

CREATION AND DEVELOPMENT OF THE LAW OF EMPLOYMENT AND LABOR LAW IN KOSOVO

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ABSTRACT

The right to work is one of the most important rights, economic and social human rights and fundamental principle of labor legislation. Work is one of the challenges of Life, through which one humans passes during the whole life only to provide existence for themselves and their families. The right to work is exceptional importance for every individual, as such represents a precondition and guarantee freedom, the realization of personality development. People without access to jobs, are dependent on social assistance or no perspective. In the development of labor law there is a large number of constitutions that guarantee everyone has the right of respect for his personality at work, conditions, safe and healthy at work, protection needed in daily and weekly work, vacation pay annual job fair compensation, and legal protection in case of termination of employment. These rights are fundamental and nobody can avoid. Employment is the challenge of each national ligjislacion to provide a dignified life for citizens and society in general.

Keywords: East, difficulties, challenges, employment, responsibility.

INTRODUCTION

The right to work as a separate branch of law, was developed relatively recently, with the beginning of the nineteenth century, being separated from the civil rights. This process of separation from civil law starts with state intervention in labor relations. In these changes, in terms of strengthening state intervention in labor relations, had organized pressures impact on improving employee and labor humanity. With the introduction of trade unions in different countries like England in 1825, France 1864, Germany 1900, Austria 1910 etj. organized pressures strengthened the ruling structures in order to improve working conditions and labor relations humanity, which until then characterized by the severe exploitation and employees were at the mercy of employers. In the beginning the requirements consisted in cutting working hours and the prohibition of child labor, which demands were being gradually expanded. State, ispecially the ruling elite, to the stability of the social order and maintaining power, was forced to intervene in labor relations issues and take defensive measures regulating the straight and more humane labor relations. In these circumstances, government intervention in matters of employment is developed in two basic stages: The first phase of state intervention in labor relations matters has done at the period of accumulation of capital, which has had intended to protect employers. As the second phase of state intervention in matters of labor relations is done at the period of the industrial revolution, where the relevant legislation has been directed at the protection of workers from excessive exploitation.¹ In the period between the two world wars, there is a rapid development of labor legislation. In this

¹ Herman, Vilim – Cupurdija, Milorad "Fundamentals of Labour Law" f.1 Law Faculty in Osijek-Kroaci

period, in many countries, we have definitive formation of labor law as separate branch of law. Special importance of the development of labor law represents the foundation of the International Organisation in Paris in 1919.² Given that the constitutional and legal position of Kosovo has changed through the decades after World War II and given the fact that most of these adjustments, Kosovo had the capacity to extract the laws is perfectly understandable that the issue in question, as well many other issues, have been the subject of confusion and combination of legal norms. As a result of these developments, Kosovo has undergone a series of laws, issued in a timely manner. After 1945, Yugoslavia has enacted provisions which in many ways is the issue of employment. First constitution after the Second World War on the People's Federal Republic of Yugoslavia (RFPJ) was issued on 1946. This constitution consisted of the fundamental principles concerning the rights of labor relations. In addition to this they brought these bylaws -Decree on Establishment and Termination of employment in 1948; Decree for the Protection of Pregnant Women and Mothers employed in 1948; - Decree on Disciplinary Responsibility and Materials Workers in vitin1949; This period of development of labor law, administrative government bears the stamp of the country's economy, while the provisions that regulate labor relations have been modeled Soviet legislation.

In December 1949, adopted Guidelines for the Establishment and Operation of the Council of Workers in State Enterprises and Commerce. This instruction was given the opportunity employees have more complete information on the performance and problems of enterprises, have a direct impact as production problems and other governance issues in the enterprise.³ On 27.6.1950 adopted the Law on State Governance and Economic Enterprises and Senior Economic Associations of Workers Collectives.⁴ The objective of this law has been, that govern social production workers directly. With the application of the selfgovernance, the Employee Councils have taken important decisions regarding the business, earnings and other matters of economic importance. Employee Council has appointed and sacked Workers Collective, for a period of one year. Governing Council manages the economic organization, namely high economic association, and to work itself responded Employees Council and the competent state bodies. Director by position, has been member of the Board. Employees Council is composed of 15 to 120 members. Number of Employees Council members to any economic enterprise, is defined by the regulations of the company, depending on the number of employees and the structure of economic enterprise. Employee Council elections were held at the beginning of each year. People's Government of the Federal Republic of Yugoslavia, for some certain branches of economy could also set other terms of the Employees Councils election. Enterprises that had fewer than 30 employees and officers, employees collective as a whole has made the Employee Council. In order to advance the principles of self-government was adopted Law on Labour Relations in 1957. This law represents the first codification of the right to work in the former Yugoslavia. Continuity of legal provisions governing the right to work is the first law of Labour Relations adopted in 1961⁵. This law has regulated labor relations at the level of Yugoslavia and has had a few additions and changes. The first text purging of the Basic Law of Labour Relations was published in 1966⁶. But the law noted above, has undergone several additions and changes in 1966, 1968 and 1969. Based on additions and changes mentioned above, in 1970 followed the new text of the Basic Law for purging Working Relations.

² "Portal lawyer" Bosnja e Hercegovina, f.2, www.bh-pravnici

³ WWW.znaci.net/00001/138_81

⁴ Official newspaper " of RFPJ Nr.43/50

⁵ "official newspaper" of RFPJ Nr. 17/61

⁶ "official newspaper" of RSFJ Nr.12/70

- With provisions of the abovementioned Law stipulates that:
- Employees based on their free will, establish working relationships in the working organisation, and based on their free will they can interrupt their employment relationship;
- establishing working relations with the employee organization, employees become equal members of an employee organization, and acquire rights and take obligations deriving from employment;
- employee organization governs labor relations in the Statute and other acts, which are approved directly or through government bodies;
- Under the provisions of the Law in question, in principle employees create working relationship indefinitely, but at certain times it happens only in some specific cases;
- The duration of annual leave is scheduled from 14 days to 30 days;
- Maternity leave is given for a period of 105 days.

The period in which constitutional amendments appeared in 1971, especially amendments XXI and XXIII, which were called the 'amendments to the employees' marked the beginning of a new phase in the development of labor legislation in the territory of the former Yugoslavia⁷. Based on amendments in question, for the first time in its history, Kosovo approves Law on Mutual Relations of workers at United Labour and Employees Labour Relations.⁸ United Labor Law was passed in 1976 and there were additions and changes in 1988. This law is often called the 'Constitution of the employees'. Because of the weight has been that at the time it is implemented will do a more detailed analysis. This law contains 671 articles divided into six parts:

- I. General Provisions;
- II. Social and economic relations employee of the The United Labour;
- III. Self-organization of The United Labour;
- IV. Realization of self-government employees at The United Labour;
- V. Sanctions; and
- VI. Transitional and final provisions.

Based on the provisions of the said Law, employees in the organization adopt General Self Act, which regulates measures and criteria for revenue sharing clean employee organization⁹. Employees working in the organization make revenue sharing, for personal income and united consumption, shared pro rata contribution to the realization of such benefits. Employees who are employed, in accordance with the law, are entitled to health insurance and other rights in case of illness, reduction or total loss of ability to work. Female employees employed have special rights in terms of protection at work. Also new employees employed enjoy special rights regarding protection at work. Employees who have temporarily terminated contract, in accordance with legal provisions, have the right to health protection in the event of illness, causing disability, the right to material security and other rights while they are temporarily out of work. Anyone who meets the conditions set forth in equal conditions can create a working relationship. The working relationship can create even people who attains the age of 15 years and are capable of the health aspect. Disabled persons who are trained to perform certain tasks, are considered to possess medical skills to perform such tasks. Basically, labor relations established on indefinitely.

⁷ United Labor Law Article ,115, 116,166, 168, 177, 189, 194, 200-204, 205, 208, 209,211

⁸ Starova, Prof. Dr. Gëzime, "The right of labour law" f. 58, edition of "Logos-A" Scopje, 2004

⁹ Official newspaper" of KSAK Nr.13/74 and 22/75

Exceptionally, definite employment relationship is created only in cases prescribed by law. The employee creates working relationships on performing certain duties. During the course of employment, the employee may be transferred to another job position within the organization, who answered his professional preparation and ability to work under the conditions and criteria set by the general act of selfgovernance. Employees are entitled to a break during working hours, between the two days of work, weekly rest, annual and other holidays, regardless of the relationship of the work is full time or part time work. Special protection is provided to pregnant women from heavy work, harmful influences at work, work longer than full-time work, night work, the right to maternity leave, the right to part-time work and other rights established by law; Disciplinary Responsibility observes Disciplinary Committee, which is composed of the chairman and members, who were elected by secret ballot by all employees of the organization. Disciplinary proceedings may be initiated by the council of employees, employee organization leader, self-control body, social lawyer of selfgovernance, unions and the competent authority of socio-political community. The employees alleged to have committed dereliction of job, it should be submitted requests for initiating disciplinary proceedings and that it should have informed the union. Against the decision of the disciplinary committee, the initiator blame employee and disciplinary procedure have had the right to appeal to the employee council.

If the employee council decision complainant is not satisfied, or if the employee council has not decided within 30 days, the complainant within 30 days following had the right to address the Labour Court of the United Fundamental to protect their rights. If the employee at work or related work has caused damage to the employee organization has been obliged to damage to declare. If the damage was caused by more than one employee, each employee has offset the damage caused. If there is not possible to be defined portion of damage separately for each employee, in this case the damage is compensated in equal parts. If the employee has suffered damage at work or related work is entitled to request from employee organizations awarding damages under general principles of liability for damage. An employee is terminated in these cases if declared in writing that it desires to terminate the employment relationship; if with the authorized body of the employee organization enters into agreements on termination of the employment, if he refuses to work in the workplace in which is determined in accordance with legal provisions and the general selfgovernance act. Employees can be terminated the employment if in the case of the creation of employment has introduced or inaccurate silent regarding working conditions, and these conditions have been influential for the performance of certain works; does not perform work obligations, and thus harms the interests of other employees or employee organization; improver who has established working relationship indefinitely, if after the expiry of the internship does not exceed the professional exam. Employees working contract terminates by operation of law if he refuses to sign the statement for accepting self-governance agreement for the joint labor union organization -if in the manner prescribed by law, concluded that it is completely unable to work; if on the basis of a final judgment of the court, or to an act of the competent authority is prohibited performance of duties and relevant work, while the employee organization has no other work suitable for to collate; whether because of sentence must be absent from work for more than six months; if the measure of safety, educational measures or safeguards for the usual time longer than six months, and intern who has established working at certain times only for conducting internship, labor relations terminates on the day of completion of the internship. With transitional and final provisions of IPR (LPB) provided that the entry into force of this Law, the SFRY Republics and Provinces are obliged to bring

their laws which regulate labor relations, but not later than 31.12.1977¹⁰. First Law on Labor Relations, after issuing the Constitution of the Socialist Autonomous Province of Kosovo, was announced on 12.27.1977. With this law, are articulated in a more concrete way some issues that have been regulated by the United Labour Law, or are discussed those issues under the provisions of IPR, have remained regulated by relevant laws of the republics and autonomous provinces of Yugoslavia at that time. This law has regulated these issues: means of establishing working relations; preliminary inspection of working skills; assignment of employees at certain jobs. Under Article 24 of the Law on amendments to be changed and accomplished of the Law on Labour Relations. Legislative and legal committee of the Assembly of the Socialist Autonomous Province of Kosovo, in the meeting held on February 20, 1989, has set purging text of the Law on Labour Relations. Revised text of the above mentioned Law has resulted from: Under Article 24 of the Law on amendments to the Law on Labour Relations Commission, legislative-judicial The Assembly of the Socialist Autonomous Province of Kosovo, in its meeting held on February 20, 1989, purging defined text of the Law on Labour Relations, Revised text of the abovementioned Law has resulted from: Labour Relations Law 'Official Gazette of SAP' (Socialist Province of Kosovo Autonme) No.24 / 84, Law on amendments to the Law on labor relations ' Official Gazette of SAP (KSAK), no. 14/87. Law on Amendments to the Law on Labor Relationship 'Official Gazette of SAP, Nr46 / 87. Law on Amendments to the employment relationship 'Official Gazette of SAP, NR15 / 88, and the Law on Changes and amendments on Labour Relations Law 'Official Gazette of SAP' No. 32/88. After the constitutional changes in 1969, and after the first approval of the Constitution of Kosovo in 1974, until the beginning of 1981, this period is known as one of the most successful years in Kosovo, in the political, economic, cultural, educational. After the year 1981 and onwards, the laws that were in force in Kosovo are not implemented in full. In this period, leaving aside the legal provisions, on the basis of party positions, Serbs and Montenegrins were hired without conducting the announcement procedure. Even were employed in the same way Serbians and Montenegrins which have not emerge and live in Kosova. With the pretext that allegedly to prevent the deportation of Serbians and Montenegrins, the goal was to increase the number of Serbian and Montenegrin inhabitants in Kosova.¹¹ After violent suppression of Kosovo's autonomy, Serbia applied in Kosovo violent measures starting from 05/07/1990. In order to discrimination on national, Serbia adopted the Law on Labour Relations in Special Circumstances, which Law applied only to Albanian employees, until the end of war in Kosova. Based on the provisions of this Law, more than 135,000 employees are dismissed from their jobs¹².

The law in question, includes working organizations of administrative bodies, and in all organs where applicable Law on State Administration, enterprises, social activity organisations, and other working organizations, with a word all working organizations in Kosovo. In 1989 the Assembly of the Socialist Federal Republic of Yugoslavia approved the Law of Fundamental Rights on Labor Relations. This law is changed and amended in 1990. With this law are suspended all legal provisions that regulate the employment relationship, and all powers are concentrated in the enterprise violent body, including the creation of employment, disciplinary, termination of employment, change of working position and all other matters. In 1989 the Assembly of the Socialist Federal Republic of Yugoslavia approved the Law of Fundamental Rights on Labor Relations .This law is then changed and

¹⁰ "Official newspaper" of RSFJ Nr.53/76 dhe Nr.57/83,

¹¹ Osmani, Dr.Jusuf, "Kosovo and Serb colonization /13" f. 4.-Wikibooks

¹² Hasani, Mr. Safet: "Serbian plans against Albanians in Kosovo" (www.nacionalalbania.al/feed/).

amended in 1990. But this law is not applied in Kosovo until the end of the war, when there was to do with Albanian employees who have left without being dismissed. UNMIK in Kosovo was set by Resolution 1244/1999 of the Security Council of the United Nations. As the first act UNMIK brought the Regulation 1999/1 which in Article 4, establishes application of law in Kosovo. According to this, it is said 'Kosovo laws which were in force in its territory before 24 March 1999 shall continue to apply in Kosovo if not inconsistent with the standards mentioned in Article 2, with the fulfillment of the mandate given to UNMIK by Resolution 1244 (1999) of the Security Council of the United Nations or with this regulation or any other regulation issued by UNMIK'. UNMIK Regulation 1999/1 filled with UNMIK Regulation 1999/24, Article 1, has provided the laws applicable in Kosovo. According to them the applicable law is:

- a) The regulations promulgated by the Special Representative of the General Secretary instruments issued thereunder, and
- b) Law in force in Kosovo on March 22, 1989.
- c) Laws issued after March 22, 1989, provided that their provisions do not have a discriminatory character and not be in violation of the provisions of international conventions and practices, this provision which can be applied in practice as an exception under Article 1.2 of the Regulation. In such circumstances, the sphere of employment in Kosovo has been quite complex and this for two reasons:
 - the first reason was the lack of a unique law that regulates issues of labor rights in the most complete way, and
 - the second reason was the issue of the complexity of the provisions applicable in this area, which largely prevents avoiding the collision of norms and legal uncertainty.

With the installation of the international observation mission in Kosovo - UNMIK, in 2001 passed Regulation 2001/27. This Regulation entered into force in October 2001, before the provision of institutions of self- government (PISG). Regulation No.2001 / 27 for The Essential Labour Law in Kosovo, with a total of 28 articles, has access on employees rights of employment relations, in a very general way, it offers a choice that represents the minimum on legal protection of the workers right on employment relations. After the establishment of the PISG (IPVQ-ve), the Government and the Assembly tried to legislate a more advanced Labour Law, but without success. The reasons they gave for not passing a Labour Law, were, high financial cost of the law, underdeveloped economy, foreign investment, the pressures of the International Monetary Fund, etc. Union of Independent Trade Unions of Kosovo, Kosovo Government (Ministry of Labour and Social Welfare) and the Chamber of Commerce of Kosovo, in 2005, adopted the General Collective Agreement of Kosovo, in order to advance the rights of employees with the General Annex to the Agreement, on date 01.07.2005, the social partners have agreed that the contract in question begin to apply from the date 01.07.2005. But with various excuses, and referring mainly to the lack of finances, this contract is implemented very little, not to say never implemented. However, the Assembly of Kosovo, on 01.11.2010, approved The Labour Law No. 03 / L-212 with the entry force of the Constitution of Kosovo in June 2008 creates a legal hierarchy. Kosovo Constitution in Article 16 speaks of the legal hierarchy, which states 'The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts must be in accordance with this Constitution. Article 19 of the Constitution regulates the implementation of the provisions of international agreements. Point 1, Article 19 states: International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are applied directly, except when they are not self-executing and their application requires the

adoption of a law 19. While paragraph 2, Article 19 states: 'Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo'. In order to protect persons with disabilities, was approved Law No. 03 / L-019 for Training, Vocational Retraining and Employment of People with Disabilities.

REFERENCES

- Herman, Vilim – Cupurdija, Milorad “Basics of Labour Law” f.1 Law Faculty in Osijek-Kroaci
- “Portal lawyer” Bosnja e Hercegovina, f.2, www.bh-pravnici
- WWW.znaci.net/00001/138_81
- Official newspaper “ of RFPJ Nr.43/50
- “Official newspaper” of RFPJ Nr. 17/61
- Official newspaper” of RSFJ Nr.12/70
- Official newspaper” of RFPJ Nr: 52/66, 26/68, and 20/69
- United Labor Law , article ,115, 116,166, 168, 177, 189, 194, 200-204, 205, 208, 209,211
- Starova, Prof. Dr. Gëzime, “The right of work” f. 58, edition of “Logos-A” scopje, 2004
- Official newspaper” of KSAK Nr.13/74 dhe 22/75
- “official newspaper” of RSFJ Nr.53/76 dhe Nr.57/83,
- Hasani, Mr. Safet: “Serbian plans against Albanians in Kosovo” (www.nacionalalbania.al/feed/).
- official newspaper” of RSFJ Nr.60/89
- official newspaper” of RSFJ Nr.60/89
- official newspaper ” of RSFJ Nr.42/90
- Official Newspaper” of Republic of Kosova Nr.90/2010
- Official newspaper” of Republic of Kosova Nr.47/2009)