



## **Serbia: Chapter 23 - What does it Take to Stay on the Train and reach EU?**

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**SERBIA: CHAPTER 23 - WHAT DOES IT TAKE TO STAY ON THE TRAIN AND REACH EU?**

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Authors: Ivan Milošević, Partner  
Design and prepress: JPM Janković Popović Mitić  
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**The answer is simple: to make EU membership top priority, to form the team with the capacity to drive and stay on the train until the final destination.**

**But it is not only important for the team to have only the Loco pilot only to drive the train, the team must have other members with the understanding who is in the train, the train route both in Serbia and EU and who share strong belief that the final destination will bring the benefits not only to the country of the departure (passengers) but also to the countries and citizens of the destination.**

**If something is missing in that chain, it may happen that the Loco pilot may drive the train via Antarctica to EU with the possibility that the train may get stuck somewhere on the route and may never reach its final destination.**

## 1. WHERE IS THE TRAIN FOR THE TIME BEING?

### *Life Event – Processing Of Employees' Health Data By Employers*

A) Patient/Employee Vs Doctor

An employee feels health problems and goes to the doctor. The doctor performs medical examination, determines health condition of the employee – health diagnosis and inserts medical prescription in ICT system. The pharmacist identifies the patient and issues medicines to the patient.

B) Doctor Vs Sick Employee Vs Employer

#### **Fact 1**

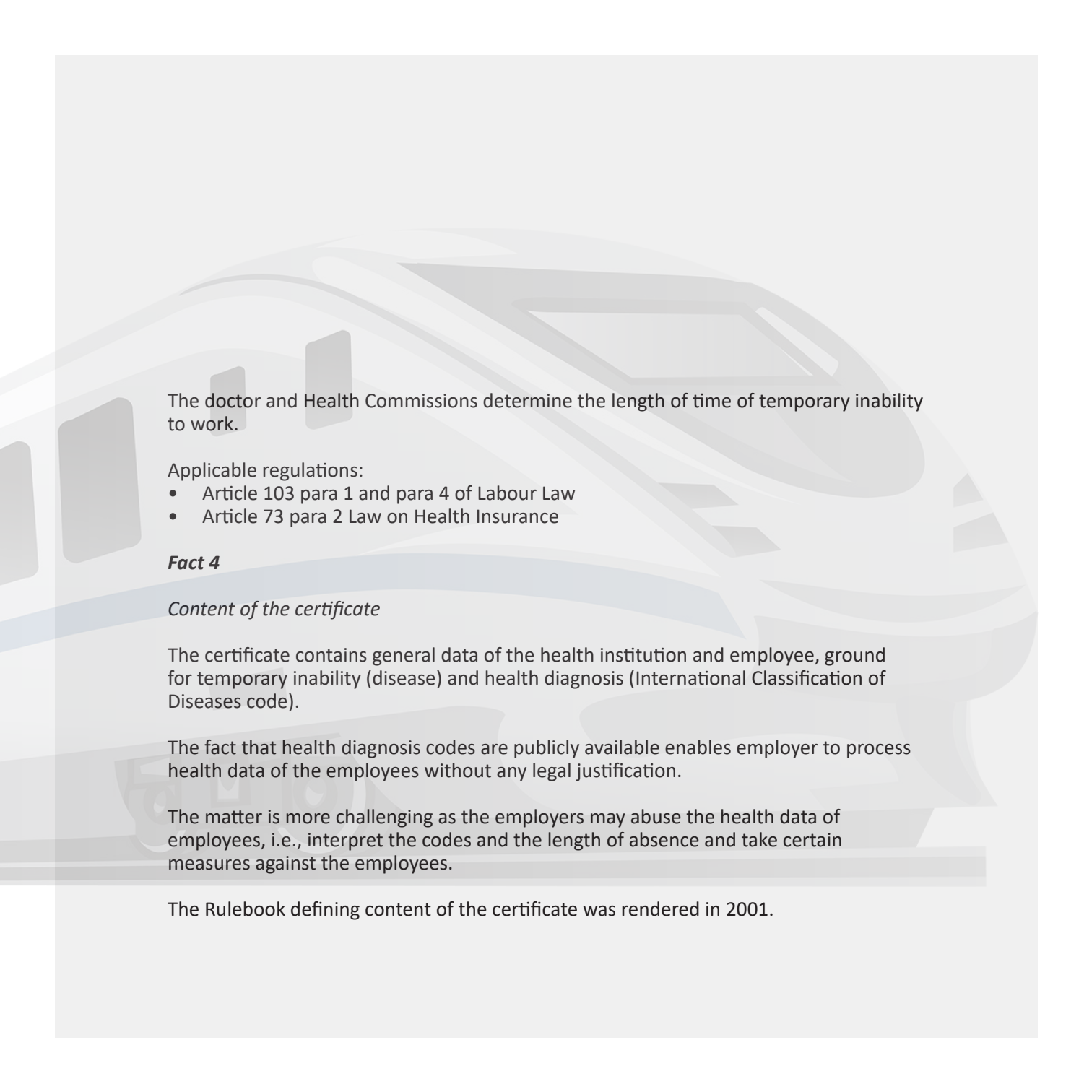
*The employer must plan and organise the working operations.*

#### **Fact 2**

*The employer must be notified on the absence of the sick employee to be able to plan and organise work operations.*

#### **Fact 3**

Manner of notification of the employer on temporary inability of the employee to work  
Current condition: Within three days upon occurrence of inability for work, the employee must deliver certificate issued by doctor containing expected time of inability to work.



The doctor and Health Commissions determine the length of time of temporary inability to work.

Applicable regulations:

- Article 103 para 1 and para 4 of Labour Law
- Article 73 para 2 Law on Health Insurance

***Fact 4***

*Content of the certificate*

The certificate contains general data of the health institution and employee, ground for temporary inability (disease) and health diagnosis (International Classification of Diseases code).

The fact that health diagnosis codes are publicly available enables employer to process health data of the employees without any legal justification.

The matter is more challenging as the employers may abuse the health data of employees, i.e., interpret the codes and the length of absence and take certain measures against the employees.

The Rulebook defining content of the certificate was rendered in 2001.

**Fact 5***Purposes of processing of personal data from certificate*

By employer: payment of compensation on the ground of the inability to work for the first 30 days.

By the Healthcare Insurance Fund: payment of compensation on the ground of the inability to work of after 30 days.

Employer calculates the compensation in both cases; in the latter case, the employer submits request for payment of compensation to the Health Insurance Fund.

Applicable regulation:

- Articles 101 and 102 of Law on Health Insurance

**Fact 6***Personal data required for calculation of salary*

Report on inability for work issued by the doctor – this document does not contain health diagnosis since 2021.

This document shall be differentiated from the certificate. The certificate is issued at the beginning of sick leave, while the report is issued at the end of sick leave period or at certain point of time during the sick leave to provide the employer with information that the sick leave is either still opened or closed and to calculate the compensation on the ground of the sick leave.

Applicable regulations:

- Article 1 para 1 Rulebook on Forms in the Health Care System
- Article 81 of the Rulebook of Manner and Procedure of Achievement from Obligatory Health Insurance

### **Fact 7**

*Personal data required for approving inability to work above 60 days and revision of the opinion of the doctor*

- a. After 60 days –the doctor submits documents to the Health Commission – proposes prolongation of the sick leave;
- b. In case the Healthcare Insurance Fund or employer require revision of the opinion the doctor.

In these cases, personal data are processed by the doctor, the Health Commissions or the Healthcare Insurance Fund itself.

Applicable regulations:

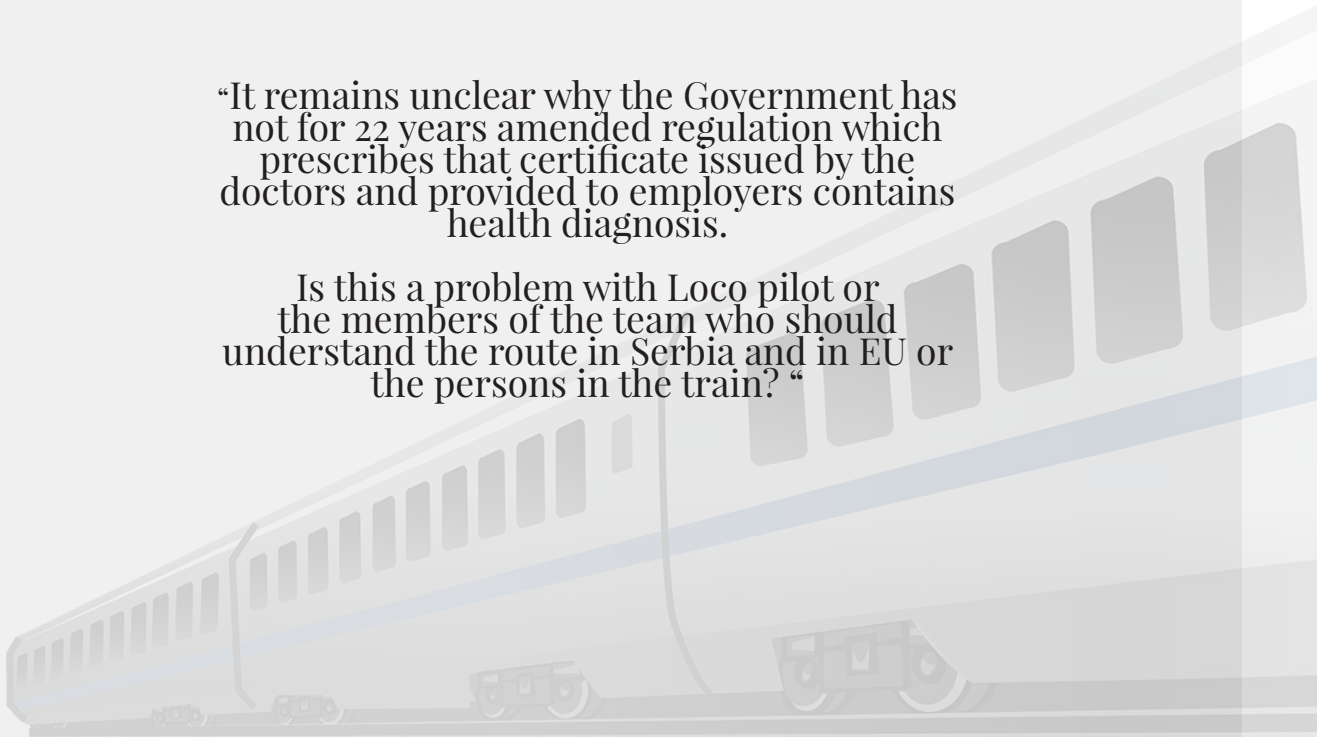
- Articles 75 para 4, Article 156 of the Law on Health Insurance

In case under a) health data are processed by the doctor and the Health Commission/ the Healthcare Insurance Fund.

When the employer initiates revision of the temporary inability to work, personal data processed are contained in medical documentation (in possession of the health institution) and are processed in presence of the employee and, if necessary, a medical examination of the employee is performed.

“It remains unclear why the Government has not for 22 years amended regulation which prescribes that certificate issued by the doctors and provided to employers contains health diagnosis.

Is this a problem with Loco pilot or the members of the team who should understand the route in Serbia and in EU or the persons in the train? “





None of the applicable regulations authorise the employer to process health data in case when the employer decides to request revision on temporary inability to work, to check potential abuse of the right to sick leave by sending the employee to another health institution at his expense or by conducting internal checks to collect information on potential abuse on the right to sick leave (Article 17 para 2 item 2 of the Law of Law on Protection of Personal Data in connection to the Article 179 para 4 of the Labour Law).

**Fact 8**

*Processing of health diagnosis by Health Insurance Fund*

Having in mind that the employer does not need personal data – health diagnosis for any reason, it is necessary to change the provisions of the Law on Health Insurance in a manner that the doctors share this data directly with the Health Insurance Fund.

The processing of this data by the Health Insurance Fund is necessary to decide in the procedure on the right to salary compensation in the case of temporary inability to work upon expiration of 30 days or in the case when the Health Insurance Fund performs revision of the reasons for temporary inability to work itself.

## 2. WHERE DOES THE TRAIN GO?


It remains unclear why the Government has not for 22 years amended regulation which prescribes that certificate issued by the doctors and provided to employers contains health diagnosis.

This unclarity gains more significance due to the fact that the Government changed the content of the report on inability for work, which now does not contain health diagnosis and serves as the ground for payment of compensation during the temporary inability for work by the Health Insurance Fund.

In situation when the document submitted by employer to the Health Insurance Fund for the purpose of payment of compensation does not contain health diagnosis, the question is from which source the Health Insurance Fund will obtain health diagnosis for its records and to perform its competences. A possibility that doctors send report on temporary inability to work is not foreseeable at the moment.

The form - report on inability for work without health diagnosis is still not used and nobody knows the reason for delay. The doctors still use the old form and insert the health diagnosis.

It is unclear why the Ministry of Health has still not consummated the power from Article 33 para 2 item 11 of the Law on Health Documentation and Records in the Field of Health and amended the content of the certificate, while on the other side amended the content of the report on inability for work.



It is also unclear why the lawmaker and the Government determined that certificate on temporary inability for work shall contain health diagnosis and could not anticipate that this health data is not needed for any reason and may be abused by employers. Is this a problem with Loco pilot or the members of the team who should understand the route in Serbia and in EU or the persons in the train?

In 2021 the amendments and supplements of the Law on Health Insurance were proposed authorising the Health Insurance Fund to calculate the compensation of salary during temporary inability for work after 30 days and to transfer to employer the funds. In the proposal to the said amendments and supplements, it is stated that the doctor shall, with the consent of the employee, provide certificate on temporary inability to work to employer.

However, the latter amendment is not visible from the proposed text of the amendments and supplements of the Law on Health Insurance. The processing of the health diagnosis by employers is still possible and there are no indicators that this practice may be stopped in the near future.

JPM Jankovic Popovic Mitic

8a Vladimira Popovića,

DELTA HOUSE, V Floor

11070 Belgrade, Serbia

T: +381/11/207-6850

E: [office@jpm.law](mailto:office@jpm.law)

[www.jpm.rs](http://www.jpm.rs)