Current legislation on termination of employment and resolution of relevant disputes in Azerbaijan

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Abstract

This Article will examine the mechanism of protection of employees against dismissals under the national legislation of Azerbaijan and provide an analysis of the resolution mechanisms related to termination disputes. Laws and practice in Azerbaijan will be analysed to identify existing problems and suggest solutions where possible.

Keywords: dismissals, dispute resolution mechanisms, employee, employer, termination law

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I. National law and practice

Labour Code of Azerbaijan Republic (LCAR) enshrines the fundamental provisions regarding the protection of employees against arbitrary dismissals. The basis of the regulation is in line with the principle of International Labour Organisation (ILO): in case of the termination on the initiative of the employer, a valid reason is required. Termination grounds are set under the Article 70 of the LCAR and are as following:

a. an initiative of one of the parties,
b. expiration of the employment contract,
c. alteration of working conditions.
d. change of the ownership of an enterprise (only with respect to heads, deputyheads, senior accountants and other division managers directly performing managerial functions),
e. cases not depending on the will of the parties,
f. cases established by the parties in an employment contract.

Initiative to terminate the employment contract can emanate from the side of an employee as well as an employer. In case the employee wishes to resign, he/she has an obligation to notify the employer in writing one calendar month in advance. An employee is exempt from this obligation if a valid reason exists such as retirement, admission to an educational institution, signing of employment contract with a new employer, change of place of residence or in case of sexual harassment. It is prohibited to use force or threats to make the employee resign.

Regulations become stricter when the initiative of termination is taken by the employer. The Labour Code stipulates an exhaustive list of grounds that are considered valid and allow to dismiss the employee:

a. liquidation of the enterprise;
b. staff redundancy;
c. decision of the authorized body that the employee doesn't comply with therelevant position due to lack of professionalism and qualification;
d. employee doesn't fulfil his/her labour functions or obligations under the employment contract or engages in gross misconduct as indicated in article72 of the LC. The mentioned article precisely lists the cases which are considered as gross misconduct and allow immediate termination.
e. employee fails to meet the expectations during the probation period;
f. employee working in a state-funded enterprise reaches the age limit.

This list is strictly exhaustive, and the employer has to justify the termination under one or more of these grounds, otherwise, it will be unlawful and violate employees' labour rights. Moreover, there is a certain procedure during the termination that must be complied with.

Notice periods

The notice period is stipulated in Labour Code with regards to the termination as a result of redundancy. Namely, in case of staff cutback, the employer shall officially notify the employee, and the notice period is identified based on the length of service:

length of service - up to 1 year – at least two calendar weeks;

length of service - 1 to 5 years – at least four calendar weeks;
length of service - 5 to 10 years – at least six calendar weeks;
length of service - more than 10 years – at least nine calendar weeks;

Moreover, during the notice period, the employee shall be released from work for at least one working day in order to look for a new job with retaining his/her salary.

In case of alteration of employment conditions, the employee shall be notified as well. The notification must be given in writing and at least one month in advance. If an employee doesn't wish to continue employment under the new working conditions, he/she must be transferred to another position. Only if there is no possibility to transfer the employee, he/she can be dismissed under the Article 70(c). The notice period is also envisaged for the termination of employment by the end of the probationary period. Either party is entitled to terminate the contract by notifying the other party in writing three days prior to its end.

There are no notice periods provided by the legislation for terminations under the grounds other than the ones mentioned above, thus termination for those is carried out immediately. Importantly, in practice, when notification is given, it is always in writing and signed by both parties.

Severance payments

Labour Code also envisages severance payments to the dismissed employees in certain cases. First of all, the employer is obliged to provide dismissal compensation during terminations on the grounds of liquidation of the enterpriseand redundancy. These payments depend on the length of service as well:

if the length of service is up to 1 year - in the amount of the average monthlysalary;
if the length of service is from 1 to 5 years - at least 1.4 times the averagemonthly salary;
if the length of service is from 5 to 10 years - in the amount of at least 1.7times the average monthly salary;
if the length of service is more than 10 years - at least twice the averagemonthly salary.

With the consent of the employee, the employer can substitute the notice period with paying severance to the dismissed employee. Notice periods described above can be replaced as follows:

0,5 of the average monthly salary instead of the two-week notice period,
0,9 of the average monthly salary instead of the four-week notice period,
1,4 of the average monthly salary instead of the six-week notice period,
2 of the average monthly salary instead of the nine-week notice period.

Other severance payments are paid during the following cases:

- termination due to the alteration of working conditions – a dismissed employee is entitled to an allowance of no less than twice the monthly average salary;
- termination due to military commencement of military or alternative service – an employee is entitled to benefit of no less than twice the monthly average salary;
- termination due to the impossibility to perform labour functions complete loss of working ability for a continuous period of more than six months unless the law sets longer period – dismissed employee receives an allowance of no less than twice the monthly average salary;
- termination due to the death of employee – heirs receive a three-fold average salary of the

employee;
- termination due to the change of ownership of the enterprise – dismissed employee is entitled to three-fold average monthly salary;

Further requirements

There are some additional obligations provided by the legislation for the employer during dismissals.

If an employer decides to terminate an employment contract due to staff redundancy or failure to fulfil labour functions and obligations with the employee who is a member of a trade union, he/she is obliged to apply to that trade union with prior reasoned submission in writing. This submission shall present valid motivation for the dismissal and contain all the relevant documentation for justification. The union shall respond with its reasoned decision in writing no later than 10 days.

Further, Labour Code envisages dismissals of employees performing direct managerial functions (heads, deputy heads, senior accountants, and other division managers) during the change of proprietor of the enterprise as a valid ground. However, the new proprietor or the employer are prohibited from undertaking mass termination of employment contracts by abusing his/her right toentrepreneurial activities and without assessing the level of professionalism, ability to perform labour function of employees and revealing any incompetence that may cause damage to the new owner's business. The Code provides definition for the "mass termination of employment contracts" as following:

> If the total number of dismissed workers within 3 months (at the same time or at different times) from the date of acquisition of the right of ownership to the relevant enterprise is:
> - in enterprise with 100 to 500 workers – more than 50 percent,
> - in enterprise with 500 to 1000 workers – more than 40 percent,
> - in enterprise with more than 1000 workers – more than 30 percent.

Contracts are also terminated with the expiration of their duration. In this case, the employer is entitled to dismiss the employee within one week, otherwise, the agreement will be deemed to be extended for the same period defined previously. If an employee's contract expires while he/she is absent from work for an excusable reason (illness, vacation, mission etc.), then the employer may terminate the contract only upon the employee's return to the workplace but no later than one week from the return.

Dismissal protection

Dismissal protection applies to employees both in form of priority rules and prohibitions with respect to certain categories of workers. To begin with, the redundancy selection criteria in Azerbaijan is based on the level of professionalism and qualifications of the workers. In other words, during staff redundancy, the employees with a higher qualification required to perform a job have the advantage of being retained. In case several workers possess the same level of qualifications, a certain list of workers is granted with the benefit of priority. Those are the following persons:

- family members of martyrs,
- war veterans,
- spouses of soldiers and officers,
- workers with two or more dependent child under the age of 16,
- workers disabled as a result of an industrial accident or occupational disease,
- special IDPs, persons equated to them, and refugees,
- other persons as stipulated in collective agreements and employment contracts.

Another group of workers is completely protected against dismissals, except for the cases when the enterprise is liquidated or the expiration of the contract's term.Those are:

- pregnant women, women with a child below the age of 3 and men independently upbringing the child below the age of 3,
- employees upbringing a child below school age with the only income source being from this job,
- employees temporarily lost the ability to work,
- employees due to the diagnosed diabetes or multiple sclerosis,
- employees due to their membership in a trade union or any political party,
- employees with dependent family members with limited health under theage of 18 or I group disabled,
- employees on vacation, on a business trip or engaged in collective negotiations.

II. Dispute resolution mechanisms

Termination of employment represents one of the major subjects of labour disputes regulated by the legislation. In general, several forms of dispute resolution mechanisms are stipulated in Labour Code:

- appeal to the court,
- appeal to the pre-trial review bodies under the trade union within the enterprise (only in case such mechanism is provided by the collective agreement),
- strike of an individual employee (which is not relevant anymore after the dismissal),
- other mechanisms stipulated in an individual employment contract.

In practice, employees in order to restore their violated rights also can file a claim to the State Labour Inspection Service (SLIS) under the Ministry of Labour and Social Protection of the Population of the Republic of Azerbaijan which is a specialized institution monitoring the compliance with labour legislation. According to the Ministry's Annual Report from 2019, the SLIS ensured the reinstatement of 88 employees whose employment was terminated for unlawful reasons.

It is worth to mention that at the moment, the SLIS carries out daily control over the "Employment Contract Notification" electronic subsystem in order to prevent unjustified dismissal of employees during the special quarantine regime. As part of control measures, the employers who have notified them of the termination of employment contracts through the system are contacted. The reasons for termination are clarified, and if the termination does not comply with the law, the reinstatement of relevant employees is ensured. There is already a positive experience of cooperation with employers in this area. In total, the SLIS has reinstated more than 700 employees whose employment contracts were terminated during the quarantine period. In addition, during the quarantine regime, the government recommended a moratorium on undertaking termination of employment contracts with employees.

Judicial settlement is the most common mechanism for the resolution of termination disputes. The dismissed employee is entitled to appeal to the court of the first instance within one calendar month from the date of discovery of the violation of the employee's rights. In case an employer fails to comply with the rules of terminating the employment contract stipulated in legislation, the court upon examination of the employee's statement of claim and facts of the case decides on the reinstatement of the employee and obliges the employer to pay all the lost wages from the moment of dismissal or issues a resolution approving the conciliation agreement between the parties. The decision of the court may also provide for the payment of damages caused to the employee by the employer.

Turning to the other method of dispute resolution of conciliation which stems from the collective agreement, this method has an advantage in a sense that unlike judicial settlement, it doesn't allow the dispute to extend beyond the enterprise, thus, makes it easier to continue normal labour relations after the resolution of the dispute rather than after ages of suing. Unfortunately, this method is not commonly used in practice and has drawbacks in regulation which will be discussed later.

III. Problems and possible solutions

To begin with the *legal regulation of unfair dismissals*, the first and the largest problem in Azerbaijan is that the legislation has not incorporated some of the international standards set forth by the ILO. This fact has a number of implications that have been negatively reflected in Azerbaijani labour legislation. The main form of dismissal that lacks regulation is collective redundancies.

First, there is no definition of collective redundancy in the Labour Code and no relevant quantitative threshold. The only reference is made to 'staff redundancy' which is a general term without any identified scope. What should be considered as staff redundancy? How is it regulated? How many workers can be made redundant? Within which period? None of the answers to these questions can be found in the legislation. The Labour Code or some other legislative act should envisage the notion of collective dismissal and the procedure that must be followed by every employer when dismissing a large number of employees. Unfortunately, what happens in practice is that the employers disguise the redundancy by negotiating with employee and convincing him/her to resign.

There is also no regulation requiring notifying the competent authority during collective dismissals. The absence of this regulation complicates the job of SLIS which tries to reach out employers by themselves and examine the lawfulness of dismissal. This should be a mandatory condition to fulfil for dismissing a large number of employees.

Ratification and implementation of the ILO Convention No. 158 on Termination of Employment could bring harmony to the termination law in Azerbaijan as well as ensure the protection of employees during collective dismissals. Further, Labour Code would have to be brought in conformity with the ILO standards and extend the protection of employees.

Turning to the problems existing in the field of *dispute resolution mechanisms*, although Labour Code has a basis for the conciliations, it is barely regulated under the legislation. Although the Labour Code envisages the possibility to appeal to the pre-trial review bodies under the trade union within the enterprise, this mechanism in legislation is not imperative and operates only in case it is provided by the collective agreement. This is the only sentence devoted to this method of resolution in LC. The Code lacks any provisions regulating the establishment of a specific conciliation commission, its structure, rights and obligations, the procedure of settlement etc. For example, the "Metal-work" Trade Union Federation has drafted the Charter of the Commission on consideration of individual labour disputes of enterprises, departments, organizations under trade union committees. This proves that even if the establishment of commission would not be relevant within small enterprises with little number of employees, they can be established within larger fields of work uniting workers of similar professions.

To conclude, Azerbaijan being a post-Soviet country, has made considerable efforts in reforming its labour legislation since gaining independence and has great potential of forming a model labour legislation in the region by implementing further improvements.