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Labor contract in Kosovo and its harmonization with the EU labour law

Abstract: Private law within itself interlocks a big number of rights. It interlocks the civil law-general part of it, the real law, family law, inheritance as well as obligatory law. Obligatory law is the most voluminous field of law and it within itself interlocks the contract law where belong a series of contracts by name and without name. Labor law covers also the labor contract. Labor contract is part of the contract law and as all contracts it is regulated and uses all disposals and principles of the obligatory law. Labor contract is one of the more frequent contracts that has the determined form and which presents judicial connectivity between the job seeker and employer. Through this contract the rights and obligations of contract parties are determined. This contract derives from the Roman Law, so quite early in the history. It starts to develop a little but in feudalism whereas its perfection it achieves in the XX Century.

Albanian Law since it belongs to the continental system of law has inherited many disposal from the French Civil Code. The labor contract in Albanian has started to be applied during the King Zog time (Zog Code) and it continued until nowadays. This contract is regulated by law, respectively by the Labor Code being served also by the Law on Obligations and the Civil Code, especially by the general principles. Due to the fact that the Civil Law is still not codified by a unique EU Code, then at least to this contract there unified all disposals and they are unified in all countries that have undergone the analysis of the paper and that are the part of EU.

Keywords: labor law, labor contract

Introduction

Contracts are the main resources of the obligatory law. The judicial life would be impossible without contracts. All people are obliged to exercise various activities in order to live as better as possible. They every day conclude contracts even when they buy bread in a supermarket. Therefore in developing sale activities and in order to develop trading in general as well as job in particular then by all means subject shall conclude the labor contract.

Paper starts with the description of the history of the labor contract from its first days of appearance until nowadays. Initially paper starts with its notion giving explanations and interpretations of the law related to this contract.

Labor contract is one of the most frequent contracts. It covers disposals that represent the relation between employer and employee. By this contract there are determined also the responsibilities of contracting parties. This contract in most cases is formal contract where its composition is determined by the labor law. By this contract parties determine the time of the work, then the short or long duration that is calculated to be 10 years.

After conclusion of this contract according to the Law on Obligations there is necessary to be fulfilled a series of conditions which if not fulfilled brings to the situation when the contract is considered absolutely invalid. Labor contract is individual and collective contract. Paper contains also the effects that this contract produces and at the same time with the paper there are enumerated also the ways of termination of the contract according to the current legislation in our country and in some EU countries, as well.

History of labor contract

The division of the labor relations as paid relations as a specific group of relations starts by capitalist production. In the time of industrial revolution at the end of XVIII Century and early XIX it starts and continues until nowadays.

Roman Law has used a labor contract that was rarely implemented in the slave society. This contract was called location condiction operarum (contract of agreed to work). By this contract a free person in Rome sold his working capacities for a remuneration. Renting of slaves was done by this contract. This as a short term contract. All reports were of short term nature. Labor contract was recognized by Napoleon Code also.

In the feudal society there were no paid working relations, for the structure of feudal order¹. The work of villager was not treated with labor contract by the feudalist. In the judicial doctrine theory of labor relations had its historic development. The labor contract until XX Century was the legal basis for the relations between employer and employee. In the labor relations there were implemented all obligatory rights. There were also implemented all principles of the contract law.

After the First World War the capitalist state begin to intervene in the labor relations aspects. After the Second World War the labor relations start to develop even in our territories. Therefore agreement was regulated by the Civil Code of the Albanian Kingdom dated 1928 as well as with the actual labor legislations from the Western Countries as Italy, French, Germany, United Kingdom, etc. Today, Albania has its Labor Code whereas Republic of Kosovo has the labor Law.

Labor contract – notion

Labor contract represents an individual act that is concluded between employer and employee. The labor contract is a contract which describes all rights and obligations between employer and employee. According the Labor Code of Albania the labor contract has a lots of space in the code since the code itself treats it as such. The Labor Code starts to explain the labor contract in the chapter V starting with article 12. Labor contract is agreement between employers that regulate labor relations and it contains the rights and obligations of parties².

According to the United Kingdom legislation: labor contract is an agreement between employer and an employee that determines the rights of employment, responsibilities and the duties. These are called “conditions of the contract”³.

Labor contract is concluded in the written form and it is signed by both: employer and employee. It is a formal contract that is concluded in the form as foreseen by the law. It is considered as a contract by name since it is enumerated by the Labor Law. Labor contract is a commutative contract where contract parties know their rights and duties. It is a contract that belongs to the group of contracts by remuneration because employer rewards employee for his job or for exercised services in the employer institution.

¹ Kudret Cela, E Drejta e Punës, Shtëpia Botuese ILAR, Tiranë 2012, p. 200.

² Labour Code of Albania, article 12. Point 1 Kodi .

³ http://www.lra.org.uk/index/employment-questions-and-answers/contracts_of_employment.htm (access:08.09.2014).

As many other contracts the labor contract has also its elements that are: labor contract can be concluded for a determined period of time, for an undetermined period of time and for the work and the specific duties⁴.

Labor contract is conceded for a probation period but it is concluded also for undetermined or determined period of time where the undetermined period covers ten years period of time. According to the German Civil Code the contract which is concluded by contract parties may be concluded for a probation period of time. Parties agree that the probation period is between 6 month period of time⁵.

German legislation determines the labor contract initially for two years period of time. This means that this period is shorter than two years. Concluded contract is limited for two years and there could not be concluded the other contract with the same employer⁶.

Labor contract that doesn't contain any specifics for its duration is considered as a contract for undetermined period of time⁷. Whereas German legislation considers as a permanent contract the contract which duration is until age 58 that means that this is the retirement age.

Contract with undetermined period of time cannot be concluded for a period longer than 10 years⁸.

Contract of determined period of time that is renewed clearly for a period longer than 10 years is considered to be a contract for undetermined period of time⁹.

According to the Labor Law, article 13 if this contract is concluded for a specific duty, it cannot be longer than 120 days within a years.

It was mentioned that with the labor contract both parties have rights and obligations. Labor contract is commutative contract because parties since the conclusion know their rights and duties.

⁴ Kosovo Labour Law, nr 03/L-212, Gazzete, Parliament of the Republic of Kosovo, article 10, paragraph 2 and sub paragraphs 1, 2 and 3.

⁵ http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158899/lang--en/index.htm (access:8.09.2014).

⁶ http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158899/lang--en/index.htm (access: 08.09.2014).

⁷ Ibidem, article 10, paragraph 3.

⁸ Ibidem, paragraph, article 10, paragraph 4.

⁹ Labour law, article 10, paragraph 5.

With the labor law employee offers his work or services for a determined period of time or undetermined under the framework of other person organization and orders called employer which takes the responsibility to pay a price¹⁰.

As a rule, persons that have a labor contract by which they are employed and by which they have put their services in the framework and orders of the employer against a determined salary¹¹.

Conditions for concluding the contract

In order to be concluded the contract should fulfill conditions of conclusion. These conditions are enumerated by the Law of Obligatory Relations. A number of theorists divide the conditions into general conditions and specific conditions. The other groups explains those only as conditions for concluding a contract. General condition for concluding a contract are: ability of contract parties, will, subject of the contract and contract basis. If the contract doesn't fulfill these conditions it will be considered absolutely invalid contract and it is also considered as it was not concluded at all. If the specific condition are not fulfilled when concluding contract that it is considered as relatively invalid contract.

Ability to conclude a contract

Ability of contract parties is the condition that is required before signing a contract. Subjects that pretend to sign labor contract being physic or judicial persons they should have the working ability. The working ability means that the subject that signs the contract based on his will has determined rights and duties¹².

Physic person gains the working ability by achieving age of 18-age of majority. Whereas physic person may gain the working ability after achieving age of 16 and this means that they achieve the acting ability by emancipation that is gained by the court decision¹³. Apart to the total ability there exists also the limited working

¹⁰ Albanian Labour Code, article 13, paragraph 1.

¹¹ Kudret Cela..., op. cit., p. 243.

¹² Nerxhivane Dauti, E Drejta e Detyrimeve-Pjesa e përgjithshme dhe e vacantë", Universiteti i Prishtinës, Prishtinë 2001, p. 63.

¹³ Emancipation represents a fact when the ability to act is gained before age 18 by the court decision and by the request for example (case of marriage) when they/partners ask establishing of marriage. By the court decision the ability is gained and partners are similar to all persons that overcome the age 18 therefore they establish marriage.

ability which have persons age 14 and the persons of majority age to whom by the court decision is taken off partially the ability to act by the court decision. The minor that has reached age of 15 and that got employed can possess incomes that realizes from a working relation¹⁴. According to the German labor law the work of minors is forbidden because this is forbidden by the act that protects children. This applies not only to children under 15 but also to older ones but that are still obliged to undergo obligatory education¹⁵.

Consent of the will

Principle of autonomy of will is a foundation of the private law¹⁶. From this we can say that this principle is one of the main principles of the labor law in particular. Consent of the will is the second condition for concluding the contract. Consent of the will should be the same for both parties of the contract and it should be in accordance with the external will that is in other form called declared will. The will on concluding contract could be expressed on words, usual signs or with any other behavior from what it may be concluded surely its existence. The consent of will should be freely and seriously expressed¹⁷.

Subject of the contract

Subject of the labor contract is a general condition for concluding contract. Subject of the contract is everything for what parties agreed or “for what the contract is concluded”¹⁸. To the labor contract the subject of contract is work which worker/employee should exercise whereas employer should remunerate for the executed work.

Basis of the labor contract

Contract basis is the last condition for concluding the contract. Contract basis is the reason, cause for what the debtor takes the responsibility.¹⁹

¹⁴ Nerxhivane Dauti..., op. cit., p. 3.

¹⁵ http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158899/lang-en/index.htm, (access: 8.09.2014).

¹⁶ Ardian Nuni, Ilir Mustafaj, Asim Vokshi, “E drejta e Dtyrimeve I”, Tiranë 2008, p. 10.

¹⁷ Law on Obligatory Relations, Gazzete, Parliament of republic of Kosovo, Prishtina, article 19, paragraph 1 and 2.

¹⁸ Nerxhivane Dauti, “Kontrata”, Universiteti I Prishtinës, Prishtinë 2012, p. 37.

¹⁹ Ibidem, p. 38.

Basis of contract is called also as cause, reason, judicial title, etc. In cases if the basis is absent than the contract is a fictive contract.

Form of the contract

Form of the contract is a view of the contract²⁰. Contract should have its content and in most cases this is determined by the law. The labor law the disposals of content are enumerated taxatively. Labor law determines the content of the contract and that should be respected by both parties: employer and employee. The labor contract is category which could be concluded also verbally. If the labor contract form the beginning is individual it should not have a specific form. It may be initially informal contract. However there are cases when it should by all means have the form determined by law. It should be written. Labor contract contains: data about the employer (title, residence and number of business registration); data about the employee (name, surname, qualification and place of living); title, nature, type of work, type of services and job description and the information that the work has to be done in various locations, working hours and timetable, date of starting the work, duration of the labor contract, the salary and other additional income, duration of vacations, termination of the labor relationship, other data considered by both parties to be important for regulating the labor relations, labor contract may contain other rights and obligations foreseen by the law, the rights and duties that are not determined by the labor contract, they will be regulated with the disposal of this law, with the collective contract and with the inner acts of the employer²¹.

Agreement between parties

Labor contract as objective conditions for contract conclusion enumerates: agreement between parties, cause of the contract, object of the contract and the form of the contract. Regarding the object and the cause of contract there were discussions above. According to the labor law we have described the content of the contract (what the contract contains in its disposals) as well as we have talked about its form. Further we will discuss more about the agreement between parties that was not mentioned above.

²⁰ Vilim Gorenc, "Baza e së drejtës tregtare statusore dhe kontraktore", Kolegji Victory, Prishtinë, p. 151.

²¹ Kosovo Labour Law, op. cit., article 11, paragraph 1 and sub paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13.

Contract is considered concluded at the moment when achieve agreement, and this means that one that has made a proposal receives also agreement of the other party²².

Agreement is concluded as a consequence of reception of proposal (offer) from the party that is proposed respectively reception of offer by employer and/ or employee. Offer is made for an undetermined period of time to a determined person (employee). There are cases when the proposal is made for a determined time and the reception of offer or proposal should be done within a determined time. If the proposal (offer) is not accepted within the deadline it is considered that the proposal is not accepted by the proposed.

Collective contract

Collective contract is a collective agreement by which the working conditions are determined and regulated, the rights and obligations from the labor relations between employers and employees for the cases when the law disposals are not appropriate or when they cannot be applied²³.

Collective contract cannot contain less favors for the employee and employer from what is determined by the law²⁴.

With the collective contract in accordance with the law there are regulated the rights and the obligations of the employers. Collective contracts are concluded in special fields, for example: education. culture, health, etc. Based on the general collective contracts there are concluded specific collective contracts and consequently the labor contracts for establishing labor relations that are practically similar to decisions for jobs²⁵. Collective contracts is concluded with one or with some employers or employer organizations in one side and with some unions on the other side²⁶.

Termination of the labor contract

Labor agreement may be terminated in several cases. This may be with reciprocal agreement with the employer, by the force of the law and without this²⁷.

²² Kudret Cela..., op. cit. p. 246.

²³ Riza Smaka, E Drejta Biznesore, Universiteti Mbretëror "ILIRIA", Prishtinë 2008, pp. 486-487.

²⁴ Kosovo Labour Law, op. cit., article 4, paragraph 2.

²⁵ Riza Smaka..., op. cit., p. 487.

²⁶ Albanian Labour Code, article 160.

²⁷ Mazllom Baraliu, "E Drejta Biznesore", Universiteti i Prishtinës, Prishtinë 2010, p. 423.

The German labor law makes a difference between usual termination (by the agreement of both parties, when the contract is over-time or it is over and by the death. This way of termination represents the same way of termination of contracts as it is foreseen by law respectively the labor code. In France the ways of labor contract termination are: by agreement of the parties, by termination from employer or employee, by expiration, by the death of employee and from the court²⁸.

In the United Kingdom termination of the contract is done similarly to French and all French forms of the contract termination are applied in Great Britain²⁹.

According to the disposals of article 11 of the Kosovo labor law the contract is terminated in the following cases: with the death of employee, by the written agreement between employer and employee. Further terminations go with: the bad behavior of employee, for the un-fulfillment of duties by the employee, by expiration of its duration and by the force of the law.

Employee may declare by its will and in written, without pressure why he requires termination of the contract.

In cases of bad behavior from the employee the termination of the contract is done when:

Without justification refuses to fulfill working obligations determined with the labor contract, steals, damages, sells out the business secret, uses drugs and alcohol in the working place, or when employee violates heavily duties, etc³⁰.

Labor contract according to the labor law in force may be terminated by the employer also due to the economic, technologic or structural changes of the enterprise³¹.

If we analyze the ways of termination in French, United Kingdom, Germany, Kosovo and Albania there we see a lot of similarities on contract termination.

Conclusions

Obligatory law is one of the more broader fields of the civil law in general. As a law field it deals with the study of all judicial relationships that are created between creditor and debtor. It is divided in the obligatory law: general part and the special part. In the focus of the study I was committed on the analysis of the labor contract – part of the obligatory law – special part of it.

²⁸ <https://www.cfe-eutax.org/taxation/labor-law/france> (access: 08.09.2014).

²⁹ More at: <https://www.cfe-eutax.org/taxation/labor-law/united-kingdom> (access:08.09.2014).

³⁰ Kosovo Labour Law, op. cit., article 11, paragraph 3, points a-d.

³¹ Ibidem, article 12.

Labor contract is one of the most frequent contracts. It is initially seen in the Roman Law in the slave society. Then there was a stagnation in the feudalism where it was rarely used. Many theorists have dealt with the labor law and the culminations of its development and its perfection it arrives in the modern times. Our law the labor contract regulated with the Ahmet Zogu Civil Code (King Zog) of 1929. This code was based a lot on the Napoleon Code.

Its intensive development has started in 20th years of XX Century and its perfection is achieved after the Second World War.

Labor contract in Kosovo is regulated as a part of the civil law and it is covered by the labor law. The Kosovo labor law is a law adopted in the XXI Century and within itself it contains disposals that are in harmony with the EU legislation. This happened also due to the fact that Kosovo pretends to be a part of EU therefore efforts were made on the harmonization of this law, and not only this with the EU legislation. Since in EU there is a unique civil code, in some of the laws there were efforts made to have some similar laws. When we talk about similarities, we see that German, French, United Kingdom, Kosovo and Albania have the same conditions for concluding contract law. At the same way the definition is the same in these countries in every European state.

Labor contract is a contract concluded between employer and the employee. Both contracting parties are obliged to fulfill their duties. It is a contract that in order to be signed agreement between parties is needed and this represent the main condition for its conclusion. The consent of will is the second condition and if there is no accordance of will and expressed will as well then the contract is considered absolutely invalid. Subject of the labor contract is the work that is to be executed by the employee whereas the employer is obliged to pay the price or salary for the executed job by the employee. Basis of the contract is the cause or the goal why the contract is concluded and at the same time it represents the fourth condition for its conclusion. Form of the contract is determined. Labor contract apart from being commutative contract where parties know their rights and duties, it is also the contract by name and contract by remuneration. Kosovo Labor law and the Albanian Labor Code enumerate ways of contract termination that are at the same time the ways of termination of the labor contracts similarly to the German Civil Code, Britain (even thigh this is common law), and French. From this a conclusion is drawn that all EU countries have not unified the labor law but in order to unify the labor law firstly we should have similar laws with almost no differences.

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