PORTUGAL'S NATIONAL ASSOCIATION OF WORKERS WITH WORK-RELATED DISABILITIES AND INJURIES (ANDST) (CASE PT6)

Introduction

Promoting effective occupational safety and health (OSH) practices is key to safer and healthier workplaces. Improving arrangements and practices for managing OSH across a whole range of industry sectors and firm sizes — large, medium and small — is stimulated, supported and sustained by a range of institutional actors and internal and external processes to firms. Scientific research highlights, among other things, the critical role that state regulators for OSH, such as Labour Inspectorates, prevention services, as well as other OSH stakeholders, can play (EU-OSHA, 2021). This case study is part of a research project conducted in Portugal to provide further insight into this topic.

In Portugal, insurance entities are responsible for handling occupational accidents (OAs), including medical treatments and determining resulting disabilities (i.e. temporary or permanent, and their degree). The delegation of responsibility from employers to insurers is mandated (Rodrigues, 2018). While there is no public institution that automatically intervenes in the event of a workplace accident to oversee the entire process, the injured party may eventually take the initiative to seek clarification about their rights and ask for advice, for example, from entities such as the Portuguese Authority for Working Conditions (Autoridade para as Condições do Trabalho – ACT), the Public Prosecutor's Office or, alternatively, consult with a legal counsel. However, this individual initiative is influenced by factors such as workers' economic and educational resources (Machado et al., 2018). In short, unlike most Member States, Portugal has a private responsibility system, which leads to the introduction, in these cases, to an entity 'foreign to the work reality and social policies' (Rodrigues, 2018, p. 4, free translation).

The mission of the state is to safeguard the public interest within the framework of this model by conducting inspections and repairs related to workplace accidents (Lacomblez & Leitão, 2018). This is particularly pertinent in instances of economic incapacity on the part of the company, such as during bankruptcy proceedings or cases involving the disappearance or inability to identify the company. This responsibility is assigned to the Workers' Support Fund (FAT). Nevertheless, there is an absence of a public guardianship institution that consistently oversees the entire post-accident process and is tasked with the responsibility of monitoring the protection of workers' rights (Rodrigues, 2018).

The National Association of Workers with Work-Related Disabilities and Injuries (Associação Nacional dos Deficientes Sinistrados no Trabalho – ANDST) offers the provision of legal, social and psychological support, as well as support for the social and professional reintegration of workers who are victims of accidents or occupational diseases, seeking to serve as a guardian entity for workers' rights. Every person can become a member for a small fee (12 Euro annually + 5 Euro registration fee) and legal, social and psychological support are for free, medical assessments and reports can include extra costs. The association has received public support from the National Institute for Rehabilitation (Instituto Nacional de Reabilitação – INR, I.P.) and the Social Security Institute (Instituto da Segurança Social, I.P.) since 2004.

Thus, the present case study depicts the action developed by the ANDST, in their efforts to mitigate the limitations in this private responsibility system.

Description of the case

Aims

The ANDST is a Private Social Solidarity Institution (IPSS) that provides legal, social and psychological support, and promotes the reintegration of workers who are victims of OAs or diseases in their social and professional contexts.

The association's intervention aims to constitute a response to the concrete needs of workers when interacting with different institutions (e.g. Labor Court, Social Security Institute), often associated with the workers' economic and educational resources. In addition, it also addresses the unequal relationship that often exists between the workers and the institutions with which they can claim the safeguarding of their rights (Rodrigues, 2018).

Target group

The ANDST's action is aimed at workers injured at work or victims of occupational diseases, as well as at union leaders and delegates. With over 20,000 members to receive support, the association has a multidisciplinary team that provides support to 4,000 workers per year. As mentioned by the ANDST's President, those looking for support are often low-skilled workers from different work contexts:

'On average, annually, we provide support to 4,000 people who use our services, as shown in our activity reports.[1] Today, we have experts in the areas of law, psychology and social services.

Most requests come from low-skilled workers from industrial contexts, especially construction too, and [recently] more workers from the services and commerce sectors, people with trauma and, above all, with occupational disease processes. In large supermarkets, this has happened with some frequency… In large warehouses too. … From the service sector, we increasingly receive requests for support [from workers], either for the certification of the occupational disease or for support regarding the traumas caused by occupational accidents.

It is well known that it is difficult for union leaders and delegates to help workers when they resort to them and they get worried because they have had an [occupational] accident that the insurance company does not recognise as such, or often companies that refuse to report it to the insurance company, the difficulty they have in managing to get their occupational disease recognised as such … difficulty in getting the occupational doctor or family doctor to fulfil the mandatory participation.' (ANDST's President, Male, 48 years of seniority)

What was done, and how?

The standard situations in which the ANDST's intervention is particularly required have been identified by the authors below:

a) When the accident was not reported to the insurance company, or the insurance company does not recognise the causal link between the accident and the injury:

Interaction with the insurance company and risk of individual liability in the case of an occupational accident

The ANDST plays a crucial role in mediating the relationship between workers and insurance companies, ensuring that OAs are accurately characterised. When insurance companies engage investigators to interrogate workers in an attempt to evade responsibility and to, consequently, reserve the right to seek reimbursement for compensation paid to the victim, the ANDST consistently

[1] The ANDST's latest activity report is available at: https://andst.pt/documentos-institucionais

endeavours to inform workers that they are only obligated to respond to inquiries from either ACT, the Republican National Guard (GNR) or the Public Security Police (PSP):

> *'Currently there is a situation to which we have constantly drawn attention. Insurers have recently hired specialised companies, we call them 'detectives', who will investigate the accident at work. They will talk to the worker, the victim, a co-worker, or a family member, alleging that it is to speed up the process, asking the worker or the colleague or the family member to describe, especially the worker, to describe how the accident happened. And, not infrequently, the worker is undergoing treatment, sometimes hospitalised, and not infrequently, after three or four months, he receives a letter at home from the insurance company, saying that, having investigated how the accident occurred, it was concluded that it was due to his/her fault, for violating safety rules. And, as such, the insurance company mischaracterised it, does not assume responsibility for it, and reserves the right to be reimbursed for the amounts it owed to the victim. Of course, when a worker receives a letter like that … he/she is left in anguish, not just him/her, but also his/her entire family, because these things naturally pass on to the family. … we have always told the worker … that if this happens, the worker, the family member, and the colleague should not respond to these types of people; they should not say anything. The worker is only obliged to respond to either the ACT, the GNR, or the PSP.' (ANDST's President, Male, 48 years of seniority)*

Interaction with the Labour Court in cases where the insurance company mischaracterises the occupational accident

In instances where the insurance company mischaracterises an OA, attributing the resulting injury to another cause as determined by their doctor, the ANDST works to ensure that the workers dispute this result. The association submits a petition to the Labour Court to uphold the workers' rights, provides a doctor to assess whether the injury is causally linked to the work and the resulting type of incapacity, and ensures that workers are not burdened with legal fees that they often cannot afford:

> *'When a worker shows up with an injury or trauma … and the workers' doctor says, "look, this is an old injury, it has nothing to do with an accident, this is a degenerative problem". They seek to mischaracterise the accident as an occupational accident. The worker, unfortunately, has many difficulties in hiring a specialist doctor who can contradict the insurance company's doctor, and, on the other hand, in making a petition to the Labor Court claiming their rights. And, these days, it is much harder to access justice because if the worker intends to claim their rights in the Labor Court, they are faced with the possibility of having to pay legal fees. … Workers with financial difficulties start to think twice about whether or not it is worth going through the legal process. This is a denial of the right to justice, a denial of access to justice. In these cases, we file the initial petition, and we have a doctor who collaborates with us to certify whether or not it is an injury with a causal link with work and whether the injury is permanent, or a permanent incapacity, or if it's just an absolute temporary incapacity. Even so, we petition the Labor Court, and, as a rule, by acting as an assistant in the process, the complainant strictly pays nothing.*
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> *… we managed, in 95% of cases, we managed … to recognise the accident as an occupational accident, the existence of a causal link between the injuries and the accident. And the worker is, of course, compensated for the occupational accident.' (ANDST's President, Male, 48 years of seniority)*

The ANDST's intervention – the preparation of a medical report, the drafting of a petition to the Labor Court for the review of the assigned disability, and the request for the reimbursement of related expenses

When work accidents result in permanent incapacity, the ANDST aims to verify the type of incapacity put forth by both the insurance company and the Forensic Medical Institute, as discrepancies may arise. In such cases, this matter is discussed in a medical board, comprising doctors from both entities, and the ANDST also provides a doctor to represent the worker on the board. This representation is vital to ensure the fairest outcome for the workers:

> *'If a worker is left, after an accident at work, with a permanent incapacity, when he uses our services, we always seek a doctor's opinion to confirm or not the incapacity proposed or suggested by the insurance company and also by the Forensic Medical Institute. In the event of discrepancies in the attribution of the [type of] incapacity — if the insurance company says the incapacity is 5%, if the Forensic Medical Institute says it is 8%, and our doctor says it is 8% or 10% — there is a place for a medical board, and the worker is represented by our doctor. Unfortunately, as a rule, in medical boards, and the courts know this, judges know this, prosecutors know this, as a rule, if the worker does not take a doctor with him to the medical board, even if the opinion of the Institute of Forensic Medicine is [that the incapacity is] much higher than that stated by the insurance company, as a rule, the insurer's opinion prevails. In the case of our associates, who are represented by our doctor, the incapacity of our doctor generally prevails.' (ANDST's President, Male, 48 years of seniority)*

However, there are cases where the insurance company does not recognise any resulting incapacity from the accident. The ANDST's doctor does an evaluation and then their legal service petitions the Labour Court to review the case, but the workers, often unable to work, are left without any source of income. The ANDST also intervenes in these cases, requesting that the workers request the family doctors for medical leave, then contacting social security to inform them that the injured party is temporarily incapacitated and that the matter is being processed in the Labour Court, ensuring payment for the worker's total temporary incapacity:

> *… If the insurance company understands that, after a clinical cure, the claimant is left without any permanent incapacity, the claimant disagrees and comes to our services, the process is the same. He/she is seen by the doctor who works with us, and he/she writes the report confirming that there is a permanent incapacity. Our legal service makes the initial petition to the Labor Court. And then the process runs normally. There have been many cases in which, for example, the insurance company does not assume responsibility, even in the event of a serious accident, in which the victim is in fact unable to work. If they are unable to work, what we recommend is that they request the family doctor for medical leave. The family doctor recognises that, in fact, he/she cannot work and is able to dismiss him/her from work, but without any retribution.*
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> *… We immediately report it to the Court, and the process is given a number; our social service contacts the social security system, saying that the injured party is temporarily incapacitated; the process is being processed in the Labor Court. Therefore, we request that payment be made for the employee's total temporary incapacity. And it's paid. If there is no case in court, they don't. But if there is a case in court, the social security system pays the remuneration for temporary incapacity to the worker and reserves the right, naturally, to act as an assistant in the process. If the insurance company is convicted, they must also pay back the Social Security company the amount paid which was to the worker.' (ANDST's President, Male, 48 years of seniority)*

Figure 1 illustrates a flowchart of the ANDST's intervention pivot moments, in the event of an OA **not being reported** by the company.

Figure 1: The ANDST's intervention in non-reported OAs

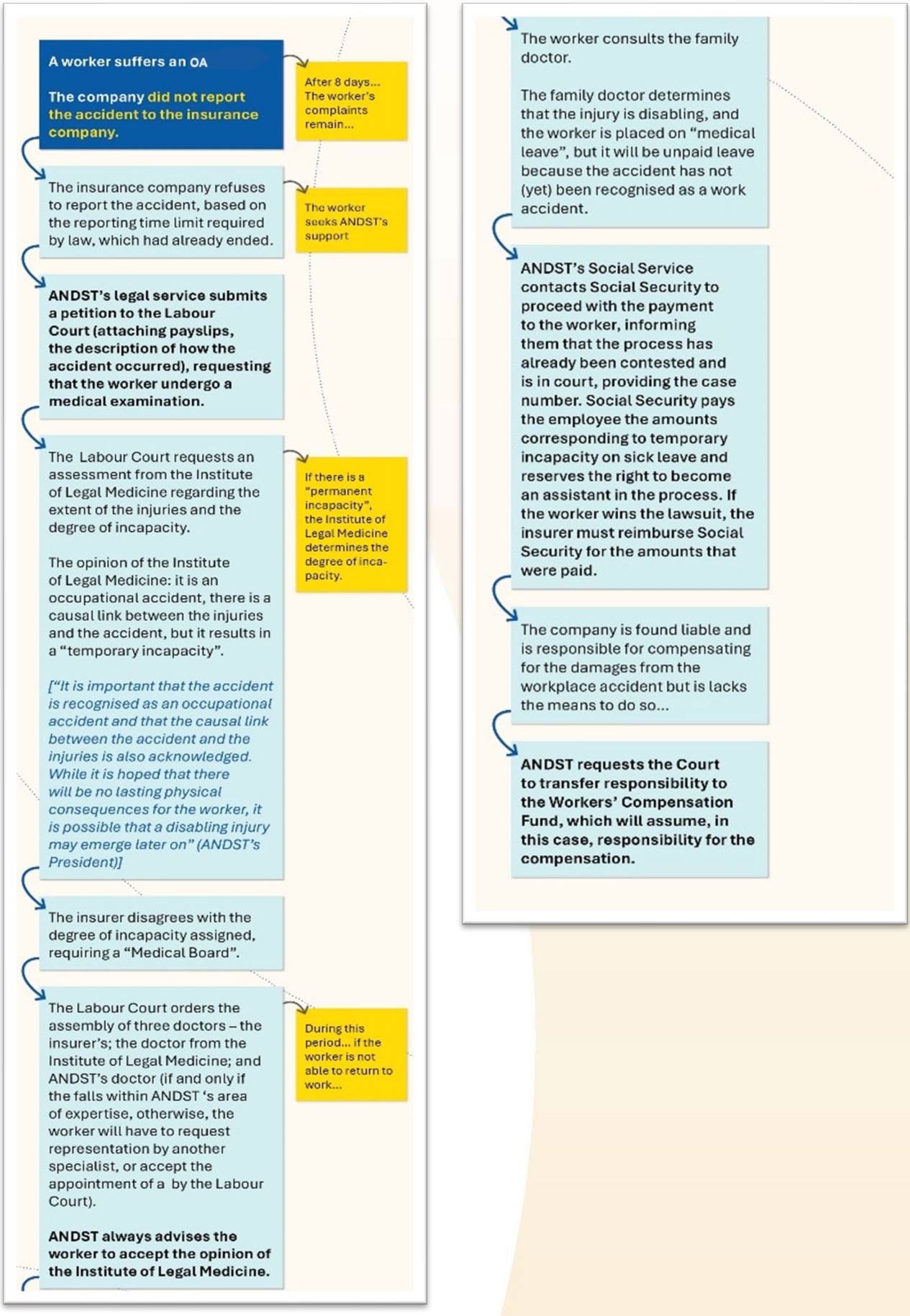
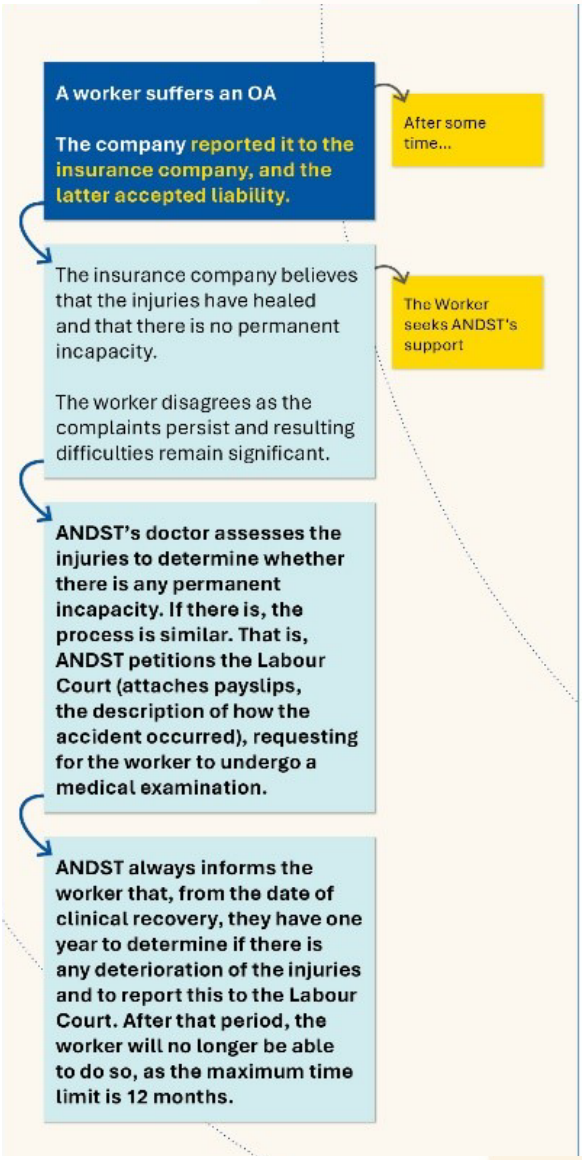


Figure 2 illustrates a flowchart of the ANDST's intervention pivot moments in cases in which **occupational accidents are recognised as such**, but the workers are faced with **challenges regarding the level of incapacity** that is determined as a result.

Figure 2: The ANDST's intervention in cases of reported OAs



b) When the occupational disease is not reported or the attributed disability is inconsistent with the health complaints/health status perceived by the worker

The process involving occupational diseases entails a greater complexity. The responsibility for the certification and management of occupational diseases lies with the state, specifically through the Department of Protection Against Professional Risks (DPCRP).

According to data from the DPCRP, there were 1,797 mandatory reports of occupational diseases in 2017, which increased to 5,970 in 2018, and further escalated to 14,440 in 2019. Notably, in 2019, a total of 5,740 diseases were officially certified as having an occupational origin.

The scarcity and disparity of the numbers presented by the DPCRP hinder a comprehensive understanding of the certification processes for occupational diseases. Additionally, the protracted duration of these processes, coupled with a prevalent lack of awareness among workers regarding their

rights, further exacerbates the issue. In 2023, the ANDST provided support to 427 occupational disease cases.

Interaction with the doctor who does the report – taking into account that the report of occupational disease is mandatory, whether by the occupational doctor, the family health doctor or the doctor who collaborates with the ANDST

'We always insist with people who come to us with suspected occupational disease that, if there is a doctor at the company, it is the company doctor who has to take part [in the process]. If this element doesn't exist, because it exists in large companies, it doesn't exist in small and micro companies, then it's the family doctor. And the family doctor we always try to raise awareness that the family doctor, regardless of not having time or having many patients … to do the report. When it isn't the company doctor or the family doctor, the doctor who works with us [ANDST's doctor] can also do this, or a private doctor… Whichever doctor, he/she can do it. It's a mandatory report disease.' (ANDST's President, Male, 48 years of seniority)

The support provided by the ANDST, at no cost to those seeking it, encompasses various services. These include providing: information regarding the rights and guarantees associated with occupational disease claims; support for administrative or judicial appeals in instances where workers contest the decisions rendered by the DPCRP; assistance with requests for pension remission when legally permissible, facilitating reimbursement claims for expenses related to technical aids and healthcare services; and informative and legal guidance to family members in cases of death resulting from occupational illnesses, among other services. Additionally, the ANDST may facilitate the preparation of clinical reports necessary for the review of cases concerning the exacerbation of disabilities.

Moreover, the ANDST frequently collaborates with both public and private institutions to conduct public awareness-raising initiatives about rights and guarantees about unfortunate workplace incidents.

The ANDST's intervention in case of an occupational disease

The certification of an occupational disease can be lengthy, often taking three years or more after the report of the disease is done by a doctor. This may pose challenges for a worker awaiting their certification, as there is no assurance that this will be the outcome and there is also the possibility that the determination may find no causal link to the working conditions. In the latter case, the employee is given 15 days to file an appeal, and the ANDST supports workers in this process. According to the ANDST's President, in these cases, they frequently request reports from the Department of Protection Against Professional Risks of Social Security and provide the medical services available at the association. If permanent incapacity is acknowledged, they submit an appeal. If the appeal is rejected, maintaining their original position, they can take the extra step of reporting the situation to the Labour Court, which has yielded positive outcomes:

'The process for certification of the disease takes an average of three years. It is indeed a lot of time for a worker, just to see your disease certified. Either it is certified, which often happens, or there is no cause-effect link to working conditions, and the employee is informed that he has 15 days to appeal hierarchically. The worker doesn't know what to do… … Or in the identical cases in which the Department of Protection against Professional Risks recognises the existence of occupational disease, but without a permanent incapacity. And, so, the worker can disagree by presenting the appeal. "How is this done?" The worker doesn't know either. … So, what we do, and what the services usually do, is to ask for all reports from the Protection Department Against Professional Risks and use our medical services. If a permanent incapacity is recognised, an appeal is presented. If the response to that appeal is denied, maintaining the same position, what we do, and with good results, is to report it to the Labour Court.' (ANDST's President, Male, 48 years of seniority)

Degree of innovation

Due to the ANDST's dual action (preventive and reactive), this is an innovative practice in the country. The association holds periodic information sessions, within the country, with union leaders and worker representatives, recognised as pivotal actors in the fight against under-reporting of OAs and occupational diseases, after the occurrence of these critical events, in the support provided in intermediating the contact of workers with different institutions that intervene in the recognition and reassessment of professional incapacity, and in their professional reintegration.

Approach

The approach followed is primarily reactive, but the association has also recently integrated a proactive approach, implemented through information sessions with key actors, who can directly impact real work situations in a more direct manner.

'We are very focused on, in addition to our primary vocation — post-accident or post-occupational disease — emphasising prevention whenever possible. That is why we carried out some public information actions, unprecedented even in the country, and photographic exhibitions alluding to accidents and occupational diseases, aimed at the general public.' (ANDST's President, Male, 48 years of seniority)

What was achieved?

Currently, the ANDST has 20,000 members, of whom 4,000 receive direct support. In 2023, they held 2,673 individual sessions regarding OAs and 426 individual sessions regarding professional diseases at a national level. Of those sessions, 2,377 were held with male workers and 722 with female workers. Out of the total number of workers, 1,001 were aged between 45 and 55.

The support of the ANDST resulted in a total of 642 legal queries, 242 social service consultations, 69 psychology appointments, and 385 medical and physical damage assessments (ANDST, 2023).

Success factors and challenges

In Portugal, workers are often not well informed about the procedures for getting an OA or occupational disease officially recognised. This includes understanding when to appeal to the court if a disease is not acknowledged as work-related, or if it is recognised as work-related but without any resulting incapacity being attributed. For this reason, the information that the ANDST focuses on providing to workers and the representation made on their behalf with the institutions that have the power to act on these matters constitute factors of the ANDST's success. In addition to the technical support provided to workers in these areas, the association holds public information sessions, especially in the country's interior region, for worker representatives and union leaders.

One of the main challenges in the country is that OA management is handled by insurance companies, unlike other countries in the EU where it is a responsibility of the state through social insurance. This is where the ANDST's work comes in: protecting rights that may clash with the profit-seeking nature of insurance companies. The sustainability of this association is a challenge due to the lower funding it receives in Portugal compared to similar associations in other European countries.

Therefore, it is essential to rethink the current private liability model for workplace accidents in Portugal. This model, which is unlike other European legal systems, should shift towards a social responsibility model integrated within social security, thus ensuring enhanced protection for workers (Lacomblez & Leitão, 2018; Rodrigues 2018).

Transferability to other EU Member States

The ANDST is affiliated with the International Federation of Persons with Physical Disability (F.I.M.I.T.I.C.) and is a member of the Disability and Human Rights Observatory. However, there are significant differences between Portugal and the other Member States' associations, mainly because, in other countries, social security is responsible for the process. That is, as aforementioned, OA insurance is a form of social insurance, unlike what happens in Portugal. In the latter, private

organisations are responsible for the management of such situations, an issue in the origin of different requests for intervention made to the ANDST. Furthermore, in other countries, the concern is mainly the professional reintegration and rehabilitation of workers. In Portugal, the requests are concentrated on recognising the OA as such.

References

ANDST - Associação Nacional dos Deficientes Sinistrados no Trabalho. (2024). *Relatório de atividades e contas*. https://andst.pt/assets/uploads/ca3b0-relatorio-atividades-e-contas-2024-parecer-cf-e-ata.pdf

EU-OSHA – European Agency for Safety and Health at Work, *Improving compliance with occupational safety and health regulations: an overarching review*, 2021. Available at: https://osha.europa.eu/sites/default/files/Improving_compliance_OSH_regulatons_lit%20review.pdf

Lacomblez, M., & Leitão, A. R. (2018). O regresso ao trabalho após um acidente de trabalho : apresentação do dossier. *Laboreal, 14*(1). https://journals.openedition.org/laboreal/pdf/549

Machado, L., Rodrigues, V., Madureira Pinto, J., Pereira, C., Santos, M., Cunha, L., Lacomblez, M., & Monteiro, B. (2018). *Regresso ao trabalho após acidente: Superar os obstáculos*. Associação Nacional dos Deficientes Sinistrados no Trabalho. http://oddh.iscsp.utl.pt/index.php/pt/2013-04-24-18-50-23/outras-publicacoes/item/420-andst

Rodrigues, V. (2018). Os sinistrados no trabalho e o direito à reparação: percursos pós-sinistro de contacto com as instituições. *Laboreal, 14*(1). https://doi.org/10.4000/laboreal.552

Authors: Liliana Cunha and Sarah Maggioli, Center for Psychology at University of Porto (CPUP); Faculty of Psychology and Education Sciences at University of Porto (FPCEUP), Portugal

Sara Ramos, Centre for the Study of Socioeconomic Change and the Territory (DINÂMIA'CET); University Institute of Lisbon (ISCTE), Portugal

Project management: Dietmar Elsler, Ioannis Anyfantis, European Agency for Safety and Health at Work (EU-OSHA).

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