



PROBLEMS RECORDED IN THE SPHERE OF THE PROTECTION OF LABOR RIGHTS AND PROPOSALS ON THEIR SOLUTIONS

In the sphere of protection of labor rights, the Republic of Armenia (hereinafter also referred to as the RA) should be the main responsible actor in regard to ensuring legal mechanisms of protection of labor rights, implementation of the right to work in dignity, promotion of social partnership, as well as other matters and issues of labor relations.

Back in 2019, HCA Vanadzor recorded a number of problems in the sphere of the protection of labor rights, such as manifestations of discrimination by the employer or other employees at the workplace; ungrounded dismissals; application of ungrounded disciplinary penalties; incorrect calculation of salary by the employer; not making the final settlement; not notifying the employee, in accordance with the established procedure, before terminating the employment contract; not compensating for the damage caused to the employee's health¹.

The problems recorded in the sphere of labor rights protection allow stating that such violations in the RA are of continuous and systemic nature. These problems are attributed to the non-compliance of national legislation provisions with the requirements of international obligations undertaken by the RA, the existence of provisions that give rise to misinterpretation in the national legislation, as well as the lack of sufficient legal mechanisms ensuring protection of labor rights.

Problems of labor legislation and the need to solve them were also manifested [in the conditions of the spread of COVID-19, when the problems that arose in the sphere of labor rights due to the spread of the pandemic discovered legislative gaps and stressed the urgent need to solve them.](#)

The study of obligations envisaged by the Revised European Social Charter (hereinafter also referred to as Charter) and undertaken by the RA allows for a conclusion that the Republic of Armenia has undertaken minimum obligations to protect labor rights.

The Republic of Armenia has not ratified 1995 Additional Protocol to the European Social Charter providing for a System of Collective Complaints. Under these conditions, non-governmental organizations and RA citizens are deprived of the opportunity to apply to the European Committee of Social Rights to restore their violated labor rights.

The situation described shows the improper attitude of the state towards the obligations to secure labor rights and to prevent violations of labor rights. For years on end, the authorities did not

¹ [The problems of the protection of labor rights in Armenia, HCA Vanadzor, 2019.](#)



make the necessary efforts to form respect towards labor rights as the dignity of a person in the Republic of Armenia.

The Charter has 31 (thirty-one) articles and 98 (ninety-eight) paragraphs, of which Armenia has ratified only 20 (twenty) articles and 67 (sixty-seven) paragraphs. In these conditions, in regard to national reports presented by Armenia, the European Committee of Social Rights (hereinafter also referred to as the Committee) has repeatedly recorded the non-compliance of national legislation norms with the provisions of the Charter.

In particular, based on the [national reports](#) presented by the RA for the reporting period of [2013-2016](#) , the European Committee of Social Rights recorded the non-compliance of domestic legislation with the provisions of the Charter in terms of the following rights: [reasonable working hours](#) (part 1 of Article 2), [elimination of risks in inherently dangerous or unhealthy occupations](#) (part 4 of Article 2) [increased rate of remuneration for overtime work](#) (part 2 of Article 4), [equal pay for work of equal value for men and women workers](#) (part 3 of Article 4), [reasonable notice for termination of employment](#) (part 4 of Article 4), [restrictions on deductions from wages](#) (part 5 of Article 4), [procedures of negotiations](#) (part 2 of Article 6), [the right to collective action, including the right to strike](#) (part 4 of Article 6), [the right of workers' representatives to protection in the undertaking and facilities to be accorded to them](#) (Article 28).

By the [Comprehensive and Enhanced Partnership Agreement \(CEPA\) of the Republic of Armenia-European Union \(EU\)](#), signed on 24 November 2017 and ratified on 18 April 2018, Armenia undertook a number of international obligations, including the obligation to promote “Decent Work” Programme of the International Labour Organization (ILO), employment policy, health and safety at work, social dialogue, social protection, social inclusion, equality of men and women and elimination of discrimination, by thus contributing to the creation of more and better workplaces, deduction of poverty, enhancing social peace, sustainable development and improvement of the quality of life (Article 84 and Article 85).

In the frame of the agreement, Armenia undertook a commitment to approximate (to align) legislation to EU legislation and international standards in order to ensure a high level of labor protection.

International Labor Organization (ILO) and the Republic of Armenia developed [Decent Work Country Programme for 2019-2023](#). The Programme has three main priorities: 1) to further develop mechanisms of regulating labor relations, 2) to improve employment policy and enhance employability of women and men, 3) to strengthen social dialogue and collective bargaining at all levels, in the frame of which one of the expected results is the alignment of labor legislation with international labor standards.

In this context, it should be recorded that in order to fully ensure the process of alignment to international labor standards and solving the RA labour legislation problems raised by local and international organizations, it is necessary to review and amend the [Concept of Reforms of the RA Labour Code](#) placed for public discussion, and to develop a complete concept of reforms of labor legislation regulation. In order to give adequate solutions to the problems recorded in the sphere of labor rights protection, we find it necessary that the provisions of the Revised European Social Charter (that have not been ratified by the RA so far), as well as 1995 Additional Protocol to the European Social Charter providing for a System of Collective Complaints be ratified. At the same time, it is necessary to take adequate measures to enhance non-state mechanisms of protecting labour rights and solving labour disputes, as well as to strengthen cooperation between state bodies and non-governmental organizations engaged in the protection of labour rights, the parties to social partnership, their representatives and specialists of the sphere in the field of labour rights protection in order to discover the current problems and take joint action aimed at eliminating them.

Below we present proposals by HCA Vanadzor that were developed based on international documents, national legislation, reports of local and international organizations, as well as problems discovered in the frame of judicial and extra-judicial cases conducted by the Organization.

1. The right to employment

1.1 The right to employment is not enshrined on constitutional level. This means that the State does not recognize that right at the level of Constitution. Only the RA Labor Code points out the right to employment and only as a component of freedom of employment. Thus, the State ensures not the implementation of the right to employment, but rather, it ensures the freedom to choose among different jobs.

Therefore, it is necessary to enshrine the right to employment in the RA Constitution and the RA Labor Code.

2. The right to free choice of employment

2.1 In order to ensure the full exercise of the constitutional right to free choice of employment, it is necessary to develop effective mechanisms of full protection of this right by envisaging possibilities of judicial or other legal protection of the violated labor right to eliminate manifestations of arbitrariness by employers.

2.2 To establish presumption of existence of labour relations in the frame of claims to recognize

unregistered labour relations, by thus putting the burden of proof of the existence or absence of labor relations on the employer.

3. The right to be free from discrimination

3.1 In order to ensure the full implementation of the prohibition of discrimination, the Labor Code should also be made in line with Violence and Harassment Convention No. 190 and requirements of the European Committee of Social Rights, by ensuring availability of legal protection and support means for victims of discrimination, establishing penalties, providing effective measures of checking and investigating into cases of violence and harassment, including by labor inspectorates and other authorized bodies.

3.2 At the same time, it is necessary to enshrine in the national legislation the right to a fair and proportionate compensation or satisfaction for any damage caused to the employee as a result of discrimination, to envisage a special procedure of distributing the burden of proof in cases of discrimination by putting the burden of proof on the employer.

4. The right to make union

4.1 To reserve, in the national legislation, the right of trade unions to present collective and individual interests of employees in court in case of labor disputes. To review the procedure and conditions of joining trade unions by extending the circle of persons who have the right to create trade unions.

4.2 To ensure financial and practical independence of the trade union from the employer.

4.3 To determine signature of collective agreements as a mandatory legislative requirement.

5. The right to equal and fair remuneration

5.1 Under Article 184 of the RA Labor Code (Remuneration for overtime and night work), besides the additional payment of not less than 50 percent of the hourly rate for each hour of overtime work, to envisage a procedure of extending the duration of the employee's rest time for each hour of overtime work.

5.2 When determining the limits of the employee's material responsibility, to restrict deductions from the salary in case of a defective product due to the fault of the employee to the degree and the extent that the employee and the person under his/her care not be deprived of the minimum remuneration or means of subsistence.

6 *The right to safe and healthy work*

6.1 To establish legal mechanisms to ensure that employers properly inform the health and labor inspectorate (hereinafter referred to as the Inspectorate) about the accidents and occupational diseases at the workplace, and in case employers do not provide proper information, in regard to applying liability measures, to amend and supplement part 2 of Article 260 of the RA Labor Code (In case of death of an employee at the workplace the employer shall be obliged to notify immediately the insurer, the RA Police and the RA Inspectorate authorized by the Government to hold control of ensuring safety at work.) by establishing an obligation for the employer to immediately inform the Inspectorate about an accident or an occupational disease, and in case of not informing, to establish a possibility to apply liability measures prescribed by law, and respectively, to amend the RA Code "On administrative offences" by establishing in Article 42.1 (Non-execution of recommendations of officials of inspection body of the Ministry of Health of the Republic of Armenia or hindering the checks, studies and administrative proceedings conducted by the inspection body of health care) the application of liability measures against the employer for not providing the above-mentioned information.

6.2 To specify the grounds, in case of which the employee can exercise his/her right to refuse to work, in order to ensure the effective implementation of the self-defense measure of the right to refuse to work in case the employer fails to comply with the rules aimed at ensuring occupational safety and health.

6.3 Health and Labor Inspectorate should not be a body only conducting control and supervision over the observance of labor legislation requirements (Article 33 of RA Labor Code), but it should also be a body ensuring the application of legal norms creating and ensuring safe and healthy working conditions (Article 3, part 1 of the Charter).

7. *Protection of violated labor rights*

7.1 To reserve the authorized inspectorate conducting state supervision over the observance

of labor legislation requirements the right to present employees' collective and individual interests in a judicial process based on cases of violations of labor rights discovered as a result of inspectorate checks, as a tool of full implementation of the protection of an employee's labor rights.

7.2 To adopt checklists necessary to check all types of economic activities according to risks.

7.3 To ensure that the Inspectorate is equipped with adequate personnel, as well as material and technical conditions.

7.4 To establish the presumption of the employee's conscientiousness in all claims of reinstating in the job, irrespective of the ground for terminating the employment contract, by putting the burden of proof on the employer.

7.5 For employees presenting in the status of a witness in judicial cases concerning labor disputes, to establish guarantees in the RA Labor Code by envisaging inadmissibility of terminating the employment contract at the initiative of the employer on this ground and establishing a requirement to maintain the guarantee within two years after participating in the trial.

8. Termination of an employment contract

8.1 To establish legal mechanisms to assess employees' professional skills.

8.2 In part 1 of Article 114 of the RA Labor Code (Restriction to terminate the employment contract at the initiative of the employer), among the restrictions to terminate the employment contract at the initiative of the employer, to envisage, inter alia, filing a complaint or participating in an investigation conducted against the employer on the alleged violation of law or applying to the competent administrative body.

9. The right to be notified

9.1 To envisage in the second paragraph of part 1 of Article 115 of the RA Labor Code, inter alia, an obligation for the employer to notify in writing in case of termination of the

employment contract at the initiative of the employer on the grounds of Article 124 of the RA Labor Code, point 5 of part 1 of Article 113 of the RA Labor Code, point 6 of part 1 of Article 113 of the RA Labor Code.

10. The right to the protection of claims in the event of the insolvency of the employer

10.1 To ratify Article 25 of the Revised European Social Charter (Right of workers to the protection of their claims in the event of the insolvency of their employer).

10.2 To establish a guarantee system of the protection of claims in case of the insolvency of the employer.

11. The right to dignity at work

11.1 To ratify Article 26 of the Revised European Social Charter (The right to dignity at work).

11.2 To introduce concepts of “the right to dignity at work” and “sexual harassment” in the labor legislation as a cornerstone in the protective regulations and mechanisms of the employee’s right to be free from sexual harassments.