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Ombudsman of the Republic of Latvia

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United Nations
High Commissioner for Human Rights
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On the UN Resolution 37/16
“Right to work”

The Ombudsman has received and evaluated the United Nations (hereinafter – the UN) High Commissioner for Human Rights letter of 24 July 2018 of *On UN Resolution 37/16 “Right to work”* (hereinafter – the Letter).

In the Letter, the UN requests providing information for the preparation of the UN analytical report, including a short summary on regulatory enactments, policy planning documents, programmes, challenges and good practice examples, which are applicable to the right of the youth to work.

The Ombudsman notes that the Ministry of Welfare is the body responsible for the development of regulatory enactments, planning documents and programmes with regard to ensuring the right to work.

Therefore, in this letter the Ombudsman will provide information about challenges and good practice examples in the employment policy, including about the youth:

[1] In order to ensure the right to work to different target groups, the Ombudsman has developed informative materials, which can be evaluated as **good practice examples**:

[1.1] In 2017 the Ombudsman in cooperation with the European Network of Equality Bodies drafted a handbook for practitioners “Equal Pay. How to build a case on

equal pay”. The handbook includes practical information on the questions to be asked to parties, on the burden of proof principle, arguments and counter arguments, as well as information about sanctions, remedies and advisable follow-up.

[1.2] In 2017 the Ombudsman created an informative material “Short legal course parents of young children”, which provides information on the rights of employed mothers and fathers of young children.

[1.3] In 2017 the Ombudsman created an informative material for employers “Information for employers on support measures envisaged in the regulatory enactments for expectant mothers and parents of young children”, thus ensuring that employers are also informed about the rights to be provided to parents of young children.

[1.4] In 2017 the Ombudsman in cooperation with the people with disabilities organizations created a practical informative material for employers “Accessible workplace for employees with disabilities”. This material is unique, because it provides practical information on communication with employees with various disabilities, as well as on accessible work process and information on physical and informative accessibility elements for employees with movement, visual, hearing and autistic spectrum disorders.

[1.5] In 2018 the Ombudsman in cooperation with the Equality and Human Rights Commission of the United Kingdom drafted a material “Undesirable actions of sexual nature in the workplace”, which provides employees and employers with legal and practical information on how to identify undesirable actions of sexual nature and how to protect rights in such situations.

The Ombudsman believes that these materials can help any employee, including young people, to defend their rights.

[2] Defending rights of different community groups, the Ombudsman has turned to the Constitutional Court and noted Saeima at inaccuracies, which affect employment issues, and which are considered as **challenges** in ensuring labour rights:

[2.1] The Ombudsman submitted to the Constitutional Court a case on the amount of payment within normal extended working hours for medical practitioners. According to the Labour Law normal working hours are eight hours per day. If an employee works more, then the employee has the right to receive payment for overtime work, which is

100% of the hourly or daily wage rate set for the employee, but in case of accord wage – no less than 100% of the accord work payment for the amount of the work performed.

During the economic crisis, a norm was adopted with regard to medical practitioners, providing that if a medical practitioner works extended normal working time, the payment for the working time exceeding normal working time defined in the Labour Law is determined in proportion to the increase in the working time no less than the hourly or daily set wage rate, but in case of accord wage, according to the accord work payment for the amount of the work performed. Normal extended working time for medical practitioners is 12 hours per day, therefore medical practitioners can receive payment for overtime work starting from the 13th hour.

The Ombudsman stated a violation of the equal treatment principle and brought a case to the Constitutional Court.

The Constitutional Court recognised that all employees, whose work time exceeds normal work time defined in the Labour Law are in a comparable situation in the case being examined. The norm being disputed treats differently medical practitioners having extended normal working hours and persons from teams of emergency medical assistance, who are not medical practitioners. The persons, who work extended normal working hours, have a lower rate than the overtime work payment rate under the Labour Law. Therefore, the Constitutional Court recognised that a violation of the equal treatment. This norm will lose its force from 1 January 2019.

[2.2] The Ombudsman is concerned about the draft amendments to the Labour Law that have been submitted to Saeima lately, which do not create the possibility to protect the employee as a weaker party.

[2.2.1] In May 2018 draft amendments to the Labour Law were submitted to the Saeima envisaging the possibility to reduce an extra payment for overtime work by 50% from the hourly wage rate or the accord work payment for the amount of work performed set for the employee, if the concluded general agreement envisaged a considerable increase of the minimum wage or hourly wage rate defined by the state in the sector. This reduction would apply to the construction sector.

The Ombudsman pointed out to the Saeima that it is not permissible to envisage a reduction of the overtime payment rate for one sector creating worse conditions for it

employees compared to employees of other sectors. Such a different treatment has no legitimate purpose. Moreover, the compromise reached between the state and the construction sector to conclude a general agreement for the purposes of a significant increase in the minimum wage and reduction of the scope of shadow economy in the sector, at the same time envisaging to reduce the overtime payment rate for workers, thus putting them in a more disadvantageous situation compared to workers of other sectors, who do overtime work, cannot be considered legitimate. It should be noted that current regulatory enactments envisage the possibility for the sector to conclude a general agreement envisaging more favourable conditions for workers of the sector. Furthermore, there are other mechanisms for combatting the shadow economy and “envelope salaries”.

According to the above mentioned, the Ombudsman believes that the legal norm included in the draft law does not correspond to the principle of equal treatment defined in the first sentence of Section 91 of the Constitution of the Republic of Latvia.

[2.2] The draft amendments to the Labour Law submitted to the Saeima in May 2018 envisages a reduction of protection for members of trade unions, as well as does not correlate the rights of employees and employers in relation to a dispute in case of an employee’s notice of termination, where the rights to go to a court are fully transferred to the employee.

The Ombudsman has objected against these draft amendments.

According to the above mentioned, the Ombudsman is concerned about further development of the labour rights, correlating interests of employees and employers, as well as preserving the principle that the employee is a weaker party, thus needing better protection. The Ombudsman notes that negative development trends in the Labour Law may affect the rights of the youth to the provision of work.

With best regards

Ombudsman

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