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Contributing Editors:
Charles Wynn-Evans & Emma Byford

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Armenia

Sedrak Asatryan, Janna Simonyan & Ani Varderesyan
Concern Dialog law firm

General labour market and litigation trends

Recent developments in the field of labour law include the adoption of alternative dispute resolution mechanisms for disputes concerning employment.

The Republic of Armenia (RA) Code of Civil Procedure first introduced mediation as a possible means of resolution of disputes regarding employment. Previously it was up to advocates to negotiate a settlement between employee and employer, whereas today legislation allows the assistance of a professional mediator to be sought. Accordingly, the court examining the lawsuit may leave the dispute to be examined by the mediator if the parties agree to that.

Additionally, due to the amendment of the RA Labour Code, disputes concerning employment became arbitrable in the territory of the RA. The new provision regulates arbitration agreements between employer and employee. It provides, however, that the arbitration clause cannot limit the right of the employee to submit the resolution of the dispute that has arisen in connection with the employment contract to the court. The only exception is when the arbitration agreement has been concluded after the dispute has arisen and the parties have, without any reservation, agreed to submit their dispute to an arbitral tribunal.

This development has not yet resulted in widespread recourse to mediation or arbitration in labour disputes, however, the practice is expected to gradually increase.

As to expected directions of development, it should be noted that in recent years the courts, for the first time, have started receiving claims based on allegations of violation by the employer of conditions of work, more particularly sanitary norms, space and furnishing of workplace, etc. The legal bases for these claims are regulations of labour legislation, which provide that if the conditions of work do not correspond to the requirements of law, the employees, besides the salaries envisaged in their contracts, are entitled to additional payment. Similarly, the courts have started receiving claims concerning the failure of employers to additionally remunerate their employees for overtime work.

In the absence of case law on the subject matter, the outcome of these proceedings may bring clarity concerning the application of relevant provisions of labour legislation and, in particular, regarding the procedures for engaging an employee in overtime work. The same is true for cases of violations of conditions of work, where the existence of case law could allow uniform application of the provisions of labour legislation to be guaranteed. The decisions of courts on the aforementioned matters are expected to be adopted within a year.

Protection against dismissal

CEOs of joint stock companies

In connection with the dismissal of the head of an executive body of joint stock companies, the Court of Cassation of the RA has recently adopted a decision underlining the specific status of head of an executive body and, in particular, regarding protection against dismissals.

Through interpretation of relevant legislation, the Court has concluded that the status of director (CEO) of a joint stock company is fundamentally different from the status of employee as it is envisaged in the RA Labour Code. This is due to the scope of functions entrusted to the CEO and its role in the governing bodies of the company.

From the analysis of legislation, the Court has deduced that the provisions of the RA Labour Code are applicable to the CEO as an employee, only when those provisions are in line with the status of CEO as it is envisaged in the law of the RA on Joint Stock Companies, and where specific relations are not otherwise regulated by the law of the RA on Joint Stock Companies.

The Court has further referred to Article 88, paragraph 5 of the law of the RA on Joint Stock Companies, which prescribes the right of the shareholders to terminate the contract of the CEO at any time (this authority can be transferred to the board by the charter of the company). The Court has accordingly noted that this right of shareholders is based on special status of the CEO and is a form of protection of the interests of shareholders. This right, according to the Court, arises from economic necessity, freedom of business and competition. The Court of Cassation has further noted that the respective decision of an authorised body does not need to include any cause or motive.

To conclude, the Court has affirmed that the employment of CEO of a joint stock company does not qualify as a conventional employer-employee relation, and that a CEO can and should predict that their contract can be terminated by the company at any time.

Participation in military activities

Article 175 of the RA Labour Code, prescribing cases where the employee is released from the obligation to perform their functions and is entitled to maintain their position at work, has been amended to include a new provision. The scope of circumstances that fall under the regulation of this Article has been enlarged to include voluntary participation in military activities.

The Article refers to employees who are not in military service but have voluntarily participated in military actions aimed at protection of the RA or other countries, with whom the RA or its authorised bodies have an agreement on mutual military assistance.

The employee is released from their obligations based on a certificate issued by the RA Ministry of Defence. The remuneration of the employee for that period is decided by the parties or by collective agreement.

Other recent developments in the field of employment and labour law

Work permit for foreigners

Currently, foreigners do not require permission from any governmental body to work in the territory of the RA. The Government decree N493-N adopted 12 May 2016, which was intended to introduce work permits, has been suspended until 1 January 2018.

The decree was long-awaited, since the law of the RA on Foreigners of 2007 had regulations concerning employment of foreigners which could not be implemented without a governmental decree regulating the procedure for issue of work permits.

By the decree, the RA Ministry of Labour and Social Affairs has been appointed as the authorised body which receives applications and issues work permits to foreigners based on the procedure defined by the decree. The decree equally lists all those circumstances where foreigners are allowed to work in the territory of the RA without a work permit.

Accordingly, if the employer hires a foreigner without residence or a work permit, they will face responsibility and be fined.

The decree entered into force on 4 June 2016; however, as mentioned above, it was immediately suspended until 1 January 2018.

Work book

Article 90 of the RA Labour Code defined the work book as the "main document containing information on the labour activity of the employee". Previously, the employer had an obligation to keep a paper work book for every employee. The book would contain information such as duration of employment, name of the employer, etc. The book may also contain, if the employee so requests, information about the position held by the employee, reasons for termination of the employment contract, etc.

The obligation to present the work book has been revoked for employees who have been hired after 1 January 2017.

The work books are expected to be fully pulled out of circulation during the two years following 1 January 2017. To achieve that, employers must submit work books they are currently keeping to the authorised governmental body, so that the information contained in those books can be fully entered into the data register of the pension system. Alternatively, the employer may transmit the book to the employee.

This development is aimed at creating a digital database of employment history. The information that was previously stored in the work book of the employee will now be digitally collected from databases of tax and social authorities.

Statute of limitations for claims of unpaid *per diem* and other business trip expenses

The RA Labour Code prescribes that there is no statute of limitations for claims of unpaid salary. However, the Court of Cassation was recently faced with the question whether *per diem* and other business trip expenses also fall under this special guarantee as payments assimilated to salary.

Based on the analyses of relevant legislation, the Court concluded that *per diem* and business trip expenses do not fall under the definition of payments assimilated to salary. This follows from the nature of those payments, which is to reimburse expenses of the employee rather than to remunerate the latter for work performed.

Therefore, the Court has concluded that claims for unpaid *per diem* and business trip expenses are subject to the general statute of limitations, which is three years.

Sedrak Asatryan
Tel: +374 1057 5121 / Email: sedrak.asatryan@dialog.am

Sedrak Asatryan has been the Managing Partner of Concern Dialog law firm since 2003. He practises in the areas of Labour Law, General Administrative Law and heads the Real Estate practice of the firm. In 2010, Mr Asatryan intensively researched law firm management as part of an exchange experience organised for managing partners in USA. Mr Asatryan co-authored *The New Labour Code of the RA: Employment Contracts* and *The New Labour Code of the RA: Employer's Internal and Individual Legal Acts*. In 2013, another book co-authored by Mr Asatryan, *Law Firm Management, an essential contribution to the Armenian legal reality*, was published. Since 2014, he has led the employment law clinic for students, run jointly by Concern Dialog law firm with the French University in Armenia.

In addition to his attorney practice, Mr Asatryan lectures at the School of Advocates. In 2017, Mr Asatryan was elected to the Board of the Chamber of Advocates of the Republic of Armenia.

Janna Simonyan
Tel: +374 1057 5121 / Email: janna.simonyan@dialog.am

Janna Simonyan has been a Partner at Concern Dialog law firm since 2010. She is specialised in Labour Law consulting, as well as Employment Law litigation issues. Ms Simonyan has represented corporate clients of Concern-Dialog as well as individuals in numerous cases since 2009 and has more than 50 successful litigation cases involving Labour disputes. Ms Janna Simonyan regularly organises individual and group courses on the Labour Law and developments, seminars on issues related to Labour Law for HR department managers and employees of organisations, and discussions on Labour Law with law clinic students from universities in Armenia. Ms Simonyan periodically trains teams of students for moot court competitions in Armenia. Janna Simonyan is also author of many articles and co-author of publications on Employment and Labour Law.

Ani Varderesyan
Tel: +374 1057 5121 / Email: ani.varderesyan@dialog.am

Ani Varderesyan joined Concern Dialog law firm in 2016. She graduated from the French University in Armenia with a Bachelor's degree and currently continues to pursue her Master's degree at the same university. As a student she has participated in many competitions and conferences, and has represented the university team at the international round of Jessup moot court competition. She specialises in Comparative and Private International Law issues.

Concern Dialog law firm

1 Charents street, 2nd floor, 207 office, Yerevan, Armenia
Tel: +374 1057 5121 / Fax: +374 1057 4779 / URL: www.dialog.am

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