INTERNATIONAL STANDARDS AND AUTHORIZATIONS OF LABOR INSPECTION IN AGRICULTURE IN CASE OF TERMINATION OF EMPLOYMENT RELATIONSHIP

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ARTICLE INFO

Review Article

Received: 25 February 2023

Accepted: 20 March 2023

doi:10.59267/ekoPolj2301323R

UDC 006.323:331.108.2

Keywords:

labor inspection, international standards, termination of employment, agriculture

JEL:J43, J80, K31, K42

ABSTRACT

Agricultural work is the oldest form of work, but the rights of agricultural workers are still not sufficiently protected, especially if their legal position is compared to that of employees in other branches of the economy. One of the tools for improving the legal protection of farmers is through the work of labor inspection, as an important element of control over the application of the relevant legal regulations. Even though the legal status of employees in agriculture has seemingly experienced some normative progress, the situation is unfortunately still far from being ideal, especially regarding the protection of their rights in the employment relationship and the manner in which those rights are exercised in practice. In this regard, this paper will address universal international standards in this area and the compliance of domestic Serbian legislation with the relevant conventions and recommendations of the International Labor Organization. Additionally, a particular focus will be placed on protecting agricultural workers against illegal dismissal.

Introduction

Labor inspection is a vitally important instrument of state supervision of the application of labor-related regulations. It is through the operation of labor inspection that working conditions are improved and the protection of rights from the employment relationship is ensured. The employment relationship is characterized by the subordination of the employee to the employer, so in order to protect the rights of employees, there is a need for state to intervene through the action of the labor inspection. The labor inspection is a powerful and quality instrument for the effective implementation of policies in the field of labor and safety at work (Rozić, Mehmedović, 2019: 848). In addition to the direct supervision of the application of regulations in the field of work, administrative protection of the right of employees to legal and dignified work is achieved through

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inspection supervision (Marković, 2016: 216). Labor inspection actions serve both as a preventive and corrective tool. The preventive role is reflected through the control of subjects on the labor market in a country, supervision over the implementation of laws and other acts regulating labor relations and working conditions, and through monitoring the actions of employers and employees in their application. Simultaneously, the corrective measures of labor inspection are rendered especially in the possibility of issuing an injunction for the elimination of observed irregularities. Those powers also play a certain retributive role, e.g. when sanctioning employers due to non-compliance with the rules and standards of the labor market that are prescribed by the state with its imperative norms. Where necessary, and often as a last resort, inspectors can use their enforcement powers and take formal enforcement action to achieve compliance with the law (Casale, Fasani; 2012: 3). These powers also affect the position of employees, especially in the case of termination of employment because they affect the postponement of the execution of the employer's decision on the termination of the employment contract by order of the labor inspector, which will be discussed in more detail in this paper.

Materials and methods

By applying the normative method, we observe the accordance between international standards on labor inspection and compliance with domestic legislation. The emphasis will be on inspection supervision in the field of agricultural activity. By comparing domestic regulations in the realm of labor inspection, we will determine labor inspection's concept of organization and its powers. The work is based on the analysis of positive regulations, as well as theoretical concepts of labor inspection.

International Standards on Labor Inspection in Agriculture

When we talk about international standards in the field of labor inspection, we should first mention ILO Convention No. 81 on labor inspection in industry and trade from the year 1947. The task of labor inspection is hereby defined to ensure the implementation of legal provisions related to working conditions and the protection of workers while performing their work, providing professional information and advice to employers and workers on the most effective ways of complying with legal regulations, as well as informing the competent authority about deficiencies and abuses. In Article 3 of Convention No. 81, the contracting states are called upon to protect all categories of workers, including vulnerable groups of workers. With the aforementioned convention, the labor inspection was placed under the supervision and control of the central authority, from which the conclusion can be drawn that its orders and instructions have to be obeyed. However, the aforementioned provision is considered to be the cause of certain problems due to its interpretation and application, especially about the organization of labor inspection and its relationship with other authorities. Moreover, Convention No. 81 urges the state to ensure a sufficient number of inspectors, their training and other conditions conducive to successful work. The powers of inspectors are thus prescribed -

they are allowed to come freely and without prior notice at any time of the day (or night) at the workplace that is the subject of supervision. Furthermore, inspectors can issue orders with the aim of eliminating irregularities and immediate danger to the health of workers. The mentioned provisions of the Convention represent a great step forward in terms of improving rights from the employment relationship, and working conditions, through the supervision of labor inspection. But this convention refers primarily to workers in industry and trade, for which reason the need for a new convention that will pay special attention to workers in agricultural activities has emerged.

Therefore, related to the topic of this paper, the ILO Convention No. 129 on labor inspection in agriculture, which was adopted in Geneva in 1969 and ratified by Yugoslavia in 1975 (Official Gazette of SFRY No. 22/75), stands out as the most important. Convention No. 129 furthermore confirms the provisions of the above-mentioned Convention No. 81 stating a special adaptation to the working conditions in the field of agriculture, bearing in mind the specificity of that field of work. Namely, the adoption of this convention was conditioned on the fact that the general regulations in this area are insufficient to protect farmers' rights and that there is a need to adapt the normative standards to the working conditions in that area of economy, as well as to the working hours of agricultural workers and the distinctly seasonal nature of agricultural work. It is particularly important to note that Convention No. 129 enables countries, that have ratified it, to entrust labor inspectors with advisory or control functions in their national laws, in order to control the living conditions of agricultural workers and their families (Article 6, paragraph 2). This shows the intention to improve not only the working conditions, but also the living conditions of farmers and their household members through the actions of labor inspection. Furthermore, the Convention prescribes the need for the work of inspectors to be such that they are guaranteed continuity in their work, and "independence from the change of government and inappropriate external influences" (Article 8, paragraph 1). With the mentioned provision, significant progress was made in the field of guaranteeing the impartiality of labor inspectors, their professionalism, expertise, and the prohibition of other authorities to interfere in the decisions of labor inspectors. Bearing in mind the large number of agricultural enterprises and employees in that field, the Convention stipulates the obligation of states to provide a sufficient number of inspectors in order to effectively supervise the subjects of work. Inspectors are authorized to undertake measures aimed at eliminating defects in installations or in the method of work in agricultural entities. Authorization related to health protection and safety at work is especially important, through the issuance of an order for the modification of agricultural installations, tools and plants. Also, the inspector can take measures with immediate executive power, which can even go so far as to order the suspension of work in the event of an imminent danger to health and safety. All these measures can also affect the improvement of working conditions, since labor inspectors are the only public law entities that have access to all workplaces (Kovačević, 2022b:17). Observations made by analyzing the text of the Convention show that preventive measures exist, such as visiting workplaces and offering advice and instruction to employers. In the agricultural sector, among other

preventive activities, labor inspectors also organize: field shows and training courses in safe cutting methods in the event of specific threats (trees felled by storms or snowfalls) in some forest district offices; education in rural areas targeting children and adults on the most frequent work-related hazards; the organization of inspection stands and consultation points on technical safety at work during mass rural events, such as machine shows and exhibitions; the publication and distribution of brochures, guidebooks and leaflets; and the provision of information to the public through newspapers, radio and television (Casale, Fasani, 2012: 3). The adoption of Convention No. 129 enables the extension of inspection supervision to all agricultural workers, including workers who have not established an employment relationship (Kovačević, 2022b: 28). Inspection powers include the right to enter the employer's premises under supervision without prior notification, and this is one of authorities that particularly stands out. Also, the inspector can conduct various examinations, tests, analyses of products and samples, and the inspector has the right to demand the submission of all business books and registers by the employer. The question of how to organize inspections can be solved in different ways, using different models. In Article 16 of the Convention, it is defined that the labor inspection in agriculture could be carried out by, for example, a labor inspection authority responsible for all sectors of economic activity; a labor inspection body that would ensure internal functional specialization, through appropriate training of inspectors who should perform their functions in agriculture; a labor inspection body that would ensure internal specialization by creating a professionally capable service whose officials would perform their functions in agriculture; a specialized service for inspection in agriculture whose work would be supervised by a single central authority that was granted the same prerogatives regarding the inspection of work in other areas, such as industry, transport and trade. States are left with the right to choose between the above solutions, thus recognizing national differences and peculiarities. For example, in some countries, labor inspectors cannot impose fines on their own, but can only file misdemeanor charges or notify relevant ministries to file such charges (Rozić, Mehmedović, 2019: 860). This possibility was foreseen by Convention 129, which in Article 23 stipulates that if labor inspectors are not authorized to initiate misdemeanor proceedings on their own, then they must have the authority to submit reports on misdemeanors to state authorities competent to initiate such proceedings. Different models of labor inspection, meanwhile, reflect the differences that exist between countries in terms of the concept of the state and its relationship with society (Kovačević, 2022b: 6). In the ILO conventions no. 81 and 129, therefore, the general principles and universal international framework of importance for the position, structure and functioning of labor inspection are confirmed (Albracht, 2005b: 69).

In addition, ILO Recommendation No. 133 on labor inspection in agriculture from 1969, which was adopted along with Convention 129, is also important, and which supplements it, among other things, with the possibility of recognizing the authority of labor inspectors to participate in the role of conciliator/arbitrator in the resolution of labor disputes between agricultural workers and their employers. Article 3, paragraph 1 of the Recommendation,

defines that the functions of labor inspectors in agriculture should not include the function of conciliator or arbitrator in procedures related to labor disputes. However, if there are no special bodies in agriculture for this purpose, inspectors can be called upon as conciliators, as a temporary measure. Therefore, this provision creates a possibility for the labor inspector to act as a mediator in resolving disputes in this branch. Such a provision represents a step forward in relation to Convention No. 129 which does not foresee the possibility of conciliation by the inspector. Namely, conciliation is the preferred out-of-court way of resolving a labor dispute, which speeds up and facilitates the procedure for resolving disputed issues. And bearing in mind that the process of conciliation and arbitration is expanding in all branches of the economy, there is no reason why it should not be applied in the field of agriculture as well. Apparently, more efficient and effective protection of the rights of agricultural workers can be created by increasing the number of conciliation and arbitration procedures in agriculture. Conciliation is also advantageous from the employer's point of view, because it lowers the costs of the procedure and speeds up the resolution of the dispute. This solution does, however, present a peculiarity. According to Recommendation 133 (in paragraph 3 of Article 3), if the labor inspector is temporarily engaged in the function of conciliator, the competent authority should take measures with the aim of having the labor inspector as soon as possible released from these functions, so that he is able to devote himself to his basic supervisory function (Stojšić, 2013: 67). Safety and health at work should also be protected by labor inspectors in cooperation with employers and employees. This serves to emphasize the importance of social dialogues, as one of the most effective ways to regulate the field of safety and health at work and create a healthy working environment (Stojšić, 2013: 67). In addition, Recommendation No. 133 foresees the employer's obligation to carry out prior consultations with the labor inspection, when setting up a plant, as well as acquiring new materials and substances. As a result of the previously mentioned provision, labor inspection becomes more actively involved in the supervision of various activities. This is extremely important, especially for employers who procure and provide hazardous substances or work tools that they have not used in the production process so far (Stojšić, 2013: 67-68).

Convention no. 81 together with Convention no. 129, and their accompanying recommendations, established the basis for the labor inspection system (Casale, Fasani, 2012: 1). Despite the differences in the field of agriculture which exist between states around the world, the states retain the right to determine how the inspectorate is organized, with a lot of flexibility. It is up to each state to decide the method of constructing, organizing, and operating labor inspections that most suits its national circumstances, legal tradition, and other factors (Kovačević, 2022b: 15). Based on this, the conclusion can be drawn that the mentioned international standards have made a shift in the organization and operation of the labor inspection, but that it is up to the states to continue work on improving the protection of labor rights through inspection supervision. Through their national legislation, countries have to adapt the implementation of international standards to their labor market and economic situation, including that in agriculture.

ILO Convention No. 150 on labor administration should also be mentioned, which refers, among other things, to the organization of labor inspection, as part of state administration in a broader sense. As a result of Article 7 of the Convention, it is recommended that labor administration functions, including labor inspections, be extended to groups of workers who are not employees based on national law, such as tenants and self-employed persons. This shows the intention to establish stronger inspection supervision in the agricultural sector, which achieves a greater degree of legal security for agricultural workers, but also for their families. This is especially important due to the fact that private entrepreneurs, agricultural holdings and other organizational structures are increasingly used as a form of business, and at the same time that the natural person, who is the bearer of these activities, does not have sufficient knowledge in the field of work, nor hires persons who have such knowledge, which often leads to endangering the basic rights of employees or persons engaged in work, and even endangering their health or life (Stojšić, 2013: 349).

Powers of the labor inspector in Serbia in case of termination of the employment contract

When we talk about inspection supervision in Serbia, it should be noted that the Labor Law/ Labour Law/Employment Act ("Off. Herald of RS", No. 24/2005...13/2017-Decision of the CC, 113/2017 and 95/2018) in Article 268 stipulates that the supervision of the implementation of laws, other regulations on labor relations, general acts and labor contracts, which regulate the obligations and responsibilities of employees, is carried out by the labor inspection. A strict linguistic interpretation of the provision means that labor inspectors are competent only with regard to the application of legal regulations to employees, not to employed persons who work outside the employment relationship (Brković, Urdarević, 2020: 258). Although in a large number of cases the inspection also reacts when it comes to contracts outside the employment relationship, it seems that it is more about an act of good will of the labor inspector or about their discretionary decision, whether to carry out such supervision or not (Brković, Urdarević, 2020: 236). This is precisely what is the source of potential problems for agriculture workers, whose employment status is not always clearly regulated. This can potentially undermine the protection of their rights, when such rights are threatened. What is of paramount importance is the authority of the inspector to order the execution of measures and actions with the aim of eliminating violations of the law. In addition, the inspector is required to submit a report for a committed criminal or economic offense or a request for the initiation of misdemeanor proceedings. However, related to the topic of this paper, the most relevant authority of inspector is the one defined in point 11, article 268a. It states that the inspector can postpone the execution of the employer's decision on the termination of the employment contract, when the right of the employee is clearly violated. Namely, one of the basic rules of Serbian Labour Law implies that an employee cannot terminate his employment relationship against his will, unless there are justified reasons for this regarding the ability and behavior of the employee or the needs of the employer. To be more precise, it is about the concept of justified (valid)

reasons for the termination of the employment contract by the employer, which is built into ILO Convention No. 158 on the termination of the employment relationship at the initiative of the employer, which applies to all employed persons and all employers. The grounds for termination of the employment relationship are further prescribed by domestic laws, and are exhaustively listed. Any termination without legal grounds is illegal, which entails the following consequences: 1) return to work - reintegration, 2) compensation for damage, 3) payment of the corresponding contributions to mandatory social security. Employees generally believe that the employer is obliged to return them to the workplace where they worked until dismissal (Popović, 2020: 137). But, returning to work means returning to the previous job position, and in the event that such a job was terminated, to a job that corresponds to his professional training and abilities (Brković, Urdarević, 2020: 236). This is supported by the verdict of the Supreme Court of Justice of Serbia (No. Rev2 1017/2017 of 15.05.2014), that the employer is not obliged to return the employee to the same job that he was performing before the dismissal, based on the decision of the labor inspector, but to assign him to a workplace that corresponds to his professional training, knowledge and abilities, in accordance with his own act of workplace systematization.

Article 271 of the Labour Law stipulates that, if the labor inspector finds that the employer's decision to terminate the employment contract clearly violates the right of the employee, and the employee has initiated a labor dispute, the inspector will postpone the execution of that decision at the employee's request. The inspector's decision, made on this basis, is a type of temporary measure that the labor inspector, as a representative of the administration, takes instead of the court before which the labor dispute is pending (Marković, 2015: 208). That decision can be effective only until the court makes a final, legally binding decision. Otherwise, if the employee's right is not clearly violated, the inspector will reject the employee's request to postpone the termination of the employment contract. By passing the above-mentioned measure, the labor inspector is, at least temporarily, protecting the employee. The Labour Law prescribes the conditions for postponing the termination of the employment contract, which must be fulfilled cumulatively. It is necessary to prove that the employer's decision clearly violated the right of the employee, that the employee initiated a labor dispute and that he submitted a request to the labor inspectorate to postpone the execution of the employer's decision of dismissal (Maričić-Vukotić, 2009: 155). Hypothetically speaking, there may be a situation where the decision on the temporary measure of the court is in conflict with the decision of the labor inspector, made on this basis (Marković, 2015: 208). Bearing in mind that both the court and the labor inspectorate in this situation can make a decision on a temporary measure, deciding on the protection of the employee, it is possible for there to be contradictory decisions, but this has not taken place in practice. On the other hand, what has been noticed is that the employee was able to return to work as a result of both the court and the acting inspector's decisions (Marković, 2015: 208). Of course, what is a potential problem in the Labour Law with such a temporary measure, is the need for an "obvious violation of the employee's rights". Such a

definition is unclear at first glance, and subject to wide interpretation, depending on each individual situation. What does "obvious violation" mean? What kind of violation of rights is obvious enough to require and justify the intervention of the state in the form of a decision of the labor inspector? The employee's right is clearly violated, when it is visible that a violation of rights has occurred, that is, when the conclusion of a violation of rights can be reached without extensive proof, and it is almost certain that the court will annul the employer's decision due to the violation of the employee's rights (Marković, 2015: 208). Therefore, an obvious violation would exist when there is a high probability that both authorities will come to the same decision on this issue. The violation of rights must be gross, that is, it must have had a significant impact on the legality of the decision made (Marković, 2015: 209). Of course, whether the inspector initially made a correct decision will be known in the merits and final decision of the court, which is also a check of the legality of the inspector's work. When the labor inspector makes a decision to postpone the employer's termination of the employment contract, the employer must act on that decision and return the employee to work, and register him again for mandatory social insurance. The employer can file a complaint, but it does not delay execution. If the employer does not act in this way, then he can bear the consequences, because he commits a violation, for which he can be fined. So, when the inspector issues an order, it is the employer's obligation to act on them, within the defined deadline, otherwise he may bear further retributive consequences. In protecting employees' rights at work, the labor inspector's administrative procedure is most effective due to its speed and efficiency (Maričić-Vukotić, 2009: 158). Usually only a few days pass from the moment a request is submitted, to executive supervision and taking action (Maričić-Vukotić, 2009: 159).

Results and Discussion

Of all forms of economic activity, agriculture is the one in which the work of labor inspection is particularly important, especially when suppressing the shadow economy, illegal and undeclared work. According to one commonly used definition, undeclared work includes all currently unregistered economic activities that would contribute to the officially calculated gross domestic product, if such activities were recorded (Schneider, Williams, 2013: 19). According to the data of the Statistical office of the Republic of Serbia, based on the labor force survey conducted every year, the rate of total informal employment in the third quarter of 2022 was 14% of the total number of the working population in Serbia. The rate of informal employment outside agriculture amounted to 7.0%, while the same rate in agriculture amounted to 53.8% (Source: Statistical office of the Republic of Serbia, Labor Force Survey, 3rd quarter of 2022). The phenomenon of de facto work remains a key problem in the field of labor relations with labor inspectors making extensive efforts to introduce this phenomenon into the legal regulation of mutual rights, obligations and responsibilities based on work (Peruničić, 2011: 182-183). Despite all the problems in this field that the labor inspection is facing, there is a noticeable increase in the number of concluded employment contracts and

registered mandatory social insurance, after the inspection was carried out (Peruničić, 2011: 185). Undeclared work is the most prevalent phenomenon in agriculture (including gardening), fishing, and mineral extraction after the construction sector. More than half of all jobs in the non-agricultural sectors of developing countries – over 0.9 billion workers – can be considered informal, and if agricultural workers in developing countries are included, this leads to an estimate of about two billion people (Schneider, Williams, 2013: 79). In addition to illegal work, as a form of engagement without a contract, which is an acute problem in the agricultural sector, there are also problems such as delays in the payment of wages or even non-payment of wages to many employees, especially agricultural workers. Also, unsafe working conditions, non-payment of contributions for mandatory social insurance are frequent occurrences.

Conclusion

By considering the international regulations in the field of labor inspection, which are primarily defined in the ILO Conventions No. 81 and 129, it can be concluded that they enable countries to adapt international standards to their specific national circumstances. On the other hand, it is noticeable that in domestic legislation in Serbia, there is a significant number of laws that regulate the position and powers of labor inspectors: The Labour Law comes first, then the Law on Inspection Supervision, the Law on Administrative Procedure, and the Law on Safety and Health Protection at Work. It can be concluded that, from a normative point of view, domestic legislation is harmonized to a high degree with world standards, as well as that the field of labor inspection in Serbia is regulated in quite detailed legal terms.

But of course, legal regulations are one thing, and their practical application is another. In this field, the challenges remain challenging, taking into account the insufficient number of labor inspectors, the prevalence of undeclared work and the shadow economy. According to the relevant parameters, each employer could be subjected to inspection only once every eight years (Kovačević, Lj., 2022a: 220). In addition, the problem exists in the unclear demarcation of powers between labor inspection and other inspections and supervisory bodies, because in some cases of supervision these powers overlap, which undermines the effectiveness of their work and leads to the waste of the already modest capacities of labor protection in our country (Kovačević, Lj., 2022a: 206). Also, the Labour Law foresees one particularly powerful repressive measure, which is the request to initiate misdemeanor proceedings before the court, by the labor inspectorate, when a violation of the relevant regulations by the employer is determined. However, the Law does not prescribe any deadline for the court to act on the inspector's request. Therefore, it may happen that, despite the timely reaction of the labor inspector, the statute of limitations for the initiation of misdemeanor proceedings still may occur (Kovačević, Lj., 2022a: 180). It should also be borne in mind that, compared to ILO standards, this repressive measure seems insufficient to ensure the effectiveness of labor legislation. In the spirit of ILO standards, labor inspectors can, namely, impose mandatory penalties, as well as initiate (temporary or permanent)

revocation of permits and suspension of enforcement before the competent authorities, and undertake other measures that enable the achievement of the desired goals related to the consistent application of the relevant regulations. Finally, the challenges follow the authorization of the labor inspector to delay the execution of the dismissal decision, with a particular challenge being the determination of the "obvious violation of the employee's rights" standard.

The ideal of inspection is its disappearance, i.e., the achievement of such a level of compliance with laws and other regulations of the subjects of supervision that there is no need for the corrective and repressive function of inspection services (Rozić Mehmedović, 2019: 850). Of course, it is almost unimaginable that such a scenario will ever come true. However, the creation of a society in which inspections will no longer be needed is something to strive for.

Acknowledgements

Acknowledgement to the author's PhD mentor, professor Ljubinka Kovačević, regular professor, University of Belgrade Faculty of Law, who provided significant help during the research.

Conflict of interests

The authors declare no conflict of interest.

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