

St.Mary's University College
Faculty of Law

LL.B Thesis

The Ethiopian Civil Servants'
Freedom of Association

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of Association

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Table of Contents

Title	Page
Acknowledgment	
1. Introduction	1
Chapter One	
1. Historical Background of Freedom of Association as Fundamental Human Rights	7
1.1 Definition of Freedom of Association	7
1.2 Historical Background of Freedom Of Association As Part of Human Rights	8
1.2.1 ILO and Human Rights	9
1.2.2 U.N. Chapter and Human Rights Conventions	11
1.2.3 U.N. Chapter	12
1.2.4 Universal Declaration of Human Rights	12
1.2.5 Human Rights Covenants	14
1.2.6 African Chapter on Human and Peoples' Rights.....	16
Chapter Two	
2. Freedom of Association and ILO	18
2.1 Freedom of Association and ILO Conventions	18
2.2 Public Servants Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	20
2.3 Public Servants and the Right to Organize and Collective Bargaining Convention 1949 (No. 98).....	24

Chapter Three

3. Freedom of Association at the Present

Ethiopia legal System	28
3.1 FDRE Constitution and Fundamental Rights.....	28
3.2 The FDRE Constitution and Freedom of Association	30
3.3 Significance of Freedom of Association	34

Chapter Four

4. Conclusion and Recommendations	37
4.1 Conclusion	37
4.2 Recommendation	40

I. End Note

IV. Bibliography

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Statement of Declaration

I here by declare that this paper is my original work and I take full responsibility for failure to be observe the conventional rules of citation

Name:- Zewdu Tilahun.

Signature _____

ST. MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW

L.L.B THESIS

IMPLEMENTATION OF SOCIAL COURTS LEGISLATION
IN THE YAYA GULELE WEREDA

BY: YESHI BENTI

ADDIS ABABA, ETHIOPIA

JULY 2008

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ST.MARY'S UNIVERSITY COLLEGE

FACULTY OF LAW *LL.B THESIS*

**THE RIGHTS OF EMPLOYEE UP ON TERM
TERMINATION OF CONTRACT UNDER
PROC377/96**

THE LAW AND PRACTICE

By Woinshet Mengistu

ID.NO 3322/97

ADDIS ABABA

ETHIOPIA

JULY, 2009

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By:- Woinshet Mengistu

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Table of content

Acknowledgement	I
Introduction	II
Chapter one	
1. Contract of Employment	1
Definition of contract of employment - - - - -	1
Elements of contract of employment - - - - -	1 - 4
Duration of employment contract - - - - -	4 - 6
Unique characteristics of employment of contract - - - - -	6 - 11
Chapter two	
2. Termination contract of employments	12
Termination by the operation of the law - - - - -	12 - 15
Termination by agreement of the parties - - - - -	16
Termination by employer - - - - -	17
A. Termination without notice - - - - -	17 - 18
B. Termination with the notice - - - - -	18 - 19
Termination by worker - - - - -	19 - 20

CHAPTER THREE

3. The Rights of the Employee upon the Termination of Contract	21
3.1 The rights of the employee up on unlawful termination of the contract	21
3.1.1. Unlawful termination of employment contract when the Termination has unlawful Contract.	22
A. Re instatement	22 - 23
B. Compensation	23 - 24
3.1.2. Unlawful termination of contract of employment where there is procedural fault	24
3.2. The rights of the employee upon lawful termination of the contract	25
A. A employment certificate	25
B. Payment for the annual leave that has not been taken	25
C. Severance pay	26 - 29

CHAPTER FOUR

4. Conclusion and Recommendation.	30-32
4.1. Conclusion.	30-31
4.2. Recommendation.	32
4.3 Bibliography	33- 34

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Introduction

Among the contracts, contract of employment is one. This contract governs the relation between employer and the employee. The legislative development of federal democratic republic of Ethiopia witnesses that the working environment of the industry should be peaceful and suitable in contributing the economic activities of the country through legislating laws that can protect the rights of both employee and employer save their duties.

In this paper I will throw a light up on basically about the remedies available poor the employee up on termination of the employment contract for the sake of spring ball the paper is divided into three chapters.

The first chapter is devoted for discussing general points about contract of employment, the second chapter provide about termination of contract of employment, the third chapter puts the remedies available under proclamation 377/96 with practical analysis and the last chapter provides conclusion and recommendation.

Chapter one

1. Contract of employment

Contract of employment governs the relation between the employee and employer as the relation between the employee and employer emanates from contract hence, general provisions relating to contract gets applicability to some extent. Furthermore, where the Labor Proclamation provides special provisions to fill the gap in the general provisions of contract, the latter has direct applicability as the legal maxim goes “the special derogates over the general as the legal maxim introduces.”

Definition of contract of employment

According to Art 4(1) of proclamation No 377/96, /A/ contract of employment is a contract that is established on employment relation which is considered as contract where a person agrees directly or in directly to perform work for and under the authority of an employer for a definite or indefinite period or piece work in return for wage. (Proc. 377/96 Art. 4(1)).¹ From this definition, one can understand that as contract is a basic element to create employment relation, no one can be forced to enter into contract of employment without his or her consent.

1.2 Elements of contract of employment

There are certain general requirements that any contract should fulfill in order to say a contract is validity concluded. These general requirements are called elements of contract. According to Article 1678 of the Ethiopian civic code capacity, consent, object and form are the legal requirements for validity of a contract. The details are provided as here under.

1. Labour Proclamation Art 4/1/ Neg Gaz 10th year No12 Proclamation No377/96

A. Capacity

Capacity here means competence of the parties to enter into valid contract. Here the parties who entered into contract of employment must have capacity. Instead of trying to identify what capacity is it is better to identify what incapacity is. Incapacity is generally categorized in to two: general and special. The former relates to age and mental conditions while the latter is related to status.²

From the very nature of general incapacity, a person who had not attained 18 years of age can't conclude a contract including contract of employment since he has no capacity. Nevertheless this general rule provided under the Ethiopian Civil Code is not applicable to determine the capacity of an individual in contract of employment.³ because a person who has attained a full age of 14 can validity conclude contract of employment as a worker (proc. 377/96 Art.89 (1)⁴ One may think that there is a conflict between the legislations of the Civil Code and the Labor Law. The conflict is resolved by the use of technique of interpretation of legal provision, i.e, applying the legal maxim special pervious over the general. Hence, in such a situation the provision of the labor proclamation are made to apply instead of the general provision of contract law.

B. Consent

Besides capacity parties must give their consent to conclude contract of employment. For every contract including contract of employment the external manifestation of party's intention are legally significant. Therefore, for the existence of consent by the parties, there must be offer and acceptance to employee and to be employed.⁵

2. Alfa Module labour law 2007 page 59

3. Ibid

4. Supra at note 1 Art 89/1/

5. Dix on Contract of employment 5th edition page 2

The terms of offer and acceptance must be sufficiently defined, clear and not loose. The wording of proclamation 377/96 under Article 4(2) enables us to infer a contract of employment shall be stipulated clearly and in such manner as that the parties are left with no uncertainty as to their respective rights and obligations under the contract therefore it goes without saying that the formation of employment contract that the parties agree in the same sense, at the same time, and their consent is free and real⁶.

C. Form of contract of employment

The form has to be considered as a requirement only if it is required by the law. (Civil code Art. 1678) .⁷ Where the law doesn't require formality requirement parties have freedom to conclude the contract in any way they desire since their agreement is sufficient to create a contract.

Once the agreement of parties provides that contract must be concluded in a particular form the failure to observe that form results in the invalidity of the contract⁸.

When we examine the formality requirement of contract of employment, the law guarantees freedom of form. Unless otherwise provided by law, a contract of employment shall not be subject to any special form as provided under 377/96 Art 5. The parties are free to conclude their contract as they wish, either in written form or orally.⁹

6. Tadesse Mulugeta, Labour law (Unpublished), 2007

7. civil code of Ethiopia Art 1678 Neg Gaz 19th year No 2 Proc No 160/1960

8. Supra at note 6

9 Supra at note 1 Art 5

If the parties to contract of employment conclude their contract in written form the contract should specify the name and address of the employer, the name, age, address and work card number (if any) of the worker, the agreement of the contracting parties, and the signature of the contracting parties. An interesting point that one has to bear in mind is that where the contract of employment is not made in written form, the employer shall within 15days from the conclusion of the contract give the worker a written and signed statement containing the requirements specified under the provision that articulates elements of contract of employment (Proc. 377/96 Art, 7(1)). It is clearly stipulated that failure to comply with the requirements of the labor law entails.

Proclamation that reads about contract of employment shall not deprive the worker of his rights under labor law. (Proc. 377/96 Art 8)¹⁰

1.3 Duration of employment contract.

According to black law dictionary duration means extent, "limit or time which any thing exists". Under the Labour law there are two types of duration of contract of employment that basically depends upon the nature of work which is to be performed. These are contract for definite period of time or piece of work and contract of indefinite period of time.¹¹

10. Ibid Art 7/1/ and Art 8

11. Black's law dictionary 6th edition page 348

A. CONTRACT OF EMPLOYMENT FOR DEFINITE PERIOD OF TIME

The period of termination is definite in case of contract of employment for definite duration. The contract can be terminated without any act by the parties. The contract is terminated in this case not because one of the parties wants to terminate it, but due to the expiry of the period. Thus, Article 24/1/ of the Proclamation provides:

A contract of employment shall terminate on the expiry of the period or on the completion of the work where the contract is for definite period or piece work.

As a result, there is no need for one party to give notice for the other in this case in terminating the contract.¹²

By definite period of time set in advance regarding the duration of the contract, the parties do not forfeit their freedom to modify it later by mutual agreement. Consequently, by mutual agreement the parties may:-

- A. Terminate the contract before the expiration of the agreed term or
- B. Continue or renew the contract after the expiration of the agreed term¹³.

B. CONTRACT OF EMPLOYMENT FOR INDEFINITE PERIOD OF TIME

“As a general rule, all contracts made for an indefinite period of time may be terminated by either party, provided previous notice is given to the other party”¹⁴

12. Supra at note 2 page 65 paragraph

13. Marco gadagni Ethiopian labour law Hand Book 1972 Asmara University page 85

14. Ibid page 86

15. Supra at note 2 page 86

If the contract of employment is concluded for indefinite period, it means that the contract is concluded for unspecified period. In this case, the termination of the contract will happen only for something related to the parties. Therefore, the party who wants to terminate the contract normally needs to give notice to the other party. But Article 10 of the Labor Proclamation lists contract of employment that can be concluded for definite duration. Does this mean other contracts of employment which are not listed under Article 10 are for indefinite period? Further more Article 9 provides that “any contract of employment shall be deemed to have been concluded for an indefinite period except those provided for under Article 10”.¹⁵

1.4 Unique characteristics of employment contract

Ethiopian Labor Law recognizes and provides rules that regulate some special contract of employment. These are mainly contracts of employment with young workers, female workers, and apprentices. These workers are special because there are regulations and protection given to them, which are not provided in ordinary contracts of employment. The discussion here will be started with the provisions relating to employment of young workers. Who is a young worker? Article 89(1) of the proclamation provides:

Young worker means “a person who has attained the age of fourteen but is not over the age of 18 years.”

15. Supra at note 2 page 86

Therefore, young workers are those workers whose age is between 14 and 18 years. If the worker is below the age of 18 but attained the full age of 14, the law considers him/her as a young worker. Labor law provides certain protections for the young workers. The protection given to young workers are provided under Article 89 of the labor Proclamation. Labor law provides the following protections.¹⁶

i/ Protection for their Life and Health:

It is prohibited to employ young workers which, on account of its nature or due to the condition in which it is carried out, endanger the life or health of the young workers performing it. It is the responsibility of the Ministry of Labor and Social Affairs to list the works that young workers are prohibited to undertake. The following works are particularly considered as dangerous to the life and health of the young workers under labor law.

- a) Work in the transport of passengers and goods by roads, railway, air and internal waterway, dock-sides and warehouses involving heavy weight lifting, pulling or pushing or any other related type of labor;
- b) Work connected with electric power generation plants transformers or transmission lines;
- c) Underground work, such as mines, quarries, and similar works; and
- d) Work in sewers and digging tunnels.

But the prohibitions provided under Article 89(4) are not applicable to work performed by young workers attending courses in vocational schools that are approved and inspected by the competent authority.¹⁷

16. Supra at note 1 Art 89/1/

17. Ibid Art 89/4/

ii. Protection with regard to working Hours:

The normal hours of work for young workers is set under Art 90 of the Proclamation. The law provide a general maximum working hours applicable in employment relationships, which is 8 hours a day. But, with the view to protect the young workers, the law puts certain limitations. Young workers can work only up to seven hours in a day. Moreover, they should not work during the nighttime, weekly rest day, on public holidays, and over-time work.¹⁸

The other category of employee with special contract of employment is female worker. Article 87 of the Labor Proclamation provides protections to female workers. The following are the protections given to female workers under Labor Law in Ethiopia.

1. Women shall not be discriminated against as regards employment and payment, on the basis of their sex.
2. It is prohibited to employ women on types of work that may be listed by the ministry to be particularly arduous or harmful to their health.
3. No pregnant women shall be assigned to night work between 10p.m and 6p.m or be employed on overtime work.
4. No pregnant women shall be given an assignment outside her permanent place of work provided; however, she shall be transferred to another place of work if her job is dangerous to her health or pregnancy as ascertained by a medical doctor.
5. An employer shall not terminate the contract of employment of a woman during her pregnancy and until four months of her confinement.
6. Notwithstanding the provision of sub-article (5) of this Article, the contract of employment of a pregnant woman may be terminated for reasons specified under Articles 25 and 29(3) of this Proclamation.¹⁹

18. Ibid Art 90

19. Ibid Art 87

Therefore, female workers should not be employed to works which are hazardous or harmful to their health. They are also entitled to maternity benefits during their pregnancy including maternity leave. There are three categories of maternity leaves. These are:

➤ **Leave for medical check-up;**

An employer has duty to grant leave with pay to a pregnant woman worker for medical examination connected with her pregnancy. This is a duty upon the employer imposed by the law, but the woman has the duty to present a medical certificate of her examination. There is no fixed period of time for which a woman is entitled to such leave. This is just for medical check up. But if, in case, her conditions of health requires rest recommended by her medical doctor, she is also entitled to leave with pay for the purpose of getting the medically required rest. Art 88/1-2/²⁰

➤ **Prenatal leave, which is 30 days before giving birth;**

A pregnant woman worker is entitled to get prenatal leave with pay. The employer is duty bound to give a period of 30 consecutive days of leave with pay to her preceding the presumed date of her confinement. But what will happen if the woman does not deliver the child on the presumed date or within the 30 days period? In other words, will she be entitled to additional days of leave? In this case, the employer is duty bound to give additional prenatal leave until her confinement upon delivery of the child .Art 88/4/²¹

20. Ibid Art 88/1-2/

21. Ibid Art 88/4/

➤ **Post-natal leave, which is 60 days after giving birth to the child**

This is a leave with pay granted to a woman after her confinement. It is a period of sixty consecutive days beginning from the date she give birth to the child. As you have seen under the discussion on prenatal leave, if a woman does not deliver the child within the 30 days period, we have said that she is entitled to additional leave. What if she delivers the child before she finish the 30 days prenatal leave? In this case, if delivery takes place before the 30 days period has lapsed, the post-natal leave will commence. That means, the pre-natal leave will end there and the post-natal leave will be started to be counted. Art 88/3²²

Contract of apprenticeship is also another special contract of employment provided under the Labor Proclamation. There shall be a contract of apprenticeship when an employer agrees to give a person complete and systematic training in a given occupation related to the functions of his undertaking in accordance with the skills of the trade. The person, who wants to be employed as apprentice, in turn, agrees to obey the instructions given to carryout the training and works related to it.

Even young workers can enter into contract of apprenticeship. It is said that contract of apprenticeship is one of the contract of employment to be concluded with special formality. Thus, the contract of apprenticeship and its modifications shall be valid only where it is made in writing. Moreover, it needs the attestation of the Ministry of Labour and Social Affairs. With regard to its contents, Article 49 of the Labor Proclamation provides that contact of apprenticeship shall specify at least the following:

22. Ibid Art 88/3/

1. The nature and duration of the training of apprenticeship;
2. The remuneration to be paid during the training; and
3. The conditions of work.

The law also imposes obligations upon both parties. Accordingly, the apprentice has the duty to diligently follow the training and make efforts to complete it successfully.²³

The contract of apprenticeship can be terminated upon the expiry of the period for the training. If the apprentice has successfully completed his/her training within the given period, it means that the contract of apprenticeship is terminated. Upon termination of the contract, the employer has the obligation to give a certificate indicating the occupation he has been trained in, the duration of the training. But this does not mean that the contract of apprenticeship can only be terminated upon the expiry of the period. There are also other possibilities of terminating it. First, both the employer and the apprentice have the right to unilaterally terminate the contract after giving notice. The employer can do this where:

- i) He is no longer able to discharge his obligations due to change of work or other causes beyond his control.
- ii) The apprentice violates the disciplinary rules of the undertaking; or
- iii) The apprentice is permanently incapable of continuing his training or completing his training within the specified time limit.

23. Ibid Art 49

24. Ibid Art 51/2/ (A – C)

Chapter Two

2. Termination of contract of employment

A contract of employment may be for a fixed period or for carrying out a particular task. The general law of contract provides that in such cases when the time expires the task is performed and the other stipulations have been complied with, the contract is discharged.¹

Under the labor law of the Federal Democratic Republic of Ethiopia a contract of employment may be terminated in four ways; termination by law, termination by agreement, termination by the employer and termination by the employee.²

2.1. TERMINATION BY OPERATION OF THE LAW

As it is indicated under Art23/1/ of Proclamation No 377/96, the contract of employment may be terminated by the operation of the law regardless of the will or the knowledge of the parties concerned. This proclamation under Art 24 lists five reasons or grounds under which contract of employment could be terminated by operation of law. Let us proceed to discuss them one by one.

The first ground on which contract of employment is to be terminated by the operation of the law is, on the expiry of the period, on the completion of the work, where the contract of employment is for a definite period or piece work respectively.³

1. Dix on Contracts of Employment 5th edition page 125

2. SN] [Ç= eK=fÄèÁ ŸW]“ W^— N<ÇÄ ,’İ Ømf ‘Øx. Ide 2000 Ñè 60

3. Labour proclamation Art 24/1/ Neg Gaz 10th year No 12 proclamation No 377/96

Accordingly, where the contract expressly or impliedly provides that the relationship of employer and worker is to be in existence for certain time, the contract will be terminated at the expiry of such period.⁴ However, when we say that contract of employment made for a definite period or piece work shall be terminated on the expiry of that period or on the completion of piece work, it doesn't mean that the contract of employment should be terminated exactly on the expiry of such period or completion of piece work entirely.

Another ground for termination of contract of employment is, upon the death of a worker. Services rendered by a worker are of a personal nature therefore, the contract of employment should be terminated up on the death of the worker.⁵ Accordingly one writer says that, "the worker shall be alive to perform the contract; if he died his executor is not liable to an action for the breach of the condition occasioned by his death."⁶

The third ground for termination of contract of employment is, upon the retirement of a worker in accordance with the relevant law. As far as contract of employment is concerned, pension become a ground for termination only for undertakings which have a pension scheme and the pension is paid from the contribution made by both employer and employee.

The other ground for termination of contract of employment is "when the undertaking ceases operation permanently due to bankruptcy or for any other cause."⁷

4. G.H.L Fridomain, the modern law of employment 1963 page 339

5. Supra at note 3 Art 24/2/

6. Supra at note 4 page 472

7. Supra at note 3 Art 24/4/

As it is indicated under our commercial law, there is a condition of bankruptcy when the trader has suspended payments and has been declared bankrupt by the court.⁸ accordingly inability to pay the debt is not enough to be deemed bankrupt. However, it should be declared by the law of court that he is bankrupt. In another way, it is to mean that before bankruptcy would be taken as a ground for termination of contract of employment, the decision as to the existence of bankruptcy should be given by the law court.

Bankruptcy of an undertaking could result from internal and external causes or factor. For instance, the inefficiency of the management can be considered as internal factor, whereas, the shortage of raw material and the lack of market can be considered as external factors. As one can understand from the last phrase of Art24/4/ of Proclamation 377/96, the contract of employment can be terminated “for any other cause.” That is, bankruptcy is not the only cause which makes undertaking to cease operation permanently. One foreign writer says that

“Contract of employment can be terminated
Whenever the circumstances have changed and
when the performance of a contract has become
impossible or has been rendered value Less.”⁹

Accordingly, where a change in the legal situation has occurred affecting the purpose of the contract, then the contract will be terminated, however, in such a case, the court has to take into account, not only the interests of the parties, but also the interests of the public.¹⁰

8. Commercial Code of Ethiopia Art 969 Neg Gaz 19th year No3 proclamation No 166/1960

9. Supra at note 4 page 475

10. G.H.L Treitel, the law of contract (19th edition, 1995) page 799

Another instance in which the employment contract would be terminated is that, when a worker is unable to work due to partial or permanent incapacity.¹¹ Art 24/5/ of Proclamation 377/96 is silent whether partial or permanently incapacitated worker is unable to do any kind of remunerated work or unable to discharge only an obligation under the contract. However, Art 28/1/b says that permanent incapacity prevents a worker only to carry out his obligation under the contract of employment. So what is the difference between Art 24/5/ and 28/1/b?

Though Articles 24/5/ and 28/1/b are talking about the permanent disability where the worker's disability results in the inability to carry out an obligation under the contract of employment, they have differences.

As far as Art 28/1/b is concerned, the employer is obliged to give prior notice to a worker in order to terminate contract of employment. Because it is talking about a worker whose working capacity is reduced, but his disability is not yet approved by a medical board. The worker is still working however; his disablement may be approved by a medical doctor in the subsequent future.

Under Art 24/5/ however, the contract of employment shall be terminated by the operation of the law. Because this provision is talking about disability which had been approved by a medical board. As soon as the disability of a worker is approved the contract of employment is automatically terminated by the law. Therefore, there is no need of termination by an employer. In a nutshell Art 24/5/ is taking about permanent or partial disability after it is approved by medical professions. Where as, Art 28/1/b is talking about permanent disability which has not been approved by a medical board.

11. Supra at note 3 Art 24/5/

2.2 Termination by agreement of the parties.

The contract of employment could be terminated by the mutual agreement of the parties. In all countries especially in the former socialist countries the simplest and in practice most frequent method of termination of employment was by way of mutual agreement.¹² Accordingly, the Hungarian labor code laid down that employment may be terminated at any time by the mutual agreement of the worker and employer.¹³

In like manner our Labour Proclamation under Art (25(1) of proclamation 377/96, stipulates the parties may terminate their contract of employment by agreement, however, the waiver by the worker of any of his right shall have no legal effect. The individual contract which has been made between a worker and an employer should not provide the lesser right than that right provided in the labour proclamation.¹⁴

The reason why the law limits the right to terminate contract of employment by mutual consent of the parties to not less than the minimum standard provided by the law is that, because of the reality that, the employer is on a higher degree to the worker in his economic position, so that he might compel the worker to the benefit of him self (employer). In the event employment is terminated by the way of mutual consent no notice has to be served by either party's.

As far as this labour proclamation is concerned there is a requirement of form in which the agreement to terminate the contract of employment is to be made. Termination by mutual consent of the parties shall be effective and binding on the parties only where it is made in writing.¹⁵

12. Andor Welther fundamental traits of social labor law /1997/ page 197

13. Ibid

14. Supra at note 3 Art 4/5/

15. Ibid Art 25/2/

2.3 Termination by the employer

The third of the four categories of termination listed in the Labour Proclamation of 377/96 is termination of contract of employment by the employer. As far this Labour Proclamation is concerned termination of contract of employment by the employer is dealt within Articles 26/1/, 27, 28 and 29. Such mode of termination is known in other Labour legislations. For instance the fundamental Labour legislations of the former USSR and the Union Republics.¹⁶ When contract of employment is terminated by the employer two methods may be distinguished. These are termination of contract of employment by way of notice and with out notice.

Termination With out Notice

A contract of employment may be terminated with out notice by an employer, where there are grounds connected with the workers misconduct. However, what do we mean by misconduct?

The dictionary meaning of the word “misconduct” is improper behavior, intentional wrong doing or negligent violation of rules of standard of behavior.¹⁷ In so far as, the relationship of contract of employment is concerned, a worker has certain express or implied obligation to words his employer. Any conduct on the part of a worker inconsistent with the faithful discharge of his duties to wards his employer would be misconduct.¹⁸

16. Fundamental Labour legislation of the USSR cited on Art 17/4/

17. Opmalhotra, the Law of Industrial Disputes 2nd ed

18. Ibid

“unless otherwise, determined by a collective agreement a contract of employment shall be terminated without notice on the grounds of misconduct, however the act of misconduct must have some relation with the employee’s duties to wards his employer”¹⁹

This is to mean that if an act has no relation with the employment, it would not be an act of misconduct to wards his employer. Labour Proclamation 42/93 on Article 27(1) provides these acts and omissions which shall be treated as misconduct. From the language of Article 27(1)K of this Proclamation, we can understand that the misconduct’s are illustrative but not exhaustive. There may be many more acts which may constitute misconduct, which are treated or enumerated in the collective agreements, other than in this proclamation.²⁰

Termination with Notice

An employer can terminate contract of employment with notice based on the grounds of termination. This is to mean that the law allows the employer concerned to give prior notice before he moves to take the measure of dismissal. To this affect our Labour Proclamation Article 28 and 29 of Proclamation number 377/96 provides certain grounds to terminate contract of employment with notice. As far as the grounds for termination of contract of employment with notice is concerned they are not serious grounds, like the grounds for termination of contract of employment without notice. Now we will proceed to discuss the grounds of termination of employment with notice.

19. Ibid

20. Supra note 3 Article 27/1/k

CAPACITY

A) LOSS OF CAPACITY AND SKILL

The first ground of termination of contract of employment with notice is when a worker loses his capacity to perform the work to which he has been assigned, or his lack of skill to continue his work as a result of his refusal to take training or his inability to acquire the necessary skill.²¹

Unfitness is to be seen in the process of work, when the worker, because of lack of capacity of skill unable to work his normal duties

The justification of dismissal for inefficiency presents particularly difficult problem of proof. It is for the employer to set the standards that are reasonable standard of job.

B) DISABILITY

Contract of employment could be terminated when the worker is for reasons of health or disability, permanently unable to carry out his obligations under the contract of employment.²² Disability under Article 28(1)b refers when ability of the worker declines and as a result of this he unable to discharge his obligation under the contract of employment. This means the worker might be able to work another remunerative work.

2.4 TERMINATION BY WORKER

“Every one has the right to free choice of employment”,²³ this is to mean that employment is not slavery, so that every one has the right to sell his Labour and intellectual ability to an employer he prefers, and has the right to terminate the previously made contract of employment. Therefore, like an employer, an employee has the right to terminate contract of employment

21. Ibid Article 28/1/

22. Ibid Article 28/1/b

23. Universal Declaration of Human Right

with notice or without. In accordance with Art 31 of proclamation 377/96, any worker who has completed his probation period has the right to terminate contract of employment by giving an employer a thirty days notice in writing. A worker is entitled to unilateral termination of contract of employment by giving a thirty days prior notice except for reasons provided under Art 32/2/ of pro 377/96. However, by the agreement of the worker and employer the contract of employment may be terminated before the expiration of thirty days.

The worker can also terminate the contract of employment without giving any notice. A worker is entitled to terminate the contract of employment without notice for reasons of an employers conduct or act. The first ground for termination is “when the employer has committed against a worker any act contrary to human dignity and morals or other acts punishable under the penal code.”²⁴

The second ground for termination of contract of employment by worker is when an employer fails to discharge his obligation under the contract that is failure to control imminent danger threatening the workers safety or health within a reasonable time limit. This is when the employer is responsible for an extremely grave breach of his obligation under circumstances constituting a grave and immediate risk to life, physical safety and health.¹⁹In addition to the obligation in this Labour proclamation the worker is entitled to terminate contract of employment, when the employer has repeatedly failed to fulfill his obligations under collective agreements, work rules or other relevant laws.²⁵

24. Ibid Art 32/1(a)

25. Ibid Art 3/1/(c)

Chapter Three

3. The Rights of the Employee upon the Termination of Contract

Employee employer relationship is established through contract of employment. As everybody understands from the general notion of contract law, a contract may be altered or terminated according to the law or contrary to the law. Since contract of employment is among special contracts it has its own governing provisions that regulate formation, modification and termination of the contract. The contract of employment at times stipulates condition of termination of the employee - employer relationship. Where the employment contract fails to treat conditions of termination of contract of employment, the labor law comes in to fill the gap. Termination of contract of employment can be made in both lawful and unlawful way.

The rights of the employee up on unlawful termination of the contract

A contract of employment is said to be terminated unlawfully if it is terminated contrary to the law or collective agreement or employment contract. When the contract of employment is terminated unlawfully it has its own effect. The parameters that can be used to examine whether the termination is lawful or not are basically two, content or procedure.¹ both of them are provided here under.

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3.1.1 Unlawful termination of employment contract when the termination has unlawful contract

When a contract of employment is terminated on grounds other than those provided under labor proclamation, it is unlawful termination. The proclamation has exhaustively stipulate that he termination of the contract of employment is unlawful where it is terminated by the mere fact that the employee is a member of a trade union, his participation in lawful activities, seeking or holding office as worker's representative, submission of grievance against the employer and any other reason related with his nationality, religion, political outlook, marital status, race, color, family responsibility, pregnancy.²

The employee has two remedies when the termination is because of the above reasons, reinstatement or compensation.³

A. Reinstatement

Reinstatement is restoration of dismissed worker to his original post and concerned is entitled upon order of reinstatement to be put back in the same position as if he had never been dismissed.⁴ The employer shall be obliged to reinstate the worker, provided that employee shall have the right to payment of compensation if he wishes to leave his employment. Apart from this, if the contract of employment is terminated contrary to article 24,25,27,28 and 29 of the proclamation reinstatement is not mandatory, the labour dispute settlement tribunal may order the reinstatement of the employee or the payment of the compensation.

2. Proclamation 377/96 Article 26(2)a-e

3. Ibid Article 43(1)

4. Ibid

Reinstatement brings an important question whether wages that is not paid during the employment contract is terminated will be paid or not ? The proclamation has clear answer for this. That is where the first instance court orders the reinstatement of the employee, it shall order the payment of the back-pay not exceeding 6 months wages and if the decision is confirmed by the appellate court it shall order payment of back pay not exceeding one year.

Practically in a case where Fikru Mengestu is a plaintiff and Ethiopian Insurance Corporation is a defendant the federal first instance court renders decision that allows the plaintiff to be reinstated and payment of six months wages ⁵ the appellate court examine the same issue because the appellant, the lower defendant brought the case before it and confirms the decision of the lower court and decided that the appellant should pay eight months wage. ⁶

B. Compensation

Unless the court decided that the employee to be reinstated the employee is entitled to compensation in addition to severance pay. ⁷ The compensation equals to one hundred eighty times the average daily wages and a sum equal to his remuneration for the appropriate notice period. ⁸ One has to take care is that the purpose of the law where the contract of employment is terminate because of the above reasons is reinstatement not compensation.⁹In the case where Tefera Dufa plaintiff and Ethiopian Insurance corporation is a defendant the First Instant Court renders decision that allows the plaintiff to be reinstated and payment of six month wages¹⁰ the appellate Court examine the same issue the payment of the money compensate based on Art 43/3/. ¹¹

5. Federal First Instance Court Civil No 20849

6. Federal High Court Civil No 63029

7. Ibid Article 42(4) Supra at not 2 Art 43/4/

8. Ibid Article 43 (4)a

9. Ibid Article 43(3)

10. Federal First Instance Court

11. Federal High Court Civic Case No50656

the labor law. This is for instance reflected under the judgment of the federal first instance court where Ato Meberat Tessfaye is plaintiff and sunshine construction is the defendant. In this case the court renders a decision that the plaintiff should be paid compensation even if the termination is lawful, it is because the plaintiff is responsible for brawls in the work place which is sufficient to terminate the employment contract.¹²

3.1.2 Unlawful Termination of Contract of Employment Where There is Procedural Fault

Sometimes employers fail to follow all the procedures provided under the law in terminating the employment contract even if they have sufficient grounds to terminate the contract for instance the employers disregard to give notice before terminating the employment contract.¹³ Such procedural faults make the termination of employment contract unlawful.

The employer's failure to give notice in its proper time brings the responsibility to pay wages in lieu of the notice period, in addition to any other compensation¹⁴ and the employee can't claim reinstatement.

The labor law has clearly provided the length of the notice period that the employee shall give to the employer before termination of contract and it ranges from one month to three months if the contract is concluded for indefinite period of time and it is left to the parties to decide the length of the notice period if the contract is for definite period of time.¹⁵ As to this I haven't ever found the discrepancy between the law and the practice.

12. Federal First Instance Court Civil Case NO 14444/2000 E.C

13. Supra note 1 PP. 75

14. Supra note 2 Article 44

15. Ibid 35(1) and (2)

3.2 The Right of the Employee upon Lawful Termination of the Contract

As I have discussed it under the previous chapter the termination of employment contract is considered to be lawful where it meets all the necessary grounds provided under the law, collective agreement and contract of employment to terminate the contract.¹⁶ Even in the case of lawful termination of employment contract the Labour Law entitles the employee to certain rights which are provided here under.

A. Employment Certificate

Without taking into consideration the grounds of the termination of employment contract, any employee has the right to get the employment certificate free of fee. The certificate shall include the type of work an employee had performed, the length of service and the wages he was earning.

In practice employers state facts that don't have importance and sometimes that harm the employee in the employment certificate. The proclamation is silent about this but as far as the Civil Code is allowed to be applied in matters which are not covered by the proclamation, it has something to say about such act of employers, it prohibits employers not to insert any un- important statement that harm the employee in his employment certificate.¹⁷

B. Payment for the Annual Leave That Has not been Taken

In principle it is not allowed to pay wages in lieu of the annual leave¹⁸ however if the contract of employment is terminated before the employee takes his annual leave, he is entitled to claim payment for the annual leave that he has not taken.¹⁹

16. It is advisable to note that the termination of employment contract by the employer is lawful where all the necessary grounds provided under Article 26-29 of the Labour Proclamation are met.

17. Civil Code Article 2588(2)

18. Supra note 2 Article 76

19. Ibid Article 77(5)

C. Severance Pay

Severance pay is a payment by employer to the employee upon termination of the employment contract to adjust the financial consequences that occurs because of termination.²⁰ Here it has to be noted that the employment certificate and payment for the annual leave that has not been taken is allowed to any employee whose contract of employment is terminated but severance pay is not allowed for every employee whose contract of employment is terminated.

The law provides that severance pay is going to be allowed for the employee if:

- The contract of employment is terminated without notice²¹
- The contract is terminated because of work force reduction²²
- The contract of employment is terminated due to permanent case of the undertaking in case of bankruptcy or any other reason²³
- Where he has no entitlement to a provident fund or pension right and his contract of employment is terminated upon attainment of retirement age stipulated in the pension Law²⁴
- The employee serves at least for five years²⁵
- The employee terminated his contract of employment because of HIV/AIDS²⁶

Another question that has to be answered in connection with severance pay is what if the employee dies before receiving severance pay? In this case it is possible for the dependants of the employee who are mentioned under article 110(2) of Proclamation 377/96,²⁷ to dimed for its payment.

20. Blacks law dictionary PP.958

21. Supra note 2 Article 39(1)b

22. Ibid Article 39(2)c

23. Ibid Article 39(2)a

24. Proclamation 494/2006 Art 2/2/g

25. Ibid Article 2(2)h

26. Ibid Article (2)i

27. Supra note 2 Article 39(2)

On the initiative of the Confederation of Ethiopian Trade Unions (CETU), the 1996 Labour Proclamation was amended by Labour (Amendment) Proclamation No.494/1998. The Confederation Prepared a Proposal which is intended to amend the provisions of Labour Proclamation 377/1996 with a view to ensure workers right. On the other issues raised was there of severance pay.

According to the proposal of the Confederation, the 1996 Labour Proclamation was constraint on workers' right enshrined under the Labour Proclamation. "The Confederation expressed its objection against the 1996 Labour Proclamation through public demonstration in Regional States and in Addis Ababa. It also sent a written memorandum to the former Speaker of the House of Peoples Representatives Ato Dawit Yohannes and to Ministry of Labour and Social Affairs."²⁸

The 1996 Labour Proclamation, before it went long and served its intended purpose, faced the arising preconceived problems, inter-alia, when workers lose their employment for the reasons beyond their capacity, for instance in the event of sickness or death resulting from non-employment injury or as a result of attainment of retirement age, they are not entitled to receive severance pay.²⁹ As a result, workers and their families faced Economic and Social hardship. To overcome this and other problems, the Labour (amendment) Proclamation No.494/1998 was enacted.

On the other hand, severance pay is allowed to a worker in return for the service he has rendered to the undertaking. This is justified by the worker's use of skills, knowledge and all other efforts in discharging his duty in the contract. Those contributions, in turn, would be presumed to have building

28. Mesfin Getachew Labour Law (unpublished) 2007

29. Labour Law amendment Proclamation Article 2 (G-H) Proclamation No 494/1998

the financial capacity of the employer. Hence, the worker shall have the right of an allowance from the accumulated profits through his efforts and severance pay is such an allowance for the service of the worker.

Generally, the prominent objection forwarded against this payment is the liability of the employer for payment of allowance may affect his economic position due mainly, to the higher amount involved in most of severance pay claims.

This contention may be convincing, especially for the employer who fired his workers for the reason of bankruptcy or other financial problem. But the priority shall be given to the existence of the undertaking or its financial capacity, then we are disregarding the financial crisis faced by many workers as a result of their dismissal due to such causes. Hence we are in this case, concerned with the existence of one employer on one hand and on the other, with the fate of may be large number of workers. Thus, the main problem is if the employer is relieved of any liability for severance pay what will be the guarantee of the worker's live hood? On the other hand, it is worth while to take into consideration the possible outcome of unemployment on the economic and social positions of the country. Particularly for a country that does not have any means of social security and unemployment benefits.

According to the commentary on the draft Labour (Amendment) Proclamation, the 1996 Labour Proclamation was adopted based on the assumption of entitling a worker to claim severance pay in order to ensure a certain level of income protection where a worker's contract of employment has been terminated on the initiative of the employer. To this end, it seems

the 1996 Labour Proclamation was adopted taking into account the experience of some countries and the International Labour Convention No 158, which was ratified by Ethiopia.

The discussion at the tripartite (representative of government, workers and employers) conference revealed, a worker who has rendered service for a long period and retired up on attainment of retirement age, having rendered a certain year of service and where a worker resigns because of decline in capacity to work, sickness, or death and specially where a worker resign because of HIV/AIDS, the necessity to entitle a worker to receive severance pay. Accordingly, Article 2 sub-article (2) of the Labour Amendment Proclamation 1998 came up with three provisions (g, h and i) to be added in Article 39(1) of the 1996 Labour Proclamation to entitle a worker to claim severance pay.

It should by now be clear that how the Labour (Amendment) Proclamation No 197/2006 promulgated, the rationale behind enacting the Labour Amendment Proclamation, 2006.

Chapter Four

Conclusion and Recommendation

Conclusion

The very purpose of the labor law are provided under the preamble of the Labour proclamation. These purposes include ensuring the worker-employer relations are governed by the basic principles of rights and duties, maintaining industrial peace and work in the spirit of harmony and cooperation to all-round development of the country, to guarantee the rights of workers and employers to form their respective associations, and to lay down the procedure for the expeditious settlement of Labour disputes.

Since the employee-employer relation is basically established by contract, it is deemed that all the purposes of the proclamation may be considered but where disagreement occurs the Law aims to govern the dispute between the contracting parties.

From the usual practice the disputes of the employee and employee is prevalent after the termination of the contract. Termination is considered to be Lawful where the conditions provided under the Labour Law are fulfilled and it is deemed to be unlawful where the

employer terminates the contract contrary to labor Law, collective agreement and contract of employment.

Where the contract of employment is terminated unlawfully the employee will have remedies available to him both civil and criminal. The civil remedies include severance pay compensation; reinstatement the criminal Liability of the employer where the termination is unlawful is fine.

Having all these in mind there are discrepancies and unpredictable practice is rewarding the remedies available for the employee where his contract is terminated unlawfully and sometimes the judiciary interpret the law against the employer that may award unfair remedy for the employee.

Recommendation

To the findings of this paper I forward the following recommendations

- The employers in every industry should take maximum care before terminating the contract of employment.
- The judiciary should render justice in predictable way.
- The Legislature should amend the Law to make the remedies available for the employee clear.
- The lawyers should know all the remedies available for the employee and their condition precedents before rushing to court.

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