

VIOLATIONS OF THE RIGHTS OF EMPLOYEES IN PUBLIC AND PRIVATE SECTOR IN KOSOVA

PhD. Muhamet BINAKU¹

Abstract

Persons who are in work, except rights also have other obligations. Rights arising from employment are rights determined by law, the company's internal acts and collective contract, but at the same time, they are rights guaranteed by the Constitution and international Convention. Judging by these criteria, fair labor relationship are treated as inalienable rights and unlimited. The employer, company and institution are obligated to respect and to allow workers to realize rights from employment which belong. In any case when the employer or institution does not respect the rights of workers, or have discontinued the realization of any rights, from labor relations comes up labor dispute. The labor dispute is a dispute that arises when violated the rights provided by law, from employment or when not carried out certain obligations to workers arising from employment or related to labor relations. In the case of labor dispute, or violation of any rights of employees arising from employment, are defined in labor law some mechanisms through which it can require the implementation of any right which he has offended.

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1. Introduction

The field of labor relationship and working conditions in Kosovo is presented as one of the most complex and important matters ranging from the preparation, information, monitoring the implementation of the legislation, found violations and actions taken in this field. While talking about labor relations, it's important to note that this issue is related to the business, and the meaning of "business" is dialogue, thus in labor relations it is very important the cooperation between employer who may be a natural or legal subject, a joint stock company or public enterprise and the other party that is employee. and other party is employee. The cooperation between subjects of the labor law, the employer and the other hand the employee have a great importance of doing the job properly, meanwhile, the relation with the workplace has an important role in everybody's life. It is important the role of employer in labor relations. If there is no a dependent labor relationship than cannot exist the labor relations that are very important for the progress of a society. The relationship between employee and employer is a service based relation, where both parties have rights and obligations. The employee is a natural subject who get paid for the performed work. Nowadays we are dealing with a global economy which is rapidly progressing and this makes the employee to specialize, be more flexible and motivated in order to adapt to growing market demands. The economic and social security as well is an important matter of human security. In this regard, the working right and the employees rights at work play an important role. A major influence in the birth and development of the labor law and labor relations had the various treaties, conventions that enable the protection of employees in the workplace, their non-discrimination on religion, nationality, gender or political beliefs as well as wage or overtime. Therefore, such relations are very important to the life and work of every person who enter in the labor relationship implementing the rights and obligations of the contracting parties based on legal provisions. Today the unemployment has become a life challenge, faced by almost all world countries. In particular, Kosovo is as well facing this problem where unemployment presents the percentage of unemployed from the entire capacity of the workforce in a certain area within a part or the whole country. Thus, this economic indicator shows the level of unutilized workforce in the economic process in Kosovo, where the unemployment rate is around 35% of the workforce that is able to work. The average age of the Kosovo population is about 27 years old, so it is young and active population. On this high unemployment rate, many factors have led. Considering that Kosovo has emerged from the war

¹ Muhamet Binaku - AAB College, Prishtinë, Kosovo, muhamet.binaku@universitetiaab.com.

with a partially destroyed economy and inadequate process of privatization of social enterprises inherited from the previous system, unemployment in Kosovo is mainly a consequence of the inherited economic development. A key issue is establishing an appropriate macroeconomic policy to provide conditions for operation of national labor market, which should be able to maintain the current level of employment and create preconditions for new jobs and new employment. The policy for creating new jobs, which means increased opportunities of Kosovars to produce work, should be come to attention as a key element of the policy for economic and social development. This strategy does not yet exist and presents a serious problem for establishing a logical correlation between economic, employment and social policy. This interaction would lead to a more appropriate policy for sustainable employment growth. Labor market policies need to expand employment opportunities for individuals and increase job demands to absorb a flow of new entries into the market. The labor market in Kosovo has some special features compared with other transition countries. Almost all processing data show that a third of the population is under 16 and over 50% of the population is up to 24 years. Because of this, there are significant entries of individuals in the labor market. Considering the high unemployment rate, it should be mentioned that most individuals entering the labor market are among the groups of unemployed. In addition, due to less opportunities to find a job, there are many people who withdraw from the labor market. In regard of movements in the workforce, Kosovo is characterized by significant entries of individuals into the labor market (most are among the groups of unemployed) and significant exit from the labor market. Another noted problem to meet market needs is the preparation of jobseekers in the professional aspect. The majority of jobseekers is not prepared for the labor market in new economy conditions because the country education policies instead of raising the capacity for vocational education of new generations based on the labor market needs, by far the policies are oriented towards providing the youth with diplomas, but not preparing for the actual labor market needs. Day by day social problems becomes more pronounced, which require an increased mobilization of society to face with this challenge, concretely to open new jobs. An unemployment rate is an indicator of overall economic welfare. A low rate of unemployment is indicator of a strong economy where jobseekers can find the job quickly, while higher rate may indicate a weaker economy. On the other hand, when the unemployment rate is high the employers can easily find the employees. Considering the mentioned circumstances, a stressful problem in society today is unemployment. Also, on the Labor Law are stipulated the obligations provided by the rights and obligations between the employer and employee, as in the private as well in the public sector in the Republic of Kosovo. It also regulates few employees rights as in public and private sector that are highly violated in Kosovo. The applicability of this law in practice has often faced difficulties in the private sector when it came to the realization of the rights on maternity leave, working hours, fixed or not fixed-term contracts or those with specific tasks. Despite these difficulties, the Labor Law is welcomed by employees and employers in the private and public sector. In the public sector the implementation of labor law is almost strictly applicable, the innovations in this law are penalty measures for individuals who do not implement it. Taking into account the fact that unemployment is one of the most serious macroeconomic diseases and a serious social problem, then the state objective is to hold it to normal limits. By employment we mean that state of the economy in which all those who actively seek job are employed, where the institutions are obliged by labor legislation to ensure these rights, that employees in labor relation to not have pressure or fear of job termination in disrespect of legal proceedings, where the state is the guarantor of the employees rights with economic and social state policies.

2. Violations of the employees rights in the private sector

In Kosovo is being developed a continuous effort to create legal infrastructure which would regulate the contractual relations between employers and employees, by which the rights and obligations of the labor relationship are defined. The labor relationship in private and public sectors is regulated by Labor Law. Also, by Law on Labor Inspectorate of Kosovo is established the

mechanism for monitoring the implementation of the law provisions and regulations that regulate these relationships between employers and employees as parties. Kosovo has now started to take the first steps for the development of sustainable economy according to market economy. It is evident that the employers have no business tradition, have no sufficient financial sustainability, have limited investment opportunities, have small or a very small knowledge for business development, limited knowledge about the advantages of doing business by respecting the legal provisions, as well as a high degree of unemployed that is about 35%, etc., have led these employers as far as possible to try to escape from legal obligations. In its mission, the Labor Inspectorate, besides having the most effective monitoring of the law provisions and regulations, has also the role to advise the employers and employees for the implementation of legal provisions. From the statistics taken in the Labor Inspectorate of Kosovo, it is noticed that the number of violations of certain labor law provisions is still in high degree, in both sectors.

Failure to adhere to legal provisions of labor law mainly include:

- failure to respect the working hours (*longer hours of work*),
- leaves (*the breaks needed within 24 hours, weekly rest, annual leave, medical leave etc.*),
- night shift (*non-payment of the difference for working hours in the night shift*),
- failure to notify the employee on time about the non-renewal of contract,
- maternity leave (*non-payment of maternity leave*),
- termination of the employee's employment contract by the employer without prior notification,
- failure to comply with the recruitment procedures for candidates in the public sector,
- failure to respect the minimum wages etc.

As for the above-mentioned violations in the private sector, the following commercial entities are the main violators: construction companies, catering (hotels), companies dealing with physical security of facilities, companies for hygienic and technical maintenance of facilities, banks etc. In the construction companies the employees often work without contracts and are not registered in TAK (Tax Administration of Kosovo). These are informal workers who do not enjoy any rights as employees.

The Employers of these companies, even if they sign contracts with the workers, they sign them for a limited period i.e. for a duration of 3 -6 months. And like this they manage to avoid the obligations i.e. paying the benefits in accordance with the law and at the same time they exert pressure on the employees who then do not dare to seek the realization of their rights, because with the expiration of their employment contracts, their contracts would not be renewed. This is because the demand and supply in the labor market are in great disproportion. A quite disturbing phenomenon in the private sector is that this sector doesn't adhere to the minimum wage requirements, despite the issuance of a decision by KES (Social Economic Council) wherein it determined the minimum wage. This phenomenon can especially be seen among the companies dealing with physical security of facilities and among the companies responsible for hygiene maintenance in the government and public buildings, and these companies are not only adhering to the minimum wage requirements but they are also working with lengthy working hours of 10 or 12 hours a day and they do this in contradiction with the law that specifies the daily working hours. Another problem is the maternity leave, especially in the private sector, and this is because the contracts are fixed-term contracts and when the employee is identified as pregnant, the employer, without any specific reason and without the assessment of performance, doesn't renew the employee's contract. This happens because the employers want to avoid the financial obligations (paying the salary while the mothers are on leave, in the amount prescribed by the Labor Law). In this case the mothers also lose the benefits guaranteed by law and which are the responsibility of the state. The working hours during weekends and during holidays are not paid to the employees in accordance with the provisions of labor law i.e. with an additional amount. However, there seem to be improvements in the level of compliance with the law, and this is thanks to the engagement of relevant institutions responsible for monitoring the implementation of the relevant legislation in this area and especially with the intensification of the activities of the Labour Inspectorate, which,

through regular inspections, consultations, guidelines and also by imposing sanctions from time to time, has contributed significantly in raising the awareness of the employers about the implementation of legal provisions. This results in the increase of employees safety at work, their motivation for work increases and in the process of work there is improvement in the relations of contracting parties i.e. employer – employee. Seeing the gaps in the law that become an obstacle to its implementation, in accordance with its function the Labor Inspectorate gives concrete proposals for amendments to the current law. The role of the labor inspectorate is, among others, to provide support to employers and employees in the exercise of rights and obligations arising from working relationships i.e. doing this by applying the law. The priority of labor inspectorate is to support the businesses in their development and in no way to become an obstacle to their development. The permanent aim of the labor inspectorate, through the supervision of law enforcement, is to give the contribution in the creation of new jobs, creating better conditions for work, creating conditions for safe and healthy jobs, enabling greater motivation for work, reduction of stress at work etc. The vision of labor inspectorate is the full and strict implementation of: labor law, the law on occupational safety and health, and other legal acts; to eliminate the possibility of accidents occurring during work, create jobs with good and healthy working conditions, to eliminate stress at work etc. Thanks to the efforts of the institution, today the employees in the private sector, at the moment they notice that the employer violates any of their rights, they submit a complaint to the Labour Inspectorate to review the legality of this.

3. Violations of the rights of workers in the public sector

In accordance with the applicable law in Kosovo, the following sectors are considered as public sector: education, health, state-owned public enterprises and public enterprises in the ownership of the municipalities of the Republic of Kosovo. The legal provisions and the provisions of bylaws, which regulate the working relationships, are being respected at a much higher level in the public sector compared to the private sector. However, the violations of workers' rights are evident. The more significant violations occur with the recruitment of new employees. Whenever there is a need for new employees in public enterprises, the public sector employer is obliged to make a public vacancy announcement. The public vacancy announcement is a legal means which declares the employer's offer for the participation of interested people in the competition for the vacancy or vacancies announced. The vacancy announcement provides the job description, criteria for the job, the working conditions for that job, the salary that the employer offers for the respective position and the criteria that must be met by the people interested in this vacancy announcement. The vacancy announcement shall be published in print media or electronic media in written form, in the three official languages in Kosovo. Eligible are all citizens of the Republic of Kosovo, who have reached the age for employment and who meet the criteria required in the vacancy announcement. The Administrative Instruction No. 14/2011 regulates the terms under which an employment shall take place in the public sector. The most common violations are due to nepotism, political influence and establishing working relationships without adhering to these procedures. The requests to Labor Inspectorate for inspection regarding the realization of the rights guaranteed by law, mainly consist of non-observance of recruitment procedures, failure to invite the candidates for interview despite the fact that they met the criteria set out in the vacancy announcement, the candidate deserving the position is not selected in accordance with defined criteria, but the selection is done with the dictate of people who deal with politics etc. The reports of the Labour Inspectorate show that a significant number of requests of the parties, for the realization of the rights for the working relationships is resolved in their favor, either by annulling the selection of candidates who were selected irregularly and in violation with the law, and obliging the employer to re-announce the vacancy, or by using punitive measures against natural or legal persons who do not follow the current legislation. In legal proceedings, every natural or legal person who commits illegal acts while recruiting new employees at work shall be punished with a fine of one hundred (100) up to ten thousand (10,000) Euros.

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