taken into account.²⁰ The foreseeability is subjective. Therefore, first, the objective duty of care is determined, and then the foreseeability of the outcome is individually assessed and determined for each specific case and perpetrator.²¹ The Court of Cassation has acknowledged the causal link in cases where an individual operates a gas station without the required operational permit and license, fails to

¹⁷ ÖZBEK/ DOĞAN/BACAŞIZ, General Provisions, pp.475.

¹⁸ ÖZGENÇ, pp.257.

¹⁹ TEZCAN, Durmuş/ERDEM, M. Ruhan/ÖNOK, R. Murat, *Theoretical and Practical Special Provisions of Criminal Law*, 18th Ed., Ankara, Seçkin, 2020, p. 229.

²⁰ TEZCAN/ERDEM/ÖNOK, pp. 229-230.

²¹ ÖZBEK /DOĞAN/BACAŞIZ, Genel Provisions, pp.476-477; ÖZGENÇ, pp.257.

supervise the workplace, neglects to take sufficient precautions, and disregards occupational safety regulations, thereby leading to an incident.²²

2) Principle of Trust

The scope of the duty of care and diligence is determined in accordance with the 'Principle of Trust'. In workplaces where services are provided collectively, and the work is carried out by multiple individuals, each worker's belief or effort that the others will endeavor to prevent risky or harmful outcomes is indicated. This concept, originating in German law, was initially applied to traffic accidents.

In order to properly apply the principle of trust in the working environment, there should be certain legal norms as well as social behavioral rules. These rules should be shared with employees through a behavioral modeling. The equal and proportionate sharing of responsibility brings along with it obligations and compensation. Each of the responsible parties can be content with adhering to behavior rules that concern only themselves.²³ The coordination required under the objective duty of care and the identification of foreseeable risks to take necessary precautions are natural consequences of the principle of trust.²⁴

The division of labor and distribution of responsibilities are inevitable in the world of work. In this regard, employees working in various positions and departments within the workplace are subject to different norms based on various possibilities. These behavioral norms aimed at preventing harmful outcomes impose obligations related to occupational safety on those involved. The foundation of this sharing or collaboration is rooted in legal regulations. It is understood that a division of labor and sharing of responsibilities that allow for the consideration of the principle of trust exists. However, in cases where there is an obligation of supervision and monitoring, and where the occurrence of harmful consequences is foreseeable, this principle cannot be invoked. Nevertheless, there are two important limitations to the application of the principle of trust in determining and establishing criminal liability. The first of these is when the result becomes foreseeable based on the circumstances of the specific case due to the faulty conduct of others. In such cases, the defendant must act in accordance with the objective duty of care required by the specific case to prevent the harmful result. The second is when a person with hierarchical position and authority for supervision and monitoring acts contrary to these rules. In this case, the defendant cannot escape liability based on the principle of trust.²⁵

The Court of Cassation acknowledges the liability of the employer or the employer's representative in cases where the duty of care, supervision, and monitoring is violated in contravention of the duty of attention and care. For instance, the Court of Cassation has considered the crane operator who failed to conduct a pre-operation inspection of the crane, contrary to Article 7/1-a of the *Regulation on Health and Safety Conditions for the Use of Work Equipment*, and who turned a blind eye to workers commencing work without safety belts, as primarily negligent. Moreover, the Court of Cassation has also rendered decisions that acknowledge the non-attribution of fault to the employer in cases where there is no breach of the duty of care and diligence.²⁶

d. Predictability of the Outcome (Subjective)

Predictability refers to the capability of the specific attributes possessed by the actor to foresee the consequences of their actions in a concrete situation. If the outcome is not foreseeable, the actor cannot be expected to exercise care and diligence. Whether the outcome is predictable or not must be examined by considering all characteristics of the actor. Therefore, the subjective standard is inherently the actor themselves.

e. The Existence of Causality (Causal Link) Between Action and Outcome

In offenses involving negligence, there must be causality and objective imputation. For this purpose, the dangerous or harmful consequence should arise as a result of the breach of the duty of care and diligence. Causality is determined using the theory of conditions. If it can be asserted that the outcome would not have occurred without the negligent conduct of the actor, then causality exists. Objective imputation, on the other hand, signifies that the breach of the duty of care and diligence leads to the outcome. If there is

²² ÖZBEK/DOĞAN/BACAŞIZ, General Provisions, p. 476. Supreme Court of Appeals, Decision No: 16/05/2000, Case No: 2000/9-104, Decision No: 2000/110 (www.kazanci.com.tr).

²³ KATOĞLU, Tuğrul, "The Principle of Trust in Activities Conducted in Teams and Criminal Liability," TBB Journal, Vol. 68, 2007, pp. 30-31.

²⁴ APAYDIN, Cengiz, "Determination of Negligence in Negligent Offenses and the Principle of Trust," Terazi Monthly Law Journal, Vol. 11, No. 124, December 2016, pp. 86-87.

²⁵ TEZCAN/ERDEM/ÖNOK, pp.230.

²⁶ Court of Cassation 12th Criminal Chamber, Decision No: 25/04/2016, Case No: 2015/11050, Decision No: 2016/7094 (www.uyap.gov.tr - Access Date: 29/05/2023).

no causal connection or if the outcome has not arisen due to the breach of the duty of care and diligence, it is not possible to speak of negligence.²⁷ In order for the perpetrator to be held accountable, there must be a connection of non-compliance with the obligation. If it can be asserted that the outcome would not have occurred had the perpetrator acted in accordance with the duty of care, then in this case, the outcome can be attributed to the perpetrator.²⁸

If the offense has been committed through “*negligent conduct*,” the conduct must have a causal value in terms of the resulting outcome. However, the causality sought here is not actual causality but rather apparent or ostensible causality. Therefore, in cases where a person under a legal duty to prevent the outcome could still assert that the outcome would have occurred even if they had taken preventive action, the responsibility of the perpetrator cannot be attributed to this outcome.²⁹

4. Conscious Negligence

In our legal system, conscious negligence is defined as the situation where “despite not desiring the foreseen consequence, the consequence occurs.” (Article 22/3 of the Turkish Penal Code).

In conscious negligence, besides considering the likelihood of the occurrence of an act in accordance with the statutory definition, another criterion is required. This criterion is the non-desire for the occurrence of the anticipated consequence that is deemed likely.³⁰ The distinguishing characteristic between conscious negligence and ordinary negligence lies in the fact that in conscious negligence, the undesired consequence is actively foreseen, while in negligence, it is not foreseen. In the law, conscious negligence, regulated as a type of negligence, essentially serves to limit the scope of *dolus eventualis* (conditional intent). Therefore, without defining the meaning and limits of *dolus eventualis*, it is not possible to determine the scope of conscious negligence. Although *dolus eventualis* (conditional intent) and conscious negligence overlap in terms of the foreseeability element, they differ in terms of the acceptance element. The distinguishing feature between *dolus eventualis* and conscious negligence is the acceptance of the possible or probable foreseen consequence without having confidence that the anticipated outcome will not occur. In other words, if the actor is saying 'I would have acted this way regardless,' it constitutes *dolus eventualis*; however, if the statement is 'I would not have acted this way if I knew the consequence would occur,' it constitutes conscious negligence.³¹

Conscious negligence signifies a higher degree of culpability compared to ordinary negligence. Even though the individual foresees the outcome, they have not refrained from the behavior that brings about the outcome. In conscious negligence as well, the outcome is definitely not desired and it is believed that it will not occur. If it can be stated that 'had the individual believed the outcome would occur, they would not have taken the action,' then the person is considered to have acted with conscious negligence; otherwise, conditional intent comes into play. For example, a driver who, despite seeing a red traffic light, proceeds believing nothing will happen and causes an accident by running the red light, will be acting with conscious negligence. The perpetrator does not desire the occurrence of the accident, believes it will not happen, but fails to take the necessary action to prevent the foreseen consequence. The consistent practices of the Court of Cassation also support this perspective.³²

The state of conscious negligence holds significant implications within the context of occupational health and safety law. In fact, the majority of workplace accidents consist of simple incidents that could be foreseen by employers. In such cases, it is widely acknowledged that employers or their representatives foresee the potential consequences but fail to take the necessary precautions. This type of occurrence can yield far-reaching ramifications. The consequence brought about by the regulation of conscious negligence has highly adverse impacts in the realm of labor relations. In reality, the concept of conscious negligence, originally intended to prevent negligent actions in traffic accidents rather than addressing crimes arising

²⁷ TEZCAN/ERDEM/ÖNOK, pp. 225-226; YCGK, Decision No: 11/03/2008, Case No: 2007/9-275, Decision No: 2008/49; ÖZGENÇ, pp. 240, footnote 364.

²⁸ LARGUIER, pp. 42-43.

²⁹ TEZCAN/ERDEM/ÖNOK, pp.203-205.

³⁰ ÖZGENÇ, pp.281-282

³¹ For details, see Court of Cassation 12th Criminal Chamber; Decision Date: 24/05/2012, Case No: 2011/19124, Decision No: 2012/14547, (www.uyap.gov.tr - Access Date: 22/04/2023).

³² For details, see Court of Cassation 12th Criminal Chamber's Decision Date: 21/05/2012, Case No: 2011/19317, Decision No: 2012/12647, (www.uyap.gov.tr - Access Date: 16/05/2023).

from accidents in the production process, has taken on a form that can also be applied to workplace accidents due to its mode of regulation.³³

In practice, cases of “workplace accidents” resulting in injuries involving conscious negligence are very rare. This is because it is extremely difficult to prove that the anticipated outcome, which is foreseeable in this category, was acted upon knowingly. The Court of Cassation, however, accepts the existence of conditions of conscious negligence as a presumption in cases of injuries occurring in coal mines.³⁴ The Court of Cassation has acknowledged that the conditions of conscious negligence exist in cases where female workers are employed in workplaces categorized as ‘very hazardous works’ in accordance with the supplementary schedule of the ‘Regulation on Hazardous and Dangerous Works,’ published in the Official Gazette on June 16, 2004 (No. 225494), despite the requirement that they should not work in such places. This recognition is based on the employment of women workers in workplaces with insufficient supervision and monitoring mechanisms, overlooking the continuation of activities falling within the ‘very hazardous works’ category, and the absence of adequate inspection and control mechanisms.³⁵ Furthermore, the Court of Cassation has ruled that in a case resulting in the death of a worker due to falling while working on the factory’s rooftop without taking precautions, the provisions of conscious negligence cannot be applied. The court based this decision on the grounds that the worker foresaw the possibility of experiencing a workplace accident but acted believing that the accident would not occur.³⁶

In Mining and Quarrying Operations, in accordance with regulatory provisions, first and foremost, regular measurement of gas concentration should be carried out, and if the concentration exceeds an acceptable level, necessary precautions should be taken (for example, by providing workers with carbon monoxide masks) to ensure the immediate evacuation of workers. In this context, if the failure to implement precautions, inadequate performance of supervisory duties, absence of necessary equipment or tools, or failure to report identified deficiencies to the employer is determined; in cases where work is carried out without ensuring workplace safety and without taking necessary precautions, the presence of conscious negligence has been recognized by the Court of Cassation.³⁷

In our opinion, when making decisions regarding injuries resulting from workplace accidents, factors such as the customary mode of work, working conditions, whether it complies with regulations, the age, gender, and abilities of the injured worker, whether these attributes comply with regulations,

³³ For details, refer to Court of Cassation 12th Criminal Chamber's Decision Date: 17/10/2012, Case No: 2012/7274, Decision No: 2012/22212; Yargıtay 12th Criminal Chamber's Decision Date: 13/03/2012, Case No: 2012/9561, Decision No: 2012/6894, (www.uyap.gov.tr - Access Date: 16/05/2023).

³⁴ “...Without taking any safety measures and operating an illegal mine under very primitive conditions, the defendants caused the death of a person who was only 16 years old. However, the application conditions of the conscious negligence provision stipulated in Article 22/3 of the Turkish Penal Code were not considered, and a deficient sentence was imposed as indicated in the written decision,” (Court of Cassation 12th Criminal Chamber, Decision No: 15/04/2014, Case No: 2013/13917, Decision No: 2014/9162; www.uyap.gov.tr - Access Date: 16/05/2023).

³⁵ “...Despite the fact that according to the additional schedule of the Regulation on Hazardous and Dangerous Works published in the Official Gazette dated 16.06.2004 and numbered 225494, it is prohibited for female workers to be employed in this workplace categorized as highly hazardous works, and despite the absence of sufficient monitoring and supervision mechanisms, female workers were employed. Furthermore, the continuation of activities classified as highly hazardous works, similar to the explosion incident, within this workplace that lacks adequate supervision and control mechanisms, and the defendants’ actions of turning a blind eye to such continuation and failing to establish sufficient monitoring and control mechanisms, result in the conditions of conscious negligence. The prescribed penalties are not taken into account and increased in accordance with Article 22/3 of the Turkish Penal Code, ...” Court of Cassation 12th Criminal Chamber, Decision No: 01/07/2015, Case No: 2014/18035, Decision No: 2015/12308 (www.uyap.gov.tr - Access Date: 03/07/2021); Similarly see, Court of Cassation 12th Criminal Chamber, Decision No: 27/04/2015, Case No: 2013/17398, Decision No: 2015/6786; Court of Cassation 12th Criminal Chamber, Decision No: 11/11/2014, Case No: 2013/29714, Decision No: 2012/22415. (www.uyap.gov.tr, Access Date: 16/05/2021)

³⁶ “...The defendant, despite foreseeing the possibility of an occupational accident occurring to the deceased apprentice V., whom they employed on the rooftop of the factory without taking necessary precautions and measures, and despite their belief that the accident would not happen, was sentenced to an excessive penalty under the provisions of Article 22/3 of the Turkish Penal Code due to the rationale that conscious negligence conditions were not met;” (Court of Cassation 12th Criminal Chamber, Date: 16/01/2019, Case No: 2017/5239, Decision No: 2019/732 (www.uyap.gov.tr - Access Date: 01/06/2021).

³⁷ Court of Cassation 12th Criminal Chamber, Date: 04/02/2016, Case No: 2015/3063, Decision No: 2016/1383 (www.uyap.gov.tr - Access Date: 01/06/2023).

the impact of all these factors on the outcome, whether sufficient and necessary occupational safety measures have been taken in workplaces according to relevant regulations, whether the lack of such measures or their insufficiency was known to the employer or authorized personnel, should all be considered in reaching a decision.

5. Determination of Fault

In order for negligent criminal liability to be established, proof of negligence in the form of fault in the perpetrator is required. In parallel with social and economic developments, the execution of certain activities and the establishment of certain commercial companies unavoidably entail certain risks. Despite adhering to the utmost duty of care and diligence to prevent risks, hazards, or harmful outcomes, it is not always feasible to prevent them. Such companies or businesses, due to being necessary and beneficial as a result of sociological, economic, and social needs, are not prohibited despite carrying a certain danger or risk. In fact, often the inevitable hazards associated with them are defined as “*permissible risks*” For instance, in cases such as the operation of industrial material production facilities, mining operations, these types of hazards are present. The liability arising from the duty of care and diligence is limited within the scope of permissible risk. If an inevitable misconception arises regarding the existence and content of the objective duty of care, the perpetrator cannot be deemed at fault.³⁸

Rules related to Mining or Construction activities can be cited as examples of the duty of care and diligence. The perpetrator must be capable, given their own abilities, perceptual skills, experiences, level of knowledge, and the conditions they are in, of foreseeing and fulfilling the objectively existing duty of care and diligence. The determination of criminal liability should rely on the criteria of “*foreseeability and preventability*” to establish the existence of a breach of the objective duty of care and diligence.³⁹ In criminal law, the determination of negligent criminal liability can be established through a normative analysis of the prohibitions or obligations defined by legal norms, within the framework set by the law. In cases of workplace accidents resulting from insufficient occupational health and safety measures, it is essential to first identify the responsible negligent conduct or the extent to which the duty of care and diligence has been violated. For this purpose, when necessary, conducting on-site inspections and obtaining expert reports become imperative.⁴⁰ With the expert report, it should be examined who is responsible for taking occupational health and safety measures and whether they have been taken adequately. In our opinion, the expert's examination is not limited solely to determining whether each defendant violated the legal norm assigned to them, based on technical data.

In workplaces, according to the employment contract made in compliance with legal provisions, there are mutual rights and obligations for the employer, employer's representative, and the employee according to the law and secondary regulations. Essentially, the scope and extent of negligent criminal liability are related to how these obligations, which have been defined, are fulfilled by the parties. When determining liability, action should be taken based on the possibilities mentioned below⁴¹:

- If the employee has fulfilled their obligation completely while the employer has not fulfilled their obligation, then the employer will be held responsible for the outcome.⁴²
- If both the employee and the employer have failed to fulfill their obligations mutually, both parties will be responsible for the outcome in proportion to their respective faults. If a workplace accident occurs due to the negligent actions of both parties, the responsibility will be shared between both parties. In the determination of fault based on negligence, since no mathematical evaluation will be conducted, the responsibility will be determined based on the severity and lightness of the fault. Indeed, in this case, “*In crimes committed through negligence by multiple individuals, each person shall be held responsible for their own fault. The punishment of each perpetrator shall be determined separately based on their degree of fault.*” (Article 22/5 of the Turkish Penal Code)
- If the employee has not fulfilled their obligation and the employer has fully fulfilled their obligation, in such cases, the employer cannot be held responsible.⁴³ In the event of adopting strict liability, the

³⁸ APAYDIN, *Negligent Infliction of Injury...*, p. 76-77.

³⁹ APAYDIN, *Negligent Infliction of Injury...*, p. 77-78.

⁴⁰ According to the Code of Criminal Procedure No. 5271, Expert, Article 3 of the Regulation on the Preparation of Expert Lists by Provincial Judicial Justice Commissions

⁴¹ ÖZEN, Mustafa, “Legal, Criminal, and Administrative Liability in Occupational Accidents,” *Ankara Bar Association Journal*, Vol. 2015/2, pp. 239-240.

⁴² Court of Cassation 12th Criminal Chamber, Date: 18/01/2016, Case No: 2015/2717, Decision No: 2016/489; www.uyap.gov.tr - Access Date: 02/07/2023).

⁴³ “*On the day of the incident, in the event where the injured party, who was painting on a wheeled ladder at a height of 4 meters in the Trade Limited Company, of which the defendants were authorized, jumped to the ground to avoid falling from the ladder, resulting in a third-degree bone fracture in their*

employer will be held responsible. However, in such cases, the fault of the employee should be taken into account.⁴⁴

For instance, within the scope of duty responsibility of the occupational health and safety expert, if the expert identifies deficiencies in the workplace and records them in the workplace journal as separate items, according to **Article 7, Paragraph 4 of the Regulation on Occupational Health and Safety Services**, the mention that the recorded findings and recommendations in the approved journal are deemed to have been communicated to the employer, if duly noted, absolves the diligent occupational health and safety expert from any fault.

In one of its rulings, *the Court of Cassation* has ruled that “... *On the day of the incident, while the participant was cutting a wooden curtain in the hotel room using a plaster cutting machine (spiral) and saw purchased by the employer, the machine slipped from their hand and flew, resulting in a severe injury to the wrist area of their left hand, posing a life-threatening situation and causing a bone fracture that would impact life functions to the third degree... it is understood that the participant, who had the experience to know that wood should not be cut with the plaster cutting machine in question, started working after removing the protective part of the machine purchased before the plaster job. In this way, not only did the participant use an inappropriate tool for the task but also removed the protective part of the tool and continued working, creating the danger themselves. Therefore, it is ruled that the defendant, who assigned the task to the participant with expertise in the field, cannot be held at fault.*”⁴⁵

– If a third party suffers damage in connection with a task being carried out at the workplace or outside of it, the employer cannot be held liable in their capacity as an employer for non-employee third parties who suffer damage in connection with a task being carried out at the workplace or outside of it. In such cases, liability will be pursued through general provisions.

– In cases where injuries occur due to the failure to address the measures or deficiencies specified by the responsible expert for occupational health and safety measures, despite warnings, those individuals serving in the company management body in the employer position will be held responsible.⁴⁶

C. ELEMENT OF ILLEGALITY IN LAW

Illegality in Law” can be defined as acting contrary to a command or prohibition specified in a particular legal norm. Illegality in law signifies non-compliance with demands that legal norms either require or prohibit. It pertains to the value judgment assigned to an action. The act performed by the offender, which is deemed unsuitable under the legal system, is disapproved. In the theory of crime, an act is defined as criminal if it is both typical and contrary to law. In other words, crime types inherently embody illegality. Illegality in law is distinct from the concept of wrongfulness. Wrongfulness pertains to a type-appropriate and unlawful act itself. Conversely, illegality in law is a characteristic of a type-appropriate action and a feature of an act constituting a crime. The illegality of an act implies its non-conformity with the entire legal system.

1. In General

In the context of the work environment, despite both the employee and the employer taking acceptable risks and precautions, and implementing all necessary protective and supportive measures, it is possible that employees may experience physical harm as a result of potential and undesired occupational accidents.⁴⁷

body; considering the defendants' agreement with the injured party who has a workplace related to the activities related to the incident, to carry out painting, renovation, and repair work at the mentioned workplace, and evaluating the nature and scope of the work performed, it was disregarded that there is no reasonable attribution of fault to the defendants, and a decision was made to convict them based on an insufficient expert report, instead of their acquittal,” (Court of Cassation 12th Criminal Chamber, Date: 09/05/2016, Case No: 2015/7885, Decision No: 2016/8106; www.uyap.gov.tr - Access Date: 29/05/2023); “...*Considering that the injured party was injured due to their own fault, and taking into account that no one can be attributed with fault for the incident...*” (Court of Cassation 12th Criminal Chamber, Date: 29/01/2015, Case No: 2014/7750, Decision No: 2015/1532; www.uyap.gov.tr - Access Date: 29/05/2023.).

⁴⁴ For details, see Court of Cassation General Assembly of Criminal Chambers, Date: 31/01/2015, Case No: 2013/12-654, Decision No: 2015/75; (www.uyap.gov.tr - Access Date: 29/05/2023).

⁴⁵ Court of Cassation 12th Criminal Chamber, Decision No: 25/11/2015, Case No: 2015/2489, Date: 2015/18217; (www.uyap.gov.tr, Access Date: 29/05/2021).

⁴⁶ ÖZGENÇ, p.264.

⁴⁷ “An occupational accident is an incident that occurs: a) while the insured person is present at the workplace, b) due to the insured person's independent work carried out on their own behalf and account

“In this context, aiming to prevent or minimize the potential risks and hazards through necessary occupational health and safety measures against undesired potential risks and dangers is intended. Therefore, within the realm of the work environment, the State, as the primary supervisory authority, as well as both the employees and employers, bear legal, educational, technical, or medical responsibilities. The protection and preservation of the fundamental human rights enshrined in the Constitution, such as the right to life and health, are fundamentally rooted in the establishment and maintenance of occupational health and safety.

The concept of occupational health and safety is generally accepted to have two aspects. The first of these is the measures that the employer needs to take within the scope of occupational health and safety. This is referred to as “*narrow sense of occupational health and safety*” in academia. These measures encompass both the workers and other workers who are temporarily present at the workplace or who are present at the workplace due to a subcontracting relationship. The second aspect expresses the responsibility assigned to the state. This is also referred to as “*broad sense of occupational health and safety.*”

2. Normative Regulations Regarding Occupational Health and Safety

Normative regulations related to occupational health and safety are dispersed and manifest themselves in both private law and public law domains. The obligation of the employer to ensure worker health and safety arising from the employment contract emerges as a duty stemming from private law. The European Union's Framework Directive 89/391 has provided the means to define employers' responsibilities regarding occupational health and safety, and its incorporation into our domestic law is through the Law on Occupational Health and Safety, numbered 6331, dated 20/06/2012.

When an occupational accident occurs, the first and foremost task is to determine the scope and content of the occupational health and safety measures in effect as of the date of the incident within the context of the ongoing work, as a priority.

a. The Turkish Code of Obligations

The fundamental mandatory regulation regarding occupational health and safety is included in the Turkish Code of Obligations numbered 6098. Article 417 of the TCO generally regulates the employer's obligations concerning occupational health and safety. According to the article, “*The employer is obligated to have all the necessary tools and equipment for ensuring occupational health and safety in the workplace. The employer must take all necessary precautions for ensuring occupational health and safety in the workplace, keep the tools and equipment complete, and the workers are obligated to adhere to all precautions taken regarding occupational health and safety. Compensation for damages resulting from harm to bodily integrity or violation of personal rights due to the employer's actions contrary to the law or the contract is subject to the provisions of liability arising from contractual breach*”(TCO, Article 417/2,3).

b. The Occupational Health and Safety Law (OHSL)⁴⁸

The fundamental goal of Law No. 6331 is prevention. In line with the prevention policy, the obligation has been imposed on the employer to conduct risk assessment and the duty to prepare a safety report before opening the workplace. Measures will be determined according to the risks. Without discrimination, the Law will be applicable to all workplaces in the public or private sector, including their employers, employer representatives, apprentices, and interns, regardless of their fields of operation (OSH Law, Article 2)⁴⁹.

The primary responsibility for ensuring occupational health and safety rests with the employer. This is because the employer is under the obligation of “*duty to protect the worker.*” Therefore, ensuring the health and safety of the worker is one of the most significant responsibilities assigned to the employer.

if they are self-employed while conducting work on behalf of the employer, c) during periods when the insured person, who works under the authority of an employer, is sent to a location other than the workplace for official purposes and is not engaged in their main job, d) (Amended: 17/4/2008-5754/8) during the times when a nursing woman insured under the scope of the first paragraph of Article 4 of this Law is entitled to breastfeed her child according to the labor legislation, e) during the commute of insured individuals to and from the place of work using a vehicle provided by the employer, resulting in immediate or subsequent physical or mental disability for the insured person.” (Article 13 of Law No. 5510 on Social Security and General Health Insurance)

⁴⁸ Official Gazette:30/06/2012-No.28339

⁴⁹ TİFTİK, Mustafa/ADIGÜZEL, Ayşe, “The Employer's Duty to Protect the Worker in the General Service Contract According to the Occupational Health and Safety Law,” www.dergipark.org.tr (Accessed Date: 02/04/2021)

The obligations of the employer in accordance with the Law on Occupational Health and Safety (OSH Law) No. 6331 are detailed in various articles. Article 4 covers the “*General Obligations of the Employer*,” Article 5 addresses “*Principles of Protection from Risks*,” Article 11 pertains to “*Emergency Plans, Firefighting, and First Aid*,” Article 14 discusses the “*Recording and Reporting of Occupational Accidents and Occupational Diseases*,” Article 15 deals with “*Health Surveillance*,” Article 16 outlines “*Informing Employees*,” and Article 17 includes provisions on “*Training of Employees*.”

While the Turkish Code of Obligations (TCO) introduces the criterion of the “*workplace*” in terms of occupational health and safety measures, Article 4 of the Law on Occupational Health and Safety (OSH Law) includes the criterion of “*work-related health and safety*” for employees. In other words, the employer will be responsible for ensuring the work-related health and safety of each individual worker and will take mandatory measures according to the nature of the work.

c. Regulation on Occupational Health and Safety Services⁵⁰

The most significant provision introduced by the Regulation is the imposition of certain obligations on employers. In this context, employers will take occupational health and safety measures as required by their obligations. Moreover, the Regulation stipulates that the responsibility of employers or employer representatives will not be absolved if employers seek services from external experts or organizations regarding occupational health and safety, or if the worker themselves violates their obligations concerning occupational health and safety.

IV. SPECIAL FORMS OF OFFENSE

A. PARTICIPATION

Participation is not possible in negligent offenses. (Turkish Penal Code, Article 37-39) The Supreme Court practice is also in this direction. Participation is only possible for intentionally committed offenses. Theoretically, the convergence of negligent bodily harm actions by multiple individuals without the intention of participation is possible. In this case, according to Article 22/5 of the Turkish Penal Code, each person will be responsible for their own negligence. However, in this exceptional situation, the negligence of each perpetrator for the realization of the outcome, due to the negligent bodily harm act, must be evaluated independently from the others. For example, in a collapse incident that occurs at a construction site, it is possible for the employer, site manager, or worker to be negligent simultaneously.

B. ATTEMPT

In negligent offenses, attempt is not possible. One of the conditions required for attempt to be applicable is that the committed offense must be an *intentional offense*.

C. CONSUMMATION

In the offense of negligent bodily harm, conceptual concurrence is possible. In this case, both an offense of endangerment and an offense of negligent bodily harm are established. Accordingly, according to the provisions of conceptual concurrence of different types, the punishment should be imposed based on the offense that requires the most severe penalty for the perpetrator (Turkish Penal Code, Article 44).⁵¹

D. AGGRAVATED OFFENSE

As an exception to the general rule that each action will be considered a separate offense, the concept of “*aggravated offense*” emerges. It indicates a continuing criminal act with characteristic features, which result in sustained and effective consequences. The reason for considering separate acts as a single offense when determining the punishment is that there is a shared connection between these crimes in terms of their mental elements, thus resulting in an overall heavier penalty for each crime. However, if multiple individuals are injured due to a negligent act, Article 89/4 of the Turkish Penal Code will be applied.

E. RECIDIVISM

“*The provisions of recidivism shall not apply between intentional offenses and negligent offenses.*” (TPC, Article 58/4) Since the probation period for applying recidivism provisions starts after the execution of the conviction provisions, the date of the fulfillment of the decision underlying the recidivism should be determined.⁵²

⁵⁰ Official Gazette:29/12/2012-No.28512

⁵¹ ALTUN, pp.57-58.

⁵² The specific execution regime for recidivists and the manner of applying the probationary release measure, its duration, and the authority to decide on this matter are regulated in Article 108 (4), (5), and (6) of the Turkish Criminal Procedure Code No. 5275. For a recidivist defendant who has been sentenced to imprisonment, according to Article 58, paragraph seven of the Turkish Penal Code, it is required to decide



V. CONCLUSION

One of the common intersections between Criminal Law and Labor Law is incidents resulting in injuries that occur in workplaces. Negligent bodily harm offenses are particularly problematic in terms of 'work accidents'. The legally protected interests within the framework of occupational health and safety law include the worker's right to life, physical and mental integrity, and personal safety.

The regulations do not specify what precautions should be taken by the employer; therefore, they do not set any limits on what these precautions will consist of. The obligation to "take all necessary precautions" can vary based on the employers' economic, technical, and financial structures. The scope of the employer's obligation to take protective measures should be determined according to the characteristics of the specific case, the nature of the work performed, and the workplace.

The purpose of norms aimed at preventing occupational accidents, which are subject to material penal sanctions, is to protect the worker against accidents arising from their own negligence, lack of caution, and inexperience. Therefore, as long as the worker remains within the risk area related to the activity performed and provided that the employer has not taken the necessary precautions to prevent occupational accidents, the worker's careless, reckless, or inexperienced behavior will not sever the causal link. In comparative law, for instance, according to the Italian Court of Cassation, the employer's behavior should aim at acquiring the latest science and technology products to ensure the worker operates within absolute safety conditions. Thus, if the process of technological advancement requires additional measures to enhance safety, upon acquisition, a specific tool should comply with the safety conditions mandated by law. It should be noted that if the worker's behavior is extraordinary and abnormal, deviating from the procedures to be followed for performing the task and the instructions given to them, the employer's liability is mitigated. Behavior that represents a complete contradiction to what needs to be done to avoid occupational accidents, while controllable and foreseeable, does not absolve the employer of their responsibility.

In line with the principles of preventive crime and punishment policy, employers must strive to acquire the latest science and technology products to ensure their workers operate within absolute safety conditions. Therefore, if the process of technological advancement necessitates taking additional measures to enhance safety, the tools and equipment must comply with the safety conditions mandated by law.

In our study, with regard to injuries resulting from occupational accidents due to the negligence of occupational safety measures, in accordance with the principles of crime and punishment policy, the structural elements of the offense, the manner of commission, the determination of criminal liability, and the principles and procedures to be considered in establishing the faults of these individuals are explained, taking into account judicial precedents. Additionally, proposed solutions for potential issues are provided.

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