

Legal Procedure for Realizing the Rights from the Working Relationship

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Abstract:

The right to work is a fundamental right of every human beings in the moment of coming of age for work. To realize these rights were issued international Conventions and Recommendations, including regulation of all segments of employment, in which respect the right of workers to freedom of work, the dignity and the protection of the interests of workers in labor relations. Once that work is the activity of conscious and voluntary, natural but laborious, where man has nothing but labor, to win means to his existence and his family. Everyone has the right to earn the means of living by lawful work that he has chosen or accepted himself. In this sense, with the right for work we understand the obligations of the society that the citizen, who needs to work and wants to work to offers them the employment opportunity. The rights and obligations created by the establishment of working relationships and at work may be limited, but these restrictions must be made only by law. Today, even after the war in Kosova was issued regulations and laws that regulate the relationship and working conditions which are provided and guaranteed by constitutional provisions.

Key words: Employment, freedom of employment, the mechanisms for implementation of rights at work.

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Entry

Persons who are employed have obligations and also rights. Rights arising from employment are rights defined by law, internal acts of the employer and collective contract, but at the same time, they are rights guaranteed by the Constitution. Judging by these criteria, the rights from the work relations are treated as inalienable rights and unlimited.

The employer, enterprise and institution are obliged to respect and to allow workers to exercise rights from work relationship which relate. In any case where the employer or institution does not respect the rights of workers, or have discontinued the realization of any right arising from employment comes through the labor dispute. The labor dispute is a dispute that arises when violated rights protected in law from employment or when not carried out certain obligations towards the employee arising from employment or related to labor relations.

If labor dispute, or violation of any right of an employee, arising from employment, the Labour Law allows various forms or legal mechanisms through which it can require the implementation of any right which was violated . Labour Law provides that for rights violations arising from employment, the realization of that right can ask the competent bodies. These bodies are: the employer, trade union, reconciliation institution, the labor inspectorate and the competent court.

Protection of rights, of the workers carries in accordance with laws that contain in themselves the rights of employees in each working sector which has to do with work and for work. Employee who is in work relations from the employer, has the right to demand the realization of rights to work relations. At the same time he has the right to challenge a decision that was taken regarding his rights to express dissatisfaction and disagreement on certain decision. The worker who considers that the decision by which the employer or the competent

authority of an enterprise decides for the rights, obligations and responsibilities arising from employment is unlawful, has the right to dispute. Once the mechanisms that ensure the protection of these rights should have the force of law, to ensure compliance with the agreement.

The realization of the rights of workers to the employer

How long that lasts employment agreement with the employer, the employee has the right to demand for the realization of its rights arising from work relations as well as the right to challenge the decision taken related to the rights, obligations and responsibilities.

By submitting the request for the realization of its rights arising from employment, the employee expressed interest and commitment to the realization of the rights violated which are guaranteed by legal provisions and internal act of employer and collective agreement, while with the exception to express dissatisfaction and disagreement regarding certain decision, taken related with any of its rights or obligations.

Request or objection, by the employee submitted within 8 days from the day the decision is delivered which has been infringed any of his right, or from the date when the employee has learned for the violation related to his right. The employer is obliged to decide on the request of the employee, within fifteen (15) days from the date of receipt². If the competent body of the company or the employer does not set the deadline related the objection of the employee, or the employee is not satisfied with the decision of this body he is entitled to the realization of his rights to ask among other competent bodies.

The realization of the rights of employee from Unions

Traditionally the main purpose of trade unions is to promote

² Labour law 03/L-212 article 78

and protect the interests of their members. They are there to strike a balance of power between employers and employees. As, Emmott comments (2008): trade unions have always been about power. '

The aim of the trade unions for compensation in case of imbalance of power between employers and employees and this remains the fundamental basis for their existence. "Unions are described by Ackers and Payne (1998) as "essentially collective self-help bodies." The basis of the working relationship is work contract.

But this is not a contract between the equals. Employers are almost always in a stronger position to dictate the terms of the contract that the individual employees. Unions, as shown by Freeman and Medoff (1984), are to provide employee with a collective voice, to make their demands known to management and create the current conditions better and wanting to be closely together. This applies not only in terms of employment conditions such as payment, working hours and holidays, but also for the way in which individuals are treated in the employment aspects such as the resolution of complaints and discipline, surplus etc. The unions also are aware that from time to time management will have an alternative view on key issues affecting the employee.

More broadly, unions can see their role as participants in the management and decision-making on matters affecting the interests of their members. Within this general role, the unions had two specific roles: **Firstly** to ensure through collective bargaining, improved terms and conditions for their members, and **secondly** to provide protection, support and advice to their members as individual workers.

An additional role of the trade unions is providing the legal service, financial and other to their members. The main reasons why people can join a trade union is to receive external support and protection from employment problems or require improvements to wages and working conditions. They also can

join, because union membership is common in a working place or because of faith in union organizing³. According to the law on trade union organization in Kosovo Unions are organizations that are created as a voluntary union of employees, whose purpose is to represent and protect the legal rights and interests of economic, social and professional of their members.

The establishment of trade union organizations enables employees and guarantees the organization and syndicate action. Unions are established to protect workers' rights and trade union freedoms. Employees have the right under free will, to establish union and join in, under conditions which are determined by law. The establishment of the union is to create conditions and the best standards of work of employees, protection of legal rights, economic, social, occupational, for employees, promotion and development of social dialogue between social partners.

Membership in unions can be every employee who under the applicable law has met the employment age. Union members are obliged to pay regular monthly union membership in an amount to be determined by the competent body of the union. Duties and responsibilities of members of the union are required to take part in the work and activities of the union, to adhere to the principles and charter rates, to maintain the image and unity of the trade union and pay the monthly costs of union membership.

The immunity of union representatives is the prohibition of discrimination against representatives of trade unions. For the union activity, the union representatives, without the consent of the union cannot, terminate the work contract, assigned to another position, decreases the job position, to begin disciplinary procedures and reduce wage.

It prohibited any act of interference in trade union creation program, the choice of union representatives and in the administration of the trade union organization from the

³ Armstrong: The article, „HRM approach to employee relations”

government authorities. For the realization of union requirements allowed forms of syndicate pressure, as protests and strikes of workers in accordance with international conventions and applicable laws and the syndicate statute⁴. Generally outstanding role of the union in protecting the rights of employees in work relations and according to the work is very important, because that gives us the right to talk that workers have a chance to protect these rights, now exactly before the syndicate. Creating labor unions, it aims to protect each other, where it prevents the employers violating labor rights.

Whenever a worker is threatened with removal from work, humiliation, discrimination, or worst paid at work, the only way that he and others to improve their conditions is through the organization. Nobody has the power to punish all workers that are solidarity with each other and operate as the same body. Employers cannot control and imposed each worker separately and isolated. Employers are obliged to listen and respect the collective of the workers, which ones in organized way threaten to joint protest or strike activities. Union empowers, the power gives rights, rights bring prosperity and dignity for everyone, and for everyone.

The competent body is obliged, before making the decision about the request, or objection of the worker, to take the opinion of the trade union, not any of the trade union, but exactly that syndicate that the worker belongs. The competent body is obliged, taking a decision on the application, or objection to the worker, take the trade union opinion and this review, then even to pronounce it, if the union has given its opinion.

The role of trade unions in protecting the rights of employees carried with it the right to participate in the proceedings of the competent authority that decides on the request, or objection of a worker. In this procedure, the union is

⁴ Law on Trade Union Organization in Kosova Nr.04/L-011

able to represent the worker, at the request or his consent, in which procedure taken a decision on the realization of his rights.

Protection of employees through mediation

The employee and employer can settle disputes out of work and on the work through mediation. Rules and procedures for the settlement of disputes through mediation work are determined by the provisions of law.

The reconciliation procedure is intended affirmation opposing of the aspects till to the acceptance of a solution type of an agreement, the contract compared with diplomatic agreements "Mediation" is an extra activity, carried out by a third party (mediator) for the solution of disputes between employers and employees in accordance with the conditions provided by law. For the initiation of mediation should have the goodwill of the parties.

The mediator during the mediation procedure is fully impartial and independent of any influence. For the initiation of mediation should exist the goodwill of the parties. Mediation procedure begins at the moment when the parties agree to start its parties in the mediation procedure may be natural and legal persons. Mediation begins after the parties signing the agreement for initiation of the mediation procedure.

The agreement for the initiation of mediation shall contain: data on the parties to the proceeding, their representatives, subject of dispute, the statement of acceptance of mediation, as well as provisions on the costs of the proceedings. For the initiation of mediation should exist goodwill of the parties, the duration of the mediation procedure may not last more than ninety (90) days after the completion of the mediation, the mediator is required to notify the court or competent body in writing of the termination of the mediation procedure, in any case where the court or other competent

bodies exist a case-file or for which was developed mediation, or if the file is in court, the written settlement agreement should be submitted to the court, which after approval, has the power of an executive title⁵.

Protecting the rights of workers from the labor inspectorate

Employees at any time can submit a complaint to the Labour Inspectorate on issues which fall under the authority of this body⁶, which includes the protection of workers' rights at their request. For the realization of its rights arising from employment and protection of these rights, the employee has the right to address the labor inspectorate to request to ensure this right. Labour inspector had a duty to act at the request of the worker to his realization and protection. For this purpose, the labor inspector undertake a number of actions for determining the factual situation of the rights of workers.

If the labor inspector finds a violation of the law, internal regulations, or employment contract and other acts, which do supervisor inspection, he will oblige the employer to issue a decision to abolish the act, which would avoid irregularities and deficiencies found.

The labor inspector must issue a decision on the appeal within thirty (30) days or inform the complainant regarding the extension within which decisions should be made. If the employer does not implement the decision of the labor inspectorate, within the legal limit, which is given by the labor inspector, the labour inspector following, issued a decision by which issues the punitive penalty measure for not implementing the decision made by the labour inspector.

⁵ Law for mediation Nr.03/L-057.

⁶ Labor law 03/L-212 neni 82.

The employee is not entitled to seek the realization of his rights before the court, if it has not previously done the request to the competent body of the enterprise or the employees.

Legal protection of workers in the competent court

Any employee who is not satisfied with the final decision of the competent authority with which he thinks are violating his rights, or does not receive the answer within the time prescribed by law, then the employee is entitled to seek the protection of rights following his term of thirty (30) days, by initiating a labor dispute to the competent court⁷.

The competent court, which will consider and decide on the protection of workers' rights is a regular court. If the court finds that the termination of the employment contract by the employer is unlawful under the provisions of the law, collective agreement or employment contract, then will order the employer to execute one of the following remedies: pay compensation to the employees exempt allowances and other amounts that belong to employees under the law, the contract of employment, collective agreement or internal act, in such amount as the court considers fair and appropriate, but which should not be less than twice the value of any compensation that meets workers at the time of discharge; or if the dismissal is considered illegal under the law. Court can bring the employee to his place of work and orders compensation of all salaries and other benefits lost during the whole time of the unlawful removal from work.

The realization of workers' rights is possible only through the courts, and other institutions that are for the protection of workers does not have mechanisms to realize a right that was violated an employee, but can only take punitive action for Employer for non-compliance of the decision issued by the competent authority for the protection of employees. The

⁷ Article 79.

employer is obliged in due time to implement the decision of the competent court.

Execution of Judgment

Employee realizes his right completely only when implemented court decision. To decide on execution proposal on the basis of executive document by which the employer is obliged to return the employee to work, or to systemize him in appropriate working position and for application of execution, of territorial jurisdiction is the court in whose territory it is creating work relationship⁸.

The proposal for execution on the basis of executive document by which the employer is obliged to return the employee at work, may be submitted within 30 days from the day on which the execution proposer has obtained the right to present this proposal⁹. Considered that the worker has obtained the right for presentation of execution proposal after the deadline for voluntary fulfilment of obligation assigned in execution document¹⁰.

Conclusion

Freedom of work represents one of the most important rights of human. With labor freedom understand the right of citizens to freely choose their profession and work without any imposition. This right is more oriented human safety at work, respectively protection of workers from the arbitrariness of his employer. In this respect, under pressure from the unions, they are providing various forms of protection of workers. Problems with which are faced authorized institutions for the implementation of legislation in the fields of labor relations and conditions.

⁸ Article 291 Law No.03/L-008 on executive Procedure of Kosova.

⁹ Article 292.1.

¹⁰ Article 292.2.

The theme was carried out taking into account the current problems faced by the employer and the employee, and realization of their rights by the competent authorities. The manner of implementation of workers' rights, the followed procedures and deadlines for conducting operations by the competent authorities for the realization of a right.

The rights of employees as one of the numerous rights of individuals are found as a priority by the country's institutions. In the area of employment the basic defect lies in non-implementation as it should from the legal aspect and non-operation of relevant public institutions.

Recommendations

1. Improving and upgrading the highest level of legal enforcement, from work relations and working conditions in general.
2. Adding labor inspectorate activity and its activities, to be more present on the ground.
3. Informing workers for their right to lodge complaints in case of a violation of the rights by the employer.
Informing employers for their legal obligations towards workers, reminding that non-compliance of the legal obligations will be sanctioned with fines foreseen by law.
4. Boosting efficiency with trade union organizations to inform and raise the awareness of employees about the importance of the existence of collective and individual contract of employment, respect for workers' rights by employers.
5. Organization and strengthening of trade union structures in the private sector and public.
6. Improved cooperation of Trade Unions and Employers.
7. Organisations for the implementation of labor legislation being made efforts to increase the level of employee training to implementation control structures,

legislation and conflict management structures. Improving the excessive length of civil proceedings before the courts to labor disputes, non-ekuzekutimi of final decisions of the courts to return the worker to work and work assignments. Courts should give priority to cases dealing with the demolition of labor relations disputes by encouragement employee to report cases to the inspectorate or the courts, since the resolution of disputes will soon become.

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