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Contributing Editors: Charles Wynn-Evans & Jennifer McGrandle

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Kosovo

Sokol Elmazaj & Delvina Nallbani
Boga & Associates

General labour market and litigation trends

The labour market in Kosovo is characterised by a high unemployment rate which, according to the Kosovo Agency of Statistics, amounts to 35.3% of the active population.

Due to the limited employment opportunities, violations of the rights of employees are very common, and in such cases employees for the most part address the courts to protect their rights.

Even though the Kosovo courts are overwhelmed with cases, cases involving employment litigation are treated with priority and are resolved in a relatively short period, overwhelmingly in favour of the employee.

Resolving labour disputes through mediation has gained momentum in recent years but there is still no established practice in this area.

Redundancies, business transfers and reorganisations

The provisions of the Labour Law regarding the termination of the employment contract due to business-related reasons (i.e. when such termination is justified for economic, technical or organisational reasons) may be applied provided that it is inappropriate for the employer to transfer the employee to another work place, or to train or qualify the employee in order to carry out the current or another job. In that case, the employer may serve notice of termination to the employee with a period which can range from 30 to 60 days, depending on the years of work or type of contract (definite or indefinite).

Statutory change or change of employer are regulated by one provision of the Labour Law (article 13). In such cases, the next employer is obliged to take over from the previous one all obligations and responsibilities of the employment relationship that are applicable on the day of the change of the employer. The previous employer is obliged to inform properly and entirely the next employer on the rights and obligations from the Collective Contract (if applicable) and on employment contracts to be transferred to the next employer.

The notification on transfer should also include the notice that, based on paragraph 4 of article 13 of the Labour Law, the employment contract will be terminated if the employee refuses the transfer of the employment contract or does not declare within five days.

There are no requirements in Labour Law to inform the work council or union regarding the transfer.

Business protection and restrictive covenants

The Labour Law is silent on the obligations of employees with regard to business secrets.

In practice, the obligation of professional secrecy and its modalities are regulated by the employment contract.

Discrimination protection

The Labour Law provides protection from any discrimination including exclusion or preference made on the basis of race, colour, sex, religion, age, family status, political opinion, national extraction or social origin, language or trade-union membership which has the power of nullifying or impairing equality of opportunity or treatment in employment or occupation or professional development.

The Labour Law and the Anti-Discrimination Law (law no. 05/L-021) provide the violations that constitute discrimination in the employment relationship.

In this regard violations related to conditions for access to: employment; self-employment; discrimination during recruitment or training; in promotion of employment; terms and conditions of employment; disciplinary measures; in termination of the employment contract; or other matters arising out of the employment relationship, are all considered to be discrimination.

Further, the violation of employee rights based on membership and involvement in organisations of employees or employers, or any other organisation whose members exercise a particular profession, including the benefits provided by such organisations, are also considered to be discrimination.

The Labour Law provides that in case of hiring new employees, the employer is obliged to create equal opportunities and criteria to both male and female applicants, without any gender discrimination. When a specific job may be performed adequately by a person with disabilities, direct or indirect discrimination of such persons is prohibited during employment, promotion and professional development process.

The Anti-Discrimination Law defines different types of discrimination. In this regard, direct discrimination occurs when a person is treated less favourably than some other person would be treated or has been treated in a comparable situation based on one or more discrimination grounds.

Indirect discrimination is considered when a provision, criterion or impartial practice in appearance, has or will put the person in an unequal position compared with others, according to one or more discrimination grounds, unless the provision, criterion or practice can be objectively justified by a legitimate purpose and the means of achieving that purpose are appropriate and necessary.

Harassment shall be deemed to be discrimination when an unwanted conduct occurs based on violations that constitute discrimination, including but not limited to unwanted conduct of a sexual and/or psychological nature, which has the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Any employee who considers that a violation of the principle of equal treatment has occurred may file before an administrative body or competent court evidence, from which it may be presumed that there has been direct or indirect discrimination.

The burden of proof will be on the defendant, who must prove that there was no breach of the principle of equal treatment.

In cases where the dismissal is deemed unlawful under the reasons of discrimination, the court may reinstate the employee in his or her previous employment and order

compensation of all salaries and other benefits lost during the time of unlawful dismissal from work.

Protection against dismissal

The Employer may terminate the employment relationship for the reasons specified in the Labour Law. Except for business-related reasons, the employer may terminate the employment contract of an employee by providing the period of notice of termination if there is a serious case of misconduct or there is unsatisfactory performance of work duties.

An employment contract may be terminated by the employer without providing a period of notice of termination in cases where the employee fails to refrain from repeating non-serious misconduct or breach of obligations, or when the employee's performance remains unsatisfactory in spite of a written warning (provided that the employer has notified in writing to the employee the description of the unsatisfactory performance and provided a probation time for improvement).

Employees considering that the employer has violated their labour rights (i.e. including, but not limited to, violations in relation to termination of the employment contract) may submit a request to the latter or to the relevant body, if existing, in order to enforce such rights. The employer shall decide about the subject matter of the said request within 15 days from the request's acceptance date. Such decision shall be delivered in writing to the employee within eight days from the relevant date.

In case the employee does not agree with the abovementioned decision or it does not receive any answer in accordance with the term of 15 days as mentioned hereinabove, it may, in the subsequent term of 30 days, file a lawsuit before court in order to enforce its rights. Pursuant to Article 80 of the Labour Law, if the court finds that the employer's termination of the employment contract is unlawful, it shall order the employer:

(i) to pay the employee compensation, additional to any allowance and other amounts to which the employee may be entitled under the Labour Law, the Individual Employment Contract, a Collective Agreement or the Employer's Internal Act, in such amount as the court considers just and equitable, but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal; or

(ii) in cases where the dismissal is deemed unlawful under the reasons of discrimination, the court may reinstate the employee in his or her previous employment and order compensation of all salaries and other benefits lost during the time of unlawful dismissal from work.

Statutory employment protection rights (such as notice entitlements, whistleblowing, holiday, parental and maternity leave, etc.)

Subject to Article 71 of the Labour Law, the employer seeking to terminate the employment contract shall serve notice to the employee in compliance with the following periods:

(i) in case of termination during the probationary period the notice period shall be seven days;

(ii) in case of an employment contract with indefinite term the notice period shall be: (a) from six months to two years of employment − 30 calendar days; (b) from two to 10 years of employment − 45 calendar days; and (c) over 10 years of employment − 60 calendar days; and

(iii) in case of a fixed-term employment contract, the notice period shall be 30 days.

The normal weekly working hours should not exceed 40 hours for employees over 18 years of age and 30 hours for employees between 15 years of age and 18 years of age. The Labour Law makes a distinction between mandatory and voluntary overtime. Mandatory overtime must be performed by the employee in extraordinary cases, with the increase in volume of work and in other necessary cases, at the request by the employer. Such overtime must not exceed eight hours per week.

Besides the mandatory overtime, the employee may perform paid voluntary overtime in agreement with the employer. In case of overtime, the employee is entitled to an additional 30% of basic salary per hour. As for work on national holidays and weekends, the employee is entitled to an additional 50% of the basic salary per hour.

The employees are entitled to paid annual leave of at least four weeks during the calendar year, regardless of whether employment is full- or part-time. Other paid leaves consist of five days in case of employee's marriage; five days in case of death of a close family member; three days for the birth of a child; one day in each case of voluntary blood donation; and two days for the father in case of birth or adoption of a child.

Employed women are entitled to 12 months of maternity leave to be taken upon a medical certificate 45 days before giving birth or, if consented to by the woman, 28 days before the expected childbirth.

The first six months of maternity leave are compensated with 70% of the salary payable by the employer; the consecutive three months are compensated with 50% of the average salary in Kosovo payable by the Government of Kosovo; and the last three months are not subject to monetary compensation.

A child that requires special care due to poor health conditions, and a child with permanent disabilities in the context of the provisions of health insurance, respectively, shall enable one of the parents to work part-time, after the expiry of maternity leave, until the child becomes two years old. These rights may be exercised by the caretaker of the child in the case of the death of both parents, or if one of the parents abandons the child.

Article 53 of the Labour law prohibits the employer from terminating the employment contract or transferring the employee to another position during pregnancy, maternity leave and during absence from work due to special care for the child (except in cases of collective dismissals).

Worker consultation, trade union and industrial action

The Labour Law provides an obligation for the employer to consult trade unions in case of collective dismissals (i.e. dismissals for economic, technical or organisational reasons which include at least 10% of the employees but not less 20 employees are discharged within a six-month period). Prior to introducing such changes, the employer is obliged to notify its employees and, where applicable, the employees' trade union, one month in advance and in writing, of the changes planned and their implications, including the number and type of employees to be discharged and the measures to be taken by the employer to mitigate the consequences of collective dismissal. Such measures include: (i) limiting or interruption of the employment of new employees; (ii) internal reordering of employees; (iii) limiting overtime working hours; (iv) reduction of normal working hours; (v) offering professional retraining; and (vi) observation of the employees' rights as set out in the Employment Contract, Employer's Internal Act or Collective Contract.

The Labour Law guarantees freedom of association and action without undue interference from any other organisation or public body for both employees and employers.

The rights and freedoms of the employees to establish and join trade union organisations are regulated by the Trade Union Law (law no. 04/L-011). The said law provides an obligation to register workers' organisations to the competent body of the Ministry of Labour and Social Welfare and criteria to be distinguished as a trade union association, federation or trade union confederation. Based on such registration and number of members, the trade union has the right of representation. In this regard, the trade union shall acquire the right of representation in relation to collective contracts, in agreements with employers, within the authority of social dialogue, if it has at least 10% of members out of the total number of employees in the level of the enterprise, sector and at state level.

The Trade Union Law determines the right to strike as an elementary right of the employees and trade unions to fulfil the trade union requirements.

The Law on Strikes (law no. 03/L-200 as amended), sets out the requirements to be met for a strike to be considered legal. In this regard, the strike should:

- be organised by a trade union organisation registered with the Ministry of Labour and Social Welfare;
- be organised by at least one-third of the employees within a work organisation;
- have the purpose of realising the requirements from the employment relationship, when trade unions on one hand and employer on the other hand, have made the effort to achieve compliance through licensed intermediaries, according to the rules and procedures of the Law on Mediation; and
- supported by at least one-third of the total number of trade union members of the trade union organisations or within a particular working organisation when there are no trade union organisations, when employees decide to declare the strike by secret ballot and when it is not against the legislation in force.

The Law on Strikes provides the reasons for employees to go on strike, which include: non-implementation of law provisions that protect employee's interests; non-fulfilment of employee's legal requirements, which are based on protection of the employee's social interests; non-payment of salaries; absence of safety at work; and non-implementation of provisions of the General Collective Contract and the Employment Contract entered into between the employer and the employee. The strike may also be organised for other reasons which are based on applicable laws or in International Labour Conventions.

The Law on Strikes provides the obligation of the strikers' council to announce the strike to the employer and trade union organisation, not later than seven days before the assigned date for the beginning of the strike.

Strikes cannot be announced before the reconciliation procedures according to the Law on Mediation are exhausted, provided that these procedures are appropriate, equitable, timely and the parties have the opportunity to participate in each phase. In cases where strikes are organised in services of vital importance, where the minimum of the work process should be ensured, the parties are bound, before announcing a strike, to have exhausted the conciliation and mediation procedures.

No disciplinary measures such as termination or suspension of employment relationship and/or other punitive measures can be taken against the organisers of a legal strike, the strike participants or against other employees who support the strike. However, the employer may initiate disciplinary proceedings against employees who organise and participate in a strike that contradicts the Law on Strike provisions. In cases of illegal strikes, the employer is entitled to terminate with immediate effect the individual contracts

of the employees who do not recommence work within five days.

The Law on Strikes further provides that when the strike is accompanied by illegal action, the parties should refer to the competent court, which determines the responsibilities of parties, actions that they must commit, the damage caused and the obligation of a party for compensation.

Employee privacy

Employers are obliged by the provisions of the Data Protection Law (law no. 03/L-17), with regard to collecting and processing the personal data of their employees.

In this regard the Data Protection Law provides the rights, responsibilities, principles and measures with respect to the protection of personal data. The National Agency for the Protection of Personal Data is the institution responsible for monitoring the legitimacy of data processing.

The Law provides the conditions under which personal data may be processed. Such conditions include the prior consent of the data subject, if:

- the processing is necessary for the performance of a contract to which the data subject is party;
- the processing is necessary for compliance with a legal obligation to which the controller is subjected;
- the processing is necessary in order to protect the vital interests of the data subject;
- the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or
- the processing is necessary for the purposes of legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed.

Pursuant to the provisions of the Data Protection Law, video surveillance at work places may only be conducted in cases where this is necessarily required for the safety of people, the security of property or for the protection of confidential information, if such purposes cannot be achieved by other means. Video-surveillance must be strictly limited to those areas where such interests are at stake.

Prior to the installation of video-surveillance systems the employer must inform in writing the data subjects about their rights and the reasons for the surveillance. The monitored areas have to be indicated by the employers through appropriate signs.

If the employee is a member of a trade union, the representatives of the trade union should be informed by the employer prior to the installation of video-surveillance systems in the public or private sectors.

Other recent developments in the field of employment and labour law

A General Collective Agreement was signed between the Government of Kosovo, the Union of Independent Trade Unions, Kosovo Chamber of Commerce and Kosovo Business Alliance, which should have entered into force on 1 January 2015. From the contents of the Agreement, the signatories intended the Collective Agreement to be applicable to all legal entities in Kosovo either public or private, which would constitute a violation of the Labour Law provisions governing collective agreements. Its entry into force was suspended by the Ministry of Labour and Social Welfare.

Sokol Elmazaj
Tel: +381 38 223 152 / Email: selmazi@bogalaw.com

Sokol joined Boga & Associates in 1996. He is a Partner of the firm and Country Manager for Kosovo.

He has extensive expertise in project finance, concession law, privatisations, telecommunication, corporate law, construction and real estate, energy and public utilities, taxation laws, litigation, competition law, environment protection law, etc. He is continuously involved in providing legal advice to numerous project financing transactions, mainly on concessions and privatisations with a focus on energy and infrastructure, both in Albania and Kosovo.

He has also conducted a broad range of legal due diligences for international clients who are considering investing in Albania or Kosovo in the fields of industry, telecommunications, banking, real estate, etc.

He is an authorised trademark attorney and has expertise in trademark filing strategy and trademark prosecution, including IP and litigation issues.

Sokol graduated in Law at Tirana University, Albania (1996). Sokol is fluent in English and Italian and is admitted to practise law in Albania and Kosovo.

Delvina Nallbani
Tel: +381 38 223 152 / Email: dnallbani@bogalaw.com

Delvina is an Associate at Boga & Associates, which she joined in 2012.

Her practice is mainly focused on providing legal advice to clients on a wide range of corporate, business and banking matters. She also provides assistance in advising investors on a number of transactions, including mergers and acquisitions, and privatisations.

Delvina graduated in Law at the University of Zagreb, and passed the Bar exam in Kosovo.

She is fluent in Croatian and English.

Boga & Associates

Nene Tereza str., Entry 30, No. 5, Pristina, Kosovo
Tel: +381 38 223 152 / Fax: +381 38 223 153 / URL: http://www.bogalaw.com

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