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Juridical Evolution of the “Decent Work” Concept in the Albanian Labour Legislation

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Abstract

The development in workplace relationships in our society demonstrates the need to respect human rights and freedoms at the work place, the so-called essential guarantees for 'having decent work and dignity in the workplace'. Thus we can detect that the “decent work” concept takes place in the dimensions between the new demands of a country’s job market, in respecting the important principles and values, such as the principle to ban forced work, the principle that bans discrimination in the work place, the principle of equal pay, the freedom of association principle, the principle for comprehensive protection in the work place which is coherent to the development of current issues, such as the need to defend one’s rights in the work place. Considering the current development of the international labour law and in particular the need to develop the concept of ‘decent work’ now an actual interlacement is needed between the respective legal framework and the best policies adapted in order to meet the legal goals of a country in the best way possible.

Keywords: labour rights, decent work, forced work, employment, freedom of association

1. Introduction

The legal labour relationship is a special judicial relationship which are now legally consolidated because of the special nature of the judicial elements it entails.

Besides the qualifying judicial elements in the workplace relations, the most important principles that the labour legislation is based on¹ the comprehensive variety of labour rights guaranteed give this legal framework special judicial pattern.

In the same manner, social and technological evolution enable not only the detection of what the dynamics in the respective legislation are, but they also present the needs to adapt to the coherent development of legal principles and concepts.

The “decent work” concept has already been presented in a series of international acts, and it can be treated as the goal or the motto of improving working conditions and sustainable development. (“Decent work is not just a goal, it is a driver that of sustainable development.”²)

¹ Here we add: principle of non-discrimination, principle of equal pay, principle for banning forced work, principle for general protection in the workplace

² Guy Ryde, ILO Director-General, “Decent Work and the 2030 Agenda for Sustainable Development”, <https://sustainabledevelopment.un.org/post2015/transformingourworld>

'In 1999, the ILO set itself a new goal "Decent Work for All", which aims to secure decent work for men and women everywhere. The objective is the creation of not just jobs, but jobs of acceptable quality'.³

Thus we can detect that the "decent work" concept takes place in the dimensions between the new demands of a country's job market, in respecting the important principles and values, such as the principle to ban forced work, the principle that bans discrimination in the work place, the principle of equal pay, the freedom of association principle, the principle for comprehensive protection in the work place which is coherent to the development of current issues, such as the need to defend one's rights in the work place.

2. Judicial Analysis of Some Principles and Freedoms in the Workplace According to the Legal Frame in Albania in Regard to the Evolution of the 'Decent Work' Concept

The evolution in workplace relationships in our society demonstrates the need to respect human rights and freedoms at the work place, the so-called essential guarantees for 'having decent work and dignity in the workplace'.

In regard to the main legal guarantees in the workplace, the Constitution of the Republic of Albania sanctions the right to work and to freely choose a profession, the freedom of association, the right to go on a strike, the right for social protection and it guarantees the principle of banning forced work and discrimination in the workplace.⁴

Nowadays, the Albanian labour legislation regulates completely the workplace relations and guarantees the protection of the employees. The Albanian Labour Code⁵ as the main corpus of the regulating articles for the workplace relations provides the main rights in the workplace as well as the main principles.

International Labour Organization, in cooperation with other famous international bodies/institutions which focus on the constant global economic growth rhythm through sustainable improvement of employment and working conditions, expole the always changing problems that come up from time to time, and summarize them in the synthesis of common interactions taken in order to better the living conditions.

We can thus conclude that decent work is a concept that has been integrated in every labour rights' principle, and in each guarantee or essential labour right and as such it needs constant adaptation of the legal framework, it needs policies and special strategies in the employment sector to evolve in complete accordance with the demands of economic, social and cultural developments of a country.

2.1 The right to work and banning forced work

The right to work for each individual is the right that guarantees the chance to ensure means to live through legal work and it refers to employment policies and generating new work in the job market. The legal framework that incites employment and vocational training⁶ provides the main ways for the government to intervene in the job market, including active employment policies such as: regulating the employment agencies activities, programs to generate new jobs and programs that offer vocational training.

Based in data by the Statistics Institute, during the second trimester of 2019, the official

³ See "Decent Work and Development Policies", Gary S. Fields, Cornell University, *International Labour Review*, Vol.142 (2003), No 2, p.23

⁴ See *Constitution of the Republic of Albania*, approved by Law No 8417 dt 21.10.1998, amended, respectively articles 18, article 26, article 49, article 50, article 51

⁵ *Labour Code approved in 1995, amended by Law No 8085, dt 13.03.1996, by Law No 9125, dt 29.07.2003, by Law No 10053, dt 29.12.2008, and by Law No 136/2015 (the latter came to power on date 22.06.20016)*

⁶ See *Law No 15/2019 "On Inciting Employment", approved on dt.13.03.2019, and Law No 15/2017 "On Professional Education and Training in the Republic of Albania", approved on dt 16.0.2017*

unemployment rate in Albania, for the population over 15, is 11.5 %. For males, the job market participation rate is 15.9 % higher than for females⁷.

As stated above, the job market in Albania is characterized by the lack of stability because of the concentration of the number of young people in choosing certain professions, the low level of salaries in the country and the emigration fluxes.

Despite the fact that the National Strategies has as one of the goal, to incite decent work through fruitful policies in the job market including modernizing the service offered by the National Employment Service and interinstitutional cooperation with all the social actors and partners⁸, the problems in the job market and the issues regarding gender equality in the workplace seem more evident and much more complex.

Meanwhile the employment policies should be included in a completely reformed agenda, which deals with current issues, minors are still abused in various forms of employment and unpaid jobs continue to be among the most sensitive employment issues.

The Albanian society has gone through the roughest dictatorial regime, in which the principle that bans forced work was violated in all forms and it was instead the opposite of it that was pushed upon all social classes, despite the manner in which it would be disguised and the decorative 'strategies' they used to achieve that.

As mentioned in the document published by the Authority for Informing on the Former State Security Service Documents: "the official goal of keeping political prisoners in jail was to 'rehabilitate and educate them' through suffering and labour"⁹.

The Constitution, the international acts that were ratified in Albania regarding banning forced work, as well as the Labour Code have legally engraved this important principle that eradicates all forms of forced work, including the worst forms of minors work, however, informal work, the economic need and the deep problems in regard to implementation of law, including the principles that are part of the legal framework remain present and inseparable part of the big issues of a society that is still transitioning, since 1990.

Legally, forced work is banned in all its forms, including every job or service demanded by an individual without his consent, under threat of whatever punishment¹⁰ and also hiring children under 16 is banned¹¹ and also considered a criminal act according to the criminal legislation.

Considering that in 2010 Albania has reported very high numbers of children (from 5-17 years old) that have been victims of various forms of work abuse¹², a deep analysis of the social and legal issues remains a contemporary case to be made.

Thus, decent work chrystalized and formatted in the framework of respecting principles remains a comprehensive concept which in its implementation is still far from expectations considering the wide array of social problems which are inevitably intertwined in the low level of law implementation.

2.2 Health protection at the workplace

Protection and safety in the workplace is another important Constitutional and legal principle and

⁷ See: www.instat.gov.al, "Quarterly Survey for the Work Force, II Trimester, 2019"

⁸ National Strategy for Employment and Training 2014-2020, see p. 61, Chapter 3: "The goals of the policy for major products in developing employment and skills"

⁹ Authority on Information for the Files of the Former State Security Institution, "Study Frame on the Prison system, banishment and forced labour during the communist regime in Albania focused on founding a Commemoration Museum in the former-camp of Tepelena", Academic Beqir Meta, Dr. Ermal Frasheri, Tirana, November 2018, see: p. 28

¹⁰ Labour Code, Albjuris 2017 Publishing, Article 8/1, p. 11

¹¹ Labour Code, Albjuris 2017 Publishing, Article 98/1, p. 73

¹² INSTAT, ILO, (IPEC-International Programme on the Elimination of Child Labour) "Children who work in the Republic of Albania, the results of the national study on children labour in 2010", Tirana, July 2012, see p.10: "It's estimated that in Albania, 54 000 children aged 5-17 years old work. This figure represents 7.7% of the child population in this age group".

another aspect that deserves great attention during this short summarizing analysis.

Protection in the workplace is a comprehensive concept and principle in the Labour law as it encompasses all the aspects of protections for employees hired in a workplace, including their salary, working hours and resting hours, working conditions, protection of special categories of employees, rights granted by the statute at the work place, the legal chance to change or terminate the work relations as well as the right to equal treatment and freedom of association.

However, when protection in the work place is directed towards the working conditions and safety, this legal concept approached more the concept of protection of life and health of the employees in their workplace.

In the Albanian Labour Code safety in the workplace and the working conditions are regulated in a special chapter, which contains general provisions and special articles regarding safety in the workplace.¹³

In the framework of the harmonization of the Albanian legislation with European Union laws, as an explicit and necessary need in fact, a special law on safety in the workplace brought about the implementation of the novelty principles that had been lacking in the field, along with prevention measures and constant cooperation and social dialogue through the actors involved.¹⁴

Although the legal articles mentioned above can be considered as having had a 'reforming' effect on the field, the principles that describe it could be qualified as such even in the Labour Code during the general amendments made to this Code in 2015.

As we presented in general the legal regulations, we can now pose the question whether the concept 'decent work' or 'dignity in the workplace' is implemented in practice and how does that evolve.

In my opinion, meeting the right level of expectations regarding the implementation of the 'decent work' concept in this aspect/field must take place through implementation of the respective legal framework in power, which helps detect issues in many aspects, including the efficiency of intra-institutional cooperation, the necessary professionalism from the employers who 'control' this field and lastly the well-functioning of the judicial branch.¹⁵

2.3 Freedom of association

Considering the fact that freedom of association is not only one of the main freedoms of employees (referring in this case to freedoms and rights of employees), which can also be considered an important mechanism in function of fulfilling all the freedom and rights of the employees at work.

The principle of freedom of association is sanctioned in the Albanian Constitution and it can also be found among the articles of the Labour Code in accordance to the principles of the international acts ratified by Albania. Similarly, based on the articles of the Labour Code the intervention of the employers in the syndical activities of the employees, where intervention is considered the entirety of measures that incite founding of syndicates of employees supported in various forms by the employers, including financial means. Employers are also banned from hindering the founding or functioning of employees' associations and cannot discriminate their

¹³ The legal framework for safety in the workplace and the working conditions, besides the main legal regulations also includes legal acts which refer to detailed rules for special sectors such as: CMV No. 844, dt 03.12.2014 "On employees's protection from risks related to ionizing radiation in the workplace; CMV No. 843 dt 03.12.2014 "On protection of employees from risks regarding optic radiation in the workplace; CMV No. 484 dt 29.06.2015 "On approving the guidelines to protect employees from risks coming from asbestos in the workplace"; CMV No. 108 dt 15.02.2017 "On approving the guidelines to protect children in the workplace"; etc.

¹⁴ Refers to Law No 10.237 dt 18.02.2010 "On safety and healthcare in the workplace" and after that, for its implementation a series of legal acts were approved such as: CMV No 312 dt 05.05.2010 "On safety in the construction sites"; CMV No. 1012 dt 10.12.2010 "On signs in the construction site and the workplace"; CMV No. 107 dt 09.02.2011 "On the structure, rules for how the Safety Council and healthcare in the workplace would function, and employees' representatives"; etc., see also: <https://inspektoriaipunes.gov.al>

¹⁵ As is well-known now, in Albania the justice reform is being implemented, because of the many issues detected through the years in the functioning of the judicial branch.

employees based on their membership or participation in the activities of a syndicate or organization.¹⁶

Among the most important legal instruments at the hands of the syndicates are collective contracts which are also one of the main professional sources that regulate a specific work relationship in special sectors or fields of activity, as well as the right to go on a strike. These legal institutions, are a crucial part of the Labour law framework in Albania and are found in articles that regulate respectively the procedures of signing and starting collective contracts and the rules that regulate how to exercise the right of striking when there is a collective conflict.

Certainly, to study the activity of syndicates and the efficiency of their activity a rational and actual use of these vital mechanisms is necessary.

The implementation of association freedoms and rights is based thus in a series of international acts and it is also sanctioned in the main legal act, the Constitution as well as described in other parts of our legislation. Even though Albania is on a path of progressive legal transformations, in order to join the European family, practical implementation of principles that are internationally approved is important, while the European Union member states respect the principles sanctioned in a series of essential legal acts. In the second edition of "European Labour Law, Bercusson says about European syndical rights: "Both jurisprudence and The Treaties now point to the need to identify within Member States the common traditions regarding fundamental trade union rights".¹⁷

In Albania it does not seem to have been any harsh collective conflict so far that stem from possible clashes between sides (namely representatives of employees and employers) regarding any disagreement about negotiable conditions in the collective contract. Consequently, the question we can naturally pose is whether the lack of this conflict stems from the "excellent" will of the sides to meet each other's rational requests or from their "will" to respect the formality of their relationship and their collective contracts by not making adequate and necessary requests in these contracts?

As was analyzed above, the concept 'decent work' besides other fields of dealing with essential rights and freedoms of employees, evolves best when it relies on the efficiency of the judicial tools used by the sides to actually improve the work relationship and not only the meticulousness of the legal provisions.

The analysis of some of the collective contracts that are implemented in some important sectors of activity concluded in findings such as the formality of their relations in general lacks specific regulations beyond legal provisions, even in such cases when the legal articles direct the sides to the collective contract as a legal instrument to regulate and detail their relationship.

3. Conclusions

Labour law in Albania consists of important principles and includes the regulation of the work relationship in its entirety, both in the public and private sector. The provisions in the labour law regulate both the individual and the collective contract, the judicial status of the sides, including their rights and obligations that derive from this legal relationship, but besides the comprehensive variety of regulating this relationship, the rights of employees in the work place are a vital aspect of the legal framework. Such rights are provided not only in important legal acts, but they are also an integral part of any institution of this legal framework.

Considering current developments of the international labour law and in particular the need to evolve with the concept of 'decent work', now an actual intertwining is needed between the legal framework and the best politics adapted with the purpose to better reach the legal objectives in the country.

With the purpose to eliminate the negative phenomena in the global range, which threaten the implementation of the decent work principle, it is crucial to increase the effectiveness by taking care of the sustainability of the global economic growth. Furthermore, considering this goal, *first* growth

¹⁶ *Labour Code updated with judicial practices, Tirana 2017, Albjuris Publishing, see article 186, p.134*

¹⁷ *Brian Bercusson, "European Labour Law", Second Edition, Cambridge University Press, 2009, p.320*

should be reached evermore comprehensively meaning *improvement of the living and working conditions* for many countries, and increasing the social groups that should benefit from the improvement of these standards.¹⁸

In my opinion, if the social and economic issues are detected more realistically, it would help find the most accurate policies for the job relationship, including building strong bridges of inter-institutional cooperation and use in the proper way of financial sources, with the goal to increase professionalism in this field.

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¹⁸ See: "World Employment Social Outlook, Trends 2018", International Labour Organization, International Labour Office-Geneva, 2018, Box 1.2, p. 6, for more visit the website: www.ilo.org/publns