



British Embassy
Tirana



ALBANIAN HELSINKI COMMITTEE
KOMITETI SHQIPTAR I HELSINKIT



MANUAL

ON JOURNALISTS'
RIGHTS AT
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Tirana, February, 2019

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Dear reader,

The role of the media in a democratic society is essential and inalienable. A free and independent media constitutes a prerequisite for the functioning of all other branches of power under the principles of good governance and accountability.

Moreover, the media operates within a regulatory framework, i.e. the Labor Code, which establishes the rights and obligations of both employers and employees. On paper, journalists enjoy protection from abuse at work, however practice shows that despite efforts to fully formalize the labor market, the Labor Code is yet to be fully applied, thus leaving journalists vulnerable to pressures, blackmail or threats that have a direct effect on the quality of their reporting, whilst casting doubt on whether they can do their jobs at all.

The battle for truth begins with journalists. Journalists aware of their rights at work demand them both individually and collectively, when being a member of a trade union, serving as an example for everyone else to follow. Every employee is entitled to respect in the workplace but in the case of journalists this is mandatory as their mission is key to democracy.

In this context, the Albanian Helsinki Committee took the initiative of enhancing the understanding and education of the journalists' community about their legal rights. Other than workshops in Tirana, Korça, Shkodra and Gjirokastra, the two experts were engaged in the preparation of this Guide, which incapsulates the main rights of journalists in the workplace.

The guide is intended to serve as a handbook for journalists who are currently employed or are preparing for employment in the media, so they can learn about the legal framework dealing with labor relations. A special focus was also given to the gender dimension of journalism, focusing on discrimination or sexual harassment in the workplace. The

second part of the guide is devoted to case studies in local court practice and the practice of Council of Europe countries, as an incentive that will help journalists seek the restoration of violated or denied rights.

The third section contains information on institutions that monitor labor rights and, in this context, the Albanian Helsinki Committee is pleased to provide its FREE legal expertise to all journalists who feel that their workplace rights have been violated.

In conclusion of this project, we believe that altogether we can make the media sector in Albania one that is respected, in which every employee enjoys integrity and dignity whilst upholding EU values.

Erida Skëndaj
Executive Director
Albanian Helsinki Committee



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EXECUTIVE SUMMARY

The Manual on Journalist's Rights at Work is an explanatory overview of the legal framework of labor relations for journalists in Albania. The purpose of the Manual is to give guidance to journalists about labor relations, recommending a number of steps that they need to bear in mind both at the beginning and during their employment. Items covered are the employment contract, the detailed job description, working hours including breaks, annual leave, maternity leave and overtime, as well as a variety of other rights that the legislation provides for, including a dignified and appropriate working environment for the journalists to be able to perform their tasks in the course of their informative mission.

According to data from the Union of Albanian Journalists, in 2018, about 2,700 people practiced journalism in the national and local media, nearly 40 percent of all media sector employees estimated at 6,200 people in total. This sizeable community of journalists has been plagued for years by serious issues relating to the respect for the rights of journalists in the workplace, such as journalists working either without any employment contracts, or with fictitious contracts therefore being unable to negotiate them, or not having any knowledge of the content of their contract. Other issues include employers failing to pay journalists the probation period they are entitled to, social insurance contributions as per the law, the minimum wage, maternity leave or overtime. There is also no respect for working hours, weekly days off or annual leave, no recognition of doctor's sick notes or the ensuing inability to work. Journalists are expected to undertake tasks that are not in the existing job descriptions, and in some cases these are demanded for the benefit

of another medium within the same media group. Employers fail to respect maternity leave requirements, or the notice period when deciding on dismissal, thus terminating employment with immediate effect and without providing any just cause. According to the Union, 120 journalists resigned in 2018 due to, inter alia, low salaries or the non-payment of probation. The majority of these journalists worked in the online media sector. 62 journalists were dismissed without being provided with a just cause, whilst 12 journalists have either been granted or are in the process of being granted political asylum abroad.

The guide is intended to serve as a handbook for journalists who are currently employed or are in the process of becoming part of the media sector, so as to help them learn about the legal framework of labor relations. A chapter is devoted to the gender dimension of journalistic work focusing on sexual discrimination and/or harassment in the workplace. To facilitate reading, at the end of each section, summary boxes are provided displaying practical information on each of the rights, and the steps to be taken should they be violated.

The second part deals with case studies in domestic case law so as to help journalists seek justice and the restoration of their violated or denied rights.

The third section contains information on institutions that monitor labor rights and, in this context, the Albanian Helsinki Committee, is pleased to provide its FREE legal expertise to all journalists who feel that their workplace rights have been violated.



THE IMPORTANCE OF FREE JOURNALISM IN A DEMOCRATIC SOCIETY

The front page of Time magazine in 2018 featured 4 journalists. In the tradition of awarding the “Man of the Year” prize, the prestigious magazine chose the Guardians of Freedom and of the Struggle for Truth as the suitable label for 4 characters: the murdered Saudi journalist Jamal Khashoggi, whose murder in the Saudi consulate shocked the world; The Capital Gazette, with 5 of its staff killed in a mass killing in June; Philippine journalist Maria Ressa; and Reuters journalists Wa Lone and Kyaw Soe Oo. Ressa has reported on global terrorism for a long time, and is the executive director of the Philippine Rappler news site. She has led the website in its highly critical coverage of President Rodrigo Duterte and his violent crackdown on drugs. Last month, the Duterte administration brought fiscal fraud charges on Ressa and her website, charges she dismisses as harassment and intimidation, although she risks up to 10 years in prison.

And yet, it was 200 years ago that US President Thomas Jefferson coined the iconic phrase “Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.” The importance of the press for democracy is sanctioned in the first article of the US Constitution in another iconic sentence “The Press is Free.” Little did Jefferson know that one day there would come a time when people of the Press would be labeled ‘enemies of the people’ or that the medium through which the public would obtain its news would simply be a hyperlink, rendering redundant the position of a field journalist reporting from the scene. Yet, experience has shown that journalism

plays an important role in a democracy even 200 years after the triumphant establishment of democratic governments.

- 1) It ensures that citizens make responsible and informed choices rather than based on ignorance and misinformation.
- 2) Information serves as a “control function” by ensuring that elected representatives keep their promises to their constituency.

Various scholars – John Milton in the 17th century with his ‘Aeropagitica’, in which he suggested the libertarian argument for the right to free discussion, to the English philosopher John Stuart Mill in the 19th century, and Jürgen Habermas in 1962 with his book «Structural Transformation of the Public Realm” – have asserted that the strengthening of democracy in some European and American countries was fundamentally linked to media progress.

Ever since, there have been no cessation of the studies that indicate a strong link between stable democratic governments and a developed media sector. In 2018, Lisa Müller (London School of Economics, 2018) examined two aspects of media performance in her comparative study of 47 countries by analyzing the level at which the media plays its supervisory function by providing information, and the degree to which it acts as representative of citizens’ views platform.

No country gained high scores in either of these dimensions, but differences in scores between countries match the differences in the quality of their democracies.

Mass media in authoritarian regimes, typically controlled by the state, serve to keep the existing establishment in power. North Korea is a clear example that comes to mind. On the other hand, however, there is broad consensus among scholars in viewing media as a facilitator of democratic processes, as evidenced in eastern Europe during and after the collapse of communism.

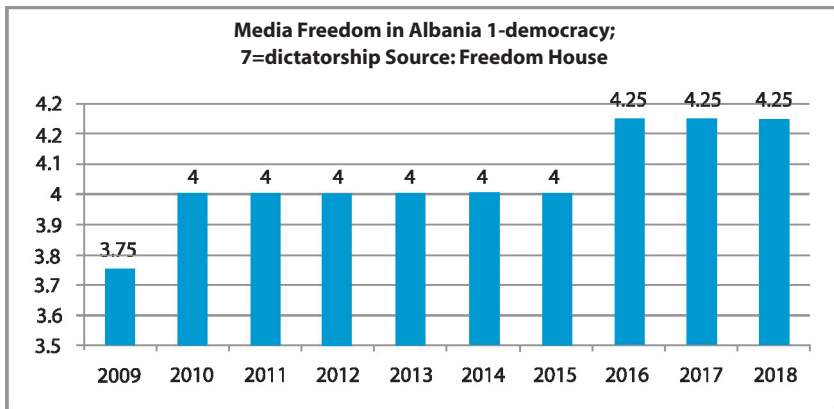
Countries with a higher media performance also display higher levels of political participation and less corruption. They tend to have a more vibrant civil society, and their elected representatives seem to better reflect the preferences of their citizens.

In addition, a number of fundamental documents and international agreements sanction the link between media and democracy. The United Nations Millennium Declaration for instance, explicitly states that Millennium Development Goals will be achieved through good governance in each country.

“All aspects of Good Governance are facilitated by a strong and independent media within the society.

Good governance can be achieved only when journalists are free to monitor, investigate and criticize public administration policies and actions.

Independent media allow for constant checks and assessments by the population of the government activity and help amplify the voice of citizens by providing a platform for discussion.”



The chart above provides an overview of the media freedom in Albania since 2009 according to Freedom House, an NGO. In recent years, although there are no substantial changes, there is a deterioration in the indicators on which media freedom is assessed in a country.

Media freedom is, in actual fact, the freedom of journalists to be fairly, impartially and professionally informed. ‘There can be no freedom of press if journalists exercise their activity under conditions of corruption, poverty or intimidation,’ writes the International Federation of Journalists, the world’s largest journalist association, founded in 1926.

WORK RELATED RIGHTS ARE ABOUT FREEDOM OF THE MEDIA

That is why no report on the media situation in a country can ignore work related rights in the media sector. For example, the European Commission's 2018 Annual Report on Albania analyses the situation in the country in its Economic Factors section. "Audiovisual media ownership and the transparency of media funding and public advertising remain key issues. The editorial direction of private media continues to be strongly influenced by political and business interests. Media funding remains key to improving media freedom, especially given new challenges such as 'fake news' and third-party influence. Among others, self-censorship and the precarious nature of employment for journalists remain issues of strong concern." In the Social Dialogue/Social Conditions section, the Report underscores that 'job security for journalists needs to be strengthened. Media owners do not formalize work contracts and the Labor Code needs to be properly implemented for journalists."

Issues with work rights for journalists are also highlighted in the report of the Albanian Media Institute on the implementation of the Council of Europe media standards. Following are 13 indicators:

- Defense of Freedom of Expression and Information
- Freedom to Criticize Government Officials
- Necessity and Proportionality of Freedom of Expression Limitations
- Freedom to Exercise Journalism
- Political Parties' Access to Media
- Non-Discrimination of Foreign Journalists
- Freedom to Choose Communication Language
- The Undesirable Phenomenon of Secret State Ownership of the Media
- Incompatibility between Public Offices and Professional Media Engagement
- Opening up of State Institutions to All Media

- Preference for Media Self-Regulation
- Respecting the Code of Conduct for Journalists
- Albanian Parliament’s Efforts for Media Freedom Preservation
- Indicators 11 and 12 tackle the issue of journalist’ rights at work, as follows:

Indicator 11 – Journalists must be provided with proper employment contracts that ensure adequate social protection so that their independence and impartiality are not compromised.

Situation: The journalist’s vocation is considered a very stressful one as it demands a hefty workload with many compromises and little pecuniary recompense (Albanian Media Institute Report, 2018)

Indicator 12 – Journalists should not be banned from establishing professional organizations and trade unions for collective representation.

Situation: Although the law seems to provide protection and sufficient rights for journalists to organize themselves in trade unions, there is currently no trade union in the media organizations in the country. (Albanian Media Institute Report, 2018)

If there is no democracy without a free press, and there is no free press without free journalists, there can then be no democracy without free journalists.

**FREEDOM OF INFORMATION IS THE FREEDOM WHICH
ALLOWS FOR THE VERIFICATION OF EXISTENCE OF
ALL OTHER FREEDOMS**

Win Tin, journalist, Burma

What is the status of journalists in Albania at present? Are they able to fulfill the aspiration for a free press while they are bound by unwritten agreement clauses, while their labor rights are fragile, while they are in a dismal economic position, while they have no good working conditions, while they apply self-censorship, while they are not empowered to stand for their rights?

1.1. Journalists in Albania – Facts and Figures

According to data from the Union of Albanian Journalists, by the end of 2018, there were about 6,200 people employed in the media sector. Of these, 2,700 are journalists. The largest number of journalists are found in public media and television broadcasters.

Indicators	Figures	Source	Notes
Number of Print Media	About 200 19 daily news-papers	IDRA, quoted in Ownership of Media Monitoring, Albania	There is no official list of registered print media
Number of Television Channels	Five national digital licenses 56 local television stations 98 cable televisions	Audiovisual Media Authority (AMA)	Data on 2018
Number of radio stations	51 local stations Four community radios	Audiovisual Media Authority	Data on 2018
Number of online media	650 news portals	Union of Albanian Journalists	Data on 2017
Number of news agencies	1	Albanian Telegraphic Agency	Although the definition of the news agency has changed to some extent with the introduction of new technologies, the Albanian Telegraphic Agency is the sole news agency in the traditional sense of the phrase.
Number of public radios	5 national programs 4 local programs	RTSH	

Number of public television stations	8 national RTSH programs 4 local programs	RTSH	
Number of employees in the media sector	6,200	Union of Albanian Journalists	There are no official data. Data obtained from the Journalist's Association for 2018
Number of journalists	2,700	Union of Albanian Journalists	There are no official data. Data is from the Journalist's Association for 2018
Number of members of journalist associations	786	Union of Albanian Journalists	Data on 2018
Percentage of journalists in radio and television stations	TV: 27% Radio: 29%	AMA, Periodic Bulletin No. 2	Data on 2016

1.2. Issues Journalists Encounter in the Workplace – Situational Overview

Qualitative and professional journalism must rely on a well-regulated labor market in which journalists have the opportunity to research, report, express opinions and provide information to the public free of external factors. Despite the existing and revised legal framework in the domain of labor relations (the Labor Code), problems pertaining to the respect of the rights of journalists in the workplace have persisted for years, as evidenced by both domestic and international stakeholders. The problems identified are related to the fact that there are journalists who work as such but they have no employment contract to this effect. Some journalists have formal contracts which they have signed without being informed of their contents or unable to negotiate them. Oftentimes, the contracts do not reflect the real salary journalists are paid but rather a lower wage which is then paid through the banking system, while the remainder journalists are paid cash in hand. The probation period goes unpaid, therefore, journalists

are changed every 3 months, once their probation comes to an end. The monthly wage is not paid on time, and is often not paid for months on end. Social insurance contributions are either paid on the basis of the minimum wage declared or are not paid at all for entire months. Regular working hours are not observed, neither are days off during the week. Annual leave is not respected, and even when granted, it often goes unpaid. Sick leave is not recognized, and neither is one's inability to work due to sickness. Overtime hours are not paid. Job tasks are extremely varied and fall outside the scope of the job description. In some cases, journalists are forced to provide services to other media companies within the same media group. Maternity leave is not observed either. Labor relations are often severed without notice and in an abusive manner, in particular when a journalist is deemed to have disobeyed their employers' orders about the news report, or any other similar demands.

The above issues have been raised time and again primarily by the Union of Journalists of Albania, but also by the international bodies that monitor freedom of expression and the steps Albania needs to take in the framework of EU integration. In a recent statement, in April 2018, the Union noted that in the first 4 months of 2018, 62 journalists had lost their job to the 'capriciousness' of their employers, while a considerable number of reporters and media employees had not received their salary for months¹.

In the framework of this project, towards the end of 2018 surveys were conducted with 29 local journalists (9 journalists in Elbasan, 9 journalists in Vlora and 11 journalists in Durrës) and their responses showed that the most pertinent problem is the failure of local or national media outlets to timely disburse journalists' monthly salaries, followed by other issues as mentioned above.

In order to assist journalists by informing them and raising their awareness of their legal rights, the following section will address in brief the rights provided for in the Labor Code, which employers should respect and heed for the duration of the employment relationship.

1 <https://www.cna.al/2018/04/27/raporti-alarman-unioni-gazetareve-nx-jerr-te-palarat-e-mediave-video/>



THE LEGAL FRAMEWORK OF JOURNALIST'S EMPLOYMENT RELATIONSHIPS

2.1 Understanding the employment relationship; employment contract form and its proof of existence.

The employment relationship is the legal-civil relationship that exists between the employer and the employee for the work performed, which highlights certain rights and obligations for both parties. This relationship is derived and regulated by the **employment contract**, which, according to Article 12/1 of the Labor Code, is defined as an **agreement between the employee and the employer, which regulates the employment relationship and contains the rights and obligations of the parties involved**. In the employment contract, the employee undertakes to provide his work or service for a fixed or indefinite period of time, within the organization and orders of another person, called employer, who, in turn, undertakes to pay remuneration for the work carried out. Therefore, if between the employee and the employer there is an agreement for the former to perform a task and the latter to pay a certain sum of money for that task, according to the law it follows that the parties are in a labor contractual relationship.

It is worth noting from the outset that there may be cases when the relationship between journalists and the media is not a working relationship regulated by the Labor Code, but by the Civil Code instead, for instance in the case of freelance journalists. These will not be addressed by this guide, as the aim of this manual is rather to inform journalists about the rights deriving from the labor contract.

As to the employment contract, it should be noted that, despite the

importance and the understanding that, in principle, there is a contract concluded between the parties with respect to the rights and obligations set forth in the employment contract, **the employee's rights deriving from the Labor Code cannot be affected in any case.** According to the provisions of Article 659 of the Civil Code, which sets out the general principles of and basic rules covering contracts, the contract is a legal act by which one or several parties bind themselves, change or terminate a legal relationship and, according to Article 660 of the Civil Code, the contractual parties are entitled to freely determine the contract's content, albeit within the limits established by the legislation in force. In the case of a labor contract, the Labor Code itself² has determined that in spite of the freedom that the parties – the employer and the employee – have to regulate according to their will and desire the terms of employment in the employment contract, **these clauses cannot establish lesser rights for the employee than those defined by and set out in the Labor Code.** This means that the rights of the employee that the Labor Code provides for are minimal rights for the employee, which cannot be undermined or abrogated under any circumstances,

- 2 Article 11/1 of the Labor Code provides that: “1. Rights and obligations related to labor relations are prioritized by these sources: 18 19 a) Constitution of the Republic of Albania b) International Conventions ratified by the Republic of Albania c) This Code and its sub-legal acts d) Collective work contract e) Individual labor contract f) Internal regulation g) Local and professional traditions. 2. Sub-legal acts shall be decreed for the completion and implementation of the provisions provided for in this Code. They may set less favorable working conditions for employees than those provided for by this Code only when expressly provided for in the latter. 3. Any provision that violates a superior provision, is void. However, only those provisions that improve the position of the employee are valid. 4. The employee may not waive the rights arising from the ordinance provisions of this Code or collective labor contracts. Agreements made in the presence of a labor inspector or those that come in the form provided for in the collective labor contracts aiming at avoiding a conflict through reconciliation via mutual concessions, voluntarily accepted by both parties. The above-mentioned agreements do not apply to paid annual leave. 5. Vocational traditions are applicable only in the cases when there are no legal provisions, stipulations in the agreement/contract, and when the legal provisions refer expressly to vocational traditions”.

even if the employee waives them expressly. This legal provision aims at protecting the vulnerable position of employees who may waive their rights due to financial needs or simply due to their need to work, while ensuring that employees enjoy a healthy personal, family and social life. Of course, this does not prevent the employment contract from being more favorable to the employee, beyond the minimum standard of rights envisaged for the employee in the Labor Code.

It should be noted that the Labor Code **does not specify the obligation** that the Employment Contracts be in **writing** for its validity or evidence. As mentioned above, Article 12/1 of the Labor Code where the meaning of the employment contract is defined, it does not necessarily require a form of employment contract. Nevertheless, the Labor Code stipulates that the lawmaker prefers that the employment contract be made in writing³, for the purpose of clarity for the employee about the rights and obligations he is incumbent with in the employment relationship and that in case of a conflict with the employer, the employee has the possibility to prove the elements that are more favorable than those envisaged in the Labor Code, which may have been agreed between parties (such as longer periods of annual leave, higher wage or other benefits, etc.), as minimal rights are defined nonetheless in the Labor Code. The case law reviewed for the purpose of this Manual has highlighted the discussions on the **form** that a labor contract must have in order for it to be considered to exist in the legal sense⁴. This issue has been particularly pertinent when journalists were dismissed by their employer, the former took the respective media to court, and the court discovered that no written contract of employment existed.

3 Article 21/1 of the Labor Code states that: “The employment contract shall be concluded in writing. It may be amended in writing if the parties agree to do so”, however, notwithstanding this provision in paragraph 2, it is stated that: “2. The employment contract is deemed effectual when the employee accepts the completion of a job or service for a fixed or undefined period of time, within the framework of the organization and under the employer’s orders and which, based on these circumstances, is performed only against payment.”

4 See for example Decision No. 2677, dated 15.03.2013 of the Tirana District Court mentioned below in the section of practical cases.

Specifically, the law⁵ prefers that the contract of employment contains:

- a) the identity of the parties;
- b) the work position;
- c) general job description;
- d) the date of commencement of work;
- e) the duration, when the parties conclude a fixed-term contract;
- f) the duration of paid leave;
- g) terms of notice for termination of contract;
- h) the component elements of the salary and the date of its disbursement;
- i) regular working hours per week;
- j) references to the collective contract in force;
- k) probation period;
- l) types and procedures of disciplinary measures, if there is no collective contract.

It should be noted that the job description is one of those elements that in practice is not paid much attention to, not enough for it to be mentioned specifically in the written contract of employment. Job descriptions are often taken for granted by journalists at the time of signing the employment contract. Yet in many cases, it has been difficult to determine exactly what that is, as journalists are required to perform jobs that fall outside the scope of their job descriptions, even if the work carried out is for a company within the same media group. The job description and the specific tasks that the journalist will perform in the employment contract is very important not only during the existence of the employment relationship but also in the event of its termination. During the existence of the employment relationship, a clear description of the journalist's duties enables the employee not to perform tasks that fall out of his/her job description. Whereas in cases of sudden termination of the employment contract by the employer, a clear job description makes it impossible for the employer to abuse with the reasons given for the termination of the employment contract, such as using the failure of a journalist to do a certain task as an excuse for his/her dismissal.

5 Article 23/3 of the Labor Code.

However, even if it is not in writing, if there is a working relationship between the parties, the employment contract is always believed to exist. The difference in this case, i.e. when journalists are not in possession of a written contract, is that the employee may have difficulty in proving the existence of the employment relationship with the employer. In such cases, courts have admitted the following from journalists as evidence:

- articles or various pieces that the journalist has written for the employer's media in the relevant period;
- social insurance payments;
- attestations from the company itself or payments made to the bank;
- different witnesses, such as colleagues who are aware of the work done, i.e. any written evidence or witnesses that may prove the existence of the employment relationship, in particular the duration of the employment relationship and the agreed salary. The significance of the lack of legal obligation for the written form of the employment contract is also related to the ability to prove the existence of a working relationship in trial. If we were to accept that the employment contract must be necessarily a written document, then the existence of the employment relationship could not be proved in any case and with no evidence without a written contract. Moreover, the Civil Procedure Code provides that in such a case no evidence of witnesses is admissible⁶.

Therefore, although from the legal perspective the work relationship exists even if it is not reflected in a written contract, the suggestion is to always provide one. This would facilitate the verification of both the existence of the employment relationship as well as the confirmation of some other important elements of this relationship, such as the wages, type of employment contract, job description, etc.

6 See Article 231 of the Civil Procedure Code, which provides that “Evidence of witnesses is admissible in all cases, unless the law on the validity or the evidencing of a legal action, requires solely a written document for purposes of evidence.”

- **Regardless of the contents of the employment contract, journalists can never have fewer rights than those provided for in the Labor Code and other relevant pieces of legislation.**
- **If you do not possess a written job contract, collect any possible evidence to prove its existence.**
- **The written contract form allows you to easily prove the existence of a working relationship and its terms in event of a conflict.**
- **Ask that the employment contract clearly describes the work you are going to be expected to carry out.**

Cases when the employment contract exists but does not reflect reality

It ought to be noted that if it is entered with their free and full will, the contract has the power of the law on the parties and both parties are compelled to respect it⁷. Consequently, if there is a written contract between the journalist and the employer, it is in principle considered as signed by their free and full will, on the basis of an agreement between them, reflecting the truth of the matter. In the event of a court case, the contract has full probative power between the litigants and, as a rule, if there is written evidence signed by both parties, the opposite may be proven only by another proof of the same probative force which in the case of journalists it is not easy to obtain. As noted above, it has in practice been found that in many cases, labor contracts related to journalists are standard contracts that are offered to them without the possibility to negotiate their terms, and, therefore, are either accepted by journalists, or the contract is not signed by the employer, which renders it invalid in such instances.

One of the main elements difficult to prove in court when it is claimed

⁷ The power of contract between parties is stipulated in Article 690 of the Civil Code, which provides that: “The contract properly formulated has the force of law on the signatory parties. It may be invalidated or amended by mutual consent of the parties or for reasons provided by law”.

that the written contract is not properly formulated, is that of the **monthly salary**. If journalists admit that the wage stated in the contract is lower than the real one, they not only allow their employer to avoid tax and fiscal duties but the salary on the basis of which social and health insurance is calculated and therefore paid, is lower (which means that when a journalist reaches retirement age, their pension will be lower than what it would otherwise have been should the payments have been made accurately) and in case of conflict with the employer, it is very difficult to prove that the salary has been higher than the one specified in the contract. The reason for this is because all the documentation compiled by the employer is made on the basis of the salary as evidenced in the contract, which according to the provisions of Article 259 of the Civil Procedure Code, constitutes full evidence for the parties, to ascertain what is contained therein. For a journalist as an employee to prove to the court that his/her real salary was higher than that stated in the contract, he/she should lodge written evidence to prove such a claim and it is clear that obtaining this sort of written evidence is difficult because the undeclared part of the salary was paid in cash. And even if such a document existed, the employer would have kept it, rather than the employee.

It is worth noting here that when there is a written contract of employment, the admissibility of evidence of witnesses is difficult to be sustained by the court due to the obstruction that the Civil Procedure Code imposes on allowing them to testify when there is a written document, such as the contract⁸. However, the law has allowed witness testimony in those cases when even though there is a written contract, it is entered into contrary to or in circumvention of the law, in bad faith or under the influence of the great need of one of the parties⁹. This provision can be used if in court the journalist

8 Article 231 of the Civil Procedure Code provides that: “Proof of witnesses is admissible in all cases, unless the law on the validity or evidencing of a legal action requires a written document.”

9 See Article 233 of the Civil Procedure Code, according to which: “The rules set forth in the two articles above do not apply, and evidence by witnesses is admissible: a) when the document required by the law on the validity or the

seeks to prove that the content of the written contract is not accurate by inviting witnesses who can testify to this. This rule applies to any allegation that relates to elements that are claimed to be untrue in the written contract of employment, such as the duration of the employment contract, job description, etc.

It should also be noted that failure to declare the true wage of employees not only directly damages the interests of the latter with respect to the non-profiting of real **contributions**, but at the same time **damages the interests of the state**, whilst it **constitutes a criminal offence** for which the employer is liable¹⁰.

According to Law no.7703, dated 11.05.1993 “On Social Insurance in the Republic of Albania” (amended), the contributions are split between the employer and the employee, but the obligation to withhold the value of the contributions from the salary rests with the employer, who disburses it into

legal action test has been lost or broken without the party’s fault; 118 b) when there is initially a written evidence. An initially written evidence is a document that is derived from it, on the basis of which the claim is filed and from the content of which it is found that the alleged fact is quite true; c) when the legal action made in writing is actually made: - in violation of the law, in the circumvention of the law; - by fraud, intimidation, or because of a bad faith deal between the representative of one party and the other party; - under the influence of the party’s pressing need; d) when due to the circumstances in which the legal transaction or the special relations of the parties was performed, it was not possible to obtain evidence of the written form”.

- 10 Article 180 of the Criminal Code “Concealment of Income” provides that: “Concealment or avoidance of the payment of tax liabilities by not submitting documents or not stating the necessary data according to the legislation in force, the submission of falsified documents or statements or False information, for the purpose of material gain, for himself or for others, by incorrect calculation of the amount of tax, or contribution constitutes a criminal offense and is punishable by up to three years of imprisonment. When this offense is committed with the purpose of concealing or evading payment of a tax liability worth more than five million AL Lek, it is punishable by two to five years of imprisonment. When this offense is committed in order to conceal or evade payment of a tax liability higher than eight million AL Lek, it is sentenced from four to eight years of imprisonment.

the Social Insurance Institute¹¹.

Therefore, in such cases, in addition to seeking the employer's legal obligation to pay the difference in unpaid contributions, journalists also have to report it to the Labor Inspectorate, as well as to file a complaint with the police or the prosecutor.

11 Article 13 of Law No. 7703, dated 11.05.1993 "On social insurance in the Republic of Albania" (amended) provides that: "1. Contributions will be paid by insured persons. 2. Contributions of employed persons under a contract of employment shall be shared between the insured person and his employer in accordance with the provisions of this law and shall be deposited by the employer. 3. Persons in charge of the payment of contributions are responsible for their calculation and payment. The employer is obliged to keep the salaries of the employees contributions and submit them to the accounts of the Social Insurance Institute or the General Directorate of Taxation, according to the phases defined by a decision of the Council of Ministers. Inspectors of social insurance contributions have the right to check the amounts of paid contributions, wages and payroll of the enterprises, firms, institutions and other entities. 4. Any difference in the amount of contributions shall be returned during the 5 years of the payments together with the interest".

- **Signing a contract that does not reflect the true value of the salary but a lower figure instead, penalizes you because the amount of social security and pension you will be paid, shall be less than what you are entitled to.**
- **From January 2019, the minimum wage in Albania is 26,000 lekë.**
- **If the contract you have been in possession of did not reflect your real salary or any other true information, submit this to the court and provide any evidence that you can obtain to prove it.**
- **Make the necessary verifications to make sure that your employer has paid and continues to pay regularly the social and health insurance on the basis of your real wage. If you find that your social or health insurance have not paid, ask your employer to pay them. If he/she refuses, you have the right to complain to the relevant state institutions and in a court, as well as to file a criminal charge. Attention! Ask your employer to pay your unpaid social insurance as soon as possible but no later than the 10-year term.**

2.2. Types of employment contracts

The labor code provides for several types of employment contracts, depending on their content, nature, and duration. The 2015 amendments of this Code¹² aimed at the inclusion of new forms of employment contracts, which existed in reality but were not regulated by the lawmaker, such as part-time work, working from home and teleworking¹³. These types of contracts are applicable also in cases when journalists are engaged in part-time work or work from certain other places.

Based on their content, contracts are divided into:

- a. individual employment contracts, concluded between an

12 Law no.136/2015, dated 05.12.2015 “For some additions and amendments to the Labor Code (amended)”.

13 Articles 14 and 15 of the Labor Code

employer and an employee; and

- b. collective contracts, concluded between an employer (or employer organization) and an employee organization.

Given that the main types of contract are individual ones, the following will deal with rights deriving from this type of contract.

From the point of view of their duration, individual employment contracts are divided into:

- a. probation contract;
- b. definite length contract;
- c. indefinite length work contract.

Although the term indefinite length contract signifies a contract with greater legal protection in terms of its validity, the Code provides the same rights during the duration of the work for all types of contracts, regardless of their specifics. Particularly the 2015 amendments have enhanced the protection of employees in the workplace and their safety at work.

a. Probation Contract

The lawmaker has envisaged that in order for both the employer and the employee to test whether there can be a suitable working relationship between them, a probationary period is agreed upon to start off with. Unlike what is perceived in practice, this period serves both sides and not just the employer. **It is worth pointing out that the probation period is a right of the parties and not a legal obligation.** So, from the outset, the contract can be entered into with a fixed term or indefinite term without necessarily a probation period.

The probation period is regulated by Article 142 of the Labor Code and as such is considered at maximum the first three months period of work, in the absence of a different type of employment contract. In the individual or collective labor contract, the parties may provide for an even shorter amount of time than 3 months.

Precisely because of its nature and purpose to prove the behavior of the parties in the employment relationship, during this period the parties may terminate the employment contract at any time by notifying the other party at least 5 days in advance without providing any specific reason. However, in practice this contract has been misused by employers who have abused with it by misinterpreting the opportunity it provides and by exploiting the work of employees without paying them for the services rendered. This phenomenon was especially found to be true in the case of young journalists who were employed and then let go without being paid for the period of the three months of probation, replacing successively one-another without any actual cause. Such conduct is in contravention of legal provisions, as the probationary period is not exempt from the rights deriving from the employment contract, such as the right to receive payment for services rendered. During this period, the employee must regularly perform his/her work for which he/she has to be paid.

Conducting periods of apprenticeship or vocational training within the meaning of Article 17 of the Labor Code¹⁴ is completely different from the probation period, in which the employee does not learn to work, but works regularly for the employer. Therefore, all rights deriving from the Labor Code are applicable in this case as well.

Upon completion of the probationary period, it is up to each of the contractual parties to decide whether to continue the working relationship between them or not. Should they decided to do so, they must agree on the type of employment relationship and the relevant terms.

If you are in a probationary period, ask for this to be reflected in the employment contract and ask to be paid for the work you are

14 Article 17 of the Labor Code provides that: “1. With the vocational training contract, the master is obliged to qualify the apprentice according to the rules of the trade whereas the apprentice to work in the service of the master in order to acquire qualification. 2. Provisions of this Code shall also apply to a vocational training contract”.

b. Limited term contract

A fixed-term contract implies as a rule that the parties agree that the employment relationship between them shall last for a term specified in the contract. Upon termination of this term, the contract is considered terminated and the parties may enter a new contract of either a fixed term or an indefinite term. When the parties continue tacitly the employment relationship, the employment contract continues as an indefinite term contract¹⁵.

However, with the 2015 changes to the Labor Code¹⁶, the lawmaker chose to envisage that **the rule on the employment contract after the probationary period is that it be indefinite**. An exception to this rule and the possibility to enter into a fixed-term employment contract is only when this is necessary due to the temporary nature of the type of work that the employee shall perform, a provision which, because of the nature of the work, may be applicable in the case of journalists under very specific conditions. **Therefore, as a rule, in the case of journalists, the employment contract cannot be of a fixed duration.**

However, it should be mentioned that the lawmaker did not envisage the invalidity of the contract termination as a result of non-compliance with this provision, but only **sanctioning with a fine of the employer up to thirty times the minimum monthly salary**. Although this sanction should discourage employers from violating the provision, to date no such cases have been noted. Nonetheless, this provision does not ensure any special protection for the employee in the event that it is violated.

Amendments to the Labor Code in 2015 include a provision for fixed-

15 Article 149 of Labor Code.

16 By law no. 136/2015 item 2 of article 141 is amended as follows: “2. The employment contract is entered for an indefinite period. The employment contract for a specified period must be justified by objective reasons relating to the temporary nature of the duty on which the employee is to be employed. Failure to comply with this provision shall be without prejudice to the validity of the contract but shall hold liable the employer, according to the provisions of paragraph 2 of Article 202 of this Code”.

term employees¹⁷ that if there is a vacancy at the end of a fixed-term contract, the employer has the obligation to inform the employee about it by providing them with equal opportunities with other employees to be employed in an indefinite term. Moreover, in order to ensure real-life job opportunities for the job-seeker, the employer is under the obligation to enable the employee to increase his/her skills pertinent to the new job position.

If the employment contract is of a fixed duration and the employer brings it to an end before the end date without reasonable cause, the employer is obliged to respect the termination procedure provided for in Article 144 of the Labor Code (see below).

The courts have held two main positions in relation to the indemnity sought. One is that when an employer terminates a fixed-term contract prior to the end date without reasonable cause, s/he is obliged to compensate the employee fully for all the salary that the employee would have received until the contract had come to an end on expiration date stated on it. The other position of the courts has been that the employer must pay the employee up to 1 year worth of his/her salary for the unreasonable termination of the contract.

As a rule, journalists' contracts cannot be one of a definite duration.

A fixed-term employment contract is only permitted if the nature of the work to be performed is temporary. In all other cases, you must ask that the employment contract be of an indefinite term. If your employer forces you to sign a fixed-term contract contrary to this provision, report this to the Labor Inspectorate as, in this case, your employer is administrably liable for this violation.

c. Work Contract of an indefinite duration

The contract of indefinite duration is the safest contract for the employee,

¹⁷ Added Article 149/a of the Labor Code.

since such a contract can be terminated only when there are legitimate causes under the law. Such contracts help the employee perform his/her job in safety, free of the fear that his/her employment relationship will come to an end all of a sudden. This enables the journalist to make personal and family plans related to his/her work and their livelihood, monthly expenditure, financial planning, etc.

The Labor Code has envisaged that the termination of such a contract may be made by the signatory parties only if there are **justified reasons**¹⁸, which are considered to be serious circumstances that do not allow, according to the principle of good faith, to ask the person who has terminated the contract, the continuation of the employment relationship, e.g. when the employee violates the contractual obligations by a serious flaw, the employee breaches the contractual obligations upon a minor flaw, repeatedly, or despite the written warning of the employer. Nevertheless, if an employment contract of an indefinite period is terminated, the procedure for the termination of the contract and the notice deadline (where applicable) must be clearly laid out.

Collective labor contract

The collective labor contract is a contract that aims to secure to the most the position of the employees of a particular sector who are organized in a trade union. It is signed by one or more employers or employers' organizations on the one hand and one or several trade unions on the other.

The collective contract contains provisions on the terms of employment, the relationship, content and termination of individual contracts of employment, vocational training, and on the relations between the contracting parties. The collective contract may also include provisions that put the employers and employees in mandatory positions created by parties with a collective agreement as legal persons.

The main element of a collective contract is the scope of its implementation. The Labor Code provides that any employer who is a

18 Article 152 of the Labor Code.

collective contractor signatory or member of a contracting organization is bound by a collective contract and that the collective contract applies to all employer's employees, too, whether or not members of a trade union organization. Even when the employer resigns from the signatory organization, it remains bound by the collective contract until its termination, though not for more than three years.

The obligation to respect the collective contract is also transferred to the new buyer, in cases when the employer alters the nature of the company's activity prior to the end of its term. In the Albanian context, when media owners, as is often the case, transfer shares of their companies without any impediments, this provision becomes very important with regard to the protection of journalists' rights.

In order to ensure the protection provided for by the collective labor contract, the Labor Code provides for a special procedure when an employer is seeking to dismiss a worker or when he/she is enjoying collective holidays. When, in the course of 90 days, an employer dismisses at least:

- 10 employees in enterprises of up to 100 employees;
- 15 employees in enterprises of 100 to 200 employees;
- 20 employees in enterprises of 200 employees,

the Labor Code defines the dismissal a collective one, even if there is no collective employment contract in the first place, and the termination of the employment by the employer has been made for reasons that are not related to the employee him/herself.

The law establishes a special procedure that the employer has to follow when s/he has decided to put in effect collective dismissals. Initially, the employer must notify in writing the trade union, known as the employee representative. In its absence, the employer notifies his/her employees by displaying visibly the relevant notification at their workplace. The notice must, in particular, contain the reasons for the dismissal, the number of employees to be dismissed, the number of employees normally employed and the time when such dismissals are planned for. The employer must submit of this notice to the Ministry

dealing with labor relations. Then he should conduct consultations with the employee representative trade union organization in order to reach an agreement. **If there is no such organization, the employer should allow employees to participate in consultations for at least 30 days**, so as to take steps to avoid or reduce collective dismissals and to mitigate their consequences.

Upon completion of the consultations, the employer must notify the Ministry of Labor, and send a copy of this notice to the interested party. If no agreement has been reached through discussions, the Ministry may step in to help the parties reach an agreement by the end of another 30 days. Only after the completion of these procedures can the employer proceed with the notice of termination of the employment contract while respecting the usual terms (depending on the employee's seniority). Should the employer fail to respect the procedure in question, s/he is obliged to provide the employee with a **remuneration of up to six months of indemnification**, which is added to the salary during the notice period or to the indemnification in case of non-compliance with this deadline. This indemnity is higher than the one derived from the individual labor contract. Likewise, the law provides that if in the future the employer shall employ comparably qualified workers, s/he shall give priority to the laid off employees, if they have been dismissed for reasons other than any pertaining to their performance.

In the Albanian practice, there have been cases when the dismissal of journalists has been a collective one, despite the fact that the employer has treated it as a termination of an individual contract of employment.

The existence of a trade union in the domain of journalism is a necessity and probably would be the most effective mechanism for the protection of journalists' rights. Joining the union and the legal obligation to conclude collective contractual agreements between the media and journalists, would make possible the regulation of the labor market until it is further strengthened (see below). This would require amending the current legislation, including an obligation to regulate work relations in the realm of collectively contracted journalists in order to ensure the protection of their rights.

2.3 Working hours

Although working hours can be regulated by the parties that sign the labor contract, the maximum number of working hours has been regulated by the lawmaker in the country's Labor Code. This is because regardless of the type of work, the lawmaker wanted to ensure that employees are also accomplished in their personal and family life, whilst providing other contributions, too.

Therefore, the **normal working hours in a day** are no more than 8 (eight) hours, whilst the maximum total per week should not exceed **40 hours**. Daily work is performed within the hours of 00:00 and 24:00. **Daily break** is at least **11 straight hours** within a day or, should there be a need for it, over two consecutive days¹⁹. The time for commencement and termination of work is defined in the individual labor contract, collective labor contract or the Council of Ministers' decision when there is one in the relevant domain. Similarly, breaks are regulated during the working day, such as the lunch break or any other breaks foreseen during the working day.²⁰

Should this be the case, the tasks might need to be performed in shifts or at nighttime. According to the Labor Code, any work performed between 22:00 and 06:00 hrs. in the morning is considered to be nighttime work or the night shift. The duration of night work and work performed one or more days before or afterwards should not be more than eight straight hours. They should either be preceded or followed by immediate daily rest. **Employees working overnight** are employees who work at least 3 hours of their daily work regularly, during the night, or are likely to perform a certain part of the annual work time during the night, as defined by the law and individual or collective agreements²¹.

Depending on the time when the work is carried out, the law provides for higher remuneration. Therefore, any work carried out from 19:00 to 22:00 entitles the bearer to a salary supplement of not less than 20 per cent of one's salary, and every hour worked between 22:00 and 06:00 hrs

19 See Article 78 of the Labor Code

20 See Article 79 of the Labor Code

21 See Article 80 of the Labor Code

entitles the employee to a salary supplement of no less than 50 percent²².

The 2015 amendments of the Labor Code²³ outlined **shift work** for the first time. Shift work is defined as the work carried out by employees that succeed one another in the same job position, in a certain order, at different times, during a certain period of days or weeks, but always within the daily working hours.

Overtime

Regardless of normal working hours, the law allows for employees to work overtime if circumstances require performing additional hours of work and if the employer requires the employee to complete additional hours of work as long as necessary, as well as taking into account the personal and family circumstances of the employee. However, this is allowed only if three conditions are met:

- a) Whether the personal circumstances of the employee allow;
- b) If the maximum time permitted for overtime hours is respected;
- c) Respecting the salary supplement for overtime work or compensation with extra days off from work.

a. Maximum hours of overtime

Although the law allows employees to work overtime, such work cannot be unlimited. Otherwise, employees would not have the time to rest sufficiently and accomplish themselves in other areas of life. For this reason, the Labor Code has envisaged that there can be **no more than 200 overtime hours of work per year**. No weekly additional hours can be required when the employee has completed 48 working hours per week. In special cases, for a period of up to 4 months, more than 48 hours per week can be worked, but the average weekly working time for this period should not exceed 48 hours.

22 See Article 81 of the Labor Code

23 See Article 79/a of the Labor Code, expanded with the law no. 136/2015.

b. Compensation with additional leave and salary allowance

The Labor Code prefers that additional working hours be compensated for by time off. When this is possible, the employer may, in agreement with the employee, compensate the additional hours of work with a minimum 25 percent more time off from work, corresponding to the duration of the additional hours and given within 2 months from the day of the performance, unless otherwise provided in the collective contract. Afterhours of work performed during the weekly days off or official holidays are compensated with leave or salary at least 50 percent greater than the extra hours made or the normal salary amounts to per those hours, unless otherwise provided in the collective contract. This compensation also includes the compensation included in the preceding paragraphs.

If time off compensation is not possible, for the additional hours of work that have not been offset by leave, the employer must pay the employee the normal wage and an additional no less than 25 percent of it, unless otherwise provided in the collective contract.

- **The employer may ask the employee to work overtime when necessary but cannot ask for more than 48 hours a week and no more than 200 hours a year.**
- **The employer cannot ask the employee to work overtime if the family or personal circumstances do not allow him/her to. This condition is particularly important to single parents, who may have children to care for or other personal circumstances that do not allow for this to take place.**
- **Pregnant women, women who have given birth up to 1 year earlier and persons with disabilities must not take on additional working hours.²⁴**
- **If you work overtime, you have the right to be compensated either by leave of at least an additional 25%, or be paid an additional 25% extra for each overtime hour worked.**

24 See points 3/1 and 3/2 of Article 90 of the Labor Code, extended by Law no.136/2015.

2.4. Paid and unpaid leave according to the Labor Code

a. Weekly time off

Weekly time off is no fewer than 36 hours, of which 24 straight hours. Weekly holiday includes Sunday which is not payable. Exceptions are allowed under this rule, which must be regulated by a Decision of the Council of Ministers or by a collective contract. Certain sectors of journalism, due to their nature (sporting events, etc.) must perform on Sundays, so such exceptions can be allowed by a decision of the Council of Ministers (see below).

b. Official holidays

It is usually prohibited to work on official holidays. When the official holiday falls on the week-end, it is carried over to Monday. However, due to the nature of journalists' work and the need to broadcast the news on these very days too, the Labor Code stipulates that the Council of Ministers may provide for exceptional cases when working on the official holidays is allowed. Nevertheless, journalists should be paid for the work done during official holidays. Article 87 of the Labor Code has set out the general rules on the manner of payment for the work performed during the weekly time off and official holidays.

However, in addition to these general rules, Article 97 of the Labor Code provides for the possibility for the Council of Ministers to lay down specific rules on the duration of work and dismissal in favor of both legal and natural persons to the extent that their special situation makes it necessary, as is the case of the print media and the spoken media, outlined in letter F of paragraph 1 of this Article. Despite developments in this area since the Labor Code was adopted in 1995, there is only a single decision of the Council of Ministers in this domain. **Decision No. 358, dated 25.03.1996 “On regulating the working and resting time in spoken and written press”** has entered into force since 1996, and no amendments have been made to it since.

This decision provides for the entitlement of editorial offices of periodical newspapers, or photographic or news agencies to decide that working hours must include the night shift or Sundays. If Sunday's work is scheduled from morning till afternoon or spans for over 5 hours, the employer must compensate it in either the preceding or succeeding week, with a break of at least 24 hours without interruption, which should correspond to one working day. Sports editors should have at least one Sunday off every 4 weeks. For other employees, 2 Sundays off are provided every 4 weeks.

Radio and television work can start at 05:30 and continue until 24:00 when use of the equipment requires it. The work throughout the day, including all the breaks, ought to take place within an interval of 14 hours. Employees should have a minimum of 10 hours of uninterrupted night rest. This break may be reduced, in rare cases, to 8 hours for some employees or some categories of employees:

a) when use of the equipment requires that this take place provided that the lower number of uninterrupted resting hours is not repeated more than twice consecutively and that the average night-time rest duration calculated for a week is at least 10 hours.

b) in order for the weekly rest period to be a seamless 36 hours, this can be done only once a week. The employer may ask for overtime of up to 220 hours per year per employee. In this case, a 25 percent surcharge is paid to the employee.

The additional 25 percent is not paid when the said overtime has been compensated with time off of the same duration that same year. **The employer has the right to order his/her employees to work at night time or on Sundays occasionally, but not periodically., a surcharge of 50 percent is paid for the work performed at night, and an additional 25 percent for the work performed on Sundays. The employee must have at least one Sunday off every 3 weeks. Employees working in the above sectors should have breaks of a minimum of: 15 minutes if the working day is longer than 5 hours and 30 minutes, 30 minutes if the working day is longer than 7 hours, and 60 minutes if the working day lasts longer than 9 hours.**

Annual leave is counted as working time when the employee is not allowed to take the time off but work instead.

The above decision must be changed and adapted to the real needs of those employed in the media sector. Not only is this a necessity but it is also overdue. It should be noted that the Labor Inspectorate undertakes no checks on whether employers comply with the provisions of this decision, despite the fact that it entered into force two decades ago.

c. Annual leave

In addition to daily breaks, weekly and official days off, the law entitles employees to annual leave. The duration of paid annual leave is **not fewer than 4 calendar weeks in a given working year**. Annual leave does not include official holidays. If an official holiday falls during the paid annual leave, the leave itself is postponed. When the employee has not completed a full year of work, the duration of the paid annual leave is determined pro rata upon the duration of the employment relationship. For the purpose of calculating the annual leave, periods of temporary disability are counted as working time. Annual leave must be granted during the working year or until the end of the first quarter of the following year, however, **it must never be less than one calendar week without interruption**. The right to days off not granted by the employer or not received by the employee shall be prescribed to be compensated within three years from the day on which the employee is entitled to this right. Following surveys and interviews with journalists in the country, the situation is such that most people employed in the media sector have had no leave at all, or at best they have had only 2 weeks of unpaid holidays. This is in flagrant violation of the Labor Code, as the law provides for compulsorily paid four weeks of annual leave per year for each full working year completed. When the employment contract is terminated, journalists have up to 3 years to apply for compensation for the unspent annual leave they were entitled to. This can be converted into a sum of money, which is calculated on the basis of the monthly salary at the time of the annual leave.

- **The duration of paid annual leave is no fewer than 4 calendar weeks during the current labor year.**
- **When the employee has not completed a full year of work, the duration of the paid annual leave is determined pro rata, based on the duration of employment.**
- **Annual leave must be granted during the working year or until the end of the first quarter of the following year but must never be less than one seamless calendar week. The right to leave not granted by the employer or not received by the employee is prescribed within three years from the day on which the employee is entitled to this right.**
- **In case of termination of the employment contract, within 3 years the journalist may apply for the pecuniary compensation of the unspent annual leave they were entitled to and did not receive, which is calculated on the basis of the monthly salary at the time of the employee was entitled to annual holidays.**

ç. Other days off

The Labor Code provides for the right to paid leave, irrespective of whether the employee has already made use of all the holidays he/she is entitled to, in the following cases:

- (i) In the event of the employee's marriage or the death of his/her spouse, or his/her immediate predecessor or descendants, the employee benefits from 5 days of paid leave;
- (ii) In the event of serious illness of family members, cohabitants, ancestors or his immediate descendants, attested by a medical report, the employee benefits no more than 30 days of unpaid leave;
- (iii) In case of childbirth, the spouse/cohabitant receives 3 days of paid leave.

d. Seniority at work

If a journalist has been employed for more than 3 years and decided to terminate the employment contract either for no good cause or due to abuse, as an employee s/he is entitled to a sum what is referred to as seniority at work. This sum is at least a half-monthly salary for each full labor year with the company. The reference salary in this case is the salary that the employee enjoys at the time of the termination of the employment contract. If the salary has varied, the reward is calculated on the salary of the previous year and is indexed. Journalists do not seem to seek this type of remuneration in court, and as such the court can not recognize a right that is not claimed.

- **When a journalist has worked in the same establishment for more than 3 years, and the employee is the one who terminates the employment contract for whatever reason they deem fit, the employer is obliged to pay the employee a seniority remuneration, which is at least the salary of 15 days for each full year the journalist has worked there.**
- **If the employer fails to pay the above, make sure you seek this right in a court of law. Unless you do so, the court will not recognize this right of yours on its own.**

2.5 Protection of women's employment, maternity leave and adoption leave

Women enjoy special legal protection in labor relations, deriving from the Constitution of the Republic of Albania and reflected in the provisions of the Labor Code. Among them is the obligation of the employer not to discriminate against pregnant women and to retain the employee during the pre- and post-natal period²⁵.

The Labor Code prohibits pre-employment pregnancy tests which may

25 See Articles 104-106 of the Labor Code.

be required by employers, unless the workplace environment is such that it demands working conditions that may adversely affect pregnancy or may harm the life or health of the mother or the fetus. Likewise, **during pregnancy, the woman, in agreement with the employer, is entitled to allowances payable for conducting medical visits**, when these are needed to be carried out during working hours.

On the other hand, the Labor Code **prohibits work for pregnant women 35 days before delivery and 63 days after birth**. When a pregnant woman is carrying more than one child, the 35-day period is extended to 60 days. After the 63 days of post-birth period are up, it is up to the woman herself to decide whether or not to return to work. If a woman chooses to work after the 63-day post-birth period, in agreement with the employer, for feeding the child, she is entitled to opt for one of the following options until the child turns 1 year old:

- (i) a paid time off from work consisting of 2 hours, within normal working hours; or
- (ii) working time, reduced by 2 hours, with the same salary, as if she had worked the entire regular working hours.

The salary paid during maternity leave is covered by social insurance; it is governed by the relevant law and is not an obligation of the employer. However, its obligation is to respect the 35 (eventually 60) day deadline and the 63 days as a mandatory term in which the employee cannot be at work. From the conducted interviews, women journalists report that this right is denied, which makes them face the choice of either quitting work altogether or being forced to go to work until the last weeks of the pregnancy and after the first month of birth.

Meanwhile, contrary to what is the practice, the Labor Code provides that at the end of the maternity leave, the employee is entitled either to return to the same position or an equivalent one, with working conditions that are not less favorable to her, and to benefit from any improvement in the employment conditions that she would have benefited of during her absence²⁶.

26 See Article 105/4 of the Labor Code

- **The Labor Code prohibits work for pregnant women 35 days prior to delivery and 63 days after birth. When a pregnant woman is carrying more than one child, the first period increases to become 60 days.**
- **If the woman decides at her own will to work after the 63 days period from the delivery, in agreement with the employer, in order for her to be able to nurse her baby, she has the right to choose, until the child reaches the age of 1, to:**
 - **(i) a paid leave of up to 2 hours, within normal working hours; or**
 - **(ii) working hours reduced by 2 hours, whilst enjoying the same full salary, as if she had worked during a regular workday.**
- **Maternity leave is covered by the social insurance scheme and is regulated by the relevant law; it is not an obligation of the employer. This is why social insurance contribution payments are so important.**

Moreover, the Code provides that when a pregnant woman, a woman that has just given birth and/or a nursing mother, decides to return to work after the 63-day period, but the position she once held is no longer deemed appropriate, as defined in the health and safety at work law, the employer takes the necessary precautions to ensure the temporary adaptation of working conditions and/or hours of work in order to avoid any risk to the employee and/or the child. If the adaptation of working conditions or hours is technically and/or objectively unfeasible or cannot be requested on reasonably justified grounds, the employer transfers the employee to another similar job position that suites her. If the transfer is technically and/or objectively unenforceable or cannot be requested on duly justified grounds, the employee enjoys the benefits under the applicable social insurance legislation for the entire period necessary to protect the safety and health of her and/or the child.

So, as a rule, pregnant women and young mothers cannot be assigned to

working at night if this is detrimental to the mother's and child's health. For journalists under these circumstances, there is no special regulation as such although Decision No. 634, dated 15.07.2015 applies, as it introduces health and safety at work measures for pregnant women and young mothers²⁷.

In order to ensure that women are not discriminated against due to their state of pregnancy or childbirth, the Labor Code has established that the burden of proof is with the employer for the latter to prove that the termination of employment (should it take place) had nothing to do with the pregnancy or childbirth²⁸.

- **When the maternity leave comes to an end, the journalist is entitled to return to the same position she once held or to an equivalent position, under conditions that are no less favorable to her, and to benefit from any improvement in employment conditions that she would have otherwise benefited from had she not been away.**
- **If a journalist is dismissed during the pregnancy period or when they have returned to work after childbirth, the Labor Code assigns the burden of proof with the employer who must establish the fact that the cause of the dismissal was not the pregnancy or the birth of the child ²⁹.**

In the event of adoption, the mother or father are entitled to leave, but in this case it refers to the first year of the birth of the child, as defined by the legislation on social insurance³⁰. Upon the end of the adoption

27 <http://www.vendime.al/vendim-nr-634-date-15-7-2015-per-miratimin-e-rregullores-per-prezantimin-e-masave-per-sigurine-dhe-shendetin-nepune-te-grave-shtatzena-dhe-nenave-te-reja-3/>

28 See Article 105/a of the Labor Code, extended via Law no. 136/2016.

29 SSee Article 105/a of the Labor Code, extended via Law no. 136/2016.

30 Among jurists there are a lot of discussions pertaining to the fact that the 1-year period from the date of birth is too short, as often the adoption procedure takes several months.

leave, the employee has the right to return to his/her workplace or to another equivalent workplace, with conditions that are no less favorable to him/her, and to benefit from any improvement of the employment conditions that they would have benefited from whilst they were away³¹.

Despite these provisions, the Labor Code provides no sanctions for employers who fail to respect the above provisions. This continues to remain a challenge for lawmakers. The only consequence provided by law is the invalidity of the termination of a work contract concluded during the period which the employee claims the right to receive income from social insurance scheme in the event of birth of a child or adoption. In this case, besides from the compensation of the damage, the employee has the right to request to be restored to his/her previous work position.

2.6 Termination of the employment contract by the employer and the rights of the employee in the event of termination of the contract without reasonable cause and termination of the employment contract in an abrupt and unjustified manner.

Regardless of its duration, the employment contract can be terminated all of a sudden by the employer if the following three conditions are met:

- a) the notification procedure for the termination of the employment contract is respected;
- b) the term of notice for termination of employment contract, when it is of an indefinite duration, is respected;
- c) there is a justified or reasonable cause for the termination.

Each of the above obligations must be met in order for the contract to be considered terminated in accordance with the law and if these obligations are not followed, there are consequence for each of the violations.

31 See Article 106 of the Labor Code.

a. Notice of termination of the employment contract procedures

Notwithstanding the reasons for the termination of the labor contract, the Labor Code provides for the employer's obligation when considering the termination of the employment contract, to schedule a meeting with the employee wherein to declare his intentions³². The employer must notify the employee in writing at least 72 hours prior to the meeting and talk to him/her, submitting the reasons for the decision made. In this discussion, the employer has an obligation to listen to the employee's attitude and explanations.

If after this time the employer is still of the opinion that the employment contract must be terminated, the employee shall be notified of this decision in writing within a period of 48 hours to one week after the meeting. In the written notice, the employer sets out the reasons for the termination of the contract, which relates to alleged reasons such as lack of ability, the employee's behavior or operational requirements of the enterprise.

An employer who fails to respect the procedure laid down in this Article is obliged to pay the employee damages equal to the salary of two months. The Code provides that the obligation to prove that the above procedure has been respected, rests with the employer and not to the employee.

- **The employer must notify the employee in writing at least 72 hours ahead of a meeting that it will have with the employee, setting out the reasons behind the decision taken.**
- **If after this time the employer again is of the opinion that the employment contract must be brought to an end, the employee shall be notified in writing of this decision within a period of 48 hours to one week after the meeting.**
- **An employer who fails to comply with the procedure laid down in this Article shall be obliged to pay the employee damages worth the salary of two months. The burden of proof rests with the employer.**

The above procedure is not applicable only in the following 2 cases:

³² See Article 144 of the Labor Code.

- (i) in the event of collective dismissal, a situation which is specifically regulated by the Labor Code;
- (ii) when the termination of the employment contract is resolved for breach of contractual obligations with a gross fault on the part of the employee, which the employer must justify in his decision for the immediate termination of the employment contract.

b. Notice for termination of an indefinite contract

In order for the termination of the contract of indefinite duration to be considered as regular it is necessary for it to respect the notice timeline, too.

Further to the probation period, the parties must respect the following terms in order to terminate a contract of an indefinite duration:

- (i) notice of two weeks when the employment has lasted for up to six months;**
- (ii) notice of one month, for a term of six months to two years;**
- (iii) notice of two months, for a term of two years to five years;**
- (iv) notice of three months, for a duration of more than five years.**

The notice period for the termination of the contract shall be extended, as appropriate, to the end of the week or to the end of the month. The same rule applies when the notice period is suspended during the period of disability for work, pregnancy or vacation provided by the employer. When one of the parties terminates the contract without respecting the notice clause, the termination is deemed to have been terminated as an abrupt contract.

The purpose of the notice is for the employee to have the opportunity to find another job in the meantime. This is also the reason why the 2015 amendments to **the Labor Code added the employer's obligation**

to pay the employee at least 20 hours of leave per week to seek a new job. It should be noted that the notice period for the termination of the employment contract is not only an obligation on the part of the employer, but also of the employee in case the latter is seeking the termination of the employment contract.

c. The justified cause and the reasonable cause for the termination of the employment contract

The Labor Code regulates two situations of unfair dismissal by the employer: a) the termination of the contract without reasonable cause³³ and b) Immediate unjustified termination of the employment contract³⁴.

Although these two cases appear to be similar to each other, both in terms of content and consequences, the difference between them is important as regards the accurate court application and the burden of proof in the process.

The Labor Code provides a definition of the reasons that are considered appropriate for the immediate termination of the employment contract by the employer and the causes considered unreasonable.

More specifically as **unreasonable (abusive) causes** for the termination of the employment contract, the law defines:

- a) the employee has claims arising from the employment contract;
- b) the employee has fulfilled a legal obligation;
- c) violates the prohibition of discrimination;
- d) for reasons related to the exercise by the employee, of a constitutional right, but not involving the violation of the obligations deriving from the employment contract;
- d) it is due to membership or non-membership in a union established in compliance with the law or due to his/her participation in trade

33 Article 146 of the Labor Code

34 Article 153 of the Labor Code.

union activity as per the law;

- e) the employee is not notified of the termination of the contract in writing after a minimum period of 48 hours.

Whereas, as **justifiable causes** for the termination of the employment contract under the principle of good faith, includes:

- (i) the employee has violated the contractual obligations through a serious fault;
- (ii) the employee has violated the contractual obligations through a trivial fault, repeatedly, despite a written warning by the employer.

In these cases, the burden of proof rests with the employer for the latter to prove that the termination of the contract was made as a result of a serious or mild albeit repeated violation for which the employee has given a written warning.

In the event the contract of employment is terminated by the employer without reasonable cause or unjustifiably, the employee is entitled to claim damages of up to 1 year worth of wages. The determination of the number of salaries is made by the Court depending on the reason for the termination of the employment contract and the level of the employee's damage, the employee's age and his/her real opportunities to reintegrate themselves back into the labor market, family circumstances and needs, moral damage caused, etc. Therefore, it is up to the employee to submit as many pieces of evidence to the Court in order to back up the claim for the maximum salary.

It is important to keep in mind that the claim for compensation resulting from the termination of the employment contract without reasonable cause, must be brought to court within 180 days from the date the notice period came to an end, and in the case of unjustifiable termination of the contract it must be brought to court within 180 days from the date of termination of the employment contract. If the employee finds out after the expiry of that period that the employer has terminated the employment contract for an abusive or unjustified cause, he is entitled to file a lawsuit within 30 days from the moment of disclosure of this fact. In this case, the burden of proof

rests with the employee for them to prove the date they became aware of the fact that the contract was terminated abusive or unjustifiably.

It should be noted that the case law shows that the courts have generally accepted the lawsuits filed by journalists against employers with regard to the illegal termination of employment contracts in many media cases, by recognizing to the journalist the right to compensation due to non-respect of the notice procedure, the term of notice and compensation for contract termination for abusive or unjustified reasons. Another real concern is the length of court proceedings. Often journalists find that the case if appealed by the opposing party.

Should the employer terminate the employment contract abruptly, please note that:

- **Failure to observe the procedure for notifying the termination of the contract gives you the right to claim damages in the amount of two gross monthly wages;**
- **Failure to observe the term of notice for the termination of an employment contract gives you the right to claim a salary of between 1 to 3 gross monthly wages, depending on the duration of the employment relationship.**
- **If your employer terminates your employment contract without any justified reasons, you will be entitled to compensation of up to 1 year of salary, which is calculated on the gross salary.**
- **The termination of the contract without reasonable cause from the employer gives you the right to reimbursement up to the monthly salary of a year. In such a case, consider proving to the court the concrete personal and family circumstances.**
- **Always claim a one-year salary compensation in Court, irrespective of whether the court may impose lower damages.**

- **Collect as much evidence as possible about your personal situation and experience from your employment contract (age, training, work experience, etc.), your family situation (Family Certificate, Data on Minor Children, Spouse/partner, etc.), your financial situation (credit data you may have, rent, children’s school fees, monthly expenses, etc.), as well as any evidence that may support your search for compensation in the amount of one year salary.**
- **Make sure that the claim is lodged within 180 days from the date of termination of the notice if the employment contract was terminated by the employer without reasonable cause, and within 180 days from the date of expiry of the notice period in the case of termination of the contract in an unjustified manner. If you discover such a cause after the expiration of 180 days, you may file a lawsuit in court within 30 days of the discovery of this fact.**
- **When filing a lawsuit to claim damages resulting from the termination of the employment contract, make sure you seek compensation for seniority at work, unpaid leave, unpaid social insurance, and any other labor-related claims, referred to gross salary.**
- **Seek the lawsuit that the decision of the Court of First Instance be given with immediate execution. If you have not requested it in the lawsuit, ask it during the trial, or at the end of it. Submit as many tests as you can about your financial situation to support this claim.**

It should be noted that the changes made in the Code of Civil Procedure in 2017 aimed at increasing the effectiveness and speed of civil judgments by setting strict rules regarding lawsuit, evidence, etc. In addition, the law provides for the possibility that when the claim relates to labor reparations, the claimant requests that the first instance verdict be issued with **immediate enforcement**. This means that even if the losing litigant lodges an appeal to the court of appeal, the first instance

verdict is executed immediately. The filing of such a claim as a rule must be presented in the claim, but the claimant has the right to submit it even during the trial or at its conclusion.

2.7 Gender dimension in the workplace

- *Gender Discrimination*

- *Sexual harassment*

Gender discrimination at work occurs when a person or group of persons is treated unequally at work due to his/her gender. Unequal treatment can affect how much men and women are paid, for instance when women are paid less than men for the same job. Discrimination can also occur in terms of career opportunities or vocational training as well as treatment at work. In addition to gender discrimination, women and men working in the media, especially on television, are also affected by age discrimination, as their on-air time is incorrectly linked to young age. The Labor Code, the Law on Protection from Discrimination and the Law on Gender Equality provide for the prohibition of discrimination and sexual harassment. In all cases, the law obliges employers to protect workers from discrimination and create appropriate conditions for equal treatment at work.

Article 13 of the Law on Protection Against Discrimination

- Obligations of the employer

1. The employer is obliged: a) to enforce, protect and promote the principle of equality and the prohibition of any kind of discrimination; b) to take the necessary precautions, including disciplinary measures, for the protection of the employees from discrimination and victimization **within one month of receiving notice**; c) to respond effectively and in accordance with this law to complaints received about discrimination committed by its employers, within one month of their receipt.

2. The employer is obliged to raise awareness about this law by

posting it in the public workplace environment and to enable its full comprehension either on his own or with the help of specialized entities.

• Article 12

Prohibition of discrimination

1. It is forbidden to discriminate against a person regarding his right to employment. Discrimination includes any distinction, restriction or exclusion based on the grounds referred to in Article 1 of this Law and which, inter alia, relates to: a) the announcement of vacancies; b) recruitment and selection of employees; c) treatment of employees in the workplace, including their treatment when setting or changing working conditions, remuneration, benefits and working environment, treatment related to professional training or during disciplinary process or dismissal or the termination of the employment contract; d) membership in trade unions and the opportunity to benefit from the facilities provided by this membership.

2. Any kind of harassment, including sexual harassment, by the employer against an employee or a job seeker or between the employees is forbidden.

3. The application of special and temporary measures, based on the reasons referred to in Article 1 of this Law, in order to accelerate equality in the area of employment, shall not be considered discrimination. The implementation of such measures may in no case imply making permanent the unequal dual standards, and special measures shall be discontinued when the objective of equal treatment and provision of equal opportunities is attained.

1. Every employee has the right to complain to the employer, to the Commissioner for Protection from Discrimination, or to the Court, if he/she believes that he/she has suffered discrimination. This provision does not limit the right of appeal to specific institutions, established in different sectors of employment.

2. During the review period of the complaint, the employee has the right to continue working under the terms of the contract.

3. The employee has the right to receive information at any time regarding the handling of the complaint as well as to obtain explanations for the decisions taken by the employer in response to his complaint immediately after the review.

4. Should the employer fail to take action to investigate and resolve the complaint of discrimination, the complaining employee has the right to stop working, without losing the right to salary, for as long as it is necessary to be protected from discrimination. The employee returns the salary received under this article if the alleged discrimination is not substantiated in a final form decision.

Sexual harassment in the workplace

Sexual harassment in the workplace is one of the most common types of gender discrimination, usually perpetrated against women and girls, and the media sector is not excluded from this discrimination. Sexual harassment in the news media industry is a persistent and global phenomenon. A 2013-2014 survey found that 48% of journalists had experienced some form of sexual harassment during their work. 83% stated that they did not report the incident. Because this issue is a taboo, journalists are no exception to the seldom overall reporting of sexual harassment in the workplace. The law protects them post-factum, which means after the harassment has taken place.

Is there something you can do to prevent this concern? Sexual harassment thrives in a culture of hushing and frustration, so it is recommended that journalists, along with other media colleagues, make constant efforts to secure a working environment free of such concerns. But how?

- demanding an internal regulation of the company where they work on ethics at work and the nature of discrimination
- proposing policies against discrimination and sexual harassment (when they do not exist and when, according to the law, they must be displayed in every working environment)
- organizing activities for the purpose of the implementation of the

articles of the labor code and the anti-discrimination law along with other colleagues

- organizing training sessions on labor legislation and regulations
- learning more about sexual harassment and better reporting

Sexual harassment is illegal. Everyone has the right to be free from sexual harassment regardless of gender, age or sexuality.

In international law, sexual harassment violates the right to gender equality, the right to life and the right to freedom. Sexual harassment also violates the right to freely practice any vocation, including journalism. This chapter gives advice to media employees or contractors, on how:

- to recognize their rights in the workplace;
- to know when you or someone else is being sexually harassed;
- to know which types of behavior are unacceptable;
- to know what action should be taken if you or someone else you know is being sexually harassed;
- to know what to do if you are accused of sexually harassing someone at work.

What is sexual harassment?

Sexual harassment is an unwanted and offensive sexual behavior that violates the dignity of a person and makes them feel degraded, humiliated, intimidated or threatened.

It is the person in the receiving end of this kind of behavior that decides whether it is unwanted or offensive, regardless of the intention of the other person who carries out the conduct.

Unwanted does not necessarily mean involuntary. Someone who is sexually harassed can accept some kind of behavior and can actively participate in it even though they call it offensive, especially if they are afraid or intimidated.

What do we mean by workplace?

The place of work is the area where the employee performs his/her job. In the context of the media, the workplace includes:

- space in the building: editorial office, filming site
- spaces outside the building: on the ground doing research and interviews
- online space - any digital platform used by employees to communicate with others about their work
- work-related events such as conferences, business trips, training sessions
- social events organized by your company

Who is most at risk and why?

Sexual harassment at work may occur to both men and women, though it usually occurs more to women. It can happen to people of the same or different gender. It may be carried out by executives, colleagues or other persons outside the editorial office, such as guests or interviewees.

SEXUAL HARASSMENT DOES NOT CONCERN SEX, BUT POWER

Understanding power abuse is essential to know who is bullied and why. Sexual harassment occurs when there is inequality in relationships, e.g. between a manager and a subordinate or between an older employee and a younger one.

What behaviors are considered sexual harassment?

Sexual harassment may take many forms. It can happen once or repeatedly. It can be overt which makes it easier to recognize or covert instead

Sexual harassment may be:

- Physical - when someone exerts physical pressure or force in order to have sexual intercourse with another person against his/her will.
- Verbal - when someone gives unsolicited sexual attention to another person through verbal or written comments and conversations.
- Non-verbal - when someone gives unsolicited sexual attention through interjections or actions at a distance.

Categories of sexual harassment at work

Sometimes the terms “unfavorable work environment” or “quid pro quo” are used to determine types of sexual harassment in the workplace.

An “unfriendly workplace” is one in which someone’s word or behavior is so extreme that the person being harassed feels alienated in the workplace, which renders it unpleasant, threatening or unsafe.

This type of sexual harassment tends to occur in the form of verbal or non-verbal harassment and sometimes even more severe forms of physical harassment. It does not need to be addressed to an individual. It may be offensive to someone who witnessed this behavior or that creates an overwhelming atmosphere for few or more people, for example:

- watching porn on your desk
- putting up lewd calendars or posters
- jokes or small talk of sexist or sexual nature

Sexual harassment that is ‘quid pro quo’ is when:

- a person is subjected to sexual harassment in exchange for employment benefits such as salary increases, promotion, important positions or keeping one’s job
- the employment of a person is affected by refusal or confrontation

with sexual harassment such as being dismissed from work, one either quits or is fired.detyra.

If you are sexually harassed, you should know that it is not your fault. Also know that you are not the only one.

The legal framework for protection against sexual harassment at work in Albania

Sexual harassment is an offense provided for by the Criminal Code.

- Article 108/a - “Conducting sexual behavior that violates the dignity of a person by any means or form, creating a threatening, hostile, degrading, humiliating or offensive environment, constitutes a criminal offense and is punishable by one to five years of imprisonment. When this offense is committed in collaboration, against several persons, more than once, or against children, it carries a sentence of three to seven years of imprisonment”.

Sexual harassment in the Labor Code

1. The employer respects and protects the personality of the employee throughout the course of the contractual relationship.
2. The employer should prevent any attitude that violates the dignity of the employee.
3. The employer is prohibited from taking any action that constitutes sexual harassment to the employee and does not allow such actions to be carried out by other employees. Sexual harassment is understood to mean any concern that significantly affects the psychological state of the employee due to sex. The employer is prohibited from harassing the employee through actions that are intended to or result in the degradation of working conditions to such a degree that can lead to the violation of the rights and dignity of the person, to the impairment of his or her physical or mental health or to the detriment of his professional future.

4. Any person who identifies or receives information from an employee whose rights may have been violated under this Article, and in particular whose physical and mental health or personal liberty constrained, which cannot be justified by the job description or the achievement of the specified objectives, must immediately alert the employer or relevant bodies when the person who has suffered the infringement is the employee him/herself.
5. An employee complaining of being harassed in one of the ways provided in this provision must present evidence to prove the harassment. It is then up to the person to whom the complaint is addressed to prove that his/her actions were not intended to harass, and to point out the objective elements that make it clear that his/her behavior did not constitute harassment or cause distress to others.
6. An employee complaining that he or she has been harassed in one of the ways provided in this provision or the person reporting an act of harassment must not be penalized for their reporting the case by being dismissed, discriminated against, or subjected to sexual harassment and/or other mistreatment.

Sexual Harassment in the Law on Gender Equality

Article 16 of this law sets out the “obligations of the employer in the employment relationship” in paragraphs 8 and 9: “the employer must take action to prohibit discrimination, maltreatment and sexual harassment against the employee. It is also required that the employer does not place the employee in a disadvantaged position or that the employer takes no disciplinary action against the employee who opposes or complains of discrimination, mistreatment or sexual harassment as well as the employee who testifies of discriminatory actions, mistreatment or sexual harassment committed by employers or fellow employees”.

Article 18 of this law defines the responsibilities of the employer for the protection of the employee from discrimination, mistreatment or sexual harassment, as follows: “Any discrimination, mistreatment or sexual harassment at the workplace by the employer and/or the employee

is prohibited. The employer, in order to protect the employee from discrimination, harassment and, in particular, sexual harassment, is obliged to: a) take preventive actions and establish disciplinary measures (sanctions) in the internal regulation for the prevention of harassment and sexual harassment against the employee, in accordance with this law; b) in case he/she becomes aware indirectly or via a complaint of an employee who claims to have been discriminated, mistreated or sexually harassed by another employee, after making sure of the veracity of the claim, takes appropriate organizational measures to put an end and prevent discrimination, mistreatment or sexual harassment and applies disciplinary sanctions; c) to inform all employees about the prohibition of discrimination, mistreatment and sexual harassment in the workplace. The employer includes on the collective labor contract rules to prevent discrimination on grounds of gender and those regarding the manner of resolving complaints made by persons affected by such acts. Any individual agreement or collective agreement, which is in contradiction with the provisions of this law, is invalid. The provisions of this law extend their effects to the self-employed, as well as to those who are employed for work carried out from home”.

Specifically, in this law we find the obligation of the employer, to protect the employee from sexual harassment. He must take immediate action to stop this harassment as soon as it is presented with the complaint. After reviewing the relevant complaint, the employer must take appropriate organizational and disciplinary measures.

Please find below some practical actions that you should take if you are sexually harassed at work:

1. Identify how you were sexually harassed

Remember that sexual harassment can be physical, verbal and non-verbal. You are the one who decides whether or not the behavior is unwanted and offensive.

2. If possible, let the perpetrator know that his behavior is undesirable. It is not expected that you confront your harasser.

Remember that YOU HAVE THE RIGHT not to be sexually harassed. It is not your responsibility to confront the harasser or stop the mistreatment by yourself. If you feel that your safety might be jeopardized, it is best not to confront the harasser. Instead, make a formal complaint or report it to the police.

If you feel you can let the harasser know that his/her behavior is undesired, you can:

- let them know in writing or verbally, informing them that their behavior is undesired,
- discourage resolutely the harassing behavior,
- remind the harasser that you are a professional and deserve respect.

Sometimes speaking directly to a person who exhibits such behavior would suffice to put an end to it. Should this be the case, make sure that the harasser will not pose any threat to you and your company.

3. Keep your workplace safe

It is your right to work in a safe environment. If you get harassed at work, it is your employer's responsibility to provide you safety from the harasser. However, if they fail to provide you with safety, or should you think they are not doing enough, these are some things you can do to protect yourself. Editorial offices are often times places where employees have to work in close proximity to each-other. When possible, avoid being alone with the person who harasses you. If you have to, make sure there are other people around you. If you feel that physical security is threatened, you should go to the police immediately.

4. Keep and collect evidence

Insignificant as sexual harassment might seem, it is important that you gather evidence to support your complaint.

Whenever is possible:

- save all the correspondence between you and the harasser, including:
- letters, emails, phone messages, social network messages, photos, audio, video, any other physical or digital material including screenshots.
- keep a record of all times that you were harassed

- date, time, place, circumstances, behavior details, who was involved, who might have been a witness, how he responded to behavior, how he felt after the incident.
- Save a correspondence of all of the appeal procedure
- Save the evidence in more than one place, including the equipment outside the workplace or databases in which you alone have access to.

NOTE: If for any reason you have not kept evidence, this should not stop you from making the complaint anyway.

5. Make a complaint

People who are sexually harassed, often feel humiliation, shame and self-blame. They may feel frightened or victimized, lose their jobs, or not trusted. These feelings may prevent them from speaking out or reporting their harassment.

Although it may be very difficult to talk about it, it is important that you report sexual harassment first and foremost for your own safety as well as for that of the others.

If the person who is harassing you does not stop, he may take your silence as consent and his behavior may persist or worsen.

Check if the company has a policy on sexual harassment or complaint procedure.

Regardless of whether or not such a policy exists, the steps to make a complaint are similar.

Steps to file a complaint

1. Get acquainted with the policies against sexual harassment in your company, if any
2. Familiarize yourself with the rights and laws in your country
3. Decide whether to file a formal or informal complaint

4. Clarify the procedures and deadlines to make a complaint by contacting the police or by asking around
5. Make the complaint in writing if possible, even though it may be of a verbal nature and save a copy
6. Send the complaint to the person in charge in your organization. This may include:
 - the most direct superior
 - another manager
 - human resources
 - security officer
 - the trade union representative
 - professional health services
7. Underscore that you demand confidentiality
8. Ask the employer to make possible that you do not have contact with your harasser
9. Provide him/her with any evidence you have
10. Tell your employer what kind of support you are looking for
11. Check constantly what is being done with your request

Informal Complaint Procedure

This procedure is followed when you think that confronting the harasser can end the harassment. It is in the form of a facilitated dialogue between the two by the company:

1. Informal Complaint
2. Receipt of an informal complaint
3. Solution
4. Tracking and Reliance

The formal complaint procedure

If the informal complaint did not stop the harassment or if you want serious action be taken against the harasser, the following are the steps that make up a relevant process:

1. Lodging a formal complaint
2. Receiving a formal complaint
3. Investigation
4. Decision
5. Response

The consequences for the harasser:

- Official warning
- Reassessment of their performance
- Transfer
- Removal
- Suspension
- Dismissal
- Unemployed (negative or no reference letters from the employer)
- Indemnification
- Jail

6. Ask for help

Sexual harassment can affect you emotionally and physically, and, as such, your ability to excel at work. Therefore, you may be in need of help and only you can know what kind of help you need and how long for.

Professional Support:

- paid/unpaid leave

- part-time work or fewer hours at work
- split workload
- work from home

Mentoring

- support for return to work
- systematic monitoring
- police
- health care
- psychological and advisory service
- legal aid
- family and friends
- financial assistance

7. Resort to a Court of law

If the company you work in does not handle your complaint properly, you may refer the case to court. It is important that you have representation, in other words a lawyer with the right expertise.

Someone else is sexually harassed at work - what should I do?

- Remember that your employer is completely dependent on being aware of cases of sexual harassment if you have to do something with it. If you are a witness to sexual harassment at work or a colleague tells you that s/he is sexually harassed you may:
 - Encourage them to take the matter further and report the incident
 - Report it in writing preferably to either a relevant person or to a person with senior position in your organization.



THE PROTECTION OF JOURNALISTS' RIGHTS AT WORK PLACE– CASE STUDIES

1. Decision No. 7492, of 28.09.2016, Tirana District Court

Journalist A.E. vs TV KLAN Ltd.

Lack of written employment contract, unexpected termination, disregard of procedure, failure to observe the notice deadlines by the employer

Journalist A.E. had worked as an international news reporter in the national TV channel Klan Ltd. since 16.04.2015. The journalist was not provided with a written contract, but the employer had issued her an attestation for the remuneration. On March 31, 2016, the employer abruptly terminated the working relationship with the reporter without providing any supporting reasoning, but when the labor booklet was handed over, the journalist noticed the wording ‘quit at her own will’ written across it.

The journalist filed a lawsuit in court, claiming that not only did she not want to quit her job but neither had she committed any serious or trivial violations. During the trial, the journalist argued that the real cause for her dismissal was a debate of a professional nature that she had had with the editor-in-chief at the newsroom meeting, during which, according to the journalist, he had asked her to include in the news item some sequences that were completely irrelevant to the news being broadcast. The journalist claimed that the editor-in-chief verbally informed her of the dismissal following her opposition. The next day the journalist had showed up for work but the editor had not allowed her to attend the morning meeting, having assigning her task to another colleague. The

journalist had asked to communicate with the director of information in order to become informed about the reason for her termination of employment but the latter had refused to meet her.

The defendant claimed that the termination of employment had been affected as a result of serious violations committed by the journalist, as she had acted unethically towards her direct superiors, to the prejudice of the image of the respective media. To prove this claim, the defendant had submitted the minutes of a meeting held on 31.03.2016. Whereas the explanation given for the ‘quit at her own will’ claim was so as to not to stop the journalist from gaining future employment.

The Court found that although there was no written contract of employment, the employment relationship was proven to exist between the parties. Likewise, the court considered that the contract of employment had been terminated by the defendant in violation of the law, as there was no reasonable cause for the termination of the employment contract. The court also found that the ‘quit at her own will’ label and the minutes of the meeting submitted by the defendant so as to prove the journalist’s alleged grave ethical violation were fake, and that even if the debate transcribed in the minutes were real, it would not constitute a serious breach of contractual obligations, so as to sufficiently justify the termination of the employment relationship. Therefore, the court decided to accept the indictment and pay damages to the journalist for the employer’s disregard for termination of the employment contract, the notice clause and the termination of the contract without reasonable cause.

2. Decision No. 2677, of 15.03.2013, Tirana District Court

TOP Channel Ltd. vs journalist A.K.

Employment contract of a limited duration, termination by the journalist before its expiration

The plaintiff, that is a media company, had signed a 9-month contract with the journalist as the host of a television show between 13.09.2011 and 25.06.2012, for which the journalist was paid on a weekly basis. On

24.10.2011 the journalist informed the employer about the termination of the employment contract. The contract provided for the right of the parties to unilaterally terminate the contract after the expiration of a 6-month deadline, whilst informing the other party 2 weeks in advance. In addition, the contract stipulated that if the journalist would terminate the contract ahead of the deadline, he was obliged to pay the media company a penalty of 5 monthly wages.

Upon notification of the immediate termination of the employment, the media company filed a lawsuit, requesting that the journalist pay for the damage caused by terminating the contract prior to its end date to the value of 5 monthly salaries, as per the penalties provided for in the contract. The employer explained during the trial that this penalty had been placed in the contract so as to avoid journalists quitting half way through shows, as this would cause major disruption to the respective media.

Although the Court of First Instance accepted the lawsuit, finding that the journalist had indeed terminated the employment contract unexpectedly without respecting the deadline provided for in the contract, the Court interpreted the above contract as a contract of employment rather than as a service contract. With this interpretation, the court did not accept the application of the criminal sanction that would oblige the journalist to pay the value of 5 monthly salaries as a sanction for non-compliance with the terms of the contract, but applied Article 156 of the Labor Code instead, which provides for the employee's obligation to reimburse the employer a one week salary when the employee does not commence work on the due date without any good cause.

What followed was that the Court of Appeals annulled the above decision, ruling out the lawsuit. In its reasoning, the Appellate Court, just as the Court of First Instance had done, considered the contract between the parties a contract of employment, noted that the reporter had notified the employer of the contract termination ahead of time, therefore respecting the contract proviso of the possibility of unilateral termination of the contract after 6 months, informing the other party 2 weeks in advance. The Court of Appeals argued that this aspect of the contract

was respected by the journalist, for he had not terminated the contract out of the blue but had given the latter time to replace him with another journalist.

3. Decision no. 8065, of 03 December 2017

A.T. v. TV BALLKAN Ltd.

Termination of contract by the employer with no reasonable cause, failure to pay social insurance on the basis of real wage, several months of unpaid wages.

The journalist A.T. had entered into a working relationship with TV Ballkan Ltd. since 05 February 2016, when she was hired as Director of Information. On August 18, 2016, the employer informed her that she had to appear at the Company's headquarters on August 23, 2016 to become informed of the employer's decision to terminate the employment contract and to state her position on the case. Meanwhile, on August 18, 2016 the journalist was asked to hand over the equipment, and a subsequent inventory was made. Four days after the meeting of August 23, 2016, the employer informed the journalist about the termination of the employment contract on the grounds of "poor performance at work" and "failure to meet the objectives and expectations of the employing company".

As she was preparing to file a lawsuit, the journalist found that from the moment she had been hired, the employer had paid social insurance contributions based on the minimum monthly wage and not on the basis of her real wage. A.T. also found out that between February and July – that is before she was fired – she had not received remuneration, though later she found that an amount of ALL 22,000 was paid to her bank account for these months, although this was not her real wage.

The journalist filed a lawsuit claiming compensation for the immediate termination of the labor contract, because, according to her, the contract had been terminated due to her investigations on the case of the death of a child in the Sharra Landfill site in Tirana. She asked the court that the employer was forced to pay the difference of social insurance not

covered for the past periods, the difference of the wage received with the full wage she was entitled to for several months, as well as to pay of unused leave.

The Court accepted the plaintiff's claim for payment of the unpaid wage based not only on the attestation issued by the applicant herself, but also on the argument that it was clear that she, as the Information Director, could not be paid the minimum wage. In addition, the Court accepted the applicant's claim for compensation of two weeks of unused annual leave. However, the Court did not accept the applicant's claim that the real grounds for the termination of her contract had been the investigative chronicle she had been involved in, stating that such claim could not be proven by the applicant.

An appeal has been lodged against this decision with the Tirana Court of Appeal. It shall be of great interest to see the position of the Court on the case and its ruling on whether the employment contract had been terminated due to the investigative news item the journalist. A different stance of the Court of Appeal would represent a very positive development.

4. Decision no. 4053, of 28 March 2014, Tirana District Court

Case of E.Xh. v. ALSAT TV Ltd.

Unexpected termination of labor contract by the employer with no reasonable cause, failure to observe the notice deadline, unpaid wages

Journalist E.Xh. had been working as a show host at ALSAT TV Ltd. since July 03, 2012. On May 1, 2013 he was given a disciplinary sanction, as he was requested not to invite the Head of the Union of Journalists on the show of May 03, 2013 (the International Day of Press and Freedom of Expression). The journalist refused to execute this order, as the Union leader had already received an invitation to tackle precisely the problems journalists were faced with and their concerns related to timely payment of their wages. On May 1, 2013 the journalist was informed about the decision to end the show and, on May 4, 2013, about the date of the meeting on the notification of termination of the employ-

ment contract. After the meeting, which took place on May 6, 2013, the journalist was informed about the termination of the employment contract, on the grounds that he had committed repeated errors in the workplace, which amounted to such severity that did not allow for the continuation of the employment relationship.

E.XH. filed a lawsuit seeking indemnification for the termination of the employment contract on an abusive ground, because the real reason for terminating the employment contract was his invitation to the head of the Journalists' Unit to address the issue of wages of journalist, compensation for non-compliance with the notice procedure and deadline, and payment of the unpaid wages.

The Court did partially admit the lawsuit, ruling that the notice procedure was respected, although the deadline for notifying termination of the contract was not observed and the contract was not terminated based on legitimate grounds. In its Decision the Court has reasoned that in the course of trial, it was proven that the real cause of termination of the employment contract was the interview of the journalist with the head of the Union of Journalists, and ruled on a maximum remuneration for the applicant. For coming up to this conclusion, the Court was also based on the fact that up until the trial date, the respondent had failed to pay the wage of several months to the applicant. Part of the journalist's case was also the fact that the employer had failed to pay social insurance on his account. The journalist dropped this claim, while the Court decided to dismiss the case.

5. Decision no. 655, of 04 February 2015, Tirana District Court

Case of A. M. v. Top Channel Ltd.

Termination of employment contract unexpectedly and with no reasonable cause, disrespect of procedures of termination of employment contract, failure to observe the notice deadlines.

Journalist A. M. has served as a news speaker for the Top Channel Ltd. news editions from July 1, 2004. On 15 July 15, 2014, Top Channel informed the journalist about the immediate termination of the employ-

ment contract, on the grounds of having had problems with the reading of news for a continuous period and after having repeatedly received verbal remarks from his bosses.

The applicant filed a lawsuit claiming that the contract had been terminated by the respondent in violation of the law. After being asked by the Company to resign and after having refused to comply, on July 15, 2014, the journalist was handed over the document of June 27, 2014, through which the respondent informed him that he had decided to terminate the journalist's individual employment contract. Regarding the alleged violations, the journalist has claimed not only that they were not true, but also that he never had been given any disciplinary measure in writing, nor had he been told of any flaws on his part by his employer.

The First Instance Court admitted the respondent's claim that the employment contract had been terminated without reasonable cause, without respecting the notification procedure and without respecting the deadline for its notification. According to the Court, apart from damages for these violations, the respondent was also recognized the right to seniority at work.

This Decision was upheld by the Tirana Court of Appeal with its Decision no. 1169, of 17 May 2016.

6. Decision no. 5700, of 12 May 12 2014

Journalist D.SH. vs. Alsat Association Ltd.

Unexpected termination of collective contracts, without justified cause, wages unpaid for several months, failure to comply with the notice deadline and work contract termination procedure.

The Claimant, D.SH., had been employed by the respondent for 8 years as a journalist in the Information Department. On 28 March 2013, D.SH. was informed of the termination of the employment contract due to her position having been made redundant. Upon notification on 19.6.2013, the respondent had notified the plaintiff in writing of a meeting to discuss the continuation of the employment contract. The

meeting between the litigants on 24 June 2013 did not take place. The minutes of the meeting held were submitted as evidence. On 28 June 28 2013, the plaintiff was notified of the termination of the employment with effect from 28 September 2013. D.SH. filed a lawsuit claiming that by following the procedures, the respondent had hidden the fact that they had carried out a collective dismissal.

The First Instance Court accepted the plaintiff's claim that the termination of the employment contract constituted in fact collective dismissal, as the employer had dismissed more than 10 employees at the same time. On the basis of this position, the Court acknowledged that the respondent had respected neither the collective dismissal procedure, nor the notification of the employee representative organization or, in the absence of it, had not provided the employees with the opportunity to participate in discussions with the employer. The Court held that the respondent did not even make public announcements through posters that had to be displayed in public places for the commencement of the collective dismissal procedures, nor for the dismissal reasons, the number of employees to be dismissed, and the time during which this dismissal was to take effect, and that neither was the Ministry of Labor and Social Affairs informed about it. This decision was left in force by the Tirana Court of Appeal.

7. Decision no. 9627, of 30.11.2016, Tirana District Court

Journalist K.B. vs the Media Vizion Ltd. Trade Organization

The unexpected and unjustified termination of the employment contract, non-compliance with the contract's termination clause, failure to observe the notice clause, remuneration for seniority at work, payment of unpaid annual leave.

Journalist K.B. had worked for Media Vision since 2009. Between 2009-2010 she worked without a contract of employment, and was not paid social and health contributions. From 04.11.2010 until November 2015, K.B. worked as a journalist. On 22.04.2015, a disciplinary measure was issued against the plaintiff: 'Warning regarding termination of employment'. On 25.11.2015, the employment contract was terminated

through a verbal order communicated by the Director of the Information Department of the company as K.B.'s line manager. According to the journalist, the reason for the termination of the contract was a news item prepared by the plaintiff, which the respondent claimed to be in complete violation of journalistic ethics. The Respondent had submitted evidence of another decision taken on 26.11.2015 for the disciplinary measure of 'Warning regarding termination of employment' and a decision dated 07.03.2016 to terminate the Individual Employment Contract between Media Vision Association Ltd and the journalist, K.B., for serious and successive violations of contractual obligations.

The journalist had taken the employer to court claiming that the employment relationship had been terminated unexpectedly and unjustifiably on 25.11.2015, in disregard of the procedure and deadline for the said notification.

The First Instance Court dismissed the lawsuit, arguing that the plaintiff had failed to prove that the contract was terminated on 25.11.2015 as the claimant claimed. Based on this conclusion, the Court found that none of the other claims were grounded either.

On 19.07.2017, the Tirana Court of Appeal found – by way of decision no. 1854 – that the defendant neither had talks nor had given the opportunity to the employee to state her position. The Appeals Chamber underscored that for as long as the financial relations with the journalist had been terminated since December 2015, the documentation submitted by the defendant could not have been accurate and the plaintiff's labor booklet had been fictitiously filled out. Likewise, the Court of Appeal deemed that the contract was terminated without reasonable cause since the journalist had not violated any contractual obligations.

8. Decision No. 8965, of 19.09.2014, Tirana District Court

Journalist A.B. vs Focus Group Ltd.

Unexpected termination of the employment contract by the employer without reasonable cause, disregard for both procedure and notice provision

Journalist A.B., the employee, had been working for the respondent since 2006 initially as a journalist and then as the editor-in-chief of the *Gazeta Shqiptare* newspaper, which is owned by the respondent. On 22.05.2011, the journalist was informed over a telephone call by the Director General of the respondent of the termination of her employment with immediate effect, therefore bringing their financial relations to an end right there and then. As of 01.06.2011, the journalist was removed from her position as director of the newspaper where she worked without being given any reason, notice or explanation. On 27 June 2011, the journalist filed a lawsuit claiming compensation for damages caused as a result of the unexpected termination of the employment contract, failure to observe the proper procedure or to provide the necessary notice. The defendant claimed during trial that the plaintiff had left the job on her own volition, since she no longer showed up for work for no apparent reason. This was the official reasoning the defendant had written across the plaintiff's labor booklet.

The First Instance Court found that the plaintiff had not terminated the employment relationship as she had claimed, but as per the reasoning given in the labor booklet, in other words that she had left on her own free will. The Court stated that this was not about the unilaterally and unjustified sudden termination of a legal agreement by the respondent but the termination of the contract instead, due to the plaintiff simply quitting. Despite this conclusion, the Court recognized the plaintiff's right to compensation for non-compliance with the procedure and terms of notification.

This decision was annulled as contradictory by the Tirana Court of Appeal, which by decision No. 1500, dated 21.06.2016, returned the case for retrial to the First Instance Court. A recourse has been made against the decision and the file is currently in the High Court.

IV

RECOMMENDATIONS

1. Ask your employer to sign your contract before you enter into an employment relationship, and read the contract text carefully.
2. Your employment contract must contain, inter alia: general job description, if the contract is of definite or indefinite duration; the length of the working day, the length of paid holidays, the exact amount of your salary, the means and date the payment is to be made, the payment of overtime hours, etc. The employment contract may only be changed by agreement by both parties.
3. The employer must pay social and health insurance. Do not agree to work unless these contributions are paid on a regular/monthly basis, or your work will be considered informal (will not be legally documented).
4. Salaries should be paid only through the banking system. The salary may also be paid by bank check, postal check or payment order when such payment is necessary due to special circumstances. Do not accept cash payment.
5. The normal duration of the working week is no more than 40 hours. The duration of annual leave is not fewer than 4 calendar weeks per year.
6. For any overtime you may have had to put in that has not been compensated by leave days, the employer must pay you the normal salary and an additional of no less than 25 percent of it, unless otherwise provided for in the collective contract, in case there is one.

7. Your weekly time off shall be no less than 36 hours (one and a half days), of which 24 straight hours. Weekly time off includes Sunday and shall not be paid.
8. Pregnant journalists are prohibited from working 35 days before delivery and 42 days after birth.
9. In your work environment, you should not be subjected to mistreatment or sexual harassment by your employer or other employees. The employer is obliged to take all necessary steps to stop these forms of harassment that violate the dignity and physical, mental and moral integrity of journalists.
10. The employer shall consider your terminating the contract without justifiable cause if this takes place following your claims arising from the employment contract, regardless of the fact that you have simply met a legal obligation if committed for reasons of discrimination, motives related to the exercise by an employee of a constitutional right, which does not lead to the violation of the obligations deriving from the employment contract, etc.
11. The Labor Code also provides a range of other rights, including guarantees of immediate and unjustified termination of the employment contract or failure to comply with the procedures and legal time limits for dismissal.
12. Contact the Commissioner for the Right to Information and Protection of Personal Data if the public authorities fail to provide you with the requested information.
13. Refer to the Commissioner for Protection from Discrimination if you have been discriminated against or treated unequally in terms of salary, working conditions or enjoyment of other rights.
14. Should you believe that your rights have been violated, you can take your case to the Court of the Judicial District either you reside in, or your employer or your usual work base is, so as to claim indemnity.



APPENDIX

Appendix 1

Contact the following institutions to seek assistance:

Albanian Helsinki Committee

For any information pertaining to your rights or to request FREE legal aid/defense, do not hesitate to contact the Albanian Helsinki Committee. After examining your case and the legal avenues to address independent institutions/courts, the AHC may make a lawyer available to you free of charge.

You are encouraged to give your contribution to yourself and others by creating positive models of court representation.

The Albanian Helsinki Committee ensures that confidentiality and anonymity are maintained at all times, whilst providing court representation free of charge.

Contact us:

Albanian Helsinki Committee

Mobile: 0694075732

Tel: ++35542233671

email: office@ahc.org.al

website: www.ahc.org.al

Rruga Brigada VII,
Pallati Tekno Projekt,
Shkalla 2,
Apartamenti 10,
Kati 6
Tirana/Albania

The Commissioner for Protection from Discrimination

The Commissioner for Protection from Discrimination is a specialized and independent institution whose task it is to ensure in practice equality before the law and effective protection against discrimination for all citizens.

A complaint to this institution is submitted no later than 3 years from the occurrence of the discrimination or no later than 1 year from the injured party having become aware of this fact. Complaints on discrimination can be made by completing the on-line form, or by sending a letter in writing to the Office of the Commissioner for Protection from Discrimination. In the event the Commissioner's decisions are not enforced, the Commissioner may levy a fine on the said institution.

Complaints can be filed with the Commissioner for Protection from Discrimination at the following address:

Rr: "Sami Frashëri",

Nr 10,

Tirana, Albania

Tel: 04 2 431 078

Website: www.kmd.al

Tirana, Albania

The Commissioner for the Right to Information and Protection of Personal Data

The Commissioner for the Right to Information and Protection of Personal Data is a specialized and independent institution whose duty it is to ensure the right to be informed, and the protection of the personal data of every citizen.

In the event of a request for information, state institutions must reply within 10 working days from the submission of the request. In case of a lack of response or an incomplete response, citizens can appeal to the Commissioner within 30 days from the expiration of the 10-day deadline by completing the online complaint form, by phone or through written complaints.

In case the Commissioner finds a violation of the right to information by the said institutions, in addition to the obligation to inform or submit relevant documents, the Commissioner may impose a fine on the responsible official.

Complaints may be filed with the Office of the Commissioner for the Right to Information and Protection of Personal Data at the following address:

Rr. “Abdi Toptani”, Nd. 5,

Kodi postar 1001, Tirana

E-mail: info@idp.al

Tel: +35542237200

Fax: +35542233977

Green line: 08002050

<http://www.idp.al/ankesa/>



Appendix 2

MODEL FOR EMPLOYMENT CONTRACT

TEMPLATE FOR INDIVIDUAL EMPLOYMENT CONTRACT OF AN INDEFINITE DURATION

Today, in _____, on _____.____._____, based on the Labor Code and Decision of the Council of Ministers No. 358, of 25.03.1996 ‘On the regulation of working time in the written and spoken press’, this individual employment contract is concluded between the following parties:

EMPLOYER: _____.

EMPLOYEE: Mrs./Mr. _____.

Article 1

Purpose of the Contract

- 1.1. Through this contract the employer agrees to provide the employee with the work described in Article 2 of the Contract in exchange for the remuneration and the employee agrees to perform this work under the terms set forth in the contract.
- 1.2. Issues that are not foreseen in this contract are regulated by the provisions of the Labor Code.
- 1.3. This employment contract may not contain less favorable condi-

tions for the employee than those provided for in the Labor Code.

Article 2

Description of work performed by the employee

- 2.1. The employee undertakes to carry out the following tasks during the working time _____.
- 2.2. Employee's work will be checked by _____.
- 2.3. Work will be performed by the employee at _____.

Article 3

Working time

- 3.1. The normal daily working time is 8 hours a day bar cases provided for in Article 4 of this contract.
- 3.2. The normal weekly working time is 40 hours a week bar cases provided for in Article 4 of this contract.
- 3.3. The employee undertakes to carry out his/her work during ____:____ - ____:____. hours

Article 4

Overtime

- 4.1. When despite all actions made by the employer, it is necessary for the employee to work overtime, the employer may request it from the employee, while respecting the provisions of this contract and those contained in the Labor Code. A request for overtime work will be considered the employee's notice by the employer via telephone, e-mail, or any other means.

- 4.2. Overtime hours cannot be more than 8 hours per week and 200 hours per year.
- 4.3. For every working hour performed from 19:00 hrs to 22:00 hrs, the employee will be paid at the value of ____% of the daily salary or will be compensated with ____% rest time within ____ months.
- 4.4. For every working hour from 22:00 hrs to 06:00 hrs the employee will be paid ____% of the daily salary or will be compensated by ____% of the leave time within ____ months.
- 4.5. Evidence of overtime hours will be made as follows: _____.

Article 5

Wage

- 6.1. The monthly salary of the employee for the work performed will be _____ gross payment.
- 6.2. The monthly salary will be paid to the employee by the employer on the _____ day of each month, in bank account no. _____.
- 6.3. For every day the salary of the employee is delayed, the employer is obliged to pay the employee ____% of the unpaid wage as a penalty.

Article 6

Compulsory contributions

- 6.1. The employer is obliged to pay the compulsory contributions derived from the salary of the employee.
- 6.2. The employer will deduct from the employee's gross salary, income tax on salaries, social and health insurance contributions, to the extent provided by the legislation in force.

Article 7

Days of weekly and festive holidays

- 7.1. The employee is entitled to have some days off in a week.
- 7.2. For the work performed on a holiday or on official holidays, the employee is compensated with an additional 25%, or a time off equal to the duration of the work performed, which is given _____ weeks/days before or after the performance.

Article 8

Annual leave

- 8.1. The employee has the right to four weeks of paid annual leave.
- 8.2. The employee can complete the annual leave as a whole or at specific times, with preliminary planning according to the procedures established by the employer.
- 8.3. In order to claim annual leave, the employee must follow the following procedure: _____

Article 9

Maternity leave

- 9.1. Pregnant women are prohibited from working 35 days before delivery and 63 days after giving birth. When a pregnant woman is carrying more than one child, the first period mentioned above is extended from 35 to 60 days.
- 9.2. Income received in the event of a maternity leave is determined by the law on social insurance.
- 9.3. After the 63-day postpartum period, it is the mother that decides if she wants to go back to work or whether she wishes to benefit from the social insurance scheme.
- 9.4. Should the woman employee choose to return to work after the 63-

day post-birth period, she has the right to opt for the following, in agreement with the employer, for breastfeeding purposes, until the child is under 1 year of age:

- a) a paid leave of 2 hours, within normal working hours; or
- b) working time, cut short by 2 hours, upon the same remuneration, as if she had worked normal working hours.

9.5. Upon termination of maternity leave, the employee has the right to return to the workplace or an equivalent job, under conditions that are no less favorable to her, and to benefit from any improvement in employment conditions that she would have benefited from had she been at work all along.

Article 10

Duration of the employment contract

10.1. This contract takes effect from _____._____ and is of an indefinite duration.

10.2. Any change to its terms shall take place only upon a written agreement of the parties.

Article 11

Termination of the contract

11.1. This contract can be terminated upon the agreement of the parties.

11.2. The employee may unilaterally terminate the contract when:

- a. the employer does not regularly pay the employee's salary for ____ months in a row;
- b. the employer does not _____;
- c. the employer _____;

- 11.3. The employer may unilaterally terminate the contract when:
- a. The employee commits serious violations, which do not allow for the continuation of the employment contract. For the purpose of this contract the following shall be considered serious violations: _____
 - b. The employee repeatedly makes non-serious violations, irrespective of written notice of the employer. For the purpose of this contract, the following shall be considered non-serious violations: _____.

Article 12

Settlement of disputes

- 12.1. Disputes arising from the implementation of this contract shall be settled by agreement between the parties.
- 12.2. Should the parties fail to settle the dispute with consent, the competent authority for the dispute resolution shall be the Court of the Judicial District _____.

The contract is drafted in the Albanian language in 3 (three) original copies, 2 (two) of which for the Employer and 1 (one) copy for the Employee.

After being read by the parties, the contract was understood by them and signed on their own free and full will.

EMPLOYEE

EMPLOYER

