

Collective Employment Relationships and Collective Disputes Resolution in Kosovo

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Abstract: Collective employment relationships based on collective agreement are new socioeconomic and political phenomena in former socialist states. Hence, such phenomenon is even newer in post-war Kosovo, which for years was under the administration of the United Nations, which established the basics for a legal and an economic order. The new phenomenon of socio-economic development encouraged free market economics and syndicalism as the main prerequisites for development of collective employment relationships. From that time to the present, these relationships have made significant progress in Kosovo in terms of legal infrastructure and their impact on economic development of the country. This paper aims to tackle both general collective employment relationships and, in particular, collective disputes resolution. In the section concerning disputes resolution, the author focused on a Kosovo case with the comparative approach vis-à-vis a number of regional countries, particularly examining the role of the state and syndicates in both mediation and resolution of such disputes.

Keywords: Kosovo; Employment Relationship; Syndicate; Collective Disputes Resolution; Arbitration

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1. Introduction

This paper aims to assess collective employment relationships and methods of consecutive resolution of collective disputes through implementation of provisions of the collective agreements and negotiations. Negotiations between employer and employee representatives aim to reach agreements that affect working conditions as well as improve social benefits for employees.

The global trend engaging prevention and resolution of employment disputes has shown that effective strategies to prevent and resolve such disputes is of unique

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importance in fostering not only a productive work environment, but also in improving economic and social welfare.

Now many countries have established various mechanisms to address disputes prevention and resolution, whether within executive branches or otherwise. Indeed, the International Labour Organisation has continuously supported both member states and employer/employee organisations in order to further strengthen such mechanisms for effectively handling employment disputes prevention and resolution.

It goes without saying that frequent employment relationships disputes will occur and are even inevitable, which is why the International Labour Organisation recommends having effective mechanisms in place for preventing avoidable disputes and resolving others. This is crucial to minimise the number of labour disputes and consecutive consequences. In this context, the point of focus in my research was on cases where litigants with completely different positions have reached agreements. This paper will examine and assess the history and relevant methods of collective employment relationships as they are used towards resolution of disputes, particularly within the Republic of Kosovo.

2. Review of the Development of Collective Employment Relationships

From a historical approach, collective employment relationships are more innovative than individual employment relationships.

The collective employment relationships perspective emerged at the same time as the democratisation of employment relationships in Kosovo. (Bujupi-Ismajli, 2005, p. 70) The burgeoning democratisation of employment relationships created an environment ripe for collective action from the employees' side. Thus, the establishment of syndicate organisations helped employees to better address and resolve labour disputes.

Collective employment relationships are established between collective entities that demonstrate a desire to realise job-related collective interests. Collective employment relationships occur on an organizational level, which is not the case with individual employment relationships. Individual employment relationships occur between individual employer and individual employee based on the employment contract, whereas collective employment relationships happen within existing employment relationships that are of interest to more people, such as groups of employees and employers with contradictory interests. Another difference between collective and individual employment relationships is that in a collective employment relationship, an individual employer is not subject to such relationships that belong to group of employers or their organisations (syndicates).

Collective employment relationships fit into groups of employers/employees or their syndicates, whereas individual employment relationships fit into individual employers or employees.

Collective relationships or collective actions occurred for the first time in 1906, when employees explicitly expressed the right to strike in England. The disruption caused by this decision from the United Kingdom led to the adoption of the Trade Disputes Act in 1906. This act *inter alia* declared that unions could not be sued for damages incurred during a strike. (Qela & Hasi, 2002, p. 191)

Collective employment relationships steadily progressed, especially after World War II. Within this period, the International Labour Organisation approved several treaties and recommendations about collective relationships. It is worth mentioning that the Declaration of Philadelphia had a significant role in strengthening the legal framework of the collective employment relationship. The conference reaffirmed the fundamental principles on which the International Labour Organisation originated. Principle II of the Declaration of Philadelphia provides that “freedoms of expression and of association are essential to sustained progress”. (Bujupi-Ismajli, 2005, p. 66)

The European Social Charter of 1965 also demonstrated the importance of collective employment relationship. The Charter *inter alia* guarantees the right to organise and the right to bargain collectively, including the right to strike. (The European Social Charter, Article 5 and 6)

After the Second World War, a number of countries started to adopt domestic legislation about collective relations. In our country, it was UNMIK, which initially adopted a regulation in 2001 about collective relationships; then, Kosovo Assembly in 2010 adopted Law on Labour. (Law on Labour of the Republic of Kosovo, No. 03/L-212)

3. The Role of Syndicates in Development of Collective Employment Relationships

A syndicate is a democratic and independent organisation of the employee whose goal is the legal representation and protection of its members’ economic, social, and professional rights and interests. (Law on organising trade union in Kosovo, No. 04/11, Article 1, paragraph 1) On the other hand, employers enjoy the right, according to their free choice, to establish unions and to become members of these unions under conditions set by the relevant articles of associations and other union acts.

The employers’ organization is an independent and democratic organization that employers join because they offer better protection, representation, and advancement of their economic and social interests. It is undisputed that the unions’ goal is to

represent and protect interests of the employees, including employment advancements. Both state and unions played a crucial role towards the transformation process of working agreements. Hence, the state through laws on one hand and the unions through collective agreements on the other hand limit the autonomy of employers and order them to respect regulations set by both laws and collective agreements when concluding employment agreements. (Bujupi-Ismajli, 2005, pp. 72-74)

The syndicate is the only organisation that has the right to represent employees in collective negotiations and to conclude collective agreements with employer or employers' organisations. Within this framework, only syndicates have the right to undertake actions in order to push the other party to accept certain employee requests. Interim terminations of the working relationship and strikes are just a few consecutive actions (pressure remedies). This means that only modern countries led by rule of law principles recognise the strikes organised by syndicates.

Many factors influence such an attitude. First, it is crucial in order to prevent stalling the production process. Then, preventing unorganised strikes requires placing employees under the control of the organisation. Thus, employees might enter into different cooperative relations with mutual interest.

Countries led by rule of law principles tend to protect both interests of the employees and employers. It is necessary that such interests operate on specific partnership relations, which particularly came into consideration during collective negotiations between employees and employers. Based on practical cases, syndicates and techno-structures have some specific interests in these negotiations. Such interests are relatively independent from the interests of owners of productions and employers.

4. The Role of the State in Mediation and Supervision

The state plays a crucial role in the workplace security and safety through adaption of adequate legislation. Therefore, the state gives power to the respective inspectorates who are responsible for creation of a healthy and secured working environment. (Koli & Llaci, 2003, p. 217) Collective agreements serve primarily as an instrument for regulating the work sphere by adapting relations between two industrial parties or parties with opposite interests. Thus, the role of the state became inevitable *vis-à-vis* collective agreements. (Bujupi-Ismajli, 2005, p. 81) Regulative functioning of the collective agreements set a balance between partners with opposite interests (employees and employers); this balance guarantees social stability. Moreover, in order to strengthen economic development, the state generally supports such kind of regulation.

A typical example is England, where both central and local government-imposed tax relief for businesses entities government and local, which means that the state intervenes directly through tax stimulation. It is an entirely different case in the United States, for instance, because the state does not interfere in regulations of working agreements.

The role of the state in mediation and supervision comes into consideration mainly on general collective agreements. In most cases, the state engages equally with general organisations of employees and employers in concluding general collective agreements. For that reason, the state is partially responsible for implementing such agreements.

5. Collective Disputes Resolution

In most cases, collective agreements have a three to five-year term. In Kosovo, such agreements are established for a specified period no longer than three years. Collective contracts may be concluded between an organization of employers and their representatives and an organization of employees or, in cases where there are no such organisations, the representatives of employees may conclude the agreement. In addition, according to this law, a collective agreement may be concluded at the state level, the branch level, and the enterprise level. (Kosovo Law on Labour, Article 90)

The founding act of the collective agreement *inter alia* foresees the methods of the agreement resolution. Application of the methods depends from the legal system of the respective country. The resolution with mediation; the resolution with representation; the resolution through the courts and settlement through arbitration are some of the most popular collective disputes resolutions.

5.1. Collective Disputes Resolution with Mediation

According to the Kosovo legal framework, following the Law on Labour, the Social Economic Council is responsible for collective disputes resolution with mediation. Article 90 paragraph 9 of the Law on Labour states: “For the resolution of various disputes in a peaceful manner and the development of consultations on employment, social welfare and labour economic policies by the representatives of employers, employees and Government in the capacity of social partners, through a special legal-secondary legislation act, the Social Economic Council shall be established.”

The national legal framework provides additional remedies regarding individual disputes resolutions derived from the work. The Law on Labour provides that “an employee and employer may resolve disputes deriving from work through mediation.” The Law on Mediation sets specific rules and procedures for resolution

of labour disputes through mediation.¹ Meanwhile, according to the Law on Mediation, “mediation is an extra-judicial activity carried out by a third person (mediator), for the purpose of resolving by conciliation disagreements between parties’ subject to law [...]” (Law on Mediation of Kosovo, Law No. 03/L-057, Article 2). The mediator is the third neutral party, authorized to mediate between two parties aiming to resolve disputes, in accordance with the principles of mediation. Therefore, our country applies alternative resolutions for both collective labour disputes through Social Economic Council as well as individual labour disputes by instituting mediation regulated with specific law.

The Social Economic Council (SEC) is a body at the national level leading consultations on issues on employment relationships, social welfare, and other issues concerning economic policies in the Republic of Kosovo.

The Social Economic Council (SEC) as the highest tripartite body is apolitical and will function independently, without influence of any grouping or political interest that comes from outside. (Law on Social Economic Council, Law No. 04/L-008, Article 5) The Social Economic Council, among other things, is establishes social dialogue, including the signature of collective agreements at national level.

It is a similar situation with other countries in the region, as there is a positive trend among these countries for peaceful dispute resolution as a more favourable method that contributes to both economic development and social welfare. For instance, labour law in the Republic of Macedonia provides that “in case of individual or collective disputes, employer and employee may agree to refer their case to the conciliation council composed by three panel members, and that one proposed by employer, one by employee and another one proposed by both”. (Law on Working Relations, No. 106/2014, Article 183) Likewise, Montenegro, through a specific law, also applies alternative dispute resolution. (Labour Law, No. 49/2008, Article 121)

5.2. Collective Disputes Resolutions with Representation

According to scholar Hava Bujupi, proponents of contracting theory tend to interpret the legal nature of collective agreements equally as civil contracts. According to this, a collective agreement is a contract on authorisation, stipulation, or an unnamed contract. According to the contract on authorisation, the syndicate pushes collective agreements to represent either employees or members of the syndicate. The contract on authorisation is that kind of contract in which one person, the authorizer, authorises the other person, the authorised, to perform one or more legal actions on the former’s behalf. (2005, fq. 81) Therefore, based on this theory, representation remains one of the forms of collective disputes resolutions.

¹ See Law on Labour, Article 81 paragraph 1 and 2.

In Kosovo, the Law on Social Economic Council regulates this kind of collective disputes resolution. According to this law, representation of the Social Economic Council consists of the following: five representatives appointed by the employees' organizations; five representatives appointed by the employers' organizations; and five representatives appointed by the government of Kosovo. (Law No. 04/L-008, Article 6) This representation of the Council and its role in social dialogue make it clear that Kosovo applies the method of collective disputes resolution through representation since within the composition of this body are members appointed by all parties – from employers' organizations, employees, as well as the government.

5.3. Collective Disputes Resolutions through Courts

In our day, most countries guarantee legal remedies for parties to issue claims for potential rights violations – guarantees from provisions of the collective agreements. Therefore, the syndicate has the right to claim compensation from the employer side if the latter allocates less favourable conditions for the employees rather than those foreseen by collective agreement. Some countries have legislation that gives the right to syndicates to request annulment of individual employment contracts that conflict with provisions in collective contracts.

Collective disputes resolutions differ from country to country depending on the system of governance. However, most cases of collective disputes find resolution through claims and statutory limitations foreseen in collective agreements.

5.4. Collective Disputes Resolutions through Arbitration

The majority of the countries foresee arbitration as a form of collective disputes resolutions in their labour legislation. The Kosovo Law on Labour does not specify cases of collective disputes resolutions through arbitration. However, it is the decision of the parties involved to decide which form of eventual disputes resolutions they will utilize, including arbitration.

Article 183 in the law on working relations in the Republic of Macedonia foresees arbitration as a specific form of collective disputes resolutions. This article states that a “collective agreement may appoint arbitration to resolve collective labour disputes. The collective agreement determines the composition, procedure and other issues important for the work of the arbitration. If the employer and the employee agree with the arbitration resolution of the worker dispute, the arbitration decision is final and binding on both parties. An appeal against the decision of the arbitration shall not be allowed to the competent court.” From this, it appears that arbitration is one of the most advanced forms of collective disputes resolutions, reducing the workload of the courts on one hand, and strengthening of arbiters towards handling such disputes on the other hand.

6. Conclusion/Recommendation

During my research, I concluded that the interests of employers and employees in collective agreements proceed as follow:

Collective agreements protect and guarantee economic rights and working conditions;

The contract determines the provision of stable relationships with the employer, without disremembering any right or obligation;

The contract is a peaceful form that provides solutions to differences and contradictions leadings to disputes;

Resolution of disputes with mediation is one the functions of the democratic development of working relationships; it also eases a balanced economic development;

Employees become more optimistic, more motivated, and more productive by entering into a contract of employment;

Contracts of employment stimulate mobilisation of employees and have positive influence in the organisation;

Finally, employees remain closely related to their job, seeking additional advancements and professional development.

Some of these recommendations belong to individual agreements. I have included them because I believe that individual agreements should be based on the collective agreements. Regarding individual and collective agreements and their relations to each other, I have already provided a short summary above in this paper.

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