REPORT

The situation of discrimination in the process of work dismissal in Albania

ALBANIAN HELSINKI COMMITTEE
KOMITETI SHQIPTAR I HELSINKIT

CIVIL RIGHTS DEFENDERS

REPORT

The situation of discrimination in the process of work dismissal in Albania

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This report was prepared under the project "Discrimination: standards of a fair trial and politically motivated job dismissals " implemented by the Albanian Helsinki Committee and supported by the Civil Rights Defenders.

ALBANIAN HELSINKI COMMITTEE

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I. Introduction

The Albanian Helsinki Committee (AHC), being an organization with a mission to protect and promote human rights, has continually devoted special importance to the right to not be discriminated against and to the protection from this phenomenon, which turns out to be widespread in our society. One of the aspects of discrimination is the one related to labor relations, in which case people are discriminated against on various grounds, such as because of sex, age, national origin, political and philosophical beliefs, etc. Given this general observation, the AHC in fulfilling its mission to protect human rights and freedoms, has designed and implemented a project titled "Discrimination: fair trial standards for job dismissals, especially those politically motivated ", which is sponsored by the Civil Rights Defenders (CRD).

Article 18 of the Constitution of the Republic of Albania, sanctions the equality between citizens and the right not to be discriminated. As it is well known, protection against discrimination is treated further in the Law no. 10 221, dated 02.04. 2010 "On protection from discrimination" and together with other provisions in the legislation in force that regulate specific areas of life, form a rich legal basis to protect the equality of citizens as prescribed in the law as well as when facing the law. In particular, protection against discrimination is addressed in more detail in legislation on education, employment and goods and services, and these, due to their broad scope, include in themselves interests of all citizens. Our project has picked one of these areas, that of employment, not only because of the special importance that it has for the citizens being one of the most important aspects that allows their self-realization but also because recently, there are no reports that surveys and studies in this direction are being undertaken.

Labor Code, the Law "On Civil Service" and other legal provisions and regulations, constitute a good legal basis for the regulation of labor relations and to protect employees from abusive dismissal from work. Potential conflicts in this regard, can be settled by agreement between the parties, otherwise they may address, as appropriate, to the Civil Service Commission and the competent court, the final form decisions of which are mandatory for implementation by the parties.

Civil society and media are actors that, although lacking the right to provide conflict resolution in this field, become an active part of the discussion of social concerns arising from the unfair dismissal from work and react to protect human rights and fundamental freedoms without becoming a party with the entities involved in the conflict.

This study is part of this philosophy and aims at highlighting issues regarding the handling of dismissals from work, both by the public administration and by the competent bodies for their review.

Our initiative is trying to study the problem from the viewpoint of victims of job dismissals' reaction, from the viewpoint of reviewing the complaints procedure in this regard and in view of the case law established by judicial decisions in this regard. By monitoring and studying of court decisions, important findings have emerged that speak not only for a deficiency in respect of due legal process from the part of the judicial system in dealing with dismissals from the work, but also serious problems pertaining the implementation of unified legislation in force that regulates this area.

II. Report's Purpose and Methodology

This report aims at evidencing the situation of discrimination in employment relationships, and standards of a fair trial during the judicial processing of dismissals from work cases, especially those politically motivated.

Information was collected in three ways:

a. study of judicial decisions on concluded cases;

b. monitoring of relevant court sessions and the review of complaint procedures of the Civil Service Commission (CSC)

c. media monitoring to see evidence offered there and how it reflects the phenomenon

The data obtained form the basis of this report, which addresses the situation from a legal and social perspective.

The study was modest in terms of its dimensions. It has not attempted to address the situation exhaustively in covering the entire country, but was performed on the basis of an analysis of judicial decisions of three courts of first instance of Tirana, Vlora and Shkodra, for the time period January 2010 - November 2011, and it monitored proceedings in courts of first instance and appellate of the same districts as those where claims for unfair job dismissal were being proceeded. There were monitored also some sessions of processing the applications from CSC in Tirana during the time period September-November 2011.

During the study of the decision, focus is given to some key issues related to compliance by administrative bodies, and by the courts themselves, during the hearings, of the right to a fair trial.

Part of the analysis of numerous cases of judicial decision were:

- Access provided to parties in litigation,
- Identification from the public administration of the motivation for the dismissal,
- Gender and age of the plaintiff,

- Participation of the defendant in trial and the reasoning that has been presented for dismissing the employee from work,
- The way the courts have concluded on the legal resolution of labor disputes, etc.

In terms of media, their monitoring was conducted focusing on a systematic review of three papers, which have the largest circulation, as well as some electronic media, for the time period September-November 2011.

In order to perform this activity, besides AHC's staff, experts and collaborators from outside the organization were engaged. Study of court decisions was made by Dr. of legal sciences Sadushi Sokol, a former member of the Constitutional Court of the Republic of Albania and a member of the General Assembly of AHC. For monitoring of court sessions, 4 experienced correspondents and observers of AHC jurist by their profession, were engaged, who were trained in advance to specific aspects of observations in this area.

We feel obliged to thank CRD for its financial support of this project, our distinguished expert Dr. Sadushi Sokol, AHC's staff and associates who conducted the monitoring, because without their work and dedication this study, would not be possible to fruition.

III. Monitoring trial sessions on disputes over labor relations

1. General Findings

The justice system has a special role to protect the rights and freedoms that citizens are guaranteed by the Constitution, ratified international laws and legislation in force. These bodies are vested with the authority and jurisdiction to resolve disputes that citizens have with public and private administration, among other things, in labor relations. Without prejudicing all the activity of this power, is already a known fact that it has long faced serious problems and challenges, the surmounting of which constitutes some of the priorities for our country, in terms of the process of integration into the European Union (EU). The reforms undertaken have not yet yielded the expected results in this key sector of the state. Corruption, problems of organization and well functioning, observance of the solemnity and the increase of the professional level in areas of the rights, are some of the problems that plague the sector[1]. In this context, monitoring the activity of this power also by civil society assumes importance, especially to see the observation of human rights such as: Access to justice, respect for the right of a due legal process and generally how the human rights are held up, judged, and treated by these bodies.

AHC has undertaken continually the monitoring of court activity, without interfering in their decision, but this time, as mentioned above, our aim was to monitor the implementation of due legal process for a particular topic: job dismissals.

In total, 76 court sessions were observed at courts mentioned above. In the litigations monitored as defendant have been respectively, for Tirana: Tirana Municipality, the National Urban Construction Inspectorate, Agency for Restitution and Compensation of Property, Ministry of Finance etc.; For Vlora: University "Ismail"; Vlora Municipality; Educational Directory of Vlora, Lushnje and Berat; Water Enterprise; ARMO; ALB Petrol, etc. Vlora Regional Hospital.; For Shkodra: H.R.E.R. etc.

[1] See Progress Report of EU for Albania - 2011

Most of those dismissed, who were party to these processes, have seniority from 10 to 15 years and their average age was about 45 years old. About 1 / 3 of them are in the age up to 40 years.[2]

In the court sessions monitored by AHC, there were not ascertained any cases of court sessions conducted behind closed doors. In addition to the parties in litigation, during the proceedings there were present other persons as may be relatives of employees, or colleagues, in as much as space in the area where the sessions held allowed.

Timetable for commencement of judicial proceedings was generally respected, but the delays were not reflected in the minutes of the session.

The motives of the alleged dismissal of the plaintiffs have been different, including dismissal for political reasons, but the arguments and evidence in this regard were often inadequate to prove so. On the other hand, it was observed that courts have not considered seriously the elaboration of this argument but were satisfied with only hearing of it.

AHC observers have not encountered any problems related to enabling to them the monitoring of court proceedings but to this purpose, they often had to introduce themselves and inform the judge in advance, especially in Tirana, where the trial area (offices of judges) is small sized and the audience participation creates difficulties due to the crowded space.

- **On the observance of punctuality of court sessions**

In general, the monitored trials started on time. However, there were cases of delays, mostly of five to ten minutes, for which the judges excused themselves with the prolonging of their previous trial. There were cases when the judge, according to the trials schedule, was part of the panel and had to judge on various cases, in pretty much within the same hour. This indicates a not very good organization of the judging activity in courts monitored. In addition, it was found that in the record book of court sessions, the delays in the starting of the trial were not reflected. In the record book, it was written the time in which the session was planned to start, which, in some cases, was not consistent with reality. Such an

[2] More detailed data on the following terms, are found in this study.

action turns into a hurdle for assessing this aspect of the work of judges and creates conditions for the violation of the declared timetable for the parties and other persons on trial, not underestimating here also the difficulties it creates the lawyers of other cases as well, to have clear schedules in order for them to be able to be present at the proceedings that they have undertaken to defend.

- **Protection and the presence of the parties at trial**

In the monitored proceedings, the parties were present during the trial. In most cases the plaintiff was present even when defended by counsel appointed by him, and during the trial was given the opportunity to express themselves when requested to do so. There were cases in which the plaintiff had decided to defend himself at trial without counsel. In such situations the trial has manifested problems because of the frequent interventions of the plaintiff, who had no cognizance of the norms on how a court session is conducted, often causing a violation of the solemnity of the session and frequent interruptions from the judge who attempted to get the attention of the party so that to establish order. The respondents, employers, were represented generally by lawyers / attorneys of the respective entities, and no case was evidenced that the respondent was represented by the head of the institution.

In some cases the respondent's representatives have been cause for termination and postponement of the session, because they had to be present in different trials, in the interest of the same subject. Even in this case it is evidenced the lack of good work organization, to ensure full participation of parties in the trial process.

- **The setting where court sessions were held, the solemnity of sessions and communication between parties.**

In all trials monitored in the District Court of Tirana, the judgments of cases on "job dismissal" were held in the office of judge. Offices of the judges at the Court are very small places, provided only to the judge to use in his activity outside the courtroom and for the presence of relevant judicial secretary. In contrast, in the Judicial District Courts of Vlora and Shkodra, the monitored sessions were held regularly in the courtroom. The courtrooms have been equipped with all the necessary

items for a normal trial and to enable not only the presence the parties involved in litication but also the public, which is not possible to happen in judges' offices.

The conditions in the setting where court sessions are held, directly affects the respect of solemnity during the trial. Solemnity of the trial is not a formal request for the court, it connects directly with the court's authority and verdicts that it gives, but affects also the right processing in accordance with the relevant procedural litigation. Such a finding was reconfirmed also from our monitoring.

Thus we concluded that in the Court of Appeal in Vlora, the elements of solemnity of judicial process, were generally respected. In those sessions, judges and secretaries came to trial with appropriate uniform, the room was kept quiet, the parties addressed the judge when it allowed to do so. In District Court of Vlora, solemnity in court session was more respected by judges, who were the only ones wearing the cloak, unlike lawyers or secretaries. Regarding the other elements of solemnity as quietness in the room or nonuse of mobile, the situation leaves much to be desired. There have been cases when judges turned their backs to the public to speak on the telephone. The quietness and order in the room was interrupted also by the door that opened often by people interested in the matter.

In Shkodra Court of Appeal all sessions are held in the great hall of trials, which is equipped with all necessary tools to conduct a court session. The Code of Ethics was generally respected by the judging panel and in most cases the lawyers wore their uniforms (this was noticeable not only at the sessions, but also in the corridors of the court were lawyers still wore their robes).

This was unlike the situation in the Judicial District Court of Tirana where solemnity leaves much to be desired, due to the holding of trials in judges' offices, where space is lacking and it is difficult to find enough place for the parties, their attorneys, witnesses and people who want to follow the process. In these circumstances, judges allow themselves to not wear the uniform, in some cases or to perform other actions during trial that are unrelated to the session, such as talk on the phone, communications with people who enter the office and are unrelated to the litigation in progress.

However, overall, it showed up that the attitude of the judging panel towards the parties in the process, has been generally correct.

During the monitored trials are not observed biases in the treatment of the parties at trial. Also, it should be noted that judges have been understanding to parties that had decided to be represented themselves at trial, despite that their knowledge of the judicial process was minimal. In Tirana, especially, are observed violations of the code of ethics, as from the judge, so also from defense attorneys, for the way of communication between them, and the communication between the parties. There were cases when the judge addressed by name and a rather loud tone of voice the counsel of parties at trial or even the parties themselves.

- **On equality in regard to judicial means**

Parties in the monitored processes are treated equally in relation to judicial means that the law recognizes them. There were no cases of discrimination of the parties in this regard. Parties are regularly allowed to present their views on the subject of the lawsuit, their double dealing, and apply to the court with requests based on law. In the monitored processes, none of the parties filed a request for disqualification of the judging panel and therefore the trials continued to their end with the same panel.

- **On reasons for postponement of proceedings**

Litigation, contrary to what the law provides, are not held in a continuous way, but are constantly postponed. In the monitoring carried out in the judicial district court of Shkodra 50% of monitored processes are postponed, at least once. This is due to the absence of lawyers and representatives of state institutions (as the defendant usually were the public institutions), postponements have varied from 6 to 21 days. The situation is similar in the judicial district court of Tirana and Vlora. The main arguments for delaying the process were: to bring extra evidence, to enable the other party to become acquainted with the evidence presented, the absence of a party, seeking time to prepare for the final presentation etc. In the District Court of Vlora, sessions were postponed for a longer time, one month and in some cases for two months after the last session.

There were cases of exaggerated prolonging of the processing of these cases, as for example processing with 17 to 19 trial sessions.[3]

[3] For further details see the following report.

More detail on this aspect is elaborated and explained in the following chapters of the study. However it is worth noting the positive experiences of Vlora Court of Appeals in this direction, in which the trials came quickly to an end.

IV. On the implementation of due legal process principle during the consideration of cases in the Civil Service Commission (CSC)

The institution of CSC is an independent institution whose mission is to guarantee, make firm and to protect the rights of civil servants. It is an institution established by and pursuant to law no. 8549, dated 11.11.1999, "Status of Civil Servants", which, among other things, oversees the management of civil service staff and considers complaints of civil servants, at both national and local level.

Monitoring the activity of this institution, was focused on the principle of due process and the opportunity for access to this institution. A total of 10 sessions held by the CSC were monitored, in which about 63 complaints were handled by civilian employees of both central and local public administration. During this monitoring it was taken into account what stipulated from the unifying decision of the Supreme Court (decision no. 3 dated 01/24/2007), which states explicitly:

"With the features of a quasi judicial body, Civil Service Commission must be characterized by independence, impartiality, transparency and fairness in resolving conflicts, and accountability and fairness in implementing legislation in force. In order for it to be so, it is necessary ***the ongoing of a due legal process, respect for the minimum procedural rules and the maintenance of certain standards in the processing of cases. These standards relate to the call (notification) of the parties, hearing of their claims, allowing the presenting of evidence, making a final decision and its reasoning, and communication of this decision to the parties.***" Further down, the court continues: "*Since it operates as a first level of revision of the case, whose decisions can be appealed in court and be subject to judicial review,* ***it is mandatory that the later, administer and submit the investigation the materials of the case reviewed by the Civil Service Commission in order to provide a well founded answer to the parties' claims.***"

Based on the above stated, from our monitoring was found that all sessions were held in the respective room, equipped with the necessary means and in accordance with the parameters that enable the progression

of a normal court session process. Hearings were public,[4] and recorded with audio recording. As a rule, members of the CSC make their decision on a date other than the hearing of the parties and the decision making process was made behind closed doors. CSC has also in use an official web site in which it makes transparent information about the examination of complaints, that site also serves to inform the parties involved in the examination of the complaints, alongside sending personal notice by mail.

Generally, hearings were not postponed, but it did not exclude the possibility from the parties to request so, as for example when one party was absent, though it was notified about the date, time and place of the examination of the complaint. There were cases when the parties themselves sought to postpone sessions, in order to bring other corroborant evidence, and this was accepted by the Commission but, care was shown not to excessively prolong the term of processing the complaint.

All monitored hearings have begun on the pre set time, which was also posted in the official website of this institution. In a sporadic case, the session may have started up to 10 minutes late. Generally the elements of solemnity were respected during sessions, except some rare cases when it was noticed cell phone use while the session was in progress.

The complainant was present in most cases. Only in a sporadic case it was missing, due to not timely and inappropriate[5] manner of notification, for the restarting of the session. It turned out that latenesses or absence of representatives of state institutions that had given administrative measure to the employee, were more frequent.

In all cases monitored[6], decisions were not announced on the day of the hearing of the parties, they were nevertheless promulgated in accordance to Articles 59 and 60 of Law no. 8485, dated 05.12. 1999 "The Code of Administrative Procedure".

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[4] At the request of the AHC, and in compliance to CSC rules, it was allowed an AHC observer to participate in court sessions held.

[5] In some cases, postal address system, referred to CSC, was not accurate, or the notification arrived too late.

[6] Because only the court sessions were monitored.

V. Implementation of legislation by public administration bodies and the courts, in judicial cases on resolution of labor disputes

1. General Observations

An important aspect of social objectives of the state, related to "*appropriate employment conditions of all persons capable to work*"[7] that finds its constitutional provision in the chapter on fundamental rights and freedoms of citizens, is the right of individuals to choose a profession or a particular activity.

Under Article 49 of the Constitution: "*Everyone has the right to earn the means of living by lawful work that he has chosen or accepted himself. He is free to choose his own profession, workplace, and his own system of professional qualification*." The right to work, which the above-mentioned constitutional provision guarantees, includes the choice of profession, job and vocational training system, to ensure sustenance means in a lawful manner. The choosing of a profession constitutes the individual's right to provide sustenance, through its orientation toward a specific activity. The right to work and freedom of occupation implies any lawful activity that generates income and that has not a set timeframe, except where there is a separate legal regulation. The right of individuals to obtain legitimate work, assumes importance socially, because work as a profession is valued for the contribution it brings to society as a whole.

"The stipulation that section 49 of the Constitution makes of the right to work, makes for on the one hand, a social right and a positive obligation that requires state commitment to create appropriate conditions for its realization, but also a negative obligation on the other hand, which requires the not intervention of the state in order to not violate this right. The safeguards that the Constitution has given the individual regarding the right to work and freedom of occupation, are intended to protect them from unjustified state restrictions. So the action of state bodies that bring in direct consequences of preventing occupational activity, constitute a violation of this freedom of action."[8]

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[7] See Article 59, paragraph 1, letter "a" of the Constitution of the Republic of Albania.

[8] Decision no. 20, dated 07.11.2006 of the Constitutional Court of the Republic of Albania.

However, the practicing of a profession may be limited by reasonable adjustments that can be attributed to considerations to the greater good. Under the principle of proportionality, "from all the different tools that can be used to achieve a legitimate aim, the administrative authority shall use the most suitable means, which can be achieved in causing the most minute injustice to the individual "and" it should not be outside of the scope of aspired goals."[9]

Precisely,

- evidencing the manner of implementation of the constitutional right of citizens to work,
- verification of the extent of interference in public administration bodies to restrict the right to work, and
- control over the legality of this intervention by the court,has been the main objective of the study conducted by the Albanian Helsinki Committee.

The study was conducted on the basis of an analysis of judicial decision of three courts of first instance of Tirana, Vlora and Shkodra, in cases issues that concerned the resolution of labor disputes. The object of the study have been court decisions pertaining job dismissals, the respondent party being the public administration bodies of both central and local level, as promulgated by the courts of first instance of the judicial districts of Tirana, Vlora and Shkodra, for the period January 2010 - November 2011.

During the study of the decision, focus is given to some key issues related to compliance by administrative bodies, and by the courts themselves, during the cout sessions, of the right to a fair trial, in regard to its core elements.

Part of the analysis of numerous cases of judicial decision were:

- Access provided to parties in litigation,
- Identification from the public administration of the motivation for the dismissal,
- and age of the plaintiff,

[9] Ibid.

- Participation of the defendant in trial and the reasoning that has been presented for dismissing the employee from work,
- The way the courts have concluded on the legal resolution of labor disputes, etc.

The presentation of some statistical data form a clearer picture to understand performance in these two years of settling labor disputes.

Of all the issues that the Judicial District Court of Tirana and Shkodra concluded for the period 01.01.2010 to the end of October 2011 and Judicial District Court of Vlora for the round year 2010, (about 724), it turns out that a total of 587 lawsuit (about 81.8%) are accepted, of which 287 were partially received (39.6%) and 300 were fully received (41.4%); in 84 cases, the case was closed (11.6%) and 45 lawsuits were dropped (6.2%). Other issues that make up 1.2% , are acts and cases sent to a court of other jurisdictions.

The actual ratio between lawsuits accepted by the courts and those rejected in 100% of cases, is respectively approximately 82.8% received and 5.6% turned down. Such a figure shows the strong illegitimacy found by the courts in resolving labor contracts by public administration bodies. This observed illegitimacy from the part of courts in the way the public administration has exercised its activity, has in the same time, caused a great financial cost to the state budget in terms of indemnifications that they are required to pay in favor of the employees, winners in the court case.

Illegality of the actions from public administration bodies in terminating labor relations unfairly for a large number of persons, and failure to show the liability of the directors of these institutions, do not remove the suspicion that some of these employees have been dismissed for political reasons, to make room for others.

In the ratio between males and females dismissed from work, it turns out that the majority of the cases is of males. About 36% of lawsuits are filed by women and about 64% of men. Out of 682 plaintiffs that have filed in court, 135 are in the age group of 31-40 years, 173 aged 41-50, 263 aged 51 to 60 years, 50 of 61-70 years and 59 under age 30.

From the analysis on all of the cases, it turns out that besides the correct legal solutions as applied by administrative authorities and by the courts, there are highlighted also aspects of the legal nature, which are an integral part of this study.

In many cases, which have been part of our survey, it is ascertained:

- *on the one hand*, the lack of a forbearance on the part of public administration bodies in the manner of termination of employment, where it is observable a hasting to undo immediately the contract of employment, without regard to the standards required by a regular legal process and,
- *the other hand*, a kind of court pattern of attitudes regarding legal reference employed to reason the right or wrong termination of labor relations, a kind of ambiguity or misinterpretation of unifying decision of Supreme Court, but also a strong lack in the reasoning of judicial decisions, particularly in terms of justifying the payment of indemnifications to the employee's benefit.

Among the most interesting cases, examined in this study are:

- *the* different *ways in which the provisions of the Labor Code is interpreted in respect of:*
  - the employee return to work or;
  - the confusion between the contract termination without reasonable cause and termination of the contract without justified cause,
- *Disregard* of the due legal process elements, in resolving labor disputes mainly in terms of: *to the trial – the non expression of the court deciding the dispute over everything that is requested and only for what is requested;*
  - *inconsistency between the reasoning part and the obligatory part of a judicial decision;*
  - *the non reasoning of court decisions, mainly in terms of non reasoning the size of indemnifications following the termination of labor relations;*

- *violation of the right to be heard, a basic element of due legal process;*
- *failure of information in any case of the employee by the employer, for application of disciplinary measures taken previously against him;*
- *failure of maintaining a consistent position over the presence during trial of the Sate Advocacy, etc.*

Some of the problems that were noted during the observation of judicial decisions are listed here below:

- ***Ambiguity evidenced in terms of the ability of the employee to return to previous position;***

Labor Code passed in 1995, did not expressly provide for the employee's returning to previous work position. The only legal provision that declared the termination of the labor contract as null, in case of violation of the dismissal procedure, was Article 144 entitled "dismissal procedures". Under section 5 of this article, violation of rules that provided the notification procedure for termination of employment, rendered void the canceling of the contract of employment. Specifically paragraph 5 of Article 144 stated: "*The termination of the contract made in violation of this provision, is invalid. Parties retain all rights and obligations arising from the contract*."

Such a formulation of law creates room for interpretation of the provision in favor of returning to the former place of employment in the case that it is ascertained that the contract was terminated in contradiction to the notification procedures. With amendments made to the Labor Code in 2003, section 5 of Article 144 was reformulated in this way: "The termination of the contract in violation of this provision remains valid."

Thus, with the amendments made, the canceling of the contract is not considered invalid termination of the contract made in violation of Article 144 of the Labor Code. This reformulation that was made to legal provision, seems to have removed from employees the opportunity to return to former place of work, in case of declaring null the contract termination.

Impossibility of returning to work from the employees, we find sanctioned also in the unifying position held by the Supreme Court in its unifying decision No. 31 dated 03.26. 2003. In following the position of that time of European Court of Human Rights (*Pelegrin versus France*), under which the only disputes excluded from the terms of Article 6 / 1 to the European Convention of Human Rights are those that are raised by public servants, the High Court unified its position by concluding that "**The right of return to work is not entitled to legal protection, while the right of indemnity is a right that is entitled to protection. The party harmed by an unfair dismissal from work is entitled to indemnity through the court**."[10]

Several months after this unifying decision, the legislator has amended the Labor Code by shifting the concept of invalidity of termination of employment contract under Article 144, paragraph 5, Article 146, paragraph 3. So, by considering invalid the termination of employment contract due to the breach of notification procedures, the legislator sanctions the concept of invalidity in cases of termination of employment contract without reasonable causes. On the other hand, in two legal provisions (Article 146, paragraph 3 and 155, item 3) the lawgiver seems to indirectly acknowledge the possibility of a return to former place of employment for employees in public administration, the rule providing that:"For employees in public administration, where there is a final form court decision for them to return to their previous office, the employer is required to implement this decision."

It is noted from the analysis of the three district court decisions that were subject to our observation that there were ***the issues created by various conflicting views, even within the same court, about the possibility of returning to employee's former place of work***, either because the way of formulation of the Labor Code, or the unifying practice of the Supreme Court.

What is observed in the decisions of these courts?

Overall, in the majority of judicial decisions we find to be consolidated the position that the plaintiff does not return to the previous

[10] See for more information, unifying decision no. 31 dated 03.26. 2003 of the Supreme Court.

place of work. Although the cases under study proved that the conditions for termination of contract without reasonable cause (section 146 of the Labor Code) or without justifiable cause (Section 155), returning to the work place is not accepted as a potential solution by the courts.

Thus, in several decisions, the courts maintain that: "*In its entirety, this Code addresses the employment relationship as a voluntary contractual relationship between employer and employee, which, once solved by either of the parties participating in it, has no chances to be reset to its initial state, outside the will of the same party*." The courts have held in some cases the categorical position that: *"The provisions of the Labor Code in their entirety, but also in peculiarities, do not envision at any moment the obligation* of employer to rehire to work the employee."

According to the majority of judicial decisions *"Labor Code remedies the state of the employee upon dismissal only pertaining relevant indemnifications "* and the contract of employment," for as long as the plaintiff does not enjoy civil servant status, it can be terminated at any time under section 141 of the Code, " but upon the condition that the term of notice be over first.[11] (See Decision no. 1740, dated 03.05. 2010 of Judicial District Court of Tirana). In circumstances where there is no justified reason to terminate the contract of employment, the court recognizes a liability for the employer only those consequences that are stipulated under Article 155 of the Labor Code, that is indemnification for the period of notice under section 143, indemnification for breach of the procedure under Article 144 / 5, and indemnification under Article 155 / 3 of the Labor Code, but not the plaintiff's return to his former place of work.

These positions seem to stem also by the unifying decision of the Supreme Court no. 31 dated 03/26/2003 (though it belongs to a different legal situation), which concluded that *"the right of return to work does not enjoy judicial protection, in contrast to the right of indemnification which is a right that is entitled to this protection."*

In terms of the possibility of returning to work, there are observed for example in the Judicial District Court of Tirana, ***conflicting views on the way to solve issues on the basis of the same provision of the Labor Code, specifically Article 155 / 3***. Thus, the decision no. 5290, dated

[11] See Decision no. 1740, dated 03.05.2010 of Judicial District Court of Tirana.

06.28. 2010 of Judicial District Court of Tirana has interpreted as possible the cancellation of the administrative act and restoring of a public official in the former work position, when it finds the abrupt termination of employment contract as unjustified, while the decision no. 1740, dated 03.05.2010 is expressed for the contrary, that "*The Labor Code does not provide in any case the requirement that the employer rehires the employee to resume work.*" In decision no. 5290, dated 06. 28. 2010 the Court argues that *"the termination of employment of the plaintiff by the Minister of Defense was not made on justified basis." With the indictment in the trial, the plaintiff has requested his return to work. Court holds that regardless the fact that the plaintiff has exercised his function in the hierarchy of the Ministry of Defense, Central University Military Hospital, he served in the public administration of the legal person as an employee with an employment contract and his employment is regulated by the Labor Code.*" Thus, the court based on Article 155 / 3 of Labor Code finds that the claimant should be restored to office which he held prior to the afore mentioned termination of employment" and in the text of the decision has decided for "the return of plaintiff … to work …".

From these positions, it becomes necessary to **have a clearer concept of the possibility that the Labor Code provides employees to return to former place of work**. The wording of Article 146 / 3 and 155 / 3 of the Code of Labor leaves room to admit that for the public administration employees, their return to former place of work is not an impossibility. The last sentence in third paragraph of sections 146 and 155 may not seem to have been properly placed. *On the one hand*, it is recognized in section 146 the invalidity of the contract termination without reasonable causes, which goes no farther than the employer's obligation to give the employee an indemnity of up to a year's salary, on top of the salary the employee should obtain during the period of notice and, *on the other hand*, implies the possibility of a return to former place of employment in the case of public administration workers, since it is set as a requirement for the employer to implement a court decision of final form, which contains this order. Meantime, the Labor Code does not appear to have any other material or procedural provision to provide affirmatively the return to previous office. Thus, the wording of Article 146, paragraph 3 should be associated with the formulation that the legislator used in Article 155, paragraph 3, for unjustified abrupt termination of contract of employment by the employer, which is the same.

The possibility of restoring public administration employees in the previous workplace by a court decision, creates another issue on the necessity to object also the administrative act, which has terminated the employment relationship. Courts have generally not accepted as part of the scope of the lawsuit in resolving labor disputes, the objection raised against the administrative act (*See decision no. 458, dated 02. 22.2010 of Judicial District Court of Shkodra*). It is evidenced that in some case, the court concludes for the incompetence of the administrative body to issue an administrative act for the employee leaving office, does not express itself against the absolute invalidity of the action, but just passes it by, by assessing only the wrongful termination of the employment. (See decision no. 565, dated *03.11. 2010 of Judicial District Court of Vlora*). Almost all judicial decisions, although there are cases that required in the scope of the lawsuit also the annulment of the administrative act that has terminated the employment, the courts overthrow this plaintiff's claim, arguing that the dispute is not of an administrative nature, but a labor dispute . However, when the court decides that the employee return to former place of employment, because of incompetence in decision-making on the part of administrative organ, or serious breach of procedure, the text of the decision of the decision can not avoid the reverse of consequences without declaring invalid the administrative act. It is the above stated formulations of the legislator, related to the implementation of a court decision for the return to their previous office on the one hand that allow courts, under the Labor Code to restore the employee to the former place of work and on the other hand, do not prohibit its application also over the invalidation of the administrative act, as is done in accordance with the law "On civil servant status."

- ***Violation*** **of due legal process in resolving labor disputes.**

Implementation of just and fair legal procedures is the essence of the right to due process. Provisions of due legal process is presented, *on the one hand*, as a safeguard for citizens against unjust actions of state authorities and, on *the other hand*, as an obligation of the latter not to prejudice the rights and freedoms of citizens without ensuring compliance with legal procedures. In terms of this standard, anyone can address their case to the court, while the court is not allowed to refuse to administer justice.

The right to address a court that is otherwise known as the right of access to trial, implies not only an individual's right to appeal to a court, but also the obligation of the state to ensure the person this opportunity. Constitutional provision guarantees to the injured subjects the right to appeal to a court, which after hearing their claims will announce a decision after a fair, impartial public trial. If this right is denied, the process is considered irregular because access to court is, first of all, a key condition to achieve the protection of other rights.

- Access to trial concerns *the court's duty to judge the dispute, and to be expressed on all that is requested and only what is requested*.

From the study of many court decisions, which have resolved the labor dispute, it is found that to this important standard courts are not properly complying to. There are cases in which it turns out that courts have not responded to plaintiff's claims, not only pertaining the reasoning of the decision, but neither in its text of the decision, as well as there are evidenced cases in which to the legal claims of the employee, the courts respond in the text of the decision of the decision, without providing any argument in the reasoning of the court decision on their acceptance or rejection.

In Decision No. 967, dated 02.15. 2010, Judicial District Court of Tirana, although acknowledging the fact of failure by the employer of the period of notice, considering under Article 143 / 4 of the Labor Code as an immediate termination to labor relations, does not grant the employees the reward of 2 months' salary, which turns out to be the object sought in the lawsuit. In decision no. 918, dated 02.12. 2010, the court accepts the indictment on the grounds of termination of labor relations for the appellant, abruptly and without a justified cause, but does not provide a response to its seeking indemnification for breach of the procedure.

To the legal appeal of the employee for violation by the employer of procedures provided by Article 144 of the Labor Code on termination of the contract of employment, Judicial District Court of Tirana, in the decision no. 927, dated 04.10.2010 does not respond, while it employs itself in reasoning about the notification period envisaged by Article 143, topic for which the plaintiff has not filed a claim.

Judicial District Court of Tirana, in the decision no. 1469, dated 02.26. 2010, has not addressed in the text of the decision, the claim of the plaintiff to the extent requested in the indictment, while it appears to have accepted them on the reasoning of the decision. The Court itself has concluded in the reasoning section that the plaintiff must be indemnified equivalent to 10 months wages, and pay of two months work for not respecting the notice period, and the appropriate rewards for seniority, and in the section of the text of the decision decides to pay the plaintiff the salary of 12 (twelve) months of work as compensation, corresponding to reward for seniority, not determining precisely the amount of the compensation, and does not indicate precisely the amount of indemnification for breach of the notification period.

- ***Discrepancies*** **between reasoning part and prescriptive part of a judicial decision.**

A court order is required to be logical, neat in its form, and also clear in content. In its entirety the decision should be considered as a unity, in which the component parts must be closely connected among them. Arguments of reasoning section, should form part of a coherent content within the decision, which rules out any discrepancy or contradiction, disclosed or secret. Arguments should also be sufficient to support and accept the decision of the court ordering, which should flow naturally from conclusions reached in the reasoning section.

An illogical reasoning is when the court accepts that the article 146 / 3 of the Labor Code is violated, which provides for the cases of the contract termination without reasonable cause, which is the consequence of the invalidity of the contract termination, while it is satisfied only with the recognition of indemnifications under Articles 143, 144 and 145 of the Labor Code.

Since the specific provisions of the Labor Code clearly provides that "the termination of the contract without reasonable cause is invalid", reasoning that the court uses in recognizing only compensation, without stating the invalidity, is not only incomplete, but can not but be qualified as illogical. (See Decision no. 5117, dated 06.21. 2010 of Tirana District Court).

Illogical will be considered a judicial decision, that on the one hand, recognizes the labor contract termination for justified reasons and,

on the other hand, recognizes the employer's obligation to indemnify the employee, because of failure to comply with the notification period. In decision no. 4818, dated 06.11. 2010, Judicial District Court of Tirana concluded that the respondent "… shall be compelled to indemnify the plaintiff … … for not respecting the notification period, *with three months salary*", when in fact the law in cases of terminations of the contract for justified reasons recognizes compensation for the employee only in case when the procedures of termination of an employment contract were not respected, but not so also for the case pertaining the notification period.

From the analysis of several court decisions, it is found that some judges have not understood clearly the purpose of the legislator in anticipation of the notification period. The employer is obligated to allow a certain time the employee to seek a new job, a period during which the employee is paid. So the notification period is intended to avoid situations in which the employee during the job search, can be left without any source of livelihood. On the other hand, the period of notification protects employers as well, who benefit from the work of the employee during the time they need to find another employee. But in cases where the employer terminates abruptly the employment contract for justified reasons, because the employee violates the contractual obligations under big offence, it is understandable that the abrupt termination of the contract is valid and there is no room for the continued stay of the employee at work nor for observation of the notification period. This is the position held also by the Supreme Court in unifying decision No.19, dated 11.15. 2007, which concluded that *"in principle the parties must observe the terms of the notification period and the abrupt termination of contract is prohibited, however, the exemption is that it is allowed for justified reasons (Article 153) and in this case the party terminating the contract is not punished, regardless of non compliance with the term."*

Of course, observation in such cases of the procedure of terminating the employment contract (Article 144), in contrast to that of the notification period, remains an obligation for the employer due to standard procedures that require a legal process. However the procedure for the case of a labor contract termination, the legislator has allowed the court in case of the abrupt justifiable termination of the contract, to exempt the employer from liability for indemnifications. While from not only the case cited above, but also from some other cases, it is observed that the courts in cases of abrupt termination for justifiable causes of the

employment contract, incorrectly force the employer to pay the amount of indemnification for the notification period.

- **Part of the illogical reasoning are also cases when the courts fails to make a clear distinction between termination of employment contract without reasonable cause and termination of labor contract without justifiable cause.**

During the reasoning of the decision no. 967, dated 02.15. 2010, Judicial District Court of Tirana, refers to the contract termination without reasonable cause, under section 146, while in the text of the decision the decision, focuses on the employer's obligation to pay indemnifications to the plaintiff in the amount of 12 monthly salaries, due to termination of labor relations in an unjustified manner (Article 153 / 3 of the Labor Code). To the request of the employee seeking to compel the defendant to pay indemnifications of a year's salary due to abrupt unjustified termination of the employment contract, the decision nr.681, dated 03.25. 2010 of Judicial District Court of Vlora, it responds through the text of the decision for an unreasonable termination of the labor contract.

It appears that Courts confuse oftentimes termination without reasonable cause with termination of the contract with unjustifiable cause, while the consequences for each of these solutions are different. If the court finds that the contract is terminated without reasonable cause, then you should consider its termination as invalid. So, the meaning that the legislator has given the Labor Code, is that when the termination is invalid, the contract is in force and the parties retain the rights and obligations arising from the employment contract: The employee must provide the service (work) and the employer must pay wages.

Indeed, the invalidity of employment contract termination, means a restoration of all rights of the parties to the original state (*return to the workplace*), in addition to payment of indemnification, while in the case of termination of contract without a justified cause, it is not provided for invalidation of the contract termination, but only the obligation of the employer to indemnify the employee.

Even Article 155 / 3 of the Labor Code (termination without justifiable cause) does not seem to exclude the concept of returning to

previous workplace for public administration employees. Yet what distinguishes termination without reasonable causes of the contract with the termination of the contract without justifiable causes, is the invalidation of the contract termination acknowledged only in respect to Article 146 / 3 (*solution without reasonable cause*). In decision no. 5117, dated 06. 21. 2010 the court concludes that "*termination of employment … was made abruptly, without evidencing reasonable causes*." The Court itself has agreed to refer to Article 146 / 3 of the Labor Code which provides that: "Termination of the contract without reasonable cause is invalid, which means that to the party must be returned all the rights that has had previously, while the plaintiff's seeking to return to former place of work, the court rejects in an absurd way, that "*given the long time of her departure from work, based on Article 146 / 3 of the Labor Code, the Court considers that this request can not be accepted*."

The same confusion of concepts in regard to the termination of the work contract without justifiable cause, in terms of Article 153 of the Labor Code and the resolution of the employment contract without reasonable cause, is found also in the Decision no. 4645, dated 06.07. 2010, in which it is observed that to the appeal of the plaintiff for violation of the rights guaranteed by the Constitution and the damage caused by interruption of labor relations, without reasonable cause, in reference to Article 146 of the Labor Code, the court has responded in the sense of an abrupt contract termination, without justifiable reasons.

There are cases when the courts for termination of the contract without observing the notification period, which is treated as a termination of the contract with immediate effect, recognize to the plaintiff, the indemnification by referring mistakenly to Article 154 and not Article 155. In Decision No. 939, dated 05.04. 2010 Judicial District Court of Vlora argues that "since the defendant has failed to respect Article 143 paragraph 1 and 4 and Article 154 paragraphs 1 and 2, it is therefore decided that it must recompense entirely for the damage done to the plaintiff," while Article 154 deals with the immediate and justified termination of the contract and not the unjustified termination as was the case under consideration.

- ***The non* reasoning *of judicial decisions*.**

The reasoning of judicial decisions is an important standard of due legal process. Each court is obliged to justify the actions taken by giving

reasons for the decision it has made. Reasoning that the court makes to its decision, convinces the parties in a litigation that their claims are heard and debated, but also creates the opportunity to meet effectively the right of appeal to a higher court. The issue of reasoning of the judicial decision, besides the importance it takes for the actual person, to be informed of the grounds upon which the court based on violations of his rights, gives the public the opportunity to evaluate the justice system and see "how justice is administered in their behalf. "[12] The Court is not obliged to answer every question in detail, but in cases where the application submitted is crucial to resolving the issue, the court is required that in its decision "to express itself clearly and specifically"[13] indicating the reasons which support its decision.

Judicial decision is not reasoned through in all its elements. This is more sensitive in not providing reasoning of the amount of indemnification due to the termination of labor relations.

Through observation of court decisions, it is clearly evidenced that in many of them there is a lack the justification for the compensation that the employer owes to the employee. The decision of the United Colleges of the High Court no. 19, dated 11.15. 2007 has unified the approach by guiding the courts that in determining the amount of compensation to the employee due to termination of work contract, prescribing a reasonable measure of reward and not, as usually happens in practice, to decide without providing any reasoning, the maximum of indemnification of a full year's wages.

There are very few court decisions that in determining the measure of indemnification are based on criteria related to all possible circumstances, such as the spiritual suffering of employees, age, social situation, the possibilities of finding a new job, the economic situation, the duration of labor relations, etc.. Here we can point out good practices followed by the Judicial District Court of Vlora in correct reasoning on the criteria which determine the measure of indemnifications (see decision

[12] "Analysis of the proceedings of criminal cases on appeal in the Republic of Albania" - Report of the program for the proceedings of a fair trial. Published by the OSCE Presence in Albania, Tirana 2007.

[13] The case "Haxhianastasiu versus Greece", APL. 12945, dt. 12.16.1992; The case " Balani Hiro versus Spain" dated 12.9.1994, paragraph 28; The case "Torija Ruiz versus Spain 'dated 12.9.1994, paragraph 30.

no. 283, 02.10. 2010, Decision No. 291. dated 02.11. 2010 etc.). Of course the judge is free to determine the measure of indemnifications, but he is obliged to justify his decision by taking into account all the circumstances presented in the case in consideration.

In consideration of a matter about a collective dismissal from work, it turns out not to be justified by the court the amount of indemnification due to breach of procedure. In decision no. 1321, dated 02.24. 2010 the court taking into consideration *"… and the content of Article 148 of the Labor Code, determines that the respondent should compensate the plaintiff … with 6 months' salary for non-compliance of procedure of collective dismissal from work",* while that does not give any reasons for the measure of indemnification received.

There are cases that it is given to the employee as indemnification the total amount of 12 monthly salaries, without analyzing reasonably the circumstances over which the court is based on in deciding for the maximum indemnification (see decision nr. 2304, dated 03.23. 2010) just as it commonly happens not providing any reason in determining the amount of indemnification the court considers *"that for indemnification, the employer (the defendant) should pay the employee, the salary of 2 (two) months of work, and not one year as plaintiff claims."* (See decision no. 5062 dated 06.18. 2010.)[14]

Although the court reasons in the decision no. 927, dated 04.10. 2010, that the employment contract is terminated by the employer abruptly and without justifiable cause, in determining the amount of indemnification equivalent to the employee's 8 months of salary, it provides no reason over what criteria this indemnity is established. The court reaches at the same conclusion in the decision no. 2846, dated 4.8. 2010, when the employee decides to indemnify the employee for terminating the employment contract in an inconvenient time, without providing any reason over the amount of indemnity.

[14] See the decisions of the Judicial District Court of Tirana, no. 927, dated 04.10.2010, no. 918, dated 02.12. 2010, no. 9504, dated 07.23.2010, no. 247, dated 01.22.2010, no. 535, dated 02.01.2010, no. 3621, dated 05.03. 2010.

➢ ***There are misconceptions from the part of the courts, over:***

- Interpretation in **different** ways that is made to the same article 151 of the Labor Code. Most courts admit that *defined* term contracts, signed after one of an indefinite term, is invalid, while others take a completely opposite position. (See decision no. 5104, dated 06/21/2010).
- The issue of a period of 180 days under Article 146, paragraph 2 of the Labor Code that created a kind of confusion over judicial practice. This period is envisaged only for claims that arise for the termination of the labor contract without reasonable cause and not for other claims, for which provision applies to another of the Labor Code (article 203) that provides the 3-year term.
- While the court did not have a case of termination of the employment contract without reasonable cause, they have applied section 146 for other cases also, making cases of other labor dispute resolution dreg beyond the legal time frame.

It is commonly found that:

- cases when used as an argument by the employer to terminate the employment contract because of job position becoming redundant as a consequence of the restructuring of the institution, the courts have concluded for an abrupt termination of the labor contract without justified cause.
- cases in which the employer submits as the cause, the inappropriate level of education of employee, while failing to prove so, and the court has concluded with the receiving of the employer's claim. (See decision no. 9504, dated 07/23/2010).
- termination of the labor contract when the plaintiff has been temporarily disabled and the court has accepted the claim and decided for an indemnification.
- Termination of the employment contract on the grounds of coming to the pension age while in reality it remained another year to fulfill this requirement. (See Decision no. 5629, dated 07/07/2000).

- ***The right to be heard as a basic element of due legal process.***

At the core of a fair trial stand all the procedural guarantees for the individual, out of the respect of which, it can be acquired the right to a just and fair legal proceeding.

The right to be heard is the essence of due legal process. The safeguards that the right to due legal process under the Labor Code provides, begin with the notification of the employee by the administrative body for reasons of termination of his contract of employment, in order to provide an opportunity to express themselves.

Thus, in Article 144 of the Labor Code , it is envisaged for the employer, the observing of a certain procedure of termination of contract. Every employee has the right to be informed promptly in writing by the employer for reasons of termination of the employment contract. This is the guarantee that the legislator has provided in favor of the employee, as the "weaker" party in the labor contract, that living in a market economy, be more protected when confronting the employer.

In most court decisions observed during this study, it is found that one of the main claims of each plaintiff has a direct connection with violation from the employer's part, of the right of the employee to be informed in advance for the termination of the contract.

What stands out from most of the court decisions is that the employee is generally not heard in the administrative process. Violation of Section 144 of the Labor Code, which explicitly provides for the notification procedure to be followed by the employer in case of termination of contract work, is the basic provision to which the employee referred to, in any lawsuit brought to the court. And the courts have found violations of mainly Labor Code provisions relating exactly to the procedures regarding the termination of the employment contract and non compliance with the notification period. Regardless of the position held at the conclusion of the trial, the violation of this provision is quoted in almost all judicial decisions.

The wrong position held by public administration bodies in the cases of termination of the employment contract, which has brought financial penalty in considerable amounts, is one of the most problematic aspects.

In many court decisions, despite the existence of reasonable or justified grounds that may have served to terminate the contract of employment, public administration bodies are obliged rightfully by the court to indemnify the employee for breach of termination procedures of contract termination, in terms of section 144 of the Labor Code.

- ***In all cases, the employee is not informed for previous application of disciplinary measures taken against him.***

From the study, there are found in some court decisions, cases when the employer claimed that the plaintiff has committed a violation for which he is disciplinarily punished, but that has failed to prove their giving in the court session.

This way of handling issues from the employer turns out as a sort of camouflaged procedure that aims justification of his abrupt termination of the labor contract, but generally it fails to be proved in a court session.

Thus in the decision no. 818, dated 02.10. 2010 the court states that: "*During the trial the defendant failed to prove that the plaintiff during the duration of the employment relationship had breached severely the contractual obligations and that remarks were issued in his address (reputedly) in a written form, for violations of contractual obligations for minor issues*." The same reasoning lies in the decision no. 7896, dated 10.25. 2010 when it is accepted that "During the judicial investigation it didn't turn out that the defendant should have warned the plaintiff of failing to properly work." (See Decision no. 5579, dated 7.6. 2010.) This way of acting from the part of the employer is assessed in favor of the employee.

- ***The* practice over the presence of the State Bar during trial.**

In some of the decisions it has been ascertained that judges have requested the summoning to the litigation of the State Bar while in most of the cases, the respondent appears to have been protected on his own. This has caused some confusion in regard to the presence or not of the State Attorney in the trial. (See for further information decisions by Judicial Tirana District Court, no. 1469, dated 02.26. 2010, no. 2137, dated 03.17. 2010, no. 248, dated 01.22. 2010, no. 9504 dated 07.23. 2009; 73 , dated 01.18. 2010.)

- ***Resolving* issues *beyond reasonable time limits***

Any citizen who approaches a competent court for the realization of a right, can not wait indefinitely for its realization. The meaning that the right to be tried gets without undue delay, is associated with the initiation and completion of a trial within a reasonable time.

Cases generally are decided after nearly a year. The reasons for extending the process are not related to the complexity of the issue, but the behavior of the parties at trial, the defendant primarily, and in some cases with unjustified actions of the court itself. It is ascertained by several court decisions that there have been frequent sessions over 17 such, that have effected the procrastination of the process and announcement of the judicial decision in about a year and a half from the date of filing the indictment (see decisions of Judicial District Court of Tirana, no. 9262, dated 12.06. 2010 (15 sessions), no. 6071, dated 07.08. 2011 (17 sessions), no. 4232, dated 05.20. 2011 (19 sessions and eventually dismissed); no. 3977, dated 05.16.2011 (15 sessions), no. 6016 dated 07.07.2011 (17 sessions), etc.

VI. Media coverage of the issues regarding job dismissals

Due to its force and impact on society, media is considered to be the fourth power. Often times, the media has presented also cases, issues, and problems related to respect of the right to work and not to be discriminated against in this right for no reason whatsoever. We are grateful to the media because we are of the opinion that media coverage of these cases, or phenomena, brings about a higher awareness of the general public, as well as of the state and private structures, including the justice system, impacting directly on identifying problems and promoting confrontation with them.

Based on the foregoing, the AHC, during the period September-November 2011 has monitored a part of the printed media to observe the extend in which the job dismissal are covered, their nature, extent and how the media considers and reports this information for the general public.

During this period[15], we found that an important place in the media coverage was occupied by cases of employees' dismissal of local governments (municipalities and communes) which sustained political rotation, in some cases, due to local government elections held this year. Also, the media widely covered the mass dismissal of employees in the municipality of Tirana and in particular the situation of dismissal of two employees of the Municipality of Tirana, who were physically maltreated by local police commander, one of the most important officials to this institution. Similar case, the media have widely covered, was also the case of another employee of the Municipality of Kamza[16], who claims to be "persecuted" by the mayor of that municipality, alleging physical and psychological maltreatment against herself and her fiancé from members of municipal police of the ward, as well as obstruction against her, so that to make her not show up in her work place. According to information

[15] There were observed about 20 newspaper articles, which have tackled on this issue.

[16] An employee of the Municipality of Kamza had claimed intimidation and frequent sexual harassment by the mayor of this municipality, who later, upon her refusal, has ordered municipal police officers to exercise violence on the young lady and her fiancé and to prevent her to come into work facility. The case was reported by the victim and is being prosecuted by the judiciary.

received by AHC, these two cases were referred by the disadvantaged also to the judiciary.

The media have covered also other cases of dismissal, which the victims tie with motifs such as work place becoming redundant, participation in the gathering of January 21; lack of funds for wages, restructuring of the institution, etc. Dynamics of the reasons alleged by employers and reflected in the act of dismissal, was diverse, but often statements of persons damaged pertained discrimination for political reasons. In some cases the media has highlighted that the disputes caused by job dismissal, for lack of regular enforcement of procedures specified by law, have precipitated into violent reactions from both sides.

Generally the information above, the media has provided in short informative articles, without taking an assessment stand on the phenomenon. Nevertheless, in a few cases, the issue of massive dismissals from work for political reasons, has been elaborated in articles and editorials that delved into the analysis of social and political situations of the country.

VII. Key findings and recommendations

TO JUDICIAL SYSTEM

Findings

- In most judicial decisions are identified problems as follows:

  a. type of set approach when it comes to the legal reference used to justify the termination of labor relations,

     i. different interpretations by courts of the provisions of Labor Code particularly in respect of the employee return to work,

  b. disregard of the elements of due legal process in resolving labor disputes, mainly in terms of:

     i. access to trial;

     ii. inconsistency between the reasoning part and mandatory part of a judicial decision;

     iii. non reasoning of the court decisions;

     iv. violation of the right to be heard, etc.

- The different ways in which the judges interpret the provisions of the Labor Code, in regard to the employee return to work, or confusion of the contract termination without reasonable cause to termination of the contract without justifiable cause, call for professional capacity building in this direction, not to exclude adding ins to the law by the legislator in some basic aspects related to:

     i. legal provisions pertaining return to work;

     ii. the need for the defendant to be present at the court session, in order to prove in court the legality of the acts performed;

     iii. definition of a clearer position on the presence in the trial of the State Attorney, so that the interests of the state receive an equal treatment;

iv. specification through a material or procedural provision of the concept of returning to work that Article 146, paragraph 3 and 155, section 3 of the Labor Code stipulates specifically;

Recommendations

- All court cases should take place in the courtroom in order to ensure transparency of the trial and full access to the public in them.
- Supreme Court should look at the possibility of issuing unifying decisions concerning the invalidity of dismissal and relevant consequences, taking into account changes in Labor Code, pertaining the reasoning of the amount of indemnification that employees receive, as well as about the presence of State Bar in the trial.
- HCJ and the Ministry of Justice should take steps in inspecting the implementation of the principle of due legal process in resolving labor disputes, particularly with respect to: the court's obligation to express on all that is required and only for those required by the parties; for completion of these issues within reasonable limits, to respect the right to be heard, as a basic element of due legal process, which begins with informing the employee for the application of disciplinary measures against him, his notification from the administrative body for reasons of termination of contract of employment, in order to provide an opportunity to express themselves and giving notice to parties about court sessions.
- School of Magistrates, through the training program and the High Court through its decision, should find the opportunity to avoid misunderstandings and misinterpretations of the law displayed by the courts in connection with:
  - Different interpretation over article 151 of the Labor Code. Most courts recognize that defined term contracts signed after one of indefinite term, is invalid, while others take a completely opposite stand.

- The issue of the 180 days period under Article 146, paragraph 2 of the Labor Code that created some sort of confusion in judicial practice.
- Termination the contract of employment due to the position becoming redundant as a result of the restructuring of the institution.
- Cases when cause for dismissal from work is: discrepancy between of educational level of the worker and the requirements of his work position, temporary physical disability of the worker, meeting of age criteria for retirement etc.

- School of Magistrates should look for opportunities to improve the capacities of judges in reasoning through the decision, bearing in special attention particularly the compatibility reasoning and the prescriptive part of the decision, including in the reasoning section, all the requests that are made during the trial.
- HCJ and the Ministry of Justice should look at the possibility of determining the most effective means for controlling the way of reasoning of judicial decisions as an important aspect of the activity of judges.
- High Council of Justice, Ministry of Justice and the Chamber of Advocates should apply disciplinary measures against judges and lawyers for failure to comply with the code of ethics and solemnity during the court sessions.

FOR PUBLIC ADMINISTRATION

Findings

- Unequal ratio found with 82.8% cases that courts have accepted, over the termination of labor disputes, in favor of employees, with 5.6% of cases rejected, implies a high cost to the state finances and is unjustifiable for the activity of public administration.
- The majority of the dismissed belong to the age group 30-50 years, representing the most efficient people in work, with training and experience that varies from 10 to 15 years. Their dismissal

reduces the public administration capacities, impairs the realization of tasks and services to citizens.

- The unlawfulness of the actions of public administration bodies in terminating unjustly the labor relations for a large number of people, lack of forbearance in the manner of their termination of employment, where it is noticeable the hasting to terminate immediately the contract of employment, without regard to standards that a due legal process requires, and failure to hold responsible the directors of these institutions who are considered to be the cause of this lawless situation, does not disperse the suspicions that some of these employees have been dismissed also for political reasons, to make room for others to replace them.

Recommendations

- **An analysis be made over the high rate of unlawful dismissals (from the entire studied decisions, about 82.8% of claims were received by the** court **and only 5.6% were turned down).**
- To increase the capacity of public administration staffs, in charge of following the procedure for dismissal in order to achieve the right understanding and application of the procedure provided by law and to guarantee workers' rights sanctioned by law.
- The individual liability of relevant employees be drawn out, when with a final form decision of the court it turns out that the legal procedures for dismissal were not implemented and when the employer is obliged to pay indemnifications for violations of employee's rights.
- In respect of the principle of accountability by public administration bodies, efforts must be made to raise the awareness of winners of court cases, over the fact that their right does not end with the acquisition of compensation up to a year's salary, but with their right to insist on the law enforcement in all its aspects.

CIVIL SERVICE COMMISSION

Recommendations

- Should strive more, using all lawful means available in a legal state, that their decisions are implemented by public administration.
- The allegations raised by the applicants about the cause of their dismissal from work, be evaluated and better investigated, and consider more seriously the cases when the dismissal was made on grounds of discrimination. In this respect, to cooperate better with the Commissioner for Protection from Discrimination.

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Recommendations

- It is important that awareness of the trial winners of their rights, does not end with the acquisition of compensation up to a year salary, but with insisting also in law enforcement in all its aspects, demanding respect for the principle of accountability by the of public administration.
- To extend the coverage of the phenomenon of unlawful job dismissals.
- To address the problem, much better and to a greater extent than now, focusing on social and political impact of this phenomenon.
- To look at the possibility of increasing the capacity of journalists who cover stories and editorials of this area.