Treatment and Legal Protection During the Resolution of Employment Relationships Disputes in The Republic of Kosovo

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Abstract: This paper in the comprehensive aspect is of a combined character, which includes the summary and research features of the research topic, providing sufficient knowledge for the employment relationship and rights from this field in Kosovo. The paper initially contains historical aspects of the development of law and labour relations in Kosovo. In addition to this, it further contains important comparative aspects, offering the possibility of dealing with labour disputes, as well as to analyse the advantages and difficulties offered by the legal framework in dealing with this issue. The paper presents the role of responsible institutions, including the court, respectively, the trend of judicial practice for conflicts arising from labour relations. On the other hand, it also includes statistical data based on the annual work reports of the competent institutions that inspect the respect of the rights derived from the employment relationship. In order to secure the data, the comparative method of interweaving the main legal sources that determine the field of competence of the competent institutions was used. The second method is the research method through interviews conducted with officials in charge of state institutions whose duty is to protect the rights of this category. In order to provide numerical data, a statistical method was used, through which the number of complaints received by the Independent Supervisory Council for the Civil Service of Kosovo was presented, and on the other hand, the total number of employees without labour contracts in the inspected institutions by the Labour Inspectorate was presented in three last years. Based on the interviews conducted with judges, it is emphasized that regarding the nature of the disputes that are presented the most are: requests for the annulment of the employer's decisions which, as a result, have caused the termination of the labour contracts, complaints for returning to the workplace with all the rights guaranteed by law as well as requests for the cancellation of competitions. The data indicate that during these last three years, the year 2021 has been the year with the most complaints registered by the Independent Supervisory Council

Key Words: Employment Relationship, Labour Disputes, Legal Framework, Employer, Labour Rights.

1. INTRODUCTION

When a person feels damaged because a right has been violated, regardless of the category to which it belongs, he will feel violated and look for the opportunity to seek protection, respectively to return what has been damaged or lost, whether it is a material good or immaterial. In situations where a right that consists in the employment relationship is violated, this creates significant difficulties in terms of treatment and providing protection, since state institutions must be very careful in providing the right protection. The fact that the victim and society need proper protection, that a right not only exists but must be implemented, that those who violate this right will be punished, present a need and necessary acts that guarantee the provision of proper protection, especially disputes related to the employment relationship. The treatment of these disputes is also a test for society and the state, which treatment proves how democratic the state is in general.

The importance and the basic purpose of this topic is based on the need that at the present time in the Kosovar society, the most difficult aspiration for every citizen is the establishment of an employment relationship based on the preparations and qualifications that they possess. Until recently, the large number of unemployed has been quite evident, which had created convenience and opportunity for employers to terminate the employment relationship at any time and hire new employees, especially in the private sector. Discrimination in terms of gender equality, political interventions, nepotism, the lack of a proper institutional approach, bureaucratic difficulties within the organization are some of the reasons that affect the initiation of judicial proceedings where the subject of the case are disputes from the employment relationship. On the other hand, the cases of the termination of the employment relationship without a legal basis, the termination of the labour contract, the termination of the employment relationship unilaterally, are some of the reasons on which this study will focus.

The first objective of this paper is the observation of the legal framework, starting from the employer institution, up to the judicial practice related to the disputes that arise from the employment relationships examined in many aspects. This

review aims to highlight the importance and role of institutions in dealing with and providing proper protection in these disputes. The next objective is the categorization of the complaints received by the Independent Supervisory Council depending on the object that was disputed during the years 2019, 2020 and 2021. In the framework of statistical data, this paper also follows the quantitative treatment of the inspection activity of the Labour Inspectorate in relation to the identification of employees who have employment relationships without formal contracts and its influence and role in the legalization of employees and economic entities. The final objective of this paper is to look at the practise of institutions work, through a research aspect that deal with such disputes in the framework of the employment relationship.

Initially, the comparative method of interweaving the main legal sources with the secondary ones was used, through which the competent bodies act in treating complaints or disputes from the employment relationship. The second method is the research method through the interviews conducted with responsible officials of state institutions, specifically with judges who deal with civil cases, especially disputes from the employment relationship, who were asked to present their experiences with which types of disputes from the employment relationship they faced the most of the work. This method has also been used with the Chief Inspector of the Labour Inspectorate in relation to his professional evaluations for the efficiency of the implementation of the Labour Law and other acts from this field.

A statistical method was used to provide numerical data, in which case the number of complaints received by the Independent Supervisory Council for the Civil Service of Kosovo for the years 2019, 2020 and 2021 was presented. Also, this method was used to provide data that refer to the inspection activity of the Labour Inspectorate to present the number of employees who have established employment relationships informally or without labour contracts during the years 2020, 2021 and 2022. In the framework of this method, an attempt has been made to provide numerical data in terms of the number of employees and economic subjects that have been legalized during these years.

2. BASIC KNOWLEDGE AND HISTORY OF THE DEVELOPMENT OF LABOUR LAW

Labour law represents a branch of the positive legal system, which treats employment relationships as one of the relations that make up a special group of social relations with special importance and characteristics. Since the labour law has employment relationships as its object of treatment, it turns out that it is not only the positive law of employment relationships and other rights derived from this field, but that this law also deals with the theoretical study and practice of legal regulations and other provisions with the aim of advancing labour rights by providing employees with instruments and a favourable environment for guaranteeing the rights derived from the law and the labour contract.

The notion and basic element of the labour law is the labour itself, which represents a conscious and voluntary activity, natural but tiring, because it contains effort and the appropriate commitment for the creation or processing of a useful activity, whether material or immaterial (intellectual). This activity is associated with the element of compensation, since the employee is rewarded for the job performed on the basis of the salary, so that the result of a work done will have effects for the social community as well (Çela, 1998). Labour law aims to reveal the narrow circle of employment relationships and this happens because not every job performed constitutes an employment relationship in the scientific and legal sense of labour law. If an individual works on his own account, without seeking the help of others or other services and performs independent work, he is called an independent employee.

The history and development of labour relations in the informal aspect dates from the slave ownership system, a system in which the slave was the main producer of all material values in agriculture and crafts. Although the slave did not have freedom and in legal terms was treated as an object under the unlimited power of the slave owner, this situation in itself contains elements of a compensated employment relationship in the primitive forms of that time. Even in the feudal system, there were no formalized and regulated employment relations in return for what was worked and produced. The social relations of this period were characterized by the dependence of the serf on the feudal lord and that the latter had the right to sell or buy the serf, except that it was a rule that he did not have the right to kill the serf (Ismajli, 2005).

The labour law and the employment relationship in terms of content begin to appear at the end of the 17th century and the beginning of the 18th century when the industrial revolution came to England, which period is accompanied by the production of cars, especially the steam car, penetrating into European countries and other countries of the

world. All this was accompanied by the change of systems from feudal to capitalist. According to Aliu (2010), in the past employment relationships were regulated by civil law, because this was convenient for the ruling-capitalist class, since it was able to exploit the working class more easily. In the absence of an agreement for the equality of the parties, the means of production were in the hands of one person and this enabled the exploitation of the employee.

Today, labour law is an independent branch of law that was formulated at the beginning of the 19th century as a result of the largest intervention of the state in the regulation of employment relationships, and for most of the states it became evident that employees must to have their rights. The constitutionalising of the right to work and other rights related to work comes after the approvement of the Weimar Constitution of 1919, while the recognition and incorporation of this right in the constitutional texts occurs especially after the Second World War (Hasani & Cukalovic, 2013).

2.1. The history and development of employment relationships in the Republic of Kosovo

Based on the fact that Kosovo for a long time was part of the Republic of former Yugoslavia, until recently employment relationships within the province were regulated by the Yugoslav law on basic employment relationships. Regarding the legal regulations, Kosovo until the Law on Labour was issued in 2010 was faced with a number of provisions distributed in many laws and regulations which were issued in different economic, social and political circumstances. In this regard, UNMIK Regulations 1999/24 and 2000/59 had defined the legislation in force and according to these regulations, as laws in force in Kosovo were the laws that were in force until March of 1989 and the UNMIK Regulations, respectively in the field of labour were: the Law on Labour of the KSA of Kosovo of 1989, the Law on Labour of the former Yugoslavia of 1977 as well as the UNMIK Regulation 2001/27 on the Basic Law on Labour in Kosovo of 2001. From this combination of legal acts, the judges have had a lot of difficulty in identifying the legal norm that must be applied in order to apply the material right. With the entry into force of the Law on Labour, the unification of labour legislation has been made and the right of employees to seek judicial protection has been largely guaranteed.

For a long time, since the Second World War, citizens of Albanian nationality were deprived of compliance with the provisions of the Convention on Discrimination in the Field of Employment and Occupation of the International Labour Organization of 1958. This convention also obliged Yugoslavia as a signatory state. The Convention defined the concept of discrimination and provided for the obligation of the signatory states to fully implement the affirmative provisions that refer to opportunities and equal treatment in employment and occupation. According to the Convention on Discrimination in Employment and Occupation (1958) any difference, exclusion or preference based on race, sex, religion, public opinion, national origin or social origin that has the effect of disrupting or distorting equality is prohibited of opportunities or treatment in the field of employment or profession. In the preamble of the Constitution of the International Labour Organization, among other things, the establishment of social justice and the improvement of working conditions as the main prerequisite for maintaining peace in the world is foreseen as the main goal (Riza, 2011).

Albanian citizens in almost all forms of rights realization, including labour rights, were deprived of the main principle guaranteed by the Universal Declaration of Human Rights regarding the employment relationship, which guarantees that each person enjoys the right to work, namely the right not to be discriminated against in this regard (United Nations Human Rights, 1948). It is worth noting that until the nineties, the only thing that was favourable for the Albanians of Kosovo, which in economic terms probably had its own advantages, was that the Kosovar Albanians were allowed to work outside the borders of the former Yugoslavia, alongside citizens of other nationalities. Therefore, many citizens of Albanian nationality manage to create employment relationships in Western countries, but also in many other countries of the world, and all this thanks to the agreement that the Yugoslav state had with the respective countries.

After the nineties, the former Yugoslavia began to disintegrate due to territorial claims. Then the entire autonomy of Kosovo is suppressed, and with this the right to work, where the Albanian citizens of Kosovo were deprived of almost every right, including that of establishing an employment relationship. The repressive system forced the Albanians, through pressure, mistreatment and other forms, to expel them without any right from the employment relationship, a situation which caused a poor socio-economic condition. All the legislation that had to do with the employment relationship was just fictitious, because the Albanians were limited in all ways and opportunities to claim their rights, one of them being the right to work. After the end of the war in Kosovo 1998/99

and after the approval of resolution 1244 of the UN Security Council, the international monitoring mission - UNMIK is installed in Kosovo, which mission finds Kosovo in a chaotic state regarding the socio-economic infrastructure, the legal one in general and the legal infrastructure related to the employment relationship in particular.

In 2001, the UNMIK mission managed to issue a regulation 2001/27, which regulation was the only act that actually contained the designation as a law, or as it was called the "UNMIK Regulation on the Basic Law on Labour. Such a regulation, regardless of the time it was issued, contained many aspects of harmonizing issues related to the employment relationship. Among other things, this regulation prohibited discrimination at work, determined the minimum age for work, prohibited forced labour, and guaranteed the right to organize trade unions. It also regulated other issues related to the labour contract, working hours, annual leave, official holidays, maternity leave, medical leave, necessary inspections and punitive measures if employers did not comply with this regulation (United Nations Interim Administration Mission in Kosovo, 2001). The history of the regulation of the employment relationship continues to be accompanied by difficulties, since despite the establishment of temporary self-government institutions in March 2002, the Government and the Assembly attempted to issue a more advanced law, but without success.

On April 30, 2010, the Government of Kosovo approved the Law on Labour and this was the third time after 2006 and 2008 that the Government approved this law, with some changes in content. The non-approval of the Law on Labour until this time has been justified by the high financial cost, then some of the businesses in Kosovo have opposed some aspects of the Law on Labour, which according to them could burden businesses financially and would discourage foreign investments. On the other hand, the employee organizations persistently demanded the approval of the Law on Labour and other laws in this field. As mentioned above, the main reasons given for disapproval of the Law on Labour were the high financial cost of the law, the underdeveloped economy, foreign investments, pressures from the International Monetary Fund, etc. (Instituti për Studime të Avancuara, 2010).

Regardless of this, the Law on Labour entered into force in December 2010 and constitutes the basic legal framework for the regulation of many aspects of the employment relationship. After it, many other by-laws were issued that largely regulate issues related to the employment relationship in Kosovo. Among the legal acts within the national level, the most sublime act regarding the legal basis in a parliamentary state is the Constitution of the country. The constitution as the highest act is a creative norm from which created norms arise. Therefore, it presents a contract between the people and the state and this contract is an agreement to organize as a legal state (Traja, 2000).

3. THE IMPORTANCE OF TREATMENT OF EMPLOYMENT RELATIONSHIPS AND LABOUR DISPUTES

The rights derived from the employment relationship are treated as inalienable and unlimited rights where both the employer and the institution are obliged to respect them and enable the employees to realize these rights. The socio-economic situation in a society is an aspect in itself that also includes human security, therefore even in this context the right to work plays an important role in achieving human security. People without employment relationship are either dependent on aid, which is a burden on society, or have no perspective at all. The rights of employees not only include ensuring suitable working conditions, but also include protection against discrimination and exploitation in the workplace. Essentially, work is not only about ensuring well-being, but also about many relationships that determine participation in society, being closely connected in this way with human dignity. The opposite of all this, which coincides with optimal conditions and standards, can lead to personal insecurity, danger, unhealthy and unfair conditions. Therefore, unemployment and the denial of rights derived from the employment relationship attempt to create unrest and instability in society.

In order to understand the importance of all this, in the human dimension of the workforce, it is necessary to understand what labour disputes are and how the Law on Labour and other acts in Kosovo regulate them. Dispute should be understood as the situation in which a person claims to have a subjective civil right against another person, while the latter denies its existence, or for some other reason denies his obligation to behave in a certain way (Brestovci et al., 2017). In a broader sense, the labour dispute is a dispute that arises when the rights provided by law from the employment relationship are violated or when certain obligations to the employee arising from the employment relationship are fulfilled. In contrast to the dispute, Musa (2013) defines the concept of the contentious issue by emphasizing that it represents the certain vital relationship (material-legal relationship) in which a subject considers and

verifies that in relation to other legal subjects, the legal right belongs to him, while the other legal subject contests either the existence of the subjective right itself or the existence of legal authorizations. The employee whose right has been violated by the employment relationship can request its protection from the competent institutions, starting from the employer, the labour inspectorate bodies, the trade unions and finally the protection and realization of the right can also be requested from the court as the final body to decide on the disputed issue.

Historically, protection at work includes all provisions, technical, health and social measures aimed at ensuring the most suitable conditions to prevent accidents at work, occupational diseases and other diseases related to the work environment (Ligji i Punës, 2010). Historically, protection at work includes all provisions, technical, health and social measures aimed at ensuring the most suitable conditions to prevent accidents at work, occupational diseases and other diseases related to the work environment (Ligji i Punës, 2010). The idea of socio-economic security is a priority of many worldwide governments, so that in this direction in the international aspect, the rights of workers before the Second World War when the International Labour Organization was founded in 1919 were framed in its legislation. Such a practice continued even after the Second World War in the regulation of standards with the establishment of the United Nations.

3.1. Disputes from the employment relationship according to the Law on Labour and other acts in force

It is understandable that the persons who are in the employment relationship, in addition to the obligations towards work, they also have rights derived from the employment relationship. These rights are primarily regulated by the Law on Labour, then by internal acts as well as by collective contracts. Since neither the Law on Labour nor the Law on Contested Procedure determine in any provision what is a dispute from the employment relationship, we must always assume that the employer is obliged to create opportunities for employees to realize their rights from employment relationship. If these rights are not respected or employees are prevented from realizing them, a labour dispute is presented. According to Ismajli (2005), in the broadest sense, a labour dispute is a dispute that arises when the rights foreseen by law from the employment relationship are violated, or when certain obligations to the employee are not fulfilled. The employee who is in an employment relationship has the right to request the realization of his rights or he has the right to oppose the decision that was taken regarding his rights by expressing his displeasure and disagreement with the given decision.

If we approach the comparative aspect of the two basic laws in force that regulate these disputes, in terms of content, almost both of these laws include general clarifications of disputes from the employment relationship. According to the Law on Labour (2010), the employee who believes that the employer has violated the relevant right from the employment relationship, can submit a request to the employer for the realization of the violated right. The employer is obliged to decide according to the employee's request within fifteen (15) days from the date of receipt of the request. The decision is delivered to the employee in written form within eight (8) days. On the other hand, the employee who is not satisfied with the decision by which he thinks that his rights have been violated or does not receive an answer within the deadline set by this law, in the following period of thirty (30) days may initiate labour dispute in the competent court. Procedural rules from the field of employment relationships are aimed at providing protection for the employee's rights as quickly as possible and preventing the illegal acts of the employer against the employee.

The advantages that are evident in the Law on Contested Procedure in the dealing of disputes from the employment relationship, especially in the case of setting deadlines and convening court hearings, the court will always take into account the need for urgent settlement of eventual disputes. In the judgment by which the fulfilment of any obligation is ordered, the court sets the deadline of seven (7) days. Also, for this category of disputes, the law offers the most efficient possibility of protection where it determines that the deadline for filing an appeal against the judgment is seven (7) days (Ligji për Procedurën Kontestimore, 2008). As regards the assignment of competence in disputes arising from the employment relationship, the rules apply that if the plaintiff in the dispute arising from the employment relationship is the employee, then the court of territorial jurisdiction over the defendant is competent for trial, but also the court in the territory of which the work is performed or has been performed or the court in the territory of which the employment relationship was established. (Ismajli, 2005).

In the following, we will present the role of the court in resolving disputes from the employment relationship based on the provisions that determine

the procedural acts of this institution. Referring to all the possibilities offered by the legal framework to find the protection of legal relations that coincide with the employment relationship, as the last possibility for the parties, it remains to turn to the competent court. Many countries in the world today have special courts and specialized judges who judge only contested cases from the employment relationship. However, such a thing is not expected to happen in Kosovo, because the Law on Courts does not provide for such a division, since disputes from the employment relationship are resolved by the basic courts. If the large number of cases and the small number of judges are taken as a basis, these disputes, despite the importance and advantages given by the law, remain untreated. Above is mentioned the situation if the employee considers that his rights have been violated by the employment relationship and the legal opportunities that are guaranteed to him for submitting a request to the employer for the purpose of protection and the realization of the rights that he claims have been violated. The employer is obliged to decide according to the request of the employee within the period of fifteen (15) days.

Any employee who is not satisfied with the decision from the above-mentioned situation or does not receive an answer within the deadline, then in the following period of thirty (30) days can initiate a labour dispute in the competent court. If the court finds that the termination of the labour contract by the employer is illegal, based on the provisions of the Law on Labour (2010), the Collective Contract or the Employment Contract, it will order the employer to execute one of these compensations:

- To pay compensation to the employee, in addition to the allowances and amounts due to the employee under the aforementioned acts, in such amounts as the court considers fair and adequate, but which must not be less than twice the value of any compensation which belongs to the employee at the time of dismissal;
- If the dismissal is deemed illegal according to the law, the court may return the employee to the workplace and order the compensation of all wages and other benefits lost during the illegal dismissal;
- The employer is obliged to implement the decision of the competent court within the specified period.

Regarding the judicial procedure in the treatment of disputes from the employment relationship, it is important to mention some of the aspects provided by the Law on Contested Procedure. When setting deadlines and convening hearings in labour disputes, the court must always take into account the need for an urgent resolution of disputes. In the judgment by which the fulfilment of the obligation is ordered, the court sets the deadline of seven (7) days. The same deadline applies to the submission of the appeal against the judgment or decision. Favouring the treatment of disputes from the employment relationship is also added by the issue of revision as the possibility of using the legal remedy. The law has determined that against the judgment of the first instance, the parties can present a revision within the term of thirty (30) days from the day on which the judgment was delivered to them (Law on Contested Procedure, 2008). In terms of providing legal protection and the role of the court in this regard, the legal framework supports the protection of employment relationships in criminal cases as well, as it has sanctioned acts that contradict the legal acts that regulate this field.

The Criminal Code of the Republic of Kosovo has defined the actions that consume elements of the criminal offense from the field of labour such as: Violating rights in labour relations, Violating rights of employment and unemployment, Violation of the right to management, Violation of the right to strike, Misuse of the right to strike, Violating social insurance rights and Misuse of social insurance rights (Kodi Penal i Republikës së Kosovës, 2019). As a result of the materialization of the protection of this right also in terms of criminal liability, in practice these articles are little or not at all implemented because the phenomenon of reporting violators of these rights is accompanied by fear and uncertainty due to numerous political, nepotistic, religious and other obvious reasons.

In order for the paper to acquire the form of importance in terms of providing decisive protection, research has also been developed on the trend of the judicial practice of the Basic Court in Prizren in the treatment of disputes from the employment relationship. In this way, interviews were conducted with judges who deal with civil cases, particularly labour disputes. From the evaluations of the judges, it is emphasized that in terms of the nature of the disputes that are presented the most are: requests for the annulment of the decisions of the employer with which the labour contracts were terminated in violation of the Law on Labour and other acts in force, requests for restitution in the workplace with all rights deriving from the employment relationship, requests for annulment of decisions for candidate selection

(cancellation of competitions) as well as lawsuits for annulment of employers' decisions with which any disciplinary measure has been imposed on employees.

4. THE ROLE OF THE INDEPENDENT SUPERVISORY COUNCIL FOR THE CIVIL SERVICE OF KOSOVO AND THE LABOUR INSPECTORATE IN THE PROTECTION OF WORKERS' RIGHTS.

4.1. The history and mandate of the Council

The Independent Supervisory Council is foreseen in the Constitution of the Republic of Kosovo as the highest legal act of the state, according to which this council ensures compliance with the rules and principles that regulate the civil service, reflecting the diversity of the people of the Republic of Kosovo (Kushtetuta e Republikës së Kosovës, 2008). According to the Law on the Independent Supervisory Council for the Civil Service of Kosovo (2018), this Council is an independent body that reports to the Assembly of the Republic of Kosovo. The Council was originally established by UNMIK Regulation no. 2001/36 on the Civil Service of Kosovo and began to function in 2004 within the framework of the Ministry of Public Services. The functions of this institution are focused on: examining and making decisions on complaints of civil servants against the decisions of the employment body in all Civil Service institutions in accordance with the rules and principles set forth in the Law on Civil Service of Kosovo; decide if the appointments of civil servants at the management level are made in accordance with the legal rules and principles, as well as supervise the implementation of the rules and principles of the civil service legislation.

Civil servants of Kosovo and applicants for employment in the Civil Service can complain to the Council, provided that the complainant must use the internal procedure of the employment body. So, at first one should complain to the complaints commission of the employment authority and then to the Council, unless the latter excludes this request due to the reasonable fear of retaliation, the failure of the employment body to resolve the complaint within thirty (30) days or for any other reasonable reason. The Council must issue a written decision within sixty days (60) after the end of the appeal procedure, justifying the decision and the legal and factual basis of that decision. In cases where the Council is convinced that through the disputed decision the principles or rules of the Civil Service of the Republic of Kosovo have been violated, it issues a written decision which is addressed to the high-level management official or the main person in charge of the relevant employment body. Regarding the execution of the decisions of the Council, they represent administrative decisions in the final form and the execution must be done within a period of fifteen (15) days from the day of acceptance of the decision.

At the end of each year, the Council prepares and publishes the work report with detailed data and information for all activities and works performed. Specifically, this report includes the work that was carried out in the framework of the function of reviewing and deciding on the complaints of civil servants and candidates for admission to the civil service, the function of supervising the selection procedure and deciding on the appointments of civil servants at the high management level as well as the function of monitoring the implementation of the rules and principles of the civil service legislation. Also, depending on the activities, the report may contain data regarding the Council's representation in judicial proceedings, cooperation with local and international institutions, as well as the Council's involvement in important meetings related to reform processes in public administration.

From the work reports for the respective years, it can be seen that during 2019, the Council received a total of seven hundred and eighty-four complaints, which had a different object of complaint. As can be seen from the results, one of the issues that has been complained about the most is the disputed recruitment, which in our country is quite widespread as a phenomenon. After this, other complained categories continue, accompanied by not very big changes, in which case the second one that ranks according to the report has to do with material compensations and request within employment relationship. In the same number, there were complaints regarding the termination of the employment relationship and disciplinary measures imposed on the employees due to non-fulfilment of duties and behaviour according to the responsibilities defined by law. A small number of complaints were registered in categories such as demotion, against appointment of acting in duty and career advancement issues.

From the data provided, it can be seen a noticeable decrease in the submission of complaints in 2020. In contrast to the previous year, where at the top of the list of complaints were disputed recruitment, this year a total of one hundred and twenty-six complaints were submitted that derive from the employment relationship. Material compensation has marked a slight increase with four complaints

more than the previous year, while disputed recruitment have marked a marked decrease with three hundred and thirty-five fewer complaints. In addition, there has been a decrease in the number of complaints regarding the termination of the employment relationship, disciplinary measures, transfers and appraisals made in the framework of the work. Complaints for failure to enforce decisions of Complaints Commission and demotions remained the same, with minimal changes. However, unlike the previous year, this year there is an increase in the violation of the right to salary with thirteen more cases and two cases of non-extension of employment contract.

Compared to the previous two years, the year 2021 has marked an enormous increase in terms of the submission of complaints to the Independent Supervisory Council. The data from the report indicate that the complaints from the employment relationship have continued to show a significant increase, which indicates that our society from year to year is facing dissatisfaction and irregularities in the exercise of the rights that are due to the Law on Labour. Mainly during these three years, it is mainly these categories with the most reported complaints. The number of complaints regarding termination of employment and disciplinary measures this year was higher compared to the previous two years. Violations of the right to salary have marked a slight increase, while categories such as demotions, suspensions, career advancements and non-extension of employment contract have a similar number in terms of complaints to the Council.

4.2. The role of the Labour Inspectorate in the protection of rights from the employment relationship

Inspectorates in many countries with advanced democracies, but also in Kosovo, are formed as special bodies with an administrative character whose role is the implementation of laws in practice. One of the reasons for the establishment of inspectorates has to do with the implementation of laws in practice, since this activity is not easy because each of the institutions must have a clear mandate, be well organized and be responsible for the fulfilment of tasks entrusted by law. In Kosovo, a number of different inspectorates have been established that take care of the implementation of laws in the responsible areas.

The Labour Inspectorate is competent for the supervision of the implementation of the laws in force, specifically the Law on Labour, the Law on Safety and Health at Work as well as the provisions of several other laws such as the Law on Tobacco Control, the Law on Strikes, the Law on Qualification, Re-qualification and Employment of Persons with Disabilities, as well as by-laws arising from these laws. So, the Labour Inspectorate is the primary institution charged with the responsibility of overseeing the implementation of these laws, which operates within the framework of the Ministry of Labour and Social Welfare. Also, this institution supervises the respect of the rights of the parties arising from the employment relationship. About work, commitment and many other aspects, the Chief Inspector of the Labour Inspectorate was discussed, who points out that since the Law on Labour was very well received by employees and trade unions, it is estimated that, unfortunately, this law is not being implemented properly. From the work reports of this institution, as well as the research reports of many organizations that have monitored the situation of law enforcement and the efficiency of the Labour Inspectorate, it turns out that there are many delays in the implementation of the Law on Labour, such as: working outside the schedule, working during the weekend, work without contracts and the violation of the rights of workers, especially in the private sector or even non-declaration of workers. Some employers sign short-term contracts with employees due to maternity leave, in such a way that they terminate their contracts in case of pregnancy in order not to pay them for maternity leave.

The Law on the Labour Inspectorate (2002) has enumerated the responsibilities and functions of this institution, such as:

- Supervision of the implementation of the Law on Labour, working conditions and protection at work;
- Provision of technical information and advice for employers and employees for the most effective implementation of legal provisions;
- Notifying the Minister of Labour and Social Welfare or any other competent body of any absence or misuse of the applicable law;
- Providing information and advice to employers and employees in accordance with the law and warning the competent authorities of any defects or misuse that are not included in the legal provisions.

In order to implement the law from its area of responsibility, the authority of the Labour Inspectorate coordinates actions and cooperates with municipal governments, tax or health

inspections, etc. The Chief Labour Inspector is appointed by the Government on the proposal of the Ministry of Labour and Social Welfare. Municipal inspectors are elected by the Municipal Assembly. An appeal can be made against the decision of the labour inspector (first instance) within 8 days to the Labour Inspectorate (second instance), which is obliged to decide within 60 days according to the complaint. The complaint can also be submitted against the decision of the Labour Inspectorate by opening an administrative dispute in the competent court within 30 days. The appeal filed against the labour inspector's decision does not postpone the execution of the decision.

Based on the legal framework in Kosovo according to which the labour relationship is regulated, the Law on Labour also defines the types of labour contracts, which division is based on the time period of their signing and validity. Therefore, relying on this definition, the employment contract can be concluded for: an indefinite period, a certain period and for specific jobs and tasks. If the contract does not contain any details about its duration, then this type of contract should be considered as a contract for an indefinite period. In such an employment relationship, it is not known in advance how long the employment relationship will last. In such a situation, the employee can terminate the employment relationship at any time (Ismajli, 2005). The contract can also be concluded for a certain time or period formalized with the signature of the parties. If this contract is continued for a period of employment longer than ten (10) years, it will be considered as a contract for an indefinite period of time. The last type of contract is related to a specific task, which in terms of duration cannot be longer than one hundred and twenty (120) days within a year. The employee who establishes such an employment relationship has legal rights and obligations, except that he does not have the right to annual leave.

If we analyse the inspection activity of the Labour Inspectorate during the last three years, it can be seen that the total number of employees who have been without a contract is a total of two thousand and eight employees. Sharing this general result, during 2020, four hundred and sixty employees exercised their activity in a non-formal way. In 2021, the exercise of working duties without labour contracts has marked an enormous increase with a total of one hundred and ninety-two employees without labour contracts. However, the year 2022 is characterized by a decrease in the number of employees without employment contracts compared to the previous two years. The report indicates that during 2020, four hundred and nine employees who were in informal employment or without labour contracts and eight economic entities were legalized. Meanwhile, during 2021, the Labour Inspectorate has influenced the legalization of a total of three hundred and forty-five employees and twenty-nine economic entities. The work report for 2022 does not contain data regarding the number of employees without labour contracts or data for legalized subjects or employees.

Despite the fact that efforts are always made to specify the issues of the contract as a whole, again it may happen that all the rights and obligations are not included in the provisions of the institution itself or even in legal acts. Therefore, in such cases, if difficulties of this nature appear, the interpretation of the contract takes place. Such an interpretation of the contract is mentioned in the Law on Obligational Relationships according to which the provisions of the contract are applied as they have their content. In the case of the interpretation of the contested provisions, one should not be bound only by the textual meaning of the expressions used, but the common purpose of the contractors should be researched and the provision should be understood as it responds to the legal principles (Ligji për Marrëdhënien e Detyrimeve, 2012).

5. CONCLUSION

In terms of the legal framework, the Law on Labour is a basic and general law that is dedicated to all employed citizens in the Republic of Kosovo, obliging all public and private institutions to respect every provision that comes out of this law regarding the rights of work. In this regard, there should be no conflict of laws, nor double standards, legal loopholes or even dominance of by-laws over legal acts. Therefore, it is requested to harmonize the laws that regulate the employment relationship. At the time when Kosovo was part of the former Yugoslavia, employment relationships were regulated by Yugoslav law. Until the issuance of the Law on Labour in 2010, the legal system of Kosovo was faced with a number of provisions that were spread over many laws and regulations. After the end of the war in 1999, the employment relationship was regulated by the UNMIK Regulation of 2001. For a long time, specifically since the Second World War, Albanian citizens have been deprived of compliance with the Convention on Discrimination in the field of Employment and Occupation of the International Labour Organization of 1958, which at that time also obliged Yugoslavia as a signatory state. In December

2010, the Law on Labour entered into force as the legal basis for regulating many aspects of the employment relationship. This law also served as a basic document for issuing other by-laws for the regulation of the employment relationship.

At the national level, the rights from the employment relationship are firstly proclaimed and guaranteed by the Constitution of the country as the highest legal act in the hierarchy of legal acts. The paper indicates the progress and procedure of treating disputes from the employment relationship, so that if the employee considers that his rights have been violated in this field, he can submit a request to the employer for the protection of the violated right as a first instance. If the employee considers that even in the first instance, he did not manage to realize the violated right, then he can go to the competent court by opening a dispute from the employment relationship. Different countries around the world have foreseen the establishment of special specialized courts for examining and resolving disputes from the employment relationship. Well, Kosovo has not followed this model since the Law on Courts does not foresee such a division of courts at the country level. Not only that such a division has not been foreseen, but the judicial system is faced with a small number of judges, a situation that causes a number of unresolved judicial cases. For the employee whose right has been violated, the court can decide that the employer should pay the compensation, return him to the workplace, forcing the employer to implement the court decision. The research indicates that from the evaluations of the judges as a result of the conducted interviews, the disputes that are presented most often for treatment are: termination of the employment contract in violation of the law, requests for return to the workplace, requests for the cancellation of competitions as well as lawsuits for the annulment of employers' decisions by which any disciplinary measure has been imposed on employees.

The research indicates an increase in the number of complaints addressed to the Independent Supervisory Council for the Civil Service of Kosovo. In 2019, this authority received a total of seven hundred and eighty-four complaints, where the categories with the most complaints mainly have to do with disputing recruitments, material compensations and requests from the employment relationship. In 2020, there was a decrease in complaints to this institution with a total of three hundred and forty fewer cases. If we analyze the data provided by the research, the most complained about categories remain the same as those mentioned above during the year 2019. In 2021, there is a marked increase in the complaints presented to the Independent Supervisory Council with all seven hundred ninety-one cases. Similar to previous years, this year also the same categories with the largest number of complaints remain, starting with requests related to the employment relationship and two other remaining categories such as material compensations and disputed recruitments.

The research indicates that the Labour Inspectorate during the last three years has provided the relevant reports with detailed data on how the rights are respected in the employment relationship. During the inspection activity, a considerable number of employees were observed who work informally or without employment contracts, with a total of two thousand and eight employees, throughout the years 2020, 2021 and 2022. In 2020, four hundred and sixty employees exercised their activity in an informal way. During this year, a total of four hundred and nine employees and eight economic entities were legalized. In 2021, there is a significant increase in the number of employees with a total of one hundred and ninety-two employees without employment contracts. During this year, the Inspectorate managed to legalize a total of three hundred and forty-five employees and nine economic entities. Meanwhile, in 2022, a decrease in the number of employees without a work contract is observed, with a total of three hundred and fifty-six employees. Unlike the previous two years discussed, the 2022 report does not contain data regarding the legalization of employees and economic entities.

As a result of this, it can be concluded that in order to effectively formalize and protect the employment relationship in Kosovo, as well as to eliminate informality, the institutional support of the Labour Inspectorate is required. This support can be achieved by increasing the number of inspectors in order to be as present as possible in the working environments, to educate and inform employees about their rights and obligations in submitting complaints if they are faced with a violation of rights by employers. In conclusion, it is requested that more repressive measures be applied to the violators of the rights arising from the employment relationship, in order to prove the institutional commitment to the protection and promotion of the rights from the employment relationship.

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