THE SPECIFICITY OF THE PROCEDURE OF WORK CONTEST AT THE BASIC COURT IN TETOVO DURING THE PERIOD 2013-2016

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Abstract

The Article 32 of the Constitution of Macedonia guarantees its citizens the right to establish employment relations, the right to choose the job and enjoy protection of their rights under the Law and Collective Agreements. This protection can normally be realized by citizens in different forms, but the study will only approach the protection of subjective civil rights in civil litigation as a separate procedure. The procedure of labour contest is specific due to many reasons which will be dealt with in the study, whereas we will also focus in explaining them besides the analysis of the cases that were selected at the Basic Court of Tetovo in 2013-2016. In the Republic of Macedonia, the Law on Contested Procedure in 2005, unlike the previous law, brought changes in terms of procedural guarantees from labor disputes, for example: increasing procedural discipline; anticipating deadlines related to procedural actions; the maximum duration of the procedure; main screening and other circumstances that include the maximum period of 6 months in the first instance and 2 months in the second instance court etc. This is only one of the specifics of this procedure, which results in disappointing data regarding the length of the procedure, data that have emerged from the controversial proceedings from dismissal of the employment relationship, establishment of employment relationship, disputes concerning the placement and resettlement of the employee at work, and other cases not highly pronounced but still present in Basic Courts.

Key words: Law, contested procedure, court, judicial poker

2. The employment disputes

Labor disputes obviously require specific treatment as a result of specific nature and need for protection. Labor disputes require legal protection for a right which the employee considers to have been violated, whether in the field of rights and duties at work or in the unjust system at work, disputes concerning the establishment, respectively termination of labor relations, disputes concerning social security, and disputes of similar nature.

In court practice there are many cases of labor relations as a result of the discrimination of the employee based on his status, participation in union activities, sexual distress, maltreatment, and other concerns with particular emphasis on political orientation.

Today, in terms of improving employer-employment relationships, other ways of dispute resolution between these parties are foreseen, namely the peaceful, individual or collective settlements (Article 182 of the Law on Labor Relations Official Gazette of the Republic of Macedonia No. 74 of 08.05.2015), whereby the parties may entrust this solution

to a particular body preceded by law or settlement through arbitration. Regarding the composition of the procedure and other issues relevant to the functioning of the arbitration defined by the Collective Agreement, normally if the parties agree and leave the arbitral court, then this will be the final decision that has been made only by the parties.

Pursuant to Article 181 of the Law on Labour Relationship (hereinafter LLR provides the protection of the employee if he considers that the employer does not provide him with his / her right of employment or considers that their rights at work have been violated. In this case everyone is entitled to submit a written request to the employer, so he fulfills his obligations as an employer. Under the second paragraph if the employer has violated the employee's rights by this decision, he has the right within 8 days from the day of the decision to request withdrawal of the same. If the employer does not permanently disavow or does not respect the rules of employment that he should have undertaken to change the situation within the 8-day time limits then the employee has the right to ask for judicial protection from the competent court. This distinction made by the law is done for the purpose of assessing the competence, at the moment of filing the lawsuit is resolved by the jurisdiction of the court.

Dealing with labor disputes over judicial disputes in general, this area is regulated by Article 30, 31 of the Law on Courts (Official Gazette of the Republic of Macedonia No. 58/2006), which foresees substantive jurisdiction of the Basic Courts with Basic Jurisdiction and Basic Courts with expanded competence, in the territory for which those courts are created, where special sections exist within the courts with expanded competence. While local competence is foreseen for some situations in Article 58 of the Law on Contested Procedure (Official Gazette of the Republic of Macedonia No. 79/2005), which is: if in the dispute from the employment relationship the plaintiff is the competent, employee is the court in the unit where the work is performed, was performed or should have been performed, as well as the court in the unit of which the employment relationship was established.

If the employer makes a decision for terminating the employment relationship, the employee has a few rights:

-first the employee has the right to oppose within 8 days after the decision is taken, and second,

- after the decision is taken after filing the objection within 15 days the employee is entitled to filing a lawsuit in court.

In the procedure, protection is required for monetary requirements or request for individuals who have a dispute for establishing the employment relationship, within 15 days, they may also request compensation from the competent court. As regards the filing of the lawsuit by the employer in LLR Article 36 as a result of the performance of the work in the name and on behalf of other persons who are part of the employer's activity and are significant for the rules of competition, the employer shall, within a period of three months when he learns about the work he/she has done, or two years after the signing or expiration of the agreement.

3. Speed and efficiency of labor disputes

In civil proceedings, courts should ensure protection of procedural principles and commitment to maximum care in procedural actions. When it comes to labor disputes this care is added to a double measure in the sense of the principle of procedural speed and

urgency as a result of existential needs. This tendency is expressed in the determination of time limits, sessions, where Article 405 paragraph 1, 2, 3, 4, 5 (LCP) provides:

- Deadline for response to the lawsuit is eight days;
- In disputes over termination of employment, the main hearing must be held within 30 days from the day of the acceptance of the answer to the lawsuit;
- The first instance procedure must be completed within 6 months from the filing date of the lawsuit;
- The 8 day deadline for filing the appeal
- In the second instance procedure the court is obliged to decide within 30 days, respectively within 2 months if there had been made a review before the court of second instance;
- 8 day deadline for the execution of the court decision if the decision consists in *facere*.

In addition to the care of the procedural speed, the LCP in Article 409, paragraph 2, provides an exception to the suspensive effect of the complaint, the court can decide that the appeal does not stop the execution of the decision. On the other hand, in disputes of work, the possibility of filing extraordinary remedies such as revision, regardless of the value of the dispute, is offered, which is crucial to other procedures for filling a legal remedy like these. (LCP article 372, paragraph 3).

4. Challenges to avoid disputes

In context of the working environment interactions can be made, failure of harmony, confrontation and disruption of relationships between the parties, but at the same time there should be rules and principles which will enable the employees to be effective in the process of working with the employer.

Effective collaboration in the workplace requires the establishment of effective systems within the organization that will enable positive interaction, and this interaction might be:

- interrupting disputes with claims settlement and preventing them from becoming larger disputes;
- solving problems through claims from the moment they are submitted by the parties;
- improvement of working conditions and working environment;
- increasing of productivity of the workforce and improving of competitiveness of the organization;
- re-establishing of trust between workers and employees;
- improving the decision making at all levels;
- advancement of common interests and reinvigorating the motivation through participation and involvement (Dispute Resolution Systems, International Work Organization 2015, page 167-168).

In applying all these predispositions another moment is very important in avoiding labor disputes and it is the emergence of adequate systems of fair evaluation at work by professional individuals from which assessment everyone will accept their position at work and their effectiveness during the work process.

5. Conclusions

Based on the data provided by the court services, related to the lawsuits of the citizens we can see some interesting results that we are going to present below.

	Number of cases	Type of lawsuit	Year
1	188	Work contest	2013
2	342	Work contest	2014
3	168	Work contest	2015
4	151	Work contest	2016

Table No.1 Number of cases

By analyzing the data collected from the basic court we have ranged the cases by year and by nature of contest, which means that other cases are excluded. The number of cases in general is similar over the years, except in 2014, where the number of cases increased more than double of the cases from the previous year. This number cannot be ignored, taking into consideration the parliamentary elections held in 2013. To be more accurate the majority of the cases include lawsuits because of termination of employment relationship, establishment of employment relationship, disputes concerning the placement and resettlement of the employee at work. The main question is why this happened exactly after this event? In fact the answer is obvious, but the consequences are unaccepted because of the damage that the parties faced.

On the other hand, regarding to the length of procedure, we can say that the maximum duration of the main procedure screening and other circumstances that include the maximum period of 6 months in the first instance, were often violated, which is another consequence.

The general overview of the guarantees in 2005 LCP, with significant changes and additions in the following years, leads to the conclusion that there are numerous anticipated human rights assets that some of the persons applying the Law require solid training, even specialization in the existing education system in the Republic of Macedonia.

In this regard, it is not surprising to point out the managerial structures in the legal entities, especially those in the companies, to seek the employees' lawyers in their legal entity that are more professionally qualified, providing the necessary funds for this purpose, which will contribute to the legal action, resolving the issues arising from the Law on Labor Relations.

This is especially important given the lack of regularity of certain legal issues in this area including consultations, trainings and cooperation in analyzing those cases and the consequences, but it can be concluded that the legislation and its measures are not following the indications, so that the judicial practice shows significant fluctuations in the application of certain legal regulations, which often leads to legal insecurity in our justice system.

It can be expected that the indications of this issue, which is only summarized in this paper, will contribute in realizing the importance of the workers' rights first in establishing labor relations, and then protecting their rights through the work process, especially when

disputes have been created. It is an important factor for the level of human right implementation as a main goal for every country.

6. References

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