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Chapter I General Introductory Remarks

1.1. Development of Employment Relations in General[1]

Employment law[2] is a branch of law that regulates employer and employee relations. Literatures mostly employ phrases such as "labor law"; "law of industrial relations" and "work law" interchangeably with employment law. Employment relation is a contract to render service in return for wages.

Broadly speaking employment relation has manifested itself in the form of private sector and civil service sector employment regimes; it is the private sector which is more controversial and a source of much litigation. The main reason for this, while the civil service sector is being regulated by hard and fast rules which are inflexible and non-negotiable; the private sector has ample room for flexibility and private ordering. Even the terms of a contract of employment in the civil service sector have little or no flexibility. Its terms are more prescribed than negotiated. Thus, the civil service sector employment regime is more of an administrative law type than a contractually established employment relationship.

During industrial revolution in Europe the principle of freedom of contract for employment relation developed. Thus, the formally equal parties designated themselves as employer and employee; and freely bargained to stipulate their terms of engagement. The length of engagement of the parties, the amount of wages, any limits on working hours and other related employment issues were left to the determination of the contracting parties. Each party was at liberty to terminate the contract of employment with cause or with no cause at any time, or in some cases only upon giving notice. The role of the State then was mainly contract enforcement (i.e., enforcing the parties 'agreement); if and when requested. In such an engagement, capital, with its stronger bargaining power had the advantage over the weaker bargaining position of labor.

Power in labor relations was exclusively possessed by capital in that the employer had absolute prerogative in hiring and firing the labor force as it pleased. Hence, in the freedom of contract regime, profit and power were placed under the full authority of capital (the employer).

But labor is not a commodity and hence leaving it to market forces is unwarranted. Personhood must be respected beyond productive work capacity. The argument goes, behind labor there exits human dignity

[1] In pre-industrial societies, as the economy was subsistence in character and mainly agrarian in nature, it was predominantly dependent on family labor for its operation. It was industrialization that led to the emergence of what we know as "employment relations". Employment relation traces its roots from the historical antecedents in Europe and North America.

[2] Relatively speaking, employment law is of recent origin compared to other branch of laws of civil nature such as marriage, property, succession and others. The latter branch of laws has been in existence since pre-industrial societies. But capital and labor are economic prerequisites for employment law.

which is not marketable. As a result, pressing for state intervention in determining matters such as minimum wage levels, maximum working hours, employment security and safe working condition moved to the top of the agenda of many emergent labor movements around the world.

1.2. Sources of Employment Law in Ethiopia

Source of law can be Material source, Formal source and Literal Source. However for the purpose of this section we focus only on Forma sources of law. These are instruments which should be authoritatively consulted in regulating employment relations and in resolving employment disputes if and when they occur. Thus, sources of employment law may be broadly categorized into international and national sources.

The international formal sources mainly consist of ILO conventions to which Ethiopia is a party. International human rights instruments which are ratified by Ethiopia are relevant as well, since they enshrine provisions necessary for employment relations.

The national formal sources comprise various instruments, FDRE constitution, Proclamation Particularly, the Labor Proclamation, Council of Ministers Regulations (Council of Ministers issued Regulation No.342/2015), Directive, Cassation Division decisions, and (individual contracts of employment, collective agreements and work rules).[3] The first two are bilateral instruments while the third one is unilateral.

Work rule; is a unilateral instrument. The employer is authorized to issue internal rules pertaining to working conditions at enterprise level that should be observed by employees. In this sense, it is binding on the employees though they did not consent to it.

1.3 Scope of Employment Law

Employment law regulates a commitment to provide service in return for remuneration. But, it does not mean all commitments to provide services in anticipation of payment are employment relations.

There has been similarity and confusion in differentiating between employer-employee relationship; client-contractor relationship and principal-agent relationships.

Civil Code, Article 2199: Definition

[3] Individual contract of employment a contract entered into between an employer and employee which regulates their employment relations. Similarly, collective agreement is a contract entered into by an employer and trade union representatives at enterprise level or between employer associations on the one hand and trade unions on the other. Though they are not made by public actors, the legislature has promised to enforce them as they were law, pursuant to Article 1731

Agency is a contract whereby a person, the agent, agrees with another, the principal, to represent him and to perform on his behalf one or several legally binding acts'.

Article 2179: Sources of authority

The authority to act on behalf of another [agency] may be derived from the law or a contract

Article 2512: Contract of employment

A contract of employment is a contract whereby one party, the employee, undertakes to render to the other party, the employer, under the latter's direction, for a determined or undetermined time, services of a physical or intellectual nature, in consideration of wages which the employer undertakes to pay him.

Article 2610: Definition

A contract of work and labor is a contract whereby one party, the contractor, undertakes to produce a given result, under his own responsibility, in consideration of remuneration that the other party, the client, undertakes to pay him.

Their relationship

The agent, the employee and the contractor are committing themselves to render some sort of service to the other party; the principal, the employer and the client respectively. The agent is to provide service of "representation" while the employee undertakes "to render services of physical or intellectual nature." The contractor for his part is to provide the service of "producing a given result."

Differences

Principal-agent relationship may emanate either from the operation of the law or contract (Articles 2179 and 2199) while the source for employer-employee and client-contractor relationships are solely a contract. It may also be possible that principal-agent engagement could be a free service as payment is not part of the definitional elements of the relationship. Employer-employee and client contractor relationships are entered into for consideration as their definition included payment (i.e. wage for employee; and remuneration for the contractor). There is no pro bono service in employer-employee; and client-contractor relationships.

***pro bono** service, means free service*

The nature of service: An agent's service to its principal is entering into one or more legally binding acts in the name and on behalf of the principal. In this sense its service is very specific and limited to

performing of juridical acts (i.e. representation). On the contrary, employees and contractors render service of any sort to their employers and clients respectively without binding the latter.

Employer-employee and client-contractor have differences.

Degree of authority: In client-contractor relationship, the contractor is to offer its service "under its own responsibility" while in employer-employee relationship, the employee is required to render its service "under the employer's direction." the degree of authority the client has over the contractor is loose

A contractor is one who engages to perform a certain service for another, according to his own manner and method, free from the control and direction of his client in all matters connected with the performance of the service, except as to the result of the work.

In case of employer-employee relationship the employer is not only interested on the given result but on the manner of achieving the result as well.

The modality of payment, for the services provided by the employee and the contractor typically differs. The employee is to receive wage (i.e. regular [mainly periodical] payment) while the contractor is to receive remuneration in the amount of price of service to be paid mainly through lump sum payment or in installments.

Employment law only applies for employer-employee relation not for other.

Chapter II

Contracts of Employment

2.1. Introduction

Employment relations can be categorized into two: individual employment relation and collective employment relations

Contract of employment is defined under Art 4(1)

Employment relations are basically contractual relations. It is a special contract to provide service in return for wages. Thus, the general principles of the law of contract apply to this relationship. It is only when employment law comes up with its own special principles different from the general principles of contract that the application of general contract law principles would be avoided.

Definitional Elements of a Contract of Employment

a) Agreement

The source for employment relation is an agreement of the parties; and hence it is a willful engagement. This excludes forced labor from the ambit of employment relations. The manner of expressing agreement could be **direct or indirect.**

1. a person may directly and personally sit and bargain with their employer and conclude a contract of employment
2. Public or private employment agencies may serve as intermediaries between the parties in the form of "matching of offers."

There are two types of employment agency recognized by law

- The first type of agency is not a party to the contract. Its role is limited to posting of vacancies and selecting potential candidates while the actual contract is concluded directly with the service user.
- The second type of agency enters in to a contract in its own name with the employee. In the latter case the agency itself is the employer of the employee concerned.

b) For the performance of work (provision of service)

The commitment from the side of the employee is to "perform work" for the benefit of the employer. This makes an employment contract a contract of service since performing work is an aspect of the provision of service. Unlike a contractor who can delegate unless provided otherwise, employment is a service of personal nature.

c) Under the authority of the employer

Working under the authority of the employer is one of the distinguishing factors between a contractor and an employee. Contractor performs service "under its own responsibility". He is not under the strict guidance and control of the client.

Read; (File No.101396; Vol.17), (Civil Code; Article 2637(1)

Dependent worker (employee) and independent worker (contractor), the employee is dependent on the employer this implies, the employer is not only interested on the result but rather on the manner of achieving the result as well.

d) Length of employment

A contract of employment could be entered into for a definite period; for piece work or for indefinite period.

e) Wage

The employer will have a corresponding duty to discharge. It will be required to pay wages to the employee.

Ethiopia has no minimum statutory wage for the private sector employment regime. Thus, the amount of wage is an agreed sum by the parties though the level of agreement may not be on equal footing. Due to economic supremacy, the employer may dictate its own terms in this regard.

"Wage" is defined as a regular payment to which an employee is entitled in return for the performance of the work that he performs under a contract of employment (Article 53(1)).

The mode of determination, could be on hourly, daily, weekly, bi-monthly etc. basis or it could be outcome based (piece rate) mode of payment. What makes it wage is its regularity rather than its periodicity.

The fact that an employee is paid on daily basis or on piece rate does not deny her an employee status. So long as the other definitional elements are fulfilled, the modality of payment does not make any difference on the status of the employee.

Differentiating Employee- Employer and Contractor Client Relationship Is Crucial As It Determines The Applicable Legal Framework.

Employment law applies to the former and civil or commercial law applies to the latter.

Points against Which Employee-Employer and Contractor-Client Relationships Determined

1. **The control test:**

The extent of control one of the parties has over the other.

2. **Who provides working tools?** See Article 12(1)(b)
3. **Who pays tax?**

If in their contract, the service provider is to pay income tax by his own, it is highly likely that the party is a contractor; whereas if the service recipient is empowered to deduct tax due at payroll, it is highly likely that the other party is an employee.

4. **Length of engagement:**

The longer the engagement of the parties, the higher the probability that their relationships are employer-employee

5. **Personal nature of the service:**

If the service provider has the right to delegate its service provision under the arrangement, it is highly likely that the relationship is client-contractor relationship.

6. **Mode of payment:**

In employer-employee relationships, wages are determined on a periodical basis. If the service recipient resorts to paying in a lump sum or in a piece rate arrangement, it is highly likely that the relationship is client-contractor relationship

7. **Multiple clients at a time:**

Employee is attached to a single employer. In a sense, a substantial part of his working time is to be at the disposal of the employer.

It is client-contract relationship if the service provider has the right to have the possibility of multiple clients at a time.

2.2. Form of Contract of Employment

Unless otherwise provided by law, a contract of employment shall not be subject to any special form (Article 5). It can be created orally, by conduct or in any means so long as the parties have attained the so called "meeting of minds".

In case of unwritten employment contract the existence of employment relations can be proved by any means such as witnesses, employee ID cards or payroll sheets.

Written instrument are generally more durable and reliable in resolving possible disputes at a later stage. Thus, the law encourages the parties to make their agreement in writing and to be signed by the parties.

For the purposes of the law, written contract of employment can be achieved in either of the two ways. A contract of employment or a letter of employment

If the parties managed to reduce their agreement into writing that is well. However, the law requires the employer to issue a letter of employment within 15 days from the conclusion of the [unwritten] contract which should be delivered to the employee (Article 7(1)).

The legal preference is that there should be a written instrument evidencing their engagement.

It is important to underline that the law does not say a contract of employment does not require a particular form. It rather states that, "unless otherwise provided by law…" a contract of employment does not require to be made in writing. This implies that if the law somewhere stipulates the need for a written instrument, such stipulation would need to be complied with in order to obtain legal validity.

For instance, art 11(3) prescribes that when the parties agree to have probation period, the agreement shall be made in writing.

Art 25(2) where the parties to an employment contract agree to terminate their relationship, such an agreement shall be binding on the employee if and only if it is made in writing.

Art 48(3), A contract of apprenticeship is required to be made in writing and attested by the ministry as well

Agreement to amend conditions of employment (Art 15(2) and deduction from employee's wage (Article 59(1) require written instrument as well.

- Interestingly, the general principle of the law of contract prescribes that "any contract required to be in writing shall be of no effect unless attested by two witnesses" (Article 1727(2). The phrase "subject to the provisions of the relevant law" under proclamation No. 1156/2019 seems to refer to the general principle of contract that requires two witnesses for validity. **See problem for discussion pp. 48**

2.3. Exclusions

In order for employment law to be applied, there is a need to establish the existence of employer-employee relationship. However, not all employment relationships are governed by employment law. There are some employment relationships that are excluded

Two ways of exclusion are; express exclusion and conditional exclusion

2.3.1. Express exclusion art 3(2):

3. Managerial Employee

In order to determine who managerial employees are, Ethiopian legal system adopted two approaches, structural and functional approaches.

Structural approach of distinction focuses on the organizational structure of the enterprise. **The functional approach,** which has been incorporated in our labor proclamations since 1993 focuses on the function of the employee rather than on the title (form) assumed, or the position where the employee is situated within the organizational structure of the enterprise concerned.

File No.117076; Vol.19

የአዋጅ ቁጥር 377/1996 ተፈጻሚ ከማይሆንባቸው ጉዳዮች መካከል አንዱ የስራ መሪን አስመልክቶ በሚደረግ የስራ ውል ስለመሆኑ በአዋጅ ቁጥር 377/1996 (በአዋጅ ቁጥር 494/1998 እንደተሻሻለ) በአንቀጽ 3 (2) (ሐ) ስር የተመለከተ ሲሆን በዚህ ድንጋጌ በተሰጠው ትርጉም መሰረትም የስራ መሪ ማለት በሕግ ወይም እንደ ድርጅቱ የስራ ፀባይ በአሰሪው በተሰጠ የውክልና ስልጣን መሰረት የስራ አመራር ፖሊሲዎችን የማውጣት እና የማስፈጸም ከነዚሁ በተጨማሪ ወይም እነዚህኑ ሳይጨምር ሰራተኞን የመቅጠር፣ የማዛወር፣ የማገድ ፣ የማሰናበት ፣ የመመደብ ወይም የስነ ስርዓት እርምጃ የመውሰድ ተግባሮችን የሚያከናውን እና የሚወስን ግለሰብን የሚመለከት እና እንዲሁም እነዚህን የስራ አመራር ጉዳዮች አስመልክቶ የአሰሪውን ጥቅም ለመጠበቅ አሰሪው ሊወስድ ስለሚገባው እርምጃ በራሱ የውሳኔ ሀሳብ የሚያቀርብ የሕግ አገልግሎት ኃላፊንም የሚጨምር ነው::

See art 2 (10) of 1156/2019, Thus, an employee would be categorized in to management team if the worker by law or employer's delegation, is engaged in decision making task.

Reasons for the exclusion of the managerial employee from the labor law:

1. These positions are to be occupied by people who have gained the confidence of the employer.

In a sense, these job positions are "services of trust." After all, managerial employees are stationed at the workplace to protect the interest of the employer. Any employee who undertakes these functions associates herself with the employer rather than with the employees. Since one of the objectives of labor law is to protect the employee from possible mistreatment of the employer, managerial employees may not need such protection as they already secured the confidence and protection of their employers.

2. **Employer's concern,**

If managerial staff is to be covered by the Labor Proclamation, the employer will not have full power of terminating them whenever its confidence over them is eroded because grounds of termination of employees are narrowly formulated. This will compel employers to be represented by a personnel team on whom they have no or little confidence. This will have undesirable consequences from the perspective of employers' interests.

3. **ILO jurisprudence recognizes the validity of the exclusion of managerial employees from joining trade unions for the employees.**

Distinction between managerial and non-managerial employees appears to be also appropriate in order to avoid "divided loyalty" of the managerial staff. On the one hand, the job position of managerial staff requires them to ensure and protect the interests of the employer. On the other hand, if they unionize themselves with the non-managerial labor force, they may be inclined to ensure and protect the interest of the workers.[4]

If the managerial employee and the employer agree to regulate their relationship by the provisions of the Labor Proclamation, it should be given effect. **File No.60489: Vol.13**

The possible legitimate question here is; if managerial employees are excluded from the applicability of the Labor Proclamation, what safeguard would they have?[5]

4. First, their contracts of employment will be the main basis for their protection.

[4] In principle, an employee who merely limited himself to offering recommendations to the management staff without making any decision is categorized as a non-managerial employee. However, there is an exception to this rule where a legal service head of an enterprise though they may be confined to providing recommendations are still categorized by law as a member of the management staff. This position of the law may be debatable, but it seems a policy decision.

[5] Vol. 21 File No. 130685

5. Second, since the Civil Code applies to all employment relations, including managerial employees, the relevant provisions of the Civil Code may be of some help in protecting the rights managerial employees.

Employees of private [personal] service (Article 3(2) (d) Cum 2(16))

It is domestic services and the employees working in them are "domestic workers".
It must be noted that it is not all cooking, cleaning, guarding or gardening services which are excluded from the ambit of the Labor Proclamation. If such services are provided to a profit-making employer, such as hotels or restaurants, the relationship will be governed by the Labor Proclamation. Therefore, it is not the nature of the service that matters. It is rather the identity of the employer (whether for profit or for non-profit employer) that is the determining factor.

Reason for this exclusion

6. Employer and domestic worker relationship is too private and too personal for regulation.
7. Private persons who hire domestic workers for personal service purposes will be willing to buy such service as long as its price is within their economic ability to pay. If labor law protection is accorded to domestic workers, obviously the price of their labor would be higher because protection involves cost. This might have an adverse effect of reducing the employability of domestic workers.

Public servants (Article 3(2) (e)

Note that it is not all employees of the state which are excluded from the application of the Labor Proclamation. It is only "employees of state administration" which are excluded

Is there any distinction between "employees of state" and "employees of state administration?" **"Employee of the state"** comprises of ***employees of state administration*** and ***employees of state-owned enterprises.***

When the state acts as a public power with regulatory and administrative decision making functions, it is considered to have engaged in state administration. Conversely, when the state owns and runs business, for all practical purposes, it will be treated like any business entity since it has a profit and business purpose in view. It is only employees of state administration excluded from ambit of the labor proclamation. Therefore, employees of state-owned enterprises are to be governed by the Labor Proclamation.

There are employees of the state which may not fall within the two categories e.g. employees of public educational facilities and health facilities do not fall in the above categories because the public educational and health facilities are neither state administration nor state owned enterprises. They are not state administration because they do not possess any regulatory and supervisory power. Nor are they state-owned enterprises because they do not operate on a for profit basis. Strictly speaking therefore, employees of these public social service providers are not excluded from the ambit of the Labor Proclamation.[6]

Permanent staff employees of the public universities are civil servants. Hence the public universities are established by Council of Ministers regulations and they are financed by the government.

However, the academic staff in Ethiopian universities is employed on a fixed term contract basis to be renewed every two years. Strictly speaking they are not permanent employees. Thus what is the employment status of university instructors? Clearly, the service of an academic staff in public universities that is teaching, research and community services are permanent in nature as they are the institution's core functions. Therefore, though they are fixed term employees; they are, by virtue of their tasks, permanent employees of the government institutions and hence civil servants. **Read, (File No.132714; Vol: 21**

2.3.2. Conditional exclusion

The law stipulates conditions the fulfillment of which will result in exclusion. Unless and until the conditions stipulated are satisfied, the contract of employment under consideration shall remain within the coverage of the Labor Proclamation. E.g. see art 3(3) generally, these are employment relations in non-profit sector. Diplomatic missions, international organizations, religious organizations, and charitable organizations are all non-profits. This is an indication that though the Labor Proclamation is mainly intended to regulate the for profit sector, it can reach out to non-profit enterprises, if not excluded.

Employees of diplomatic missions and international organizations

The diplomatic institutions employ Ethiopians as local staff in various job positions. How the local staffs' employment relationship with the diplomatic missions is to be regulated is something to consider.

The Council of Ministers has not issued any such regulation yet. In practice it is the first option that has been materialized.

[6] "Civil servant" is a person [permanently] employed by a federal government institution (Article 2(1). And "Government institution" means any federal government office established as an autonomous entity by a proclamation or regulations and financed by government budget (Article 2(3). Federal Civil Servants Proclamation No 1064/2017

As gathered from personnel at the Ministry of Foreign Affairs, whenever diplomatic missions or international organizations commence operation in Ethiopia, they sign ***"Host Country Agreements"*** with the Ministry of Foreign Affairs. This instrument stipulates their rights, duties, privileges and immunities while operating in Ethiopia. Nevertheless, based on the agreements, they are duty bound to respect Ethiopian laws. This implies they are required to comply with the stipulations of the Labor Law in their employment relations.

However, whenever a labor dispute arises between the missions and any of their local employees, we are told by the relevant authorities that, efforts for amicable settlements through the assistance of the Protocol Department at the Ministry of Foreign Affairs will be undertaken. Therefore, the immunity accorded to these institutions is not to disregard the provisions of the Labor Proclamation. They are rather given exemption from appearing before Ethiopian labor tribunals. This approach tries to strike the balance between two competing interests, respecting the sovereign power of the representatives of the foreign countries from being dragged into domestic institutions and protecting the fundamental rights of host country citizens.

Employees of religious and charitable organizations[7]

According to the Regulation, it is stated that "the Labor Proclamation shall not be applicable with respect to a person who gives spiritual service in a religious organization" (Article 3(1). In fact, prior to the adoption of this Regulation, the Federal Supreme Court Cassation Division had already held that employees of religious institutions who offer spiritual service are not subjects of the Labor Proclamation, they are rather to be governed by the religious code of the respective institutions. **(File No.18419: Vol.8).** Based on the holdings of the Cassation Division, if the labor law is made to apply on such employment relations, it will be tantamount to interference by the government in religious affairs which is constitutionally prohibited (Article 11(3) of the Constitution).

In another note, the Labor Proclamation is applicable with respect to workers engaged in performing administrative, charity or income generating activities undertaken by religious organizations (Article 3(3) of the Regulation).

Workers engaged in performing administrative or charity activities in religious organizations are not entitled to collective bargaining. Therefore, in order to determine the full applicability of the Labor Proclamation with respect to employees of religious institutions, it depends on whether the particular job

[7] In 2015 a Council of Ministers regulation was issued to this effect. This is a "Council of Ministers Regulation on Employment Relations established by Religious and Charitable Organizations No. 342/2015."

position of the employee is an income generating or not because it for workers engaged in income generating activities in religious institutions that the Labor Proclamation in its full force applies.

With respect to employees of charitable organizations[8]

The implicit message of art 5(1) of the regulation is that employees of religious or charitable organizations tasked with income generating activities still can engage in collective bargaining.

2.4. Employment under the Civil Service Sector

The private sector employment regime where we have federally legislated single labor code applicable across the whole Ethiopia, the civil service employment regime is within concurrent jurisdiction.

Both the federal and the regional states have the competence to issue the law however, that the basic principles are the same for the federal and the regions. In this regard, the Federal Constitution states that though Regional States are empowered to enact and enforce laws on State civil service and their condition of work; in the implementation of this responsibility, it [they] shall ensure that educational, training and experience requirements for any job, title or position approximate national standards (Article 52(2)(f).

The Federal Civil Servants Proclamation No. 1064/2017 defines "civil servant" as a person [permanently] employed by a federal government institution (Article 2(1).

"Government institution" defined under art 2(3)

Employees of civil service are categorized into three; permanent civil servant employees, temporary employees and daily laborers.

Permanent civil servant means a person permanently employed by a government institution[9]

Although the word "permanent" is not included in the English version of the Proclamation, the Amharic version carries that important word.

The exclusions provided thereunder were unnecessary because they are not, strictly speaking, employees. Officials with a rank of state minister, deputy director general and their equivalent or above such Ministers and Director Generals are political appointees rather than employees. Since they did not satisfy the definitional elements of the concept civil servant, placing them under exclusion was not appropriate.

[8] The Regulation stipulated that "the Labor Proclamation is applicable with respect to workers engaged in performing income generating, administrative or charity activities in a charitable organization" (Article 4). It is only with respect to collective bargaining that the applicability of the Labor Proclamation has been avoided in connection with employees engaged in administrative and charity activities within the charitable organizations.

[9] See art 2 (1) of the Federal Civil Servants Proclamation No. 1064/2017

Similarly federal judges and prosecutors fill their respective posts through appointment instead of employment. Technically therefore they are also not employees.

When it comes to parliamentarians and members of the House of federation, they assume their seats through election and not through employment. Hence the exclusion was unnecessary. Members of the Armed Force and the Federal Police have their own separate regulatory framework which governs their rights and duties. On the principle that the special prevails over the general, it is their special governing legislation which applies on them. Thus, the exclusion was unnecessary to their cases, too.

"Temporary employees" defined under art 2(2) of the Federal Civil Servants Proclamation No. 1064/2017

As to the recruitment and deployment procedure of civil servants, it is more competitive and open compared to the Labor Proclamation recruitment procedure. See (Articles 13(1) and 16(1)) of the civil servant proclamation.

2.5. Duration of Employment Contracts

A contract of employment may be concluded for specific work, for specified period (fixed term) or unspecified period (contract for indefinite period).

2.5.1. Contract for specific work[10]

In such cases, the parties shall remain engaged until such time the task is completed or the fact that initiated the engagement has come to an end after which the parties will be separated without any further procedure. The length of the engagement will depend on the magnitude of the task.[11]

- *Read the case on File No. 20885; Vol.4*
- *Read the Cassation Division decision on Ethiopian Telecommunication Corporation v. Tiegist Worku (File No.11924; Vol.3*

2.5.2. Contract for specified period (fixed term employment

A contract of employment could be concluded for a definite duration. A contract for definite period, is mainly associated with project works which have limited period of existence.

After the expiry of the specific duration, the contract of employment shall come to an end. **However**, it is not as simple as that. In fact, this is one of the controversial areas under Ethiopian Labor Proclamation

[10] See art 10

[11] For instance, if a certain laborer is employed to harvest crops in a particular season of the year, as soon as the harvesting is completed, the contract of employment may validly be terminated without any complicated process.

because the Law has exhaustively listed certain situations where fixed term employment may be formulated (Article 10). In all other cases "the presumption of indefiniteness" of a contract of employment applies (Article 9). This means unless the nature of the contract falls under any of the circumstances stipulated under Article 10, even if the contract fixes duration, the contract is presumed to have been concluded for indefinite duration.

This is one of the areas of labor contract which deviates from the general principle of contract that states terms of contract agreed by the parties are binding as though they are law. Although the parties agreed to a fixed term engagement, the law overrides their terms and extends it to an indefinite duration. It seems that it is with the view to providing employment stability to the weaker party (the employee) that this presumption has been put in place. Therefore, even if the contract is for a definite period, if the job is of a continuous nature, the employer may be compelled to renew the contract.[12]

Fixed Term Employees are entitled to all benefits and protections under the Labor Proclamation because the law prohibits discrimination among employees based on status unless the law has created its own distinction.[13]

On the other hand, where the source of the benefit is an instrument other than the law such as a collective agreement, the Cassation Division held that benefits available to indefinite period employees may not be available to fixed term employees.[14]

In practice, however, there are instances where employers deny annual leave, maternity leave or other similar entitlements alleging that fixed term employees or contract employees are not eligible for such entitlements. As far as the law is concerned, such discriminatory measures are legally invalid. Of course, there are some instances where differential treatment is allowed by law. For instance, probationary employees are not entitled to sick leave or severance payment because the law states that in order to be eligible for these entitlements, completion of probation period is a pre-requisite (refer Articles 39(1), 85(1).

[12] Read cassation "Ethiopian Telecommunication Corporation v. Tiegist Worku (File No.11924; Vol: 3)."
[13] Read cassation "Yotek Construction Plc. v. Gebre Belayneh et al (File No. 87338; Vol.15),"
[14] Read cassation "(Ethiopian Electric Power Corporation v. Seyum Gebretsadik et al; File No.47469; Vol:9"

2.5.3. Contract for indefinite period[15]

Where enterprises are established for indefinite duration, their modality of employment is mainly for indefinite period as well. Nevertheless, this does not mean that the employee is employed forever or for life. Rather it only means the employee concerned is protected from arbitrary dismissal.

With regard to the positions of the employers, though it is within the principle of contractual freedom to enter into fixed term contracts if the parties wish, it will be unlawful to terminate a contract of employment by the mere fact that the duration expires. The presumption of indefiniteness (Article 9) prohibits such a measure. **Thus,** the employer should look for other valid grounds of termination such as incompetence or serious improper conduct if the job is of a continuous nature. Moreover, the employer can in no way reduce the benefits to be accorded to the employee by law due to his contractual status. Therefore, fixed term employment does not offer employers a wider employers' prerogative.

If an employee's sole request is to determine his contractual status or to amend definite contract of employment into indefinite one, he will not have a cause of action that requires court determination because this has already been determined by the law; and it does not need court blessing. Hence, such request shall not be entertained by courts or other labor tribunals." Moreover, if they can show that their job position is of continuous nature, the employer cannot terminate them by the mere fact that the fixed term period expires.[16]

2.6. Rights and Duties of the Parties

2.6.1. Obligations of the employer

The parties are expected to spell out their respective rights and obligations under the contract exhaustively. However, the law provides mandatory provisions from which the parties may not deviate unless the law expressly allows them to contract out. Thus, what has been provided by the provisions of law (art 12-14) shall be implied terms of the contract.

[15] There are two misconceptions both from the employers' and employees' side. From the employer's side, some employers tend to conclude fixed term arrangements while the job position is of permanent nature. The reason for so doing is they hold the view that in a fixed term arrangement they have wider latitude for hiring and firing such employees including offering reduced labor standards.
From the employees' side, whenever they conclude fixed term contract even for jobs of permanent position, they feel insecure in their employment in that they are of the view that the employer may terminate them at will upon the expiry of the stipulated period. At times, they resort to court with a view to obtaining a declaration of permanency in their employment status since their position is of permanent nature. Both positions are legally invalid.

[16] Read cassation File No.16273: Vol.2 "Ethiopian Telecommunication Corporation v. Genta Gemea"

According to Art 12(1) (a) "the employer shall provide work to the worker in accordance with the contract of employment" *why should the law obligate the employer to provide work so long as it pays him the wage?* Reasons

1. In cases where wage is assessed in the form of piece rate, failure to provide work may result in denial of wage because if the employee is not given job, she will not produce anything.

Also art 2529(1) of civil code provides *"the employee who is paid at piece rates may require the employer who engages him to give him an adequate amount of work for the duration of the contract".*

The fact that the employee is entitled "to require adequate amount of work" implies the employer has the duty to provide work in such cases. Therefore, for piece rate based wages, providing adequate work should be an essential duty of the employer.

2. Work is human rights concerns. It is believed that work is a source of pleasure and very much associated with respect to human dignity. Work has essential psychological functions such as personal fulfillment and self-expression, opportunities for social interaction, sense of status and prestige.

The work that is expected to be provided is "in accordance with the contract of employment." This formulation restricts the power of the employer towards assigning the employee in reference to the agreed job position. Indeed the Cassation Division held that it is within an employer's prerogative to assign its employee in any tasks so long as the employee's job grade and other benefits are not reduced.[17]

The other employer's duty is payment of wages and other benefits. The legal basis for such entitlements could be contracts of employment, work rules, collective agreement because **Ethiopian law does not yet fix statutory minimum wage for the private sector.** Nevertheless, if the amount of wage is not fixed in the contract, and is not based on collective agreement, the wages which is usually paid for certain work in a certain branch or region is due (Civil Code; Article 2535).

[17] Muger Cement Enterprise v. Hailu Mengistu; File No.40938; Vol: 8 and Menbere Patriarch Supreme Office v. Yibeltal Atnafu; File No.44033; Vol.8).

2.6.2. Obligations of the employee

Employee is expected to render agreed service in person and under the authority of the employer. The duty to obey the instructions of the employer is another aspect of the engagement (Article 13(2). However, the employee is never obliged to carry out work if this would violate the law.[18]

The other possible argument raised by cassation File No.90570; Vol: 16, File No.108933; Vol: 18, File No.108789; Vol: 18

Under Article 1(2) of Convention No.111, ***"any distinction,*** exclusion or ***preference*** in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination." A qualification may be brought to bear as an inherent requirement without coming into conflict with the principle of equality. As regards to men and women, distinctions on the basis of sex may be required for certain jobs.

2.7. **Triangular Employment Relationship**[19]

"Triangular employment relationship" Under standard employment relationship, the employee enters into a contract with a certain person and provides the labor service for the same person (who is the employer and the user of the labor service at the same time). **In a triangular labor relationship** however, this is not the case. The worker enters into an employment contract with a certain person assuming the place of employer (the employment agency) while the actual service is rendered to another person who is not part of the contract (the user enterprise).

The fact that they are employees might not be in doubt but they frequently face difficulties in establishing who their employer is, what their rights are and who is responsible for them.

The triangular arrangement was justified on efficiency grounds in the sense that enterprises consider that they would be more efficient if they were to focus on their core business and outsource their support service to be handled by other service providers.

[18] Nevertheless, other than spelling out these mandatory obligations, the law did not expressly attach any sanctions in case of failure to comply with these dictates. A legitimate question therefore is what the consequences would be. One possible line of argument would be since grounds of termination without notice have been exhaustively listed under Article 27(1), and since these are not mentioned thereunder, they cannot be grounds of dismissal. They could entail any disciplinary measure short of dismissal.

[19] The relationship between the employment agency, the client and the worker is the most common form of what is known as "triangular" or "tripartite" employment relationship.

2.8. Suspension of a Contract of Employment

Suspension of a contract of employment is a situation where the obligations of the parties to the contract may be temporarily withheld. This is a grey area that combines the attributes of termination and contracting. On the one hand it resembles termination since the employee will not be required to render service and the employer will not be obligated to pay wage during this period. However, since the parties will be reinstated to their previous engagement once the circumstance that warranted suspension elapses, the "bare contract" exists during this period.

Reasons for suspension

- Voluntary arrangement of the parties;
- Reasons dictated by societal interest;
- Due to reasons beyond the control of the parties

Voluntary arrangement (Article 18(1))

The employer and the employee may agree to suspend their contractual relation for some time. For instance, the employee may obtain an offer for better (payable job) for six months. In such a case, he may request his employer to grant him leave without pay for six months.[20]

Suspension for socially beneficial tasks (Article 18(2) and (4))

It is also possible that the employee may be called upon to respond for a national call, be it military or other national agenda. Many of these roles are directly or indirectly related to socially beneficial services. It seems unfair to terminate the contract of employment of an employee who is rendering service which is important to the society at large. Employees would like to make sure that they will get their employment back after discharging their social responsibility. Otherwise, they may not be willing to commit themselves to such services.

Suspension due to reasons beyond the control of the parties (art 18/3)

An employee may be detained by government authorities for some time. If the detention lasts more than five days, the fate of the worker's contract of employment should be an issue of concern. Detention is within police power and hence it is beyond the control of the employee. *Detention per se does not erode the presumption of innocence.* It is when a conviction attached that presumption of innocence would be

[20] This kind of arrangement is beneficial to both contracting parties. It enables the employee to obtain modest increases in payment for some time without losing his employment security. From the employer's perspective, such an arrangement helps it retain skilled and productive employees by providing employment flexibility that addresses its employees' concerns and interests.

removed. Conviction is judicial determination while detention is not. It thus appears that Article 18(3) is an exception to Article 27(1) (b).

In fact, the Federal Supreme Court Cassation Division held that even when the detention exceeds the 30 days limit, the employer cannot terminate the contract of employment by contending that the 30 days have elapsed unless it is shown that there was a court sentence passed against the employee as per Article 27(1) (j).[21]

Reasons beyond the control of the employer (Article 18(5) and (6)

If the cessation of the activities of the undertaking is permanent in nature, the contract of employment will come to an end (Article 24(4). But, if the situation results in temporary cessation of activities, it will be an issue of suspension of a contract of employment. Although how long is temporary or how long is permanent may be issues open to debate, it appears that the intention of the legislature seems cessation of operation up to ninety days is temporary; while cessation of operation longer than that is considered to be permanent. This can be deduced by looking at Articles 18(5) and (6) cum 21(1) of the Proclamation. **Therefore,** any temporary cessation of operation for less than 10 days should be tolerated and incurred by the employer (non-actionable); while cessation of operation above 10 days and up to 90 days shall fall within suspension. And any cessation of operation beyond ninety days may warrant termination of a contract of employment.

The reason of duty to inform (art 19) seems if the measure is left to the discretion of the employer, it is feared that it may give room for misuse of the provisions for not well-founded reasons.

Where the appropriate office determines there is sufficient ground for suspension, it will approve it and fix the duration for it. But the duration shall not exceed ninety days (Article 21(1)). Where the appropriate organ is convinced that the employer cannot resume operation within the maximum period of ninety days, the contract of employment shall be put to an end and the workers shall be entitled to benefits specified under Articles 39 and 44 of the Proclamation (Article 21(2).

[21] Read File No.114669: Vol.19). The fact of the case was the employee remained in police custody for forty days on remand after which the public prosecutor decided to send him free. Interestingly in this case neither the applicant nor the Cassation Division relied on Article 18(3).

The decision of the administration is not final in the sense that any of the parties who is aggrieved by the decision of the administration can appeal within five working days against this decision to the appellate court where the employer runs its business (Article 20(3) cum 140(1)(e).[22]

2.9. Consequences of Expiry of Period of Suspension

Normally as soon as the situation that gave rise to the suspension expires, the parties will be re-engaged without any procedure. It is important to note that the employee will not be re-employed or employed afresh. The employee will not be subjected to a probation period and the employee's prior job experience and seniority will be retained in this arrangement. This is why we contend that during suspension the bare contract exists. Accordingly, the worker shall report for duty on the working day following the date of the expiry of suspension and the employer shall reinstate the worker, who so reports for work, in the relevant position to his profession without adversely affecting his job position and wage (Article 22).

Volume	File Number
13	79105
8	41115
6	34585
8	37256, 38435

volume	File Number
11	59906
9	35358, 41767, 45746
8	40804
14	82335
6	22275

[22] If the suspension was only partial and the enterprise failed to resume operation within the prescribed period, the situation will be entertained under Article 28(3) (b). In this case, severance payment shall be due as per Article 39(1) (c) and payment in lieu of notice under Article 44. In this case too, Article 40(4) is relevant as the reduction of labor force is to be effected based on Article 29; and Article 29 cross refers to Article 40(4).

Chapter III

Termination of Contract of Employment

3.1. Lawful Termination

A contract of employment is not a life-long commitment. Lawful grounds of termination of contract of employment are the following:

- Termination by the operation of law;
- Termination by the agreement of the parties;
- Termination at the initiation of the employer;
- Termination at the initiation of the employee

3.1.1. Termination by the operation of the law

The occurrence of a certain factual or legal situation will put to an end the parties' contractual relationship without any additional procedure or process. For instance, if a contract of employment was concluded for the performance a specific work, the completion of the agreed work will bring an end to the parties' engagement (Article 24(1). Prior notice or any other measure is not required from either party in such cases.

This is not the case if a contract of employment was made for a definite period; the expiry of the stipulated period does not necessarily bring the contractual relation to an end because Article 9 places what we call a ***"presumption of indefiniteness"*** of a contract of employment. It means if the job to which the employee has been assigned is of a continuous nature, unless the employee was employed for replacement purposes. Even if the contract was for a definite period and the period has expired, renewal shall be required unless there exist other ground of termination such as incompetence or serious misbehavior.

Death of an employee is another ground for termination of a contract of employment by the operation of law (Article 24(2). Because, the right to employment is personal and cannot be inherited by third parties.

An employee's attainment of the age of retirement as per the relevant law. There is an intergenerational equity policy consideration that would note that older workers should vacate job positions to the youth.

There was no retirement age for the private sector in Ethiopia until 2011[23]. The labor proclamation does not prescribe retirement age in any of its provisions.

Enterprise's Cessation of operation permanently due to bankruptcy or for any other causes (Article 24(4). This may be considered as the ***"death of the enterprise."*** However, it is not the employer who determines bankruptcy; it is rather a court of law that declares such a status. It must be noted that mere reduction of profitability does not amount to bankruptcy. Reduction of profitability is something that will handled under Article 28(3).

Revocation of operating license of an enterprise by pertinent authority provided that the revocation is permanent. If the cessation of operation is temporary, it is valid a ground for suspension.[24]

When the worker is unable to work due to partial or total permanent incapacity (Article 24(5);

However, the subjective appreciation of the employer that the employee is unable to work due to permanent incapacity is not sufficient. Whether the employee is within permanent incapacity must be verified by medical experts. This rigorous third party verification requirement may be noted from the Amharic version of the law ***(ሲፈታ)*** though it is not clearly spelt out in the English version. In fact, Article 39(1) (g) seems to cross-refer to this sub-Article; and the requirement of verification by medical board has been expressly stated therein.

3.1.2. Termination by agreement of the parties

The basis for a contract of employment is the agreement of the parties. The Labor Proclamation places a rigorous procedure during termination compared to the time of contracting. But at the time of termination by agreement, the agreement to terminate must be made in writing and signed by the parties (Article 25(2).[25]

Such rigorous procedure of consensual termination to ensure the employment stability of the employee, Assumption of the law is; if the employee affixes signature to the written instrument of termination, it is a

[23] private sector has been introduced into pension schemes by Proclamation No.715/2011(as amended by Proclamation No.1267/2014) (i.e. Private Organizations Employees' Pension Proclamation) According to the Pension Proclamation, attainment of sixty years of age for both sexes is the retirement age.

[24] Read Cassation Division in Wudmetas Nuro import-export enterprise v. Hunegnaw Setie and et al; (File No.42985; Vol: 9)

[25] Even though the Labor Proclamation does not require the signature of two witnesses, the Civil Code has such a requirement for written contracts (Article 1719; Civil Code). A contract of employment being a special contract, it has to comply with the requirements of the general law of contract principles unless expressly excluded. If these formalities are not complied with, the employee can challenge the agreement as invalid at a later stage.

well-considered decision from the worker's side. Because written instruments tend to show due consideration and seriousness of commitment[26]

3.1.3. Termination at the initiation of the employer (dismissal)

Labor Proclamation empowers the employer to terminate a contract of employment with notice or without notice depending on the following three valid grounds;y

1. **Termination without notice (summary dismissal)-Article 27[27]**

In employment relations, skill and productivity, though necessary are not sufficient to ensure employment security. On the contrary, behavior of the employee is equally important in retaining employment security. No matter how skilled and productive an employee may be, if the employee happens to have committed any or many of the listed serious misconducts, that employee may be subjected to termination even without being accorded the benefit of notice.

Since termination of employment without notice is the most serious disciplinary measure that an employee can suffer at the hands of an employer, for reasons attributable to the worker's own behavior, the misconduct under consideration must be serious enough deserving the measure and its commission must be sufficiently verified.

Generally, seriousness of misconduct may be assessed from two angles. Firstly, single misdeed may be considered serious enough to justify summary dismissal (quality of the misdeed). Second, minor failings which may not warrant termination individually may be added up thereby cumulatively warranting such a response (quantity of misdeed). In order to verify the commission of these misdeeds through a transparent procedure, the employee must be provided an opportunity to defend himself against the allegations made, unless the employee cannot reasonably be expected to provide this opportunity (Article 7 of the Convention No.158/1982).[28]

- **Art 27/1(C) deceitful or fraudulent conduct in carrying out his duties[29]**

[26]Read cassation; No.37575; Vol.8; the Cassation Division ruled that an agreement to terminate a contract of employment that is not made in writing is invalid and hence unlawful termination.

[27] Read from page 105-110 on text book

[28] Even though the labor proclamation does not have express provisions on the procedure of the right to be heard, as the ILO Convention is ratified by Ethiopia, the procedural safeguard of the ILO Convention should be read into the Proclamation.

However, the right to defend is not available in all cases and at all times. In cases where the employer cannot be reasonably expected to provide the right to be heard, the right can be withheld. This implies that if, for instance, the employee is found red-handed (at the spot) while committing the serious misdeed, the right to defend may not be available as it is manifestly visible act which makes further investigation unnecessary.

[29] Read file No.39543; Vol: 8, it is important to note that this case was disposed based on Proclamation No.377/2003. The new Labor Proclamation No.1156/2019 introduced a new provision that seems to have been

Another issue deserving consideration as regards termination without notice is the time within which the measure should be taken. The reason why the law allows the employer to terminate the employee instantly under this provision is the misdeed committed by the employee is so intolerable that the employer would not be expected to remain engaged with the employee until the notice period expires. Hence the right is to be exercised within short span of time of having knowledge of the occurrence of the ground for termination.

According to Article 27(3) employer to terminate a contract of employment without notice shall be bared after 30 days. The presumption of law is if the employer allows the expiry of this period of time without reacting, it may be assumed that the misconduct was not sufficiently serious to justify termination of employment or the employer has waived its right to take action.

However, where the alleged misdeed makes the investigation of the circumstances of the conduct necessary, the time required for such an investigation would not be included within the thirty working days limit because knowledge as to the existence of a ground of termination will be obtained once the investigation is completed.

- ***Read cassation; File No.53358; Vol.9), (File No.41767; Vol.9), (File No.45746: Vol.9), and compare the cases***

Suspending an employee from the job as well as suspending the worker from receiving wages is available to the employer while the investigation is pending. Art 27/4. Although the maximum duration of suspension is capped by law to be thirty working days, the actual date is to be determined by a collective agreement. But the Cassation Division is of the view that even in the absence of collective agreement, the employer in its prerogative as an employer can unilaterally suspend an employee without deviating from the legal maximum, read cassation ***(File No. 53985; Vol.11)***

Note that: the employer's measure of termination without notice is not final and conclusive. It is rather open to revision before a labor tribunal if the employee decides to pursue the matter further. This right will be barred after 3 moinths (Article 163(2), the jurisdiction for revision is reserved for First Instance Court Labor Division (Article 139(1) (a).

2. Termination with notice (ordinary dismissal)-Article 28

- ***The worker's manifest loss of capacity to perform the work to which he has been assigned (Article 28(1) (a);***

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designed to fill this gap. It reads as follows. *"It shall be unlawful for a worker to make use of falsified document or an attempt thereof"* (Article 14(2) (c). The consequence as well has been determined as per Article 27(1) (i), which is termination without notice.

In this case termination of employment must be the last resort after careful assessment of his work, warning him about the possible consequences if the quality of his work does not improve, and allowing him to demonstrate his skills and to improve his work performance by arranging capacity building programs. It is after all these efforts that termination will be considered as a last resort.

The issue of how to evaluate is answered by art 28(2). However what is to be evaluated needs clarification as well.[30]

- The worker's unwillingness to move to a locality where the undertaking relocates (Article 28(1)(c);

Mobility should depend on the willingness of the employee. However, this issue should not be confused with assigning an employee to a branch office. Transferring an employee from one work place to another; or from one job position to another is within an employer's prerogative. Failure to comply with such an instruction would result in dismissal without notice. Nevertheless, it must be noted that this employer's power may be restricted by a contract of employment or collective agreement.

- The post of the worker is cancelled for good cause and the worker cannot be transferred to another job position (Article 28(1) (d).[31]

Employers are at liberty to structure and re-structure their work methods. Regulatory organs may also hand down instructions that may affect the operational and organizational set up of the enterprises these internally or externally driven measures may bring about cancellation of certain job positions exposing employees to termination. In such cases, employees whose job positions are cancelled may be subjected to termination with notice if it is not possible to transfer them to another job position.

The grounds stipulated for termination under Article 28(3) are operational or organizational conditions associated with the enterprise. This area of the labor law is where the need for business continuity and competitiveness on the one hand; and employment security for the employees on the other hand are to be balanced and maintained.

[30] Under cassation File No. 82335; Vol.14; an employee, an Amharic language teacher, was employed in a private school to teach Amharic. As his teaching load was low in the Amharic language section, he was assigned to teach the English language, too. Fee-paying students were seriously unhappy regarding the teacher's performance in teaching English. As a result, the School terminated the teacher, alleging that he had poor job performance in the English language. The teacher objected to the employer's measure of termination and brought his case to court. The Cassation Division ultimately held that "whenever an employee's performance is to be assessed, it must be in light of the job position he was employed to perform. Consequently, the Cassation Division held that the teacher's performance should have been established in light of his performance on Amharic language teaching." Thus the termination was held unlawful.

[31] Read cassations; (File No. 40804; Vol.8); (File No.69125; Vol.13); (File No.38811; Vol.8)

"Operational requirements" generally include reasons of an economic, technological, structural or similar nature. Dismissals resulting from these reasons may be individual or collective and may involve reduction of the workforce or closure of the undertaking.

For example; In order to promote specialization and efficiency, undertakings may decide "outsourcing" of services to focus their activities within the framework of their "core" businesses, leaving the 'peripheral activities' to be rendered by other service providers based on commercial contracts. This may have an impact on the organizational structure of the undertaking in the sense that services which were formerly provided by employees are now to be offered by contractors.[32]

Outsourcing of services to a commercial service provider (contractor) could cause alteration of working methods, Due to this new work method, employees who were tasked to the outsourced activity will be redundant and exposed to termination with notice.[33]

Other grounds of termination under this heading, as indicated above, are attributed to operational reasons. An enterprise may be driven out of the market by rival companies and its market share may shrink; or demand for its products may be reduced or its profit may fall. If such economic situation is left unchecked, it may ultimately lead to bankruptcy and Article 24(4) may become relevant. Thus, in order to prevent the occurrence of total collapse (bankruptcy), the law has put a safety valve under Article 28(3) in the sense that saving the enterprise by sacrificing the job security of some employees was found appropriate.

Although the law seems to prescribe consultation with workers' representatives or trade unions and comply with the priority list stipulated under Article 29(3) in cases where the reduction of the labor force affects at least 10% of the work force, as per Article 29(1), the Cassation Division tends to hold different view. In (File No. 74230; Vol.13) case, though the number of those reduced was proved to be below 10% of the labor force, the Cassation Division ruled that the employer cannot simply terminate at will; it should rather comply with the priority list under Article 29(3).[34]

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[32] This is what we called "triangular employment relationship"

- Outsourcing brought a paradigm shift to employment relation in the sense that the bilateral (employee-employer) engagement has been transformed into triangular (tripartite) relation.

[33] Read cassations File No.22275; Vol. 6; No.38435; Vol.8; the Federal Supreme Court Cassation Division, in many instances, has held that outsourcing of service provision is a lawful way of operating a business and any termination as a result of this change is a lawful ground for termination.

[34] The legislation of many countries establishes the principle of priority of rehiring. Under this principle, workers whose employment have been terminated for reasons of an economic, technological, structural or similar nature should be given a certain priority of rehiring if the employer again hires workers. Ethiopian law does not offer this kind of entitlement.

Duration and form of notice, art 34 and 35

However, the fact that notice of termination was not issued or reason of termination was not mentioned does not make the termination unlawful **(read cassation File No.49797:Vol.9).**

በአንድ ጉዳይ ጭብጥ የሚመሠረተው ከሳሽ ያቀረበውን ክስና ማስረጃ ተከሳሽ የሚሰጠውን የመከላኪያ መልስና ማስረጃና ፍርድ ቤቱ በፍትሃብሓር ሥነ-ሥርዓት ህግ ቁጥር 241 መሠረት በሚያደርገው የቃል ምርመራ የተሰጠ መልስ መሠረት በማድረግ መሆን እንዳለበት የፌትሃብሓር ሥነ-ሥርዓት ህግ ቁጥር 248 ይደነግጋል፡፡

3.1.4. Termination at the initiation of the employee (resignation)

A. Resignation with notice (ordinary resignation), art 31

A worker who does not complete his probation period does not have a duty to provide prior notice (Article 11(6). advance notice to the employer enables it to look for an alternative employee within the notice period so that no operational gap will be created due to a vacant post. The length of the notice period prescribed by the law is a flat rate in the sense that it does not take into account the length of service of the employee or seniority; it is 30 days for all.

"A worker who terminates his contract of employment in disregards of the notice requirement shall be liable to pay compensation to the employer. However, the compensation payable shall not exceed 30 days' wages of the worker and be payable from the remaining payment due to the worker" (Article 45).[35]

B. Resignation without notice (extra-ordinary resignation) art 32[36]

We have seen that the employee's serious misbehavior entitled the employer to terminate the worker without even giving the benefit of notice. **Similarly,** under resignation without notice, it is the employer's serious misbehavior against the employee that compels the latter to resign without giving the benefit of advance notice to the employer.

[35] However, cassation in ***File No.119448: Vol.21***) ruled that the employer cannot by its own deduct the one month's wage of the employee. It must be verified and determined by the appropriate tribunal or the employee must have consented to the deduction.gf

[36] Worker's right to terminate his contract of employment with Article 32 (1) shall expire after 15 working days from the date on which the act occurred or ceased to exist." However, it does not mean, that the worker cannot resign. Even after the expiry of the fifteen working days period, the worker can still resign based on ordinary dismissal (i.e. Article 31). This period of limitation is shorter than that of the Employer which is 30 days; the reason seems the complex decision making process that the employers may goes through than employee and to promote evidences that could show employee's serious misbehavior timely.

3.2. Consequences Associated with Lawful Termination

A. Generally available entitlements

Generally available entitlements are both monetary and non-monetary benefits accorded to the terminated employee regardless of the grounds for termination (this means these benefits are available to all terminated employees).

- **Monetary benefits**

Article 77(4) provides that a worker whose contract of employment is terminated pursuant to this Proclamation shall be entitled to his pay for the leave he has not taken [utilized]. In principle, it is prohibited to convert annual leave into cash. Rather it should be utilized in kind. Therefore, Article 77(4) is an exception to the general principle enshrined under Article 76(2). However, it is important to note that it is not all unutilized annual leave that will be converted into cash because annual leave cannot be accumulated for more than two years (Article 79(4).

- **Non-Monetary Benefit**

Article 12(8) of the Labor Proclamation obligates the employer to issue a **certificate of service** in favor of the terminated employee which specifies the type of work he performed, the length of service and the wage he was earning, free of charge, upon termination of a contract of employment.[37] It is a benefit because the certificate would typically assist the terminated employee in an effort to look for an alternative employment elsewhere. This certificate is available to all terminated employees as well irrespective of the ground of termination (except may be an employee whose employment was terminated upon death)

A. Ground of termination based entitlements

These are monetary benefits of different kinds and amounts, which are available only to employees terminated on particular grounds.

1. Severance pay; art 39(1)[38]

[37] Even an employee who was terminated due to serious misbehavior is entitled to a "clean" certificate of service because it is provided that nothing unfavorable to the employee shall be inserted in such a certificate (Article 2588(2) Civil Code). ILO Recommendation No.119 in its Article 8(2) has a similar stipulation. It provides "nothing unfavorable to the worker should be inserted in such certificate." The rationale seems, since disciplinary measure is an internal in-house measure, its effect should remain in-house as well. It is feared that unfavorable terms inserted in certificate of service may adversely affect the future employability of the ex-employee.

[38] The main purpose of granting severance pay is mainly to minimize the adverse impact of job losses to the employees who may not have a pension benefit at the time of termination.

Eligibility for severance pay is dependent upon completion of probation period and being non-eligible for pension payment. An employee who is eligible for a pension payment as soon as his contract of employment is terminated is not eligible for severance pay. In a sense, the legislative intent is that severance pay and pension payment are not simultaneously available. However, if the employer shows willingness to pay both, the law does not have any objection[39] regarding determination of eligibility for pension payment;[40]

If the terminated employee has completed their probation period and is not eligible for a pension payment, the next step will be to identify whether the worker's termination is associated with one of the grounds of termination mentioned above (Article 39 (1) (a-i). If not, entitlement for severance pay does not exist. Assuming that eligibility for severance pay is affirmatively determined, the next step would be calculating its amount. In determining the extent (amount) of severance pay, however, Article 40 of the labor proclamation is the pertinent provision.

See formula of calculation for severance pay on page 139of text book under table.

The other entitlement available to lawfully terminated employees on some grounds is ***payment in the form of an additional compensation.*** This entitlement emanates from two grounds of termination. One of them is the additional severance pay available to employees whose contracts of employment come to an end by virtue of Articles 24(4) or 29. This is stipulated under Article 40(4) of the Labor Proclamation. Termination based on Article 24(4) is a termination that occurs when the enterprise ceases operation permanently due to bankruptcy or for any other cause; while termination pursuant to Article 29 is a termination associated with reduction of labor force. It can be said that both grounds are situations attributable to the enterprise; and this seems why the employee is entitled to additional pay. The amount payable under this heading is an amount equal to the worker's average daily wage of the last week of service multiplied by 60. Technically, the payable amount under this part is two months' wage.

There is another modality of compensation available for employees who resigned from employment because of the fact that the employee has been a victim of sexual harassment or sexual violence by the employer or a managerial employee (Article 32(1) (b). The amount of compensation under this heading is the employee's daily wage multiplied by ninety (Article 41(2).

Finally the other form of compensation is one month's wage compensation which is available to an employee who terminates their contract of employment because of the fact that the employer has

[39] Read cassation on File No.151474: Vol.23)
[40] Read The Private Organization Employees' Pension Proclamation (Proc. No.1267/2014

committed any act contrary to human dignity and morals or other acts punishable under the Criminal Law (Article 32(1)(a); or where the termination was initiated on safety grounds where imminent danger threatening the worker's safety or health occurs and where the employer, having been made aware of such danger, failed to act within the time limit in accordance with the early warning given by the competent authority or appropriate trade union or the worker himself to avert the danger(Article 32(1)(c); or where the employer has repeatedly failed to fulfill his basic obligations towards the worker as prescribed under the Labor Proclamation, collective agreement, work rules or other relevant laws and the worker was initiated to resign as a result of this (Article 32(1)(d). It is important to note also that the compensation under this Article is payable to a worker who is even eligible for pension payment, because this has a type of punitive and deterrent effect.[41]

2. Time limit within which the payments should be effected or claimed

The economic gaps associated with job loss need to be filled soon. With this purpose in view, the proclamation stipulated that *where a contract of employment is terminated, wages and other payments connected with the termination due to the worker shall be paid within seven working days from the date of termination (Article 36).* payments connected with the termination due to the worker is intended to mean payments such as unpaid wages, bonuses, severance pay, compensation and unutilized annual leave converted into cash.

If there is a dispute as to the amount payable to the employee in this regard, the law remedies that by stating that the employer shall pay the worker the admitted amount within the prescribed period (Article 37) whiles the amount in dispute will be resolved at a later stage in time by a dispute resolving organ.

To reinforce this policy of prompt payment, the law has prescribed a penalty in stating that where an employer fails to pay the sum due to the worker within the time limit, the labor division of a competent court may order a penalty payment of up to three months' the worker's wage except where the delay is due to causes beyond the control of the employer (Article 38). One of the reasons for delay in payment beyond the control of the employer may be failure of the worker to complete her clearance process by giving back tools and other property entrusted to her for the job he was assigned.[42]

If the employer failed to settle payment within the prescribed payment period, the available remedy is resort to the first instance court art 139(1). The time limit within which such claims should be submitted is within six months from the time of termination (Article 163(4). In addition to the outstanding

[41] Read cassation; (File No.11757; Vol.19)
[42] Read cassation; File No.74636; Vol:13)

payments, the court can award up to three month's wages of the employee, if it is claimed by the employee; and if the court is of the view that payment has been unjustifiably delayed (Article 38).

3.3. Unlawful Termination and Its Effects

Broadly, unlawful terminations could be of two types: unlawful due non-observance of procedure (procedural unlawfulness) and unlawful in substance (substantive unlawfulness).

1. **Procedural unlawfulness** denotes a situation where the employer or the employee has a valid reason for termination but failed to follow the legally prescribed procedure of termination. For instance, the employer may have a valid reason to terminate by giving notice but it failed to give notice and terminated the employee immediately.
2. **Substantive unlawfulness** relates to the situation where the employer terminates the contract of employment without having a valid reason. For example, an employer terminates an employee without notice, alleging that the latter has committed a serious misdeed at the workplace, but the employer has no convincing evidence to substantiate the alleged misdeed.

Although both of the above are unlawful measures, the law has treated them differently in terms of effect. Procedural unlawfulness is accorded less seriousness in the sense that it is procedural and can be remedied through compensation. ***For instance,*** if the employee was not given due notice at the time of termination, non-compliance by the employer with the notice requirements shall only result in the payment by the employer, wages in lieu of the notice period (Article 44).

From the employee's perspective as well, if the employee failed to provide advance notice upon resigning, he shall be liable to pay compensation to the employer. However, the compensation payable by the worker shall not exceed 30 days' wages of the worker and be payable from the remaining payment due to the worker (Article 45).

Substantive unlawfulness may be divided into two categories: termination on **"invalid (prohibited) grounds"**; termination on other **substantive grounds**. The law creates a distinction in giving effect between the two. While Article 26(1) of the Labor Proclamation sets forth the principle that the employment of a worker may only be terminated on the grounds mentioned thereunder, Sub-Article (2) of the same provision provides certain reasons which do not constitute valid reasons for termination. Let us examine these.

The remedy available for an employee who was terminated based on any of the grounds mentioned under Article 26(2) would be reinstatement to her previous employment position.[43] See Art 43/1

For other terminations which are held substantively unlawful, the remedy available to the employee is either reinstatement or compensation. The labor tribunals decide these matters on a case-by-case basis.[44]

Generally, the benefits available to an unlawfully terminated employee who may not be reinstated or does not want to be reinstated shall be the following:

- As per Article 43(4)-maximum of six months wage: (180 times(x) average daily wage); and
- As per Article 43(4) and Article 35- compensation in lieu of notice period; and
- As per Article 39(1)(b) and Article 40-severance pay; and
- As per Article 77(4) unutilized annual leave to be converted into cash, if any.

In addition to payment of compensation, employers who undertook unlawful termination are liable to additional penalties as well. As per art 14(1) (c) it is unlawful for an employer to terminate a contract of employment contrary to the provision of this Proclamation Moreover, Article 185(2) (c) stipulates penalties against employer who violates the provisions of Article 14(1)[45]

Concerning the time within which an employee can challenge the unlawful termination, pursuant to Article 163(2) any claim by a worker to be reinstated shall be barred after three months from the date of termination of the contract of employment. If their claim is for compensation instead of reinstatement, the action should be brought within six month. Hence, it is advisable that the employee act as promptly as possible.

Unlike lawful termination where severance payment and pension may not be payable at the same time, for unlawful termination cases, an employee who is unlawfully terminated and who may not be reinstated shall be entitled both to severance payment and pension benefit.[46]

[43] It is only when the employee does not want to be reinstated that she may be compensated and separated because requiring reinstatement against the will of the employee would be tantamount to forced labor. In addition to reinstatement, if the tribunal found it appropriate, it may award a back pay amounting to a maximum of six months wage of the employee.
[44] Read; File No.82336; Vol.14; File No.37454; Vol.8; File No.49931; Vol.9; File No. 64079; Vol.11
[45] However, the penalty which is in the form of fine does not go to the pocket of the dismissed employee.
[46] Read cassation, File No.61 549: Vol.13; File No. 101040; Vol.17

Chapter IV

Special Groups of Employees

4.1. Probationary Employees

At the commencement of a contract of employment, the employer is entitled to set a probationary period (i.e. trial period). The main purpose of probation is to test the suitability of the employee to a post to which she is intended to be assigned. Suitability for employment could be assessed in light of different parameters, such as; competence, duty mindedness, human relations, punctuality, discipline and integrity.[47]

The Cassation Division ruled that a legally binding probationary employment contract should be prepared in written form, signed by the parties and attested by two witnesses.[48] Currently, the maximum period for probation is sixty working days (Article 11(3); Proc. No.1156/2019).

4.2. Young Workers

Admission of children into employment or labor market may potentially compromise some of the fundamental rights of children legally protected within other international treaties such as the right to education, the right to development and survival, the right to physical, mental and social development, the right to rest and leisure.

In the Ethiopian context, in principle, persons below the age of 18 are minors. However, the private sector employment regime allows individuals who attained the age of fifteen to enter into a contract of employment. For purposes of Ethiopian labor law, "young worker" means "a natural person who has attained the age of fifteen but is below the age of eighteen years" (Article 89(1)

It must thus be noted that the issue of employment of young employees is an exception to the general rule of the law of contract. As the law now stands, employment below the age of fifteen is prohibited; while employment between the age of fifteen and eighteen is rigorously regulated.

Normal working hours for young employees would be seven hours per day while for adult employees normal working hours is eight hours per day (Article 61 (1) and 90).

[47] Within the probation period, the employer is authorized to dismiss the employee without any procedure if the employer is of the view that the employee is unfit for the post. A worker on probation may terminate her contract of employment without notice as well. This period is a time when an employee has no secured job position.
[48] File No.98052: Vol.16, and No.126667; Vol.22

4.3. Women Workers

Special maternity protection measures should be taken to enable women fulfills their maternal role without being marginalized in the labor market.

Maternity leave has two underlying components; a wage replacement component covering a specified number of weeks at a specified time; and a job protection aspect during the leave period. Prolonged maternity leave which has been increased from three months to four months (one month prenatal and three months post-natal) leave with full pay is another area where change has been introduced (Article 88).

4.4. Employees with Disabilities[49]

The denial of employment opportunities to people with disabilities forms one of the root causes of poverty and exclusion of many members of this group. The principle of non-discrimination on grounds of disability has been expressly inserted under (Article 14 (1) (f)). Prohibition of discrimination against disabled persons though necessary is not sufficient for their full admission into the labor market. When this obligation is not fulfilled the employer has to pay a fine. This sum of money has to be spent exclusively on supporting the situation of handicapped persons.

4.5. Foreign Employees

Almost all countries accord priority in employment to its own nationals. It is only through bilateral or multilateral agreements with other sovereign states that such preferential treatment to own nationals may be restricted.

Ethiopian law seems to give priority of employment to its nationals. However, Ethiopia has had a bilateral agreement with Djibouti to treat each other based on national treatment, in the sense that nationals of both countries shall have equal opportunity in the labor market of both countries. For a foreigner to lawfully reside and be employed in Ethiopia, they need to possess double permits. These permits are: the permit to reside; and the permit to work. Art 176. Work permit is to be issued for a specific job; and for a maximum of three years subject to renewal.

[49] The Ethiopian legislation for the Right to Employment for Persons with Disability of 2008 defines "a person with disability" as an individual whose equal employment opportunity is reduced as a result of his physical, mental or sensory impairments in relation with social, economic and cultural discrimination.

Chapter V

Legally Stipulated Minimum Working Conditions (Labor Standards)

5.1. Statutory Minimum Wage

A) Arguments in favor of statutory minimum wage

There are massive unskilled and unutilized skilled labor forces as the youth who graduated from universities, technical and vocational training centers are unable to get jobs. These social problems combined will deprive workers of their capacity to negotiate with the employer if wages were to be determined only by individual contracts. Because of the abundant supply of labor force means easy substitutability of labor as someone will come and fill the vacancy. Then, employment contracts become "take it or leave it" options for the unskilled worker. [50]

Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.

B) Arguments against introduction of minimum wage

1. Stipulating minimum wages reduces employment opportunities for less skilled workers because employers do not believe that the imposition of a minimum wage increases productivity.

2. Minimum wages no longer guarantee a "living wage," increments are necessary in order to restore a full measure of dignity to all minimum wage earners.

3. Low labor cost does not mean profitability. Employers and their associations are mindful that cheap labor is not a guarantee for competitiveness and profitability. A profit-maximizing employer may choose to pay wages above market wages to incentivize good workers to stay at the firm and maximize their productivity levels to yield better profit margins for their employers.

Many countries have prescribed minimum hourly/monthly wages to employees working within their territory. Others leave this issue to the contracting parties. The Ethiopian employment regime seems to adopt a hybrid of the two approaches. The Ethiopian civil service regime has prescribed a minimum monthly wage for those working in the civil service; while the labor law regime has left the issue to the contracting parties themselves.

[50] The Ethiopian labor proclamation has an apparent weakness for its failure to fix the minimum wages as a minimum labor condition for fear that such measure may scare away investors..

5.2. Employment Security

Compelling the employee to remain employed against his or her will was tantamount to legalizing slavery or forced labor.

5.3. Normal Working Hours and Leaves

Currently, regular working hours for employees under the civil service and labor have slight differences. Under the civil service, it has been stipulated that "regular working hours of civil servants shall be determined on the basis of the conditions of their work and shall not exceed 39 hours a week" (Article 32). Under the Labor Proclamation, however, "normal hours of work shall not exceed eight hours a day or forty-eight hours a week" (Article 61 (1).

In order to ensure the effective implementation of the limitation of working hours, the Ethiopian regulatory framework has further introduced additional legislative tools.

1. It declared that overtime work is, in principle, prohibited. It is only in cases where exceptional circumstances expressly stated by law have occurred that overtime work is allowed (Articles 66 and 67)
2. Even if conditions for over-time work are met, the rate of payment for overtime work is being made expensive partly to discourage the employer from requiring its employees for over-time work (Article 68)
3. Even if the grounds for overtime work are met, there is limit of hours per day or week an employee can work in the form of overtime (4 hours in a day or 12 hours in a week (Article 67(2)).
4. An employer who "causes workers to work beyond the maximum working hours set forth by this proclamation or contravenes in any manner the provisions relating to working hours is liable to fine" (Article 184(1)(a))

It is important to note that the annual leave under the civil service is the minimum and at the same time the maximum; while that of the labor proclamation is only the minimum as it can be increased through individual contract of employment, work rule or collective agreement. In both cases, annual leave should be utilized annually since it cannot be postponed beyond two budget years[51]

Sick leave, maternity leave and public holidays[52] are items of minimum working conditions as well.

[51] Read File No.14057: Vol.3 & File No. 27959: Vol.6

[52] for the list of public holidays, please refer Public Holidays Proclamation No.16/1975(as

5.4. Safe and Healthy Working Conditions

Principle of voluntary assumption of risk

Employee assumes the risk of being harmed when they decided to work on that circumstance therefore the wage which was being paid by the employer included payment for possible risks. With the passage of time, however, this position gave way to the principle of transfer (passing off) of risk. That is presumption of employer's liability for employment injury cases. Such transfer is economic rationale and equity. In economic terms, when

Principle of employer liability

An employer is held liable to cover the costs of employment injury, it will transfer such cost into society by thinly distributing this expenditure in the price of the product or services, which the employer made available to the market. Hence an employer is in a better position than the employee to spread the cost to the consumers.

The principle of deeper pocket

The employer is in an economically better position to cover the cost of injury to employee, even if it fails to transfer it off to consumers.

Employer's liability principle has two levels; prevention level, and the remedial level

5.4.1. Preventive measures (art 92)

Generally, it is considered that preventive measures are cheaper, easier and better than curative efforts because even with maximum expense and expertise some injuries may not be able to be reinstated to a pre-damage situation.

It is worth noting that the employee has also a corresponding duty at the level of prevention. Since, prevention of employment injury demands conscious involvement of both parties in the sense that it requires bilateral care (i.e. two sides precaution). Therefore employees are expected to make use of the protective tools appropriately and at appropriate time and place (Article 93 (4). Furthermore, they are obligated to obey all health and safety instructions (Article 93(5).

amended)

5.4.2. Remedial measures

Once an industrial accident or occupational disease is sustained, who should cover the loss or how this loss be distributed; and among whom should it be distributed, are all policy considerations. In this regard, three possible solutions could be proposed:

1. Let the damage rest where it falls in a sense that the employee should incur the loss herself;
2. Let the damage be passed-off to the other party in this case to the employer; and
3. In principle, let the damage be passed-off to the other party, but in few cases, the damage should rest where it falls.

Ethiopian law seems to adopt the third option in sense that employer's liability is the prevailing standard (Article 96(1) but when victim's intentional fault is shown, the damage will rest where it falls, and thereby the employer is exonerated from liability (Article 96(2).

The nature of the employer's liability may be either contractual or extra-contractual. On the one hand, if the injured employee does not want to rely on the fault of the employer, they may base their claims on the provisions of the Labor Proclamation before the labor division of the regular court provided that the injury is an "employment injury". On the other hand, if they can show employer's fault and employment injury, they may bring an action before a civil court on the basis of the relevant extra-contractual provisions.[53] But they cannot make use of both tracks simultaneously.[54]

How employer's fault can be established in such cases?

Article 12 of the Labor Proclamation lists out obligations of the employer, Specifically, Article 12(5) prescribes that "an employer shall take all the necessary occupational safety and health measures and to abide by the standards and directives to be given by the appropriate authorities in respect of these measures." This means failure to comply with such mandatory provisions would amount to fault by virtue of Article 2035 of the Civil Code; because pursuant to Article 2035(1) "a person commits fault where he infringes any specific and explicit provision of a law or administrative regulation".[55]

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[53] Fault based liability

[54] ፡ የአንቀጽ 96 ንዑስ አንቀጽ 3 በአዋጁ ውስጥ እንዲካተት የተደረገው በሰራተኛው ላይ የደረሰው ጉዳት በአሰሪው ጥፋት ከሆነ ለሰራተኛው ሊከፈለው የሚገባ የካሣ መጠን በአዋጁ አንቀጽ 109 ስር በተወሰነው እንዳይገደብ ለማድረግ ነው፡፡ የተጠቃሹ አዋጅ እና አንቀጽ 96 ንዑስ አንቀጽ 3 ድንጋጌ ተፈፃሚነት ሊኖረው የሚችለው ሰራተኛው በህጉ የተመለከቱትን መብቶች በአግባቡ እና በቅጡ በትክክል ተገንዝቦ እንደየጉዳዩ ሁኔታ ዓይነት እና አግባብነት በተሻለ ሁኔታ የሚጠቅመውን የመብት አድማስ አውቆ በመለየት ተገቢው መብቱ ከመነጨበት ህግ አግባብ አንፃር ለማቅረብ ሲችል ነው፡፡ ሰራተኛው ከደረሰበት ጉዳትና ከጉዳቱ አፈፃፀም በመነሳት ከሁለቱ የአሰሪ ኃላፊነት መንገዶች ውስጥ አንዱን ብቻ በመምረጥ አሰሪውን ያለጥፋት ወይም የአሰሪውን ጥፋት መሰረት ባደረገ ኃላፊነት ክሱን ከወዲሁ ለይቶ የተሻለ መብቱ ከመነጨበት ህግ አኳያ ከሚያቀርብ በስተቀር በአዋጁ አንቀጽ 96(1) እና 96(3) ስር የተመለከቱትን መብቶች ሁለቱንም በማፈራረቅ እንደፈለገ እንዲጠቀም ለማስቻል ታስቦ እና ተፈልጎ አይደለም፡፡ File No.80343: Vol.15

[55] injuries must associated with employment

Pursuant to Article 97(1) "occupational accident" is any organic injury or functional disorder sustained by an employee:

1. **While carrying out the employer's order during time and place of work; or even away for the work place or outside his normal hours of work.** E.g. Bekele's right arm was seriously injured while he was operating a machine at his place of work
2. **While at the place of work before or after his work or during tea or lunch breaks.** E.g. Sosna sustained injury when fire broke out at a cafeteria within the compound of her workplace during a tea break while she was drinking tea. Although she was not performing work at the time of the injury, she was there for the purpose of the work and hence her injury is categorized as an occupational accident.
3. **While the employee is proceeding to or from place of work in a transport service provided by the employer.**

E.g. Seyoum was going to his place of work when the car he was in collided with a train. He thereby sustained serious bodily injury. The vehicle he was in was a bus assigned by his employer to transport employees to and from place of work. Another workmate of Seyoum, Shifa, and similarly sustained injury on his way to work place using a taxi. Shifa hired the taxi by money he received from his employer in the form of transport allowance. Seyoum's injury is an employment injury while Shifa's is not. The reason for so holding is Seyoum was going to work through a means of transport chosen and assigned by the employer and hence the employer is responsible for the consequences of its choice. But Shifa was proceeding to work through a means of transport chosen by him. Thus he was going to work at his own risk and hence no employer liability.

Occupational disease is any pathological condition whether caused by physical, chemical or biological agents which arise as a consequence of:

- The type of work performed by the employee or
- The surroundings in which the employee is obliged to work

Nevertheless, occupational disease does not include endemic or epidemic disease which is prevalent in the area where the work is done. Such diseases will only be considered an occupational disease for those employees who are exclusively engaged in combating such diseases by reason of their occupation.

Example; Osman was a store keeper at a cotton plantation in Afar Region for five years. While at work, he contracted malaria and died due to it. His family instituted a court action against the cotton plantation for compensation claiming that their breadwinner died due to occupational disease.

The claim of the deceased's family is untenable under the law. Malaria in Afar region is an epidemic disease and hence contracting malaria in Afar is a "generally available risk" to the inhabitants of the locality whether employed or not. Thus, it cannot be considered as occupational disease.

Another example, Seid is a health officer in the same cotton plantation. His job responsibility was looking after the well-being and health of the employees including malaria prevention. While on duty, he contracted malaria. In this example, malaria is an occupational disease for Seid because he is exposed to "increased risk" of malaria contraction more than others due to his job responsibilities. Hence, he should be protected from such risk if he is to effectively render service without hesitation under the contract.

5.4.3. Exemption from liability

An employer's liability is limited to employment injury cases (i.e. injuries sustained at the place and time of work; and injuries somehow related to the work). Even for injuries sustained at the time and place of employment, there are exceptional situations where the employer can validly avoid liability. A case in point is "an intentional infliction of harm by the employee exonerates an employer from liability" (Article 96(2). Nevertheless, the employer would have the burden of proof to show that the employee had indeed intentionally inflicted harm upon oneself.

Admittedly, it is difficult to confidently determine one's intention as it is a state of mind. Nevertheless, it is well established that intention could be inferred from externally manifested acts of the author. With a view to limiting controversy in litigation, the Labor Proclamation in which intentional infliction of harm could be inferred. Accordingly, any injury resulting from the following acts shall be deemed to be intentionally caused by the worker (Article 96(2)(a and b):

- Non-observance of express safety instructions given by the employer or the provisions of accident prevention rules; or
- Reporting to work in a state of intoxication caused by taking alcoholic beverages or drug that prevents him from properly regulating his body or understanding.

Indeed, justice demands that one should not benefit from one's intentional fault.[56]

[56] In Mitiku Hailu v. Mesfin Tilahun; File No. 67201: Vol. 13 case, the employee reported for duty in state of intoxication. His immediate supervisor instructed him to leave the premises. But the employee resumed working ignoring the supervisor's instruction. He sustained injury while in the state of intoxication at the workplace. The employee brought an action against the employer with a view to collecting compensation for employment injury. The Cassation Divisiondenied compensation reasoning that the employee intentionally inflicts harm upon himself.

5.4.4. Extent of liability

Once a certain injury is held to be an employment injury and the employer has no ground to invoke to avoid liability, the next step will be determining the scope of its liability. Although the scope of liability is closely related to the degree of injury sustained by the employee, there are common obligations which are applicable to all injuries. These are:

A. Immediate obligation

As soon as the employee is known to have sustained injury at work, the first step the employer is required to perform is:

I. The provision of first aid service to the injured employee;
II. Transporting the injured employee to the nearest medical facility;
III. Notifying the appropriate government organ (labor inspection office) about the incident

B. Medical expenses

Subsequent obligations imposed on the employer will be, covering the following costs of medical expenses:

I. Costs of medical and surgical care;
II. Hospital and pharmaceutical costs;
III. Cost of artificial facilities for the injured when recommended by Medical Board

What if the injury sustained by the employee requires and is verified by the Medical Board for medication abroad, will the employer be obligated to cover such costs? Is the duty limited to locally available medical facility or even beyond?

In Salini Construction v. Tiglu Frehiwot case; File No. 46363: Vol. 9, Tiglu who was an employee of Salini, sustained an employment injury while working at the Gilgel Gibie Project. The injury was very serious and demanded medical attentionabroad. The employee requested this medical coverage but the employer was not willing to positively respond to this request. The case was litigated up to the Cassation Division. According to the Cassation Division, the liability of the employer to cover medical expenses in employee injury cases does not include the duty to cover the expenses of medication abroad. Some of the reasons offered for such a holding were:

- What is provided in the labor law is minimum entitlement to the Employee, and medication abroad could by no means be a minimum Benefit; and
- As the labor law is a domestic legal instrument, it should be interpreted to Pertain to facilities that are domestically available.

5.4.5. Disability Benefits

As body organs do not have market value, disability is to be assessed in light of the reduction in working capacity due to the injury. Experts in the medical field are important to make this determination. In a sense this is a medico-legal issue. The amount of the disability benefit is dependent upon the degree and duration of disability.

Ordinarily, disability may be temporary or permanent. It may also be total or partial; the worst-case scenario, of course, is death.

Temporary disability is a reduction in working capacity that may last for a maximum duration of twelve months starting from the date of the occurrence of the injury (Article 107(1)(a) and 108). The employer, in addition to covering the medical expenses of the employee, is obligated to make payment to such an employee. The mode of payment is a periodical payment and the amount will be full wage for the first three months; not less than 75% of the employee's monthly wage for each of the next three months; and not less than 50% of the monthly wage for each of the remaining six months (Article 108(2).

- It is worth noting that such payment (both permanent and temporary disability benefit payments) is exempted from income tax (Article 112). Nevertheless, the employee may be denied of these payments if she or he fails to observe doctor's advice or behaves in a manner that prolongs the time needed for recovery.

In cases where the injury resulted in permanent disability, the employer will be obligated to provide lump sum compensation to the injured. The maximum payment available for an employee who suffers total permanent disability due to employment injury is a sum equal to five times of the employee's annual wage (Article 109(3) (a)). The employer's liability, therefore, is both limited and liquidated. If the injury sustained resulted in permanent and total disability, the above-mentioned payment shall be calculated in proportion to the degree of the disability accordingly.[57]

[57] It is important to note that the verification of the medical board is not conclusive and binding on the courts. Courts have the power and flexibility to customize the medical board's verification with the detailed facts of the case before them. For instance, in Dereje Wuletaw v. Walia Leather Processing (File No.49273: Vol.9) case, the employee lost three fingers each from his hands due to employment injury. The Medical Board verified that the victim has been disabled 65%. The Cassation Division however reasoned that the verification of the medical board

For instance, if an employee who was earning Birr 6000/month sustained total and permanent disability, due to employment injury, his disability benefit will be:

6000 (monthly wage) * 12(yearly wage) * 5(years) = Birr 360,000

However, if the employee who lost his/her right arm was verified by a medical board to have lost 30% of his working capacity, and was earning Birr 6000/month prior to the accident; his/her disability benefit will be:

6000*12*5*30/100 (degree of disability) = Birr 120,000

It is important to underline that an employee will not be entitled to permanent disability benefit if they have already a pension scheme or an insurance scheme arranged in advance by the employer.

For instance, in public enterprises or the civil service sector, if an employee suffered permanent injury of serious nature, they will automatically be pensioned and thereby benefit from the government pension scheme. In such cases the employee will not be entitled to employment injury compensation as she cannot benefit from two sources for a single injury. The same principle applies where the employer arranged an insurance scheme for the benefit of the employee provided that the payment based on the insurance policy is not below the amount prescribed by law. However, if the payment based on the insurance policy is below this amount the difference shall be covered by the employer because the amount prescribed by the law is the minimum amount.[58]

Finally, if an employee dies due to employment injury, the employer will be obliged to pay "dependent's benefit" to the dependents of the deceased. The amount of such payment will be the employee's five years wage to be paid in the form of lump sum. Furthermore, the employer will cover the funeral expenses for the deceased employee as well. In order to avoid controversy the law has formulated forced definition as to who the deceased's "dependents" are:

Dependents are nominated by the law itself and hence "nominated beneficiaries" these are:

- The employee's widow/widower;

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does not take into account the reduction in working capacity; it merely assesses the level of disability sustained by the victim due to the employment injury to a human being in general. The Cassation Division thus ruled that the loss of six fingers results in 100% reduction in working capacity and thereby awarded five years wage of the employee. However, reduction in working capacity is not to be assessed in light of capacity to work the pre-injury tasks but other gainful tasks as well (Agricultural Products Promotion and Supply Enterprise v. Getachew Gedlie; File No.43370: Vol.8).

[58] (Mihret Alene v.Ethiopian Tourist Enterprise; File No.97512:Vol.16).

- Children of the deceased who are under the age of eighteen;

- Any parent of the deceased who was being supported by the same.

It is not all dependents of the deceased who will be entitled to the dependents' benefit. It is only the close relatives, nominated beneficiaries, of the deceased who will be the beneficiaries. It appears that the widow/widower's benefit is automatic because unlike the other two, the law did not attach any condition and it is available by virtue of being a widow or widower. However, the Cassation Division in Dr. Mandefro Eshete v. Fredrich Evert Stiftung;File No.36194:Vol.8 case, a widower and his minor daughter brought an action against an employer for fatal accident sustained by his wife and the child's mother. It was determined that the widower had his own means of living at the time. The Cassation Division held that since the widower has his own means of subsistence, he is not entitled to dependent's benefit; it is only the deceased's daughter who is entitled to dependent's benefit. It seems debatable as to whether the spirit of the law is as interpreted by the Cassation Division or not.[59]

Where the deceased left a widow or widower, children and parents behind, the dependents' benefit (i.e. the deceased's five years wage) shall be shared among them on the following basis:

- Widow or widower-50%
- Children-10 % (each)
- Parents-10 % (each)

In addition to these, a minimum of two months' wage, in the form of funeral expenses is due as per Article 110(1) (b). All payments under this heading are non-taxable (Article 112).

Depending on the number of beneficiaries without affecting the share apportioned to the widow or widower, the share available to other dependents could increase or decrease. **In Yonatan Nega Teshager v. Legesse Abera (File No. 40529: Vol.9), case,** the deceased left a minor child behind without any other dependents. The guardian of the child brought the case to the attention of the Cassation Division the Cassation Division ruled that as long as it is established that the child is the sole dependent, the total amount payable in the form compensation for fatal employment injury cases, which is five years wage of the deceased, shall be due to him.

Problem for discussion:

[59] Beneficiaries other than the widow or widower have additional conditions attached to them which is a "means test" in order to benefit. For example, the children of the deceased should have been under eighteen years of age at the time of the claim. In case of parents also, it must be shown that they were being supported by the deceased; but if the parents had independent means of livelihood, they will not be beneficiaries of the dependents' benefit

It is noted that you have already studied the Law of succession in your previous law study years.

- How are dependents under this section similar to and different from successors at law?
- Should dependents be required to bring certificate of heir in order to collect dependents' benefit under this section?
- Should a widow be required to show marriage with the deceased or should irregular union be sufficient for the purpose?

Incidentally read: Ethiopian Insurance Corporation v. Kifle Yohannes Tessema et al; File No.72645: Vol.13

PART II

COLLECTIVE EMPLOYMENT RELATIONS

Chapter VI

Freedom of Association in Employment in Ethiopia[60]

6.1. General

Freedom of association is the right to come together with others to collectively express, promote, pursue and/or defend common interests. Freedom of association is a factor in the achievement of social justice and one of the principal elements in the achievement of lasting peace.

History of freedom of association in Ethiopia dates back to the 1963 Labor Proclamation. Proclamation No.210/1963 stated that:

a) Employers may create and join employers' associations and employees may establish and join labor unions. Said organizations, when registered by the Minister, may engage in all lawful activities.

b) No employer or employee may belong to more than one employers' association or labor union, respectively, at the same time.

c) No Labor union may be created in an enterprise employing less than fifty persons; provided, however, that employees of such enterprises may join general labor unions.

Even though the introduction of the law on freedom of association was considered a step in the positive direction, the stipulation that "no labor union may be created in an enterprise employment less than fifty persons had limited its applicability as enterprises employing fifty and above were very few by then. ILO jurisprudence considers that the establishment of a trade union may be considerably hindered, or even rendered impossible, when legislation fixes the minimum number of members of a trade union at obviously too high a figure.

[60] Part 1 focused mainly on the individual employee as to his or her rights and duties during employment and upon separation. The next part will be devoted towards examining the relevant regulatory frameworks pertaining to collective aspects of industrial relations. Compared to the preceding part, issues of this second part are less litigated before labour tribunals may be because both employees' organizations and employers' associations are too weak organizationally and economically to exert pressure on each other; and on the government.

It was with the coming into force of Labor Proclamation No.64/1975 that the minimum number of membership was reduced to twenty. ILO writings are of the view that the legal requirement that there be a minimum number of twenty members to form a union does not seem excessive and, therefore, does not in itself constitute an obstacle to the formation of a trade union. Currently, the minimum membership requirement is ten.

Currently, the right to freedom of association is no longer a right emanating only from an ordinary legislation. It is rather a constitutionally recognized right.

Article 31: Freedom of Association

Every person has the right to freedom of association for any cause or purpose. Organizations formed in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.

Article 42: Rights of Labor

1. (A) Factory and service workers, farmers, farm laborers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their conditions of employment and economic well-being. This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests.

(b) Categories of persons referred to in paragraph (a) of this sub-Article have the right to express grievances, including the right to strike.

(c) Government employees who enjoy the rights provided under paragraph (a) and (b) of this sub-Article shall be determined by law

The right to freedom of association has both positive and negative features.

In its positive aspect, the right encompasses the right to form an association or join an already established association. Conversely, the negative freedom of association is manifested through the right not to join any association or to withdraw from membership of an association at any time. In terms of scope, based on the ILO

Convention No.87, freedom of association should be guaranteed “without any distinction whatsoever” in the sense that it should be available without discrimination of any kind based on occupation. Thus it is

available not only to workers in the private sector of the economy, but also to civil servants and public service employees in general.

Since, Ethiopia is a signatory to the Convention, its Constitution has followed a similar pattern in stating that freedom of association is available to factory and farm workers on the one hand; and to employees of the private sector and civil servants as well. However, with respect to civil servants, the Constitution does not seem to accord freedom of association to all civil servants. The right is rather limited to civil servants **"…whose work compatibility allows for it [for associating] and who are below a certain level of responsibility".** In order to determine those "whose job position allows for association" and at "what level of responsibility" is allowed for association, the Constitution promised that a law would be issued. But the promised law has not yet gone into effect though more than twenty five years have elapsed since the Constitution was promulgated in 1995.

Pursuant to ILO Convention No.87, all public service employees (with the sole possible exception of the armed forces and the police, as indicated in Article 9 of the Convention No. 87), should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members. It was indeed considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories should have the right to organize for the defense of their interests. Since, Ethiopia is a signatory to ILO Convention No. 87, it is high time that the Ethiopian legislature should come up with a law that would enable civil servants to associate if it is to comply with its ILO obligations.

Paradoxically, however, in National Bank of Ethiopia Employees Trade Union v.MOLSA; File No.55731: Vol.11) we had the following facts: Employees of National Bank had a duly registered and certified trade union for almost thirty years. In 2008, the National Bank was re-established by Regulation No.157/2001 on the basis of which its employees are to be regulated by a special law. As soonas MOLSA learnt that the Bank's employees are excluded from the ambit of the Labor law, it brought an action before the Federal High Court for the cancellation of the registration of the trade union. The High Court ruled that the grounds of cancellation under Article 120 of Proc. No.377/2003 (Article 121 in Proclamation No.1156/2019) do not include change of regulatory regime as ground for cancellation. Hence, it denied the application.

The Ministry lodged an appeal against the decision of the High Court. The Federal Supreme Court appellate division held that since employees of the Bank are excluded from the applicability of the Labor Proclamation pursuant to Article 3(2)(e) of same, the application for de-registration is appropriate; and hence the registration of the trade union should be cancelled.

The trade union petitioned for cassation proceedings contending that the appellate court committed fundamental error of law by ignoring the Article 31 of the FDRE Constitution and ILO convention No.87 and 98 to which Ethiopia is a party as they allow formation of association available to all employees without distinction whatsoever. Nevertheless, the Cassation Division upheld the appellate court's ruling on the reasoning that employees who are entitled to form association by virtue of the Labor Proclamation should satisfy the definition of employees under that particular law. Once they are excluded from its applicability, they cannot be considered employees for the purpose of that law. Thus, the Cassation Division reasoned, de-registration is appropriate. Therefore, the mind-set at the executive level and judiciary seem restrictive in the sense that leave alone to allow unionization of civil servants in the near future, those civil servants who were formerly unionized have been subjected to dissolution.

In order to encourage employees form or join trade unions, one of the first and most important steps is to offer legal protection against anti-union discrimination. It must be underlined that protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker. **See the following pertinent provisions;**

Article 14(1) (d): It shall be unlawful for an employer to coerce any worker by force or in any other manner to join or not to join or cease to be a member of a trade union or to vote for or against any given candidate in elections for trade union offices.

Article 26(2): The following shall not be deemed to constitute legitimate grounds for the termination of a contract of employment;

(a) His [the worker's] membership in a trade union or his participation in its lawful activities;

(b) His seeking or holding office as a workers' representative;

Article 43(1):

Where a contract of employment is terminated because of those grounds mentioned under sub-Article (2) of Article 26 [above], the employer shall be obliged to reinstate the worker, provided, that the worker shall have the right to payment of compensation if he wishes to leave his employment.

Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance trade unions, additional measures should be taken to ensure fuller

protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts. Thus, legislation should lay down explicitly remedies and penalties against acts of anti-union discrimination in order to ensure the effective implementation of the right to association. Consequently, with a view to providing a maximum safeguard to dismissals associated with union leadership and union activities, the Ethiopian legislature prescribed reinstatement as a remedy pursuant to Article 26 cum Article 43 (1) as indicated above. Moreover, penalty in the form of fine has been imposed for unlawfully terminating a contract of employment (Article 14(1)(c) cum Article 185(2) (c).

In principle, measures of suspension or dissolution by the administrative authority constitute serious infringement of the principles of freedom of association. Dissolution by the executive branch of the government pursuant to a law conferring full powers, or acting in the exercise of legislative functions, like dissolution by virtue of administrative powers, does not ensure the right of defence which normal judicial procedure alone can guarantee and which the Committee on Freedom Association considers essential.

Article 121(1)

The Ministry or the appropriate authority may file before the competent court to cancel the certificate of registration of an association, on any of the following grounds:

Article 4 of the ILO Convention No.87 to which Ethiopia is a party prescribes that association may not be suspended or dissolved by administrative body.

The minimum number of membership to establish trade unions has been fixed so low at ten members (Article 114(2) that it enables employees in small enterprises to associate. Besides, relaxed registration procedure in the sense that the registering organ shall respond within 15 working days; and no response within the prescribed period amounts to acceptance of registration (Article 119 (2) is another favorable environment for associations. Exempting original trade union registration from payment of stamp duty (Article 119(5) is helpful as well.

The fact that associations could not be dissolved by an executive organ safeguards them from arbitrary interferences of administrative organs in the associations' day to day activities. It is rather a competent judicial organ which is the labor division of the regional appellate court that is empowered to entertain such cases (Article 140(1) (f).

By formulating a legal framework that allows for the establishment of more than one trade union in an enterprise (Article 115(1) (a)), the law introduced the so called "plurality of unions" policy. This policy is

considered to be a paradigm shift towards the ILO desired direction, away from the previous policy of "mono-union" system.

Note;
Concerns have been raised from different corners that allowing more than one trade union in an enterprise would create a fragmented labor force which would adversely affect unity and solidarity. Based on this concern, trade union leaders are skeptical that laws which allow plural
Unions are against the interest of the labor force. On the other hand, others contend that legislative prescription which stipulates only one union can be established in an enterprise is an
Interference on freedom of association. The argument goes; it should be left to the members how to associate and how many unions to form.

6.2. The legal framework for employment related Freedom of Association in Ethiopia: A historical perspective

6.2.1. Introduction

The failure of "freedom of contract" to bring about fair outcomes in industrial relations principally is owing to the structural imbalance in the bargaining power of the parties; (Employer and Employee) and it demanded some sort of remedial measure to redress the inequality. Employees tried to mitigate the effect of the power imbalance by organizing themselves in trade unions, thereby seeking to negotiate as a collective organ instead of individually.

At earlier times in labor history, formation of associations by employees was treated as **("cartel")**[61]**,** and thereby incompatible with the then prevailing free market philosophy due to its alleged market distortion effect on the supply and price of labor.

Trade unionism was also considered to be tantamount to conspiring against the economic and property rights and interests of the employer, and hence a prohibited act.

6.2.2. Freedom of association: International sources

Among the instruments of global application that recognized freedom of association are:

a. **The Universal Declaration of Human Rights (UDHR) (1948);** Article 20 (1) provides that "everyone has the right to freedom of peaceful assembly and association" while sub-Article (2) of the same Article provides that "no one may be compelled to belong to an association."

[61] Devoted to increase wage for labor

b. **The International Covenant on Civil and Political Rights (ICCPR) (1966);** Article 22 of the ICCPR, for its part, provides: "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."
c. **The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966),** "the right of everyone to form and join the trade unions of his/her own choice."

As regards instruments of regional scope, the right to freedom of association has been incorporated under various human rights instruments such as the European Convention on Human Rights (1950), The American Convention on Human Rights (1969) and the African Charter on Human and Peoples' Rights (1981).

There are also more specific and specialized instruments relevant to workplaces. These are the Freedom of Association and Protection of the Right to Organize Convention No.87 (1948); and the Right to Organize and Collective Bargaining Convention No.98 (1949).[62]

Note that; though the right to freedom of association is available both to employees and employers, it was employees who demanded and most in need of associations. Employees urge for collectivization mainly emanated from their weak bargaining positions when and if employees sought to bargain individually. Because "the individual employer is already a collective power in being a holder of capital"

An employers' association may also help them deal with host governments with a view to lobby for business-friendly policies and laws.

6.2.3. Production and regulatory challenges to Trade Unionism

From the investment point of view, tax incentives, lax environmental regulations and low labor standards have become additional offers of incentive from some investment destinations particularly from the developing world.

The establishment of 'union free' workplaces approach tends to consider labor standards as the decisive factor in determining investment locations.

In the current economic order, the overall trend towards unionization, union density and the role of unions have been on the decline. These are mainly the outcome of the changes in production and regulatory regimes dictated by the global economic order and fierce global competition.

[62] Both of these were adopted under the auspices of the International Labour Organisation and hence applicable within the sphere of the ILO's mandate.

6.2.4. Constitutional recognition of freedom of association in Ethiopia

Freedom of association was for the first time officially and constitutionally recognized in the country by the 1955 Revised Constitution.

6.2.5. Industrial associations during the post-Derg period

The international climate since the early 1980s was one of economic liberalization mainly manifested through privatization accompanied by, among other things, market and price deregulation.

With a market oriented and liberalised policy framework, the government declared its preparedness to withdraw from micro-managing state enterprises in order to provide autonomy and economic space for private sector development except in those 'key establishments' of the economy. Hence, privatization of stateowned enterprises was commenced. In conformity with this political and economic disposition, a new Labor proclamation which repealed that of the military government was issued in 1993. It was stated in the preamble for the proclamation that one of the rationales for its adoption was to ensure compliance of the Labor law with the international [ILO] conventions and other legal commitments to which Ethiopia is a party.

More specifically where freedom of association is concerned, in contrast with the previous law which only granted the right to form association to the employees, the right to establish organizations was recognized and became even-handedly available both to employers and employees. From the employees' perspective, the minimum level of membership to form a first-level trade union was maintained at twenty by the Labor Proclamation of 1993. Protection against anti-union discrimination was been explicitly legislated for the benefit of trade unionists and trade union leaders.

This did not mean, however, the removal of all direct potential administrative control. The Ministry of Labor and Social Affairs, an administrative organ, was empowered to cancel the registration of an association by providing thirty days prior notice specifying the reason(s) for cancellation and the opportunity to challenge it (Article 120). This stipulation was inconsistent with the ILO jurisprudence which expressly stated that 'administrative dissolution of trade union organizations constitutes a clear violation of Article 4 of Convention No.87' to which Ethiopia is a party. Furthermore, the mono-union policy of the military regime was also carried over to the new labor proclamation.

However, with the adoption of Labor Proclamation No.377/2003 and the repeal to Proclamation No. 42/1993, further liberalization towards union formation and administration has been observed. Accordingly, the minimum membership level to form a basic trade union has been again reduced to ten. This change further paved the way for employees of small enterprises to unionize. The possibility of

forming more than one trade union in an enterprise (plurality of unions' policy) has also been expressly legislated for.

Moreover, since the issuance of the Labor Proclamation of 2003, the power of the administrative organ to cancel the registration of an association has been withdrawn. As a result, it is the regular court, consistent with the prescription of the ILO jurisprudence, which has the power to decide on cancellation of registration issues. The right of the administrative body is limited to making application to the court to order cancellation of an association. With these legislative reforms, many of the outstanding issues as to the non-conformity of the previous laws with ILO standards have been positively addressed.

Nevertheless, it may also be argued that the current Labor law brought a fresh problem of its own from the standpoint of a suitable legal framework for trade unionism. This is associated with the exclusion of the management staff from joining trade unions and how the 'management staff' is defined. The ILO jurisprudence accepts the exclusion of 'management and supervisory staff' from union membership of non-managerial employees as managerial employees are believed to be representing the interest of the employer at workplaces.

The labor proclamations of the military government defined the **'management staff'** from the **organizational structure** perspective whereby "only those officials directly accountable to the General Manager or his [her] deputy were categorized within it and hence excluded from trade union membership." The residual part of the labor force outside of this structural linkage was entitled to establish or join trade unions of their own choosing.

Labor Proclamation No. 377/2003, however, defines the "management staff" from the angle of the function the employee performs rather than the post he assumes in the enterprise's organizational structure (i.e. functional approach). Accordingly all employees engaged in managerial functions, regardless of their structural position are considered to be members of the management staff. For the purpose of the present law, managerial function includes, inter alia, possessing the power to "(…) take disciplinary measure (…)." Disciplinary measures, for their part, range from the issuing of a written reprimand or - even an oral warning for that matter- to imposing disciplinary dismissal decisions.

Chapter VII

Collective Bargaining and Collective Agreement in Ethiopia

7.1. General

As indicated above, it must be underlined that formation of an association is not an end by itself. It is in view of defending and furthering the interests of the collective body that an association is mainly established. Thus, association though necessary, is not sufficient to serve its intended purpose. Undertaking collective bargaining and concluding collective agreement are important steps towards achieving this final goal. The right to collective bargaining has been offered constitutional recognition.

Article 125: Definition

1) "Collective agreement" means an agreement on conditions of work concluded in writing between one or more trade unions and one or more employers or representatives or agents of employers' associations.

2) "Collective bargaining" means a negotiation process between employers and workers organizations or their representatives concerning conditions of work in order to reach at collective agreement or the renewal or modifications thereof.

In the Ethiopian legal framework, establishment of trade unions is a pre-condition in order to undertake collective bargaining because collective bargaining is to be conducted between an employer and employers' association on the one hand; and trade unions or their representatives on the other.[63]

Article 129: Subject matters of a collective agreement

Matters concerning employment relations and conditions of work as well as relations of employers and their associations with trade unions may be determined by a collective agreement.

Article 131: Procedure for collective bargaining

1) A party desiring to initiate a collective bargaining may request the other party in writing. It shall also prepare and submit a draft proposal necessary for the negotiation.

2) The requested party shall within 10 working days of receiving the request appear for collective bargaining.

[63] In some jurisdictions, even if there is no trade union in the enterprise, nonunionized workers could still nominate representatives and negotiate with their employer.

3) The parties shall before commencing collective bargaining draw up the rules of procedure for bargaining.

4) Each party shall have the duty to bargain in good faith.

5) Issues on which the parties could not reach agreement by negotiations in good faith may be submitted to the competent labor tribunal.

The principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided. Moreover, it is important that both employers and trade unions make every effort to reach an agreement and genuinely and constructively negotiate with a view to reaching an agreement. Since good faith is a state of mind, it can only be deduced from the externally manifested acts of the parties. Other than those stated above, good faith may manifest itself through making objectively reasonable proposals, employing objectively reasonable practices and procedures while conducting negotiations and complying with the agreements which are concluded.

It is important to note that failure to make oneself available for bargaining within ten working days after receiving request and proposal for bargaining by the other party; and failure to bargain in good faith have been serious violations to which fine in the form of sanction has been imposed pursuant to Article 186 (2). A related issue would be how the sanction to be effected. Fine generally is a penal sanction. In order to impose penal sanction, the prosecution office handles the case and the Criminal Bench renders the decision. However, for the purpose of the labor law, the situation is entirely different. Enforcement of violations under the Labor Proclamation is to be handled Labor inspectors. Labor inspectors are empowered to institute an action against suspects before the Labor division of first instance court. However, the fine is to be delivered to the state treasury. Therefore, the Labor Proclamation has its own unique procedure and organs of dispute settlement.

The other issue associated with collective bargaining is in cases where more than one union have been formed in an enterprise with whom would an employer be obliged to bargain in good faith. One possible solution would be to entitle every union to bargain with the employer with respect to working conditions of its members. However, this proposition has some limitations. First, under this arrangement, the employer would be compelled to undertake multiple negotiations in which substantial part of its managerial time would be spent in negotiating. Second, an employer may be pressed to accept heterogeneous working conditions at enterprise level as every trade union may propose differing working

conditions. This outcome is undesirable to the employer since it would like to have homogenous working condition at enterprise level.

ILO jurisprudence has proposed a solution in such circumstances. It is adopted a working system that states that "the most representative union shall be the exclusive bargaining agent". ***This proposition again raises new issues to be resolved: How to determine the most representative union?*** And ***what does exclusive bargaining agent mean?***

This will take us to ILO jurisprudence again. The Committee of Experts of the ILO Governing Body stated that it is not necessarily incompatible with the Convention to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit. This is the case, however, only if a number of safeguards are provided. The Committee has pointed out that in several countries in which the procedure of certifying unions as exclusive bargaining agents has been established, it has been regarded as essential that such safeguards should include the following:

- ✓ Certification to be made by an independent body;
- ✓ The representative organizations to be chosen by a majority vote of the employees in the unit concerned;
- ✓ The right of an organization which fails to secure a sufficiently large number of
- ✓ Votes to ask for a new election after a stipulated period;
- ✓ The right of an organization other than the certified organizations to demand a new election after a fixed period, often twelve months, has elapsed since the previous election.

Similarly, the Ethiopian Labor proclamation stipulates that where there exist more than one trade unions at a given undertaking, the trade union which will be the exclusive bargaining agent and undertake consultation with authorities, is the one which secures 50% plus [and more than] one membership of all the employees of the undertaking (Article 115(1)(a); and if an organization subsequently failed to secure the majority membership of workers, the other organization that secure majority shall be recognized instead (Article 115(1)(c).

If there is no union covering more than 50% of the workers in a unit, the solution offered by the Committee on Freedom of Association is, collective bargaining rights should nevertheless be granted to the unions in this unit, at least on behalf of their own members. Ethiopian law is silent on this issue. ***What way out do you propose? Do you subscribe to the solution offered by the Committee? Why? Why not?***

Article 132: Registration of collective agreement

1) Upon signing a collective agreement, the parties shall send sufficient copies of same to the Ministry or the appropriate authority for registration.

2) Unless there exists a valid reason to deny registration, the Ministry or the appropriate authority shall register the collective agreement within 15 working days from the date of receipt of copies thereof.

Article 134: Duration and validity of collective agreement

1) Any provision of a collective agreement which provides for conditions of work and benefits which are less favorable than those provided for under this Proclamation or other laws shall have no effect.

2) Unless otherwise provided therein, a collective agreement shall produce legal effect as of the date of signing by the parties.

3) Unless expressly stipulated otherwise in a collective agreement, no party may challenge the collective agreement within three years from the date of its validity.

Problem for discussion:

Article 27(1)(k) envisages that a collective agreement may stipulate additional grounds for dismissing of an employee without notice other than those grounds of termination provided by law. This implies collect agreement can bring in less favorable terms (i.e. additional grounds for summary dismissal) to the employee. On the other hand, Article 134(1) prescribes that "any provision of a collective agreement which provides for conditions of work and benefits which are less favorable than those provided for under this Proclamation or other laws shall have no effect." Is there any inconsistency between the two provisions of the same instrument? Please refer to: Bole Sub-city Kebele 01/02 Recreation Center v. Masresha
Hussien; File No.49750: Vol.9

7.1.1. ILO PRINCIPLES CONCERING COLLECTIVE BARGAINING

Definition and purpose of collective bargaining

Collective bargaining is deemed to be the activity or process leading up to the conclusion of a collective agreement. Stipulations in contracts of employment which are more favorable to the workers than those prescribed by a collective agreement should not be regarded as contrary to the collective agreement.[64]

Subjects, Parties, and Issues in Collective Bargaining

LO instruments, clearly permit collective bargaining only with representatives of the workers concerned if there are no workers' organizations in the area in question (enterprise level or higher). This standard is set out in paragraph 2 of Recommendation No. 91 and is confirmed in Convention No. 135, which provides in Article 5 that "the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives" ; and in Convention No. 154, which also provides in Article 3, paragraph 2, that "appropriate measures shall be taken, whenever necessary, to ensure that the existence of these [workers'] representatives is not used to undermine the position of the workers' organizations concerned".

Governing Principles

The Principle of Free and Voluntary Negotiation

The obligation to promote collective bargaining excludes recourse to measures of compulsion. The Committee on Collective Bargaining agreed upon an interpretation of the term "promotion" (of collective bargaining) in the sense that it "should not be capable of being interpreted in a matter suggesting an obligation for the state to intervene to impose collective bargaining".

It cannot therefore be deducted from the ILO's Conventions on collective bargaining that there is a formal obligation to negotiate or to achieve a result (an agreement). Nevertheless, the supervisory bodies have considered that the criteria established by law should enable the most representative organizations to take part in collective bargaining, which implies the recognition or the duty to recognize such organization.

Drafting and registration of collective agreements

In the opinion of the Committee on Freedom of Association, intervention by the public authorities in the drafting of collective agreements is not compatible with the spirit of Article 4 of Convention No. 98, unless it consists exclusively of technical aid.

[64] In 1951, Recommendation No. 91 set out the binding nature of collective agreements and their precedence over individual contracts of employment, while recognizing the stipulations of individual contracts of employment which are more favorable for workers.

According to the supervisory bodies, refusal to approve a collective agreement is permitted only on grounds of errors of pure form or procedural flaws, or where the collective agreement does not conform to the minimum standards laid down by general labor legislation. However, legislative provisions are not compatible with Convention No. 98 where they permit the refusal to register or approve a collective agreement on grounds such as incompatibility with the general or economic policy of the government or official directives on wages or conditions of work; a situation which requires prior approval of collective agreements by the authorities amounts to a violation of the principle of the autonomy of the parties to negotiate.

Nevertheless, for reason of general interest, governments establish mechanisms so that the parties take into account considerations relating to their economic and social policy and the protection of the general interest. Both the Committee of Experts and the Committee of Freedom of Association accept these mechanisms, provided that they are not of a compulsory nature. The Committee of Experts has indicated that:

> ***The public authorities could also envisage a procedure to draw the attention of the parties in certain cases to considerations of general interest that might call for further examination by them of proposed agreements, provided, however, that preference is always given to persuasion rather than coercion (ILO, 1994a, para. 253)***

The Committee on Freedom of Association has stated that if the public authority considers that the terms of the imposed agreements are clearly contrary to the economic policy objectives recognized as being in the public interest, the case could be submitted for advice and recommendation to an appropriate consultative body, provided, however, that the final decisions would rest with the parties. However, these considerations must not be confused with stabilization policies which result in significant and generalized restrictions on future wage negotiations, which will be specifically examined in a separate section below.

7.2. Subject matter of collective bargaining in Ethiopia

The initial objective of collective bargaining was just to regulate **"working conditions."** Traditionally, "working conditions" was narrowly understood to mean terms such as working hours, overtime pay, rest periods and wages, which were predominantly economic matters. Overtime, the scope of collective bargaining began to widen to include social issues such as paid leave of different sorts (annual leave, maternity leave, sick leave etc.).

Chapter VIII

Employment Dispute Settlement Mechanisms[65]

8.1. General

Since the employment relation is a unique contractual relationship, it requires a unique dispute resolution arrangement. In many cases it is within the continuity of relationship framework that disputes may occur; and hence they need to be resolved in a manner that would not adversely affect the continuous relationship between them. Dispute settlement within the labor law regime differs from that of the civil service. The former is mainly a dispute of private nature, while the latter is a public one. Generally, the Regular courts and Labor Relations Boards are the most important dispute settling organs for labor law purposes. As regards to the civil service employment regime, disciplinary committees, administrative tribunals and regular courts have jurisdiction to entertain Civil Service employment disputes.

8.2. Nature of Labor Disputes and Jurisdiction

From the preceding chapters, we will recall that employment relation manifests itself either in individual or collective features. The nature of the disputes may be reflections of such interactions in the sense that there will be individual and collective employment disputes as well. However, as freedom of association is not yet recognized for the civil service employment regime in Ethiopia, we do not have disputes of collective nature for that employment regime.

Under the labor law, other than conciliation and arbitration efforts, whether a dispute is under the jurisdiction of a regular court or a labor relations board depends on the nature of dispute. Admittedly under the Civil Code era there was no distinction between individual and collective labor relations. Since there was no freedom of association then, all labor relations at the time were individual, and hence the disputes were individual as well. Thus it was the regular civil court that had the jurisdiction to entertain labor disputes.

It was with the coming in to effect of the Labor Relations' Proclamation No.210/1963 that individual and collective labor relations were brought into existence. In fact, it was also through the promulgation of that law for the first time Labor Relations Board was introduced to the Ethiopian employment dispute resolution system. Emanating from these relations, individual and collective disputes began to crop up.

[65] It must be noted that no matter how clear and well-articulated provisions of a law may be, there will always be disputes in their interpretation and application. Hence, there is a need to lay down in advance dispute settlement mechanisms so that disputes could be managed and resolved accordingly if and when they arise.

In terms of competence, individual labor disputes are within the jurisdiction of regular courts (labor division) while the collective labor disputes are under the competence of the Labor Relations Board. Therefore, determining whether a certain dispute is individual or collective is essential in deciding which organ has competence to entertain the case. But how individual labor dispute is to be distinguished from the collective one is a crucial issue to be resolved.

With this purpose in view, Proclamation No.64/1975 defined "individual trade dispute" and "collective trade dispute." Accordingly, "Individual Trade Dispute" means a claim of an aggrieved worker arising out of the violation or alteration of provisions contained in laws, regulations, work rules or individual contracts of employment or the non-application of established practices by the undertaking (Article 2(12). Conversely "Collective Trade Dispute" means any claim arising out of the interpretation or the improvement of existing provisions or benefits contained in laws or regulations or collective agreements or work rules or accepted practices and any dispute involving questions or representation by the workers or the undertaking or arising in the course of collective negotiations (Article 2(5).

However, since the adoption of Labor Proclamation No.42/1993, the legislature, instead of defining these concepts, resorted to spelling out illustrative listing so that similar issues could be included. The lists for each of them have been reproduced herein below.

Article 139: Labor Division of First Instance Court

1) The labor division of a federal and regional first instance court shall have jurisdiction to settle and determine the following and other similar individual labor disputes (underline added);

a) Disciplinary measures including dismissal;
b) Claims related to the termination of employment contracts;
c) Claims related to hours of work, remuneration, leaves and rest day;
d) Claims related to the issuance of certificate of service and clearance;
e) Claims pertaining to employment injury, transfer, promotion, training and other similar issues;
f) Unless otherwise provided in this Proclamation, suits pertaining to violations of provisions of this Proclamation

Article 143: Duty and responsibility of Conciliator

1) A Conciliator appointed by the Ministry or the appropriate authority shall to bring about a negotiated settlement on the following and other similar collective labor disputes (underline added):

a) Issues of wages and other benefits which are not determined by work rules or collective agreements;

b) Establishment of new conditions of work

c) The conclusion, amendment, duration and invalidation of collective agreements;

d) The interpretation of any provisions of this Proclamation, collective agreements or work rules;

e) Procedure of employments and promotion of workers;

f) Issues affecting workers in general and the very existence of the undertaking;

g) Suits related to procedures issued by the employer regarding promotion, transfer and training;

h) Issues pertaining to reduction of workers

It must be admitted that the above cited provisions are not intended to define individual and collective labor disputes. It is rather indirectly that we can gather their definition therefrom. In fact, due to lack of sufficient clarity with this illustrative approach, the issue proved to be one of the most controversial in practice. As a result, the Federal Supreme Court Cassation Division was compelled to formulate a binding interpretation on this subject.

The core of the Cassation Division's interpretative note is "if the dispute revolves around individual claims or concerns individually or even collectively, it is individual labor dispute while if the resolution of the dispute will have the effect of affecting all or substantial part of the labor force, the dispute will be categorized as a collective one" (KK Textile Industry v. KK Basic Trade Union.[66]

8.3. Organizational Composition and Working Systems

It must be clear from the outset that, though legislating Labor law is within the competence of the federal legislature, its dispute settlement mechanism is partly entrusted to the regional states. In individual labor disputes, it is only in cases arising in Addis Ababa or Dire Dawa that the Federal First Instance Court Labor Division would be involved. In all other cases, the first instance regional court labor divisions where the dispute arises have jurisdiction. Appeal from these fora is to be referred to the regional appellate courts except in Addis Ababa and Dire Dawa from which appeal is lodged to the Federal High

[66] File No.18180: Vol. I)

Court. Therefore, it may be argued that, the principal competence for individual labor disputes falls under the regional courts.

A point to note is Addis Ababa is the capital city of Ethiopia and at the same time a regional capital for Oromia Regional State. Due to this overlapping, determination of jurisdiction for Labor disputes arising within Oromia state owned enterprises situated in Addis Ababa was an issue. Whether it is to be submitted to the Federal First Instance Court or to Oromia Region first instance court an unsettled issue. However, in Teklie Haile et al v. Oromia Road Construction Enterprise; File No.100950/2007 E.C. (unpublished) case, the Cassation Division ruled that it is the Oromia regional first instance court rather than the Federal First Instance Court which, has jurisdiction to entertain individual Labor dispute cases where the defendant is Oromia state owned enterprises situated in Addis Ababa. Oromia Region has a zonal administrative structure named as "Finfinie Special Zone" where it has also established a first instance courts within the environs of Addis Ababa (Finfinie).

The Cassation Division's ruling on the case at hand was initiated by the Cassation Division on its own motion. The defendants did not challenge the material jurisdiction of the federal courts; nor did the lower courts raise the issue. They took it for granted that they possess the material jurisdiction over the case. Admittedly, the issue of material jurisdiction can be invoked by the courts at any level even if it is not raised by the parties to the dispute. Therefore, the Cassation Division is authorized to invoke it. The issue however is, should federal courts be denied material jurisdiction due to the fact that one of the parties to the dispute is regional state-owned business entity? It seems to me that any business entity, regardless of the type of ownership, is a private person. In practice state enterprises own by the federal government have been summoned to appear before regional first instance court of Labor divisions where they operate branch offices. They never challenged material jurisdiction of the regional courts because the way the Labor Proclamation is formulated tends to provide the nearest forum for the employees to submit their suits. But, now that the Cassation Division has handed down an interpretation with a new perspective, the purpose of the Labor Proclamation may not be adequately served. For instance, employees of Oromia state owned enterprises operating in Addis Ababa who may have a Labor dispute will obligated to go as far as Menagesha (around thirty kilo meters away from Addis Ababa) in search of Oromia Region first instance court Labor division. Due to this I am of the view that the holding of the Cassation Division on the case at hand is liable to doubt and debate. In fact, in another case (East Cement Share Company v. Zelalem Tadesse; File No.95638: Vol.17), the Cassation Division held a slightly different position in the

sense that it ruled that in labor disputes the identity of the disputants would not be taken in to account in determining jurisdiction of federal and regional courts.[67]

As regards to collective labor disputes, the law anticipates the Labor Relation Boards are to be established at federal and regional levels. The federal Labor Relations Board by the Ministry (currently Ministry of Labor and Skills) while in the regions by the respective regional Labor offices. The Labor Relations Board established by the Ministry entertains collective Labor disputes in connection with federal government owned enterprises situated in Addis Ababa and Dire Dawa (Article 145(1). The Labor Relations Boards established in the regions entertain collective Labor disputes arising in their respective regions. Addis Ababa and Dire Dawa administrations have Labor relations boards as well with similar competence. Appeal from the various Labor relations boards is to be submitted to the Federal High Court or pursuant to the delegation provided given by the Federal Constitution to the Regional Supreme Court. Hence, it seems safe to conclude that the core competence for collective Labor disputes rests on the federal adjudicative forum. The Labor Relations Boards are considered to be more knowledgeable than the courts in factual issues of industrial relations. As a result, factual determinations by the boards are conclusive. Nevertheless, it is important to note that, more often than not, delineation of issues of fact and law is difficult, if not impossible. Be these as it may, the composition and the working systems of the regular court Labor divisions and the Labor Relations Boards are significantly different. As regards to composition, the Labor divisions of the regular courts are to be operated by sitting judges of the ordinary courts. The Ministry or the regional Labor offices has no role or involvement in the appointment of such judges. Nor have the Labor divisions reporting duty to the Ministry or the regional Labor offices. Conversely, Labor Relations Boards are composed of representatives of the employers' and employees associations in addition to the appointees of the government (i.e. tripartite arrangement). They are to be appointed by the Ministry or the respective regional Labor office for those operating in their regions (Article 146(1). The Boards have also the duty to submit annual reports to the organ that appointed them (Article 157).

Labour Relations Board members are to be appointed by the Ministry or the appropriate authority [regional labour offices] which shall comprise of a chairperson, two members who have the knowledge and skill on labour matters, four members out of which two represent trade unions; and two represent employers' associations, and two alternate members one from each association (Article 146 (1). Two employers' representatives shall be nominated from the most representative of employers' associations

[67] Please closely read the above cited two cassation cases and decide among yourselves whether the Cassation Division was consistent in its ruling on the issue. Interestingly, the record shows that both cases were decided in the same year (2007 E.C.)

and workers' representatives shall be appointed from the most representative of trade unions. The remaining board members including a secretary shall be appointed by the Ministry or the appropriate labour office.

With respect to the working systems, the labour divisions are expected to conduct business in accordance with the stipulations of the civil procedure in their judicial proceedings. Labour divisions are handled by single judge benches. Winner-loser determination is the final outcome in a judicial forum. In terms of time frame, the labour division of a regional First Instance Court shall render its decisions within 60 days from the date on which the suit is filed (Article 139(2). If one of the litigants prefers to lodge an appeal, it is stated that, the party who is aggrieved by the decision of the first instance court may, within 30 days from the date on which the decision was delivered lodge an appeal to the appellate court (Article139(3). The appellate court shall render its decision within 60 days from the date when theappeal was lodged (Article 140 (3) and its decision shall be final (Article 140 (2) without compromising the right to refer the case to the Cassation Division upon invoking fundamental error of law on the final decision. The desire of the law seems that labour disputes should be disposed of as soon as possible, within less than six months. In practice, however, due to mainly case-load of courts, the time limit prescribed by the law for the courts has not been met in almost all cases.

Labour Relations Boards are expected to serve as more of negotiating forum rather than an adjudicating one. They are required to settle disputes before them in a manner acceptable to both of the disputing parties (Article 151(1). Therefore, a win-win solution is the preferred mode of settling disputes before the Boards. The reason for employing mutual agreed solutions as a preferred modality of dispute resolution seems that since collective labour dispute has broader impact on industrial relation, winner-loser determination would have adverse impact on industrial peace and on the future relationship of the disputants.

It is only when amicable settlement is not achieved that the Boards will resort to judicial settlement. Thus, judicial settlement of disputes before the Labour Relations Boards is the last resort which should be disposed within 30 days from the date when the claim filed (Article 152(1). Submission of cases before Boards is free of charge to all parties (Article 162(1) while exemption of payment of court fee only applies to the employee and the employees' association when cases are submitted to the labour divisions of the regular courts (Article 162(2).

Decisions of the labour divisions, as indicated above, are appealable to the upper floor in the judicial hierarchy and the decision of the appellate division is final (Article 140(2) irrespective of whether the appellate division affirms or reverses the decision of the lower court. Similarly, decisions of the Boards

are appealable, on issues of law only, to the Federal High Court and the decision of the high court is final regardless of whether is agrees or disagrees with the Board's ruling (Article 155(2). It is important to note, however, that the final decision of the Federal High Court is open to challenge before a Cassation Bench provided that fundamental error of law is shown to have been committed in the final decision.

In fact, in a case between Ethio-Telecom South-Western and Gambella Region and Saba Mengesha;), the Federal Supreme Court Cassation Division[68] held that if the Region where the dispute was originally filed has established a Cassation Division in its court structure, application for cassation cannot be submitted to the federal Supreme Court Cassation Division without exhausting the remedy at the level of the regional cassation division. This implies there will be cassation over cassation in the sense that once the cassation at the regional level is exhausted, the aggrieved party will still have another chance for petitioning to the Federal Supreme Court Cassation Division.

Problem for discussion:

As per the Ethiopian Constitution, promulgation of Labor Code is within federal jurisdiction. If so, why should the Regional Court Cassation Division is empowered to examine fundamental error of a federal law? Do you agree with the holding of the Federal Supreme Court Cassation Division in this regard?

The other modality of employment dispute settlement pertaining to the labour law employment regime is ***strike*** or ***lock-down***.[69]

Strike is an industrial action available for the labour force; while lock-out is to be exercised by an employer with a similar object and purpose in view. These are essentially self-help measures where the initiating party may withhold its contractual commitments in order to compel the other party to accept its demands. However, since ***such a unilateral measure is technically a breach of contract***, it cannot be allowed to be undertaken at the pleasure of the initiating party. In fact, it must be a measure of last resort in the sense that it is after all other lawful avenues to resolve the dispute are exhausted that this self-help measure may be exercised.

More importantly, this right to industrial action is not available to all sectors of the economy. There are enterprises which are not allowed to undertake strike or lock-down. These are enterprises of "essential public service undertakings" that render services which should be provided to the general public without interruption (Article 137(2). Even for those strike or lock-down is permitted, the procedure is rigorously

[68] File No.94102: Vol. 16

[69] strike and lock-down are an industrial actions

regulated under the labour law. Herein below, the relevant provisions of the labour on strikes and lock-out are reproduced.

Article 158: General

1) Workers shall have the right to strike to protect their interests in the manner prescribed in this Proclamation.

2) Employers shall have the right to lock-out in the manner prescribed in this Proclamation.

3) The provisions of sub-Articles (1) and (2) of this Article shall not apply to workers and employers of undertakings providing essential services.

Article 137: Definitions

1)……

2) "Essential public service undertakings" means those services which shall be rendered without interruption to the general public and are the following undertakings:

a) air transport services;

b) Electric power supply;

c) Water supply and city cleaning and sanitation services;

d) Urban light rail transport service;

e) Hospitals, clinics, dispensaries and pharmacies;

f) Fire brigade services; and

g) Telecommunication services.

Article 159: Conditions to be fulfilled

Prior to initiating a strike or lock-out partially or wholly the following steps shall be taken:

1) The party initiating a strike or lock-out shall give advance notice to the other party indicating its reasons for taking the said action.

2) Both parties shall make every effort to solve and settle their labour dispute in a mutually amicable manner.

3) The strike to be taken by the workers shall have to be supported by simple majority of the workers concerned in a meeting in which at least two-third of the members of the trade union were present.

4) Measures shall be taken to ensure the observance, by employers and workers, of safety regulations and accident prevention procedures in the undertaking.

Article 160: Procedure of notice

1) The notice under Article 159 (1) of this proclamation shall be given by the party initiating a strike or lock-out to the other party, and to the Ministry or the appropriate authority.

2) The notice specified in sub-Article (1) of this Article shall be served 10 days in advance taking action.

Article 161: Prohibited acts

1) Without prejudice to the provision Article 160(1) of this Proclamation, a strike or lock-out shall be unlawful if initiated after a dispute has been referred to a Board or to a court and 30 days have not elapsed before any order or decision is given by the Board or the prescribed period has elapsed before the court has given decision.

2) It shall be unlawful to resist or unduly delay the execution of an order or a decision of a Board or court disposing, in whole or in part, a labour dispute or to take or continue to strike or to lock-out in protest to such order or decision of the board or court; provided, however, that the strike or lock-out shall not be unlawful if initiated in order to ensure compliance with such order or decision.

3) It is prohibited to conduct strike or lock-out accompanied by violence, threats of physical force or with any act which is illegal

In order to undertake a lawful strike or lock-out, the above procedures are required to be complied with. The most important principles enshrined on the law include:

No surprise strike; in the sense that the party initiating a strike or lock-out shall give ten days advance notice to the other party and the government indicating its reasons for taking the said action (Article 159(1).

No violent strike; in the sense that it is prohibited to conduct strike or lock-out accompanied by violence, threats of physical force or with any act which is illegal (Article 161(3).

Strike or lock-down should be a measure of last resort; in the sense that prior to initiating strike or lock-down both parties shall make every effort to solve and settle their labour dispute in a mutually amicable manner (Article 159(2).

Strike should not be the sole declaration trade union representatives; in the sense that the strike to be taken by the workers shall have to be supported by simple majority of the workers concerned in a meeting in which at least two-third of the members of the trade union were present (Article 159(3). It does not seem to require secret ballot.

No strike pending judicial proceeding; in the sense that a strike shall be unlawful if initiated after a dispute has been referred to a Board or court and 30 days have not elapsed before any order or decision is given by the Board or the prescribed period has elapsed before the Court has given decision (Article 161(1). Once these requirements are met, the trade union or the employer may undertake strike or lock-down respectively with a view to compelling the other party accept its terms and proposals.

No sympathy strike; for purposes of Ethiopian law, "strike" is defined as the slowdown of work by any number of workers in reducing their normal out- put on their normal rate of work or the temporary cessation of work by any number of workers acting in concert in order to persuade their employer to accept certain labour conditions in connection with a labour dispute or to influence the outcome of the dispute (emphasis added; Article 137). Based on this definition, strikers should have a labor dispute with their employers and they are engaging into such a concerted measure in order to persuade or compel the employer to accept their terms. Therefore, employers who do not have any labor dispute with anyone whosoever are not allowed to call on strike, thereby prohibiting sympathy strike.

A legitimate question, at this juncture, would be, since the law has listed out the so called "essential public service undertaking" whose services could not be interrupted through strike or lock-out what remedies, if any, are available to the employees who are not allowed to call on strike have. The Committee on Freedom of Association of the ILO is of the view that where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes

affecting such undertakings and services. As regards the nature of appropriate guarantees, it is stated that, in cases where restrictions are placed on the right to strike in essential services, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.

In the Ethiopian context, this issue will take us towards differentiating permanent and ad-hoc Labor Relations Boards. The Labor Proclamation has established these two boards with similar composition having their own distinct objectives to attain. The permanent Labor Relations Board, as it name implies, is permanently there to entertain, amicably settle and render decisions on collective labor disputes submitted to it, except on "determination of issues of wage and other benefits" (Article 148 (1). This implies Permanent Board has no power to determine issues of wage and other benefits because it is considered that such cases should not be judicially determined. It is believed that judges are not experts in determining bonuses and wage increments. These issues are more of economic and managerial items. It has been considered appropriate that enterprises ***other than those rendering essential services,*** whenever they encounter disputes pertaining determination of wages and other benefits, should compel their employers to accept their terms through strike.

The ad-hoc Labor Relations Board, for its part, is a temporary forum to be established for a specific purpose. This ad-hoc board is empowered to entertain issues pertaining to wages and other benefits with regard to enterprises rendering essential services (Article 148(2). Essential services (Article 137(2) are meant those "services whose interruption would endanger the life, personal safety or health of the whole or part of the population." As a result, they are denied from calling of strike or lock-out. In principle ILO is not against national laws prohibiting strike or lock-out in enterprises rendering essentials service, provided that they are narrowly defined and compensatory guarantee is offered. Therefore, it is with a view to providing them with compensatory guarantee that an Ad-hoc Labor Relations Board has been established in order to render decision on wage and other benefit in these enterprises.

To sum up, as far as the legal formulation is concerned, disputes pertaining to wages and other benefits are not to be determined by decision of the Labor Relations Board because such issues have economic implication to which judicial for a have no adequate knowledge. If at all dispute arises on those issues, it should be through industrial action (i.e. strike or lock-out) that one of the parties would compel the other to accept its terms. That is why the permanent Labour Relations Board is denied from entertaining such disputes. However, for those enterprises rendering essential services, since they are not allowed to take

industrial action, the Ad-hoc Labor Relations Board has been given the power to determine disputes relating to wages and other benefit with regard to these enterprises.

At this time in point there is an issue that deserves further clarification. As indicated above, permanent labour relations boards have been prohibited from rendering decisions on determination of wages and other benefits. The issue, however, is what does "determination of wages and other benefits" mean?

In Construction works and Coffee Technology Promotion Enterprise-Trade Union v. Construction works and Coffee Technology Promotion Enterprise; File No. 49152: Vol.10 case, the trade union and the enterprise negotiated and signed a collective agreement which was duly registered. The collective agreement in question had provisions on the conditions as to when and what amount of bonuses shall be given to the employees. An attainment of a certain profit threshold in a budget year was set for bonuses to be payable to the labor force. The trade union claimed that the enterprise registered a gross profit of 78,000,000 (seventy eight million) in the 2000 budget year and hence one month salary increment and half month salary in the form of bonus should be awarded to the labor force as per Article 24(1) of the collective agreement. The case was submitted to Federal First Instance Court Labour Division for contract enforcement. The enterprise filed preliminary objection arguing that since the case is a collective labour dispute, the court has no jurisdiction to entertain it. The court accepted the contention of the defendant and closed the file.

The trade union brought fresh case to the Labour Relations Board for the enforcement of the provision of the collective agreement. The Board dismissed the case ruling that it has no jurisdiction in determining wages and other benefits. Although the case was referred to the Federal High Court on appeal, the Court affirmed the board's decision. Finally, the trade union submitted an application for cassation contending that the lower tribunal committed fundamental error of law. However, the Cassation Division upheld the decisions of the lower labour tribunals.

The Cassation Division reasoned that the terms of a collective agreement pertaining to "wage and other benefits" cannot be enforced before labour tribunals. According to the Cassation Division, it is rather for the party claiming the benefit (the trade union in the present case) to take industrial action in order to put pressure on the other party to comply with the terms of the collective agreement. It proposed that calling on a strike is the appropriate measure to resolve disputes pertaining to wages and other benefits prescribed in a collective agreement. It did not view the terms of a collective agreement on wages and other benefits as judicially enforceable provisions. With due respect to the Cassation Division's ruling, I am of the view that this is not the intention of the legislature.

It must be noted that Ethiopian labour law requires a collective agreement be made in writing and signed by the parties. Moreover, it needs to be registered before a governmental organ. Once these formalities are satisfied, it is expressly stated that it begins to produce legal effect from the date of signature (Article 134(2). It is on the face of these rigorous procedures and clear legal stipulation that the Cassation Division denied enforcement of its terms.

In my view,[70] the legislature would not have prescribed this rigorous procedure for validity of a collective agreement had the position been that it would be enforced through private action. In fact, it could be said that one of the objectives of effective collective bargaining is to prevent or minimize the occurrence and frequency of industrial actions. Interestingly, the Cassation Division did not rule that a collective agreement in its entirety is not enforceable before labour tribunals. It is only for the terms of a collective agreement relating to wage and other benefits that it denied judicial enforcement. Of course, if the terms of the collective agreement were not sufficiently clear, it may be appropriate to deny enforcement until the bargaining parties come up with clear and enforceable terms. Otherwise, if it has sufficient clarity, it would be going contrary to the intention of the parties to enforce some of their terms and deny enforcement to other terms within the same instrument.

> ***In my view, what the Permanent Labor Relations Board has been prohibited is determination of wages and other benefits. Determination is meant fixing the amount of wages and the benefits payable to the employees. However, in the case at hand, the parties have already fixed when and what benefit is to be paid. The Board was merely requested to enforce what has already been determined by the parties. It seems with the intent of avoiding such a confusion that the current labor proclamation formulated the provision which imposed the prohibition in such a way that "issues of wages and other benefits which are not determined by work rules or collective agreements" (Article 143(1) (a); emphasis added) implying that if they have been already determined by work rules or collective agreements appropriate order or decisions may be handed down by the Board.***

"ILO PRINCIPLES CONCERNING THE RIGHT TO STRIKE"

Bernard GERNIGON, Alberto ODERO and Horacio GUIDO, "ILO principles concerning the right to strike" International Labour Review, Vol. 137(1998), No.4

It may be surprising to find that the right to strike is not set out explicitly in ILO Conventions and Recommendations. It has been discussed on several occasions in the International Labor Conference during the course of preparatory work on instruments dealing with related topics, but for various reasons

[70] Mehari Redai (PhD)

this has never given rise to international standards (Conventions or Recommendations) directly governing the right to strike. However, the absence of explicit ILO standards should not lead to the conclusion that the Organizations disregards the right to strike or abstains from providing a protective framework within which it may be exercised.

Two resolutions of the International Labor Conference itself –which provide guidelines for ILO policy – in one way or another emphasized recognition of the right to strike in members States. The "Resolution concerning the Abolition of Anti- Trade Union Legislation in the States members of the International Labor Organization" adopted in 1957, called for the adoption of "law, ensuring the effective and unrestricted exercise of trade union rights, including the right to strike by the workers. Similarly, the "Resolution concerning Trade Union Rights and Their Relation to Civil Liberties", adopted in 1970.

General Issues

The Basic Principles of the Right to Strike

The Committee on Freedom of Association has recognized that strike action is a right and not simply a social act, and has also:

1. Made it clear it is a right which workers and their organizations (trade unions, federations and confederations) are entitled to enjoy;

2. Reduced the number of categories of workers who may be deprived of this right, as well as the legal restrictions on its exercise, which should not be excessive;

3. Linked the exercise of the right to strike to the objective of promoting and defending the economic and social interests of workers (which criterion excludes strikes of a purely political nature from the scope of international protection provided by the ILO, although the Committee makes no direct statement or indication regarding sympathy strikes other than that they cannot be banned outright; this matter will be examined subsequently);

4. Stated that the legitimate exercise of the strike should not entail prejudicial penalties of any sort, which would imply acts of anti- union discrimination.

Definition of the right to strike and various types of strike action

The principles of the ILO's supervisory bodies contain no definition of strike action which would permit definitive conclusions to be drawn regarding the legitimacy of different ways in which the right to strike may be exercised.

The Committee of Experts has stated that:

When the right to strike is guaranteed by national legislation, a question that frequently arises is whether the action undertaken by the workers constitutes a strike under the law. Any work stoppage, however brief and limited, may generally be considered as a strike. This is more difficult to determine when there is no work stoppage as such but a slowdown in work (go-slow strike) or when work rules are applied to the letter (work-to-rule); these forms of strike action are often just as paralyzing as a total stoppage. Noting that national law and practice vary widely in this respect, the Committee is of the opinion that restrictions as to the forms of strike action can only be justified if the action ceases to be peaceful.

The Committee considers …that restrictions on strike pickets and workplace occupations should be limited to cases where the action ceases to be peaceful.

Objectives of Strikes

In discussing this matter, reference should be made at the outset to Article 10 of Convention No. 87 which, for the purposes of the Convention, defines worker organizations as any organization established "for furthering and defending the interests of workers". This definition is clearly of fundamental importance not only in that it sets down guidelines for differentiating such organizations is for those other types, but also because it specifies the purpose of such organizations for "furthering and defending the interests of workers" thereby demarcating the boundaries within which the rights and guarantees recognized by the convention are applicable, and consequently protected in so far as they achieve or seek to achieve the stated objectives.

The nature of the demands pursued through strike action may be categorized as being occupational (seeking to guarantee or improve workers' working or living conditions), trade union (seeking to guarantee or develop the rights of trade union organization and their leaders), or political. The two former categories do not give rise to any particular problems as from the outset the Committee on Freedom of Association has made clear decisions stating that they are legitimate. However, within the three categories of demand specified, a distinction should be made as to whether or not they directly and immediately affect the workers who call the strike. It should at once be noted that the Committee on Freedom of Association and the Committee of Experts have rejected the notion that the right to strike should be confined to industrial disputes that are likely to be resolved through the signing of a collective agreement.

Political strikes

On the basis of the definition of "workers' organization" contained in Article 10 of Convention No. 87, the Committee on Freedom of Association considers that "strikes of a purely political nature… do not fall within the scope of the principles of freedom of association.

Hence, in a subsequent decision, the Committee concluded that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. Along the same lines, the Committee has stated that the workers and their organizations should be able to express their dissatisfaction regarding economic and social matters affecting workers' interests in circumstances that extend beyond the industrial disputes that are likely to be resolved through the signing of a collective agreement. Nevertheless, workers action should consist merely in the expression of a protest and not be intended as a breach of peace. In this connection, the Committee on Freedom of Association has stated that "a declaration of the illegality of a national strike protesting against the social and labour consequences of the government's economic policy and the banning of the strike constitute a serious violation of freedom of association". That said, it should be added that the principles laid down cover both strikes at the local level, and general strikes, which by their nature have markedly political connotation. As regard the geographical scope of the strike:

The Committee of Experts also has stated that strikes that are purely political in character do not fall within the scope of freedom of association. However, the difficulty arises from the fact that it is often impossible to distinguish in practice between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers or employers; this is the case, for example, of a general wage and price freeze.

Sympathy Strikes

Where sympathy strikes are concerned, the crux of the issue is to decide whether workers may declare a strike for occupational, trade union or social and economic motives which do not affect them in a direct and immediate manner.

In its General Survey of 1983, the Committee of Experts defined sympathy strikes ("where workers come out in support of another strike") and determined that a general prohibition of sympathy strikes could lead to abuse and that workers should be able to take such action provided that the initial strike they are supporting is itself lawful**.**

Workers who enjoy the right to strike and those who are excluded

Committee on Freedom of Association recognize a general right to strike, with the possible exceptions being those which may be imposed for **public servants** and **workers in essential services** in the strict sense of the term and prohibition of strikes in the event of an acute national emergency.

Public service

When public servants are not granted the right to strike, they should enjoy sufficient guarantees to protect their interests, including appropriate, impartial and prompt conciliation and arbitration procedures.

Concept of the public servants, where their possible exclusion from the right to strike is concerned, relates to public servants who exercise authority in the name of the state. This approach imply that the guidelines for determining those public servants who may be excluded no longer emanates from the application to them of the national law governing the public service, but from the nature of the functions that such public servants carry out.

For instance the right to strike of officials in the employ of ministers and other comparable government bodies may be subject to major restrictions or even prohibition; the same does not apply, for instance, to persons employed by the state enterprise. To date, in response to complaints submitted to it, the Committee on Freedom of Association has stated that certain categories of public servants do not exercise authority in the name at the state, such as public servants in state owned commercial or industrial enterprise.

Finally, it should be noted that, among the categories of public servants who do not exercise authority in the name of the state, those who carry out an essential service in the strict sense of the term may be excluded from having recourse to strike action.

A too broad definition of the concept of public servant is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers.

Committee on Freedom of Association has pointed out that one of the main difficulties is due to the fact that the concept of ***public servant*** itself varies considerably from one legal system to another. However, it is necessary to establish fairly uniform criteria in order to examine the compatibility of legislation with the provisions of Convention No. 87. For this reason, it has judged it futile to try to draw up exhaustive and universally applicable list of categories of the public servant who should enjoy the right to strike or be denied. Such a right given that they exercise authority in the name of the state the Committee is aware of the fact that except for the group falling clearly into one category or another, the matter will frequently be one of degree. For this reason, in borderline cases, it has suggested one solution might be "not to impose a total prohibition of strikes, but rather to provide for the maintaining by a defined and limited category of staff of a negotiated minimum service when a total and prolonged stoppage might result in serious consequences for the public".

Essential services in the strict sense of the term

Services the interruption of which would endanger the life, personal safety, health of the whole or part of the population

what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country; likewise, there can be no doubt that "a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of whole or part of the population".

The Committee has considered to be essential services in the strict sense, where the right to strike may be subject to major restrictions or even prohibitions, to be: the hospital sector; electrical services; water supply services; the telephone service; air traffic control.

What services do not constitute essential services in the strict sense of the term, whereby the prohibition to strike does not pertain? Refer page 353 of the text book. **Committee on Freedom of Association** provided illustrative list.

Note that: - the Committee maintained that the possible long-term serious consequences for the national economy of a strike did not justify its prohibition. Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

Compensatory guarantees for workers deprived of the right to strike

The workers who thus lose an essential means of defending their interests should be afforded appropriate guarantees to compensate for this restriction. Therefore prohibition to strike in such circumstances should be "accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.

Conditions for the exercising the right to strike

1. Obligation to give prior notice
2. Obligation to have recourse to conciliation, mediation and (voluntary) arbitration procedures in industrial disputes as a prior condition to declaring a strike, provided that the proceedings are adequate, impartial and speedy and that the parties concerned can take part at every stage
3. Obligation to observe a certain quorum and to obtain the agreement of a specified majority
4. Obligation to take strike decisions by secret ballot
5. The adoption of measures to comply with safety requirements and for the prevention of accidents

6. The establishment of a minimum service in particular cases
7. The guarantee of freedom to work for non-strikers

Compulsory arbitration

The Committee on Freedom of Association' position regarding compulsory arbitration is clear: it is only acceptable in cases of strikes in essential services in the strict sense of the term, in a case of acute national crisis, or in the public service:

Compulsory arbitration to end a collective labor disputes and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the state or in essential services in the strict sense of the term, namely those services whose interruption would endanger life, personal safety or health of the whole or part of the population.

Legislation cannot impose compulsory binding arbitration as a replacement for strike action, either at the outset or during the course of an industrial dispute, except in the case of an essential service, or when a non-essential service is interrupted for so long that it endangers the life, safety or health of the whole or part of the population (and that the non-essential service thereby becomes essential)

Quorum and majority for declaring strikes

With regard to the number of votes required for the calling of the strike, the prerequisite of two-third of the total number of members of the union or branch concerned may be difficult to reach and it is infringement of Article 3 of Convention No. 87, in particular where trade unions have large numbers of members covering a large area (members of trade union who are resides in a different area).

It is conformity with the principles of freedom of association a situation where the decision to call a strike in the local branches of a trade union organizations may be taken by the general assembly of the local branches, when the reason for the strikes is of a local nature and where, in the higher level trade union organizations, the decision to call a strike may be taken by the executive committee of these organizations by an absolute majority of all the members of the committee.

Committee on Freedom of Association recognizes the principle of the freedom to work for non-strikers

Situations in which a 'minimum service'[71] may be imposed

Is intended to maintain a certain level of production or services of the company or institution in which the strikes takes place.

The establishment of minimum services in the case of strike should only be possible in:

1. Services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services ***in the strict sense of the term***);
2. Services which are not essential ***in the strict sense of the term*** but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and
3. Public services of fundamental importance

Regarding the determination of **minimum services** to be maintained and the minimum number of workers providing them, minimum service must limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear.

Declaration of the illegality of a strike for failure to comply with legal requirements

According to the committee Responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties to the dispute. t "such matters are not within the competence of the administrative authority"

The Committee on Freedom of Association considers the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement: "workers and their organizations should be able to express in a border context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests".

Protection against acts of anti-union Discrimination in connection with strikes

8.4. Employment Dispute Settlement under the Civil Service Regime

Unlike the labor employment regime where we have individual and collective employment disputes, we do not have a collective employment dispute within the civil service employment sector. The reason for

[71] Under the ILO jurisprudence there is a third category so-called "minimum service requirement" in which enterprises under this category are in principle allowed to call on strike but they will be required to provide a Under the ILO jurisprudence there is a third category so-called minimum service in a day or a week. The main reason for such an arrangement is the concern that a non-essential service may become essential if the service is withheld for longer duration

this outcome is the absence of freedom of association in the civil service as a result of which civil servants in Ethiopia do not have an organized and collective voice. Thus there are only individual employment disputes.

The other point to note is, though labor law is within federal jurisdiction, civil service employment regime is both a federal and regional subject matter in the sense that federal civil servants are regulated by the Federal Civil Servants' Proclamation while the civil servants in the various regions are to be governed by legal instruments within their respective regions. Therefore we are to rely on the provisions of the Federal Civil Servants' Proclamation No. 1064/2017.

According to such proclamation, the relevant organs of employment dispute settlement in the civil service sector are:

1. Disciplinary Committee
2. Grievance Handling Committee
3. Administrative Tribunal
4. Federal First Instance Court
5. Federal Supreme Court and
6. Federal Supreme Court Cassation Division.

Article 71(1) provides that any government institution shall establish a '**disciplinary Committee'**[72] which shall conduct formal disciplinary investigation and thereby submit recommendation to the head of the government institution.[73] This organ is relevant in cases where a civil servant is suspected of committing serious misbehavior that needs further investigation to determine the truthfulness of the allegation or otherwise. Pending an investigation, a civil servant may be suspended from duty and salary. Article 72 reads as:-

1) Any civil servant may be suspended from duty if it is presumed that;
    a) He may obstruct the investigation by concealing, damaging or destroying evidence related to the alleged offence;
    b) He may commit additional offence on the property of the government institution;
    c) The alleged offence is so grave as to demoralize other civil servants or negatively affect the public trust towards civil servants; or

[72] The Disciplinary Committee is not a decision-making organ in the sense that its power is limited to merely offering recommendations to the head of the government institution. It is up to the head of government institution to approve, amend or reverse the recommendation.
[73] Under the labor law there is no express duty imposed by law for the establishment of a disciplinary committee. Whether to establish disciplinary committee or not is left for private ordering (work rules or collective agreements).

d) The disciplinary offence may lead to dismissal.

2) A civil servant may be suspended from duty and payment of salary only for a maximum period of two months

If the suspension period of a civil servant from duty and payment of salary expires before his dismissal or reinstatement is determined the head of the government institution may extend the suspension for a period of up to one month. The extended period of suspension shall be with payment of half salary if the delay is caused by the complexity of the investigation of the disciplinary charge or without payment of salary if the cause of delay is attributable to the civil servant himself (Article 72(6). Unless a decision of dismissal is rendered against a suspended civil servant, the salary withheld during suspension shall be paid to him without interest (Article 72(4).

It is stipulated that disciplinary measure shall not be taken against a civil servant who has committed an offence which entails simple disciplinary penalty unless such measure is taken within six months (Article 73(1). Simple disciplinary penalties are oral warning; written warning and a fine up to 15 days' wage (Article 69(2)

Rigorous disciplinary penalties are fine up to three months' salary; down grading for the period of up to two years; and dismissal (Article 69(3). For this category of misbehavior, no disciplinary charge shall be brought against a civil servant who has committed an offence entailing rigorous disciplinary penalty in addition to criminal liability, unless the disciplinary charge is brought within the time limit provided for in the Criminal Code for such criminal offence (Article 73(2). However, what happens if a certain rigorous disciplinary misbehaviour is not punishable under the Criminal Code? For instance, unjustified and repeated absenteeism or neglect of duty by being alcoholic or drug addict has been categorized as rigorous disciplinary misbehaviour (Article 70(4) and (6). But they do not seem to have been criminalized by penal provisions. Thus it seems there exist a legal vacuum in this regard. ***Under the Criminal Code, limitation period for bringing a criminal action for the most serious one is twenty-five years; while for the least serious crime the period is three years (Article 217(1) Criminal Code).***

According to article 76 "any government institution shall establish a Grievance Handling Committee that conducts grievance inquiry and submits recommendations to the head of the government institution". "Grievance" for this purpose is defined as "a complaint of a civil servant that could not be resolved through discussion conducted with the civil servant's immediate supervisor or with concerned officer and should be addressed through a formal review procedure" (Article 74).

Both the Disciplinary Committee and the Grievance Handling Committee is an in-house dispute settling

organ tasked to provide recommendation to the head of the government institution.

In disciplinary proceedings, it is the government institution which appears as a plaintiff before this Committee while the civil servant is a defendant.

In Grievance Handling proceedings the civil servant will be the one who submits her claim or grievance against the government institution to the Grievance Handling Committee.

Once the internal dispute settlement organs are tested, if there still exists grievance or dissatisfaction, there exists an appellate procedure within the executive organ, i.e. Civil Servants Administrative Tribunal which entertains civil service employment disputes and render decisions. Orders and decisions of the Administrative Tribunal shall be considered as orders and decisions of any civil cases (Article 80(3).

Although the decision of the Administrative Tribunal on question of facts is final, any party who claims that the decision of the Administrative Tribunal has an error of law, may appeal to the Federal Supreme Court within 60 days up on receiving the decision of the Administrative Tribunal (Article 81(5). Indeed, based on the constitutional stipulation, any final decision of court of law in which fundamental error of law has been observed can still be submitted to a cassation division as an additional procedural remedy.

Generally, the dispute settlement machinery in the civil service sector starts from internal remedy within the administrative unit; then moves to the Administrative Tribunal forum which is quasi-judicial administrative remedy; ***it is after exhausting the local and administrative remedies that the judicial remedy would be employed.***

The End!

Short Note From Ethiopian Employment Law Text Book by Abdulfettah Bushura. Jan, 2025.

Every Important Points of The Text Book Included.