

**ST.MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW**

LL.B THESIS

**THE ROLE OF ASSOCIATION IN ENSURING THE
RIHGT OF WORKERS TO COMPNASATION UP ON
SUSPENSION AND TERMINATION UNDER CIVIL
SERVANT'S PROCLAMATION NO 515/2007
"THELAW AND THE PRACTICE"**

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*ADDIS ABABA, ETHIOPIA
JULY 2008*

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"THE LAW AND THE PRACTICE"**

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ABBREVIATIONS

Art - Article

ACHPR - African Charter on Human and peoples Right

C.C – Civil Code proclamation No. 165 of 1960.

EPRDF_ Ethiopian people Revolutions democratic front

FCSA – Federal Civil Service Agency.

FCSP – Federal Civil Service Proclamation.

Fed. Neg. Gaz_ Federal Negarit Gazette.

FDRE – Federal Democratic Republic of Ethiopia

ICCPR – International Convenient on Civil and Political Rights.

ICESCR–International Convent on Economic, Social and Cultural Rights.

ILO – Internal Labor Organization.

J.E.L. “Journal of Ethiopian Low”

No – Number

Proc. – Proclamation

“PEAO, 1964” – “Public Employment Administration Order” No 26 of 1964.

UDHR – Universal Declaration of Human Rights

UNGA – United Nation General Assembly.

Statement of declarations

I hereby declare that this paper is my original work and take full responsibility for any failure to observe the conventional rules of citation.

Name: - Diro Keneni Debela

Signed-----

TABLE OF CONTENT

Table of content	Page
Acknowledgement	i
Abbreviations	ii
Statement of declaration	iii
Chapter One: Introduction.....	1
1.1 Background of the study	1
1.2 Statements of The problem	2
1.3 Objectives of the study.....	3
1.3.1 General Objectives.....	4
1.3.2 Specific Objectives	4
1.4 Significance of the study	5
1.5 Scope and limitation of the study	5
1.5.1 Scope of the study.....	5
1.5.2 Limitation Of the study.....	5
1.6 Methodology of the study	6
1.7 literature review	6
1.8 Organization of the study.....	8
Chapter Two: Civil service in General	9
2.1 Conceptual frame work.....	9
2.1.1 Definition	10
2.2 Historical and General Development of civil service.....	11
2.3 Sources of employment law in the civil service	17
2.4 Basic feature of civil service law	18
2.4.1 Political neutrality.....	19
2.4.2 Basis of employment	19
2.4.3 Organizational structure.....	20
2.4.4 Civil service and the Public enterprise	20

2.5 Civil service institution in Ethiopia	21
2.5.1 Inception and development	21
2.5.1.1 During Emperor Menilek	21
2.5.1.2 The period of HaileSELLASSIE	22
2.5.1.3 The period of the Degree	23
2.5.1.4 The Ethiopian people revolution Fronts.....	23
2.6 Employment relations in the civil service	25
Chapter three: The Right to Freedom of	
Association of civil servants	27
3.1 Meaning of Freedom of Association	28
3.2 Human Right Law and Freedom of Association	31
3.2.1 Human right mechanism	33
3.2.2 ILO conventions protecting the freedom of associations	35
3.3 Constitutional Guarantee in the field of freedom of association	38
Chapter four: Final Terms of Employment and	
The role of Association	45
4.1 Contracts of Employment	45
4.2 Regular Working Conditions	48
4.2.1 Probationary Employments	49
4.2.2 The normal working hours.....	52
4.3 Suspension and termination of employment.....	56
4.3.1 Suspension	56
4.3.1.1 Voluntary arrangement of the parties	56
4.3.1.2 Societal interest	56
4.3.1.3 Due to reasons beyond the	56
Control of the employer	56
4.3.1.4 Disciplinary suspension	56
4.3.2 Termination.....	60
4.4 Employment Injury	62

4.5 The Role of Association	65
4.5.1 Negotiation.....	66
4.5.2 Conciliation/Mediation	67
4.5.3 The Right to Strike	68

Conclusion and Recommendation

Conclusion

Recommendation

Bibliography

Appendix

CHAPTER ONE: - INTRODUCTION

1. Backgrounds of the study

Public servants labour associations have undergone profound changes in many countries over the last several decades. Since the 1950s there has been a considerable growth of trade unions membership and militancy in public service as well as significant shift from unilateral determination by the government of the condition of employment of public employees to bilateral mechanisms that allow public employees some say in determining these conditions. The ILO reviewed certain of these developments in an earlier worldwide survey.¹

In 1958 and 1986 the ILO carried out a series of studies on labour relation in the public service in selected developing 13th countries.² This studies of ILO formed the second part of an ILO program aimed at identifying the recent trends in public service labour relations and analyzing the main problems controlling the parties to day in both industrialized and developing countries. Labour relations have not traditionally been the object of as much attention in the public service as in the private sector nor they been analyzed in the same terms. It also has different procedures for regulating terms and conditions of employment. These procedures were traditionally based on unilaterally determination by the employer and were more amenable to analysis in terms of administrative law than in terms of modern labour relation thinking.³

Many factors have intervened in recent years to alter these traditional features, to varying degrees. The growth and transformation of the state have made the public service more and more central to economic and social life in both developing and developed countries. In Most nations the public service has become the largest employer and is required to provide ever more complex and extended services.

¹. IOL, Public Service labours relations recent trends and future prospect (Geneva), 1987.

². ILO, Labour relation in the public service developing countries, (Geneva), 1988.

³. Supara at note 1

The ILO has highlighted the importance of freedom of association increasing and enabling an environment of social dialogue, which in turn, stimulates a people centered-kind of development. The ILO operational objective states precondition for social dialogue is the necessary guarantees for Freedom of associations and collective bargaining.⁴

The other factor that intervened was many human right mechanism and the regional human rights instruments also protect the right to freedom of association.⁵ The existing differences in the legal framework and in the machinery for governing labour relations have not prevented demands by public employees and their unions for wages and employment conditions comparable to those in the private sector. Public employments continue to organize, at present more successfully than those in the private sector, and have acquired in many countries an increasingly important influence on the determination of their employment conditions.⁶

This development and important right to determine public employment conditions is completely denied in Ethiopia. This important right of civil servants, which is completely Denied in Ethiopia, brought some problems up on individual workers. This is the reason why, I forced to study on this areas of law.

2. Statements of the Problems

The legal problems that inspired me to concentrate on the role of association in insuring the right of workers of civil servants are the Ethiopian Federal Civil Service proclamation N^o 515/2007 is salient about the Freedom of association’s of civil servants.

The other country (Many countries in the World) has reached the stage at which, they determine their conditions of work collectively. This is because these countries of the world understood that, the public servants are the backbone of the government and economic of the countries. It is necessary to strength the justice system so as to give civil

⁴. IOL, Freedom of association and procedures fore determining conditions of employment in the public conference, 63rd session, (Geneva), 1977

⁵. Art.20 (1) of UDHRs, Adopted and proclaimed by General Assembly resolution 217 A (II) of 10 December 1948.

⁶ [www.WHRnet.org/docs/ Issue- Association](http://www.WHRnet.org/docs/Issue-Association) (Accessed on January, 2008)

servant’s better protection and it is necessary to incorporate those rights of public employment. Because such democratic right of civil servant is guaranteed by different human right mechanism and FDRE constitution. But the Federal civil servant proclamation N^o 515/2007 is excluded this right rather than strengthen freedom of association of public servants. So it should be implemented to protect the interest of the workers. When we see comparatively, the extremely diverse system of labour relations operating in the public service of many country is reformed in a manner to protect public employees. But still there is a variety of system, with some countries (like Ethiopia).

At one end of the spectrum, there are these systems in which public servants are totally denied the right to organize, and their pay and the government with out any consultation with them, determines conditions of employment unilaterally. At the other of the spectrum, there are systems in which public servants are treated particularly on an equal footing with private sector.

In spite of significant diversities in many respects, it is possible to discern trends and problems, that are common to most of them, such as growing militancy among public servants, growing number of disputes, a spread collective bargaining or other forms of participation by the public servants in the process of determining there employment conditions.

The other problems that inspired me to work on this area of law is that the public servants right to compensation up on suspension and termination from work. Unlike that of private sector, the public employee is not entitled to compensate in the event of unlawful suspension and termination from their work. Due to the existence of this problems and denial of the former right, the individual right of civil servants will be endangered and this in turn will damage the growth of the economy of the country.

3. Objectives of the study

In consideration of the above problems and magnitude of its impact on the public servants, and economic developments of the country, this paper will have the following general and specific objectives.

.Genera Objectives.

The general objectives of this study will first fully explain the theoretical line of civil servants in general. The study also briefly over views the historical development of the civil service in Ethiopia. Then it briefly notes trends in employment and employment or working conditions in the public service and their significance. Then preceded to the examination of the main problems areas of the public service labour relation (i.e. public service organization including the rights of public servants to organize and the role of such organization to protect Civil Servants).

. Specific objectives.

The specific objectives of the studies are to:-

1. Identify the problem related to with the law (the proclamation No 515 (2007)
 - a. The Salient nature of the law regarding civil servants freedom of association.
 - b. The limitation or denial of rights in the proclamation relatively with constitution, the human right instruments and the ILO convention.
2. Examines into the variance between the countries those who implement Freedom of association and those who not.
3. Define that suspension and termination is and ground thereto
4. Analysis the outcome of not recognizes the right of public servants (such as denial of compensation in the even of unfair suspension and termination of employment).
5. Analyze cases in order to show the problems in the civil service in Ethiopia.
6. Deals with the problems caused by the absence of right to freedom of Association of civil servants.
7. Spelt out the Role of Association in insuring the workers right and interest after examining the whole conditions.
8. Propose the alternative systems to protect the right of public servants.

4. Significant of the Study

Every research should have something to contribute, since human energy is exerted to it. Therefore, the study believed to contribute the following.

- ❖ The study briefly explains the usefulness of Freedom of association.
- ❖ The study informs to concerned officials about the magnitude of the problems to take the necessary corrective measures.
- ❖ The study helps as a base for the extension of public servants freedom of association.
- ❖ The study enumerates the respective legal consequences for lawful and unlawful suspension and termination.
- ❖ The study helps federal civil service to improve such rights of public servants.
- ❖ The study serves as source materials for teachers who give lecture in this area.
- ❖ The study will serve as a springboard for other researcher who would like to study on the same issues.

5. Scope and Limitation of the study

5.1. Scope of the study

Scope of the study covers all governmental institutions and civil servants administrated by special branches of the civil service commission proclamation No 515/2007.

The study encompass the public servants employed permanently and temporally by Federal government institution established as an autonomies entity by a proclamation or regulation.

The study covers comparative study of different countries in order to show the usefulness of freedom of association in order to protect employees’ right and interest.

5.2 Limitation of the Study

Research work requires availability of sufficient time, budget and other resources. Above all material resources, time and budget are a major resource that affects my research work. In addition, the willingness of the concerned officials, such as civil service

Commissions and other institutions to give adequate documents is the other limitation of the work.

Lack of domestic reading material and research work especially on this area of public servants Freedom of association was also the other limitation.

6. Methodology of the study

Since the topic covers Freedom of association and compensation of public servant that involves problems in relation to their Freedom of association.

- ❖ In order to get relevant information about the topic, I will use primary data, secondary data as well as information and data gathered from my own personal observation.
- ❖ The primary data is gathered from the law i.e. from the federal civil servants proclamations, regulation, FDRE constitution, public servant’s pension proclamation and other different regulation, human right instruments, ILO convention, and etc.
- ❖ Secondary sources-Books, journals, Internet websites, unpublished reports and other official documents are extensively used.
- ❖ In writhing this paper information is collected, through, comparative survey, cause analysis and discussion with different members of the civil service and with knowledgeable persons in the field and the writers own observations.

7. Literature review

The literature marks, the role of the civil service as an instrument in a country’s socio-economic and political development is inconsistable. In some parts of the world, however, the civil service seems unable to cope with the prevailing ideological, political and economic changes as well as management innovation.⁷ In other parts of the world, especially in Africa, the institutional and capacity weakness of the civil service is considered to be one of the major causes of social and political upheavals and economic crises.⁸ Cognizant of this fact, over the last two decides, many counters are introducing

⁷ . Paulous Chaine, The Challenges of the civil service reform in Ethiopia. Initial observations, Department of management and public administration, Addis Ababa University, page 2.(Unpublished)

⁸ . Ibid

fundamental changes in structure and operation of civil service to be able respond a social needs and conditions. Such activity including civil service workers in the country to engage in effective social dialogue at all stages of decision making processes, which would ensure the support for and commitment to the decision taken by all workers, leading to successful implementation of the reform.⁹ To get such successful implementation, civil servant union is important, in order to pass decisions regarding their interest.

The ILO has highlighted the importance of freedom of associations increasing and enabling an environment of social dialogue, which, in turn, stimulates a people-centered kind of development.¹⁰ The ILO operational objectives states preconditions of social dialogue are necessarily guarantees for freedom of association.¹¹ But the Ethiopia civil service proclamation is silent about such important rights.

The ILO believes that public service reforms at all levels, including decentralization and privatization, have to provide access to safe, reliable and affordable public services, provides universal and equitable access to all necessary public servant to fulfill basic human needs, improve and enhance democracy and security of human rights. The capacity of workers to engage in meaningful social dialogue would be urgent needs in the countries were a mechanism has not yet developed.

8. **Organization of the study**

The paper is organized in four chapters in which I will attempt to expose and tries to answer the question of problem of civil servants.

- ❖ The first chapter contains the introductory parts or contents of proposal which introduce about the future of the study including, backgrounds, statement of the problem, objective, significant, Methodology of the study and the reviewed literature and etc.
- ❖ In the second chapter, the paper will review the general provisions that will be used to analyze the civil service including definition, theoretical line, public service, purpose

⁹ . Scot Ian, the Hong Kong civil service and its future,1988,page 32

¹⁰ .Supara at note 6.

¹¹ . Kingdom J.F, the civil service liberal Democracy, an introductory survey, 1996,page17

- ❖ Of freedom of association and the civil service in Ethiopia, and basic characteristic of civil servants. In this second chapter, it was expected that to talk about suspension, termination and compensations.
- ❖ The 3rd chapter is the important body of the study that is about civil servants or the right to freedom of by citing the relevant instrument such as constitution ,ILO convention and other relevant laws this chapter clarify the importance’s of this right by supporting the relevant legal regimes, purpose, and comparative study of deferent countries.
- ❖ The 4th and the last chapter is deal with the final terms of employment (i.e. suspension and termination) of civil servants. Here, the study reviews the role of civil service union in insuring every Conditions of work.

CHAPTER TWO: CIVIL SERVICE INGENRAL

2.1 Conceptual Framework

The concept of civil service has various dimensions. This is because, it has different concepts in different countries in terms of the employing authorities and the service covered on the one hand, and the personnel covered on the other. In fact the concept and the scope are determined by the overall constitutional, political and social systems on which the organization of each state is based.¹² So this is why the concept of civil service has various dimensions. Before defining the civil service, it is better to show those different dimensions of the civil service.

One of Its dimensions relates it to the system of personnel administrations that are applied to the government employees. This concept focuses on the system of employment, that means, the size of civil service, and rules of civil service employment as these relates to such issues as recruitment, selection, job evaluation, training and development, performance appraisal, the Role and composition of civil service.¹³

The second dimension of civil service focus on the government functions by the people who occupy job position that are neither political, Juridical nor military. Under this dimension civil service is used to mean that, the body of government officials who are employed in civil occupations that are nether political nor juridical, but refers to employees selected and

¹². ILO, Public Service Labour relations, recent trends and future prospect, (Geneva) 1987, page 4

¹³. Ibid

promoted on the basis of a Merit and seniority system, which may include examinations.¹⁴

The third dimension is related to the employees of government ministries and agencies. Who occupy job positions below politically assigned ones and these of the Military? Therefore, the reception of the concepts of the civil service is still confusing.

2.1.1 Definition

Because of the above various dimensions of concepts of civil service, the conventional definition of civil service are always inadequate. There is no standard definition of civil service domestic laws and practice very considerably most countries recognize, at an overall level, the deference between the public sector which includes state owned enterprises) and the private sector, but nuances appear at the next level down. After examining the system on which the organization of each state in different countries is based, the ILO adopted a fairly broad definition of civil service.¹⁵

According to this definition “*The civil service covers all levels of the government-central and local, whether regulated by a common or separated regimes and special branches of the public administration or agencies*”. The ILO, in defining the civil service, considers the nature of the employer organization, service or institution prove to the factor most widely used in defining the civil service. The dominant character, what ever the terms used, is that the state is the employer and pays for the service from tax revenues in the form of budged posts.

¹⁴. Encyclopedia Britannica, 15th. Edition, 1993

¹⁵. ILO, Public Service Labour relations, recent trends and future prospect, (Geneva) 1987, page 4

The useful guidance on definitions which exists in the only specific international labour relations recommendation (No. 159) covers the fundamental labour rights of civil servants (the right to organize, to participate in consultations or Negotiations in relation to their terms of employment and to settlement of the dispute). Art.1 of the convention states that its provision apply to “all persons employed by public authorities” but permits exemptions for “high level employees whose functions are normally considered as policy-making or managerial or . . . employees whose duties are of highly confidential nature”. Art 2 defines “public employ” to mean any person covered by the convention in accordance with Art 1. This is also a very wide definition of civil servants.

In Ethiopian case _ under the percolation N^o 515/2007 defines the phrase of civil service by excluding some specifically mentioned institutions from the general category of civil service institutions.¹⁶

Art. 2 (1) of the proclamation N^o 515/2007 defines, civil service as “*civil service*” means a person employed prominently by federal government institutions, provided, however, that it shall not include the following.

- A.** *Government officials with the rank of state minister, deputy director general and equivalent and above;*
- B.** *Members of House of Peoples’ Representatives and the House of the Federation;*
- C.** *Federal judges and prosecutors;*
- D.** *Members of the Armed Forces and the Federal Police including other employees governed by the regulations of the Armed forces and the Federal Police;*

¹⁶ . Federal Civil servants proclamation, Federal. Neg. Gaz., 19th N^o 15 proclamation N^o 515/2007

E. Employees excluded form the coverage of the Proclamation by other appropriate laws.”

According to the definition of this proclamation; the question is who government institution is. Art 2 (3) of the Proclamation N^o 515/2007 lists three criteria to be government institution. That is any Federal government office:-

- A. Established as an autonomous entity by a proclamation or regulation;
- B. Fully or partially financed by government budget;
- C. Included in the list of government institutions to be drawn up by the council of ministers.

Therefore, if the government institution is established according to one of the above procedures, those institutions are government institution and regulated by the Proclamation N^o 515/2007. In addition to the above definition Art 2(2) of the public servants pension proclamation. No. 345/2003 defines very widely that “public servant” “means person permanently employed in any public office, and includes government appointee, member of the deference Force and the policy.”

2.2 History and General Development of the civil service

Different literature Marks that, the use of competitive examinations to select civil officials was begun in china during The Han dynasty (200 BC-220.AD).¹⁷ This first use of examinations to select civil officials in China

was expanded to include all important positions during the sung dynasty (960-1279 AD). In the West, However, selection of civil administration and

¹⁷. en. Wikipedea. Org/wiki/united-state civil service commission (Accessed on December 2007)

staff on the basis of Merit examination is a late development. It did not begun until the rise of national states replaced the feudal order.¹⁸ So the establishment of the Modern civil service is closely associated with the decline of feudalism and the growth of national autocratic states.

In Prussia, as early as the Mid-17th century, Frederick William, elector of Brandend burg, created an efficient civil administration staffed by civil servants chosen on competitive basis. In France similar reforms preceded the Revolution, and they were the basis for the Napoleonic reforms that transformed the Royal Service in to the Civil service. In the English-speaking word (In Great Britain and United States of America). The development of professional civil service came several decades later.¹⁹

In the united state of American History, the history of civil service is inextricably intertwined with that of the American ideals of democracy, the idea that dedicated hardworking individuals with Moral and character would come to work for the United States government has been an important concern from the very First days of the public.

These basic principles of a fair and democratic Federal government have stood the test of time and transition of the United States from a pioneer society to one of the most complex in the world. However, the history of civil service was begun in an ancient China and expanded to other countries of the world, since the end of the 17th century; the United States was extremely fast behind the other nations in structuring and developing the civil service system in the world.

Then, in the history of united state of America, the prospective development of civil service can be divided in to four district phase these

18 . Ibid

19 .Ibid, page 4

are can be the end of the 17th C, in the US, the idea of civil service is extremely developed. In the history of United States the prosperous district phases.²⁰ Those are:-

- I. The Federalist “fitness test” era.
- II. The spoils era
- III. The early years of competitive civil service
- IV. Modern civil service/civil service to day

I.The Federalist “fitness test” era: - This era talks about the History of civil service of United States from (1789-1829): First in 1789-1797 presidents George Washington set a high standard in political appointments in selecting his nominees. In 1797-1801, President John Adams, continued the policies of his predecessor, demanding demonstrable ability in a candidate for a political appointment. In the year from 1801-1809, a political appointee’s came to be an important factor in his qualification during President Thomas Jefferson’s administration.

President jams Madison (1809-1817) and jams Monroe (1817-1825), being of the same political party as a Thomas Jefferson, saw no need to modify the “redress the balance” civil service policy of their predecessor. During this era until 1825 political appointees come to be an important factor in their qualification.²¹

Despite the passage of office of act, President Jhon Quincy Adams (1825-1829) refused to remove officials for political reasons. Currying out his policy of “No Change for political reasons”, President Adams would be the last to make conservative use of powers of appointment and removal.²²

²⁰ . [www. Answers. Com/topic/civil-service](http://www.Answers.Com/topic/civil-service). (Accessed on January 2008)

²¹ .Ibid

²² . Donald F. Kettl Patricia W. Ingraham, civil service Reform. 1996, page 90

ii. The spoils era (1829-1883):- Owing doubtless in part to the spoils system so strongly established in the Jacksonian era, The united states lagged far behind other nations in standards of civil service competence and probity.²³ President Andrew Jackson (1829-1837) is widely considered to be the strongest supporter of the rotation system of government. In 1951, congress passed a resolution and in 1853 legislature indicated that there was increasing disenchanted with the spoils system. By 1870 the movement to reform the civil service system was well underway.

In the United States, the first civil service commission was established by congress in 1871, but it only lasted a few years. The first civil service reform association was formed in New York City in 1877, and in 1883, New York City and Brooklyn became the first cities in the nation to adopt civil service regulations.

The National civil service movement was inspired by the New York examples, and the 1883 Pendleton Act reestablished a Federal civil service commission and this one lasted.

III. The early years of competitive civil service: - The passage of the civil service act of 1883 marked the beginning of the Merit system in Federal service, creating the United States civil service commission. For the first time certain Federal jobs were now to be filled through competitive examinations opened to all citizens and section of the best qualified applicants were made without regard to political considerations. Merit as basis for hiring, was guarantied by law.²⁴

A strong advocate of civil service reform, president Roosevelt set about to expand, Modernize and reform the Federal government, based on his philosophy that opportunity be made equal for all citizens, that only those

²³. Supara at note 9

²⁴. Ibid

who had Merit be appointed to Federal jobs, and that public servants should not suffer for their political beliefs. Roosevelt’s reform set the foundation of the Modern Merit system of United States. To day, President Roosevelt is considered to be the “Father” of the Modern Merit civil service system.²⁵

IV.The Modern civil service: - The early 1900s was period of major governmental expansion. Growing modernization of the Federal system was aided in 1906 by the various civil service commissions of the states and cities that met in Washington, DC. The 1906 conference formed a permanent organization originally named the civil service assembly of the United States and Canada. To day it is called the international personnel management associations.

The civil service reform act of 1978 abolished the civil service commission and divided its functions among the merit systems protection board, the office of special counsel, and the office of personnel management.

The enormous expansion of civil service union in USA is particularly notable in contrast to development in private sector union and in the economy as a whole. In the private sector, between 1960-1980, the total labor force declined. In contrast, civil service union grew during the same period. This strength and growth of civil service unionism becomes even more compelling. The cause of this remarkable growth are the expansion of civil service union was accompanied by a significant rise in the use of strike and other economic weapons by public employees to achieve their collective goals. This represents a major shift in the attitudes of public employees.

²⁵ . Ibid, page 9

As in the private sector, the most important issues underlying work stoppages in the public service are, first, economic issues (wages, hours of work, fringe benefits, etc), and second work place, administration issues including personnel rules, work rules, assignments, discipline, discharges, and physical facilities.

To day, the USA has ratified convention N^o 87 and convention N^o 98 of the ILO regarding the “freedom of association and protection and, protection of the right to organize, and the application of principles of the right to organize and to bargain collectively”. Therefore the civil servant of the united state plays a great role in determining their right and interest.

Lastly this is what about the developments of civil servant associations in the united state.

2.3. Source of employment Law in the civil service

Within the historical part, it may be appropriate to discuss the sources of employment law. The phrase “sources of law” may mean different under different contexts. Material and formal sources of laws are the most usual ones. Be that as it may, sources of law in this context should be understood to mean “legal instruments which will have impact in regulating employment relations or in resolving employment disputes if and when they arise (i.e. formal sources of law)”. Those sources could be categorized in to national and international or in to public and private instruments.

The international ones are mainly conventions and recommendations. International labour conventions and recommendations differ from the point view of their legal character. Conventions are instruments designated to create international obligation for the states which ratify them, while recommendation are not designated to create obligations but provides guidelines for government action. As of 2006, Ethiopia ratified 21

ILO conventions. Those international agreement ratified by Ethiopia are an integral part of the law of the land according to Art 9(4) of the FDRE constitution.

The source of employment law of national origin may be classified in to public and private ones. The public act includes the FDRE Constitution, the labour proclamation to gather with its amendment, Federal civil service proclamation and the regional civil service proclamations of the representative regimes; public servant’s pension proc. and etc.

Furthermore, subsidiary instruments such as directives of civil service agency and the regional actors need be consulted as a source. Due emphasis should be given to the constitutional principles such as the right to association, the right to Freedom of movement; the right of labours, equality and non-discrimination and other relevant items of the same document. Last but by no means least, decisions of the Federal Supreme Court Cassation Bench should be noted as sources of employment as these decisions are binding by virtue of proclamation No. 454/2005.

The private acts are instruments of private nature but binding as though they are law (art. 1731(1) of the c.c.). Private acts as a source of law for the civil service do not seem to be applicable. For one thing, the contract of employment between the civil servants and the employer (i.e. the government office) will be an administrative in nature and public law in branch. So, as now stands, as unionization is not yet allowed for employees of civil service, collective agreement will be unthinkable instruments as a source of law in this area.

2.4 Basic features of civil service.

The civil servant institutions have its own characteristics that made the institution different from other administrative divisions or from other

federal offices: - These are:-

2.4.1. Political neutrality

When we talk about political neutrality of civil service, we mean that, even if the government changed the civil servant need not be changed. They implement government policies and laws in respective of their own plan. Only not the supporter of the executive organs, they are selling their own knowledge and neutral from that of politics.²⁶

They are knowledgeable and advice the top of the executive organ. The top officials that may be elected politically may be changed, but not need for change of civil servant with the change of government.²⁷ Civil servant gives neutral technical advices to the top government who are more responsible for the failure or success of the government policies.

The civil servants are relying on royal and neutral civil servants to carryout their policies. No use of government time, money and property for political purpose. Neutrality does not mean that the civil servants are not allowed political activity, but that in exercising their functions they are forbidden to say or do any thing that will make the user of the public service doubt the impartiality of the service. Loyalty means that civil servants will support legitimate political to his full capacity, even if they disagrees ideologically with the policy. The logic is to limit the civil servants not to merge political party and government function. Government service should not discriminate irrespective of its duties or function. The civil servants can support what ever they want, but should be neutrally implement government policies and laws.

2.4.2: Basis of employment

Civil servants are employed based on educational background, experience

²⁶. R.K. Mishra, National civil service system in India:- A critical view 1997, page 10-12

²⁷. Ibid

and competitive examinations. No employment shall be affected based on political affiliation. They only based on educational backgrounds.²⁸

Accordingly, a loyal and neutral civil service can best be realized through the application of the merit principle in nominations based on competitive examinations executed by an independent institution. This lead that, the promotions of civil servants in turn are depoliticized by introducing criteria such as seniority, examinations, experiences and general educational backgrounds.²⁹

Therefore, in principle the nomination of civil servants should have not been affected by political ideology.

2.4.3. Organizational structure

The civil service is organized in a pyramidal structure where few top officials regulate the subordinate and the sub-subordinates. Through these systematic organizations; the civil service implies the system under which employees are hired on the bases of their qualifications, as determined by examinations and not because of their political affiliations.

2.4.4. Civil service and public enterprise

In the beginning of this chapter, it stated that as the conception of civil service is recognized differently by different country and impossible to give conventional definition of civil service. Despite of that the term civil service generally means employment in federal state, city and town government with such positions filled on merit as a result of competitive examinations.

A public enterprise- these groups are utility company privately owned but regulated by governments. Those privately owned corporations are may

²⁸. Ibid

²⁹. Supara at note 11,page 9-15

sell gas, water or electricity, transportation to any or all members of a community.³⁰

2.5. Civil service institutions in Ethiopia

Ethiopia, as a part of its generally political and economic restructuring programs, is recently reforming, its civil service twice. It also found that the reform measures lack the necessary preconditions to be adequately put in to practice. So this study regarding Ethiopian civil service concludes by arguing and identifying priority areas, while taking in to consideration the capacity to implement the law. Here, first we will talk the theoretical line and development of Ethiopian civil service.

2.5.1. Inception and development of civil service in Ethiopia

The official inception of civil service was begun recently in Ethiopia. Next we shall see the perspective development of civil service in Ethiopia in a short and brief ways.

2.5.1.1 Emperor Menilek and the inception of civil service

The inception of modern public administration goes back to the creation of modern administration during the last days of the reign of emperor Menilek (1889-1913).³¹ Prior to this period, the country was under traditional administration and the different Ethiopian monarchs had failed to build any kind of administrative frame work through which they could exercise their absolute power.³²

The period of Menilek saw the beginning of modern government and many Ministers was created. During Menilek’s time, the ministers were not salaried and appointment was based on loyalty and the number of

³⁰. Gabriel Roth, The private provision of public services in developing countries, 1988, page 1-2.

³¹. Paulous chainie, the challenges of the civil service reform in Ethiopia: - initial observation, 2001, page,⁴ (Unpublished)

³². Ibid

followers that they could mobilize during war time. The civil service was also small in number and was primarily engaged in maintain laws and order. However, the setting up of the ministers by Menilek was the beginning of a new era in the administrative development of the country and the inception of the civil service.³³

2.5.1.2. The period of Haileselassie and the civil service

Emperor Haileselassie (Regent 1917-1930, Emperor 1930-1974) had the best claim of instituting modern public administration in Ethiopia, which was started by his predecessor. It was during his reign that the process of centralizing and modernizing the state reached relatively advanced stage and the modernization of the sate was promoted.

From 1930-1935 many important attempts at reform were taken. Implementation of reforms was discontinued as a result of the Italian occupation of 1935-1941. But after its end, the emperor’s return to power, many reforms were carried and the whole ministerial system was completely recognized and greatly extended.³⁴

During Haileselassie Regarding civil service the establishments of central personnel agency by order N^o 23 of 1961 and amended by order N^o 28 of 1962 were existed.³⁵ The enactment of basic regulations governing the civil service through the public service position N^o 1972 was promulgated. The creations of those rules were improving the proper formation of the civil service administration.

Nevertheless, there were problems. These were the absence of strong participation from the concerned organs especially in preparation of the position, classification, salary scale and job descriptions, and also lack of

³³ .Ibid

³⁴ . Lynn G. Mere house: Ethiopian labour Relations, Attitudes, practice and law, J. Eth. L, vol. VII. No. 1. page 241

³⁵ .www. Osgreanet/rw/good govern (Accessed on February, 2008)

skilled personnel to prepare a uniform and comprehensive policy.³⁶

Moreover, the absence of strict adherence to the civil service rules and regulations, and political interference in administrative affairs were seen as chronic problems of the time.

2.5.1.3. The period of the Dergue and the civil service

There was a revolutionary government in Ethiopia (1974-1991), popularly known as the Dargue. It was a highly centralized unitary government following a soviet- inspired centralized economic planning and command economic system.

The literature marks that during this period, there were no fundamental Reform measures promulgated to modify the functioning management of the civil service.³⁷ Except for the introduction of a few reform measures, the civil service operated under the different orders and decrees issued during the reign of Hailsellassie.

Among some of the Reform measures taken during those periods, the expansion of the state apparatus and restricting of the cabinet could be mentioned. Some new ministers, commissions, agencies, and authorities were merged or dissolved.³⁸

During the period of the Dergue many problematic situations that crippled the civil servants were observed. The lack of trust, respect and confidence of the politicians as regards the career civil service personnel, absence of competitive merit based recruitment and promotion practices at higher and middle level post, and poor pay.

2.5.1.4. The Ethiopian people Revolutions democratic front and the civil service.

³⁶. Ibid, page 6-8

³⁷. Ibid, page 8-9

³⁸. Ibid, page 9

The EPRDF, after coming in to force in 1991, set up a transitional government (1991-1994) and subsequently a Federal Democratic government in December 1995.

The EPRDF government has also taken different specific measures, one of which is civil service reform. These measures includes the initial actions of reviewing existing civil service law and making recommendations on ways of installing a civil service system that is cost effective, accountable and efficient reviewing the system.³⁹

After 1996, the reform can be considered as an other enhances process of many Ethiopian civil service reform sub-programs. The major aim of the reform program is to modernize the human resource management in the civil service so as to develop an effective and efficient civil service:

However, in the reform made (Proclamation. N^o 262/1994), the necessary conditions for the reform are lacking. Because of these lacks of necessary conditions, the Proclamation N^o 262/1994 was reformed again, so as to give civil servants better protection and it is especially to incorporate in a new law the changes occurring as a result of the implementation of the human resource sub-program. The recent reform made (the Proclamation N^o 515/2007 also lacks, the very fundamental rights of the civil servants, that is freedom of association of the civil servants.

It would appear that the civil servants, who are going to be affected by the reform, have not been actively and adequately involved in the drawing-up of the reform projects and the modalities of their implementation. As it can be seen from the experience of different countries, it is important that the reform programs draw on the knowledge and experience of civil

³⁹. Ibid, page 10-14

servants union in participative way to diagnose the problems faced.

Furthermore, in Ethiopia, the reform effort seems to lack the required level of participation from the civil servants union. So failure to mobilize the civil servants about their right and interest in the reform of civil service could seriously hamper the effectiveness of the operation of the federal civil service itself.

So not participating or the absence of civil servants union brought a problem up on individual civil servants in determining their right and interest. Moreover, we will see in the subsequent chapter especially in chapter four about the problem of lack of this right of civil servants under the Proclamation N^o 515/2007.

2.6. Employment Relations in the civil service

Employment relation is established through a contract of employment and is shall be, deemed formed where the employee agrees to perform work for the employer for a definite or indefinite period. Employment contract is the agreement and the basis for employment relations. This automatically excludes forced labour from the ambit of employment relations.

By employment relation, what we mean is, a contractual relation between on employee and employer in their individual capacity. Employment relations under the labour law and under the civil service have their own peculiar features. In the labour law setting, the legal instrument is limiting itself towards stipulating minimum conditions of labour providing sufficient room for flexibility for further bargain by the parties under the civil service; however, conditions of work are rigorously regulated by law and there is a little or no room for negotiation.

As regard to terms of contract, the labour law regime in principle requires no special form for contractual validity. It is under exceptional cases that it requires written form. The civil service regime on its part requires written instrument in all cases. While the parties are contractually engaged, it may be possible that the right and obligation of the parties may be suspended for different reasons.

Suspension is a situation where the employee will not be required to provide service to the employer and the employer will not be obligated to pay wages and other benefits to the employee. Nevertheless, their contractual engagement remains intact. Therefore, suspension is grey area in the sense that it has attributes of termination on the one hand and of employment relation on the other hand.

Under the civil service law, disciplinary suspension is within the sole prerogative of the employment. Its length could also be as long as two mouths normally as soon as the duration for suspension expires, the employee will be reinstated. But there may be circumstance where suspension may be transferred in to termination.

Termination of an employee is normally an action that the employer believes should be seen as a final step in a process after other reasonable attempts to satisfy the problem have been exhausted.

Before any action is taken in the process of dismissal the employer requires that an investigation is carried out to establish the belief that the employee is in breach of what ever rules, regulations, policies, procedure or performance level that are the essence of the matter. The employee will be given a reasonable opportunity to reply to any and all allegations before a decision to termination is made. The federal civil service proclamation spelt out grounds of termination in their respective regimes of employment (art. 78-86) of the proclamation No. 515/2007.

CHAPTER THREE

THE RIHGT TO FREEDOM OF ASOCIATION OF CIVIL SERVANTS`

The development and expansion of labour union and membership in the civil service is one of the most striking phenomena of recent years in most country of the world, but important in insuring these workers right and interest. In most developed countries public employees have become the most highly organized group, plays a great role in determining their working conditions and they are the backbone of the development of economy of the countries.

But in some countries, these civil service unionism, is also facing new challenges, the decreasing attraction of the labour movement and the general lack of militancy that are increasingly evident may undermine the stability of even the most business oriented public unionism. And this may not be compensated by the protection and status offered to public employees by strong and recognized collective representation through the unions.⁴⁰

These restrictive rights, which clearly impinge one the civil servants, are major sources of internal discontent and disunity in some countries. Again, this might weaken the position of civil servants unions, particularly the large unions linked to the general labour movement. In some counties the origin and composition of civil service unions are quite different from those in the private sector. Often born as professional association's independent of the general labour movement, they may continue to define

⁴⁰ [http:// training itcilo.it/ils/CD-use-int-law-web/Additional library/English/. htm](http://training.itcilo.it/ils/CD-use-int-law-web/Additional_library/English/.htm). (Accessed on December 2007)

them selves as a professional association even when they have begin to behave as trade unions.⁴¹ Many public employees’ organizations continue to maintain the states of independent unions, even in countries where the great majority of organized works belong to large central organizations representing the entire labour movement that stands and protect for the right and interests of public employees.⁴²

The need for unions to solve the problem between the employers and the workers nevertheless remains high in the civil service in Ethiopia .Conflict remains difficult to control unless these legal unions used to intervene. Some sort of machinery for achieving consensual determination of working conditions and settlement of disputes, therefore, remains a necessity. Then, before, we derive in to the need of the freedom of association in determining the workers right and interests of civil servants, we shall see the term Freedom and the meaning of Freedom of Association.

3.1 Meanings of freedom of Association

The study in this chapter claim to be an original contribution in the field of Freedom of Association as implemented in the context of labour management relations and the consequence of its absent. But before we derive in to considering the meanings of Freedom of Association, it is better to say some thing about the term freedom. Parties of series on freedom could be divided in to two broad groups depending on their function.⁴³ These parties are:-

- Freedom by concepts.
- Freedom by forms.

Freedom by concepts: - encompass, economic Freedom, political

⁴¹ . ILO, Public service labour relation, recent trends and future prospects, (Geneva),1987, page 5-7

⁴² .Ibid, page 5-7

⁴³ .[http// en. Wikipeda. Org/wiki/ freedom-of -Association](http://en.Wikipeda.Org/wiki/freedom-of-Association) (Accessed on December 2007)

Freedom and Philosophical Freedom

This right entitles individuals to associate freely, in good faith, without interference from other individuals or from state actors. This includes economic, social, cultural and political activities within a group or with other person, including inter- racial and other equalities.

These last demands of social obligations, in economic processing zones and sweatshops, for example, the “no union, no striking policy” is enforced with the support of some government of some country. But the important of workers right to organize in the midst of the current trends of globalization is highlighted by the degree to which it has been suppressed.⁴⁴

The other part of Freedom is Freedom by form:- this part of freedom encompasses, freedom of association (which is the basic aim of this study), freedom of Assembly and Freedom from government (such as freedom of movement, freedom of press, freedom of speech and expression, freedom of religious and belief, freedom of thought and etc).⁴⁵

In this regard, the right to associate with others and form or join associations is closely linked with other civil and political rights, especially freedom of expressive and opinion, freedom of peacefully assembly and the freedom of movement.

These civil and political rights are vital vehicles for the promotion and protection of economic, social and cultural rights are also dependent on the extent to which economic, social and cultural rights are enjoyed.⁴⁶ This all are about parties of series on the term freedom. Therefore, next, we shall see the meanings of freedom of association.

The right to freedom of association involves “*the right to join, and withdraw membership from groups Associations and partnerships of different*

⁴⁴ . Ibid

⁴⁵ . Ibid

⁴⁶ . [www. Whrnet org/docs/issue-association](http://www.Whrnet.org/docs/issue-association) (Accessed on January 2008)

kinds”.⁴⁷ It requires the non-interference of the state in the formation and the affairs of associations that functions within the scope of the law. It also required the assistance of the state in increasing and maintaining an environment that is conducive to exercise the right to free Associations.

The freedom of association and related right are critically important for civil servants who play a key role for their members as organizers and activities in securing and realizing the entire spectrum of human rights. However, workers freedom and capacity to exercise the right to association are frequently undermine by lack of access and control of economic and political system that put them in disadvantage positions relatively to that of private sector.⁴⁸ In case where the right is violated by the employers or conflict arises between workers and employers, governments have a duty to provide the enabling environment and eliminate any norms that prevent workers from exercising this right.

Workers association, which is the most visible form of collective action, in the event of improving their right and interest is often seen as the first resort of workers organizations in the pursuit of their demands while sticking action, which is the other most visible form of collective action in the event of labour disputes, is often seen as the last resort of workers organizations in the pursuit of their demands.⁴⁹

Freedom of association is a fist objective for workers, employers and society due to failure in the process of fixing working conditions through collective bargaining. A fundamental element of personal liberty is the right to choose to enter in to and maintain intimate human relationships. Freedom of association to live in a community or be a part of an organization whose values or culture are closely related to ones

⁴⁷ . Ibid

⁴⁸ . Ibid

⁴⁹ . supara at note 1

preferences, or, on amore basic level, to a society with any individual one chooses.⁵⁰

The expression of the phrase “*freedom of association*” as used here in this study, refers to the right of employees to organize for the defense of their occupational interests. The expression has to be understood in its broadest sense. It not only has to do with the right to set up associations but also with a whole range of rights with out which the right to organize would lose much of its meaning.⁵¹ Libertarians also argue that freedom of association in political context is merely the extension of the right to determine with whom to associate in ones personal life.

Such rights not only refer to the right of the association to decide on its organizational structure and administration, but also the right to decide freely on its activities.

3.2 Human Right law and freedom of Association

The developments of the two patterns of rights are closely related through the international labour supervisions. There are two sticking developments in 1948 in the nascent field of international human rights law.⁵²

The first time the adoption by ILO of the freedom of association and protection of the right to organize Convention (No-87).

The second was the adoption of the united nations of the universal declaration of Human rights a few months later. The close relations between some aspects of the two at the times has been maintained through the ILO’S supervisory process ever since. The universal declaration is, Of course, of great impotence to the ILO in its work for the promotion and defense of human rights. As the ILO’S committee of experts of the application of conventions and recommendations stated in the

⁵⁰ . supara at note 7

⁵¹ . Ibid ,page 4

⁵² . www-questia.com/pm.qst?a=o and se=qq 15c and d=50001394421 (Accessed on December 2007)

report of its 1997 session.⁵³ The universal declaration is generally accepted as a point of reference for human rights throughout the world and as the basis for most of the standards setting that has been carried out in the united nations and in many organizations since then the ILO’s standards and partial activities on human rights are closely related to the universal values laid down in the declarations.⁵⁴

The ILO standards on human rights along with the instruments adopted in the United Nations and in other international organizations give practical application to the general expressions of human aspirations made in the universal declaration and have translated in to binding terms the principles of those noble documents.⁵⁵ It is of particular interest to the ILO that the universal declaration of Human Right Proclaims in its article 23, paragraph 4, that “Every one has the right to form and to join specific manifestation of the right aid down in Article 20 of the universal Declaration to” the right of freedom of peaceful assembly and association”.⁵⁶

The inclusion of this principle in the universal Declaration had been preceded by its inclusion in three important ILO instruments. The first of these is the ILO’S constitution which in its original version as part XIII of the treaty of Versailles proclaimed that the high contracting parties considered that the right of association “for all lawful purposes” is of “special and urgent importance,” both for workers and employers. The preamble to the constitution explicitly cities trade unions and other associations among the measures that could improve working conditions and thus assure peace.⁵⁷

⁵³ . Ibid

⁵⁴ .Ibid, page 2

⁵⁵ . Ibid

⁵⁶ . Ibid

⁵⁷ . Ibid ,page 3

The second of these fundamental texts, when in the 1944 the ILO adopted the declaration of Philadelphia and in 1946 incorporated it in to the constitution, it reaffirmed freedom of Association as one of the fundamental principles of on which the organization was based, and characterized it as “essential to sustained progress”.⁵⁸ It also referred to the “effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures”.

The third of this fundamental text was the freedom of association and protection of the right to organize convention, 1948 (N^o .87). The adoption of the specific convention on this subject in the ILO was not early, as is outlined in different literature. It was put off many times as being too difficult to agree on, and its lack began to be felt early.⁵⁹

This is the important parts of close relations between the human rights law and Freedom of association developed through the ILO supervision in a short and brief manner. In addition to this relation, following, I will discuss the human right status and conventional mechanisms regarding freedom of association.

3.2.1 Human Right Mechanisms

In the international labour movement, the freedom of Association is a right identified under international labour standards as a right of workers to organize and collective bargain. Freedom of Association, in this sense, is recognized as fundamental human rights by a number of documents including the universal Declaration of Human Rights.⁶⁰

⁵⁸ . Ibid

⁵⁹ . Ibid

⁶⁰ . supara at note 7

The right of freedom of association is guaranteed and protected under the universal declaration of human rights. Article 20(1) states “every one have the right to freedom of peaceful assembly and association. Article 23(4) of the same human right instruments also states that “every one has the right to form and join trade unions for the protection of his (her) interest.”⁶¹

Article 22(1) of the international covenant on civil and politic right provides: “Everyone shall have the right to Freedom of Association with others, including the right to form and join trade unions for the protection of his (her) interests.”⁶²

Art 8(1) (a) of the International covenant on Economic, Social and Cultural Rights mandates state parties to the convention to ensure the right of every one to form trade unions and join the union of his (her) choice, subject only to the rules of the organization concerned, for the promotion and protection of his (her) economic interests.⁶³ The article further clarifies that restrictions may be placed on this right only in cases when such temporary restriction vital to national security interests or public order in a democratic society or when the restriction is for the protection of the rights and freedom of others. So the freedom of association of civil servants that we discuss here is not subject to restriction according to the above conventions. Rather, it is right to protect their economic interests.

The United Nations General Assembly (UNGA), Declaration on the right and Responsibility of individuals, groups and organs of society to promote and protect universally Recognized Human Rights and fundamental freedom (also know as the declaration for the protection of the human rights defenders) reaffirmed citizens right to freely associate with others especially for the purpose of working for the protection and realization of

⁶¹ .UDHR, Adopted and proclaimed by General Assembly resolution 217 A (II) of 10 December 1948.

⁶² .ICCPRs,.,Adopted and proclaimed by General Assembly resolution 2200A (xxI), of Mar. 23,1976

⁶³ ICESCRs,.,I Adopted and proclaimed by General Assembly resolution 2200A (xxI) of Jan. 3, 1976.

fundamental rights and freedoms. It likewise reiterated that the primary responsibility of promotion and protecting fundamental rights and freedoms lies with the state.⁶⁴

Pertaining specifically to the freedom of Association, Art- 5 of the General Assembly Declaration reaffirmed the rights to “(a) To meet and assemble peacefully”, “(b) Form, join and participate in non-governmental and intergovernmental organizations.”

Therefore, freedoms, of associations of civil servants are certified by these human right instruments, as basic or important rights of those workers.

3.2.2 ILO conventions protecting the the right to freedom of Associations

The ILO has highlighted the importance of freedom of Association in creating and enabling an environment of social dialogue, which in turn, stimulates a people-centered kind of development. The ILO operational Objective states a precondition for social dialogue are the necessary guarantees for freedom of association and collective bargaining in the international labour movement, the freedom of association is also a right identified under the international standards as a right of workers to organize and collective bargain⁶⁵ in the ILO convention (N_o -87) and (N_o-98), No 151 and others. The ILO convention (N_o -87), (N_o-98) N_o 151 are the three of the eight fundamental cores in international labour standards.

The freedom of Association and protection of the right to organize convention (c-87) protects the right of workers and employers to join or establish organizations and operate with out state interference or prior restriction.⁶⁶ The right to organize and collective bargaining convention (C-

⁶⁴ .supara at note 22.

⁶⁵ . supara at note 7

⁶⁶ . ILO, Freedom of Association and protection of the Right to organize convention (C-87)

98) Protects workers from anti-union discrimination, including the protections for forced membership into unions or forced resignation from union membership. It also guarantees equal protection of worker and employers organizations and protection from interference against one another.⁶⁷

The worker’s Representatives recommendation (R-143) protects trade unions representatives such as leaders, members, and other representatives elected by the workers organization, from any action that are harmful them, including dismissal on the ground of representing or being a member of a union or participating in union activities.⁶⁸

The termination of employment convention (C-158) through Articles 5(a) provides that membership or participation in “union activities outside working hours or with the consent of employer within working ours” shall not be considered a valid reason for termination.⁶⁹

Article 14(h) of the social policy (basic aims and standards) convention (C-117) aims for the abolition of all form of discrimination among workers. It states: art : 14(1) It shall be an aim of policy to abolish all discrimination among workers on grounds of race, color, sex, belief, participation in the negotiation of collective agreements.⁷⁰

For rural areas, the ILO has come with these conventions that contain provisions protecting the freedom of association. The plantation convention (C-110) provides the freedom of association through article 54, 62.⁷¹

⁶⁷. ILO, The Right to organize and collective bargaining convention (c-c-98)

⁶⁸. ILO, Workers representatives recommendation (R-143)

⁶⁹. ILO, The Termination of employment convention (c-158)

⁷⁰. ILO, Basic aim and standards (social policy) convention (c-117)

⁷¹. ILO, plantation convention (110)

The rural workers’ organizations convention (C-141) Provides in article 3(1), 3(2) and 4. The rural workers organization recommendation (R-143) Provides in paragraph 4 and 8(1) and (2) (a).⁷²

Regional human rights instruments that also protects the right to freedom of association are, European convention for the protection of human rights and fundamental freedoms and its protocols (Art.11), American convention on human rights (Article /6)and African charter on human and peoples Right (Article-10).⁷³

In addition, the Declaration of principles and criteria relating to the Freedom of Association in the Arab countries, which was formulated during the Arab civil society, affirmed the significance of this freedom in national development.⁷⁴ This all are conventions developed through The ILO Supervision for protection of the workers freedom of Association.

The declaration attested that this freedom is crucial to achieving sustainable human development, promoting citizens interest in public issues and enhancing democracy, democratic culture and strengthening civil society.”⁷⁵ Accordingly, the realization of this right works most favorably with in the frame work of democracy and the strengthening of its process and institutions. Therefore, this enhancing democracy and strengthening civil servants is absent in Ethiopia.

This restriction of freedom of Association is amount to against these international recognized instruments. Aside from other obligation of governments to respect and ensure workers right to freedom of association, the state, the origination or home countries of multinational and transnational companies are equally liable under international law. States that have ratified international human rights instruments,

⁷². ILO,The rural workers’ organizations convention (c-141)

⁷³. ACHPR, adopted June 27, 1981, entered in to force Oct. 21, 1986.

⁷⁴. Supara at note 7

⁷⁵.<http://www.i10.Org/unions.htm> \. (Accessed on January 2008)

particularly the international covenant of civil and political Rights and relevant ILO conventions, have placed upon themselves the duty to respect, protect and promote every person’s freedom of association. This duty includes ensuring that its citizens or workers right to exercise the freedom to association which includes the right to form and join workers’ unions.⁷⁶

This is because the right is briefly given by these ILO instruments on civil servants situation in the freedom of Association, pertaining particularly to their under representation in leadership levels. It gives suggestions on how these workers can overcome barriers to union participation and leadership and presents some achievements in this field.

3.3. Constitutional guarantee in the field of freedom of Association

In most countries constitution, there is no prohibition against the formation of freedom of association of civil servants. In almost all countries, neither the state nor any body else may prevent workers from setting up an association to safeguard and improve working and economic conditions or being a member of such association.

In most countries the member of association is not only protect against discrimination but also entitled to all activities guaranteed to the association as such by the constitutional guarantee of freedom of association. And have again these activities are protected from discrimination. For instance, in the federal republic of Germany case, the freedom to set up an association is called “positive” freedom of Association.⁷⁷

⁷⁶. Supara at note 7

⁷⁷. www-ilo.org/public/English/dialogue/active_learn_global/Freedom_2-htm. (Accessed on December 2007)

Freedom of Association could be individual or collective freedom of associations. Individual freedom of association focus on the rights of individual workers and employees while collective freedom of association is concerned the right of unions and employees freedom of association. It is generally agreed that whether individual or collective freedom of association would be useless if the association were not subject to constitutional quarantine.⁷⁸

In the federal Republic of Germany, in order to have constitutional guarantee, there is a criteria for identifying associations qualified for bargaining established by the federal labour- court, in addition to the self-evident implications of the guarantee of collective freedom of Association.

First the association has to be created to an indefinite time. This is the requirement of corporate structure. This means that the association must be organized in a way which guarantees its continuity even if members leave the association.⁷⁹

The second criteria, is an association is only accepted as a participant in a collective bargaining if it is independent from the opposite side. According to these criteria the association must be independent from the state and from political parties neither the state nor the political party is allowed to influence the policy of an association. This requirement dose not exclude that the political orientation of an association and a political party may be identical. This would be up to the autonomous decision of the association. Independence from state and political parities therefore means nothing else but guarantee of this autonomy.⁸⁰

⁷⁸. Ibid

⁷⁹. Ibid

⁸⁰.Ibid

The third condition is closely connected with the second one that members of association may only belong to one side, whether it is the employees or employers side. This is to limit as the top executive staff are not dominating the association. A basis of solidarity which extends beyond the scope of an establishment and relies on the coherence of external links is considered to be the best guarantee for independence.⁸¹

The fourth criteria focus on the inner structure of the association. Since associations act on behalf of their members, there should be guarantee that members are able to influence the association’s activities. This is why the requirement of democratic organization was established. Therefore, if these criteria were formulated with the establishment of association the constitution obliges the government to respect and ensure the rights of civil servants.⁸²

The federal democratic republic of Ethiopia also obliges that the government shall respect and ensure the right of civil service workers or government employees. According to the constitution, the government obliges to guarantee the right of every worker to form or set up Association to improve their conditions of employment and economic well-being.⁸³

The constitution quarantined these right of workers in article 42(1) state that Factory and service workers, farmers, farm labourers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their conditions of employment and economic well-being. This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests.

⁸¹.Ibid

⁸².Ibid

⁸³. The constitution of Federal Democratic Republic of Ethiopian proclamation N^o1/1994, Federal Neg. Gaz. 1st year N^o 1 (Art. 10).

(b). categories of persons referred to in paragraph (a) of this sub-Article have the right to express grievances, including the right to strike.

(c). Government employees who enjoy the rights provided under paragraphs (a) and (b) of this sub-Article shall be determined by law.

2. Workers have the right to reasonable limit of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays as well as healthy and safe working environment.

3. Without prejudice to the right to recognized under sub-Article one of this Article, laws enacted for the implementation of such rights shall establish procedures for the formation of trade unions and for the regulation of the collective bargaining process.”

Freedom of association is one of the democratic rights recognized by the FDRE-Constitution Article 31 of the constitution also states that “every person has the right to freedom of association for any cause or purpose. This constitutional right is implemented by the government or among the central function of the government, the function of protecting the people in their civil rights. People should enjoy all this rights to which as a member of society, they are justly entitled. The right of freedom of Association could be around the very life of a person and a part of personal liberty. Of course these are not a private property of any one. They are to be shared with others who exactly have the same rights.

In other words, individuals or a group of persons may enjoy these rights provided that their enjoyment shall not in any way unlawfully cause harm upon similar enjoyment of these rights by others. The source of these rights and freedoms are usually the universal declaration of human right, international human right covenants and humanitarian conventions by way of adoption. So this guiding principle being that human rights and freedoms arising from the nature of mankind are inviolable and

inalienable.⁸⁴ Therefore, the restriction of the right to organize is amount to against this democratic right, when we examine it relatively with the constitution.

The issue and right to freedom of Association of the civil servants were existed while preparing the draft for Proclamation N^o 262/94 and Proclamation N^o 515/20007. During the enactment of Federal civil service Proclamation N^o 264/94 the council of ministers at their 20th session was debated on this issue. Among people who strongly argue for the enactment of the right to freedom of Association of civil servants were between Ato Hasan Amdela (a ministry of labour and social affairs) and the chairman of the session Ato Tefara Walwa (Deputy prime ministers).⁸⁵ Ato Tefera states that regarding Freedom of Association of civil servants, there are two ideas in our country.

The first idea is that the right to establish Association of civil servants was still not exercised in our country by the predecessor of governments.

The second idea is that, if the right to freedom of Association of civil servants is allowed, may cause dangerous to the discipline and political movements of the country.

One side of the argument focused on the usefulness of the establishments of Association of civil servants, the other side of the argument oppose the enactment of the right to freedom of Association in to the prepared draft.⁸⁶ Ato Hasan Amdela briefly introduces as this right is guaranteed by the ILO. He also states that, even, not only the right to organize, but the right to bargain and negotiation with the government in order to discuss about their right and interests, in order to reach an agreement that is favorable to both employees and employers.

⁸⁴. The constitution of Federal Democratic Republic of Ethiopian proclamation N^o1/1994, Federal Neg. Gaz. 1st year N^o 1 (Art. 10).

⁸⁵. FDRE Council of ministers discussion made to approve the draft Proclamation N^o 264/94

⁸⁶. Ibid

This right is guaranteed by the ILO convention. Ethiopia is a member to this convention and Ethiopia ratified many human right instruments and include in to the constitution by was of adoption. Then he suggests that the government should protect for the civil right by implementing the constitution, the fundamental human rights and the ILO standards

The civil servants are not different from that of other factory workers. The ILO has the same view for both civil servants and other workers. The situation and the right to association of civil servants in many country of the world including many African countries were increasingly developed.

Therefore, those people states that almost all countries in the world and even in Africa, this right of civil servants is exercised except a few countries. These associations have a great Role in determining workers right and interests in those countries. Because of the usefulness of this association recently the World Bank forcing us to give the right to freedom of Association of civil servants.

The argument from the government side also introduces about their misunderstanding of ILO standards. They argue that our country is not at the stage of establishing or allowing such right of civil servants, but the ILO standards is for both developed and developing counties. The ILO is not residing for only developed countries to protect the workers right and interest.

The same argument is made while enacting Proclamation N^o 515/2007. They said that the issue of freedom of Association of civil servants needs further research.⁸⁷ They come with the reason that whether the establishment of the association is at national level or at the local side

⁸⁷. Merit, quarterly published by the public relations service of the federal civil service Agency, Vol. 12, No 2 June, 2007.

level and the usefulness of the association. But the usefulness of the association is important when we see relatively with the country that recognize and give such rights for their civil servants. In Ethiopia there is no genuine reason for not establishing association. Bossily the government is denied for this right of civil servants.

The starting point of any collective bargaining is the process of recognizing freedom of association to act on behalf of the employees affected. Recognition gives the civil workers organization a number of statutory rights, such as the right to information for collective bargaining purposes, the right to safety representatives for the organization activities etc.

Therefore, employers should have been legally obliged to recognize freedom of Association because it is already protected by the constitution and by the human right instruments and also by the ILO conventions that the employees should be represent by their representative. Moreover, in the next chapter, after I will discuss the concept of suspension and termination of employees, I will talk the Role of Association and the consequences of their absence up on individual workers.

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CHAPTER FOUR

FINAL TERMS OF EMPLOYMENTS AND THE ROLE OF ASSOSATION

Before we talk about final terms of employment (i.e. about suspension and termination of employment), it is better to with contract of employment.

4.1 Contract of Employment

Any contract of employment (contract of service) in principle shall be deemed to have been concluded for an indefinite period of time, both in labour law and the civil servants law.⁸⁸ However, there is a condition when a contract of employment may be concluded for specified period of time. In labours law, a contract of employment concluded for a specified period may be considered as a contract of definite period if the work of the employee falls in one of the conditions that are listed under Art. 10 of the labour Proclamation N^o 377/2003.

The parties may fix in advance, at the time of the stipulation, a final resolutely term to the contract. In this case the contract is said “of fixed duration”. So in labour law, lacking this final term previously converted by the parties, the contract is said to be “of indefinite duration”.⁸⁹

In case of civil servants, the contract of employment shall be deemed to have been concluded for an indefinite period of time.⁹⁰ Art.2 (1) of the Proclamation N^o 515/2007, states that civil servant means a person employed permanently by federal government institution. Actually this is not definition for a contract of employment of civil servants at all. It rather

⁸⁸. Federal civil service proc. Art 2(1), Federal. Neg. Gaz, 19th years no 15 proc. 515/2007, and labour proc Art. 9, Federal Neg. Gaz 26th year no 12 proc. No 377/2004

⁸⁹. Mahari Radae, teaching material on Employment law, AAU Faculty of law, April, 2008. (Unpublished)

⁹⁰. Federal civil service proc. Art 2(2) Federal. Neg. Gaz, 19th year no 15 proc. No 515/2007.

says a civil servants contract of employment are to be considered as made for indefinite duration. Thus, the “duration” is an element of the cause. The parties sign a contract of employment, or service because they want to be bound not only for a moment, but for a length of time.

Like that of a fixed duration, in case of labour law, there are a temporary civil servants employed in a government office, for a job which is not permanent in nature or where circumstances so require to a permanent position.⁹¹ Like that of permanent civil servants, the issue of temporary civil servants is not under the jurisdiction of administrative tribunals, rather subject to regular courts.

However, still there is a problem regarding these temporary workers. The proclamation recommends issuing detailed directives regarding rights and work conditions of temporary employees.⁹² But there are no details directives that regulate those employees. So their right and interests were left a side without protection. For this purpose it is better to examine the following practical cases decided by the administrative tribunals.

Federal administrative tribunal

Appeal files No 4921/99

August 24/99

Appellants: - Are Ato sulymanz Ahimd and Eleven people.

Respondents: ministry of Rural and Agriculture.

This is an appeal lodged to the federal administrative tribunal against the decision of the respondent on February 8, 1999, because the denied compensation required by the appellant.

⁹¹. Ibid

⁹². Ibid, Art. 22(3)

Facts: - *the facts, as presented by the appellant, are the appellant was disagreed with the decision of the respondent, because in memorandum of appeal written on march 13,2007,they state that as they were employed in the institution for five up to nine years and latter terminated without any legal ground.*

This is why the employees ask for compensation for the service they render for these last nine years, up on the termination. Therefore, the appellant prays to this court that, considering these facts, the decision of the respondent be quashed.

The respondent public authority defends by stating the following facts. The respondent states that the termination was based on the contract. Regarding the compensation, the law says nothing about temporary workers compensation for their service up on termination. This is why they do not get any compensation.

Issues: - *these being the arguments urged by each of the parties, the issue on which this court based itself to give decision is whether the temporary workers termination is lawful or not.*

Reasoning and holding of the court. *The administrative tribunal state that proclamation N_o 515/2007, excludes temporary workers and they were not under the jurisdiction of administrative courts. But the law, recommended that, until the agency issue directives, temporary employees were governed by the relevant Proclamation N_o 262/2002.⁹³ So according to this proclamation, Art 79(1) 24(7), 25(1) the administrative tribunal consults the ground of retrenchment of civil servants. Art. 83 of the same proclamation, states that any civil servants who have been retrenched under Art. 79 of proclamation N_o 262/2007, which is not entitled to pension allowance shall be paid severance payment. However, temporary employees*

⁹³ .Ibid, Art 94(2)

were not entitled to this severance pay in promotion to their service. So the administrative tribunal held that the scope of the law is limited to include those workers, to compensate for their service. So appellant has no legal support, however, the termination is unfair. So the decision of the respondent is confirmed. The detail of this case is annexed at the end of this paper.

Therefore, the above case show us the problems related to both law and practice of civil servants. With regard to law, the limitation of temporary employees who is not entitled to pension payment immediately after termination is denied of severance payment the law does not protect for those workers .The practical problem is that the law stipulates the legal grounds to terminate employees. As we observed from the above case, after the employee render their service for the nine years, their contract terminated. The public authority does not follow the exhaustive legal procedure to terminate those employees. Finally those workers were lost both their work and compensation for their service. So, I suggest that, for such problem, association, collective agreement and unity of employees are important to hobby for the improvement of workers rights and interest because association is powerful than individual employees.

4.2 Regular working Conditions

As we discussed above that the nature of the indefinite duration of the contract of service of employment is the sole legal basis of labour relations. However, there is a social need to regulate its content and to impose some limits on the original freedom of agreement .There are a working conditions to be taken in to consideration in the formation of contract of service. These working conditions are the minimum entitlements that a worker can expect. As we observed from the civil service legal rules currently enforces the freedom of the contracting parties to settle matters

relating to essential terms and conditions of employment by mutual understanding is, thus, restricted and the content of the contract of service they made is largely determined unilaterally by the employer.⁹⁴ The contract of service will be acceptable and valid so long as the parties do not contravene the minimum working conditions that law guarantees. So this minimum working conditions that the workers entitled under the law is our basic issue to discuss.

Under the civil servants law Proclamation N^o 515/2007, the condition of work has fairly wide definition Art. 2(11) states that “condition of work” means the entire field of relations between government office and government employee and shall also include probation employment hours of work, wage, leave, healthy and safety, compensation to employment in jury, dismissal, retrenchment and severance pay, disciplinary and grievance procedure and any other similar matters.

Thus, from this definition, we understand that, it is not exhaustive, but all entire relations between government offices and government employees. Therefore, here we will not discuss specifically each of that entire relation between employees and government office, but with only the short coming of the proclamation N^o 515/2007.

4.2.1 Probationary employment

Probation period is one of condition of work that relate to duration of contract of employment. The purpose of probation (i.e. Trial period) shall be to prove the competence of a newly appointed civil servant through follow- up of this performance.⁹⁵

The issue is the same for labour law, that, if an employment in which the parties concluded the contract for the purpose of testing the suitability of

⁹⁴. Supara at note 2, page 28

⁹⁵. Supara at note 3, Art. 20(1)

the person to be employed to a post.⁹⁶ But the difference is that, in case of labour law, the provision is not a mandatory .The employee may enter into contract of probation (if they wish) to test each other. They can avoid, if they wish, the existance of the stage of contract of employment. Hence, in case of labour law, probation contract is optional; it is not an essential element of contract of employment. If the parties agree to have a probation period, it shall not exceed 45 consecutive days.⁹⁷ During these 45 consecutive days, the employee has an absolute power to terminate the contract.

Under the civil service, the situation is different, in that the evaluation process is mandatory for permanent appointment of civil servants. The probation period is mandatory in the sense that every new employee should pass through the test and its length is specified by law and hence it is not subject to contractual bargain.⁹⁸ This does not seem the case under the labour proclamation. The period of probation of civil servant on the position of his appointment shall be for six months, provided however, if the performance result is below satisfactory, it may be extended for an additional period of three months.⁹⁹

This is what made civil servants completely far from that of private sector/ labour law. Because, in labour law it is expressly fixed that a final terms to the probation, that this period shall not exceed 45 consecutive days.¹⁰⁰ But in case of civil servants, in addition to this long period (period of 6 months), it may be extended for an additional period of three months. Unlike that of labour law, under civil servants the law does not strictly fix the period. It is essential to fix in advance a final term to the probation. However, it takes long; the extension of 3 moths is not fair. This is because

⁹⁶ . Labour proc. Art. 11 (11), Federal .Neg. Gaz. 26th year no 12 proc. No 377/2004.

⁹⁷ . Ibid, Art. 11(3)

⁹⁸ . Supara at note 2, page 28.

⁹⁹ . Supara at note 3, Art. 20(2)

¹⁰⁰ . Supara at note 9.

it will create diverse problems on individual employees. This conditional nature of probation under civil service, open a door to abuse individual civil servants right. To clearly demark the problem related to such issue, we shall see the following cases decided by federal civil service administrative tribunal.

Federal Administrative tribunals

Appeals file no 00525/2000

March 4, 2000

Appellant: 1. Ato Damto Tesama

2. Rael Jatema.

Respondent: (pleader) from ministry of defense

This is an appeal lodged to the federal civil service administrative tribunal against the decision of termination made by the respondent.

Facts: - *the facts as presented by the appellants that, the appellants were workers of ministry of defenses, undertakes their service with the close supervision of employer for the duration of more than nine months. After this long duration, the appellant asked a letter for permanent appointment, because the time to get information about their test of suitability was passed. But the respondent forced them to wait, because of that no person who tests their competence for the last duration. But after 10 months, they issued a letter that show their performance result is below satisfactory. Thus, being asking the letter, the appellant terminated without any reason. Then, they argue that as the evolution process is not done appropriately and it is a kind of abuse by the employers and the respondent has no sufficient reason to justify the termination, they required the court to decide in favor of them to reinstate them to their work.*

The respondent on his side came up with the fact that, the performance of the employees (appellant) result is below satisfactory, and this is the reason why the appellant terminated.

Issue: - *The administrative tribunal, after having examined the arguments of the parties, the core of the dispute here was whether the termination for the reason of evolution process is lawfully done or not.*

The court states that according to Art. 20(1) of proc. No. 515/2007 the purpose of probation is to prove the competence of a newly appointed civil servant through follow-up of his performance. This period is for six months. But the termination is not for the reason that the evolution result is below satisfactory. Because of this reason, the court holds that the termination is not based on law, and the court decided in favor of the appellants.

From the above decision of the employer we observed that problem related to both the law and the practice to implement the law based on the principle of extension for an additional period of three months. The long nature of period of probation opens way for the employer to abuse employment, and the individual rights of civil servant will be endangered.

While enacting the Proclamation No 262/2007, the council of ministers discussed and decided to reduce the probation period from nine months to three months.¹⁰¹ While amending the proclamation No 262/2002, by proclamation No 515/2007, the same issue was discussed to reduce, but nothing has been changed and they left aside to correct it.¹⁰²

4.2.2. The Normal working hours

By normal working hours what we mean is those periods in a day or in a week when the employee regularly renders service to the benefit of his/her

¹⁰¹. Supara at note. 3. Art, 20(2)

¹⁰². Merit, quarterly published by the public relations service of the federal civil service Agency, Vol. 12, No 2 June, 2007

employer.¹⁰³ Historically, determination of working hour was left to the parties bargain. An attempt to limit working hours by law was being held an interference of the state into private domain.

Through passage of time, however, it becomes a general practice to fix maximum hours of work by law and/or by collective agreement. In fact, limitation of maximum working hours became one of the most important concerns of labour laws of various jurisdictions. Actually, in 1919, ILO came up with a convention which embodied eight hours/per day as the normal working hours.¹⁰⁴

Ethiopia, for the first time, introduced a provision limiting working hours in 1964 through a regulation issued pursuant to proclamation no 210/63. It was then stated that normal working hours for employees under the civil service and labour law have slight differences. Under the civil service, it has been stipulated that “regular working hours of civil servant shall be determined on the basis of the conditions of their work and shall not exceed 39 hours a week”.¹⁰⁵ Under the labor proclamation, however, “normal hours of work shall not exceed eight hours a day or forty eight hours a week”.¹⁰⁶

In order to ensure the reliable application of this limitation, the law has further introduced additional safety values. The law declares that over time work is in principle prohibited. It is only in cases where exceptional circumstances expressly stated by law have occurred that over time work is allowed.¹⁰⁷ Even if conditions for overtime work are met, the rate of payment for over time work is being made expensive partly to discourage the employer to require overtime work. (Art 68 of Labour Proclamation).

¹⁰³ . Supara at note. 2, page 40

¹⁰⁴ . <http://www.Ictur.Labournet.Org/>(Accessed on January,2008)

¹⁰⁵ . Supara at note 3, Art. 32

¹⁰⁶ . Supara at note 9. Art, 61 (1)

¹⁰⁷ .Supara at note 3. Art 34

But in case of civil servants, the law recommends the agency to issue directives on the conditions of over time work, amount of payment and compensatory leave. Under the labour law, an employer who “cause workers to work beyond the maximum working hours set forth by or contravenes in any manner the provisions relating to working hours is liable to fine.¹⁰⁸ Under civil servants, there is no laws that exposé such fine liability. But the law grants that, any civil servant who has worked over time are entitled to compensatory leave or overtime pay based on his performance. And such conditions of overtime work, amount of payment, when the hours of work begins and ends were determined by the regulation.

Then in principle the regular working hours of civil servant is be determined on the basis of the conditions of their work, but it should not exceed 39 hours a week. When we come to the practice, it is far from this fact, because there are employees who work 72 hours per a week with out any compensatory leave or payment. See the following cases decided by Federal Administrative tribunals.

Federal Administrative tribunals

Appeals file no 4976/99

December 5, 2000

Appellants are – Debele Disasa and other five persons

Respondents._ Ethiopian Quality and Standard Authority.

This is an appeal lodged to the federal administrative tribunal against the decision given by the respondent on the letter no 4/27/37/24/99.

Facts: *in the appeal written on July 19/1999, the appellants are guardian, employed, 72 hours in one week and 48 hours in the other week. Because of this, the appellant required compensatory leave or overtime pay based on*

¹⁰⁸. Supara at note 9. Art 184(1) (a)

their performance. They present their inquiry to the grievance handling committee. The grievance handling committee conducts and investigates the grievance inquiry and submits recommendation to the general director of the institution. The general director approves the decision of the committee and asked the FCSA that those workers should have been paid overtime pays rather than compensatory leave. The FCSA denied both compensatory leave and pays, on the base that there is no regulation which deal with such right and work conditions of civil servants. So the appellants argue that the reason brought by the agency to limit/or restrict the right of workers is contradict with the law and they present all evidence that support them.

The issue: - *is that whether the appellant is entitled to compensatory leave, pays or not. The court examines and decided on the case brought to it. The court holds and conform the decision of the agency. Finally those employees are restricted and left without compensatory leave or pay benefits.*

From this we can observe the existence of such practical problem. The law sate that, however, the hours of work is determined on the basis of the conditions of their work, and it should have not exceeded 39 hours per week. The law exactly indicates the regular working hours which are required to be observed by the employee. It specified the basis up on which hours of work are expected to be observed. But if the employee because of the conditions of their work, employed beyond this expected time, entitled to compensatory leave or overtime pays

So the practice of the employer is not justified because they employed two times as much the regular working hours. The detail of this case is annexed to this paper.

Those individual workers were affected by the employer. This is why they have no power to decide up on their interest and conditions of work.

Association is power full to insure and influence such unilateral decision and practice of employer. In addition to this, there are other many conditions of work, that determined unilaterally by the government (Such as, Retrenchment policy, Remuranation of the civil servant and etc.).

4.3 Suspension and Termination of employees

As the main element in a contract of employment has been the consent of the parties to the contract, they are at liberty to modify the terms of their contract and to suspend or terminate it and when the need arises so long as their consent have been extremely and clearly manifested as required by the law.¹⁰⁹ While the parties are contractually engaged, it may be possible that the right and obligations of the parties may be suspended for different reasons. Employment relations under the labour law and under the civil service have their own peculiar features. Relatively speaking the labour proclamation has had detailed provisions pertaining to suspension as opposed to the federal civil service proclamation.

2.3.1. Suspension

Suspension is a situation where the employee will not be required to provide service to the employees and the employer will not be obliged to pay wages and other benefits to the employee. Therefore, suspension is a gray area in the sense that it has attributes of termination on the on hand and of employment relation on the other hand.¹¹⁰ In the labour proclamation a contract of employment may be suspended for a variety of reasons. Those are: - voluntary arrangements of the parties, societal interest, due to reason beyond the control of the employer and disciplinary suspension.¹¹¹

¹⁰⁹. Supara at note 2, page 22.

¹¹⁰. Ibid

¹¹¹. Ibid, page 23

2.3.1.1 Voluntary arrangement of the parties: is when the employee and employer agree to suspend their contractual relation for some time. After the expiry of this time, however, the parties will be reinstated to their previous employment relation.

2.3.1.2 Societal interest: - Is suspension for the benefit of the society, such as election for trade union, hold office at kebele, or parliament, national service and etc. the Labour Proclamation has come up with solution that the employee will regain his employment. Under the civil service, the law is silent.

2.3.1.3 The other is due to reason beyond the control of the employer: - such situation will have an impact of temporary cessation of activities. It is subject to revisions by the ministry of labour and social affairs or regional labour and social bureau.

2.3.1.4 Disciplinary suspension: - one of the prerogatives of an employer is to take disciplinary action against an employee. The employee on its part is required to render faithful service to the employer. Failure to observe such faithfulness may subject the employee to disciplinary action. In this sense until investigation is completed, it may be appropriate to suspend the employee so that investigation could go smoothly.

With this purpose in view, the labour proclamation delegated collective agreements to deal with this matter. Nevertheless, disciplinary suspension is not to exceed one month in duration with in which time the employer should complete its investigation to arrive at decision. Unlike the civil service, as the labour proclamation now stands, disciplinary suspension is not within the unilateral power of the employer, it is rather to be determined by the employer and the trade unions (i.e. collective

agreement). Besides its length is not even left to collective agreement; it is rather fixed by law and can not exceed one month.¹¹²

Thus, under the civil service law, disciplinary suspense is within the sole prerogative of the employer. Unlike that of the labour proclamation, under the civil servants, the only ground for suspension is disciplinary suspension. It is the first resorts to take disciplinary measures. Under Art. 70(1) of Proclamation N^o 515/2007, some of those grounds is stated. Those are any civil servants will be suspended from duties, if it is found that:-

- ❖ He/she is concealing the evidence related to the alleged offence
- ❖ He/she may commit additional offence on the property of the government institutions.
- ❖ The alleged offence is so grave as to negatively affect the public trust towards civil servants.
- ❖ The disciplinary offence may lead to dismissal.

This is the only ground of suspension of civil servants. The law is silent about other suspension of workers such as societal interest, we described in case of labour law above. Under the civil service law, its length could also be as long as two month. Thus, under the civil service law disciplinary suspension is investigated and determined with in the unilateral power of the employer (government). The Labour Proclamation delegated collective agreements to deal with the matter.¹¹³ Therefore, collective agreement plays a great role in determining the workers’ rights and interests. Under civil service such body (i.e. civil servants association) is not recognized to give protection to individual workers.

There fore normally as soon as the duration for suspension expires, the employee will be reinstated to his previous employment. The problem is

¹¹² .Ibid, page 24.

¹¹³ . Supara at note 9. Art 27(4)

that, for instance in case of disciplinary suspension, if the outcome of the investigation shows a serious misconduct attributable to the employee, the suspended employee may be terminated. But what happen if the investigation shows serious misconduct attributable to employer? The following case is the best example to point out such problem.

Federal civil service administrative tribunals

Appeal files No 4909/1999.

February 28, 1999.

Appellants: W/r Dinber Galaw

Resonant: Ato Asefa Gasese (pleader fom the Idigate Legolmasoch School).

The present appeal is lodged before the administrative tribunals against the decision of suspension made by the institution.

Facts: - *the facts as presented by the appellant are, he is suspended from his work and salary for more than a month. Because of this unlawful suspension made by the employer the appellants family endangered and he required the court to quash the decision of the respondent and to reinstate to his work.*

The fact presented by the respondent on February 20, 2007, is that, the committee did not complete the investigation for the alleged misconduct of the employee. Thus, it is appropriate to suspend the employee so that investigation will go smoothly. If the appellant is reinstated to his previous position, it was feared that he may obstruct the investigation by concealing evidence for the alleged offence. This is why the duration of the suspension is extended.

Issues: - *the administrative tribunal, after examining each side of argument, framed an issue as whether the suspension is lawful or not.*

The administrative tribunal's states the legal ground of suspension of any civil servants is exhausted under Art. 70(1) (a-d) of proclamation No.

515/2007. And the court through its reasoning, reached on the maximum period of suspension of civil servants from his duty and salaries. The maximum period is not exceeding two months. But the suspension is made for the maximum period of more than two months. Finally the administrative tribunal held that the suspension made by the respondent is unlawful. So the decision of the institution is reversed.

Therefore, from the above case, we can observe the existence of the problems related to practice in implementing the law. In case of civil service, unlike that of labour law, the maximum period of suspension is two month. The employer using this long condition of period of suspension abuse the employment and the employee is always affected. Therefore, both the long nature of period of suspension and practice is not fair and justified. Such long duration of suspension and unlawful practice of employer should be negotiated through collective agreement or association.

Under the civil service, in every decision of the court, question of costs, compensation and other benefit is not accepted. Under labour proclamation, such issue is delegated to collective agreement to deal with the matter. Therefore, I suggest that, under civil service, the existence of association is necessary to protect individual employees.

4.3.2. Termination

The law governing termination of employment occupies a central place in modern labour law. The overwhelming number of litigated disputes of employment also arises out of termination of employment relationship. Termination is nothing but to put an end, to cease contract of employment.¹¹⁴ Both labour law and Federal civil service proclamation spelt out grounds of termination in their respective regimes of

¹¹⁴. Blacks law Dictionary

employment. Under the labour law, categories of grounds of the termination are stated in Art 24 up to Art 32 of labour proclamation.

Under the civil service law, the followings are the lawful grounds for termination of employment.

Resignation (Art.78), Termination due to illness (Art. 79), termination on grounds of Inefficiency (Art 80), Termination due to force majeure situation (Art.81), termination due to nullification of employment (Art 83), termination of service on Disciplinary Grounds (Art.84), and termination on the Ground of death (Art. 86)

Those are the lawful grounds of termination of employment under the civil service law. Once a contract of employment is terminated in accordance with the stipulation of the law and the parties are separated for good, there will be some consequences which will follow the termination. Those are certificate of service, payment instead of unutilized annual leave, severance payment, compensation and period of limitation.

Certificate of service is the document to be issued by the employer which testifies how long the employee had been employed at the employer; the position he/she held; and the wage he/she was earning while employed.¹¹⁵

In this connection, Recommendation N^o. 119 of the ILO stated that “nothing unfavorable to the worker should be inserted in such certificate.¹¹⁶ Under the civil service, proclamation N^o. 267/2002 required the inclusion of reason for termination in the certificate. However, this has been deleted with adoption of proclamation No. 515/2007 (compare. Art 82 of proc. N^o 262/2002 with Art 87 of proc. N^o 515/2007). Hence, even an employee whose contract of employment was terminated due to theft or breach of trust is entitled to “clean” certificate of service.

¹¹⁵. Federal civil service proc. Art. 87, Federal Neg. Gaz., 19th year no 15 proc. No 515/2007 and Labour proc. Art. 12{7}, Federal Neg. Gaz., 26th year no 12 proc. No 377/2004}.

¹¹⁶. ILO, recommendation, Art. 8{2}{R.No. 119}

Payment instead of unutilized annual leave; in principle it is prohibited to convert annual leave into cash.¹¹⁷ However, if the contract of employment is terminated prior to the utilization of the annual leave, the employee is entitled to his pay, for the leave he has not taken.¹¹⁸

As annual leave cannot be postponed for more than two years, the payment for this cannot be in excess of two years annual leave converted in to cash.¹¹⁹ This is what the law stipulates both in federal civil service proclamation and labour proclamation. But under federal civil service, the practical implementation of the law has not smoothly gone. For this purpose, look at the case cited under section 4.2.2 will be a good proof.

Thus, from this case, we observed that the employee denied for either compensatory leave or pay for the leave he/she has not taken. In connection with this the law grants certain amount of paid leaves in the form of annual leave is to enable an employee get rest with payment and resume work with renewed Strength there after. Thus, the implementation of the law or the practical application is absent in the federal civil service. Therefore, association is important to ensure this right and interest of the federal civil servants.

4.4 Employment Injury

Employment injury could be categorized in to two. They are either occupational accident or occupational disease.¹²⁰ Occupational accident is any organic injury or functional disorder sustained by an employee. Occupational disease on its part is any pathological condition whether caused by physical or biological agents which rises as a consequence of the type of work performed by the employee or the surroundings in which the employee is obliged to work.

¹¹⁷.Supara at note 3Art. 36{3}

¹¹⁸. Ibid

¹¹⁹. Ibid, Art. 39(1)

¹²⁰. Ibid, Art. 47(1)

Nevertheless, occupational diseases do not include endemic and epidemic disease which is prevalent in the area where the work is done.¹²¹ The extent of disability and diseases caused by an employment injury shall be determined under art 24 of civil servant pension proclamation No. 345/2003.¹²²

The assessment of the employment injury under Art 28 of the public servant’s pension proclamation No. 345/2003, apply for implementation of permanent disablement. The assessment of employment injury shall be assessed by authorized medical board in accordance with the schedule to be issued pursuant to art 24 of the proclamation No. 345/2003.¹²³ The medical board shall assess the extent of employment injury based on the directives to be issued by the authority.¹²⁴

The problem is that the authority does not organize the medical board that determines the extent of employment injury and the degree of incapacity.¹²⁵ If the appropriate medical board is organized, the authority, in consultation with this appropriate organ, issue schedule which lists, the occupational diseases and the extent of incapacity schedule. Because of the absent of this appropriate organ and the schedule which lists occupational disease, both occupational disease and incapacity of individual employee is determined by ordinary physicians, rather than medical board. In connection to this problem, we shall examine the following real cases decided by federal civil service administrative tribunals.

Federal civil service administrative tribunals

Appeals file No. 00531/2000

April 9, 2000

¹²¹ .Ibid, Art. 47(3)

¹²² .Public servants person proc. Art 28, Federal Neg Gaz ,8th year no 65 proc. No 345/2003.

¹²³ .Ibid, Art. 28(2)

¹²⁴ .Ibid Art. 28(1)

¹²⁵ .Ibid Art. 28(2)

Appellant: Ato Brehanu Yirdaw

Respondent: National registration library Agency.

This is an appeal lodged to the Administrative tribunal against the decision of the institution letter written on November 5, 2000.

Facts: *The fact is presented by the appellant that the respondent depending on the ordinary physician medical determination, without the decision of appropriate medical board decided that, the appellant is unable to work permanently. The respondent, first, when the appellant transferred to another position, did not inform, about the lowering grade and the unavailability of vacant position of the same grade, but without the willingness of the. Finally, as the result of this Medical certificate given, the respondent restricts the base policy for periodical increment authorized for a grade of class.*

The respondent present the fact that, the appellant was deriver, and so that, unable to carry out the function of this position because of sight problem provided and approved by medical certificate. This why the appellant transferred to other suitable position and restricted the periodical increment pay authorized for grade of class.

Issues: *Depending on the above fact, the issue on which the court bases itself to give decision is whether the restriction of salary pay for periodical increarment is lawful or unlawful.*

The court states that, the incapacity of the appellant was approved by provided medical certificate. So the administrative tribunal holds that the restrictions of the salary increment is lawful and approve the decision of the respondent.

The problem is not whether the salary increment is lawful or not, but whether the provided medical certificate is lawful or not. Because the law is very careful in determining the extent of incapacity of employees. The

assessment of incapacity should have been made by the medical board.¹²⁶ Even when it deems necessary the authority can refer the assessment to other medical board for further evaluation.¹²⁷ Therefore, in the above cases the process to determine the extent of incapacity is not based on a transparent procedure, as the law provides .There is no the schedule which lists occupational diseases, extent and degree of incapacity. The recommendation made by the law to issue the schedule and to establish the appropriate organ (i.e. Medical board) is absent. Not only the absent of the medical board and the incapacity schedule, but there is a wide problem with related proclamation of civil servants, which expected to be ensured by the association.

Art. 11 of social security agency Re-establishment proclamation talks about social security appeal tribunal. The designation of member of the tribunal is appointed by the government. They need not to have legal knowledge. This appointed tribunal may reverse, vary or conforms decision of the agency against which appeal are taken.

The decision of the Tribunal is final and conclusive.¹²⁸ The federal civil service commission commissioner, at the same time, chairperson of the board. Not only chairperson, but also in the decision passed by the tribunal, has a casting vote.¹²⁹ Therefore, how and to what extent fair is the law in this respect? How the merely appointed tribunal, without any legal knowledge, passes fair and justified decision which the appeal is to be taken? But if associations are there, they expected to improve such unilateral decision of the employer and the ordinary person being an appeal tribunal.

4.4. The role of Association

¹²⁶ .Ibid.

¹²⁷ .Ibid Art. 28{3}

¹²⁸ .Social security Agency Re-establishment proc.Art.11(5) , Federal Neg Gaz ,29th year N^o 31 proc.N^o 495/2006

¹²⁹ .Ibid, Art. 11(6)

It must be understood that formation of association is not an end by itself. It is in view of defending and furthering the interest of collectivity that association is mainly established. Thus, the issue of Association, collective bargaining and collective agreement are important concepts in unionization.¹³⁰

As we examined from the practice of different countries employees association plays a great role using some instrument (i.e. Negotiation, conciliation/ Mediation, and strike) to improve workers right and interest.

4.4.1. Negotiation

In the preparatory work to convention No. 151 (1978) the interpretation of the term “negotiation” was accepted as being “any form of discussion, formal or informal that was designated to reach agreements”. The term “negotiation” being deemed preferable to “discussion”; this did not emphasize the need to Endeavour to secure agreements. In this respect, convention No. 151 provides in Art.5 that “public employee’s organizations shall enjoy complete independence from public authority “so this machinery and procedures should be designed to facilitate bargaining between the two sides, leaving them free to reach their own settlement.

Countries having separate civil service labour relations act (like Canada-Federal jurisdiction) have detailed statutes setting out the negotiation through bargaining councils or national joint councils through which the state employer and staff representatives arrive at agreements.¹³¹

Some countries that had previously restricted Freedom of association have changed radically towards direct collective participation of civil service employees through their union. In New Zealand, 1 may 2000 saw the signature of an agreement between the minister of state and the civil service association which will: - *Enable employees to collective participate*

¹³⁰. Supara at note 17.

¹³¹. Ibid

*in the management of their workplace to the extent possible in the civil service and recognizing activity of association.*¹³²

In General, it could be said that the last decade has seen a movement away from the concept of government as a sovereign employer and determiner of pay and other terms of employment to a more consensual approach, reflected in statutory recognition of rights to negotiation in place of the earlier, restricted rights to consultation. The institutional negotiation of the broader approaches can be seen in the wide Variety of social dialogue arrangements.

So negotiation, is the other exhaustive of employees, since the system restricts the essential right available to workers to defend their economic and social interest. The associations also envisage the establishment of joint or independent body responsible for examining rapidly and without formality the difficulty raised by a party. Thus, Negotiation is important, since the legal position naturally does not satisfy the employees who continue to demand the right to negotiation with authority in line with the position of employees.

4.4.2. Conciliation/Mediation: In large number of countries legislation stipulates that, conciliation Procedures must be exhausted before strike may be called.¹³³ The sprite of these provisions is compatible with Art. 4 of convention N^o 98, which encourages the full developments and utilization of Machinery for the voluntary negotiation of collective agreement.

When Conciliation and arbitration are voluntary account, it should be taken of Art. 7 of the voluntary conciliation and arbitration Recommendation, 1951(No 92) which states that no provision of this recommendation may be interpreted as limiting in any way, what so ever,

¹³² <http://training>. It ci lo. It/i15/cD-use-Int-Law-we b/ Additional library/ English/ (Accessed onDecember,2007)

¹³³ .Ibid

the right to strike”.¹³⁴ Through this mechanism association of employees serve only to strengthen their determination. This demand is always rejected by the public authorities, acting on the basis of the principle of unilateral determination of employment conditions. But if the association is strengthened, and when there were the conflict arises and the balance of power was unfavorable to the authority, the employer consented to enter in to an agreement with the employees association representing public employees, putting in to effect by the normal legal methods.¹³⁵

4.4.3 The Right to strike. The strike action, which is the most visible form of collective action in the event of a labour dispute, is often seen as the last resort of workers organization in the pursuit of their demands. As a basic principle, from its very earliest days, during its second meeting, in 1952, the committee on Freedom of Association declared strike action to be a right and laid down the principle underlying this right, from which all others to some extent derive and recognize the right to strike to be one of the principal means by which workers and their associations may legitimately promote and defend their economic and social interest. ¹³⁶

The committee on Freedom of Association has recognized that strike action is a right and not simply a social act, and has also made it clear, it is a right which workers and other organizations (such as civil servants Associations, Trade union} are entitled to enjoy.¹³⁷ The ILO instruments are the primary sources of law in this context, but the right to strike is also recognized in several other international and national instruments and the practice. Art 1 of the abolition of Forced Labour Convention, 1957

¹³⁴. ILO, voluntary conciliation and Arbitration Recommendation, 1951(R. no 92)

¹³⁵. Supra at note 45.

¹³⁶. Ibid.

¹³⁷. Ibid.

(No. 105), Art 4, 6 and 7 of the voluntary conciliation and Arbitration Recommendation, 1951 (No 92), Mention strike action, albeit indirectly.

However, several resolutions of the international labour conference, regional conferences, refer to the right to strike, its exercise as a guarantee of workers. Art 8(1) of the international covenant on Economic, social and cultural Rights provided that the states party to the covenant undertake to ensure the right to strike provided that it is exercised in conformity with laws of the particular country. An examination of national legislation and practice shows that the manner and extent to which the right to strike is recognized.

Our constitution also recognized in Art.42 (1) (b) stating that workers have the right to express grievances, including the right to strike. Therefore, an association plays a great role through bargain council between state employer and staff representatives to arrive at agreement. Since the association is a powerful they doubtable ensure the workers right through negotiation, conciliation and sticking as the last resort.

Conclusion and Recommendations

Conclusion

In this paper, an attempt has been made to raise issues concerning Ethiopian civil service. The civil service labour relation currently is in progress and their importance in the context of present socio-political and economic changes has been stressed. The civil service labour relations have undergone profound changes in many countries over the last several decades. There has been a considerable growth of association membership and militancy in the public service as well as significant shift from unilateral determination by the government of the condition of employment of civil service employees to bilateral mechanisms that allow civil servants in determining these conditions.

The paper has attempted to address in the historical parts, as the civil service designates the body of people employed in the civil administration of government. The establishment of modern civil service is closely associated with the decline of feudalism and the growth of national autocratic states. Owing doubtless in part to the spoils system so strongly established, in the Jacksonian era, the United States lagged far behind other nations in standards of civil service competence and probity.

In Ethiopia, the development of labour relations, have been very low and slow development. For the civil service, aspects of historical development constituting legal documents such as Order No. 23 of 1961” together with the Regulation No. 1/62”, and Federal civil servants proclamation No. 262/2002, and federal civil service proclamation No. 515/2007, appears to be important.

Currently, the Ethiopian societies’ attitude towards labour and labourers has been very discouraging, because the basic reasons behind the weakness of the civil service seem not to have been properly articulated

and diagnosed. The preconditions for the reform measures seem underdeveloped, whereas those counties that are following the “new public management” are using it to improve their already well-developed administration system. But in Ethiopia, where an adequate system is entangled with problem such as restricting Freedom of association, poor civil service pay and compensation system, lack of trust that, it will be wishful thinking to implement the law.

The paper has attempted to address that, in the international labour movement, the Freedom of association is a right identified under international labour standards as the right of workers to organize and collective bargain. Freedom of association, in this sense, is recognized as fundamental human right by a number of documents including the universal declaration of Human Rights and International labour organization conventions, which were the core international labour standards. Therefore, the Freedom of Association and related right are critically important for civil servants who play a key role for their members as organizers and activities in securing and realizing the entire spectrum of human rights.

In connection to this and the absence of the Freedom of association, which is the most visible form of collective action of civil servants, the civil servants faced practical problems. The research attempts to address some real cases that show the diverse problem of civil servants.

Therefore, a writer of this paper believes that to draw to the attention of the federal civil service agency the commitments they undertook to observe core labour standards. In many countries in the word, the civil service employees are now highly organized to reduce unilateral determination of the employer.

The establishment of disputes arising in connection with the determination of terms and conditions of employment shall be seen as may be appropriate to rational conditions through independent and impartial machinery, such as negotiation, mediation/conciliation established in such manner as to ensure the confidence of the parties involved. Therefore, this mechanism may reduce the practical abuse of employment and the unilateral determination of employer about the right and the work conditions of employees.

Recommendation

1. Though Ethiopia has been a member of the ILO since 1963, she had to as member to ILO convention and recommendation, implement the convention and the recommendation made by ILO. States that have ratified international human rights instruments, particularly the international covenant of civil and political Rights and relevant ILO conventions, have placed upon themselves the duty to respect, protect and promote every person’s freedom of association.
2. As this juncture, mention should be made as to “any international agreement ratified by Ethiopia in an integral part of the law of the land “Art 9(4) of the FDRE-Constitution. As of 2006, Ethiopia ratified 21 ILO conventions. So the government of Ethiopia must implement every right that provided by the ILO conventions and Recommendations. Denying employees from forming association was in contravention of the convention to which Ethiopia has been a party.
3. Now what the FDRE constitution grants “every person has the right to freedom of association for any purpose”{ Art 31}, Freedom of association is not any longer at the mercy of the legislature or the executive organ. The right of labours to form association is also expressly stated in the constitution. (Art 42).

As regard the Formation of association for civil servants, however, the issue is not yet settled. The FDRE constitution provides that government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form association to improve their condition of employment and economic well-being (Art 42 (1)).It, however, further provided that “government employees who enjoy the rights mentioned here in above shall be determined by the law (Art 42(1) {c}). Even though such stipulation was stated under the federal

constitution adopted in 1995, the anticipated law to wards enabling government employees to form association is yet to come. So the writer suggests that the law that determines such right should be enacted.

4. Above all, of course, the lack of labour protection has adverse consequences on workers and their families. At the same time, however, the absence of workers, right have negative impact on society generally. Thus, the writer of this paper, after observing the practical implementation of the law, recommends that; the establishment of association will improve the following A. the unjustified nature of Art. 20 of period of probationary employment, in a manner for protect for workers.
 - A. The practical implementation of the working hours under civil service which is not based on the law. The 72 hours employed per a week without compensatory leave or compensatory pay. The agency should implement the exact regular working hours.
 - B. Negotiate for the absence of the appropriate organ (i.e. medical board) who determine the extent of employment Injury and the schedule which list; the occupational disease and extent of capacity.
 - C. Negotiate with the Agency to establish the social security appeal tribunal with the appropriate legally appointed person to reduce the monopolized power of the Agency.
 - D. Negotiate with the Agency to reduce the unilateral restructuring of the civil service, execute without genuine consultation of civil servants unions.

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