

## Discrimination as a form of denial of labor rights

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### **Abstract**

**“...Universal and permanent peace could be achieved only if it is based on the social justice...”**

Title with the maxim taken from Constitution of the International Work Organization has a total sequence, avoiding discrimination from all forms in work. Thus essential aim is to respect maximally the human rights in work, the right to work and the right to employment. More and more people work partially, are self-employed or face instable working conditions. Determination to deal with this issue is not only of professional character but it is moral also. Judicial norms are created to and continually are advanced also as the consequence of frustration of employees from employers which continually and without mercy violate their rights from the process of work. Being experienced and seeing myself violation of human rights of workers by both private and state employers the moral obligation came out to approach the issue of discrimination in work.

To better illustrate the rights to work it is necessary to give its definition as “the labour law regulates and administers relationships that derive from doing an independent job, exercising a job in favour of someone else – thus we talk for dependent work done in favour of employer, usually owner of means, equipment and working instruments” or “that treats and study labour legislation, respectively interventionist defending legislation in favour of employees”. By justifying that the goal of law under review is protection of an individual from arbitrary act of

public authorities. Whereas word “discrimination” could be explained in the following way: discriminate-discriminated means “I differ someone differently badly from others, by not naming equal with the others and by limiting or denying the rights that belong to him”.

**Key words:** discrimination, workers, work, public, private

## Introduction

Title with maxim taken from Constitution of International Labour Organization has a goal sequence, avoiding discrimination of all forms in work. So, essential aim is to determine maximally the human rights in work, the right to work and the right to employment.

More and more many people work partially, are self-employed or face instable working places. Determination to deal with the topic of discrimination is not only of professional character but it is also of a moral character as well. Legal norms are created and continually are advanced also as a consequence of frustrations of employees and employers, which continually and with any mercy violate their rights in the working process. Being coexistent and seeing myself the violation of worker rights by both private and public employers, I felt to be morally obliged to approach the issue of discrimination in work.

To better illustrate the right to work it is necessary to define that “the right to work regulates and administers relations that derive from exercising a dependent work, exercising a work in favour of the other – thus we talk about a dependent work done in favour of the employer, usually the owner of working equipment and means” or it “treats and studies the labour legislation, respectively defending interventionism in favour of workers”<sup>1</sup>. By justification that the goal of the law (right) under review is protection of individual against arbitrariness of public authorities<sup>2</sup>. Whereas word “discrimination” could be explained in this way: thus, discriminate-discriminated<sup>3</sup>, means “I (one) differs one from others and mistreat in a way that do

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<sup>1</sup> Hava Bujupi- Ismajli, E drejta e punës, Prishtinë, 2005, fq 25.

<sup>2</sup> Ivana Roagna, Mbrojtja e së drejtës për respektimin e jetës private dhe familjare sipas KEDNJ, Këshilli i Evropës, Strasburg, 2012, fq, 9

<sup>3</sup> Fjalori i gjuhës shqipe, bot. “Rilindja” në Prishtinë, 1981 fq, 341

not treat equally with the others and limit or neglect the rights that belong to him". Or in the other meaning regarding discrimination as foreseen with the article 2 letter a) of the Law Against the Discrimination in Kosovo, regarding issues that deal with nondiscrimination there exist a definition where it is said: "principle of treating equally that means that there will be no discrimination either direct or indirect against a person based on gender, age, marital status, language, physic and mental illness, sexual orientation, nationality, thoughts or political conviction, religion or faith, ethnic, social, race, property, birth and other statutes"<sup>4</sup>. Being based on the above explanations, discrimination could not be understood differently from its real meaning. There is no doubt that forms of discrimination are various, whereas we have identified three basic causers:

- 1) Discrimination as a resource of hatred
- 2) Discrimination as a resource for realization of immoral profit goals and
- 3) Discrimination as denial of conventions and international declarations

## **1. Labour discrimination as a resource of hatred**

Many people suffer from consequences of expressions of hatress and discrimination. Surely, if the hatress against people would not exist the life would be much better for all. So if the hatress would not exist we would not have no types of discrimination. Thus both have coexisted and coexist and will coexist and will cause suffering for mankind. Loads of man's body with the negative energy, which could have various genesis or causers loads him with the hatress. In this way employer pushed by hatress discriminates the subordinate in work. Regarding this following types of discrimination are individualised:

- 1.1 Discrimination as a resource of personal hatress;
- 1.2 Discrimination as the resource of determined political goals;
- 1.3 Discrimination from professional hatres.

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<sup>4</sup> Ligji kundër diskriminimit, Ligji Nr.2004/ 3, Kuvendi i Kosovës.

## 1.1 Discrimination in work as a resource of personal hatress

In order a treatment to be treated as discrimination, it should be based on one personal characteristics. Characteristics of persons based on which discrimination is based is called “basis of discrimination”. Sometimes it happens that one acts against a person but that behaviour/act could not be characterised as discrimination since it is not based on its personal characteristics of that person even if the acts are no accepted, are not rightful and not professional: e.g. chief of a department, where all employees are late on exercising their duties , he punishes only one person whereas he warns the others; an officer of public administration serves one person without respecting the waiting line due to the fact that he knows him whereas the others are waiting in the waiting line; director of a firm illtreats or disparages worker that is the spouse of the former director<sup>5</sup>. However we as the object of paper in this situation have the personal hatress of employer which is created in most cases step by step and very rarely by occassion. Slow hatress is more worsen than vigorous because the first is implanted so deeply in ethe mind of people so the employer waits the time to show his superiority against the subordinated.

Impact factors of personal hatress are various whereas we will stress out some as follows:

- a) As a consequence of inferiority on friend since childhood;
- b) As a consequence of inter-family conflicts;
- c) As a consequence of personal conflicts;
- d) As a consequence of prejudices and as the reflection of negative tradition of hatred between localities (willages), provinces, etc.
- e) As consequence of negative vice of the leader.

a) **Discrimination in work as the consequence of toddlers**, usually its genesis has in the early childhood where constituent in all views was more in focus compared to the current employer. Thus he was more beautiful, more strong, more famous in the society, more capable in school, etc. All these factors had an impact on the emplore which during the entire right acumulated strong hatress. But as we see now a weaker before (current employer) has become

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<sup>5</sup> Prof. dr Nevena Petrušić, komisionerja për mbrotjen e barazisë Kosana Beker, MA, ndihmës komisionerja për mbrotjen e barazisë, Udhëzim për identifikimin e diskriminimit, Beograd, 2012, fq 14, shih [http://www.ravnopravnost.gov.rs/jdownloads/files/praktikum\\_za\\_zastitu\\_od\\_diskriminacije\\_albanski.pdf](http://www.ravnopravnost.gov.rs/jdownloads/files/praktikum_za_zastitu_od_diskriminacije_albanski.pdf)

stronger now. He now illtreats his friend from the childhood since he now wants to witness he is stronger than him.

**b) Discrimination as a consequence of family conflicts** – unfortunately is present even though in many cases employer expresses discrimination in a camouflage way. He usually without taking into the consideration professional capabilities of his constituent, doesn't treat him equally with the other colleagues. Even if he doesn't punish him whom he hates based on family, he doesn't pay him equally. It is the intention of the employer to make a difficult life to his employee.

**c) Personal conflicts** – employer, head-constituent may have had a history before coming up into the current positions. Now by changing the roles the stronger discriminates in various ways the other person. Discrimination could reflect also as a consequence of a race for the same position. In these cases the winner instead of being generous he discriminates his opponent in work because hate leads in that direction. Conflict could appear also after coming into the position of leading against the opponent. It could be any disagreement that explodes into a personal conflict and thus in these cases the weaker suffers.

**d) Discrimination as a consequence of created prejudices within a determined circle or group** – which in the road of individual development during the all time for the group of people living around him (neighbourhood, neighbour village or even neighbor province) always has heard bad words; without any doubts to that individual the hate of group (collective) is transplanted in the subconscious. Scholars in many cases have paid attention to the subconscious where its reflections are conditioned from a type of ideas quite dominant on it. Thus if they are dominated from a positive side the reflection will be positive; if dominated by negative then the reflection is inevitable. In this case we have the building the transfer of negative prejudices to an individual. Owner or head of a public or private institution loaded by such prejudices his discrimination trends against constituent which lived near him, expresses in ways he considers to be suitable. To him it appears that he knows the person but indeed he knows him superficially. These discrimination affiliations are presented since the process of employment-so he will not give a job to the person of the other group even if there is a total lack of competition requested by the foreseen criteria. These absurd controversy unfortunately are present in our country quite

a lot. E.g. it is always talked about rivalry between villages: or this side of this river-with the other side of river, mountainous-flat, etc. Also it is known the prejudice urban not urban relation.

**e) Discrimination as a consequence of negative vice of the leader** – there is no doubt that from discrimination could suffer individual or group. It depends from vice the owner has and in which level he shows it. It frequently happens that in the ruling position there is a person with narcissoid affiliations, the other is prepotent. These are more pathologies of people (self-loved) as they prepotent (overestimate themselves) do not discriminate individual but also the entire group because to them the feeling of being stronger, better, clever, etc. According them their individual value is bigger not only as individual but even more than group. Deeds of such individuals cannot have a long life either during the process of employment whereas in work it quickly surfaces. As a very negative vice of leader it is dealing with various rumors that could spread by employees under his lead. Usually he orders someone or a group of 2-3 persons to be informed on who what says about him. In these situations both workers and the leader with these ideas demolish the working atmosphere and relationships among colleagues.

## 1.2. Discrimination in work as the consequence of determined political goals

Discrimination could be defined as a such behaviour (unfavorable treatment) during which determined persons or groups are put in the unfavorable situations (differently from the others that in the similar situation are not treated at that way) based on the law by which about forbidden behaviour on which are foreseen by the law <sup>6</sup>. Therefore like in every country of the world also in Kosovo the war has left heavy consequences where most suffered are Albanians. There were killed and massacred thousands of various ages and gender, there were burnt and demolished thousands of houses, there were expelled from their homes a million people. This massive destruction left consequences to people. The biggest consequence was that political conscience of people were not considered as a competition of ideas for development of Kosovo but as a form of discrimination, unfortunately even at the current days all these have their origin on the

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<sup>6</sup> Miroslav Dvořák, Martina Štěpánková, František Valeš, Ladislav Zamboj, Drahomír Radek Horváth, Kristýna Hradilová, Si te jetohet e drejta antidiskriminuese, 2014, Projekti është përkrahur nga ana e Ministrisë së punëve të jashtme të Republikës Çeke në kuadër të programit të bashkëpunimit tranzicional. Shih, [http://www.ecmikosovo.org/wp-content/uploads/2014/12/ALB\\_final.pdf](http://www.ecmikosovo.org/wp-content/uploads/2014/12/ALB_final.pdf)

ideologic hatred or political conscience. Therefore protection should be provided to those whose rights are violated due to the political affiliation or due to the fact that they have determined beliefs. Moreover it is suggested that discrimination on this basis offers protection for activities or demonstrations of opposition<sup>7</sup>, against established political principles<sup>8</sup>. Discrimination on this basis could appear in a series of contexts in employment especially in the public sector, related to the freedom of expression, access to determined services as getting tenders or contracts in the process of public procurement<sup>9</sup>.

### 1.3. Discrimination in work from professional hatred

Proved professional affiliations of constituent make the employer more jealous. Indeed this jealousy surely has a history thus the power from the position is a good chance to discriminate a more capable colleague. Such discrimination appears more in the public and private institutions. Leader expresses this hatred when for the same job and on the same level of education doesn't treat similarly in paying working colleagues. There are strange these xenophobia<sup>10</sup> behaviour because people by similar or identical origin, born in the joint territory should not be treated as foreign.

### 2. Discrimination in work as a resource for immoral benefits

People especially those powerful not rarely abuse their position. Forms of abuse with the position are various but it is very difficult to clarify them. However forms of abuse are possible for two fields of activities:

2.1 Abuse in the public institutions and

2.2 Abuse in the private sector.

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<sup>7</sup> Kjo nënkupton aktivitete jo të dhunshme

<sup>8</sup> Interights, 'Non-Discrimination in International Law: A Handbook for Professionals' Botimi 2011, f. 207

<sup>9</sup> Ligji kundër diskriminimit në Kosovë shtatë vite pas, Prishtinë, Dhjetor 2011, Shih [http://www.yih.org/public/fck\\_files/ksfile/Anti-Discrimination%20Law%20in%20Kosovo%20-%20seven%20years%20on.pdf](http://www.yih.org/public/fck_files/ksfile/Anti-Discrimination%20Law%20in%20Kosovo%20-%20seven%20years%20on.pdf).

<sup>10</sup> Ksenofobia paraqet urrejtje dhe mosbesim ndaj të huajve. Ajo bazohet në paragjykimet etnike dhe fetare, racizmin, nacionalizmin dhe shovinizmin.

## 2.1. Abuses in the public institutions

It should be stressed out the fact that we can find similarities in bot fields but in some cases they differ. First, we stress out some abusive abuses that are characteristic of public institutions:

a) **Tenderomania** – Never before the word tender was not mentioned as it is being used during last years. This word in Albanian means offer. Word tender is heard every where and wherever you are. This word is used from more simple feelings being that in a mountainous village up to the most high level institutions. You hear the word tender at home, in the offices of the institutions, in restaurants, cinema, theatre-simply every where and any time. Issue went so far so if you ask persons that are involved in the benefits from tenders whose number unfortunately is not small, that was is the real meaning of word “tender” since from this notion they had big benefits in sense of money, the same people don’t know the real meaning of this word and in the question they remain as muzzled<sup>11</sup>. Prefix of this expression (tender) start to be known immediately after the war in Kosovo, whereas suffix (o-mania) became known after beneficiaries appear on the stage from the percentages of contracted tenders with various companies. This phenomenon has taken worrying proportions because within a very short time it is noted that a number of people became rich. Such beneficiaries were distinguished people of these institutions. Many domestic companies and enterprises just because of tenders have bankrupted! These phenomenon happened for one reason that is percentage or that the “preñë e gjahut” had to divide to/or some persons that were involved in tenders and thus many owners of domestic companies have bankrupted, since they were obliged to give from their pockets for the projects according to the announced tender and this brought them to bankruptcy because profit was zero-zero<sup>12</sup>. These beneficiaries have damaged heavily the qualitative work because the winner of tender has the obligation to in detriment to quality of work to fill up their pockets. Discrimination is realised in that way that it is not selected the company that deserves, so under current situations these companies hardly survive. Phenomenon of tenders in Kosovo may continue for a long period of time because laws and courts are not functioning and this leads

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<sup>11</sup> Bajram Mjeku, [http://www.trepca.net/2004/04/040423\\_bm\\_tenderizimi\\_kosoves.htm](http://www.trepca.net/2004/04/040423_bm_tenderizimi_kosoves.htm)

<sup>12</sup> Bajram Mjeku, [http://www.trepca.net/2004/04/040423\\_bm\\_tenderizimi\\_kosoves.htm](http://www.trepca.net/2004/04/040423_bm_tenderizimi_kosoves.htm)

towards de-institutionalization and anarchy of Kosovo<sup>13</sup>.

**b) Blackmail of woman in the process of employment** - when we talk about rights to work measures on the principle of nondiscrimination and equal treatment should not be left aside. Rules of nondiscrimination and equal treatment dominate the entire social right. We should pay a special attention to the rules which ensure equal treatment of woman in the labour market. Sexual harassments and the possibilities for equal treatment are worrying in the field of employment regarding woman and man. Blackmail of woman in the process of employment is one of not acceptable ugly and one of the worst forms of enslavement of woman. Therefore it is difficult to give an appropriate name for people that don't hesitate to exploit woman based on her poverty. It is clear that the condition for employment is placing the involuntary, unwillingly and without love against a man which if such circumstances don't exist he would never had to do something with that woman. These cases happen also during the process of work, where due to the lack of the rule of law, woman is put under the pressure from job dismissal or under the pressure of changing the working place if she doesn't act as requested, and there are other abusive forms of this nature.

## 2.2. Abuses in the private sector

The rights of workers in the private sector continue not to be respected. This sector is the biggest violator. Unfortunately discrimination in the private sector is more frequent. The number of abuses of employees is so big that it is impossible to name all examples. If we think about the violations of the rights in work, they are violated mostly in the private sector by the owners of private companies. Violations are various where we will stress out as follows some examples: disrespect of timetable, employment of children, misuses of woman, violation of legal vacations, nonpayment or not regular payment and dismissal from job without any procedure.

**a) Disrespect for timetable** from the private employer is a phenomenon. In many cases the working hours are not respected being that daily (eight hours), weekly 40 hours or 5 working days per week. Workers are afraid to denounce employers because as the reason they can lose

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<sup>13</sup> Po aty

job. Labour inspectors do not exercise their duties as needed and if they did so such discrimination would be reduced.

**b) Employment of children** against legal norms is forbidden but however the owners of various private companies do such employment secretly. Labour Law in its article 7 gives conditions and criteria for creating a job position<sup>14</sup>. The heavy forms of work of children refer to children which work under the dangerous conditions and under the conditions of exploitation. Dozens of millions of children around the world work full job, deprived from education and entertainment that are crucial for the personal and social development<sup>15</sup>. They work without contract and they are paid based on verbal agreement which in many cases is not respected by employers. Worst thing is that employers in these cases do the other violations in addition - they do not pay taxes and do not fulfil other legal duties even though employer is obliged to submit notification for an employee to the Kosovo Tax Administration and the other institutions that manage and administer obliged pension schemes (article 7 p.4). In case of illness or work injuries employer leaves employee on the faith of mercy.

**c) Misuses of woman** or abuse with it by private companies is more noted compared to public or state companies. Owners usually select young women. They avoid employing married women but they do not avoid employing divorced. These are characteristics of trade companies, restaurants, tourism, etc. It is a phenomenon miserable and waster but it is also difficult for the state to intervene. Thus even if the law exists the abusive behaviour of owner is still not being seen those who would denounce. The worst issue stands on the fact that no matter how good worker a woman might be, he will dismiss her from job as soon as he is convinced that there nothing to be achieved in sense of sex. Thus sexual harassment of women is a big problem especially in the private sector. But victims usually have not reported such cases because of the fear from publicity and the fear of losing job. There are lots of cases when owner achieves the goal and becomes fed up he dismisses her from job and in this way she is put in a humiliating situation morally broken and left in the street. Whereas owner continues its way of being thirsty for sex and thus continues to exploit other women.

<sup>14</sup> Ligji i punës, Nr. 03/L-212, Kuvendi i Republikës së Kosovës.

<sup>15</sup> Kuptimi i të drejtave të njeriut, Doracak mbi arsimimin për të drejtat e njeriut, Qendra Evropiane e trajnimit dhe hulumtimit për të drejtat e njeriut dhe demokraci (ETC) Grac, 2003, fq 270.

**d) Disrespect on vacations according to the law** is very frequent in the private sector. Rarely employees are given paid vacations, e.g. annual leave, birth leave, state celebrations, national celebrations, religious and weekends. There is no doubt there is extreme discrimination of employees in the private sector.

**e) Nonregular payment** happens often. Even though the owner is obliged to respect contract with the employee, he doesn't. Reasons could be by purpose and without purpose. Purposed goal of owner is done from various motives. There are cases when owner requires excuse to punish his constituent or to blame him at the level so he will be punished in salary. Whereas delay on payments happen due to the fall of business of the company. Reason for delay doesn't exist because employer is obliged with the contract. As a phenomenon faced by nonpayment in official and temporary employment. In these cases owner of private companies avoid respecting legal obligations as: labour contract assignment and obligations in favour of state. All should be clarified with the brutto salary whereas neto present money to be taken by employee.

**f) Job dismissal** afforded badly and normally this is a very difficult moment for each of us. This phenomenon is usual practice of the private companies. They do this whenever they want. It is not important if you are a good or not a good employee. This is one of heavy forms of discrimination which is applied in the private sector.

### 3. Diskrimination as denial of international declarations and conventions

Protection from discrimination is the right that is regulated with many international acts, starting with the Universal Declaration of Human Rights<sup>16</sup>, as a declarative international act continuing with the regional acts as: European Convention for Human Rights<sup>17</sup>, jurisprudence of European Court for Human Rights and the EU acts which regulate this right within this community. Nondiscrimination is comprehensive principle (cross cutting) in the international

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<sup>16</sup> Deklarata Universale e të Drejtave të Njeriut u miratua dhe u shpall nga Asambleja e Përgjithshme me Rezolutën 217A (III) të saj, më 10 dhjetor 1948.

<sup>17</sup> KEDNJ-ja u nënshkrua në 4 nëntor 1950 në Romë dhe hyri në fuqi në 3 shtator 1953, pas ratifikimit të dhjetë të saj nga Dukati i Luksemburgut.

law for human rights. This principle is consisted of all main conventions for human rights<sup>18</sup>. According to the article 22, par.1 and 8 of the Kosovo Constitution all cases of discrimination in work are the most drastic examples of violating the most important international conventions and declarations. Thus this form of behaviour against workers especially from heads of institutions which not only did not undertake measures against violations but they were directly involved in the violations of Kosovo Constitution. In order to see what violations were done we will explain by citing article 2 of the Universal Declaration for Human Rights that goes: "the rights and freedoms belong to every one as declared by this Declaration without any differences in race, colour, gender, religion, political thought or any other thought, national and social origin, wealth, birth or other circumstances..."

The logic of xenophobia administration especially after the declaration of independence is very harmful for the state of Kosovo. Cited articles are also over the laws because they are not by occasion in the Kosovo Constitution. Kosovo cannot have any changes for economic development and get out from the international isolation if there is no respect for the Universal Declaration for Human Rights and without respecting ratified international conventions. In supporting the overall approach on discrimination in work we raise the question on which rights were violated: the human rights and freedoms; expression of free opinion; the rights and freedoms to work; the women rights; the rights of children, etc.

#### 4. Conclusions

From the above elaboration we saw that the discrimination in work is nothing more than a distinction, difference, disfavor, non equal treatment, neglect, an exclusion or non equal treatment of determined persons or groups as a consequence of ethnic origin, outlook, weakness, age or sexual identity and this is linked to the report of forces.

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<sup>18</sup> Udhëzues për zbatimin e strategjisë nacionale për barazi dhe mosdiskriminim në bazë të përkatësisë etnike, moshës, aftësisë së kufizuar mentale dhe fizike në bazë të gjinisë, Shkup, 2013, fq 12

We also saw that discrimination happens when determined groups that have no impact they are not given rights as to the other part of society. Existing problems that are related with the color and moral prejudices are attributed to the discriminated groups. Thus these persons or these groups take the role of culpable. The determined person is not seen as an individual and he is seen as a person with the characteristics that attributed to him. Therefore in order to protect workers there is a need for a different approach from the Kosovo Government firstly, and then from mayors of cities/municipalities and their collaborators in regard of respecting laws and constitution. Democracy and democratic order differs from totalitary and not democratic systems with respect to law and continual advancement of them which protect individs and save the values. Thus democracy and the human rights are unique and non divisible. Those keep other position rather than this shold not be allowed to head central and local institutions of country. Discrimination should not be allowed not in any case and not only for political feelings, based on origin, based on the relations on private life, etj. Official work should remain official whereas leader should establish a friendly a collegial atmosphere. Thus good and successful leader seeds positive opinion for all. We should ensure that our country should use all potential telants and human talent of the country in order to offer qualitative services for the benefit of citizens because by eliminating discrimination we push talents and do not make obstacles to them.

Taking into the consideration the selected and presented content I believe that this paper will serve as an important guide for pratitioners, experts but also for discriminated parties as well as to the wider opinion to explain dilemma and to differ and identify more easily cases of discrimination wherever they happen.

By closing the paper a citation of Carl T.rowan will be used as follows:”...often is easy to angry with injustice that happen in the other half of the world rather than with the pressure and discrimination that happens hald way from your house....”.

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