Labor rights protection issues in Armenia

Article 57 of the RA Constitution guarantees everyone's right to the freedom to choose employment. At the same time, the means and mechanisms of exercising labor rights are enshrined in the international treaties[1] ratified by the RA, as well as in domestic legislative acts. Despite the condition that the RA has taken on positive obligations to create and secure guarantees of labor rights protection by international treaties, labor right violations recorded in the RA indicate that the state does not fulfill the obligations or fulfills them improperly.

As of July 2019, 18 (eighteen) cases are in the proceedings in the RA Court Instances and Helsinki Citizens' Assembly Vanadzor implements the protection of the beneficiaries' rights. Having conducted a study of the aforementioned court cases and labor rights violation cases of citizens who applied to the Organization, we have separated the essential legal issues that served as a cause or might serve as a cause of labor rights violations. The main reasons for labor rights violations are the lack of mechanisms of labor rights protection, employees' low level awareness of their labor rights, inaction of competent authorities.

The following issues on the cases of labor rights violations spoken out by citizens who applied to the Organization were recorded,

1. *manifestations of illegal persecutions or discrimination against the employee by other employees in the knowledge of the employer and (or) by the employer,*
2. *ungrounded dismissals,*
3. *application of ungrounded disciplinary penalties to the employee,*
4. *provision of the employee with remuneration incommensurate with the work done, non-payment of the salary or payment of an amount of money less than the established salary,*
5. *inaccurate calculations of working hours and salary in accordance with the rate,*
6. *failure of the employer to execute the final settlement with the employee,*
7. *not notifying in the established order prior to the termination of the employment contract,*
8. *non-reimbursement by the employer of the damage caused to the employee's health at work.*

[1]Such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Protection of Wages Convention, International Labour Organization agreements (...).

As a result of the analysis of the above-mentioned issues combined, below we present the legal problems, only in case of the solution of which will it be possible to improve the current situation of the protection of employees' labor rights.

1. Establishment of State Labour Inspectorate as the body securing labor rights

Most of the complaints of the citizens who applied to the Organization concern the non-payment of the salary by the employer or payment of the amount less than the established salary, non-execution of the final settlement, salaries unpaid as a result of incorrect calculation of the salary, illegal persecutions against the employee, cases of not signing employment contracts, signing civil law contracts as employment contracts. It is noteworthy that the invoked violations occurred both in state bodies and in private organizations.

In accordance with Article A part 4 of the Revised European Charter, "Each Party shall maintain a system of labour inspection appropriate to national conditions". The RA positive obligation to have a State Labour Inspectorate is also determined in Convention No. 81 on Labour Inspection in Industry and Commerce which was ratified by the RA on October 25, 2004 and entered into force on December 17, 2005. Article 1 of the above-mentioned Convention states, "Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in industrial workplaces".

No matter how the State attempts to disguise the non-fulfillment of its obligations by the activity of the Health and Labour Inspection Body, Convention No. 81 on Labor Inspection in Industry and Commerce actually remains unfulfilled.

In accordance with Article 1 of the RA Healthcare and Labor State Inspectorate current Charter[2], "The Inspection body is a body under the RA Government and carries out supervision and other functions prescribed by law. It can impose sanctions in the spheres of healthcare, workers' health and safety, acting on behalf of the Republic of Armenia in the manner established by law". It is noteworthy that as a result of the study of the competences of the inspection body as established by point 11 of the inspection body charter, it becomes apparent that matters such as functions of signing an employment contract, adoption of personal legal act on hiring an employee, contract termination procedure, discovery of cases of discrimination

[2]RA Prime Minister's Decision No. 755-L dated 11.06.2018

manifestations at workplace, discovery of illegal work, discovery of cases of non-payment of salaries are actually out of the frame of the inspection body's competences and are thus left out of state supervision field.

Touching upon the functions of State Healthcare and Labor Inspectorate, it should be recorded that in the context of the protection of the worker's health and safety, the inspection body does not have sufficient legal and technical toolkit. In particular, the issue of the determination of checklist and criteria for inspection checks conduction still remains an unsolved issue in the sphere and under such conditions the inspection body is deprived of the possibility to conduct inspection checks on its own initiative. The issue becomes more urgent under the condition when the employee, in the atmosphere of fear, does not speak out about the problems existing at workplace, while the inspection body, not having an opportunity to carry out checks on its own initiative, does not conduct the necessary checks by thus leaving the matter of the employee's labor rights protection unsolved. Under such conditions we find that after determining the risk rates of the organizations, inspection body should have an opportunity to conduct unimpeded checks at organizations of high risks on its own initiative.

Non-payment of the salary by the employer continues to remain as one of the essential problems existing in the sphere. For this case, Article 169[8] of the RA Code on Administrative Offences envisages liability for the employer in case of not calculating or paying the salary in the order and time established by the RA legislation or in case of not paying for the time period of enforced idleness or in case of establishing an amount of salary which is less than the amount envisaged by Article 1 and (or) 2 of the RA Law "On the Minimum Monthly Wage" or in case of doing incorrect calculation of the salary exceeding that amount. In contrast to the established norm, the current legislation does not envisage the body that will examine the violations envisaged by the article and bring the employer to liability. Under the current legislative regulations we have a situation in which the legislation defines the offense and the punishment applicable for it, but in practice, we lack the competent body that can conduct checks under these conditions and bring the offender to liability. In the employer-employee relations regarding the calculation and payment of the salary, violations made by the employer, such as not calculating or paying the salary, establishing salary less than the minimum wage, incorrect calculation of the salary exceeding the minimum wage, not paying for the time period of enforced idleness are public dangers. Under such conditions, the existence of administrative legal measure upon the offense is entirely just and necessary. The aforementioned measure will be efficiently implemented in practice should there be established a competent body (such as the State Labor Inspectorate that existed in the past)

that would conduct checks based on the applications addressed to it and would bring the offender to administrative liability.

It is noteworthy that the establishment of extrajudicial body during the fulfillment of labor legislation requirements and the reservation of competencies in compliance with international standards would also contribute to the alleviation of the RA court instances' load in terms of cases on labor rights violations. As a result of the amendments to the RA Civil Procedure Code, the legislation obliges the courts to examine and solve cases on labor disputes within three months upon taking up the proceedings. Nevertheless, the court does not ensure the fulfillment of the mentioned legislative requirement based on the overload of the courts.

As a result of the analysis of the above-mentioned issues combined, the establishment of State Labor Inspectorate becomes entirely necessary and just. The State Labor Inspectorate should reserve competencies established by the standards under international treaties ratified by the RA by thus granting other state bodies absolute independence.

2. Issues of discovery and prevention of discrimination manifestations against employees

The complaints received by the Organization make it apparent that manifestations of discrimination and illegal persecutions against an employee are a common problem in the sphere. Besides, there are various manifestations of discrimination against an employee at workplace, vertical and horizontal, direct and coupled. Recently, victimizing manifestations have become particularly frequent, when informing the competent bodies about a violated labor right entails illegal persecutions against the employee by the employer.

It is noteworthy that in domestic legislation, prohibition of discrimination is established under Article 29 of the RA Constitution. Article 3 of the RA Labor Code envisages the principle of legal equality of the parties in work relations. Whereas in practice, it is quite difficult for an employee when he/she has to prove the discrimination manifested against him in workplace in order to protect his/her violated rights, which employees do not manage to do in practice under the conditions of not having enough proofs. It should also be recorded that we also lack the ground (in this case, the definition of the concept of "discrimination") with which the protection of a person's right to be free from discrimination will be implemented. In this context,

the concept of "persecution" does not have a legal definition, either, and this makes it impossible to record the fact of its manifestation in practice.

The mentioned issues would, in fact, be solved if a legal act on the prohibition of discrimination manifestations and illegal persecutions were adopted, based on which an amendment would be made to the relevant provisions of the RA Civil Procedure Code and during the apportionment of burdens, the employer would be given the obligation to prove that no discrimination was manifested against the employee.

Moreover, according to Article 2 of Convention No. 111 concerning "Discrimination in Respect of Employment and Occupation", which entered into force on July 29, 1995 for Armenia, "Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof".

In the context of eliminating discrimination manifestations, there is a completely objective need to establish an independent body that will deal exclusively with the resolution of disagreements related to discrimination manifestations and which will be completely independent from other state bodies.

The aforementioned issues allow for the conclusion that as a result of the lack of domestic anti-discriminatory legislation, the protection of the rights becomes ineffective. Adoption of anti-discrimination law becomes absolutely necessary. In this context, the establishment of an independent specialized body is subject to a separate discussion.

3.Labor rights in general education institutions

The majority of the cases of labor right violations that became known to the Organization mainly concern violations of labor rights of employees in the RA general education institutions.

In particular, regional administrations act as the authorized body for general education institutions and their competences are established in Article 31 of the RA Law on General Education. The legal provisions enshrined therein entail that the latter ensures the implementation of state education policy in the territory of the marz (region), supervises the educational institutions' implementation of the normative acts adopted by the RA legislation on education and the authorized body of the state management of education, the implementation of educational programs in compliance with the state standard of general education. Under this condition, applying to the latter in the frame of its competencies and informing about the head of the

educational institution not implementing his/her official competences does not come to its logical conclusion given the inaction of the competent body.

Under these conditions, we should record either the existence of personnel lacking sufficient professional knowledge in the competent bodies or flawed legislative regulations. The first issue is of systemic nature, which needs a separate study to be conducted, therefore we find it necessary to touch upon the issue of flawed legislative regulations.

Thus, Article 31§1 of the RA Law on General Education gives a comprehensive list of all the competences of the regional governor (of the Mayor in the city of Yerevan) in the sphere of general education. In particular, according to Article 31§1 of the law, the competences of the regional governor are as follows,

1) to ensure the implementation of state educational policy in the territory of the marz [region] (in the city of Yerevan);

2) to supervise the observance by educational institutions of the legislation on education of the Republic of Armenia and the regulatory acts adopted by the authorised public administration body for education, as well as the implementation of educational programmes in conformity with the state standard for general education;

3) to coordinate and exercise supervision over keeping on records the school-age children; to ensure their enrollment in educational institutions;

4) to ensure the construction, exploitation and maintenance of buildings transferred to educational institutions under the right of use (...).

In this part, we find that there are imprecise formulations that result in the discretionary application of the norm by the authorized body and therefore, inaction.

There is a need to make an amendment to Article 31 of the RA law on General Education as a result of legislative regulations by establishing that “the competences of the regional governor (of the Mayor in the city of Yerevan) (...) include organizing and ensuring the regular operation of general education institutions”. The mentioned formulation itself brings forth the matter of the regional governor’s responsibility, as an authorized body, under conditions when the tension in employer-employee, employee-employee relations affects the normal functioning of the educational institution by thus disrupting the educational process.

Summary

In the frame of labor rights protection, the RA has ratified a number of international treaties, by which it has undertaken positive obligations to initiate the necessary sufficient measures to secure the effective enjoyment of labor rights. However, the current situation of labor rights indicates the non-fulfillment of the obligations undertaken by the state in compliance with international treaties.

In particular, the RA has not fulfilled its obligation established by ILO Convention No. 81 on "Labor Inspection in Industry and Commerce". And the current Healthcare and Labor Inspectorate can not be considered as a state body conducting state control and oversight over the requirements of labor legislation. Healthcare and Labor Inspectorate was established by the RA Government decision N 857-N dated July 25, 2013, as a result of the merging of State Hygiene and Anti-Epidemic Inspectorate of the RA Ministry of Health and the RA State Labor Inspectorate of the RA Ministry of Labor and Social Affairs, first as State Health Inspectorate of the RA Ministry of Health personnel, then as state health and labor inspectorate by acting as part of the Ministry of Health upon its establishment and later under the RA Government after the RA Prime Minister's decision No. 755- L dated 11.06.2018. The current inspectorate, which replaced the state labor inspectorate established in 2004 and functioning until 2013, does not have sufficient toolkit necessary to conduct oversight over the requirements of labor legislation and proper fulfillment of obligations undertaken in international arena.

With regard to certain agencies carrying out some oversight functions, their inaction entails an increase in the crisis of public trust in state structures.

In labor relations, the employees who struggle for their rights and speak up about the employers' illegal actions are in the most vulnerable position. While in practice, as a result of the lack of effective legal mechanisms, the protection of labor rights becomes both difficult and often impossible.

The aforementioned allows claiming that the state should take steps to ensure the compliance of the current legislation in line with the ratified international treaties and create legal mechanisms for their implementation in order to improve the created situation and to prevent further violations of labor rights.

Recommendations

In the context of an effective solution to the identified issues, we recommend

1. restoring state labor inspectorate by reserving for the latter broad legal levers and sufficient toolkit to conduct comprehensive oversight over the requirements of labor legislation,
2. prohibiting all manifestations of discrimination on a legislative level,
3. establishing legal safeguards in order to guarantee the protection of the employee who speaks out about the employer's illegal actions against the employer's ungrounded and illegal persecution,
4. establishing an independent body that will provide legal and psychological support to victims of employment relations.