

Aspects of Termination of Individual Employment Contract under Albanian Legislation

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Abstract

Labour legislation in every state in the world carries an important social function, as it regulates one of the most essential social relationships which are the employment legal relations between the parties involved in it. Employment is a factor that affects both the financial aspect of an individual and his family, as well as the social aspect of inclusion in the social life that the working environment provides for the individual. For this reason, the legal provisions that the legislator makes regarding employment legal relations are highly regarded.

Labour law in Albania represents a relatively new discipline due to the fact that the first legal acts in this field have been adopted only after 1945. However, a clearer, more complete and scientific basis has been made for employment matters only after the 1990s, under the influence of the important democratic changes that occurred in Albania during this period. The Labour Code of 1995, together with its amendments, shed light on the employment relations in general and on the termination of individual employment contracts in particular. In this paper, I will focus on a very important institute of individual employment relations in Albania, which is the termination of

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employment contract and the legal consequences associated with them, under the new amendments of 2015 that were made in Labour Law.

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INTRODUCTION

The employment contract is an agreement between the employee and the employer, which regulates the employment relationship and addresses the rights and obligations of the parties. One of the most important amendments that were made in Labour Code in 2015, was the fact that employment contract should be in writing, unlike before such amendments when the employment contract could also be in verbal form. Of course, this provision increased the protection of employees from arbitrary and abusive actions of the employer. Also, one of the most prominent amendments of the Labour Code in 2015 was the determination of an exhaustive list of the reasons that legitimize the dismissal of an employee from work, limiting to the lowest possible level the employers' ability to terminate the employment relationship without a reasonable motive, due to the penalties that the latter pays in these cases.

It is important to bring in focus the employment contract, because depending on its nature, differ the legal ways of terminating the individual employment relationships. This paper will deal with the legal ways of termination of individual employment contracts by employers in the case of 1) an indefinite term employment contract and 2) a fixed-term employment contract, both governed by Chapter XIV of the Labour Code. It will also be discussed how the Albanian legislation treats the employment contract, as well as some illustrative jurisprudence in this regard.

1. Employment contracts with an indefinite term

The main specification of an indefinite term employment contract is that this contract does not have a clause that dictates the moment of its termination. For this reason, the only two legal ways of terminating this type of contract by employer are as follows:

- i. Termination of the employment contract by respecting the notice deadlines; and
- ii. Termination of the employment contract with immediate effect.

Let's analyze each of the cases separately.

i) Termination of the employment contract by respecting the Notice Deadline.

The termination of employment contract by respecting the notice deadline is regulated by Article 141-148 of the Labour Code. In this case, when the employer intends to terminate the employment relationship with the employee, he has the obligation to notify him according to the deadlines set out in Article 143 of the Labour Code. This means that after the notice of dismissal, the employee shall remain in work until the expiration of the notice deadlines set out in this section, and be paid regularly during this period.

Notice deadline

Although the termination of the employment contract is a right of both employer and employee, the consequences caused by exercising such right are not the same for both parties. On one side, the termination of employment relationships cause to employee insecurity and poverty, while on the other hand employers do not face such consequences in this case. For this reason, the Albanian legislator has been careful to provide the employee with a notice deadline which employer must respect before dismissing the employee from work. Labour Code rules

that, once the probationary employment period ends,² the notice deadline for termination of employment relationship is 2 weeks. If the employment relationship has lasted from 6 months to 2 years, the notice deadline is 1 month; for the duration of the employment relationship from 2 to 5 years, the notice deadline is 2 months, and when the employment lasts for more than 5 years, the notice deadline is 3 months.³ Of course, this regulation that Labour Code has made, seeks to avoid the legal uncertainty that would exist for employees if they were not given a notice deadline as an opportunity to find another job while having an economic source that consists in salary that will be given during this period. This purpose of the legislator is enhanced even more by the provision of Article 143 of the Labour Code, which stipulates the right of the employee that, during the notice deadline, he may take a payable permit at least 20 work hours per week, during which he can find another job. It is understood that the time when the 20 hour permit which will be given, has to be determined by a mutual consent between the employer and the employer, according to the needs of the job.

Legally justified reasons for terminating an employment contract.

Albanian Labour Code of 1995, without amendments, was not exhaustive with regard to the reasons that legitimated the termination employment contract by the employer, causing many abusive practices of dismissal from work. Due to the lack of a unified judicial practice in this regard, the United College of the High Court by decision no. 19, dt. 15.11.2007 ruled that *it was sufficient that the notice of dismissal from work to be made in writing and it was not necessary to specify the reasons why*

² According to Article 143 of the Labour Code, it is considered as probationary period the first three months of legal employment relationship. During this period, the employer can remove the employee from work for any reason, by only notifying him in writing at least 5 days before.

³ See Article 143 of Albanian Labour Code.

*such a drastic measure had been taken, in order for employer to terminate an employment contract.*⁴ With the amendments that were made in Labour Code in 2015, the law imposed on the employer *the obligation to clearly state the reasons for the decision of termination of employment contract,*⁵ in order to avoid arbitrary and unlawful dismissal. Another innovation that brought the legal amendments of 2015, was the fact that the reasons for which the employer could terminate the employment contract were only those reasons which were expressly provided in the Labour Code. In this line, Article 144/3 of the Labour Code, interpreted in accordance with Article 146, sets out only three motives which are considered as legally reasonable for the termination of employment contract by the employer. These are:

- The employee's ability;
- The employee's behaviour;
- The operational requirements of the enterprise.

If the employment contract has been terminated for one of the abovementioned reasons, then the termination of the employment contract is considered as legally reasonable. In this case, the employer's only obligation is to respect the notice deadline and to give the employee a reward for the seniority, which I will explain below. It should be noted that the abovementioned reasons for terminating the employment contract by employer are exhaustive, which means that if the employment contract is terminated for other reasons that are not related to the employee's ability, employee's to behaviour, or the operational requirements of the enterprise, it will be the case of termination of the contract without legally reasonable motives. In such cases, the employee may claim before the court claim damage by employer for up to a 12 month salary, as a result of arbitrary dismissal from work. This amount of this

⁴ See Decision no. 19, dt. 15.11.2007 of United Colleges of High Court.

⁵ See Article 144/3 and Article 146 of Albanian Labour Code.

damage is added to the salary that the employee has the right to receive during the notice deadline.

Labour Code provides that one of the abusive reasons of termination of employment contract by the employer is the termination of an employment contract in an “inadequate time”. As inadequate time under Article 147 shall be considered the time when the employee performs military services or receives a temporary disability allowance from the employer or social security for a period of up to one year, and when the employee is on vacation permit provided by the employer. The purpose of this article is to protect the employee from the effects that would result by the termination of an employment contract at an unsuitable time. Such unwanted situation would reduce employee’s incomes at unexpected moments and sometimes such effect could be very tough for the individual. For these reasons, the provision in question is another effective tool for protecting the employee that Albanian legislator has imposed in Labour Code.

However, it should be noted that prohibition of termination of employment contract in an inadequate time does not mean that the employment contract can not be terminated during this period at all. This is a consolidated approach of jurisprudence in Albania. In many different cases, the Tirana District Court argued that Article 147 of the Labour Code does not hinder the immediate termination of the contract if there are reasonable grounds for employer to do so. This is also permitted by Article 153 itself, by ruling that the immediate termination of the employment contract can be performed "at any time" by employer, if there are legal grounds. Cases of termination of the employment contract with immediate effect will be discussed below in this paper.

Procedure of termination of employment contract.

Another important aspect of termination of employment contract is the procedure that the employer has to follow in

such case. In fact, the contract termination procedure is the same for all forms of employment contract and for all legal ways of its termination. Article 144 of the Labour Code specifies in detail the procedure that the employer must follow to terminate the employment contract. Thus, when the employer intends to terminate the contract, he / she must notify the employee in writing for a meeting, at least 72 hours before the meeting. During this meeting the employer explains the reasons for his dismissal and gives the employee the opportunity to express himself. In the following, 48 hours to 1 week after the meeting, the employer notifies in writing the termination of the employment relationship, specifying in writing the causes of this termination. If this procedure is not respected, the employee has the right to seek a compensation of 2 month salary before the court. It is important to note that undertaking such procedure is obligatory even in the case of termination of the employment contract with immediate effect. Thus, it does not differ according to the forms of employment contract and should be applied in any case, irrespective of the manner of termination of the contract.

Deadlines for filing a lawsuit by the employee

Article 146/2 of the Labour Code provides that the employee's lawsuit against an abusive dismissal from work can be filed within 180 days from the expiration of the notice deadline or within 30 days from the moment of the employee's knowledge of the abusive dismissal from work, when this moment is later than the end of the notice deadline. In my view, the 180 day deadline is a statutory term, which can be reset. It is the article itself that foresees the case when this deadline is reset which is the case when the abusive reason of dismissal is discovered after the expiration of notice deadline. With regard to the 30-day deadline, it is a preclusive term which ultimately time-bars the right of employee to file a lawsuit.

The remuneration for seniority is another compensation that the employee obtains in cases of employment termination. This institute is regulated by Article 145 of the Labour Code. In order to profit this remuneration, the employment relationship must have lasted for at least 3 years. The amount of this remuneration is equal to a 15-day salary for each full year of seniority, calculated on the basis of the salary that exists at the end of the employment relationship.

ii) Termination of employment contract with immediate effect.

The termination of an employment contract with immediate effect is regulated by Articles 153-156 of the Labour Code. The legal consequences that termination of the contract with immediate effect brings, are different from those of termination of contract by respecting the notice deadline.

In this case, the employer does not have the obligation to respect the notice deadline, as in the case when the termination of the contract is not with immediate effect. This comes due to the fact that the termination of contract with immediate effect applies only in cases where the employee has committed a particularly serious breach of his contractual obligations or has committed repeated violations in work, despite written objections of the employer. In this case, the employee's contractual violations are considered as "severe" as he is deprived from the "privilege" of having a notice deadline as a transitional period for finding another job position. It is precisely the nature of the violation that the employee has committed, which does not justify the continuation of the employment relationship even during the notice deadline.

However, if it is proven before the court that the immediate termination of employment contract is not justified by a particularly serious violation as required by Article 153/3 of the Labour Code, then the employee has the right to claim damages equal to a 12 month salary due to the termination of

the employment contract with immediate effect without a legal reason. In addition, the employee has the right to obtain the salary due for the notice deadline that should have been respected by the employer if the termination of the employment contract would not be terminated with immediate effect. The employee may be entitled also to remuneration for seniority or damage due to non-compliance with the procedure, as explained above. The time limit for seeking compensation to the Court by the employee is the same as when the employment contract is terminated by respecting the notice deadline (Article 155/4 of the Labour Code).

In conclusion, when faced with the situation of termination of employment contract with an indefinite term, without a legally reasonable motive, the damage that the employee may seek in court shall include the following:

- Salary due during the notice deadline;
- Up to 12 months salary compensation for termination of employment contract without reasonable motive;
- 2 months salary compensation for non-compliance with the contract termination procedure;
- Remuneration for seniority.

2. Fixed term employment contracts.

Employment contracts with a fixed term, in contrast with other types of contracts explained above in this paper, contain a clause which provides the time period during which this contract remains in force. This kind of contract ends at the expiration of the time provided by the parties, without the need for a preliminary termination. So, in the case of a fixed term employment contract, there are two ways how the employment relations may end:

- i. Termination of the employment contract with expiration of the term specified in the contract;

- ii. Termination of employment contract with immediate effect.

i) Termination of the employment contract by expiration of the term specified in the contract.

Employment relations governed by a fixed term contract are regulated by Articles 149-152 of the Labour Code. Termination of a fixed term contract by expiration of its term is a form of termination of a contract which does not require any additional procedure. Upon expiration of the term, the employer neither has to undertake the procedure of termination of employment contract as imposed by Article 144 of the Labour Code, nor has to respect the notice deadline as required for the contract with an indefinite term. It is understandable that these procedures are completely unnecessary, as the parties exercising their contractual autonomy right, have set the time when the legal relationship between them ends. In this case, the employee does not have the right to seek damage for the termination of the employment relationship, as such effect comes not because of the unfair and arbitrary actions of the employer but because this was the common will of the parties since the beginning of the employment relationship. Exceptionally, he may seek to qualify for the seniority remuneration if the employment relationship lasted more than 3 years,⁶ as explained in the first section of this paper.

ii) Termination of employment contract with immediate effect.

When the employer terminates a fixed term employment contract before the deadline stipulated in the contract, this action will be treated as an immediate termination of the employment contract. Unlike the employment contracts with an indefinite term, the employer cannot terminate a fixed term contract at any time, by only respecting the notice deadline.

⁶ See Article 152 of Albanian Labour Code.

Exceptionally, it can only terminate such employment contract in cases where the employee has committed a serious or a repeated violation of the contractual obligations arising from the employment contract. On the other hand, if the termination of the contract is done for other reasons than the ones set out in Article 153/3 of the Labour Code (which legitimize the termination of an employment contract with immediate effect) then the employer is obliged to pay damages to the employee, which are equal with the salary that would be due until the expiration of the term of contract. This provision is imposed by Article 155/1 of the Labour Code which stands that: *"The employee has the right to obtain the salary that he would have earned if the employment relationship had been completed at the end of the notice period provided by law or by contract or **at the conclusion of a fixed-term contract**"*

There are interpretations which state that besides the damage referred in the paragraph above, the employee is entitled to obtain damage remedy equal to up to 12 months salary due to the termination of the employment contract without a legally reasonable motive. We believe that this opinion is not right, since the term of a fixed-term contract itself dictates the moment of its termination and in this line, in our opinion the employee shall not receive more cash than he would have received in the case that the employment contract would continue to remain in force normally. The remedies provided by the labour law for the employee in the case of termination of the employment contract without a legally reasonable motive intend to protect the employee's financial interests at the highest possible, without entitling the latter to benefits which under normal conditions of employment continuation would not be generated. In the fixed-term contract the employee knows in advance the time when employment relationship and the financial benefit from the salary will be terminated. For this reason, we believe that as long as the employee is compensated with the amount of salary which

would be due until the expiration of the contractual term, an additional 12 month salary damage remedy would not only be unreasonable but also abusive. This stance is also reflected in many decisions of Tirana Court of Appeal and in this line we can say that there is a unified legal interpretation for the issue at hand.

As regards to the procedure of termination of the contract and the remuneration for seniority, the provisions applicable to the employment contract with an indefinite term are also valid for the fixed term contract with term. As mentioned above, the employment contract termination procedure must in any case be applied by the employer, regardless of whether the employment contract is with a fixed term or not, or whether it is terminated by legally grounded reasons or not. I would like to emphasize that, exceptionally, in order to terminate a fixed-term contract, it is not necessary to apply the procedure of termination of a contract of employment under Article 144 of the Labour Code.

Referring to the legal deadline within which the employee has the right to file a lawsuit against the employer to seek compensation for the termination of the contract without legally grounded reason, Article 155/4 provides that: *"If the contract is terminated without justified reasons, the employee has right to file a lawsuit against the employer, before the competent court, within 180 days from the day of termination of the employment relationship. In case the unjustified motive is discovered after the expiration of this deadline, the employee must file a claim within 30 days from the day of discovery of this motive."* This provision is identical to Article 146/2 which refers to employment contracts with an indefinite term, therefore the analysis made above for Article 146/2 also applies to Article 155/4 of the Labour Code.

As a conclusion, when faced with the situation of termination of employment contract with a fixed term, without a legally reasonable motive and before the expiration of the

contractual term, the damage that the employee may seek in court shall include the following:

- The salary that would be due until the end of the term of the employment contract;
- 2 month salary compensation for non-compliance with the procedure;
- Remuneration for seniority.

REFERENCES AND BIBLIOGRAPHY

1. Ardian Nuni, 2011, “Private Law – General Volume”, Tirana, Albania.
2. Artan Broci, 2018, “Individual Employment Contract in the scope of EU legislation”, Tirana, Albania.
3. Arta MANDRO, Roman Law, Volume III, Emal 2007, Tirana, Albania
4. A.Nathanaili, 1956 “E Drejta Civile e Shqipërisë përpara revolucionit popullor dhe pronësia e personave”, Tirana, Albania.
5. Flonia Tashko; “Termination of Employment Relationships; human rights 3 (23)-2000”.
6. Kudret ÇELA, 2012 “Labour Law”, Ilar, Tirana, Albania.
7. Labour Code of Republic of Albania.
8. Decision no. 19, dt. 15.11.2007 of United College of High Court.