

Labour Law: ITS IMPLEMENTATION IN THE FIRST SIX MONTHS

The most challenging articles of the Labour Law, the limited capacities of oversight mechanisms, and the role of courts in solving labour contests

EXECUTIVE SUMMARY

June 2011 marks the first six months since the Labour Law entered into force. This law regulates the labour relationships for both the public and private sector. Despite its initial positive effects, certain articles of this law, such as the article regulating maternity leave, have created problems that affect the law's implementation. Prior to June 2011, maternity leave for civil servants was not applied according to the Labour Law but according to the old system. At the same time, the budget allocated by the government to cover maternity leave expenses under the new system is not sufficient. Additionally, the Labour Inspectorate, a supervising body of the Labour Law, has an insufficient number of inspectors as well as insufficient technical capacities due to its low budget. Another problem is that municipal courts remain overloaded with cases, discouraging workers from making appeals. While the Labour Law is a good mechanism in the fight against the informal economy, for it to be effective it needs to be properly implemented. Through this paper, the GAP Institute aims to provide an overview of the level of implementation of the Labour Law by employers, recommends the need to increase the capacities of supervising bodies and provides data on the number of companies and employees whose status is regulated by this law.

I. INTRODUCTION

The Labour Law, which was approved on November 2nd 2010 and came into force on December 16th 2011, was considered by the citizens of Kosovo as one of the most crucial legislations that have been passed. The law was approved in the last plenary session of the third legislation period, the same day of the assembly's dissolution. It was approved unanimously: 101 votes in favor of the law, with no votes against and no abstentions. Before, the government had withdrawn the law two times (although in a different version) from the assembly due to concerns over the high budgetary burden. Eventually, the government decided to pass the act to the assembly, partially thanks to the pressure coming from the trade unions. They threatened to boycott the election process if the law was not approved. The draft of this law was topic to various consultations and discussions, mainly between the associations of employers and trade unions. These were organized by the appropriate assembly committee and many other civil society organizations. In this context, GAP Institute published a paper concerning the content of the draft law, making suggestions and giving recommendations as to how to design some of its most sensitive articles such as maternity leave, working hours, and probation. These suggestions took into consideration the other regional countries' experiences with its Labour Laws.

The Labour Law aims to regulate the rights and obligations between employers and employees in the private and the public sector. In Kosovo, the arrangements for employment do not derive from the Labour Law alone. In 2001, UNMIK issued Regulation 2001/27 for the Basic Labour Law which included a considerable amount of articles that are now found in the new law. Nevertheless, the Labour Law's importance does not solely derive from the fact that it was drafted by the Kosovo Assembly, but rather that it seeks to strengthen employees' rights (especially within the private sector). These rights such as maternity leave, sick leave, or regulated working hours were not respected during the period following the war. The Labour Law, which consists of 100 articles, has taken into consideration a range of requirements demanded by the trade unions. Thereby the law includes articles stating for example that the employment contract must be offered in written format only and that the probation period cannot last more than 6 months. Furthermore, it formalizes the 40 hour work week, suggests employees must be given the right to have a break of at least 30 min, and gives employees 4 weeks of vacation per year. It also provides female employees with the right for a maternity leave of 12 months, 9 months of which are paid.

These commitments to employees, which coincide with a range of demands from their trade unions, would be invaluable if they are not put into practice. The business community, which was active in opposing employee

claims (especially the articles specifying maternity leave and working hours), helped to create the perception that putting this law into practice would not be easy or would have negative impacts on the society. Therefore, monitoring mechanisms are very essential in order to ensure that the law is fully implemented. With this analysis, GAP Institute aims to demonstrate the role, capacities and importance of the Labour Inspectorate in assessing the commitment of the business community to respect the law and to analyze the role of the courts in dealing with employment disputes. GAP Institute strongly recommends enforcing monitoring mechanisms for the Labour Law.

II. THE IMPLEMENTATION OF THE LAW

Even as there were earlier attempts by the government to draft a Labour Law, this does not mean that a legal vacuum existed in respect of employment regulation. 10 years before the Labour Law was passed, UNMIK issued the Regulation 2001/27 on the Basic Law on Labour. Even though the Labour Law has many articles similar to the UNMIK Regulation, the new law includes some crucial differences. In the following analysis, we have highlighted some of the articles which are more specific and have been subject to various discussions. These would mainly regulate labour status. At the same time, there are articles which may be difficult to implement according to employers. The table that is presented in the appendix summarizes the differences between the articles based on the UNMIK Regulation, the Draft Law on Labour and in the end, the Labour Law.

III.A. MATERNITY LEAVE

Article 49 of the Labour Law regulating the issue of maternity leave states that: "An employed woman is entitled to twelve (12) months of maternity leave. During the first 6 months of maternity leave, the payment shall be done by the employer with the compensation of 70% of basic salary, and the following three months, the maternity leave shall be paid by the government of Kosovo with the compensation of 50% of average salary in Kosovo. The employed woman shall have the right, upon this Law, to extend her maternity leave also for three months without payment." Before this law came into force, employed women had the right to 12 weeks of maternity leave under the UNMIK Regulations. This leave was considered as a working period and ensured that the employer paid not less than 2/3 of the employed woman's salary.¹

Under the new law, employed woman do not only benefit in terms of time, but also in connection to the compensation of their earnings. They have

¹ Article 48, UNMIK Regulation 2001/27

gone from having 12 weeks of paid maternity leave to 9 months. The current maternity leave formula of 6+3+3 is certainly encouraging for employed women. However, there may be difficulties in implementing the compensation program from the side of the employer for the 6 months period. This is mainly due to two reasons: (1) small businesses may struggle to pay 6 months of compensation considering they also have to find and pay a replacement employee, and (2) some business might consider it as unfair to pay 70% of an employee's basic salary while the government pays only 50% of the average salary in Kosovo. The actual average salary in Kosovo is € 345², which means that a mother will be paid € 517.5 in total (for 3 months). However, in the last 3 months of the 1 year maternity leave puerperal will not get compensated. For large private entities, compensated maternity leave is not a question of financeability and they could easily apply the law. However, from numerous meetings with private businesses while preparing this analysis it can be concluded that in general they do not seem to be willing to implement this article of the Labour Law. In fact, they have already found ways to circumvent these provisions. For example, businesses have started to review female positions within their companies and change employment policies by being more selective when hiring new employees. Additionally, we have learned that there are businesses that started 1 month contracts for their employees³, even as the Labour Law is unclear whether 1 month contracts are allowed. It states that for a specific position, a contract cannot be longer than 120 days within a year.

For further assessment, it is useful to have a closer look at the concrete numbers of employed women in the private sector. Since private entities do not declare the number of their employees and because of the informal nature of employment in Kosovo, it is very difficult to find exact numbers on employed women in the private sector. Nevertheless, data from the Kosovo Pension Savings Trust (Trust) can be used to make assumptions. The number of the contributors in the Trust is 234,729⁴. If all employees in the public sector (total 70,367⁵) are contributors to the Trust, it means that the remaining 164,362 contributors are employed in private sector. Based on Trust data 27% of the contributors are female⁶. If we remove the 26,771 females working in the public sector, we can conclude that in the private sector there are more than 33,000 female employees. From the total number of female contributors, around 30% are younger than 30 years old which means they have the potential to require maternity leave for 1 year. Since more females are employed in the private sector than the public sector, the private sector has more maternity leave expenses than the public sector.

² Kosovo Statistical Office, April 2011

³ Interview with Arian Zeka, American Chamber of Commerce (11.05.2011) and interview with Berat Rukiqi, Kosovo Chamber of Commerce (17.05.2011).

⁴ Kosovo Pension Pension Trust, Annual Report 2010

⁵ Ministry of Public Administration, March 2010

⁶ Kosovo Pension Pension Trust, Annual Report 2009

One of the challenges of implementing this article is connected to the funds that the government allocated for maternity leave expenses. Based on the financial declaration of the Draft-Law on Labour, this law will cost € 1.8 million to the Government of Kosovo, whereas the total cost of the Labour Law will be around € 5 million annually. From this budget, the government allocated only € 300,000 for maternity leave, a very small amount. The Draft-Law on Labour has advanced from 12 weeks of maternity leave to 9 months in the Labour Law, yet the allocated budget has remained the same. Thus, it has not increased in a matter coherent with the changes.

Based on data from the Statistical Office of Kosovo 27,353 babies were born in 2010. If only 5% of puerperal were employed in the private sector, the government in order to compensate 50% of the average salary in Kosovo for three month (€ 517.5 in total for one mother), would have to spend € 707,759 only for the women employed in the private sector. Yet, these estimations do not take into account women employed in the public sector.

III.B. MATERNITY LEAVE IN THE CIVIL SERVICE

In May 2010, the Law on the Civil Service in Kosovo was approved by the Kosovo Parliament. The law intends to regulate the status of civil servants. The Independent Oversight Board (IOB) for the Civil Service of Kosovo is an independent institution that reports to the Kosovo Assembly. Its role is to analyze and decide on complaints from civil servants concerning employment relations, supervise appointments of civil servants and supervise the implementation of regulations and provisions of the Law on the civil service. Having analyzed the IOB report from 2010, it can be noted that the board accepted 290 complaints⁷ from civil servants and from people interested to work in the Civil Service of Kosovo. Complaints are classified according to the complaint objective, gender structure and national structure. The breakdown of complaints is as follows: termination of employment contracts (30%), competitiveness contests (28%), financial compensation (15%), non-extension of employment contract (9%), lowering of position (8%), change of position (1.8%), and other disciplinary measures (8%). As for the gender structure, the majority of complainants are male with 78%. While only 22% of the complains were made by female employees.

The Gender Equality Agency (GEA) which functions within the office of the Prime Minister states that the number of civil servants - including those employed in education, health and administration - is 70,326 people. 60% are men and 40% are women meaning that 26,771 females are employed in the public sector. However, the civil service estimates that 24,000 people are employed.

⁷ Annual Report 2010, The Independent Oversight Board for the Civil Service of Kosovo

As for the maternity leave, there is a legal uncertainty for women employed in the public sector. Our analysis showed for example that in the KSF and in the Kosovo Police Force double standards were used. The Labour Law on the one hand and Law on the Civil Service in Kosovo on the other are not synched with each other, even though Article 2 of the Labour Law states that “provisions of the law on employment apply to all employees and employers, whose employment is regulated with a special law, if the special law does not foresee solutions to specific cases in the employment relations.”

Until now the maternity leave for the civil servants was regulated by the Law on Civil Service and specified in the Administrative Instruction No. 05/2007 for Regulating and Determining the Procedures of Financial Payments for Maternity Leaves on the Civil Services of Kosovo in 2007. This states that those employed in the civil services sector are entitled to pay maternity leaves for a period of 6 months. The first 3 months are paid by the employer and the last 3 months are paid by a special fund created by the Kosovo Government. For that period women are entitled to a compensation of 70% of the minimum wage in Kosovo.

This practice was confirmed by the Independent Oversight Board⁸ and was applied until the end of May 2011. This means that if a teacher was given a maternity leave with the system 6+3, an administrative employee was entitled to a leave of 3+3. However, on April 20th, 2011, the Ministry of Labour issued the Administrative Manual No. 05/2011 for Regulating and Determining the Procedures of Financial Payments for Maternity Leaves, which nullifies the Administrative Manual No. 05/2007. This means that maternity leave for civil servants will now be in accordance with the Labour Law. The Administrative Manual No. 05/2011 was approved in April 2011 and published in June 2011. Thus, it is unclear what happens to an employee who was given a maternity leave in the old system 3+3 during this period.

In any case, maternity leave for civil servants (plus education and health employees) will be covered by the governmental budget for the whole nine months. Salary levels for civil servants are set depending on their job rankings. However, if we consider the average salary of € 345 in Kosovo, then the costs for one person on maternity leave will amount to € 1,966 (70% of the average wage for six months is estimated to be € 1,449, plus 50% of the average wage for the last 3 months is € 517.5). At the moment, the civil service in Kosovo has 226 employees on maternity leave. Again, we should consider the budget of € 300,000 set by the government to cover the expenses of maternity leave in the public sector, which is not sufficient at all. At the same time it has to cover the three month period for the private sector.

⁸ Interview with Mehdi Geci, May 2011

The Administrative Instruction No. 05/2011 describes the procedures that the puerperal must follow in order to claim the funds set by the law. The financial payment for the three months that are paid by the government budget can only be claimed during the maternity leave. However, she must first fill out a dozen documents that have to be submitted at the Municipal Employment Office. Among other things, these documents include the written request to claim the payment, the employment contract, a document by the employer describing that they have allowed a maternity leave of 9 or 12 months for the employee, a copy of the consignment note from the hospital where the baby was born, and proof that the employee has paid his/her tax liabilities.

III.C. WORKING HOURS

The new Labour Law is not so different from the UNMIK Regulation in regards to the work schedule. However, one important advancement has been made; according to Article 20 “the full time work schedule is 40 hours per week,” the full time work schedule for employees below 18 years cannot be more than 30 hours a week. This differs from 40 hours allowed in the UNMIK Regulation. We have observed that abiding to Article 20 creates problems, especially in the construction sector, where employees typically work more than 8 hours a day. Because employment opportunities in construction are seasonal in Kosovo, companies need more workers during the summer. Some employers claim that employees themselves ask to work longer hours. However, considering the fact that construction workers in Kosovo are paid on a daily basis (from € 12-15 per day) and not an hourly one, these claims seem difficult to hold up. A working day which is longer than eight hours does not benefit employees; it is solely beneficial for the employers. As such practices denote the law they should not be tolerated, especially when the labour inspector⁹ is fully aware of such unlawful activities. According to the Labour Inspectorate, there are other businesses that do not respect the work schedule, such as the hotel sector, where employees work more than 8 hours a day or in restaurants, bars, and malls etc. It should be noted that working more than 40 hours per week is punishable with a fine from € 100 to € 5,000.

The article that guarantees employees a minimum of 30 minutes for lunch break in a full working day seems to be fully respected especially in the big companies that were part of the research at hand. Again, however, a double standard and non-conformity between the Labor Law and the Law on Civil Service were found as the later provides civil servants with the right to a one-hour break during eight hours of work, unlike other employees.

III.D. WRITTEN CONTRACTS

⁹ Interview with the Chief Inspector, Mr. Basri Ibrahimi, on 10.05.2011

According to Article 10 of the Labour Law, an employment contract shall be in written form and signed by both employer and employee, as it was also specified in the UNMIK Regulation. However, during the last ten years, many businesses have failed to implement this important legal norm, by only creating oral contracts; a practice which has continued despite the implementation of the new Labor Law which echoes the UNMIK Regulation. One of the reasons for not respecting this article is the attempt to avoid tax payments by choosing not to report the real number of employees. Changes to articles in the law concerning payment during maternity leave have also pushed some employers to sign short term contracts with employees rather than long term ones to which these changes would apply. The non-declaration of employees not only violates the law and the rights of employees, but it also negatively affects the budget of Kosovo by contributing to the informal economy. Despite the fact that violations of articles concerning the work contract are sanctioned with fines of up to € 5,000, the absence of written contracts and the improper content existing contracts remain among the most pressing problems concerning the implementation of the Labour Law.

III.E. EMPLOYMENT CARD

The employment card is an identifying public document of the employee, which displays personal data and work experience.¹⁰ The labor card is issued by the Ministry of Labor and Social Welfare (MLSW), while the employee must have the employment card, which shall be delivered to the employer in the occasion of establishing the work relationship. On the day of concluding the work relationship or when terminating the employment contract, the employer is obliged to return the document to the employee, which shall be filled in with the personal data and work experience. The ministry has already issued an Administrative Instruction¹¹ for the content and form of this document. All the employees who are employed in the Republic of Kosovo native and foreigners should be equipped with this card. The Ministry of Labor will issue this card starting from 1st of July 2011, as it is mentioned in Administrative Instruction.

However, the obligation of employees to obtain an Employment Card was not foreseen by the original drafters of the law submitted by the government in the assembly. The relevant article was added by the assembly just before its adoption. The use of such a card is an outdated practice in many modern countries and it should not be mandatory in Kosovo. Further, there is a lack of information on how much it will cost for the employees and where it can be purchased. However, information does exist as to the fact that an employee without an Employment Card may be

¹⁰ Article 91, Law on Labor

¹¹ Administrative Instruction Nr. 02/2011 for the content and the form of Employment Card

fined from an amount of € 100 to € 5,000¹². This article has the potential to create chaos to MLSW by workers which are forced to be equipped with it.

III. LABOUR INSPECTORATE

The Office of Labour Inspectorate is regulated by Law No. 2002/9 on Kosovo Labour Inspectorate. This executive body, which operates under the Ministry of Labour, is responsible for overseeing the implementation of Labour Law, including the assessment of safety measures at and environment of the workplace, and protection of the health of employees. Inspectors must also explain the provisions of the law to both employers and employees and report to the Ministry concerning any misunderstanding with regard to certain acts of the law. The Labour Inspectorate is headed by the Chief Inspector, who reports directly to the Minister. Inspectors are authorized to freely enter any company, without prior notice, to inspect and examine the workplace in order to ensure that all facets of the law are being implemented. However, the inspector must inform the employer of his presence and at the end of the inspection, provide the employer with the official report, regardless of whether or not any violation of the law has been detected.

The institution of the Labour Inspectorate plays an important role in guaranteeing the implementation of the law and other regulations which aim to ensure a safe and healthy work environment. However, the institution has faced many difficulties since its creation; it has been operating for a long time without an acting director and a number of inspectors have left their positions dissatisfied with the working conditions. In this paper, we will only focus on three major problems the inspectorate faces currently: (IV.A.) the small number of inspectors, (IV.B.) the poor operating facilities, and (IV.C) the low budget.

IV.A. HUMAN RESOURCES

While the chief inspector has a staff of 4 people, there are only 51 inspectors in total, spread throughout the Kosovo municipalities. Firstly, there are too few inspectors to adequately cover all companies that operate in Kosovo. Secondly, the manner of dispersion of inspectors throughout the municipalities is inefficient. Among the 37 Kosovo municipalities, there are some without a single inspector, including for example Suhareka and Istog which are in fact quite populated. Other municipalities that were created due to the decentralization process also lack labour inspectors. Some big municipalities like Ferizaj and Lipjan each has one inspector. Prizren, the

¹² Administrative Instruction Nr. 01/2011 on determining and imposing penalties for violation of Labor Law

second largest municipality in the country, has only two inspectors. Since Suhareka is also covered by Prizren inspectors, the two inspectors are forced to stretch their time to visit all registered companies in these two municipalities.

The number of registered companies in Kosovo has increased from 2010 to 2011. According to the Business Registration Agency, there are 106,555 registered businesses. According to ILO Convention, based on which the Inspectorate was created, inspectors should visit a company as often as they consider necessarily¹³, some need to be re-inspected and others should be visited because a complaint has been made. If inspectors aim to visit every single company at least once a year, as set out in the chief inspector's recommendations, visiting a total of 106,555 companies would require every inspector to visit on average 2,089 companies a day. In Prizren, for example, with its two inspectors, to cover all 11,362 registered businesses in Prizren and Suhareka in 220 working days, they would have to visit on average 51 businesses a day. The one inspector in Ferizaj would have to visit 7,964 businesses a year.

Clearly, the small number of inspectors makes it impossible to visit every business at least once a year. In 2010, the Labour Inspectorate completed 6,937 inspections, 5,159 regular inspections, 898 repeated, 371 on demand and 509 together with other institutions (Kosovo Police and Kosovo Tax Administration).¹⁴ In comparison with the number of registered businesses (106,555), the statistics show that the Inspectorate has visited only 6.51% of them. Comparing the number of visits with the total number of businesses equipped with fiscal number (61,114) that means the Inspectorate has visited only 11.4% of them. It is worth noting the small number of visits on demand (371), which is arguably due to the fact that despite gross injustice done to the employees, the number of complaints is disproportionately low; they are fearful of the consequences or simply unaware of the available remedies.

The number of inspections in 2010 is lower than that of 2009 (8,225 inspections.) This is certainly an unwelcomed development: the number of visits should have increased instead of declining. With the current number of inspectors, businesses will be visited once every 10 years time, while the chief inspector set out that at least 30% of businesses should be covered during the year. Another disconcerting fact is that an inspection of a business by a single inspector is risky; he may be threatened, physically or psychologically harmed, and/or bribed.

¹³ Article 16, ILO Convention No. 81

¹⁴ Annual Report of Labour Inspectorate, 2010

Municipalities	Nr. of registered Businesses*	Number of labour inspectors*	Average of businesses to be inspected by each inspector	
			Per year	In a day(220 work days)
Deçan	1578	3	526	2.4
Gjakovë	5762	4	1152.4	5.2
Drenas	2552	1	2552	11.6
Gjilan	6820	3	2273.3	10.3
Dragash	966	1	966	4.4
Istog	1905	0	-	-
Kaçanik	2170	1	2170	9.9
Klinë	1851	1	1851	8.4
Fushë Kosovë	2681	1	-	-
Kamenicë	1900	2	950	4.3
Mitrovicë	5012	3	1253	5.7
Leposaviq	825	2	412.5	1.9
Lipjan	2977	1	2977	13.5
Novo Bërdë	118	0	118	0.5
Obiliq	1024	1	1024	4.7
Rahovec	2115	1	2115	9.6
Pejë	6537	5	1307.4	5.9
Podujevë	3316	2	1658	7.5
Prishtinë	25842	5	4307	19.6
Prizren	9475	2	4737.5	21.5
Skenderaj	1744	1	1744	7.9
Shtime	1245	1	1245	5.7
Shtërpçë	535	1	535	2.4
Suharekë	1887	0	-	-
Ferizaj	7964	1	7964	36.2
Viti	2498	1	2498	11.4
Vushtrri	2898	1	2898	13.2
Zhubin Potok	361	0	361	1.6

Zveqan	447	1	447	2.0
Malishevë	1550	1	1550	7.0
Gracanica	-	1	-	-

IV.B. LOGISTICAL RESOURCES

In addition to not having enough personnel, the Labour Inspectorate also has insufficient numbers of cars, offices in municipalities, and lacks good communication technology. From the total of 10 cars that it has at its disposal 3 are made available to the main office and 7 for work in the field. Inspectors are placed in offices of that particular municipality, with the exception of Obiliq, Malishevë and Lipjan where inspectors do not have an office.

In fact, working under such poor logistical conditions is also against the ILO convention, which stipulates that the responsible authority should create optimal working conditions for labour inspectors, including offices equipped with computers, transportation, communication, etc. Today, most of these ILO standards are either partially or not at all met by the Labour Inspectorate.

IV.C. SMALL BUDGET

The two problems mentioned above, the low number of inspectors and the poor logistical conditions are a result of the small budget allocated to the Inspectorate. For 2011 this budget amounted to only € 565,074,¹⁵ which is more than 24.5% of the 2010 budget of € 453,921. This increase is a result of the overall wage increase from the government, which is still small and neither allows for the increase of the number of inspectors nor for the improvement of the logistical conditions. However, the Inspectorate also has its own revenues; in 2010 it collected € 221,000. These revenues are collected in two ways: first, by issuing certificates of approval which certify that the employer has met the minimum technical conditions for carrying out his or her business, and second through fines issued for businesses which have violated the Labour Law. However, the institution is not allowed to use its own revenues to increase the number of inspectors or to encourage the current inspectors to be more efficient. The Inspectorate has constantly sent requests to the Ministry to increase the number of inspectors, improve the working conditions, and to increase its budget. Other requirements directed to the Ministry include: reaching a memorandum of understanding between the Ministry of Labour and the Ministry of Finances to allow the Inspectorate to use parts of its own revenues; to have better working conditions, inspectors' wages to be

¹⁵ Interview with the Chief Inspector, Mr. Basri Ibrahimi, on 10.05.2011

evaluated according to the responsibility of job; more professional training for inspectors, etc.¹⁶

V. FURTHER FULFILLMENT OF THE LEGAL BASIS

According to the Labour Law, article 98, the Ministry of Labour in coordination with the government, must approve a number of regulations that complement and execute the law, in the year following the law's adoption. Below are listed regulations that need to be adopted during this period; as shown, most of these regulations remain to be adopted in the second half of this year.

Article	Description	Approval
7	Terms and Criteria for the Establishment of Employment Relationship <ul style="list-style-type: none"> - Classification of easy and prohibited labour, from paragraph 2 of this Article, for persons under eighteen (18) years of age, shall be regulated by sub-legal act issued by the Ministry. 	✗
11	The Content of an Employment Contract <ul style="list-style-type: none"> - The Ministry of Labour and Social Welfare shall, for the needs of employers, issue templates of employment contract according to minimum standards, for an indefinite period, fixed period and specific task. 	✗
22	Reduced Working Hours <ul style="list-style-type: none"> - The Ministry, in cooperation with Ministry of Health, within six (6) months from the day this Law enters into force, shall issue sub-legal act on the classification and systematization of hazardous labour for employees, which severely damages their health. 	✗
32	Annual Leave <ul style="list-style-type: none"> - Tasks and duties, under paragraph 3 of this Article, shall be defined through sub-legal act issued by MLSW. 	✗
45	Protection of youth <ul style="list-style-type: none"> - For a proper and full implementation of this Article, MLSW shall issue sub-legal acts in the timeline defined by Law. 	✗
46	Protection of Women Employees <ul style="list-style-type: none"> - The Ministry shall issue sub-legal act for 	✗

¹⁶ Annual Report of Labour Inspectorate, 2009

	the classification of hard and dangerous forms of labour that may damage the health of pregnant and breastfeeding women;	
60	<p>Compensation for Occupational Injuries</p> <ul style="list-style-type: none"> - The Ministry shall issue sub-legal act to determine the extent of insurance coverage and to classify injuries and the level of compensation of injuries caused at work. 	✗
90	<p>Collective Contract</p> <ul style="list-style-type: none"> - Collective Contract shall be registered in the Ministry in compliance with terms and criteria determined by sub-legal act. - For the resolution of various disputes in a peaceful manner and the development of consultations on employment, social welfare and labour economic policies by the representatives of employers, employees and government in the capacity of social partners, through a special legal-secondary legislation act, the Social-Economic Council shall be established. - Other issues of social dialogue shall be regulated through a legal or sub-legal act depending on the agreement reached by social partners. 	✗
91	<p>Employment Card</p> <ul style="list-style-type: none"> - The ministry shall issue a sub-legal act for the content and form of the card, the issuance procedure, way of registration of the data, procedure for changing the card and for keeping the exact number of the card. 	✓
92	<p>Punitive Provisions</p> <ul style="list-style-type: none"> - Ministry of Labour and Social Welfare shall issue sub-legal act to determine fines and other payable amounts for cases when provisions of this Law are breached. 	✓

VI. THE ROLE OF COURTS IN SOLVING LABOUR DISPUTES

The Labour Law is meant to protect the very basic rights of employees, and grant them the right to appeal in case their rights have been violated. Thus, article 78 states that employees have the right to complain in written form if he/she feels that his or her rights have been violated. The employer is required to reply also in written form to his or her employee about the decision. If the employee is not satisfied with the decision, he or she has the right to sue the employer at the appropriate court. In the case that the court decides that the employer has violated the law by terminating the contract of the said employee, the employer is asked to return him/her to their position and compensate all wages lost during that period. The ruling court in such a case is the Municipal Court.¹⁷ According to the Law on Courts, which describes the new structure of Kosovo courts, the Basic Court will handle all first degree cases, with the exception of administrative and economic issues. The later are exclusively assigned to the Prishtina Court, which has departments dealing with economic and administrative cases.

The Law on Courts, however, does not mention which department is responsible for settling cases of labour relation disputes. If it is supposed that solving labour disputes is the responsibility of the department for administrative this would mean that all labour related cases from around Kosovo will be compiled at the Prishtina court. In this case the Court would certainly be overloaded with cases. At the same time, this arrangement would be very inconvenient for parties coming from further distances.

Some countries like Slovenia, Austria, Germany, France, etc., have specific labour courts and judges that specialize in labour related disputes. There are currently no plans to have such specified courts, as the law on courts does not outline this. A second major problem is that the courts today are overloaded with cases. Currently, labour disputes are solved by municipal courts. In the case of the Prishtina municipal court 181 cases were filed¹⁸ during the period from January 1st until June 1st 2011. 91 of these cases dealt with the termination of a working contract while 90 cases concerned payments of salaries. In the situation, where courts are overloaded with cases, these labour disputes can last for several years. In fact, since 2008 the number of labor related cases brought in front of courts is over 133,000, while only around 14,000 have been solved so far.¹⁹

According to the Labor Law, the Labour Inspectorate also has the authority to solve labour disputes to a certain degree. More specifically, the employee has the right to send a complaint to the Inspectorate if the dispute falls

¹⁷ Interview with Ms. Makifete Saliuka, 07.06.2011

¹⁸ Ibid.

¹⁹ Radio Evropa e Lirë, 29.05.2011

under the inspectors' authority. The Inspectorate should make a decision within 30 days. However, it is not clearly stated what the Inspectorates' competences are in relation to the appropriate courts. In addition, the Independent Overseeing Board is not at all mentioned in the Law, even though in 2009 it solved 288 cases which came from Kosovo civil servants.

VII. FIGHTING INFORMAL ECONOMY THROUGH THE LABOUR LAW

Based on the Business Registration Agency in Kosovo, there are 106,555 business registered in Kosovo²⁰, which has increased since this time last year, with only 99,647 businesses, though not all of these business are active. However, based on data from the yearly report of the tax administration in Kosovo, there are 61,114 fiscal numbers issued for businesses and 5,921 for individuals.

The economy in Kosovo is characterized by informality, so that the real rate of unemployment is most certainly lower than the official rate reported. With a rate of 40%, Kosovo has the highest share of unemployment in the region. Furthermore, it is far above European Union standards. The economy in Kosovo still depends largely on remittances and financial aid from donors. Based on MLSW data, 335,260 people were registered as unemployed at the end of 2010, of which 48% were female (160,589). From this figure, more than 90% claim to be unemployed for a long-term period (more than 12 months). Especially people with no prior job experience and job starters are affected by long-term unemployment. Out of the employed people in 2010, around 65% were males and 35% were females. Thus, the rate of unemployment is higher for females. Moreover, around 25 % of new working places are offered within the public sector, vs. 75% offered in private sector.²¹

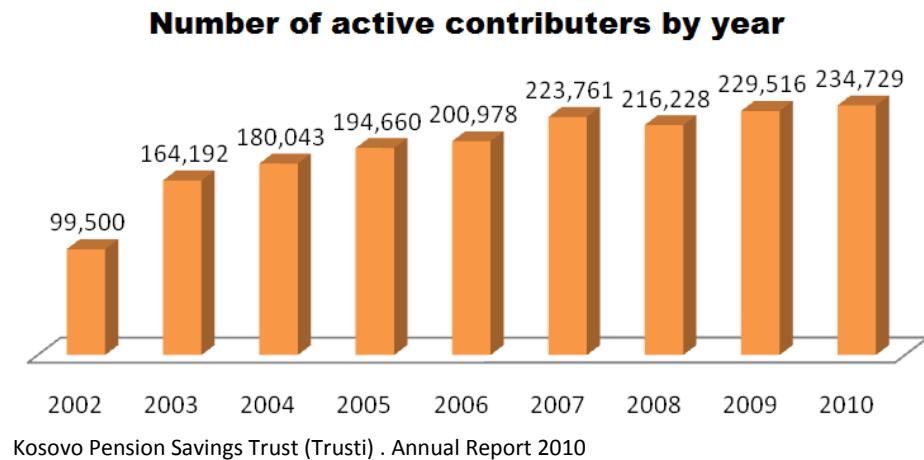
The share of the informal sector in Kosovo is also high, because many people are employed on temporary contracts. Hence, they do not enjoy the rights granted to them by new Labour Law. Many private groups are working in the informal sector, by not registering their businesses or employees in order to avoid taxes and pension contributions, which they are legally obliged to pay. There is still no exact data on the active number of businesses nor the exact number of people employed. Based on the World Banks' Report "Doing Business 2010," opening a business in Kosovo takes around 58 days, which is most certainly disconcerting for a new business entering the formal sector.²²

²⁰ Agency for Business Registration in Kosovo, 16.05 2011

²¹ Annual Report 2010, Ministry of Labour and Social Welfare

²² Doing Business 2010, World Bank

Hence, implementing the Law on labor, besides regulating the relationship between employer and employee, it aims to regulate the control of the informal economy.



VII. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

1. The new Labour Law has been very much anticipated by the employees in the Republic of Kosovo. Although the UNMIK Regulation 2001/27 regulated labour relations in Kosovo, trade unions have continuously pushed the government to pass the Labour Law as soon as possible. This new law would regulate the employee's status, especially for those employed in the private sector. On 16 June 2011 it will be exactly six months since the Labour Law entered into force. However, the implementation of the law is equally important than the existence of the law itself.
2. There are important changes between the Labour Law and the UNMIK Regulation. Some of the most important articles such as on the maternity leave have been included. The article that regulates maternity leave was initially not applied for civil servants. Only in June 2011 a new administrative instruction nullified the former regulation that disallowed the application of the Labour Law for civil servants in connection to the maternity leave.
3. While the draft law on labour has advanced compared to the final labor law, its budget remained the same. Thus, the budget allocated by the government of € 300,000 for expenses connected to the maternity leave is not sufficient in order to cover all employees in the public sector and the three months for those employed in the private sector.
4. There are indications that some acts of the Labour Law, such as the one on paid maternity leave, employment contract and the working hours, are not being implemented properly in the private sector. Therefore, there is an urgent need to strengthen the overseeing mechanisms, especially the inspectorate.

RECOMMENDATIONS

1. The Labour Inspectorate should increase its activities. It should be more present in the field in order to inform employees about their right to complain in case of violation, and to inform the employers in details about legal duties towards their employees, by reminding them that failing to fulfill these duties will be met with fines.
2. The number of inspectors should be increased and their working conditions should be improved. If the Financial Ministry cannot increase the budget, then a memorandum of understanding should be signed to allow the Inspectorate to use a portion of their own revenues.
3. The Kosovo Government should increase the fund allocated for paying maternity leave while taking into consideration the number of applications during the first six months. The current allocated fund of € 300,000 is not sufficient. This change should take place during the revision of the 2011 budget.
4. The procedures for puerperal to apply for the three month paid leave by the government should be simpler. The current application procedure is difficult and discouraging.
5. The application of the employment card is an outdated practice, which has been removed in modern countries. Therefore, this is not necessary in Kosovo either. When the first amendment of the Labour Law takes place, the act that regulates this issue should be removed.
6. The Labour Law should not serve only to regulate the relationship between the employer and employee, but also to fight the informal economy. The informal economy in Kosovo is widespread. Here, the Labour Inspectorate plays a major role in identifying the unregistered businesses. This helps the employees and has a positive effect for the overall Kosovo economy.
7. Courts should give priority to cases that deal with labour disputes. This would encourage employees to report their employer's misconducts since these cases could be solved faster.
8. A better harmonization of laws that regulates employment relationship is necessary. The Law on Labour Inspectorate should be amended since currently this law refers to the UNMIK Regulation and not the Labour Law.

APPENDIX

Differences between UNMIK Regulation, Draft- law and Labour Law

Issues to be regulated	Article	Regulation on Essential Labour Law	Article	Draft Law of Labour	Article	Labour Law
Employment Contract:	10	A contract of employment shall be concluded in writing and in an official language used in Kosovo.	9	A contract of employment may be written or oral, in mutual accordance with employee and employer.	10	An employment contract shall be concluded in written form and signed by the employer and employee.
Probation period:		-----	14	The trial period cannot last more than six (6) months in compliance with this Law, Collective Contract and Employer's Internal Act. During the trial period, the employer and employee may terminate the employment relationship through a previous notice in a term of two (2) days.	15	The trial period cannot last more than six (6) months in compliance with this Law, Collective Contract and Employer's Internal Act. During the trial period, the employer and employee may terminate the employment relationship through a previous notice in a term of seven (7) days.
Interns:			15	An employee, in the capacity of the intern, who has signed a contract with the employer, shall accomplish all rights and obligations from employment relationship the	16	An employee, in the capacity of the intern, who has signed a contract with the employer, shall accomplish all rights and obligations from

		<p>-----</p>		<p>same as the other employees. The practical work of an intern with high, university and post-graduate qualification shall not last more than one (1) year, whereas the practical work of an intern with secondary education shall last not more than six (6) months.</p> <p>The employer, in agreement with interested party, may engage interns without pay or any other rights emerging from the employment relationship, apart from being obliged to offer occupational safety and protection according to the Law.</p>		<p>employment relationship the same as the other employees. The practical work of an intern with high, university and post-graduate qualification shall not last more than one (1) year, whereas the practical work of an intern with secondary education shall last not more than six (6) months.</p> <p>The employer, in agreement with interested party, may engage interns without pay or any other rights emerging from the employment relationship, apart from being obliged to offer occupational safety and protection according to the Law.</p> <p>The employer who engages the intern without compensation of salary, shall be obliged to evidence the intern in the list of evidences without compensation of salary.</p>
Working hours:	16	Full time working hours shall be forty (40) hours per week.	19	Full time working hours shall be forty (40) hours per week.	20	Full time working hours shall be forty (40) hours

		Full time working hours for an employee, under 18 years of age, shall not exceed 40 hours per week		Full time working hours for an employee, under eighteen (18) years of age, shall not exceed 35 hours per week.		per week. Full time working hours for an employee, under eighteen (18) years of age, shall not exceed thirty (30) hours per week
Overtime work:	16	Overtime work may not last more than 20 hours per week and 40 hours per month.	22	On request of the employer, an employee shall work extended working hours (overtime) for a maximum of eight (8) hours per week.	23	. In extraordinary cases, with the increase of volume of works and other necessary cases, on request of the employer, an employee shall work extended working hours (overtime) for a maximum of eight (8) hours per week.
Break during working hours:	16	Employees are entitled to a break of 30 minutes during the working day.	27	An employee working full-time working hours is entitled to a break, during the days, of at least thirty (30) minutes, which cannot be taken at the beginning or at the end of working hours. Break times under paragraph 1 and 2 of this Article shall be considered as work.	28	An employee working full-time working hours is entitled to a break, during the days, of at least thirty (30) minutes, which cannot be taken at the beginning or at the end of working hours. Break times under paragraph 1 and 2 of this Article shall be considered as work.
Annual Leave:	17	During the first year of employment the employee is entitled to paid annual leave of 12 days.	31	An employee is entitled to a paid annual leave for at least 20 days work.	32	. An employee is entitled to a paid annual leave for at least four (4) weeks

		<p>Annual leave is calculated 1 day after each calendar month employment.</p> <p>After 1 year of employment the employee is entitled to paid annual leave period of 18 days for each calendar year</p> <p>. Annual leave is calculated one and a half (1.5) after each calendar month of employment.</p>		<p>The extension of annual leave shall be defined on the basis of work experience, whereby one day shall be added for every five (5) years of service.</p> <p>Mothers with children up to three (3) years of age and single parents as well as persons with disabilities are entitled to additional two (2) working days off.</p>		<p>during a calendar year, despite if he/she works a full-time or part-time job.</p> <p>The extension of annual leave shall be defined on the basis of work experience, whereby one day shall be added for every five (5) years of service.</p> <p>Mothers with children up to three (3) years of age and single parents as well as persons with disabilities are entitled to additional two (2) working days off.</p>
Compensation for sick leave	20	<p>Employee shall be entitled to holiday family cases such as the case of marriage, birth and death in the family.</p> <p>Periods of absence and its rate of payment adjusted by agreement between employers and employees.</p>	38	<p>An employee is entitled to a paid absence from work:</p> <ul style="list-style-type: none"> - 2 days in case of his/her marriage; - 3 days in case of the death of a close member of family; 	39	<p>An employee is entitled to a paid absence from work with the compensation of salary, up to::</p> <ul style="list-style-type: none"> - five (5) days in case of his/her marriage; - five (5) days in case of the death of a close member of family; - 1.3. three (3) days for the birth of a child

Maternity Leave	48	<p>Female employee is entitled to at least 12 weeks paid maternity leave after childbirth.</p> <p>This holiday is known as the working period and paid by the employer at a rate of not less than two-thirds of the female employee income</p>	48	<p>An employed woman is entitled to 12 weeks of paid maternity leave.</p> <p>This period shall include a period of 6 weeks compulsory leave from the day of childbirth.</p> <p>The woman is entitled to extend her maternity leave with 12 weeks of unpaid absence from work.</p> <p>Maternity leave benefits according to paragraphs 1, 2 and 3 of the present article constitute 70% of gross salary of the employee in her latest year of employment.</p>	49	<p>An employed woman is entitled to twelve (12) months of maternity leave.</p> <p>First six (6) months of maternity leave, the payment shall be done by the employer with the compensation of seventy percent (70%) of basic salary.</p> <p>The following three (3) months, the maternity leave shall be paid by the Government of Kosovo with the compensation of fifty percent (50%) of average salary in Kosovo.</p> <p>The employed woman shall have the right, upon this Law, to extend her maternity leave also for other three (3) months without payment.</p>
Additional salary	55	<p>Overtime is paid at a higher level of 20% per hour, or at the request of the employee it can be compensated with appropriate rest during the following month.</p>	55	<p>For labour performed in extended working hours and during the days of national holidays as well as night shifts, an employee is entitled to allowances in compliance with this Law, Collective Contract and Employment Contract.</p>	56	<p>For labour performed in extended working hours and during the days of national holidays as well as night shifts, an employee is entitled to allowances in compliance with this Law, Collective</p>

				<p>An employee shall be entitled to allowances calculated in the following percentage of basic salary:</p> <ul style="list-style-type: none"> • 20 % per hour for extra shift; • 30 % per hour for night shift • 30 % per hour for extended working hours; • 50 % per hour for work in national holidays; and • 50 % per hour for work in weekends. 		<p>Contract and Employment Contract.</p> <p>An employee shall be entitled to allowances calculated in the following percentage of basic salary:</p> <ul style="list-style-type: none"> 20 % per hour for extra shift; 30 % per hour for night shift; 30 % per hour for extended working hours; 50 % per hour for work in national holidays 50 % per hour for work in weekends.
Compensation for sick leave	58	<p>The employee must notify the employer for taking sick leave within 48 hours.</p> <p>In cases where sick leave taken due to accident or illness in workplace, employees belongs to salary / wages for that period.</p>	58	<p>An employee is entitled to compensation for ordinary sick leave up to ten (10) working days in one (1) year with one hundred percent (70%) salary compensation.</p> <p>Payment for compensation for sick leave falls on the employer.</p> <p>The provisions of this article will be valid until in time of entry into force of the legislation for care and protection health.</p>	59	<p>An employee is entitled to compensation for ordinary sick leave up to twenty (20) working days in one (1) year with one hundred percent (100%) salary compensation.</p> <p>Payment for compensation for sick leave falls on the employer.</p> <p>The provisions of this article will be valid until in time of entry into force of the legislation for care and protection health.</p>



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