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Reform of labor market, a time and European Integration necessity

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Introduction

Building the democratic society, establishment and enforcement of law state mean deep reformative processes. Therefore, the concept, scientific treatment and correct application of this reform indicate at all times the consideration of time and European integration requests, responsibility on the system, content, function and reforms impact in social, economic and legal life of the country. Anyhow, the claim that the reformation of labor market and legal relations created due to it constitute the priority of priorities, the subject of nowadays or otherwise states the stigmatization of the main reform in the R.A, expresses a very tangible and sharpen reality.

It is right to raise the question that simultaneously indicate quick and qualitative solution: Is it possible to have the maximal employment level? Can we increase the speed of labor market dynamism? Can we provide better interaction of private and public agencies for the jobseekers? Can we create new job positions, with modest investments but with increasing efficiency? Do the employment portal, the digital register, which already exist, favor the space for transparency and elasticity of the labor contracts, especially of the atopic ones? How can the employees' qualification and training be changed any further? Can the professional high education get more attention? Can a offered job be refused, even why the person benefits a certain economic aid? Which are the main direction of reforming the legal labor market and wider?

The synthesis of the above questions, according to us, would only have a positive response, always affinnative. Thereby, reformation would directly express the modern essence of our labor law. This is due to its extremely great importance this process has. "Actually- the outstanding American professors Cox, Bok, Gorman and Finkin write- the modern labor laws stipulate several substantial aspects of work relations" [1}]

I. The freedom and right to work are fulfilled in the labor market space

In the legal sense, the freedom of work and the right to work are respectively freedom and right to work or not to work. This thesis is closely related to the liberal regime of the action of demand and supply law at labor market. In order to prevent the misuses of

') A. Gorman - M. Finkin "Basic text on Labor Law", U.S.A., 2006, Pg.l

employers to the detriment of the employees, the international democratic legislation has set several clauses, some special rules for the protection especially of labor freedom and right of the infants, women, and disabled persons. [2)]Thus, the state in the conditions of a market economy, presents itself as regulator in the function of a progressive social policy. This public function, aims to mediate, as much as possible, the employment of persons capable to work.

Viewed in international terms, employment and labor market are under the pressure of many factors: demographic (High flux of women and youth at labor market); technical (continuous diminution of human contribute due to automation mechanism, robotization, computerization of labor processes and increased demand on qualified specialists); economic (geographic remodeling through regulating the territory and industrial reorganization, high concurrence through foreign countries) and political (EU creation and activity, removal of barriers for free circulation of employees, goods and capitals in the European Union Countries)[3]

It is understood that economic crisis and unemployment constitute a serious problem in the employment politics of a democratic state. In these conditions, there are required solutions such as, reduction of working hours, (to liberate places and reduce in this way unemployment), reduction of pension age, review of immigration policies, economy modernization and research for an improved concurrence, policies in investments to create new jobs, lawful privatization policies etc. it is also recommended the social treatment of unemployment regarding the social division of work, promotion of works with collective benefit, promotion of internships for professional education with the purpose of reduction of unemployed especially among the youth etc.

A special care is nowadays shown towards the problem of enterprises bankruptcy, minimization of these cases with the purpose to prevent massive severances.

However, it must be highlighted that the war against unemployment worldwide, starts with the professional formation and contemporaneous qualification. It continues at the framework of reorganization and reformation of economy towards social progress.[4] The state at the framework of its social politics charges the administrate and court to respect the principles and rules of labor law. But, in the final analysis it must be admitted that unemployment in minimal levels is part of contemporaneous labor law.

[2])Conventions of e OPN, EU directives on this matter, Labor Code, Laws on Gender Equality, nondiscrimination etc. See. "Codice Europeo del Lavoro", Milano, 2009 f.l73, 262, 284.

[3]) J. Pèlissier, G.auzero, E. Dockes „Droit du travail", Paris 2013, f.l92 - 198

[4])E.Ghera, "Diritto del Lavoro",, Bari 2012, f. 323 -326, 343 - 345.

Based in international legal acts, labor freedom and the right to work are sanctioned in the article 49 of the Constitution. In our country, every person who is capable to work, is free to choose his profession, job position as well as his professional qualification system. The right to work is related to work freedom, what means that everyone is entitled to gain living means through legal work he/she has chosen or accepted.

Concretely, employment policies are regulated by normative acts such as Tabor Code, and especially the Law on "Employment promotion" (as amended). These provisions aim to pursue active policies to support full, productive and freely chosen employment, fulfillment of the right of all citizens for a profitable employment, to receive professional consultation and qualification and income support.

It is the duty of every employer to register, at the office of the relevant position, where he exercises his economic activity, every employee he employs to fill the vacancies he has. Interplay of employment private and public offices would lead to very positive impacts. In this regard, the Reform Hartz in Germay gains importance, as it has brought very good results.

The filling of the vacancies the employer has, is performed with the candidatures he is offered by the labor office or by other candidate that the employer chooses willingly. The information on the labor market has great importance. In this regard, every employers reports every month at the competent office regarding the employed persons and their name lists as well as the most important activities. On the other hand, every employment office, regularly reports every three months at the general director on the employed persons number, their names, on the number of enterprises and institution in their competence and their most important activities, on the number of the vacancies as well as on their distribution in accordance with the profession, educational level and required qualification, on expected suspensions and bankruptcies number as well as on the number of involved employed persons etj.

At the relation employment and labor market, the space for jobs or new jobs by the person who is a citizen of the RA is highly evaluated. Thereby he confronts the labor office to find a job through the employment portal. It is this office which registers him and creates the possibility for full transparency of the labor market and of the concrete contract to be applied.

Based on the labor legislation and according to the international relations, bilateral or multilateral, foreign persons and the ones with no citizenship are entitled of the same rights as the Albanian citizens, what confer to the competent authorities possibilities to

express on the residence right and to issue working permissions. The relevant Ministry defines the conditions, in which it is provided the same treatment for foreigners who come from countries that do not have such an agreement with the Republic of Albania.

Persons with disabilities are entitled of special protection regarding employment. Labor legislation sanctions that every employer who hires more than 24 employees is obliged to hire a person with disabilities for every 25 employees ofhis personnel. An employer can hire a person with severe disability instead of 5 persons with slight disability. The line Ministry determinates who is defined as a person with severe disability and who is with slight disability.

In all the employment and professional formation practices, international democratic practices, principles and legislations are considered such as[5]:

a)Prohibition of obliged work; b) Prohibition of all kinds of discrimination ; c) Prohibition of clandestine work (black jobs and their marketing); d) Professional legal equality (especially the equality between women and men etc).

II. Scientific and active Politics of labor market, as a condition for its capacities expansion

The employment quantitative policies aims full, productive and freely chosen employment. Compilation and scientific application of this politics, aims to prevent crisis of unemployment and other severe social-economic consequences that lead to the slowdown of economic reforms. Opening of the new job positions thorough economy reformation, privatization, foreign investments, investments of domestic enterprises, restructuration of enterprises and institutions, are supportive instruments of employment quantitative policy.

The right for a good employment, in the function of qualification, is a right related to the professional formation and that dictates policies such as:

a) Orientation; b) Professional and educational formation c);Effective warranties of labor (sustainability and continuity) d) continuous formation, adoption and change;

the right employment policy has fundamentally the regulation of collective contracts, entered into based on social partnership, collective discussion accompanied eith the legislative refor and the state's support[6], which aim :

5^ Shih sidomos Konventat e ONP me Nr.88 ,,Per organizimin e shërbimit të punësimiE* si dhe nr.l22 "Për politiken e punësimit". 6\ G,Gingni, "Diritto Sindicaie", Bari 2012, f. 125-127, 131, 181-183.

a)to have jobs for all the capable jobseekers; b) this job must be profitable; c)To have freedom in choosing the job and qualification possibilities for persons, regardless the

race, color, sex, religious faith, nationality and social origin . Our employment policy, starts from the actual stage and level of economic development in Albania as well as from the relation and priorities existing between employment objectives.

However, the legislation, practice and doctrine of our labor work in this regard evidence:

a) The space and the chance created by the free economy of the market labor for all persons capable to work.
b) The necessity of work productivity
c) The right to freely choose work, and necessary qualification

Mediation in work, as the first element of the labor market active policies, means activities that aim to define a suitable work for those citizens who are seeking jobs and provide the necessary formation and information. The jobseeker is that person who is unemployed and who is registered at a labor office and who is expecting to work, as well as any person who goes at the labor office to seek ajob. The unemployed person is the person who is a citizen of the Republic of Albania and who has completed the obligatory 9-years school and who is seeking ajob.

Of course the employment of a person, by rules means the employment at a suitable position. The suitable position means the employment of the person in accordance with health conditions, age, qualification and other abilities but the person upon his free will may accept to work in another job outside his profession until the achievement of the required job.[8] The self-employed is situated in another legal status. This person performs an authorized activity, at the manner predicted by our legislation on its behalf, in the exchange of a payment or other reward form. For this the employment mediation includes work programs that harmonize within a commune, municipality, region, prefecture, inside and outside the country, pursuant agreements with other states. In the mediate for the labor, a special attention is paid to delicate special conditions where it is included education, mother with children under 15 years old, adults over 15 years old, persons with disabilities etc.

The second element of active labor market includes the programs of creating job positions. The programs of creatingjob position may be qualified in long-term programs, for creating permanentjob positions; in medium-term programs, to providejobs for those

7^ Neni 1 / II i Konventès Nr.l22 te ONP, thelbi i të cilit parqyrohet në Kodin e Punës dhe në Ligjin për nxitjen e punësimit.

[8]This trend expresses the successful capita of the reform “Hartz” in Germany

who finish school; in short-term programs for public jobs as well as programs to promote the medium and small business.

III. Atopic Iabor contract, elastic therapies for increasing employment.

the new development from the classic model of labor contract until today, is represented by new economic- social relations which deal with duration of the work and contractual relations. The work can be smaller in its duration, less than 8 hours. Although, the employee depends from the employer.

In these new models[9], reduction of working hours does not modify the nature of t e contract, but avoids the classic model for the needs of flexibility. The employee tends to accept a reduction of his working hours. Thereof, a solidarity need is attached to the contractual forms between the employees and employers. It is very noticeable the increase of part-time contracts of the social groups. This trend happens as the result of flexible use of the labor market and in general is seen as expression of a policy that through diminution of the labor contracts with undefined duration, is guaranteed more employment, even why with lower working hours.

Actually, the special psycho- physical stress of this kind of work, has provoked collective laws and contracts, considering the working hours of the employee. So, these laws and contracts are turned into transversal instruments to promote the part-time work. In these circumstances the labor contracts are not used as legal instruments for a policy (labor cost saving), but aim to guarantee the protection of the personnel and to not harden the labor organization, also to give it a greater flexibility. In countries such as Belgium, Holland, Portugal, Norway, France, Italy and Switzerland the part time labor is highly promoted. There are countries such Greece where this occurrence is not regulated duly. Anyhow this labor fulfills a very important economic function, as it is presented as a second employment, 'part-time' labor may have several forms. It can be created by the reduction of the daily working hour (part-time horizontal); or by a full time job performed at altered days of the week, month, year (part-time vertical); or of mixed labor, combining two precedents of part-time typologies part-time horizontal with part-time vertical.[10]

The German jurisprudence highlights that the orientation towards part time labor depends solely by the parties' will, justified by an objective motive, considering the interest of contracting parties. According to Belgian collective contracts, the circumstances

[9)] L.Galantino "Diritto del lavoro", Torino 2009, Pg. 164-168, 199-202 also "i nuovi contratti del lavoro", Trento, 2005, pg. 41-58.

[10)] "I nuovi contratti del lavoro", Trento, 2005, Pg..47,49,54,56.

justifying the part time labor must be technical and economical. It the enterprise council that has the right to modify in these cases the rules of the labor. In the framework of contractual freedom the contract “job-sharing”, seen by the sociological point of view, is a part-time version as it contains the signing of two labor contract for twojobs performed by different employees. The quality level of the work is not analyzed. Although, the feature is in the content that the parties aim to give to their labor agreements. Thereof, the labor position, separated requires a qualification grade, a type of collaboration and contacts outside working hours among persons.

So, there is a special characteristic which is the collaboration among employees. Redimensioning i expressed in a type of deviation dealing with the labor place. It has to do with a new occurrence of performing the labor outside the main producing premises so outside the enterprise center or house. The house labor is well-known since industrial revolution. But it has been part of a renovation and expansion process, where the technological progress had a major impact.

Home labor creates important legal problems regarding the compliance and discipline.

Although the legally interesting fact is that it is performed outside the enterprise. The legal expert must distinguish the close report among the employer and employee. The modification in existing legal structures caused by the technologies are analyzed in two directions, the enterprise one and to part time one, which does not constitute a danger provided that it is not misuses as a replacing system of getting undefined in time labor contracts. The expansion of technologies indicate that labor work that regulate cases in which part-time orientation is possible, reducing the free will of the parties at the moment they decide to enter in this type of agreement.

Collective contracts my discipline the manner of labor organization as well as to apply in a concrete way the legal principles. This situation is true for countries such as England (and in some amount Denmark) where part time labor was denied by the legislation and was regulated by collective contracts. One of the forms of elastic administration of labor power is the contract “job-sharing”.[11] In this contract the parties willingly agree to divide a single work (full time), among two or more persons, and as a consequence they divide the wage and other benefits sourcing by labor relations. This is a very interesting frame of labor relations.

[U)] “Nuovi contratti di lavoro", Trento 2005, pg.41,42,44. Il lavoro ripartito. (ojob sharing)

Born as an instrument of improving labor quality, this mean, especially required by the employees, more than promoted by the syndicates, seems to have been expanded mostly at women and at the employees who are at pension age.

Thereof, this is a new labor form present in many countries of European Union and which has succeeded also in the USA.

Elome labor according to the English and Swedish right, may be pursuant the circumstances, an expression of autonomy or dependency is it is connected to a specific labor body. This results from the existing labor contract; tele-worker is an employer who works home autonomous or not form the enterprise, according to what the conditions of the contract are or are not in compliance to the depending nature of labor. Thereof, this is the way that the Italian law operates to distinguish the depending labor with the producing cycle of the commissioning enterprise, -being not necessarily depending on the enterprise but under the entrepreneur orders. For the German law, the dominant criteria is that it will encourage tele-worker towards depending labor ore at home. This is the criteria followed by the Cassation Court ofBelgium.

A very spread form is temporary work, which is defined as a regular activity, for the implementation of which a temporary work enterprise signs an employment contract with theemployeethatsearchajob, inordertoput theseemployeestemporarily availableto enterprises. Temporary work appears in different variants that lead to two hypotheses, giving workers a third undertaking. Employee is commanded by the former employer to give his work also to other employers. New employer has the obligation to give the money, organization and direction, but the employee is always depending on the former employer. This phenomenon is widespread in the construction industry, such as in Belgium, and Portugal, in their high technologies, both in the US and Switzerland. As regards Italy, jurisprudence has established some basic principles thought that is always necessary interest of the employer to his employee, in the absence of which, the relationship is considered directly between the disconnected employees and to who uses him.

Temporary work as a flexible work is regulated in Germany, France, Belgium, and Netherlands and generally, fixes some principles that guarantee the company's interim status from which the employee depends. But, obviously, the permanent relation of fact decided by the enterprise user, stem certain obligations and certain rights that cannot be ignored. Above all, it is the obligation to respect the guidelines of the enterprise that uses

temporary work. The latter is bound to create for workers and take in the same environmental conditions of its employees work. Countries that have implemented this phenomenon, from a legal standpoint, have moved positively in this regard.

At the core of the labor right to determine who is the effective employer, should be the criteria of effectiveness of lending to employees. So happened in Germany and France, where the user's enterprise continue working under temporary contracts, after the deadline without renewing the contract of beginning available setting. Consequently, the latter was transformed into a contract of indefinite duration. The employee, therefore, becomes subordinate to users enterprise. In cases where there are no legal rules, this phenomenon is regulated by thejurisprudence, who can claim (as in the case ofPortugal) that there is no connection between the employee and the temporary company or consider it as independent, (as in England). This avoids the instability of the status of these entities, especially in the enjoyment of trade union rights. Opposition of the legislator toward these figures with various deviations and their status is visible. Exactly the fear of evasion or fraud to the protective provisions, the anxiety to create a working environment only with autonomous view, but in fact dependent, Swedish legislator for predicting a union right before the company decides to allow someone pursue, for its own account, a job, before taking the dependent status of the worker.

If we return to work at home module, it is a kind of contract that is usually applied to handicrafts little importance works (eg confection industry). Today, the reality has changed dramatically, especially in the use of telecommunication techniques and informatics, which allow many types of work activity to be decentralized, by the most sophisticated (shopping, searching, gathering, processing and exchange of information), to the most simple (purely executive tasks, such as etc.).

Tele work phenomenon, as a new form of work, utilizes telecommunications and tries a new method to activate a free stage of the production activity. This phenomenon is even more complex and rich social typology, which is wider than the one provided by the legislation that has sanctioned the work at home contract (for hard work, for the production of materials and services). Thus, at least as it appears from the examples, work at home qualifies as a commercial activity. Under German law, or Belgian law, is called home worker the one who processes raw materials or goods from one or more merchants, or as expressed in Italian law, who works, using first raw materials and accessories. The legislative reform in this area is necessary, especially in cases that the law defines the housework only for hard work, thus excluding not logically, intellectual work.

There are countries that do not define clearly what is meant with dependent work at home (as Portuglia and Greece). In this issue our labor legislation too, needs to be supplemented and clarified better.

However, the main problem of the legislation is precisely to distinguish specific types of work in the social market, which must keep in mind the Albanian law makers when doing new law provisions in the fast future reform.

Tele-work as an organizational choice is based on a contemporary work report that is done at a distance from the headquarters of the enterprise /organization. This phenomenon requires the identification of ways in which is submitted this form because from that depends the application of labor law, in the presence of an employment contract.

Conclusions and recommendations

The main conclusion derived from the analysis of the above issues is that our legislation and social justice already represent generally modern, contemporary legislation and practice, aligned more with legal acts and European jurisprudence. This harmonization is very susceptible to all the basic parts of the legislation.

First, in governing the individual work / labor relations (individual contract, birth, its resolution, occupational safety, salaries). Secondly, in governing the collective labor relations (collective labor contract, labor organizations, collective conflict resolution, and right to strike).

However, along with these findings cannot be denied the presence of certain problems concern about which, in summary, can be advised to urgently reform the labor market as a necessity of European integration. The main directions of the reform and the new law regulations would, in our view be, mainly these:

The expansion of the labor market area, addition of new work places, through foreign investment and local entrepreneurs. Broader and complete employment, poses the greatest challenge. The dynamics of economic life, the creation of new jobs and better protection of the personality of employees, especially of women (protection at work, special protection of women toward sexual harassment of employees under 18 years old, and the disabled) , is another direction for possible legal improvements. Prohibition of discrimination for employees affected by HIV Aids, deserves to be expressly provided in the Labor Code.

Reformulating and the fulfillment of certain provisions to better predict of the pregnancy, modification and termination of the employment contract in general and in respect of gender equality and non-discrimination because of race, gender, age, pregnancy than women contracted etc.

Better regulation of flexible forms of employment contracts (atypical individual and group contract). The review, in accordance with ILO Conventions and Recommendations, European Social Charter, the European Charter of human rights, mediation, conciliation and arbitration, will better congregate our labor legislation. Is already advised to create regional consultative local units, which will be composed of representatives of employers, employees, and from government. These tips will examine issues of common interest for Organizations of employers and employees, in order to achieve a solution acceptable to the parties at the regional level.

In our labor legislation can be performed even legal or sub transitional operations (additions, changes), in accordance with the financial and economic crisis that the world is experiencing. Thus, for example, using flexible legal forms of atypical employment contracts (such as temporary, part-time, job-sharing, contract work at home), we would have certainly higher levels of employment. For this, the job seeker should also be more flexible, more realistic, more optimistic about creating new jobs, even with limited investments, but in the future will provide high efficiency. Increased speed of the labor market dynamics is a condition for its actual development. Is required a better coordination of public and private agencies of employment. Computerization and digitization of the labor market, helps greatly in this respect and serve to the full transparency of the process of employment in our country. Expansion of secondary vocational education will expand the missed work market for these specialists. The work provided should not be refused. Accepting it brings in the future a better career, employment and motivation. Of course, the above suggestions would require legal intervention fast our Labor Code, and beyond.

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B. NORMATIVE ACTS

- Constitution of the Republic of Albania
- Labor Code
- Laws and bylaws acts
- ONP Conventions and recommendations
- Codice Europeo del Lavoro

C. JURISPRUDENCE

- European Jurisprudence (German, Franch, Italian, Belgian)
- Jurisprudence of the Republic of Albania