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CONCLUSION OF A FIXED-TERM EMPLOYMENT CONTRACT: RIGHT OR OBLIGATION?

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Abstract

This paper explores the legal intricacies of fixed-term employment contracts within the context of Uzbekistan's labor laws, particularly focusing on the differences between the Labor Codes of 1995 and 2022. The study examines whether the grounds provided in the legislation for employers to conclude fixed-term contracts are rights or obligations. The analysis reveals that the 1995 Labor Code restricts employers' rights to conclude fixed-term employment contracts under certain conditions, suggesting that in some cases, entering into a fixed-term contract is not merely a right but an obligation. The paper also discusses relevant judicial practices, including case studies, to illustrate how these legal principles are applied in practice. The findings highlight the need for clear legal guidelines to protect both employers' and employees' rights while ensuring compliance with labor laws.

Keywords Labor Market, Employment Contract, Worker Protection, Employee Rights, Employer Obligations, Legal Restrictions, Fixed-Term Employment.

INTRODUCTION

Modernization processes are associated with the active participation of the labor force in any area. And in a state where the labor market is not regulated, economic growth will not be adequate. The exact regulatory function of the state is also seen in its inner policy in ensuring that its laws are superior and applied uniformly to it in any sector. Therefore, it is important that the labor market is also regulated by law. The basis of this is the fact that the employer enters into a formal relationship with the employee, in short, enters into an employment contract. The employment contract is not only the central institute of labor law, but also the main legal fact that leads to the emergence of labor relations. For an employee, the type of employment contract concluded with him is also important. As a general rule, an employment

contract is concluded for an indefinite period, while a fixed-term employment contract can be concluded only in cases provided for by law. According to some scientists, the use of fixed-term contracts can create a segmented labor market, with insiders enjoying more stability and benefits compared to outsiders who are often stuck in temporary positions without the prospect of transitioning to permanent roles [1].

Labor Relations in the Republic of Uzbekistan are currently regulated by the Labor Code [2] adopted on October 28, 2022. This legislation is quite different from the Labor Code adopted in 1995 [3]. In particular, the norms governing the term employment contract are also radically different from each other. With the renewal of the legislation, its main purpose has not changed. The

main purpose of both legislation is to ensure the balance of the interests of employees, employers and the state, as well as to coordinate them. Therefore, with the adoption of the new Labor Code, the right of employers to conclude a fixed-term employment contract expanded.

METHODS

1. Legal Analysis:

Textual Analysis: Conduct a detailed analysis of the relevant articles in the Labor Code of Uzbekistan, focusing on the provisions related to fixed-term employment contracts. Compare these provisions with the previous Labor Code and international standards.

Comparative Analysis: Compare the Uzbek Labor Code's regulations on fixed-term employment contracts with those of other countries, particularly those adhering to International Labour Organization (ILO) conventions.

2. Literature Review:

Academic Sources: Review academic articles, books, and legal commentaries discussing labor law, employment contracts, and labor market regulation. This will provide insights into the theoretical and practical implications of fixed-term employment contracts.

Legal Journals: Analyze legal journals and publications to understand current debates and interpretations surrounding fixed-term contracts.

3. Case Studies:

Local Case Studies: Examine specific cases from Uzbekistan where fixed-term employment contracts were contested or resulted in legal disputes. Analyze court rulings and legal outcomes to understand practical enforcement of the laws.

4. Comparative Legislation:

International Standards: Evaluate how the Uzbek regulations align with or diverge from

international standards set by organizations like the ILO. This includes examining compliance with conventions and recommendations.

RESULTS

Focusing on Article 111 of the Labor Code, we see that the employer in any case does not have the freedom to conclude a fixed-term employment contract. That is, we can see that in Part 1 of Article 111, a fixed-term employment contract can be concluded only in cases provided for by Articles 112 and 113 of the code. It follows from this that fixed-term employment contracts concluded in accordance with the rules established in these norms are considered reasonably concluded.

The Labor Code of 1995 also limited the rights of employers when concluding a term contract. In particular, while its Article 75 establishes that a fixed-term employment contract for up to 5 years can be concluded, Article 76 states that only in 3 cases employer (in cases where it is impossible to conclude labor contracts for an indefinite period, taking into account the nature of the work to be performed, the conditions of its performance, or the interests of the employee; the head of the enterprise, his deputies, with the chief accountant, and if there is no chief accountant position in the enterprise, with the employee acting as the accountant; may be established in other cases provided for by law) is entitled to conclude a fixed-term employment contract. Most interestingly, Article 76 is called as a "restriction of the employer's right to conclude a fixed-term employment contract", and the three cases mentioned above are expressed as rights granted to the employer. It is also possible to derive from this the idea that the employer will not use this right if he does not want to.

However, in the Labor Code of 2022, cases when it is possible to conclude a fixed-term employment contract are expressed in a different way. According to Article 111 of the Labor Code, if

individual labor relations cannot be determined for an indefinite period, taking into account the nature of the future work or the conditions of its performance, a fixed-term labor contract shall be concluded in accordance with Article 112. In the cases provided for in Article 113, a fixed-term employment contract may be concluded without taking into account the nature of the future work and the conditions of its performance by agreement of the parties to the employment contract.

The purpose of both norms is one, that is, to make it clear to the employer when a fixed-term employment contract can be concluded. But it does not give a clear conclusion as to whether it is his right or his obligation. The reason is, Article 112 is called cases in which a fixed-term employment contract with an employee is concluded, not cases in which it is mandatory.

Article 113, by contrast, represents the cases in which a fixed-term employment contract with an employee may be concluded, but also establishes the condition that it must be concluded by agreement of the parties. From this comes three different considerations. Firstly, article 113 gives the employer the right, and secondly, if the employee does not want, the employer cannot conclude a fixed-term employment contract, whereas there is provision for an agreement by the parties, and thirdly, an employee does not sign an employment contract unless he agrees to enter into a fixed-term employment contract under the circumstances of Article 113, and the employer does not hire him. Therefore, in any case, this indicates the superiority of the employer's right.

It is understood from the content of Article 112 that this norm not only gives the employer the right, but also the opinion that it forces him to conclude a fixed-term employment contract in established cases. That is, the employer cannot enter into an employment contract for an indefinite period even

if he wishes, in the circumstances established by Article 112. This idea is not the final conclusion of course. So, it is necessary to study to what extent this hypothesis is justified. In some literature, the first type of grounds is also known as legal grounds and the second type as contractual grounds [4]. In fact, the legal basis for the conclusion of a fixed-term employment contract does not correspond to the principle of freedom of the parties to conclude a contract. In particular, professor M.Rahimov argues that this principle holds that employers and employees should have the freedom to negotiate terms and conditions of employment without undue interference from the state or other parties [5].

DISCUSSION

If we analyze this issue at the international level, Article 2 (3) of the International Labour Organization Convention No. 158 "Termination of employment", 1982 [6] establishes that adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention. Restrictions on the implementation of this goal are enshrined in paragraph 3.1 of the ILO Convention No. 166 "Termination of employment" of 1982 [7]. To this end, for example, provision may be made for one or more of the following:

- (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;
- (b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;
- (c) deeming contracts for a specified period of time,

when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.

The purpose of these provisions is also to protect employees from being deprived of certain rights and guarantees as a result of the conclusion of a fixed-term employment contract [8]. However, Convention No. 158 has not been ratified by our country. Nevertheless, our government has been following these rules.

It may not be considered a violation of labor legislation when an employer enters into a contract for an indefinite period in any case. But if, unreasonably, an employment contract is concluded for a certain period, then an offense is committed by the employer, and a fine is imposed on him based on Article 49 of the Code of Administrative responsibility of the Republic of Uzbekistan [9].

The purpose of this study is to determine whether the grounds that are actually allowed in the legislation for the employer to conclude a fixed-term employment contract are the rights or obligations assigned to them. In today's legal studies, when establishing a fixed-term employment contract, determining the rights of employers and expanding them are raised as the main issue, the problems arising in law enforcement practice are aimed at determining what consequences can arise if the employer enters into an employment contract for an indefinite period, in the event that the employer must conclude a fixed-term employment contract. Therefore, we believe that it is advisable to put forward one important point. If the circumstances in which a fixed-term employment contract could be concluded by labor law were not clearly defined, the employer would be able to conclude a fixed-term employment contract in any case. It meant that he had the right to choose. However, the

current legislation eliminated this choice in the employer and limited his right. The limited right, on the other hand, cannot be considered an obligation. To ensure the legitimacy of fixed-term contracts, parties must consider additional legal factors to protect the rights and obligations of both parties involved [10].

Judicial practice. Citizen Q.G. the court filed a lawsuit against the school No. 46 of the Jomboy District of the Samarkand region. In his claim, she said that on May 1, 2023, she was hired as an English teacher at this school for an indefinite period, the employer later stated that she was temporarily hired to replace another teacher who went on maternity leave and required her to write an application for dismissal. Q.G. rejected the employer's request, because an employment contract was concluded with her for an indefinite period. Nevertheless, the employer unreasonably terminated the employment contract concluded with her by Article 168 (4) of the Labor Code (with ground of violation of the established rules on employment).

M.Sh. is the director of the school. She involved in the case as defendant and gave her explanation of the claim. She said: claimant Q.G. knew that she was hired instead of another employee. But they conclude employment contract for an indefinite period. It was a technical mistake. That's why she terminated the contract with another ground. She said that if the contract had clearly defined its term, she would terminate the contract under Article 158 of the Labor Code. She mentioned that due to the mistake made in the contract, she terminated the contract according to paragraph 4 of Article 168 of the Code.

The court heard the arguments of both parties and refused to satisfy plaintiff's claim. Based on this, the court cited the following: Q.G. has been allocated few hours of classes with internal documents; she was given temporary leadership of the class; The

State Labor Law Inspectorate imposed a fine on the employer for concluding an employment contract for an indefinite period. As a result of this, it is stated that the employment contract was legally terminated due to the violation of the established rules on employment [11].

The plaintiff Q.G., dissatisfied with the decision made in this case and appealed again to the high standing court. The court of Appeal got acquainted with the case and considered it unreasonable that the employee was dismissed by paragraph 4 of Article 168 of the Labor Code [12]. The reason is, according to paragraph 52 of the Resolution No. 26 of plenum of the Supreme Court of the Republic of Uzbekistan 20.11.2023 "On the practice of applying legislation governing the termination of the employment contract by the courts", an employment contract on the basis of paragraph 4 of the first part of Article 168 of the Labor Code is terminated in cases of violation of the established rules of employment, if it is not possible to eliminate the committed violation and it prevents the continuation of work.

Such cases include, in particular, the following:

1. recruitment of persons deprived of the right to hold a certain position or engage in certain activities during the time appointed by the court according to the court verdict;
2. admission to work (service) in one state organization of persons who are closely related, when one of them is directly subordinate to the other or serves under his control (Article 121 of the Labor code);
3. admission of minors to work prohibited by labor law.

In addition, when considering disputes related to the termination of labor relations according to the recorded basis, it is necessary for the courts to determine how a violation of employment was allowed and whether this could or could not form

the basis for the termination of the employment contract [13]. In the appeal case highlighted above, the court held that there was no case of violation of the rule that provided the basis for the dismissal of an employee. That is, the fact that the director of the school concluded an employment contract with the employee for a indefinite period, instead of for a certain period, is not a violation of the employment rule. In this case, the employer on the ground applied the law incorrectly. The fact that the employer has in fact violated labor legislation, but in the process the hiring rule may not arise.

CONCLUSION

If, according to the legislation, the employer enters into an employment contract for an indefinite period in the event that a fixed-term employment contract must be concluded, this can be assessed as a violation of labor legislation. Because even in the 10 grounds established by Article 112 of the Labor Code, an employment contract cannot be concluded for an indefinite period. In such cases, the employee can contact the employer and ask for a clear definition of the term of his contract. The employer also has the right to contact the employee with an offer to change term the contract. However, if an employee rejects this offer the employer cannot fire him. Even if there is no way to get him to work. It should be noted that if the nature of the case is permanent, but a fixed-term employment contract is concluded, then when the employee applies to the court, his contract is determined by the court to be concluded for an indefinite period (according to paragraph 15 of the Resolution No. 26 of plenum of the Supreme Court of the Republic of Uzbekistan 20.11.2023 "On the practice of applying legislation governing the termination of the employment contract by the courts", whether the fixed-term employment contract was concluded with the employee on a reasonable basis, that is, whether the requirements of articles 111, 112, 113 of the Labor Code were taken into

account when concluding the employment contract). But if the contract, which must be concluded for a certain period, is concluded indefinitely, there are also insufficient legal grounds for the court to consider the contract to be fixed-term.

Therefore, we can consider the grounds in Article 112 as a binding basis for the employer. Employers who do not comply are liable. But this error of the employer should not undermine the interests of the employee. It is not allowed to change the term of the contract without the consent of the employee, or to terminate the contract for the expiration of the term in practice, not taking into account the fact that the contract is inappropriate. Employers need to be attentive in any case in concluding an employment contract and setting conditions.

The findings of this research highlight the need for clear and precise legal guidelines to balance the rights and obligations of employers and employees. The study concludes that while the 2022 Labor Code introduces restrictions on the use of fixed-term employment contracts, it is essential to ensure that these restrictions do not undermine the contractual freedom that underpins the labor market.

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