

Occupational Safety Experts in the Law No 6331: Qualifications, Assignments and Authorizations

*6331 Sayılı Kanun'da İş Güvenliği Uzmanlığı:
Nitelikleri, Görevlendirilmeleri ve Yetkilendirilmeleri*

İlknur KILKIŞ

Assoc. Prof. Dr., Uludağ University, Faculty of Economics and Administrative Sciences

Yusuf ALPER

Prof. Dr., Uludağ University, Faculty of Economics and Administrative Sciences

Şenel ŞEN

Civil Engineer, Class A Occupational Safety Expert

Emir Cihan ALPER

Mechanical Engineer, Class C Occupational Safety Expert

Temmuz 2014, Cilt 4, Sayı 2, Sayfa 43-68
June 2014, Volume 4, Number 2, Page 43-68

P-ISSN: 2146 - 4839

E-ISSN: 2148-483X

2014/1

www.sgd.sgk.gov.tr

e-posta: sgd@sgk.gov.tr

Yazılar yayınlanmak üzere kabul edildiği takdirde, SGD elektronik ortamda tam metin olarak yayımlamak da dahil olmak üzere, tüm yayın haklarına sahip olacaktır. Yayınlanan yazılardaki görüşlerin sorumluluğu yazarlarına aittir. Yazı ve tablolardan kaynak gösterilerek alıntı yapılabilir.

If the manuscripts are accepted to be published, the SGD has the possession of right of publication and the copyright of the manuscripts, included publishing the whole text in the digital area.

Articles published in the journal represent solely the views of the authors.

Some parts of the articles and the tables can be cited by showing the source.

SGD

Sosyal Güvenlik Dergisi
Journal of Social Security

Cilt : 4 - Sayı : 2 - Yıl : 2014 / *Volume : 4 - Number : 2 - Year : 2014*

Sahibi / Owner of the Journal

Sosyal Güvenlik Kurumu Adına / *On behalf of the Social Security Institution*
Yadigar GÖKALP İLHAN (Kurum Başkanı / *President of the Institution*)

Genel Yayın Yönetmeni / General Publication Manager

Dr. Mustafa KURUCA

Sorumlu Yazı İşleri Müdürü / Desk Editor

Yavuz Selim AYAZ

Yayın Kurulu / Publication Board

Dr. Mustafa KURUCA

Murat YAZICI

Harun HASBİ

Muammer YILDIZ

Erdoğan ÜVEDİ

Editörler / Editors

Dr. Erdem CAM

Selda DEMİR

Asuman KAÇAR

Onur ÖZTÜRK

Yayın Türü: Uluslararası Süreli Yayın / *Type of Publication: Periodical*

Yayın Aralığı: 6 aylık / *Frequency of Publication: Twice a Year*

Dili: Türkçe ve İngilizce / *Language: Turkish and English*

Tasarım / Design: Aren Reklam ve Tanıtım / Ankara 0.312 430 70 81 • www.arentanitim.com.tr

Basım Yeri / Printed by: MRK Matbaacılık / Ankara

Basım Tarihi / Press Date: 31.07.2014

P-ISSN: 2146-4839 - **E-ISSN:** 2148-483X

*Sosyal Güvenlik Dergisi (SGD),
Academic Journals Database - CH
Asos Index - TR*

DOAJ - SE

Ebsco Host - US

*Index Copernicus International - PL tarafından indekslenmektedir ve
TUBİTAK ULAKBİM tarafından değerlendirme sürecinde olup izlenmektedir.*

Journal of Social Security (SGD), has been indexed by

Academic Journals Database - CH

Asos Index - TR

DOAJ - SE

Ebsco Host - US

*Index Copernicus International - PL and
monitored by TUBİTAK ULAKBİM*

SGD Sosyal Güvenlik Dergisi

Tüm hakları saklıdır. Bu Dergi'nin tamamı ya da Dergi'de yer alan bilimsel çalışmaların bir kısmı ya da tamamı 5846 sayılı Yasa'nın hükümlerine göre Sosyal Güvenlik Kurumu Başkanlığının yazılı izni olmaksızın elektronik, mekanik, fotokopi ya da herhangi bir kayıt sistemiyle çoğaltılamaz, yayınlanamaz.

İletişim Bilgileri / Contact Information

Ziyabey Caddesi No: 6 Balgat / Ankara / TURKEY

Tel / Phone: +90 312 207 88 91 – 207 87 70 • Faks / Fax: +90 207 78 19

Erişim: www.sgd.sgk.gov.tr • e-posta / e-mail: sgd@sgk.gov.tr

ULUSLARARASI DANIŐMA KURULU / INTERNATIONAL ADVISORY BOARD

Professor Yener ALTUNBAŐ
Bangor University – UK

Professor Jacqueline S. ISMAEL
University of Calgary – CA

Professor zay MEHMET
University of Carleton – CA

Professor Allan MOSCOVITCH
University of Carleton – CA

Professor Mark THOMPSON
University of British Columbia – CA

Asst. Prof. Sara HSU
State University of New York – USA

Asst. Prof. C. Rada Von ARNIM
University of Utah – USA

ULUSAL DANIŐMA KURULU / NATIONAL ADVISORY BOARD

Prof. Dr. Mustafa ACAR
Aksaray Üniversitesi Rektörü

Prof. Dr. rsan AKBULUT
TODAİE

Prof. Dr. Levent AKIN
Ankara Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Yusuf ALPER
Uludağ Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Faruk ANDAÇ
Çağ Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Kadir ARICI
Gazi Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Onur Ender ASLAN
TODAİE

Prof. Dr. Berrin Ceylan ATAMAN
Ankara Üniversitesi
Siyasal Bilgiler Fakóltesi

Prof. Dr. Hayriye ATİK
Erciyes Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Zakir AVŐAR
Gazi Üniversitesi
İletişim Fakóltesi

Prof. Dr. Ufuk AYDIN
Anadolu Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Remzi AYGÜN
Gazi Üniversitesi
Tıp Fakóltesi

Prof. Dr. Abdurrahman AYHAN
Muğla Sıtkı Koçman Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Mehmet BARCA
Yıldırım Beyazıt Üniversitesi
İşletme Fakóltesi

Prof. Dr. Vedat BİLĞİN
Gazi Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Nürşen CANİKLIOĐLU
Marmara Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Fevzi DEMİR
Yaşar Üniversitesi
Hukuk Fakóltesi

Prof. Dr. A. Murat DEMİRCİOĐLU
Yıldız Teknik Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Üstün DİKEÇ
Emekli Öğretim Üyesi

Prof. Dr. mer EKMEKÇİ
İstanbul Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Şükran ERTÜRK
Dokuz Eylül Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Mehmet Vedat GÜRBÜZ
Yıldırım Beyazıt Üniversitesi
İnsan ve Toplum Bilimleri Fakóltesi

Prof. Dr. Ali GÜZEL
Kadir Has Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Alpay HEKİMLER
Namık Kemal Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Oğuz KARADENİZ
Pamukkale Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Türksel KAYA BENGŞİR
TODAİE

Prof. Dr. Aşkın KESER
Uludağ Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Cem KILIÇ
Gazi Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Ali Rıza OKUR
Yeditepe Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Serdar SAYAN
TOBB Ekonomi ve Teknoloji Üni.
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Ali SEYYAR
Sakarya Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Ali Nazım SÖZER
Yaşar Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Sarper SÜZEK
Atılım Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Müjdat ŐAKAR
Marmara Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Erol ŐENER
Yıldırım Beyazıt Üniversitesi
Tıp Fakóltesi

Prof. Dr. Zarife ŐENOCAK
Ankara Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Savaş TAŐKENT
İstanbul Teknik Üniversitesi
İşletme Fakóltesi

Prof. Dr. Mehtap TATAR
Hacettepe Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Sabri TEKİR
İzmir Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Prof. Dr. Aziz Can TUNCA Y
Bağçeşir Üniversitesi
Hukuk Fakóltesi

Prof. Dr. M. Fatih UŐAN
Yıldırım Beyazıt Üniversitesi
Hukuk Fakóltesi

Prof. Dr. Özlem Özdemir YILMAZ
Ortaođu Teknik Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Doç. Dr. Tamer AKŐO Y
TOBB Ekonomi ve Teknoloji Üni.
İktisadi ve İdari Bilimler Fakóltesi

Doç. Dr. Selda AYDIN
Gazi Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Doç. Dr. Süleyman BAŐTERZİ
Ankara Üniversitesi
Hukuk Fakóltesi

Doç. Dr. Hediye ERĞİN
Marmara Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Doç. Dr. Orhan FİLİZ
Polis Akademisi

Doç. Dr. Engin KÜÇÜKKAYA
Ortaođu Teknik Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Doç. Dr. Adil ORAN
Ortaođu Teknik Üniversitesi
İktisadi ve İdari Bilimler Fakóltesi

Occupational Safety Experts in the Law No 6331: Qualifications, Assignments and Authorizations

6331 Sayılı Kanun'da İş Güvenliği Uzmanlığı:

Nitelikleri, Görevlendirilmeleri ve Yetkilendirilmeleri

İlknur KILKIŞ*

Yusuf ALPER**

Şenel ŞEN***

Emir Cihan ALPER****

ABSTRACT

The Law no 6331 on Occupational Health and Safety initiated a new era in Turkey. Among the most important innovations brought about were undoubtedly taking all workplaces into the scope of the Law regardless of the number of employees and assigning the tasks of occupational health and safety to professionals such as occupational safety experts (OSE) and on-site doctors. In terms of the efficiency of occupational health and safety services, the Law attaches great importance to the process of becoming an OSE and requires special training and achievement in the central exam. The excessive number of workplaces and the fact that they are small scaled and that there are not adequate numbers of OSE present have caused a significant problem in putting the Law into practice; therefore, effective dates for some provisions were suspended. While this suspension was quite incisive; the changes made in the requirements of becoming OSE specified in the first form of the Law in order to make up for the need for OSE were misleading. Particularly, allowing thousands of people to become OSE without asking for any professional experience; but just through an exam depending on their undergraduate education and the time of insurance led to deviations from the objectives expected from the Law no 6331.

Keywords: The Law no 6331 on Occupational Health and Safety, Occupational Safety Expert, promotion among classes

ÖZ

6331 sayılı İş Sağlığı ve Güvenliği Kanunu Türkiye’de yeni bir dönemi başlatmıştır. Getirilen yeniliklerden en önemlileri şüphesiz çalışan sayısına bakılmaksızın tüm işyerlerinin Kanun kapsamına alınması ve iş sağlığı güvenliği hizmetlerinin iş güvenliği uzmanları ve işyeri hekimleri gibi profesyonellerce verilmesi olmuştur. Kanun, iş sağlığı ve güvenliği hizmetlerinin etkinliği bakımından iş güvenliği uzmanı olma sürecine büyük önem vermiş, özel eğitim alma ve merkezi sınavda başarılı olma şartlarını aramıştır. İşyerlerinin çok sayıda ve küçük ölçekli olması, yeterli sayıda iş güvenliği uzmanının olmaması, Kanun’un hayata geçirilmesine yönelik önemli bir sorun oluşturmuş ve bu sebeple bazı hükümlerin yürürlük tarihi ertelenmiştir. Bu erteleme ne kadar doğru ise iş güvenliği uzmanı eksikliğini gidermek üzere, Kanun’un ilk şeklinde belirlenen iş güvenliği uzmanı olma şartlarının değiştirilmesi o kadar hatalı olmuştur. Özellikle de herhangi bir mesleki tecrübe aranmadan, yalnızca lisans eğitimine ve sigortalılık süresine bağlı olarak yapılan bir sınavla binlerce kişinin iş güvenliği uzmanı yapılmak istenmesi, 6331 sayılı Kanun’da beklenen amaçlardan bir sapmaya sebep olmuştur.

Anahtar Sözcükler: 6331 sayılı İş Sağlığı ve Güvenliği Kanunu, iş güvenliği uzmanı, sınıflararası yükselme

* Assoc. Prof. Dr., Uludağ University, Faculty of Economics and Administrative Sciences, ilknurkilkis@gmail.com

** Prof. Dr., Uludağ University, Faculty of Economics and Administrative Sciences, alperyusuf@gmail.com

*** Civil Engineer, Class A Occupational Safety Expert, senelsen@senelsen.com.tr

**** Mechanical Engineer, Class C Occupational Safety Expert, emircihanalper@gmail.com

INTRODUCTION

With the Law no 6331, a new period was initiated in Occupational Health and Safety (OHS) practices in Turkey. The law has brought many new and positive arrangements for the solution of OHS related problems. One of these innovations has been the importance attached to the implementation of OHS services by specialist OHS professionals posted to the task in the field. Far beyond the arrangements addressing OHS professionals in previous periods, it is a fact that the law has attached great importance to arrangements concerning the definition, tasks and authorities, working conditions and specification process of the profession. A great majority of the improvements expected from the Law no 6331 will be possible with proper fulfillment of tasks by these professionals.

In this study;

qualifications, assignments and authorization processes of OSE among the OHS professionals in the period before the Law no 6331 and in the Law no 6331 will be examined. To this end, the definition of an OSE, amendments in the employers' obligations in assigning OSE and finally the conditions required in the authorization process of the OSE, particularly the examination process will be analyzed. In order to solve to problems that may occur due to the fact that workplaces are high in number while the number of OSE is limited

- The amendments made in the requirements to become an OSE and
 - The amendments made in proficiency and certification examinations,
- will be dealt with and these amendments which may disrupt the positive outcomes expected from the Law no 6331 will be emphasized.

I- QUALIFICATIONS OF OSE

In Turkey, “ *the obligation to assign an engineer or technical staff responsible for occupational safety at workplaces which are categorized as industrial, continuously employ at least 50 workers and perform continuous operations for more than six months*” was first imposed with the Labor Law dated 2003 and numbered 4857 (4857/art.82). The term “OSE”, which was not defined directly in the Law, was first included in

the Regulation dated 2004¹. The fact that the title of OSE has been used in all arrangements made as of this date and profession groups have been counted shows that OSE has been adopted in our legislation as a superior term (Demircioğlu, 2006:113).

In the regulation dated 2004, individuals to be assigned as OSE were required to meet the condition of *“being engineers or technical staff responsible for occupational safety with the certification of the Ministry”*. According to this condition, becoming an OSE requires having a university degree in certain fields and the occupational safety certificate given by the Ministry. Although these persons have certain technical backgrounds, working as an OSE is a profession which mainly requires experience and in which the branch is important. In this respect, the provision included in the article 15 of the regulation concerning *“paying attention to the fact that the OSE to be assigned belong to an appropriate job group to the quality of the main business carried out at the workplace”* has been an incisive arrangement.

In the regulation, the scope of engineering covers *“those having a degree in chemistry, mechanical, mining, geology, metallurgy, industry, electrical, electronics, civil, physics, geophysics, computer, textile, petrol, aircraft, marine, environment, food engineering and architecture departments as well as those graduated from the department of agricultural machinery at faculties of agriculture.”* For technical staff, on the other hand, it was required *“to be graduates of occupational health and safety departments, departments of chemistry, physics, geophysics and geology of universities as well as of Technical Education Faculties”*.

With the Law no 5763, (26.05.2008), the provision of the Labor Law (4857/art.82) regarding the employment of engineers or technical staff responsible for occupational safety was annulled; and with amendment made on the article 81², the term OSE was used in the Law for the first time.

1 Regulation dated 20.01.2004 on the Working Procedures and Principles; and Tasks, Authorities and Responsibilities of Engineers and Technical Staff Responsible for Occupational Safety.

2 The obligation for employers to employ “OSE” was clearly stated and the condition requiring “to be a workplace that performs continuous operations for more than six months” to employ an OSE.

Based on these amendments, Regulation³ dated 15.08.2009 was enacted, which put the arrangements concerning workplace medicine and occupational safety experts under the same umbrella. According to this regulation, persons who can work as OSE are engineers or technical staff authorized by the General Directorate. Unlike previous practices, it paved the way for those graduated from any department of Engineering Faculties to become OSE. On the other hand, graduates of the departments of architecture were excluded them of the scope. This was the result of the expression that *“those having an engineer title in their diplomas..”*⁴ used for the persons that could participate in trainings to become OSE. On condition that the person graduated from the department of architecture of engineering-architecture faculties, he/she has an architect’s title; but not an engineer’s. Also, the scope of the technical staff was also limited in the aforementioned regulation and *“those graduated from universities’ departments of physics and chemistry with a Bachelor’s Degree as well as technical teachers and graduates of health and safety departments”* were accepted as technical staff. The chance of becoming technical staff was taken away from the graduates of geophysics and geology. It was clearly stated that the applications of persons graduated from departments of programs other than those specified by the regulation would not be accepted⁵.

Following the motions for stay of execution of the State Council dated 2010⁶, OSE was first listed under the definitions headline in the Labor Law with the Law no 6009 enacted on 01.08.2010. With the additional provision, it was approved that engineers, architects and technical staff that are certified by the Ministry could work as OSE. This led the way for a larger number of people to become OSE.

3 Regulation on Workplace Health and Safety Units and Common Health and Safety Units dated 15.08.2009.

4 <http://www.csgb.gov.tr/csgbPortal/cgm.portal?page=sss>.

5 Notification for the Implementation of the Regulation on Workplace Health and Safety Units and Common Health and Safety Units (09.12.2009) ; <http://www.csgb.gov.tr/csgbPortal/cgm.portal?page=sss>.

6 Granted a motion for stay of execution for articles on authorization and articles on the acceptance of certificates given by the ministry prior to 15.08.2009 on the grounds that OSE training could be organized by the Ministry, ÇASGEM and universities and that the Ministry was not authorized to accredit other institutions offering training, http://www.tmmob.org.tr/resimler/ekler/35f1705de835d7c_ek.pdf?tipi=15&turu=H&sube=0.

In accordance with the amendments made with the Law no 6009, the Regulation dated 2009 was annulled and the new Regulation dated 2010⁷ was enacted. With this new Regulation, the principles of dealing with arrangements concerning OSE in a separate regulation and certification by the Ministry were put back into practice. The Regulation kept the requirement to be engineers, architects or technical staff certified by the Ministry for the qualifications of an OSE. In the three regulations examined so far, it is noticeable that there are three different definitions of OSE which are as follows:

- Certified by the Ministry,
- Authorized by the General Directorate,
- Documented by the Ministry

It can be observed that the definition of “Authorized by the Ministry” has been made in the regulations as of this date and that this expression has been agreed upon. However, the tradition of annulment-motion for stay of execution concerning this area continued and the State Council granted a motion for stay of execution for some articles in this Regulation on 23.11.2011⁸. This confusion in the Legislation and the other many reasons has made it necessary to introduce a new and special law in this field. As a result, covering all areas of activity and all employees, adopting a proactive approach, featuring the participation of employees and being formed over employer obligations on the whole, Occupational Health and Safety Law no 6331 was put into practice on 30.06.2012 (Kılıkış, 2014:249-250). Upon the enactment of Law no 6331 the OHS related provisions of the Labor Law no 4857⁹ were annulled.

In the article 3 of the Law no 6331, OSE refers to *engineers, architects or technical staff authorized by the Ministry and having the certificate of OSE*; while technical staff are *technical teachers, or those having a physicist’s or chemist’s title as well as graduates of occupational health and safety programs at universities*. This arrangement is not different

7 Regulation dated 27.11.2010 on OSE’ Tasks, Authorities, Responsibilities and Training.

8 It is related to the provisions concerning fees taken for certifications by Ministry and validation of some past OSE training.

9 Law no 4857, art. 2 clause 4, art 63 clause 4, art. 69 clauses 4,5 and 6, 77,78,79,80,81,83,84, 85,86,87,88,89,95,105 and prv art.2.

from the last arrangement made in the period prior to the Law no 6331 in terms of its scope.

In the *Regulation dated 29.12.2012*¹⁰, which was introduced basing on the Law no 6331 and was the first regulation, the job group that can be employed as OSE was included with the same expressions.

The provision on assigning OSE of the Law no 6331 was put into practice gradually on 30.12.2012 and 30.06.2013 depending on the properties of the workplace. The insufficiency of the number of existing OSE, the scope of job groups that could work as OSE was extended with the Law no 6495 and dated 12.07.2013. In this way, in addition to technical labor inspectors, social labor inspectors responsible for working life and inspectors of the Social Security Institution were given the right to be OSE as well. In addition, the provision, which was arranged using the titles of engineer and architect, was rearranged as graduates of faculties providing education on engineering and architecture, which gave way to those graduated from all departments of architecture faculties such as interior architects, urban and regional planners and landscape architects to become OSE. Similarly, the scope of technical staff was extended and biologists were also given the chance to be OSE. The aim of adding new job groups is to solve the problem of inadequacy of specialists in the field.

During the period of approximately ten years from the Regulation dated 20.01.2004, which arranged job groups that can work as OSE for the first time to the Regulation dated 11.10.2013, which made the latest amendment; only the secondary legislation was amended for 7 times. It is noticeable that the provision on job groups that can work as OSE, whose scope is extended every day, has gained its largest form with the latest amendments; however, it is evident that it has been arranged too quickly without preparing its infrastructure properly, doing sufficient preparations for trained staff and even without paying attention to linguistic unity.

II- ASSIGNMENT OF OSE

The Regulation¹¹ dated 2004 on the functioning of the obligation laid

10 Regulation dated 29.12.2012 on OSE' Tasks, Authorities, Responsibilities and Training.

11 Regulation dated 20.01.2004 on OSE' Tasks, Authorities, Responsibilities and Training and Working Procedures and Principles.

down employers can assign an OSE outside the workplace on contract; they can also post engineers or technical staff in charge with another task but having the certificate as experts. As the legislation is new, the provisional article 1 states that those who will be assigned as OSE would not be required to have an OSE certificate for one year (until 20.01.2005). Upon the failure to reach the necessary number of experts in the period envisaged, the provision stating that certificates would not be required for OSE was suspended for approximately another year (until 20.01.2006) with the Regulation dated 2005¹². The third suspension for the obligation to assign certified OSE occurred with the Regulation dated 2006¹³ and that certificates would not be required for another 8 months (20.09.2006) was decreed.

After the State Council mainly annulled the provisions of the related regulation on OSE in 2006, some amendments¹⁴ were made in the Labor Law with the Law no 5763 and dated 15.05.2008 and the scope of assigning OSE was rearranged by extending it a bit further. While previous regulations required the workplace to perform continuous operations for more than six months; this time period was removed with this arrangement. On the other hand, it was arranged for the first time that employers would be able to meet their obligations to assign OSE by receiving services from the common health and security units outside the workplace. With the Regulation¹⁵ dated 2009 enacted in accordance with the Law no 5763 and later the Regulation¹⁶ dated 2010 enacted in accordance with the Law no 6009 dated 23.07.2010 employers' obligations to assign OSE were kept unchanged.

OHS Law no 6331 covered all fields of activity and all employees excluding the restricted exemption provision and made all employers

12 Regulation on the Amendment of the Regulation dated 04.02.2005 on OSE' Tasks, Authorities, Responsibilities and Training.

13 Regulation on the Amendment of the Regulation dated 26.01.2006 on Tasks, Authorities, Responsibilities and Training of the Engineers and Technical Staff responsible for Occupational Safety and Working Procedures and Principles.

14 Article 82 on employing engineers or technical staff responsible for occupational safety was annulled. Article 81 was rearranged with its title and the obligation for assigning OSE was arranged here.

15 Regulation dated 15.08.2009 on Workplace Health and Security Units and Common Health and Security Units.

16 Regulation dated 27.11.2010 on OSE' Tasks, Authorities, Responsibilities and Training.

obligated to assign OSE. Unlike previous arrangements, the fact that the Law covered workplaces which have fewer than 50 employees and perform businesses categorized as industrial, all workplaces which are not categorized as industrial and state institutions as well led to a significant increase in the number of employers within the scope of the obligation to assign OSE. Considering that the need for OSE could not be met even in the period when workplaces having 50 and more employees were within the scope of the obligation, the obligations introduced by the Law in this field were enacted gradually. According to article 38, as of the publishing of the Law;

- Six months later (December 30, 2012), employers of all workplaces having 50 and more employees¹⁷,
- A year later (June 30, 2013), employers of workplaces of hazard and high hazard class workplaces with fewer than 50 employees, and
- Two years later (June 30, 2014), state institutions and employers of low hazard class workplaces with fewer than 50 employees

would be made obligated to assign OSE.

In the Regulation¹⁸ dated 2012 enacted in accordance with the Law no 6331, it was noticeable that employers were not as free as they were in the past in their obligation to assign OSE. However, if no employee of the employer has the specified qualifications, the obligation could be fulfilled by getting service from common health and security units. On the other hand, it was also arranged that if the employers have the necessary qualifications and certificates, they can undertake the task of OSE themselves.

In time, the need for OSE both of adequate number and with necessary certificates could not be met, which led the obligation to assign OSE to be suspended again with the Law no 6495 and dated 12.07.2013. According to this Law, the obligation to assign OSE would be started on 01.01.2014 at hazard and high hazard class workplaces with fewer than 50 employees

17 The term “other workplaces” used in the Law implies that this obligation is present in some part of both the private sector and public sector. For the private sector, all workplaces having fifty and more employees (workers) are in the scope of the obligation. For the public sector, on the other hand, the obligation continues for state institutions having 50 and more workers falling in the scope of the obligation by the Law no 4857.

18 Regulation dated 29.12.2012 on OSE’ Tasks, Authorities, Responsibilities and Training.

and on 01.07.2016 at state institutions and employers of low hazard class workplaces with fewer than 50 employees.

Attempts to increase the number of OSE on one hand, and arrangements aiming at facilitating employers' obligations to assign OSE on the other were carried on with the Regulation¹⁹ dated 2013 as well. According to the regulation, in the event that employers get external service when assigning OSE they were also enabled to get services from community health centers in addition to the common health and security units.

In our legislation, there have been continuous suspensions since the date the obligation to assign OSE was introduced. The period, which started with the suspension of the condition that OSE are required to be certified, continued with the suspension of the obligation to assign OSE at certain workplaces. Despite the arrangements to suspend the obligation, it should be expressed that the Ministry continues its efforts to increase the number of OHS professionals and provide opportunities that can make OHS services available to employers.

III- AUTHORIZATION OF OSE

A- Training and Examination Requirement

The main condition of being assigned as an OSE for the persons belonging to the job groups defined as OSE by the Law is to complete the specified training program and to pass the exam to be given afterwards. It is also stated in the literature that no matter how good education they get at faculties, engineers or technical staff cannot be accepted as specialists in occupational safety and that specialization can be achieved through theoretical and practical training to be received upon this formation (Süzek,2005: 685-686). Experts' training courses were designed to include at least 120 hours of training in the first Regulation²⁰ dated 2004 and at least 220 hours in all regulations following it. Training sessions consist of two parts being 180 hours of theoretical training and 40 hours of practical training. While two thirds of the theoretical classes were arranged to be

19 Regulation dated 11.10.2013 on the Amendment in the Regulation on OSE' Tasks, Authorities, Responsibilities and Training.

20 Regulation dated 20.01.2004 on Tasks, Authorities and Responsibilities and Working Procedures and Principles of Engineers or Technical Staff in charge of Occupational Safety.

given through distance learning at first; with an incisive arrangement²¹, it was decreed that maximum half of them could be offered through distance learning. However, there are doubts that “*training activities to be carried out in a field like occupational health and safety, whose social and technical aspect is highly important and where unrecoverable incidents may occur unless necessary precautions are taken, have to be carried out face to face* (Cam, 2012:142)” and that 40-hour-practical training is not realistic for OSE who work in the field (Ocak, 2013:30).

OSE certificate classes are divided into three groups within the framework of the principles specified according to job groups and working years in all regulations introduced in this field. Persons meeting the pre-requisites are entitled to have training for the related class²² and passing the exam, to get the certificate of OSE of Class A, B, and C. In both of the two notifications issued between 2004 and 2009²³ classes were determined in accordance with the risk group of workplaces in terms of OHS. When determining the risk group, the business carried out at the workplace was taken into consideration and five risk groups were defined. According to this, OSE with a Class A certificate²⁴ can work at all workplaces, Class B certificate at workplaces in the I. II. III. and IV. risk groups and Class C certificate in I. II. and III. risk groups. As of 2009; however, classes have been specified according to the hazard class of workplaces in terms of OHS. In all five of the notifications²⁵ that have been issued until today, the main business was based on when specifying the class and three hazard classes have been specified. According to this, it has been determined that OSE with class A certificates can work in all hazard groups, Class B certificates at workplaces in low hazard and hazard classes and Class C certificates in low hazard classes.

While the main condition of receiving an occupational safety certificate is to complete the training program and pass the exam given afterwards;

21 Regulation dated 27.11.2010 on OSE' Tasks, Authorities, Responsibilities and Training.

22 As experts in each class will work at workplaces of different risk groups, the content of training varies by classes.

23 Notifications dated 13.04.2004 and 06.03.2005 on the list of risk groups concerning Occupational Health and Safety.

24 The term certificate was used instead of document in the given period.

25 Notifications dated 25.11.2009, 26.12.2012, 29.03.2013, 04.02.2014 and 18.04.2014.

with the amendments made in the legislation in time, some arrangements have been made to enable certain job groups to be certified without doing the training, taking the exam or meeting either of these requirements. Underlying these arrangements were the inadequacy of the number of OSE and the fact that the necessary infrastructure had not been set up. The propriety of some arrangements made to produce quick solutions has been causing discussions in practice and between the parties. The amendments made in the ten-year-period from 2004 and 2014 concerning the conditions of getting the certificate of OSE are given for classes A, B and C in the table.1 below.

In the table above, it is noticeable that different arrangements were made for the same group from the previous one following each regulation change. It is not very possible to understand on what grounds these arrangements were amended. For example, considering the engineers or technical staff that have a doctorate's degree in the field of OHS, it is seen that they were entitled to get the Class B OSE's certificate only through practical training (40 hours) without taking an exam with the regulation dated 2009 for the first time. In the regulation dated 2010; on the other hand, architects were also included in this group and were given the opportunity to get a Class A OSE's certificate only by examination, without training. The regulation dated 2012, the group was extended a bit further and graduates of faculties providing education on engineering or architecture as well as technical staff were given the right to a Class A OSE's certificate without training or exams. As one can see, with each new regulation, the stated group was taken to the upper stage.

It is also considered for groups that worked at the Ministry General Directorate and related units. It is suggested that there are hesitations about the propriety of the differentiation between an engineer with almost 30 years of experience and the mentioned group in this respect and that it is far from fair and objective criteria (Ocak, 2013:26). It is a fact that being an OSE mainly means experience, requires industrial practice. Giving class A or B OSE' certificates to a person with no practical experience without doing training and exams implies leaving the business wide open for hazards.

Table 1. *The Conditions of Getting the Certificate of OSE*

	Class (A) OSE	Class (B) OSE	Class (C) OSE
Regulation dated 20.01.2004	<ul style="list-style-type: none"> Labor inspectors having at least 3 years of experience in OHS Engineers or technical staff with at least 10 years of experience in OHS in the Directorate of Ministry Occupational Health and Safety <p>NO TRAINING – NO EXAM</p> <ul style="list-style-type: none"> Engineers or technical staff who can document at least 8 years of experience in OHS in state institutions and organizations or the private sector <p>NO TRAINING –EXAM</p> <ul style="list-style-type: none"> Engineers or technical staff who can document at least 3 years of experience with Class B OSE Certificate <p>TRAINING –EXAM</p>	<ul style="list-style-type: none"> Engineers or technical staff who can document at least 3 years of experience in OHS in state institutions and organizations or the private sector Engineers or technical staff who can document at least 3 years of experience with Class C OSE Certificate <p>TRAINING –EXAM</p>	<ul style="list-style-type: none"> Engineers or technical staff <p>TRAINING –EXAM</p>
Regulation dated 15.08.2009	<ul style="list-style-type: none"> Labor inspectors having at least 3 years of experience in OHS OHS experts with at least 8 years of experience in OHS in General Directorate and related units <p>NO TRAINING – NO EXAM</p> <ul style="list-style-type: none"> Engineers or technical staff having at least two years of active experience with class B OSE document, who can document it with the OSE contract <p>TRAINING –EXAM</p>	<ul style="list-style-type: none"> OHS experts with at least 3 years of experience in OHS in General Directorate and related units <p>NO TRAINING – NO EXAM</p> <ul style="list-style-type: none"> Engineers or technical staff with a doctorate's degree in occupational health and safety (only practical training) <p>TRAINING – NO EXAM</p> <ul style="list-style-type: none"> OHS experts with at least 5 years of experience in OHS in General Directorate and related units <p>NO TRAINING –EXAM</p> <ul style="list-style-type: none"> Engineers or technical staff having at least two years of active experience with class C OSE document, who can document it with the OSE contract <p>TRAINING –EXAM</p>	<ul style="list-style-type: none"> Engineers or technical staff with a master's degree in occupational health and safety (only practical training) Engineers or technical staff <p>TRAINING – NO EXAM</p> <p>TRAINING –EXAM</p>
Regulation dated 27.11.2010	<ul style="list-style-type: none"> Engineers, architects or technical staff as labor inspectors having at least 5 years of inspecting experience in OHS Ministry OHS experts with at least 5 years of experience as experts Engineers, architects or technical staff with a doctorate's degree in occupational health and safety or occupational safety Those having at least 10 years of experience as engineers, architects or technical staff in General Directorate and related units <p>NO TRAINING-EXAM</p> <ul style="list-style-type: none"> Engineers, architects or technical staff having at least 4 years of active experience with class B OSE document, who can document it with the OSE contract <p>TRAINING-EXAM</p>	<ul style="list-style-type: none"> Engineers, architects or technical staff with a master's degree in occupational health and safety or occupational safety Engineers, architects or technical staff having at least 3 years of active experience with class C OSE document, who can document it with the OSE contract <p>NO TRAINING-EXAM</p> <p>TRAINING-EXAM</p>	<ul style="list-style-type: none"> Engineers, architect or technical staff <p>TRAINING-EXAM</p>

Regulation dated 29.12.2012	<ul style="list-style-type: none"> Engineers, architects or technical staff as labor inspectors having at least 8 years of experience including the period as assistant inspectors in OHS Engineers, architects or technical staff as Ministry OHS experts with at least 8 years of active experience as experts including the period as assistant experts in General Directorate and related units Engineers, architects or technical staff with a doctorate's degree in occupational health and safety or occupational safety <p>NO TRAINING-NO EXAM</p> <ul style="list-style-type: none"> Those with at least 10 years of experience as engineers, architects or technical staff in General Directorate and related units <p>NO TRAINING- EXAM</p> <ul style="list-style-type: none"> Engineers, architects or technical staff having at least 4 years of active experience with class B OSE document, who can document it with the OSE contract <p>TRAINING-EXAM</p>	<ul style="list-style-type: none"> Engineers, architects or technical staff with a master's degree in occupational health and safety or occupational <p>NO TRAINING-EXAM</p> <ul style="list-style-type: none"> Engineers, architects or technical staff having at least 3 years of active experience with class C OSE document, who can document it with the OSE contract <p>TRAINING-EXAM</p>	<ul style="list-style-type: none"> Engineers, architects or technical staff <p>TRAINING-EXAM</p>
Regulation dated 11.10.2013	<ul style="list-style-type: none"> Engineers, architects or technical staff as labor inspectors having at least 10 years of experience including the period as assistant inspectors in OHS Graduates of faculties providing education on Engineering or architecture and technical staff with at least 10 years of active experience as experts including the period as assistant experts in General Directorate and related units Graduates of faculties providing education on engineering or architecture and technical staff with at least 10 years of experience in General Directorate or related units Among the Graduates of faculties providing education on engineering or architecture and technical staff, those with a doctorate's degree in an occupational health and safety or occupational safety program <p>NO TRAINING- NO EXAM</p> <ul style="list-style-type: none"> Those having at least 4 years of active experience with class B OSE document, who can document it with the OSE contract <p>TRAINING-EXAM</p>	<ul style="list-style-type: none"> Graduates of faculties providing education on engineering or architecture and technical staff with a master's degree in an occupational health and safety or occupational safety program <p>NO TRAINING- EXAM</p> <ul style="list-style-type: none"> Graduates of faculties providing education on engineering or architecture and technical staff having at least 3 years of active experience with class C OSE document, who can document it with the OSE contract Excluding the labor inspectors who are engineers, architects or technical staff inspecting in OHS, inspectors with at least 10 years of experience including the period as assistant inspectors in Ministry and related organizations <p>TRAINING- EXAM</p>	<ul style="list-style-type: none"> Excluding the labor inspectors who are engineers, architects or technical staff inspecting in OHS, inspectors with at least 10 years of experience including the period as assistant inspectors in Ministry and related organizations Graduates of faculties providing education on Engineering or architecture and technical staff <p>TRAINING- NO EXAM</p> <p>TRAINING- EXAM</p>

Regulations also point out the standards which are based on for specification of the amount of working experience envisaged for the same job group. For instance, for labor inspectors who can get a Class A OSE' certificate, 3 years of experience was required in the first two regulations

whereas in the following regulations 5, 8 and 10 years of inspecting experience was required, respectively. In addition, while no job groups were mentioned in the first two regulations, the condition of having a title as an engineer, architect or technical staff member was laid as of 2010. Whereas the regulation dated 2010 projected achievement in the exam alone; it was decreed in all other regulations that they could get a Class A OSE' certificate without taking exams. It is possible to give more examples of similar differences for different groups (Cam, 2012:137-139). As no explanation (justification) is made about the amendments brought about with each new regulation concerning certificate awarding, it is not possible to make sense of many conditions that are present and changed later.

B- Working at an Upper Class and the Problem of Promotion Among Classes

The Law no 6331 and the previous legislation attached great importance to the process of becoming an OSE for the efficiency of OHS services; and required doing special training in this field and achievement in the centralized exams. However, due to many small scaled businesses, inadequate number of OHS professionals and the problem in finding experts especially in Class A, practices of making certification conditions more flexible came up in order to decrease the rising fees²⁶. Being promoted to the upper class without any professional experience but only with a bachelor's degree and an exam taken depending on the period of social insurance, caused deviation from the expected aims from the Law no 6331.

The arrangement on working in the upper class was included in the provisional article 1 of the Regulation dated 2010²⁷ for the first time. In fact, the mentioned provision was developed in order to assist workplaces obligated to assign OSE and with the opinion that sufficient number of OSE would not be found, especially those with a Class A certificate. The related regulation allowed Class C certificate holders to be assigned as OSEs at hazard class workplaces for 3 years and Class B certificate holders at high hazard class workplaces for 4 years. The arrangement, which was also included in the provisional article 4 of the Law no 6331,

26 The statement of Kasım Özer, General Director of Occupational Health and Safety, <http://www.taraf.com.tr/haber-apartmana-doktor-zorunlu-olmayacak-127890/>.

27 Regulation dated 27.11.2010 on OSE' Tasks, Authorities, Responsibilities and Training .

was undoubtedly considered to be a transition period provision in order to provide OHS services at the beginning. However, it turned out to be practices disturbing many groups and going beyond the main purpose with the amendments made later. The scope of working in upper classes was extended with the provisional article added to the Regulation dated 2013. This also cleared the way for promotion among classes. With the new amendments, experts with a Class B or C OSE certificate, who have 3 years of professional experience and for whom 750-day-premiums were paid, were enabled to be assigned at workplaces of all hazard classes on condition that it is limited to workplaces performing business relevant to their own branches of profession within the scope of industrial arrangement. While the previous arrangement enabled experts to be assigned to the upper class only, with this provision the possibility of working in all hazard classes on certain conditions was arranged. According to this, it is possible for an OSE with a class C certificate to be assigned to the high hazard class providing he/she meets the necessary conditions. Although the provision has its inconveniences, the most incisive part of it is that it requires the OSE to have his/her three years of professional experience at workplaces which perform business related to his/her field of profession.

The Notification dated 2013 was issued considering particularly some inconveniences that may result from assigning class C OSE to high hazard businesses. In the notification, a table of relation between class C OSE' field of profession and the hazard class of the workplace was designed basing on the NACE codes and businesses appropriate for the assignment of experts with 3 years of professional experience were specified. According to this, class C OSE who belong to the job groups specified in the table can only be assigned to workplaces that perform activities matching with the experts' titles. This arrangement, which features professional experience, is considered to be incisive in terms of reserving fair and objective criteria in comparison with the other arrangements on this topic. However, the State Council granted a motion for stay of execution for the mentioned arrangement on 30.05.2013²⁸.

28 The motion emphasized that the Law no 6331 article arranging the fields of assignment for classes and the time periods of working at the upper class cannot be replaced with an regulation. In other words, the motion was issued on the grounds that it is not possible to make unlawful regulations and accept the amendment within the scope of industrial arrangements.

A different arrangement was made to enable promotion among classes with the Law no 6495 and dated 02.08.2013. With the additional arrangement of the provisional article 4 of the Law no 6331, OSE meeting the requirements given by the Ministry was given a chance to directly take the exam for upper class certificates. The provisional article 2 of the Regulation dated 2013²⁹ was amended based on the amendment made on the Law no 6495 and the conditions for promotion among classes were rearranged. Accordingly;

Those holding a class C OSE's certificate; are entitled to get class B certificates if premiums for 1500 days, and class A certificates if premiums for 3000 days had been paid for them by the time of their application.

Those holding a class B OSE's certificate; are entitled to take the exam for class A certificates if premiums for 1800 days had been paid for them by the time of their application.

In order to benefit from the system that allows for promotion among classes, one has to have a class C certificate in the first place. Regardless of the status (by SSI, Social Insurance for the Self-Employed and Retirement Fund) and the time period of premium payments, the mentioned group was given the opportunity to take the exam two times in a year (02.08.2013 – 02.08.2014). If the person does not have a class C OSE's certificate, he/she is required to get a class C certificate before taking the exam for class promotion; otherwise it is not possible to benefit from this procedure.

Upon the questions coming up regarding the specification of the number of premium days and class promotion exams, the Ministry published announcements³⁰. The announcements emphasized that OSE class promotion exams will be given only in accordance with the number of premium payment days, those who want to promote their existing certificates to class A or B certificates of OSE are allowed to make an application, the number of premium payment days will be counted considering the premium payments in the SSI register as of the date of

29 Regulation Dated 11.10.2013 on the Amendments in the Regulation on OSE' Tasks, Authorities, Responsibilities and Training.

30 http://www.cs.gb.gov.tr/cs.gbPortal/OHSgm.portal?page=duyuru&id=sinav_hakki_duyurusu
http://www.cs.gb.gov.tr/cs.gbPortal/OHSgm.portal?page=duyuru&id=23subat_yukseltme_sinavi_duyurusu.

application for exams (foreign borrowings, debts due to military service, debts due to maternity and double premium payments will not be taken into consideration), this right can be benefited from only for promoting one certificate class (B or A), and a second promotion will not be possible even if the number of premium days is sufficient.

C- Implementation of Exams

With the first regulation dated 2004 arranging the obligation for assigning OSE, the first exam for OHS professionals was given in 2005. The exams were given at longer time intervals in the beginning, but especially started to be held more often as of the publishing of the Law no 6331; however, with the increased number of exams, objections and discussions over the exams intensified. It is remarkable that the objections have been rather for the cancellation of certain question types and the right given to certain groups. The increased numbers of exams to meet the demand for OHS professionals that came out with the Law no 6331 and the achievement rates in the exams have also been the subject of another debate. There are no organized and reliable statistical data on the exams available to the public, especially on the Ministry Website. Table 2, created with the data obtained from various sources makes it possible to make some assessments on the exams, particularly on the cancelled questions.

As seen in Table 2, 10 exams have been given for OHS professionals so far (except for the one on May 24, 2014) (Ağır, 2014; Üstadlar Eğt. Danş.). The exams for expertise in occupational safety and occupational medicine are given at the same date, time and in four separate areas of certificate under the title of Specialization Exam in Occupational Medicine and Occupational Safety. Evaluations carried out in this study focus on the system of examinations for specialization in occupational safety.

- While the exams used to be conducted within the framework of the protocol with the MNE previously, it has been decided that as of 2014, they will be given every three months within the framework of the examination protocol between SSPC and OHS General Directorate.
- In the period until February 23, 2014, candidates were asked to answer 100 questions in 110 minutes; only in the grade improvement exam dated February 23, 2014 the number of questions was reduced to

80 and the time to 90 minutes. As for the exam to be held on May 24, 2014; it has been announced that the candidates will answer 60 questions in 90 minutes.

- While the exams were given in only one exam center (Ankara) previously, as of 2014, also in accordance with the increase in the number of applications, they have been decided to be held in 5 centers at first and in 17 centers later.
- The topics to be asked in the exams and the percentages of questions were changed in 2013. Of the exams held until this date, technical topics made up 65%, legislation 10% and health 5%, whereas with the Law no 6331, technical topics were reduced to hold 40%, while legislation was increased to 30% and health to 10%. The percentages of the questions on general OHS topics and legal topics were kept the same.

It is not easy to determine the exact number of OSE according to their certificate classes and the number of workplaces according to their hazard classes. However, a study (Ağır, 2013) carried out on this issue states that there is a need for a total of 79.290 OSE being 31.700 class A, 22.610 class B and 24.980 class C. Comparing the needs and the available data, it is obvious that the number of experts with class A and B certificates must be increased. As a result of the 2 exam terms (December 21, 2013 and February 23, 2014) following December 2013 when the afore-mentioned study was carried out, it can be seen that the number of class A OSE doubled and reached 20.000 whereas those having class B certificates increased sevenfold and approximated 8.000. The most important factors in achieving this increase are arranging the right to take exams for promotion among classes depending on the number of premium days and entitling some groups to become OSE without taking any exams with the amendment in the Regulation dated 11.10.2013. However, it should not be forgotten that such an arrangement which enables promotion without having professional experience would bring along many risks. *“What is important is not to increase the number of OSE, but to train competent OSE”* (Ocak, 2013:34) because *“this field is not one that can be left to individuals’ personal effort and ability”* (Ocak, 2013:35).

Despite all its shortcomings and problems, the training+examination

system is a method that allows for a selection and listing within itself. It has been an extremely misguided act to give up this system for short term problem solving purposes (albeit temporarily) and grant certificates based on exam achievement with reference to the number of premium (insurance) payment days regardless of the field of professional experience and seniority.

It is possible to make the following conclusions on the process of certifying OSE.

- Given that field work is fundamental in occupational safety specialty, professional experience gains importance. It is a main source of problem that they take office as professionals and under full responsibility solely by training and exam achievement after completing basic undergraduate education. It should be considered to require candidates to complete a one-year “apprenticeship or trial period” or working experience as “an expert assistant” before they start working as OSE professionally as in several other professions (such as lawyers, financial consultants, inspectors).
- Examination security and the reliability of the exams constitute another issue in the certification of OSE. In a period when exam achievement rates were 10-20%, the fact that the achievement rate was 81,99% in class A, 84,18% in class B and 70,37% in class C, which corresponded to a total achievement rate of 79%, in the first promotion exam on December 21, 2013 is a conclusion that cannot be explained as “*the normal course of life*”. With this exam only, Turkey seems to have tripled the number of OSE in one exam term alone. As a matter of fact, it is seen that the achievement rate dropped back to 15% in the following promotion exam held on February 23, 2014³¹.
- Training and examination system of OSE directly affect professional orientation and commitment of those who chose the field. Criticism and claims on the security and reliability of central exams, mainly the university entrance exam, have also been uttered for OHS exams especially those held in the period following the Law no 6331³².

31 The number of candidates taking the exam for class A certificate was 13.151, of the successful candidates 2.140; for class B certificate was 7.479, of the successful candidates 2.036

32 <http://www.memuruz.net/is-guvenligi-sinavinda-skandal/>.

Justification³³ of some of these claims judicially has made the reliability of the exams a controversial issue. This has also damaged the trust for examination system. In the table below, the data regarding the exams held and the questions cancelled since 2004, when the obligation for assigning OSE came about, are compiled within available circumstances. It was found that there were no applicants for class A and B certificates in the first two exam terms and for class A certificates in the third term³⁴.

Table 2. Certification Exams for OSE and the numbers of Questions Cancelled/ Answer choices Changed

Exam Date	Total No of Questions/time	Questions Cancelled/ Answer choices Changed			Total no of bad questions
		Class A Certificate	Class B Certificate	Class C Certificate	
June 26, 2005	100 questions 110 min	No applications for class A.	No applications for class B.		
December 25, 2010	100 questions 110 min	No applications for class A.	No applications for class B.		
July 2, 2011	100 questions 110 min	No applications for class A.			
December 24, 2011	100 questions 110 min	–	–	3 questions cancelled	3

33 With the decision of Ankara 5th Administrative Court in the class C OSE' exam on 02.07.2011 question number 46 in booklet A and the corresponding question number 39 in Booklet B was cancelled. The cancelled questioned were accepted as correct in favor of the candidates by the Ministry of National Education and with an evaluation over 100 point the list of successful candidates who got 70 and over was reported to our General Directorate.

34 http://www.cs.gb.gov.tr/cs.gbPortal/isggm.portal?page=duyuru&id=21aralik_itiraz_duyurusu
http://www.cs.gb.gov.tr/cs.gbPortal/isggm.portal?page=duyuru&id=23.02.2014_sinav_sorularina_itirazlar
<http://www.cs.gb.gov.tr/cs.gbPortal/isggm.portal?page=duyuru&id=13Mayisitirazdegerlendirme>
<http://www.cs.gb.gov.tr/cs.gbPortal/isggm.portal?page=duyuru&id=21ekimitiraz>
<http://www.isgforum.net/threads/18-a-%C4%9Fustos-2013-s-%C4%B1nav-%C4%B1-iptal-olan-sorular-05-09-2013-resmi-a-%C3%A7-%C4%B1klama.8205/>
<http://www.cs.gb.gov.tr/cs.gbPortal/isggm.portal?page=duyuru&id=2temmuzmahkemeyeni>
<http://www.ustadlar.com.tr/is-guvenligi-sinav-sorulari.aspx>.

May 13, 2012	100 questions 110 min	1 question cancelled	1 question cancelled	1 question cancelled/ answer choice change for 1 question	4
October 21, 2012	100 questions 110 min	–	2 questions cancelled	2 questions cancelled	4
May 18, 2013	100 questions 110 min				
August 18, 2013	100 questions 110 min	22 questions cancelled	7 questions cancelled/ answer choice change for 1 question	7 questions cancelled/ answer choice change for 2 questions	39
December 21, 2013	100 questions 110 min	3 questions cancelled/ answer choice change for 1 question	–	2 questions cancelled/ answer choice change for 2 questions	8
February 23, 2014 Only promotion	80 questions 90 min	2 questions cancelled/ answer choice change for 1 question	1 question cancelled	No applications for class C	4

CONCLUSION AND RECOMMENDATIONS

In the arrangement regarding the job groups to be assigned as OSE, the secondary legislation alone has been amended 7 times in the period of approximately ten years. While the initial amendments were on the definition of the profession, especially the latest amendments have aimed at extending the scope. Graduates of all departments at architecture faculty such as interior decorators, urban and rural planners, landscape architects, social occupational inspectors inspecting working life as well as Social Security Institution inspectors and biologists were given the opportunity to become OSE.

The process of authorization and assignment of OHS professionals and especially OSE, which has become one of the key variables of achievement in OHS practices, has been significant to the extent that it determines these persons' competency. As being an OSE is an acquired competency, training+examination+apprenticeship procedures have gained importance in specifying and classifying OHS professionals.

In the first regulation dated 2004, class A, B and C certificates were awarded considering the working years in the field of occupational health and safety. In the regulation dated 2010, on the other hand, the working years in classes of expertise with a experts' certificate were taken into consideration and promotions were arranged for upper classes.

After the amendment made in 2013 on the regulation dated 2012, promotion to upper classes was allowed considering only the numbers of days of premium payment. In contrast to the positive arrangements in the beginning, recent legislation amendments in occupational safety have brought about negative outcomes both for beginners of the profession and for the efficient operation of the system.

The new arrangement damaged senses of justice and beliefs of the new beginners in the profession primarily. The possibility of a person with no professional experience to get a class C certificate through a 220-hour-course and later to get a class A certificate depending on the days of premium payments has discredited the importance, reputation of the profession and the value of "*being a expert*". OSE has begun to be perceived as a commercial phenomenon by many people. For instance, in such situations where a graduate of chemistry who has worked as a correction officer in a prison for years asks the question "would it be useful if I got this certificate?" and becomes a expert, gets an A certificate in the promotion exam but needs to get guidance and learn methods saying "I have no experience, what path should I follow now?", a person who is a furniture decoration teacher gets a class C certificate and starts the profession, one who has worked as a biology teacher at a private course and gets a class C certificate through promotion exams and later gets a class A certificate, a person who has never worked in his/her life

gets a class A certificate by paying optional premiums, it is an enormous question mark how a risk-free, healthy and safe environments could be established at the workplaces these persons are employed as OSE. Websites and opinion sharing forums are full of numerous examples of these.

Examinations are a system of testing. Preparing exam questions testing abilities, knowledge and skills in a specific field, and specifying the level of difficulty is a task requiring special attention and expertise. The number of questions cancelled by exam periods and the changing levels of difficulty in exams given in subsequent periods damage the trust of the candidates for the institution. The fact that the rate of achievement reaches 80% in one period while it drops to 15% in the following period brings about the question that exams go beyond their actual purposes and are given focusing on the number of experts. Correspondingly, it is stated that OSE do the math for the number of certificates for classes, try to predict the Ministry's policy in asking either difficult or easy questions depending on the exam periods, and when the results are thought to impose a threat to cause disorder in the market a tendency for making the questions more difficult comes up³⁵. In response to this, there are experts who claim that the Ministry must never turn to such means and argue that exams must be prepared in a way that covers all subjects on both current legislation and field practices to select persons who are professionally competent and qualified in their fields and believe in the importance of their profession³⁶. However, excessive fluctuations in the difficulty levels of questions, existence of questions cancelled in each exam period, the frequency of the exams which started as twice but reached a frequency of four times a year have naturally affected the views of candidates about the examination system.

Specialization in occupational safety is a task which substantially requires experience. Awarding a person who received a class C certificate with 180-hour theoretical and 40-hour practical training with no experience

35 <http://www.isgforum.net/threads/23-%C5%9Fubat-s%C4%B1nav%C4%B1-patlad%C4%B1-m%C4%B1.10741/page-6>.

36 <http://www.isgforum.net/threads/21-aralik-2013-sinavinda-a-b-c-sinifi-sinavlarina-ka%C3%A7-ki%C5%9Fi-girecek.9135/page-4>.

a certificate through promotion exams will bear greater risks in the upcoming period. The arrangement enables to bring a person having the qualifications of an OSE but not a certificate of occupational safety to the same level as a person with 10 years of experience in this field, in other words to get a class A certificate of expertise in just four months. Having no professional experience on one hand and doing the 40-hour practical training, or the 5-day apprenticeship, improperly (fake) on the other are the signs of serious trouble. Employers who believe in the importance of OHS express that the issue cannot be learned through 5-day apprenticeship/practice³⁷, and they are right. The training given can enable to reach the desired number of OSE but it is not known how competent these persons will be in terms of field experience, risk predictions and contribution to the prevention of occupational accidents. If the tendency to base on the premium days is to be continued, it is considered that the most accurate decision in this issue is the number of premium days of professional experience.

It is a great risk to expect OSE, especially those with no experience and got the certificate solely for the number of premium days and got promoted in a very short time like 4 months, to work and detect risks in a construction site, mine, shipyard or a radioactive environment. Specialization in occupational safety is a task which substantially requires experience. It is suggested that OSE having class A, B and C certificates with no professional experience work as expert assistants for a specific period of time and gain experience before they start working in the profession. This can help both prevention of dangers like occupational accidents that are likely to occur when gaining experience and protection of the reputation of certified, competent and qualified experts who have a command of the legislation and field practices.

As one can see, a system that could make it possible for the obligation of assigning OSE in all workplaces to be actually applicable has not been developed over the past 10 years. It is not possible to disagree

37 <http://www.isgforum.net/threads/21-aralik-2013-sinavinda-a-b-c-sinifi-sinavlarina-ka%C3%A7-ki%C5%9Fi-girecek.9135/page-4>.

with the argument that explains the most important reasons for this as “*unplanned practices, inability to anticipate the future, failure to prepare the infrastructure in advance, inability to project the needs and not explaining the main intention clearly*” (Ağır, 2013).

References

- Ağır, Adnan (2013), “İş Güvenliği Uzmanlığında Rakamların Dili Yalan Söylemez”, http://www.osgbrehberi.com/koseyazisi/147/IS_GUVENLIGI_UZMANLIGINDA_RAKAMLARIN_DILI_YALAN_SOYLEMEZ.html (22.04.2014).
- Ağır, Adnan (2014), “23 Şubat 2014 İş Güvenliği Uzmanlığı Sınavının Getirdikleri”, http://www.osgbrehberi.com/koseyazisi/245/23_Subat_2014_Is_Guvenligi_Uzmanligi_Sinavinin_Getirdikleri.html (05.04.2014).
- Cam, Erdem (2012), “İş Güvenliği Uzmanlığı Eğitimlerindeki Hukuki Dönüşüm (2004-2011)”, *Çalışma ve Toplum Dergisi*, 2012/3:125-154.
- Demircioğlu, Murat (2006), Ulusal ve Uluslararası Hukukta İş Güvenliği Uzmanlığı (İş Güvenliği Mühendisliği/İş Güvenliği Teknisyenliği) (İstanbul: Beta Yayınları).
- Kılık, İlknur (2014), “İş Sağlığı ve Güvenliği” Aysen Tokol-YusufAlper(ed), *Sosyal Politika* (Bursa: Dora Yayıncılık), 239-269.
- Ocak, Saim (2013), “İş Güvenliği Uzmanlığı Yönetmeliğinde Yapılan Değişikliklerin Değerlendirilmesi”, *İş Hukuku ve Sosyal Güvenlik Hukuku Dergisi*, 10(40):21-36.
- Süzek, Sarper (2005), *İş Hukuku (Genel Esaslar-Bireysel İş Hukuku)* (İstanbul:Beta Yayınları).
- Üstadlar Eğitim Danışmanlık, <http://www.ustadlar.com.tr/is-guvenligi-sinav-sorulari.aspx> (10.03.2014).
- <http://www.csgb.gov.tr/csgbPortal/cgm.portal?page=sss> (15.04.2014).
- http://www.csgb.gov.tr/csgbPortal/OHSgm.portal?page=duyuru&id=sinav_hakki_uyurusu (28.04.2014).
- http://www.csgb.gov.tr/csgbPortal/OHSgm.portal?page=duyuru&id=23subat_yukseltme_sinavi_uyurusu (10.04.2014).
- http://www.csgb.gov.tr/csgbPortal/isggm.portal?page=duyuru&id=21aralik_itiraz_uyurusu (25.04.2014).
- http://www.csgb.gov.tr/csgbPortal/isggm.portal?page=duyuru&id=23.02.2014_sinav_sorularina_itirazlar (25.04.2014).
- http://www.csgb.gov.tr/csgbPortal/isggm.portal?page=duyuru&id=13Mayis_itirazdegerlendirme (15.04.2014).
- <http://www.csgb.gov.tr/csgbPortal/isggm.portal?page=duyuru&id=21ekimitiraz> (20.04.2014)

<http://www.csgb.gov.tr/csgbPortal/isggm.portal?page=duyuru&id=2temmuzmahkemeyeni> (20.04.2014).

<http://www.isgforum.net/threads/18-a%C4%9Fustos-2013-s%C4%B1nav%C4%B1-iptal-olan-sorular-05-09-2013-resmi-a%C3%A7%C4%B1klama.8205/> (22.04.2014).

<http://www.isgforum.net/threads/23-%C5%9Fubat-s%C4%B1nav%C4%B1-patl%C4%B1-m%C4%B1.10741/page-6> (20.04.2014).

<http://www.isgforum.net/threads/21-aralik-2013-sinavinda-a-b-c-sinif-sinavlarina-ka%C3%A7-ki%C5%9Figirecek.9135/page-4> (25.04.2014).

http://www.tmmob.org.tr/resimler/ekler/35f1705de835d7c_ek.pdf?tipi=15&turu=H&sube=0 (15.04.2014).

<http://www.taraf.com.tr/haber-apartmana-doktor-zorunlu-olmayacak-127890/> (10.10.2014).

<http://www.memuruz.net/is-guvenligi-sinavinda-skandal/> (21.04.2014).