

# **PROTECTION OF FREEDOMS THROUGH EMPLOYMENT RELATIONS AND HUMAN RIGHTS AND RULE OF LAW. FREEDOM TO WORK - & - THE RIGHT TO WORK**

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## **Abstract**

Employment relations are integrable function of free societies and open democratic systems. In this context, they consist of two main pillars which are labor freedom and the right to work. Those are sanctioned freedoms and economical, social, cultural and Constitutional rights. Their quantitative and qualitative protection and development find legal immunity as well as, ethical and moral, through an organization, cooperation and unification union, creating the right social protection of labor, because all human life in its development and social progress is the foundation work which is closely connected to the right, with the right to life, the right to property, family law and Constitutional right.

This value system should be developed in the free market labor through demand and supply that modern labor laws regulate a variety of substantive aspects of employment relations and general theories of employment in the progress of human welfare and progress.

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**Keywords:** Labor freedom, the right to work, employment protection, trade union organization, social security

## **Introduction**

In the history of the development of humanity a special place takes working. During all periods and different stages of human and humanity, work and employment were attributed to slavery and their work. Through slaves and captives were committed by different work through the imposition of violence and coercion.

By placing human dignity as priority of democratic systems the European Convention on Human Rights in its Article 4<sup>8</sup> was determined

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<sup>8</sup> Article 4 of the European Convention Human Rights

binding "Prohibition of slavery and forced labor". These articles, then in Article 4 Member States have decided that:

1. No one can be held in slavery or servitude.
2. No one may be imposed on you to perform forced or compulsory.
3. Are not considered as "work imposed by force or by constraint" in the sense of this Article.
- a. Any work that is normally required by a man who undergoes a deprivation of liberty in the conditions provided for by Article 5<sup>9</sup> of this Convention (right to liberty and security) or during his stay in bail.
- b. Any service of a military character or, in the case of opponents consciousness in countries where the opposition of consciousness is recognized by law, service instead of compulsory military service;
- c. Each of the service, required in case of an emergency or calamity threatening the life or well being the human community;
- d. Any work or any service that is part of normal civic obligations.

In the theory of relativity the largest Einstein stated that "Neither thing is absolute but relative is everything". However I think and emphasize that the theory of employment "Every contract work and employment object lies through demand and supply in the free work market and this is relative, but what is absolute in work and employment is the prohibition of slavery and slavery through coercion and violence".

In this context and in that way I have seen this right and this freedom, both in terms of construction of international law through acts and international agreements and in terms of building the internal law in terms of the Constitution and legislation of special cushioning each state Party to this convention; and those states that have ratified this convention which is now becoming part of the domestic law not only of the Member States but also with the wider.

We therefore natural perspective this definition, natural object responds to extreme connotation of the expression of violence and coercion to perform a slave labor and slavery in terms of a severity which consists to life and performed beyond any limit of human dignity. But we then de jure legal perspective, the object and its legal cause is the protection of employment relations through liberties and human rights and the rule of law where freedom prevails work and the right to work which is an added value democratic systems where the rule of law is designed to protect and promote freedom and human rights-centered human dignity.

From this perspective of article 4 of the Convention will note that this legal norm itself contains a lower limit which can not be violated by anyone,

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<sup>9</sup> Article 5 of the European Convention Human Rights

so as the employer and the employee whichever natural or legal person, private or state its contractual behavior whether it be individual employment contract and whether it is a collective employment contract.

So this lower limit of which is determined in this provision will forward these cases are among others even when there is, or when conducting, or realized through physical or psychological coercion, an imposing work illegally and which is laborious and oppressive character wantonly inflicting suffering.

Besides these two main aspects sanctioned find in Article 4 of the Convention, the legal reasoning goes beyond the other aspect of this provision and precisely Outline of point 3 / a-b-c-d, in which it is sanctioned by the grammatical meaning of secular language and legal meaning through legal literal interpretation and that in these cases the foregoing can not be called as imposed work exactly the cases provided for by these provisions.

In case we are dealing with some transitional provisions which lead us to the gray part of the provision in which we are told that when we presented such cases perception should be case by case analyzed deciding legal balances these employment relationship, the two main aspects so freedom of labor and the right to work.

So each case by well known definition and their concept, we're interested in building the defense that we will see always the general and absolute prohibition of this work.

This comes in connection with article 11 of the Convention<sup>10</sup> from which derive the right to establish unions and adherence to them. In this provision in Article 11 of the Convention required that states protect the rights that enable the successful exercise of freedom union which have as their object and purpose the protection of its interests, e.g. the interests of union. In this mission is worth noting the fact that they require the protection of professional interests of the union members through the trade union movement. This Convention provides the right, while the state should allow and enable the organization and development of it. So to achieve this goal union members have the right to request that their unions be heard. This comes through the development of dialogue as one of the main features of democracy is the way of solving the problems in the country through constructive dialogue, even if bitter, not resorting to violence, because democracy flourishes thanks to freedom of expression. This site also finds another way to conduct union to taking part in collective bargaining and to the right of the rallies and strikes for the realization of their rights through peaceful meetings.

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<sup>10</sup> Article 11 of the European Convention of Human Rights

To build the legal protection of employment union movement through its unions have reached a stage attractive in terms of organizing their adequate statutory and policy in order to realize one of their main aspirations to reach and establish agreement, of which is due fundamentally to protect work relations. In this agreement the parts are employers, employees and unions, which work best and are also embodied in connection collective employment contract.

### **Protection of Freedoms through Employment Relations and Human Rights**

Protecting employment relations which show the freedom of labor and employment law has found a broad range even to the Albanian legal opinion which is now embodied in the Constitution, employment legislation which has always been one of the codified employment legislation. Also deep protection of employment relations in this context has also through social and health insurance legislation.

With the development of society added as demands for better conditions of employment, requiring the development of a field as well for the realization of the product that comes through labor and legal employment. This product goes for a better life and a protecting better life. This obligated the state that being faced these evolving demands of society and economic development, which started always and ever, by democratic principles, to carry out legislative reform in favor of realizing the demands of the employees.

In this view of the right to work is guaranteed by the Constitution, specifically in Article 49<sup>11</sup> of its lawmaker has ruled that:

1. Each has the right to earn the means of living by lawful work that he has chosen or accepted. He is free to choose his profession, place of work, and its system of professional qualifications.
2. Employees have the right to social protection of labor.

Seen on a constitutional doctrinal note that these constitutional provisions find instead incorporation of the European Convention on Human Rights, the directors of which dealt with above in introductory part. So is a fusion of thoughts, ideas already well-structured legal this right of the individual to obtain a legal work, which besides self-interest, gains importance from the social standpoint, since the work as a profession is an asset for the contribution it makes to the whole society. The right to work and freedom of profession means any activities with yields legitimate and that no term limits and determine, with the exception of specific legal arrangements.

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<sup>11</sup> Article 49 Albanian Constitution

Guarantee that Constitution gives individual regarding the right to work and professional freedom, aims to protect them from the state. This unjustified restriction on that freedom of choice and the exercise of the profession is not only one of rights to have a job, but it should be understood as a social right. Also it in the spirit of the Convention should be seen as a right and a negative freedom that allows no interference or obstruction of state, while exercising it. Also sanctions a positive obligation on the State which must be committed to creating favorable conditions for the realization of such a right, but also a negative obligation, which requires interference of the state to violate this right.

In this way, the work deals with the right to constitutional doctrine, stating that freedom of work is protected by constitutional regulations. Besides Constitution this right is also protected through the Labor Code<sup>12</sup> - mind as general provisions of this codification, also including in terms of its specific provisions.

Through Labor Code find special protection both in terms of employee belong females, as well as to the particular account of the minor. A particular place takes protection through discrimination against employees because of race, origin, gender, religion or political beliefs. It provided for in section 146 of the employment Code<sup>13</sup> when the employer terminates the employment contract without good cause and because of these motives court decides forcing the employer to compensate the worker for up to 12 monthly salaries. Also the employment code are defined and job site conditions and working hours and the rewards that come as a result of working overtime and many attitudes that protect the negative right under the contract of employment being it individual or collective employment contract. All terms of legal control to the operating relationship of employment each case, the lawmaker through volumes of dues that provides Employment Code, has delegated this right to the Court which is moved through availability from different Entities which are in quality of the employer or employee. In this case the court through discretion decide if are legal violations or breaches before the provisions of the law with the action or inaction of the litigants.

One other protection employees find in the constitutional provisions. This is provided for in Article 50 of the Constitution<sup>14</sup> which states: *Employees have the right to freely join labor organizations for the protection of the interests of their work.*

This inters legitimate interests of the labor Well Protected found through freedom and human rights and Constitutional guarantees. Seen and

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<sup>12</sup> Employment code

<sup>13</sup> Article 149 Employment code

<sup>14</sup> Article 50 of the Constitution

analyzed by my side in the body of the Convention, and that the Constitution where it is connected analytically as an indivisible structure protection of this right so negative organized by unions in their union movement facing legal violations by omission or by action of state structures through positive right.

It also provided us the right to freedom of association which through organizing and participating in various subjects to physical or legal professional unit their interests, thus having access to an organization of strikes to protect their rights.

This right is provided except Convention also enshrined in Article 52 of the Constitution<sup>15</sup>, which states that:

1. The right of employees to strike deals with the take-allocation of work is guaranteed.
2. Limitations for special categories of employees may be imposed by law to provide the necessary services for the society.

In these constitutional provisions besides the right to strike has determined limitations of some natural or legal people who can not participate and be organized in trade union organizations and other union this movement is defined by special laws for the organization and function of some Constitutional institutions and some special institutions.

So in the context of constitutional rights and constitutional doctrine has interpreted with caution and treat each case constitutional behavior of these entities in view of the constitutional guarantee of the right to strike and constitutional security-mind necessary services that society needs respecting democratic and constitutional and legal rights.

We respect the Constitutional Convention and therefore legal in the spirit of harmony, the lawmaker has provided and has enshrined these principles even in the legislation of the right to strike and peaceful meetings where procedurally defined have the right to protection of employment rights.

A defense finds other employment relationship even through Article 52 of the Constitution which says:

1. Everyone has the right to social security in old age or when unable to work, according to a system established by law.
2. Everyone, who remains without work for reasons independent of his will and has no other means, is entitled to assistance under the conditions provided by law.

So, through these constitutional provisions is reserved a special protection to employees through a legitimate employment by special law, namely that the schema of social and health insurance have access to the payment of these contributions in the years which arises from work and

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<sup>15</sup> Article 52 of the Constitution

legitimate employment benefit a type of payment after the retirement provided by this special legislation at the time of the age for the retirement. So, through these provisions a special protection take subjects who have lost their health employment ability by scheme social security protection through this legislation.

In the legal arena in the relevant Constitutional prevision and Convention which are a preamble to special legislation, given the scope of work, employment and work product, have even social character, then the lawmaker has embodied a generational solidarity insurance schemes social and health care and social assistance to them and support economic limits of a social assistance for people to come in and help people in need through a union wage to fulfill a vital minimum.

So in this way closes the current upper limit of these provisions regarding the protection of the employment relationship. But this legal limit will find a limit even in the European right of Globalization of law as regards to the right of Migration and the Albania's European Union accession.

So in this space European rights and obligations arising extra community and the European Community which should be integrated into a common set of legal in the context of achieving individual wellbeing, family, social welfare, even for Global which will come solidarity through democratic societies and member States in respect of individual rights and freedoms which are the foundation of the state of rights.

## **Conclusion**

In the economic, political, legal growth some societies were developed in different ways and someone soon and someone with a step by step development. This has happened not only to different social conditions, historical and geographical or climatic as they are developed, but has come upon all the resources and human resources which are highlighted positive energy leads by human means, positive thinking, positive action, positive feeling by establishing through this solidarity always a positive climate in social progress.

So, development has come through human ego development in the creation of oneself, in the creation of family, society, democracy and the rule of law, liberation of ego through faith, religion, philosophy, politics, economics, jurisprudence, science, technology, arts, sports and everything good in this life.

But mostly human development according to me has come from the ego's main release in liberty and establishing God's faith through spiritual and mental liberation and building through science and technique.

Not coincidentally human formation came across of natural law and positive law. To prove this assertion I close with an expression that:

*Life is movement and movement is life! In this life one will be found through religion and science, which will be in a report such coexistence in the life of a human binomial such that: Science without religion is like a lame! Whereas, religion without science is like a blind!*

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