Forms and causes of labor disputes

LL.M Denada Keçiçi
Faculty of Law of University of Tirana

Prof. asoc. Dr. Eneida Sema
Faculty of Law of University of Tirana

Abstract

Labor disputes can be small or large, individual or collective, refer to a particular job or lie in more than one enterprise. The causes of these disputes are numerous and diverse, ranging from a simple appeal of one individual employee for the right of compensation, in a collective complaint of the employees about the unsafe or unhealthy conditions of work, or termination of work by all employees in a workplace, claiming that they are prevented from setting up a union to protect their interests.
The product of this process is a binding agreement for its implementation and is the result of ongoing cooperation between employees and employers based on consensual decision.
Organizations of employees are important actors of collective conflict resolution procedures of labor relations, and particularly those held in the offices of reconciliation, should revitalize their role.

Keywords: disputes, employee, employer, relationship, work.

Introduction

Labor disputes are resolved quickly, such as when a supervisor explains to an employee how his salary is calculated based on his payment and this explanation is accepted by the employee. In this case the problem is solved and the dispute is over. However, some disputes require more time to resolve. For example, a complaint about unsafe or unhealthy work conditions by a group of employees can not be resolved immediately. If the complaint is about the lack of guards on machinery or the presence of excessive dust or high noise levels in a particular section of the factory, the employer may not be able to resolve this situation immediately. It is possible that the employer and the employee may not agree on the existence or not of a risk, on the severity of the risk and on how to minimize risk. It may be necessary for the employer to require the advice of a specialist on safety and health at work, but while the problem persists, the conflict is present and there is a possibility that the work may be stopped or taken at some other form of industrial action.

1.1 Resolving disputes at work

Usually there are four approaches to dispute resolution, namely:
- avoid, when one side simply does not address the dispute;
- power, when one party uses force and coercion for the other party to do what

needs to be done;
- rights, when one party uses several independent standards about what is right for the dispute resolution;
- consensus, when one party tries to reconcile, to compromise or accept positions or basic needs of the other party.

One of the most efficient tools for solving disputes at work is collective discussions which consists in a process of negotiation between an employer or group of employers, and an organization of employees or a group of employees, and aims to reach an agreement mutually agreed upon conditions and terms of employment. The product of this process is a binding agreement for its implementation and its result is the ongoing cooperation between employees and employers based on consensual decision. The importance of establishing machinery that enables voluntary negotiations through collective discussions is emphasized in the Convention No. 98 of ILO "On the principles of the right to organizing collective discussions" (1949), which provides that: "*Appropriate measures to national conditions shall be taken whenever it is necessary to encourage and promote the development and full utilization of machinery for voluntary negotiations between employers or organizations of employers and organizations of employees, to regulate the terms and conditions of employment through collective agreements.*"[1] Even the Convention no. 154 "Regarding the Promotion of Collective Conversation" (1981), provides that collective conversations should be allowed in all branches of the economic activity and for a range of issues.[2] This includes the terms and conditions of employment, regulation of relations between employers and employees, and relations between employers or employers' organizations and one or more organizations of employees. Negotiation is the foundation of consensual approaches to resolving disputes and is controlled by the parties included in the dispute. Resolving of disputes through negotiation shows a mature system of industrial relations, where interaction that is based on power-sharing and consensus approaches is accepted as a normal process.

1.2 Management of disputes at work

Dispute management systems vary from one country to another. As provided in Article 1 of ILO Recommendation no. 92 related to voluntary conciliation and arbitration, dispute management systems should be appropriate to national conditions. This is a necessary condition to guarantee the effectiveness of the system and the trust of its users. Usually disputes management systems fall into three main categories, as follows:

- Ministry or working departments, where prevention and resolution of labor disputes is the responsibility of national or state labor administrations. In this case, conciliation and arbitration processes depend on officials of the departments of labor, but national circumstances may allow limited involvement in the dispute settlement process to private agencies. This approach is still used in many Asian,

[1] Article 4 of the Convention no. 98 of the ILO "On the principles of the right to organize and collective discussions".
[2] Article 1, paragraph 1 of the convention no. 154 "In connection with the Promotion of Collective discussions" (1981).

African, European, Arab and American places.

- Independent bodies provided by law, where the prevention and resolution of labor disputes is the responsibility of the state-funded bodies, which operate with a high level of autonomy and independence.
- Prevention and resolution of labor disputes are the responsibility of an independent commission, authority or similar body that operates under a special law, which is equipped with its council or board of directors. Although such bodies have been operating for more than 60 years, this category can be termed as a modern independent system.

The National Labour Council is the highest institution of social dialogue in the country. National Labour Council (hereinafter: KKP) is a tripartite consultative body with representatives from the Council of Ministers and organizations of employers and employees.[3]

The KKP conducts consultations, takes decisions by consensus and makes specific recommendations to the Council of Ministers, through the Minister of Social Welfare and Youth. Organizations of employers and employees, and the public administration should give available to KKP all information and data required, relating to the subject of the functioning of the Council for the development of the consultations.

The Council examines issues of common interest to organizations of employers and employees in order to reach an acceptable solution to the parties. The consultations are made especially concerning the preparation and implementation of labor legislation, amendments to this Code and the content of laws, policies and national organizations dealing with employment, vocational training, protection of employees, hygiene and technical safety, production, wellbeing programs of economic and social development, and implementation rates of the International Labour Organization. National Council of Labor may create specialized committees or temporary working groups of advice and study of specific issues of interest to the common National Labor. The council has its own independent budget, which is set by the Council of Ministers. Rules of functioning of the National Labour Council are regulated by the Council of Ministers.[4]

1.3 Visions of Unions in Albania nowadays

Unions must show their vision, although at first glance this seems strange. This is because they are precisely the unions, which should engage with pragmatism to improve working conditions or specific legal framework. However unions were those that participated actively in the changes in the late eighties and early nineties. They pursued a vision of who hoped for more rights and better living conditions of work for their members. Other unions have followed, and today in transition countries there is virtually no trade union organization to be mentioned, which does not actively engage in Integrated Emergency improvement of legislation in accordance with EU norms and thus does not follow the "European social model" vision. Only thus can be considered successes, but also failures of certain steps in decision making. Let's use

[3] Decision no. 1039, dated 4.12.2013 "On the functioning of the National Labour Council and the appointment of representatives to the Council of Ministers in the Council".

[4] Article 200 of the Labour Code.

a concrete comparison: an organization can actually make a lot of steps, but - when everyone goes in a different direction - the result can be coming around or lay beyond the point of departure.
Unions need to start making meaningful concept of "European social model" and to apply it to the field specific topics in their countries.
Field topics may be (Hantke, 2013):
- Minimum social standards,
- The social insurance systems continuously improved (health, age, unemployment),
- Collective contractual agreement on working conditions and wage calculation,
- A coordinated tariff policy and equipped with European-wide guiding principles,
- A functioning system of industrial relations,
- A modern industrial and structural policy,
- A modern domestic legal framework of the company with the rights required for the participation of employees in decision making,
- Occupational safety and health protection.
Based on the study and research I've conducted for the right of association in Albania as well as labor relations in this regard, I have reached a number of interesting conclusions. These results consist in the legislative aspect and practical developments. The union rights can be exercised only in connection with the historical development being enriched, perfect and better fulfilling its social mission. This right reflects the dynamic development of positions between employers and employees while protecting the interests of employees, their professional, economic interests, ie persons who belong to a union.
So, from historical formation of unions and other organizations of this kind so far observed that in Albania they have changed radically. So, in its infancy begining unions had simple organisations of workers for vital interests, today we have a new branch of labor law, the Right to Organise is widespread in all sectors of the economy as a public as well as private enterprise.
Unions are the basis of democracy and where the state has the right to guarantee freedom of association, where the state at the same time has the right to provide for the right to strike and also has no right to interfere in the restriction of freedom of association.
It is amended and improved the legal applicable framework. It is ratified ILO convention which has specified and positively impacted on legislation of labor law. Labor Code has expressed in its content principles and norms set by the constitutions, conventions of the International Labour Organization (ILO) for the "right of association" or for ratified "Liberties unions", the Revised European Social Charter which are principles and norms prevailing over the regulations or provisions of the labor legislation of the two countries.

1.4 Usage of the right to strike as an instrument for resolving collective disputes

A strike is the temporary interruption of work, which employees use to solve their economic or social requirements in accordance with the rules laid down by the

constitutional provisions and other legal acts.[5]
The strike is the form or means of opposition of employee against the employer. Arranging a strike s affected by many factors such as: the degree of economic development, specific activities of trade unions, forms of political regime and other socio-economic factors.
According to its definition, a strike represents a collective cessation of work by more employees in order to realize their rights from labor relations.
The strike expresses the presence of a collective labor dispute, but it is also a war against the employer. In some legal systems, the strike is prohibited and threatens criminal penalties. In other systems, criminal law only punishes certain behavior during the strike.
The strike may be wrong or abusive in 3 groups of prohibitions:
a) those that provide the merits of the strike, through its various forms;
b) those who believe that employers have abused with the right to strike through its abnormal use;
c) those that characterize such events as the worker actions not related to the strike, and who can not find legal justification in the very existence of the strike.
The legality of the strike is an important issue. According to Article 197/3 of the Labour Code are define the general terms of this aspect.

- It is organized by a syndicate, which enjoys legal personality or affiliates to an organization of employees with such personality;
- It aims to achieve the signing of a collective labor contract or, if there is one, to meet the requirements arising from labor relations and which are not regulated by this contract, except as provided in Article 169/2;
- Syndicate or syndicates, on one side, and employers' organizations on the other side, have tried to agree, subject to mediation and conciliation proceedings;
- It is not contrary to legislation. There are some types of strike conditions: special conditions that can suspend the strike like natural disasters, war, or emergencies, and cases when the freedom of elections is into risk, etc. Dismissal due to a lawful strike is invalid. The period of suspension does not affect seniority and its effects.

When the strike is illegal, under Article 197/9, according to the Labor Code, the employer may terminate the employment relations with the strikers. He has the right to make a decision for the workers that do not resume work within three days, to terminate the employment contract with immediate effect, and to ask them to pay for the damage caused. Also the demand for compensation may be directed against the syndicate organizing the strike.
It is the court that decides in the case of an illegal strike, the responsible person, setting the damage caused and indemnification obligations of the parties. If circumstances allow the court may decide on resuming the work.
French legal doctrine, the strike is defined as a fundamental way of protecting professional interests, such as temporary collective suspension of labor in order to

[5] http://albanianjustice.com/?p=1259

put pressure on the employer to support the demands of the employees.
The right to strike is a constitutional right which is enshrined in the Preamble of the French Constitution of 1946 which states that: "*The right to strike is exercised within the framework of the laws that govern*". By that time, the legislature did not see fit to issue regulations on the right to strike. The action of this right was practically free in the private sector (that is framed by rules of jurisprudence); but it was only partially regulated in the public sector. On the question of establishing a minimum service in public services, it should be noted that the legislature - before 2007 - was very careful.[6]
Legislator in France has specified, fixing specific rules for strikes in public services. It follows that judicial and administrative jurisdictions have refined the right to strike, that foremost is its setting as a legal right. Constitutional Council has oriented legislative activity in this field.
Case law shows that administrative authorities and managers do not have the power to regulate the right to strike in general (it is an exclusive competence of the legislature), but they can maintain a minimum individually service. However, the State Council and the Constitutional Council created a law to limit the powers of public authorities and to create a minimum service, it should actually be a minimum service and not a normal, and otherwise it would be a barrier to the right to strike. In general, historically, courts have strictly controlled the powers of public service managers in minimum service.
Therefore we can see that in France, the right to strike, including public services before 1990 were much less regulated but then, the topic of social dialogue began to spread more widely and is displayed in the form of "minimum negotiated services " for example public sector of transport in Paris (RATP).
The right to strike in France is known to public officials with few restrictions.
The conditions set by Art. L.521 - 2 and L.521 - 6 of the Labour Code on the right to strike are:[7]

- Mandatory presentation of notification by one or more representatives at least 5 full days before the start of the strike by the syndicate.
- The notice must specify the reasons for the strike, deciding the venue, date and time of onset and duration of the proposed strike
- During the notification period the parties may negotiate;
- Following strike
- Failure to comply with these provisions may result in sanctions against the strikers.

According to the law of the State Council, the two main classes of agents can be ordered to remain in their posts during the strike, by:
- Personal authority involved in the action of the government and,
- Agents that ensure the functioning of essential services to government action to guarantee the physical security or the maintenance of buildings and equipment.
Restrictions on the right to strike (the establishment of minimum services) are performed by the regulatory authority under the control of the administrative judge.

[6] www.journaldumauss.net/spip.php?article28
[7] http://www.fonction-publique.gouv.fr/fonction-publique/statut-et-remunerations-23

Conclusions and Recommendations

In Albania both employers and employees are aware of the importance of developing international standards of trade union rights and freedom of association for the protection of the economic interests of each party.
It is the duty of the state, trade unions, and the awareness of not only the employers but all public opinion, because if employees are not respected, there can be no movement forward in the process of globalization in the world of work.
Workers' organizations play an important role in the process of signing of the collective agreement, as well as during implementation. During these processes they represent the interests of workers, to ensure decent work conditions for them, in accordance with the rights set forth in the legislation.
The organizations of employees should increase its representation and the reaction of workers to the stage of the beggining of collective legal labor relationship. As represented to be an organization of employees, the stronger is its power in the negotiation stage of the collective contract and the guarantee on the rights arising for.
The strike and solidarity in the definition that the Labour Code has today, restricts freedom of association of organizations of employers, solidarity character of this movement. Solidarity of employees to guarantee their rights to employment, there can be no trade unionism. On the above, I appreciate the need to have a reformulation of the concept of solidarity strike, so that we do not limit freedom of association, for the protection of the rights of employees.
Workers' organizations are important actors of conflict resolution procedures of collective labor relations, and particularly those held in the offices of reconciliation, so they should revitalize their role.
Workshops may be organized by unions of different countries to recognize their analysis and conclusions - perhaps completely similar. Interior workshops on discussing about "new area of action" in a democratic society and eventually "new rules of the game" offer certainly the information on potential needs for structural changes or for setting new accents within the organization. Workshops to discuss the tasks of trade unions in transitional societies and democracy can follow the discussion on reform throughout the ranks of the membership (inviting participation in the renewal of its trade union).

References

Çela, K. (2010). "*The right to work*", Publisher "ILAR", Tiranë.
Çela, K. (2009). "*About European profile of the collective labor contract*", "Legal Studies", Tiranë.
ABC of Unionism, Edition Albanian Association School, Tiranë.
Hantke, F. (2013). "*Unions of XXI century*", Tiranë.
Conventions of (ILO) No. 98 "*For the application of the principles of the right to organize and collective discussions"*, 1951.
Convention of (ILO) No. 87 "*For Freedom of Association and Protection of the Right to Organise*" 1948.
Recommendation no. 92 ILO, "*In connection with the Voluntary Conciliation and Arbitration*", 1951.
The ILO's Convention no. 154 "*In connection with the Promotion of Collective Discussions"*, 1981.