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REPORT

FINDINGS FROM THE MONITORING OF THE DECISIONS OF THE JUDICIAL COURTS OF TIRANA, DURRËS, SHKODËR AND VLORË

Monitoring period: May 2020 - February 2021

Prepared by: Av. Rezarta Agolli, Ines Leskaj

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Thank you!

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ABBREVIATIONS:

CPAD - Commissioner for the Protection against Discrimination

SILSS - State Inspectorate of Labor and Social Services

HJC - High Judicial Council

EDO - Electricity Distribution Operator

AWEN – Albanian Women Empowerment Network

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SCOPE AND METHODOLOGY OF THE REPORT

This report is composed by the findings of legal counseling services offered on the context of the project *Furthering Women's Labour Rights through Improving Access to Justice* implemented by AWEN and **as part of the Action: 'Furthering Women's Labour Rights, funded by the European Union and co-funded by Swedish Development Cooperation'** and findings based on the monitoring process of the decisions of the Judicial District Courts of Tirana, Vlora, Durrësi and Shkodra on the issuance of discrimination on the place of work and the legal assistance offered during the period May 2020 - February 2021.

The first dimension of the monitoring report describes the legal counseling services consisting in: face-to-face counseling, writing comments and advices, supporting all the problematics referred by the plaintiffs related to labor relationships and rights. The findings reflect the social profile of the plaintiffs and divided problematics; successful cases, and their treatment, as also the difficulties faced during the implementation of the services.

The second dimension of the report reflects the findings related to the monitoring process of the court decision in four districts Tirana, Durres, Vlora, and Shkodra. The monitoring report is drafted based on the data resulting from the monitoring files completed by the law expert in various districts, targeted by the project.

The monitoring process covered a total of 141 court decisions of the targeted judicial district courts regarding the termination of labor relations and discrimination in the place of work. The monitored decision consisted of 16 decisions of the Shkoder Judicial District Court, 12 decisions of the Vlore Judicial District Court, 10 decisions of the Durres Judicial District Court and 103 decisions of the Tirana Judicial District Court. This element constitutes one of the main strengths of the monitoring, firstly due to the fact that civil society organizations which are part of the AWEN network have previous experience in the monitoring of court decisions regarding such object, and secondly due to the expertise of lawyers and their clear understanding of the relevant procedures, which ensures a high-quality monitoring.

The monitoring is based on a monitoring scheme which combines two dimensions: the social and the technical - legal dimension. Throughout the monitoring, the scheme enabled the gathering of various data and conclusions on social issues and problems identified in the court decisions, as well as a series of findings on the law enforcement methods and techniques used by the courts for the protection of labor rights issues.

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The monitoring scheme includes important issues such as: demographic data which served as comparative variables, education profile, object of the claims, body of inquiry and concrete court decisions.

This report and its findings and recommendations constitute an advocacy and lobbying tool which may be used by non-profit organizations working in the field of human rights, and especially in the prevention of discrimination in the place of work as well as by other active and relevant stakeholders.

The problems identified during the monitoring also serve as a baseline for the continuous work of organizations that have monitoring as their focus of work.

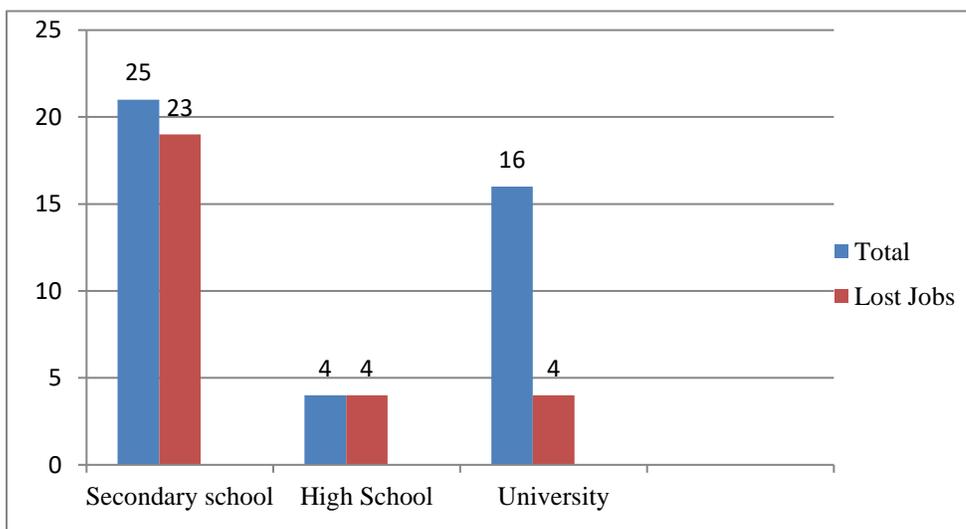
CHAPTER I - SOCIAL PROFILE OF THE JURIDICAL ASSISTANCE OF BENEFICIARIES

1.1 Gender and education profile of the beneficiaries of free legal counseling service

AWEN on the context of project framework have legally monitored 165 cases and assisted 41 cases, women/girls and man whom have faced employment issues.

25 cases were women and 16 cases were men. 21 of them had a low education profile (basic and secondary education) 4 had attended high school and 16 of them had a university degree. Education profile reflects a relevant issue on assuring and maintaining a job. The low education profile indicates a higher incentive to lose the job, contrary with the ones with a university degree, whom had lower possibilities to lose the job (Chart 1)

Chart 1



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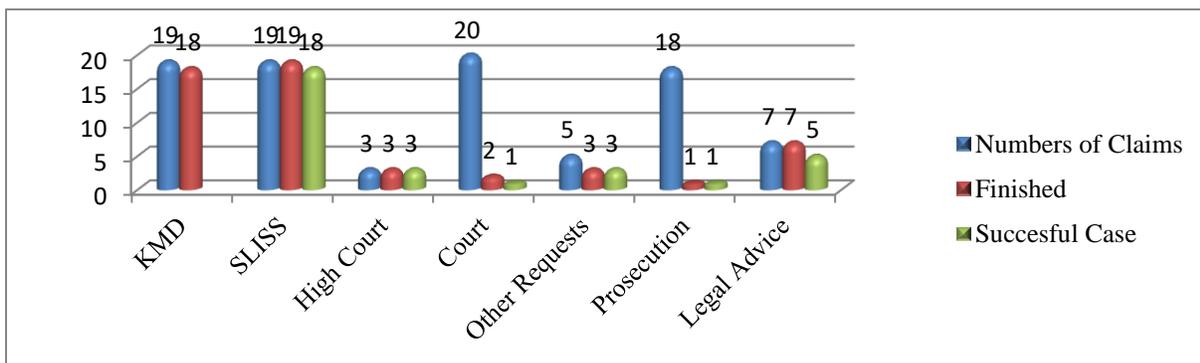
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The legal assistance has provided some basic data related to the importance of education level toward the risk for losing the job. Low education background affected losing the possibility of working. From 21 cases advised who reflected basic education, 19 of them have lost their job and tried to reestablish their rights. High education profile (middle and university degree) enables the individuals although have lost their job, to request legal assistance.

16 of the beneficiaries of legal assistance, with a university degree, only 4 of them had lost their place of work, and the others had demanded respect of their labor rights such as: discrimination in the place of work, requests and complaints addressed to employers and state institutions. The main complaints are addressed to the State Inspectorate of Labor and Health Services, as well as to the Commissioner for Protection against Discrimination - CPAD (Figure no. 2).

Figure no. 2



Lawyers responsible for the legal assistance have compiled 19 complaints addressed to CPAD (Commissioner for the Protection against Discrimination) aiming identification of the discrimination in the place of work. Findings reflects all the cases as gender-based discrimination.

Another compliant is addressed to CPAD, consisted in a group of 17 women. For this case CPAD has issued two decisions. The commissioner has taken a neutral decision as has not been able to contact the employer. This case is being prosecuted in Court for violation of the rights at the workplace based on the Labor Code and assuring the payment of unpaid social and health insurance.

One of the cases treated by CPAD has not defined discrimination in the place of work, but instead violation of the procedures of employment and dismissal.

One of the cases referred to the Commissioner for Protection against Discrimination, is being reviewed for elements of gender discrimination based especially on the education and place of living.

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19 Complaints have been addressed to SILSS. All these complaints have been under evaluation and this structure has taken actions in the favor of the complainers.

3 cases have been addressed to the High Court with requests for revoking the suspension of the execution of the final court decision, where the employers, although they had acquired the rights by a court decision, failed to execute the decision. Two cases treated in this court, were focused on the reestablishment of the rights violated by the employee. One of the cases was related to an unfair dismissal and the court in its decision paved the way for the process to return to the plaintiff's previous job because he/she held the status of civil servant and since 2014 he was dismissed.

Three cases were sent to the court for 19 employees, one case was successfully completed in the Korça Judicial District Court. A case for which the KMD had decided non-discrimination, we appealed to the court and this one has maintained the same position with the KMD. The case of a sewing company consisting of 17 women / girls is currently pending before the Tirana Judicial District Court.

5 other requests have been compiled, such as expedited trial, requests for voluntary fulfillment of obligations, etc., three of them have been resolved immediately with the intervention of a lawyer and two others are under process.

18 cases have been addressed to the prosecutor, where 1 case has been resolved successfully and another case consisted in 17 complainers, is still on ongoing.

5 cases beneficiaries of the legal assistance have been resolved through negotiation process with the employers.

1.2 During legal counseling and assistance the most frequently encountered problems, and concrete action undertaken by the lawyers have consisted mainly in:

1. *Face to face counseling;*
2. *Compilation of claims addressed to institutions;*
3. *Drafting of complaints to state institutions or private employers;*
4. *Compilation of complaints addressed to independent institutions, e.g., Commissioner for Protection against Discrimination;*
5. *Following the entire administrative procedure to the highest body at the hierarchical level (letters/confrontations /representation);*
6. *Compilation of the claim for lawsuits addressed to the Administrative Court;*
7. *Compilation of the claim addressed to the Judicial District Court (depending on the nature of the cases);*
8. *Compilation of Appeals, in the District Courts of Appeal or at the Administrative Court of Appeal in Tirana;*
9. *Compilation of Recourses addressed to the High Court;*
10. *Compilation of Criminal charges;*
11. *Request for suspension addressed to the Court;*
12. *Request for Revocation of Suspension addressed to the High Court;*

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13. Request for exclusion from court fees and costs;
14. Request for execution of the decision addressed to the bailiff offices;
15. Representation at any court of any trial level;
16. Mediation or reaching an agreement between the parties, etc.

1.3 Reflections

Labor relations in the Republic of Albania are regulated and protected by laws, starting from the Constitution, International Agreements ratified by our country, the Labor Code of the Republic of Albania, as well as specific laws in this field.

According to the issues addressed so far by us, results that the rights and obligations in labor relations are abusively violated mainly by employers, not respecting the rights of employees till unjustifiable dismissal.

The most common problems identified are:

- Irregularities in the way of recruiting employees in the workplace, especially the structures of the State Administration (Law on Civil Servants No. 152/2013).
- Lack of signing preliminary contracts and individual employment contracts (Articles 21, 140 et seq. of the Labor Code).
- Undeclared work, without declaring to the tax authorities, resulting in an unpaid work performed (Article 36, Labor Code).
- Work financially rewarded with a minimum wage regardless the degree of the difficulty at work (Article 110 et seq. Labor Code).
- Gender based discrimination, different treatment of the case files between men and women, as well as harassment in the workplace (Articles 9, 32 of the Labor Code).
- Failure to promote employees based on their individual achievements (Specific Laws).
- Exercising the power of the employer against the employee, forcing them to obey their illegal orders (Article 23 of the Labor Code).
- Violations of technical conditions and protection at work (Articles 39, 43, 54 et seq. of the Labor Code).
- Unpaid salaries, health and social contributions (Article 94, 95 Labor Code; Law on Social Insurance No. 7703 dated 11.05.1993, amended).
- Unspecified vacation period and holidays (Article 79 et seq. of the Labor Code).
- Immediate and unjustified dismissal (Article 144 et seq. of the Labor Code).
- Delays in court proceedings (Article 6, Convention of Human Rights, etc.).

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CHAPTER 2. FINDINGS OF THE MONITORING PROCESS OF THE COURT DECISION

The monitoring process has targeted civil and administrative courts of: Durrës, Shkodër, Tiranë and Vlorë districts. It is relevant to emphasize the fact that 2020 has been a difficult year for the work done by the institution of the Court due to pandemic situation. This year affected also the employment relationships and the labor rights.

The monitoring process has comprised: the entire court decisions regarding parts involved, legal framework, court arguments, parts proofs, and the disposals with all its elements.

The cases monitored by the lawyers in the 4 Court Institutions targeted by the project are: 103 cases in Tirana District Court, 10 cases in Durrës District Court, 12 cases in Vlorë District Court and 16 Shkodër District Court. In total 91 cases are accepted and addressed by the targeted Courts and 50 cases are still ongoing. In total 30 cases have been rejected and 17 cases have been terminated.

Table 1

	Tiranë Court	Durrës Court	Vlorë Court	Shkodër Court
Acceptance of the lawsuit	30	6	3	4
Rejection of the lawsuit	20	2	3	5
Termination of the lawsuit	15	1	0	1
Incompetence	0	1	0	0
Total	65	10	6	10

Table 2

	Tiranë Court	Durrës Court	Vlorë Court	Shkodër Court
Cases closed	65	10	6	10
Cases ongoing	38	0	6	6
Total	103	10	12	16

2.1 Monitoring findings on District Court of Tirana

Decisions monitored of Tirana District Court were 103 cases in total. 65 of them have been closed with a specific court decision and 38 of them are still ongoing. In 50 cases the court has decided

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the acceptance or rejection and 15 lawsuits have been suspended.

The monitoring process reflected that from the court decisions accepted and/or rejected in total: 20 of them were man and 30 women. From the court decisions suspended or withdraws: 3 plaintiffs were men and 12 were women. From the on-going processes: 24 plaintiffs are men and 14 women. It can be noticed that in decisions dismissed due to non-appearance or resignation the ratio is 3:12 (or 1: 4). Meaning that women in all resignation cases represent 75% and men 25%.

- Social profile of the plaintiffs

Social profile of the plaintiffs has been analyzed based on the information reflected in court decisions. It was noticed that the claims were addressed by persons over 18 years old, where the youngest employee was a young girl of 24 years old and the oldest one was a 67 years old man. Despite the fact that in the Republic of Albania, based on the Labor Code, even after the retirement age, the employment relations are regulated, it has not resulted that any employee after this age has made a court dispute case. For the category that corresponds to the retirement age for men and women, there is no case of judicial conflict with the object of discrimination or violation of any other labor rights. After the retirement age, there are elder women and man whom continue to work due to family and personal needs.

Table 3

	Age of Plaintiff	Men	Women
20-29	5	2	3
30-39	18	7	11
40-49	14	4	10
50-59	4	2	2
60-69	9	5	4

The age group of employees whom have addressed to the Court the problematics related to conflict at workplace, were among 30-49 years old. This is due to the fact that this age group constitutes the largest workforce, they have average family needs and better economic situation and conditions to access the court proceedings.

Another social variable analyzed in the court decision has been also the employment sector of the plaintiffs. Data gathered reflected that the majority of immediate dismissal are more frequent to the private sector about 54% of the cases, followed by the public sector with about 34% of the cases and public-private partnership entities at 12% (Figure no.3).

Chart 3

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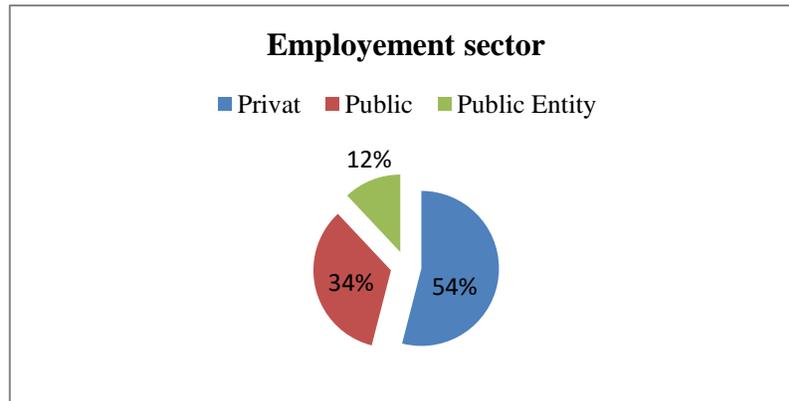
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A trial in the Tirana Judicial District Court related to labor relations took an average of 15 months: included here cases that lasted between a period of 5 months (minimum) and 25 months (maximum)¹.

Some of the reasons of extension of court processes to final decisions, are related to health reasons, requests of defendant for acquaintance with the acts, and for not preparing evidences according to the format required by law. While the online Court platform during the monitoring process has been under construction and this made impossible to monitor the cases in real time. Most of the cases are still ongoing.

The length of time between one court hearing to another is about 2 months. During 2020, Court institutions were closed due to the pandemic of Covid-19 based on the decisions of the HJC (High Judicial Council) from 10.03.2020 to 27 04.2020.

In 65 cases that the court addressed, 20 have been rejected by the court (2 of which have been rejected due to exceeding of the deadline for filing a lawsuit), 30 of the cases have been accepted and won the trials and 15 have been dismissed due to non-appearance, resignation of the lawsuit or settlement out of court. Tirana Juridical District Court in most of cases has accepted court costs as incurred (Figure no 4).

Chart 4

¹ This period did not include a court decision which lasted 6 years, because it was suspended due to a parallel criminal process.

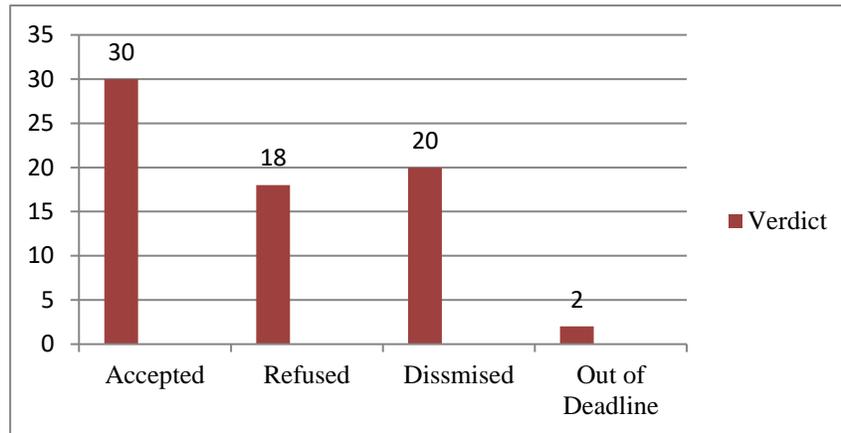
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2.2 Monitoring findings on District Court of Durrës

The cases monitored in district Court of Durrës, were 10 cases in total. 8 of the plaintiffs were women and 2 of them were man. 8 of them were employed in the public sector and 2 in the private sector. 6 of the cases were accepted and won the trial by Durrës Court, 2 of them were refused, and 1 case was dismissed (Figure no.5; Figure no. 6).

In 5 of the cases referred, the plaintiffs belonged to the groupage 30-40 years old, 2 of them to the 40-50 years old, and 1 to 50-60 years old. For the rest of the cases were no data specified (Figure no 7).

1 of the cases has been considered and decided as incompetence; for 1 of the cases was decided termination of the lawsuit; 2 cases have been rejected by the Court; 6 cases have been successfully claimed and been accepted by the Court. 2 successful cases have assured the temporary execution (Figure no 8).

Chart 5

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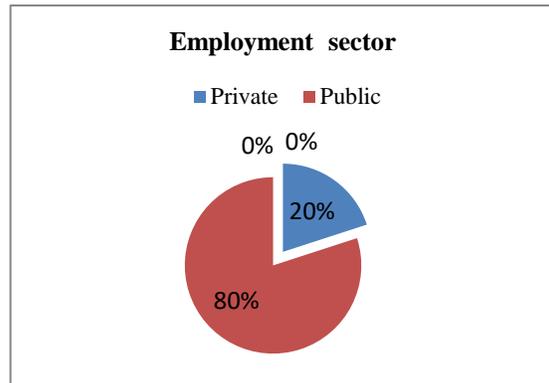
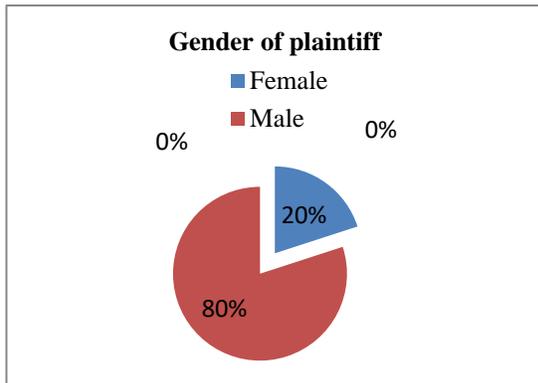


Chart 7

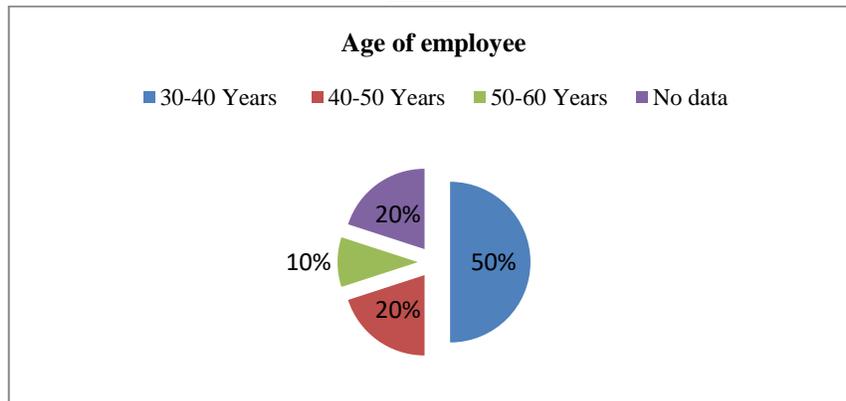


Chart 8

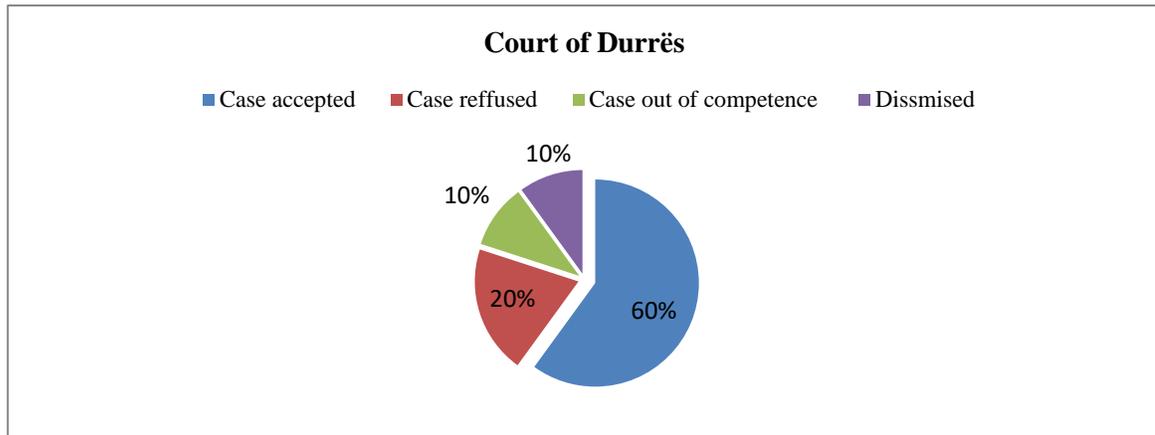
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During the analyzing of the court decisions is noticed that in 8 of the cases objects of the lawsuits were: *immediate and unjustified dismissal from place of work from state institutions*. The conclusions of the court decisions were the compensation for 6 of the cases of 72.3 salaries and for the other 2 cases it was decided the compensation in the amount of 1,923,340 ALL.

One case related to private sector accepted by Court of Durrës, had as a final decision to compensate the employee with 23.5 salaries. One of the cases monitored was dismissed as out of competence.

Regarding court costs, from the court decisions monitored, it is noticed that within the court expenditures are marked only the lawsuit fee, without taking into consideration some other important expenditures such as: cost for potential experts, notarizations and notifications or costs related to judicial defense.

2.3 Monitoring findings on District Court of Vlorë

12 court decisions were monitored in District Court of Vlora. 7 of them were related to private sector and 5 to the public sector. 5 of the plaintiffs were 5 men and 7 of them women. Only 3 cases were closed with the compensation of the plaintiffs (Figure no. 8; Figure no. 9).

In the monitoring made at Vlora District Court, it was noticed that individuals were representatives of the working class and they had claimed for the reestablishment of the labor rights. 3 cases have claimed for discrimination at the place of work but without specifying the causes. These cases are still ongoing.

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Chart 8

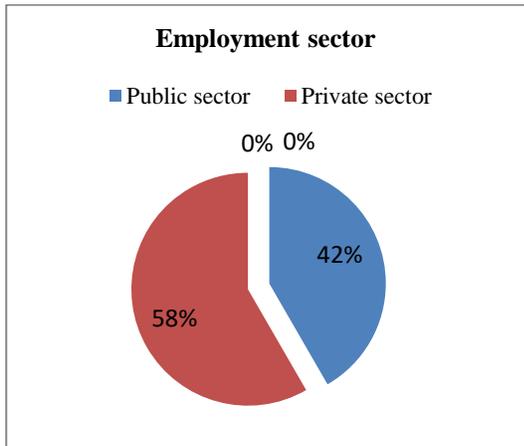
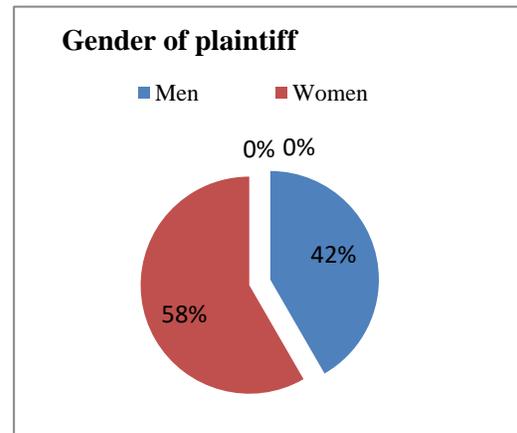


Chart 9



2.4 Monitoring findings on District Court of Shkodër

In the Juridical District Court of Shkodër, were monitored in total 16 court decisions. From the cases monitored, for 10 of the cases were taken concrete decisions while 6 of the cases are still in process.

From the cases addressed, 4 lawsuits have been accepted by the court, 5 of them have been rejected and 1 was terminated. 6 of the plaintiffs were men and 10 were women. (Figure no.10)

Chart 10

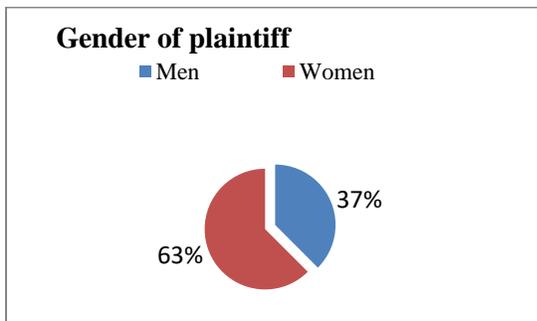
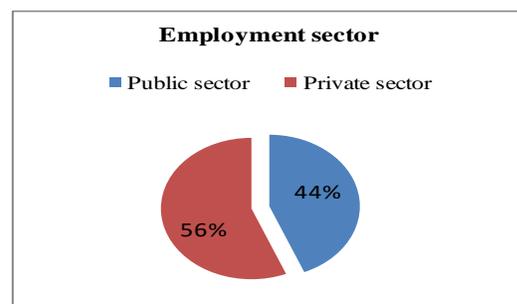


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In the Juridical District Court of Shkodër, different from the other court decisions monitored in the three District courts targeted by the project, it is noticed that have been addressed collective lawsuits, having two or more plaintiffs.

It is evidenced that in cases treated for discrimination in the labor relations, 1 of the cases was related to the employee dismissal due to pregnancy, which is one of the main reasons for gender discrimination at the work place. From the 16 cases monitored in this District Court, 2 cases have been dismissed due to pregnancy (12.5% of all the cases monitored).

3. General findings related to the monitored District Courts

Albanian District Courts are easily accessible not only geographically but also through their digital applications.

It is also accessible to everyone the communication with the court institution through the electronic mail, but in order to address it, the person must complete the procedure based on the Code of Civil Procedure, in writing form defined by Article 154 of the Civil Code and for the reasons set out in Articles 31.32 of the Code of Civil Procedure.

Legal Representatives of AWEN have contacted the District Courts, according to the procedures mentioned above, in order to access the court decisions related to the labor relations but only civil courts have responded institutionally.

The method used to monitor in depth the court decisions, was based on the content of the decisions itself.

a) Education profile and employment sector

In 70 monitored court decisions, the general demographic data were easily identifiable such as the date of birth, place of birth, place of living, employment state at the moment when they have addressed the claim. It was difficult to identify other social, civil and economic data related to the plaintiffs.

It has resulted that the employees who have addressed the court for resolving labor disputes are mainly with higher education profile. In a depth view, their actual work position is at the specialist level as: economist, lawyer, lecturer or second level bank employee. Only in the Vlora District Court decision it is reflected that the plaintiffs have a job position as basic employees: fisherman, employee in supermarket and tailoring sector. In the monitoring of the Tirana Court only 8 of the cases are from the basic level employees.

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Professions	Tirana District Court	Durrës District Court	Vlorë District Court	Shkodër District Court
Teacher/lecturer	4	-	1	-
Bank sector	6	1	-	-
Economist/financier	4	-	-	-
Jurist	9	1	1	1
Tax offices and Customs specialist	10	5	1	2
Phone operator	3	-	1	2
EDO employees	2	-	-	1
Senior Director/Manager	7	2	-	2
Security sector	3	-	-	-
Transporter	3	-	-	-
Basic workmanship	-	-	4	2
Sales Manager	4	-	-	-
Fish factory	-	-	2	1
Sewing sector	-	-	2	2
Consultant		-	-	3
For dismissed cases and most cases ongoing there is no data related to the profession.	48	1	-	-
Total	103	10	12	16

This finding confirms for a variety in the levels of job positions held by the employees, which can usually be referred to the courts.

The other approach observed in these decisions is that the claims are addressed to the court for the reestablishment of labor relations, only when an employee has completely lost his/her job. No case of restoration of the violated right has been noticed.

From the monitoring process is reflected that there are no lawsuits represented by a free lawyer and in no case, there are decisions based on the state-guaranteed free legal aid although most cases have lost their jobs and have been referred to court.

b) The object of the lawsuit

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The object of the lawsuit is directly and closely related to the immediate and unjustified dismissal, as below:

- *Compensation for the immediate termination of the employment relationship, without justified reasons, in the amount of 12 monthly salaries;*
- *Compensation for non-compliance with the procedure of termination of employment in the amount of 2 monthly salaries;*
- *Compensation in the amount of 3 monthly salaries for non-compliance with the notice deadlines;*
- *Compensation in the amount of ½ for each working year based on the labor code;*
- *Returning in the place of work from which has been dismissal unfairly and illegally, in a discriminatory manner;*
- *Claiming the differences in the unpaid salaries;*
- *Issuance of the decision with temporary execution as the plaintiff is in difficult financial conditions;*
- *Reward of existential moral consequences (1 case);*
- *Obligation of the defendant party to pay court, bailiff and lawyer costs.*

In all lawsuits the object is the same. Throughout the monitoring only one case was related to the compensation for moral and existential damage from dismissal but the case is still pending. The plaintiffs demand the maximum compensation provided by the Labor Code of the Republic of Albania.

From all the decisions monitored, only in one case the employer is in the capacity of the plaintiff and the defendant is the employee. In this case the object of the lawsuit is as follows:
"Obligation of the defendant to reimburse the salary of one month for the damage caused to the employer as a result of the immediate termination of employment by the employee without respecting the notice period"

c) Legal frame- the right on which the lawsuit is based

In Article 154 of the Code of Civil Procedure, which is the main law on which are based the lawsuits, it is specified a key element in restoring the violated right.

Re-establishment of rights requested by the plaintiffs in the monitored court decisions, was mainly based on Article 32 of the Code of Civil Procedure and Articles 143, 144, 146, 153, 155 of the Labor Code.

In 5 cases the plaintiffs have based their requests in Article 9, 138, 139 of the Labor Code, Law no. 10221, dated 04.10.2010 "On protection from discrimination". Only in 12 cases, the parties have based their requests on articles: 18/2, 42, 44 and 49 of the Albania Republic Constitution and the European Convention of Human Rights, mainly article 6 and Articles 8, 14 of its 12th protocols and 1 case has marked in the legal basis the directive 78/2000 of the European Union.

1 case has based its claim in law 9901, dated 14.04.2008 "On traders and companies", and another in the collective labor contract. Looking at the legal basis of court decisions it is noticed

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lack of strategic legitimacy, and the parties have presented in most cases a tepid legal basis based mainly only on the labor code.

In all monitored cases, the court has accepted the lawsuits in relation to the legal basis and with the clarity of the requests in its object.

Statement of defense for the respondent

With the drawing of the lots in the courts and the appointment of the judge, the court immediately notifies the respondent of each act, through ready-made forms, explaining to the employer of his rights (focus of monitoring) and the manner of compiling the statement, leaving a 300-day deadline from the notice to prepare for the defense.

The court in all cases informs the defendants that: *The statement of defense must contain²: a) the court before which the statement of defense is presented; b) the name, paternity, surname, place of residence or abode of the plaintiff and the defendant and of the persons respectively representing them, if any. If the plaintiff or the defendant is a legal entity, its name as it appears in the public registers, indicating the headquarters or head office where the notification will be made; c) the concrete statement of the facts, circumstances, documents and other evidence, as well as the objections and arguments for opposing the lawsuit, if any. In addition to these requirements, the respondent shall state clearly in/or attached to the statement of defense: a) his / her electronic contact details or those of his/her representatives, if any, which the court may use to notify him/her; b) the list of persons who want to be summoned to trial as witnesses, specifying precisely their names, paternity, surname, and their full address, as well as the facts required to be proved by them; c) the evidence required to be taken from third parties or the plaintiff, specifying the reasons and location of the evidence; ç) the type of expertise required to be performed during the trial; d) the name, paternity, surname or name of the legal person and the full address of the third persons seeking to be summoned to trial in this capacity; dh) the counterclaim, when the exercise of this right is requested from him, according to article 160 of this Code*

In these trials, the employee owes the obligation to try to follow the procedures. In two cases the defendants were defended with a counterclaim and in other cases with objections. In 20 cases the court ruled in favor of the defendants, thus rejecting the claims of the plaintiff.

² Article 158 of Civil Code procedure

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4. Facts on which the Albanian Courts have investigated and adjudicated

a) The object of the claims

- The court during trials have judged only on the object and legal reasons addressed by the plaintiff.
- It was firstly adjudicated the type of dispute that arose between the litigants from the employment relationship, the employment contract, considering it an agreement between the employee and the employer, which regulates the employment relationship and contains the rights and obligations of the parties³.
- Causes of discrimination if requested by the plaintiff.
- Date of birth of the employment relationship and the date of its termination.
- Monthly salary of the employee and unpaid wages during the work performed.
- Which party has terminated or violated the employment contract and the reasons for this termination?
- Deadlines and procedure followed by the parties for termination of employment.
- Payment of unpaid social and health insurance.
- The court has considered as justified reasons for dismissal the cases when the employee violates the contractual obligations with serious fault, as well as the cases when the employee violates the contractual obligations with minor fault, repeatedly, despite the written warning of the employer.
- According to the court decisions, all mistakes made by the employee do not justify his/her dismissal from the place of work without a previous warning notice. And to be a valid termination, the employer would have had to prove its accusations against the employee.
- Even in cases where the court finds that there is a motivation used by employers for dismissal, the court does not consider them valid if they are not fully proven.
- The manner of terminating the contract was of great importance to the court. In cases of unjustified immediate termination of the employment contract by the employer, the court has assessed all the circumstances, it has imposed the obligation of the employer on the employee with no more compensation than the salary of one year of work.

³ Article 12, of Labor Code

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- The court in all its decisions has considered the compensation as a concrete consequence of dismissal, in the form of salary and not a fine. In assessing the extent of this compensation, the court referred to the unjustified cause of the immediate solution, the negative effect that the plaintiff had in some cases on the mental state of the employee (stated in the hearing not with any written evidence), the duration of the work relations, the fact of being currently unemployed and / or employed and in employment difficulties based on their age, education and evidence presented.

b) Manner of recruitment

- In the court decisions, the professions of the employees are clearly identified, but the way of recruitment at work is unclear. In public positions, the maximum of the proof document of the manner of recruitment, is the decision of appointing the employee. In the labor code, establishment of the work relationship⁴ is an exclusive right of the employer but the employer does not keep records of this fact. The law allows him to use employment offices, or private employment agencies but without forcing him to evidence the manner of recruitment.
- Court decisions don't refer any stage of the employment process -- including application, interview, hiring or promotion. They refer only to termination of labor relations.
- The lack of these data is accompanied also with the lack of written contracts between the parties. There are cases that have worked for 20 years in private companies or the state ones and do not have in their personal file a written contract. Since there no providence for deadlines or time of employment, the court takes as granted the labor contract establishment, the time and the date of employment relations, the date when the employee is registered by the employer in the tax authorities as an employee. This fact in many cases harms economically the employer itself as he is not able to prove to the court the terms of work.

c) Discrimination at the place of work

- 5 cases were addressed to the court with a request for ascertainment of discrimination in labor relations.
- Only in 1 case in its reasoning the court found discrimination due to the political conviction of the plaintiff and justified such a fact, but in the final decision the court decided the obligation of the defendant to compensate the plaintiff with 6 monthly salaries due to non-compliance with the procedure of collective dismissal.

⁴ Article 19, of Labor Code, Establishment of labor relations

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Case examples

The court reasoned as follows:

Case 1: In the present case the plaintiff was discriminated by the employer related to the termination of the employment contract because all three cumulative elements of direct discrimination cited above were met. Specifically, (i) the plaintiff, a member of the Party ,,,,, has received unfavorable treatment from the employer by being fired; (ii) compared to other persons in the same or similar circumstances as her, but who were not members of the political Party as the plaintiff was; and (iii) and the plaintiff has been subject to this discrimination because of her political convictions of the fact that she was a member of the Political Party... .., a fact which is unsolvable to the personality of the plaintiff, which is included in the "protected area" by law, as cited above, and which have no legitimate connection to employment reports. On this context it is worth recalling the fact that, as soon as the new government began its constitutional mandate officially without the coalition of the Political Party in the institution where the plaintiff exercised her duty they left under the simulated motivation of "restructuring" about, employees, at a time when this institution itself realized new appointments with staff recruited from abroad. These "restructures" have affected most of the employees who had different political convictions from the new government or who were members of the Party as in the case of the plaintiff, a fact which the plaintiff managed to prove by bringing as evidence in the trial the card of her membership in the political party but also of other employees fired by the defendant with the same motivation. These facts show that the employees were fired precisely because they were members of the Party ,,,,,,

The plaintiff was not asked in the object of the lawsuit to find discrimination or compensation due to discrimination and for this fact the court did not rule on the spot.

In four other cases, the plaintiff requested the finding of discrimination in the dismissal procedure, the court did not give them the right and completely rejected the requests with the reasoning:

Case 2: Regarding the claim that the plaintiff has for "discrimination" against her, first, based on the facts and evidence presented in this process, the plaintiff could not prove and convince the court that actions taken against her were intentionally by the respondent, to its detriment through discriminatory actions.

Such an allegation of discrimination within the Union by Absorption and the collective dismissal procedure, turns out to have been submitted for further consideration and was subsequently rejected by the Commissioner for Protection against Discrimination ("the Commissioner").

Case 3:

In relation to this allegation, the plaintiff did not submit any written evidence to prove that she is subject to discrimination.

d) Compensation of plaintiffs

- Compensation of plaintiffs was made even in cases when the requirements of Articles 143, 144 and 145 of the Labor Code were not respected. Consequently, the plaintiff has achieved the right to benefit from the respective damages defined in these provisions. Specifically, the plaintiff has received the salary that would have received during the notice period, due to non-compliance with the procedure, as well as the remuneration for seniority at work.
- This compensation in the form of salary mainly according to the formula $3 + 2 + \frac{1}{2}$ salary, for each year of seniority at work has been added to the value of compensation for unjustified dismissal.

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- The cases are various, in some cases there have been suspicions on interference in the computer systems of the employer, conspiracies at work, attempts at favoritism, and accusations of theft of the employer.
- There were cases where the criminal process was followed in parallel with civil process. One case lasted 6 years, but nevertheless the court assessed the employment relationship with high priority, requesting in each case the observance of the dismissal procedure

The facts on which the court has decided to dismiss the lawsuit

The court in all cases has judged impartially by analyzing all the facts presented by the parties but in 23 % of cases has decided "dismissal of the lawsuit". Based on the reasoning of the court it has resulted that it has rejected the lawsuits of the applicants in cases when:

1. *The terms and procedures of the employment contract are respected, considering the termination of the employment contract, normal or regular after the legal requirements of the Labor Code are met to classify the termination of the employment contract, such as: terms, procedure, and motives. In these cases, it has been proven that the defendant has respected the elements of regular termination of the employment contract.*

In these decisions the court has considered the termination of the employment contract an expression of the will of one contracting party unilaterally and compulsorily for notification to the other party. The court has reasoned that: "This must be done in a form and respecting certain deadlines through which the legal relationship for the future is resolved".

In these decisions it is stated that the plaintiff was notified in writing about the organization of the employer-employee meeting, the reasons for the termination of the contract were discussed and presented and the employee was given the opportunity to express (fact confirmed in writing form), and giving to the person enough time to find another job.

The court in cases where the notice period and the procedure for dismissal has been respected, has given special importance to the motivation to terminate the employment contract and if it was fully justifiable.

2. Cases of Extraordinary Solution with justifiable causes

The court has given the employers the right to terminate the contract with immediate effect, i.e., without respecting the notice period occurred when the employee violates the contractual obligations with serious fault, with minor fault, repeatedly despite the written warnings of the employer and that the 4 facts provided in Article 153⁵ have been fulfilled immediately cumulatively of the Labor Code.

⁵ Article 153 of the labor code 1. The employer and the employee, at any time, can immediately terminate the contract for justified reasons. 2. All serious circumstances are considered as justified reasons that do not allow, according to

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The court in these cases has determined the violated obligation, starting from the absences in the workplace, non-performance of required tasks which has violated the principle of trust and has made it impossible to continue the relationship between the employer and the employee. According to this point four are the conditions to be considered the immediate termination of the employment contract in a justified manner when: a) the employee has violated a contractual obligation, b) the violation has been committed with a serious or minor fault repeatedly and after a warning. c) the existence of a causal link between the breach and the immediate termination of the contract d) the breach has affected the relationship of trust between the contracting parties.

Case 1: Court reasoning:

The Court further considers that the termination of the employment contract by the respondent party was done for justified reasons, as the conditions provided in the second and third paragraph of Article 153 of the Labor Code are met cumulatively.

Thus, it was proved during the trial that the plaintiff has committed a disciplinary violation in terms of: a) serious non-fulfillment of duties; b) non-implementation of legal provisions for the fulfillment of functional duties; c) unjustified absence at work.... when the settlement is made for breach of contractual obligations with serious fault immediately, the employer has no legal obligation for compensation as a result of its non-compliance, above all that the cause of the settlement is due to breach of contractual obligations due to serious fault.

e) Dismissed court verdicts

Terminated verdicts were about 23% of the monitored decisions and the reasons for terminating the trial were various. Most of them turned out to be for the non-appearance of the parties in the process or resignation and for some others due to the reestablishment of relations between the parties and consequently the termination of the trial. There is no additional information as to why the parties withdrew from the trial, why they did not appear and how they settled their relations. In two cases the court adjudicated the whole case and then decided to dismiss the claim for the fact that the parties went to court outside the 180-day deadline provided by law to restore their right.

f) Court costs and the costs of the employment relationship process

the principle of good faith, to ask the one who has terminated the contract, the continuation of the employment relationship. 3. The court decides whether there are justified reasons for the immediate termination of the contract. The cases when the employee violates the contractual obligations with a serious fault, as well as the cases when the employee violates the contractual obligations with a minor fault, repeatedly, despite the written warning of the employer, are considered justified reasons.

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Court costs are required by law to be calculated and divided according to their voices at the end of the process. This is obligatory according to Article 310 of the Civil Code Procedure where in article III/2 of it, the court must indicate to whom the court costs are charged. On the court decision monitored was specified only the value of the lawsuit stamp tax equal to 3000 ALL.

Litigation costs for an employment relationship trial usually include:

- From the monitoring, it was identified that the highest value of costs calculated by the court (including lawsuits and counter-lawsuits) has been in the amount of 359,327 ALL.
- Lawyer fees are calculated only in 21 monitored decisions and range from 48 000-150000 ALL.
- Experts turn out to have been called by the court in 2 decisions and the costs have been calculated according to the invoices.
- A decision has calculated the costs for photocopies in the amount of 500 ALL.
- All decisions have calculated the stamp duty, the value of 1 percent of the lawsuit and the notifications of the parties.
 - Costs for Compiling a Claim: None
 - Expenses for notarization of acts submitted to the court: None
 - Lawsuit tax stamps: 3000 ALL
 - Cost 1 % of Lawsuits: 19500 ALL
 - Notices of judicial parties: 300-1950 ALL
 - Expenses of legal representative lawyer: 4800-150000 ALL
 - Expert expenses (rarely) a)36500 all b) 96000 ALL
 - *Photocopy -500 all*

Failure to calculate these costs correctly constitutes a truncation of the right to sue. In the penultimate point of the court decision, it is clearly specified to whom the court costs are charged. Lack of such calculations turns the court decisions into a formal decision and predicts a different reality from the ones indeed.

g) Provisional execution of decisions

Another fact monitored and analyzed in this report is that Courts assures provisional execution of decisions. In all lawsuits, the plaintiff has been asked by the court to decide on the enforceable decision immediately⁶. The decision constitutes an executive title after it has become final and only then is it enforceable by the execution.

⁶ Article 317 Civil Code procedure

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Courts have concluded in a positive decision only in three cases: 1 in Tirana and 2 cases in Durrës. For all the other cases it was decided to reject the research considering that the decision constitutes an executive title after it becomes final and only then it is enforceable by execution.

Case monitored

As for the part of the lawsuit for issuing the decision with temporary execution, the plaintiff has not managed to prove this claim before the court. The plaintiff does not meet the conditions and criteria required by Article 317 of the Code of Civil Procedure regarding the temporary execution of the court decision. This provision provides for specific cases for its application and there can be no ordinary application for every lawsuit. The plaintiff turns out to have persons under supervision or for upbringing and education to create very serious financial consequences for her and the persons under his responsibility.

5. Recommendations

1. It is important to train lawyers in the field of labor relations as were noticed lack of information and knowledge on drafting a lawsuit based on Article 154 of the Code of Civil Procedure, based on the legal frame established in the lawsuit, the scope of its object and the statute of limitations.
2. There is an urgent need to lobby against restriction of access to justice especially for an age group or people with low economic backgrounds.
3. There is a need for training in the field of employment, discrimination at work and familiarity with foreign decisions in employment relations for jurists and lawyers.
4. It is necessary to increase information and knowledge on the labor code, rights and obligations arising from non-compliance with employment relations by the employer and the employer especially with private companies.

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5. It is necessary to raise awareness and inform in details the private companies on the Labor Code, the rights and obligations that come from non-compliance with employment relationships by the employee and the employer.
6. Pay further attention to the protection of pregnant women in employment relationships, as they are one of the groups that are most discriminated, since the moment of job recruitment to the manner of dismissal.
7. The way of recruitment should be better regulated by law and employees should be forced to recruit employees in a transparent and legal manner in order to increase competition and the performance at the place of work.
8. Employment contracts must be concluded in every case in a writing form and each of the parties must have a copy of it.
9. Lobbying and advocate with relevant institutions in order that victims of discrimination in the employment relations raise their awareness on the right to be represented free of charge in the cases when the criteria by the law related to state-guaranteed legal aid are met.
10. Attorneys should pay extra attention to drafting the lawsuit and submitting evidence in the form required by law.
11. All court costs should be clearly defined in each decision.
12. The legislation regarding collective litigation, cases where different employees make the same claim in court must be improved, as this reduces financial and time costs for both parties and the court itself.

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Laws:

Labor Code of The Republic of Albania Law No. 7961, dated 12.7.1995 (Amended by Law no. 8085, dated 13.3.1996) (Amended by Law no.9125, dated 29.07.2003) (Amended by Law no. 10053, dated 29.12.2008) (Amended by Law no. 136/2015, dated 5.12.2015)

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Law No 119/2014 On the Right to Information

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Law No. 7850, Dated 29.7.1994 On the Civil Code of The Republic of Albania

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Conventions ratified by the Albanian Government:

Convention on Elimination of all Forms of Discrimination against Women - CEDAW by Law No. 7767, adopted by Albanian Parliament on 09.11.1993

The ILO Forced Labor Protocols [Albania](#) ratified Conventions No. 81 and No. 129 in 2004 and 2007 respectively.

Directive 2000/78/ EC

Directive 2009/52/EC

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