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CENTRO DE INVESTIGACIONES SOCIALES Y MIGRATORIAS DEL ESTRECHO DE GIBRALTAR

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# COLLECTIVE LABOR DISPUTES AND THE LABOR INSPECTORATE: THE CASE OF MOROCCO

**SUMMARY: I. COMMUNICATIVE FUNCTION AND SOCIAL CLIMATE. II. THE PREVENTIVE ROLE AND SOCIAL CLIMATE III. THERAPEUTIC ROLE OF THE LABOR INSPECTOR AND SOCIAL CLIMATE.**

Labor relations are divided into two sections:

- individual labor relations
- collective labor relations

We can talk about the first section when the employee is linked individually with his employer, and they are based principally on the principle of subsidiarity and compliance by the employee to meet delivery fee and to ensure that the rest of the legal rights by the operator.

The second section is that in which the workers deal as a group with their employer either to develop their collective status or defend group for legal or rights acquired.

Each section of these sections requires its own methodology. So the first is based usually on direct operator orders and instructions of the employee for a salary, as mentioned above, and in case of dispute the intervention of the labor inspector is planned, even if it is not compulsory, to institute conciliation

amicably, and if this attempt does not lead to a result the employee may seek recourse in court to defend his rights.

In the second section the negotiation and persuasion take place according to prevailing force in the company, which requires the intervention of several organizations that consist primarily of the labor inspectorate and the local authority may even reach the Ministry of Employment and even arbitration.

Collective employment relations have a very serious matter so that they can, in the case of conflict, affect the security and social stability, they can also create a dramatic effect on investment and economic dynamism, which reflects, in the end, the opportunities for work.

Perhaps the role of labor inspection in the field of observation and management of the social climate (this term means the level of conflictuality within the company) is a role of paramount importance, since it is played in a two-part double-edged keep the fundamental freedoms in the work and also make

entrepreneurship and sustainability of growth. in other words the labor inspectorate is driven by a socio-economic concern based on the protection of two apparently contradictory interests, but they are in fact complementary:

a) The benefit of employees by ensuring their rights (wage, social security, health and safety in the job, etc ...);

b) Contract on the basis of interest considerations:

1. The development of economic activity, which could be reflected on the second consideration;

2. Maintain existing jobs and the development of the size of the labor force in the future.

The intervention of the labor inspector is among the innovations introduced by the Labor Code since 2004<sup>1</sup>, can the role of the labor inspector, according to the provisions of Article 3 of the ILO Convention No. 81<sup>2</sup> is to exercise control functions, communication and counseling, this Convention solemnly declares in 'paragraph 2 of the same article:

“2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any

<sup>1</sup> Official Bulletin No. 5210 Dahir No. 1-03-194 of 14 rejev 1424 (11 September 2003) promulgating of Law No. 65-99 on the Labour Code.

<sup>2</sup> C081 - Labour Inspection Convention, 1947 (No. 81) Convention concerning Labour Inspection in Industry and Commerce (Entry into force: 07 Apr 1950) Adoption: Geneva, 30th ILC session (11 Jul 1947)

way the authority and impartiality which are necessary to inspectors in their relations with employers and workers”.

And if we go back to Moroccan legislation before the entry into force of the Labor Code, the conciliation in collective conflict took place in “provincial” or “interprovincial commission of inquiry and conciliation” where the role of the inspector was limited to the referral and the purely technical consultation.

And whether the Labour Code has stated in its article 532 on the terms of reference of the labor inspectors as follows:

1. To ensure the enforcement of laws and regulations related to work;

2. Provide information and technical advice to employers and employees on the most effective ways in accordance with the legal provisions;

3. To bring to the attention of the government authority responsible for labor deficiencies or excesses of certain legislative and regulatory provisions;

4. To conduct conciliation attempts over individual labor conflicts.

While article 552 to grant to the labor inspector to exercise the conciliations attempts of collective conflicts, when they concern only one company.

According to the above functions we can analyze the role of the labor inspector by framing them as follows:

- Media or communicative function.
- Preventive function.
- Therapeutic function.

The following illustrate each of them in association with the social climate, without forgetting to analyze these prerogatives either legal or practical level.

### **I. COMMUNICATIVE FUNCTION AND SOCIAL CLIMATE**

The communicative function of the labor inspector is manifested through the announcement of the lack of respect for labor laws to the government authority responsible for employment and sometimes to the facer process showed verbal and lift the judiciary in that it takes what is necessary in case of violation of the law by employers.

He, also, guides, advises and provides legal instructions for employers and employees.

Perhaps it is very clear that the information is of great importance in the kinetics ensure quiet operation and development of a healthy social climate. While most of the tensions affecting labor relations are caused by the malfunction of the information system, either because of a lack of perception, misunderstanding, variation or difference in interpretation.

Indeed, the two ends of the employment relationship need the labor inspector, but that role will vary in appearance and disappearance at the legislative level.

The Labor Code laid the foundation of a system that observes the adoption of legal agreements. It identified the minimum rights of employees, but it has opened a wide door to the improvement of working conditions through collective bargaining and the collective agreement.

If the moroccan social legislator defined in section 92 of the Labour Code, collective bargaining as is “dialogue between representatives of the most representative union organizations or unions representing employees of the one hand, and one or more employers or representatives of professional organizations of employers on the other”. It charged the government authority responsible for employment under Article 99 of the task of providing economic statistics, social, technical and other data to facilitate collective bargaining. The copy of the minutes of the results of collective bargaining must be submitted to this authority.

This is in addition to the creation of collective bargaining council, which is headed by the minister in charge with the job, and select the objective is to develop and promote collective agreements and dissemination, as well as giving opinion and interpretation of the requirements associated with collective agreements.

Usually seen through the legislative requirements for the analysis of collective bargaining, the role of the labor inspector is the role of a communication channel, not a part of conflict management, but at realistic level he completed a facilitator and sometimes to have a power of suggestion based on his experience and relationships with stake-

holders. This so as regard facilitation and promotion of the negotiation.

However, there is one aspect that is no less important from the previous one, it's the monthly transmission report to the central services of the Ministry (Directorate of Labour) whose purpose is the state of the social climate, either calm, tense or a little frantic, if any strikes their circumstances, their causes, the points of views of stakeholders and the number of lost days, and for details that is required by the collective labor disputes.

It may be undeniable to emphasize the importance of this process because of what may be called the projection of a light on the most remote corners of the view of the central services to take into account in the review of laws or regulations related to the world of employment.

As the communicative role of the labor inspector has a purpose to clarify the text, it integrates with another role that is not less important in the functions of labor inspectors and has a significant impact on the management of the social climate, and is the role of prevention.

## II. THE PREVENTIVE ROLE AND SOCIAL CLIMATE

There is no doubt that the best problem management method is to avoid them. And the best way to do this is to pay attention to their causes, and this is why labor inspection is called for a preventive role and why not to do it proactively to any social tension.

That role belongs to the raison of being of the labor inspectorate, as the

visits of control and inspection aim reviewing the degree of compliance with labor legislation by employers and the extent of compliance with health and safety standards at work, ensuring that the fundamental rights at work are not violated and essentially regards:

- Respect for freedom of association.
- Non-discrimination between men and women in wage.
- The prohibition of child labor.
- The prohibition of forced labor

The protective role of the labor inspector may be represented by the procedure recommended by the law, as well as the approval of the inspector from any action that aims to transfer, suspend or dismiss the delegate of employees or his deputy is required (art. 457 labor code (L.C)). The same protection is extended to the union representative (art. 472 L.C) and the occupational physician (art. 313 L.C).

Since prevention efforts exerted by labor inspectors are sometimes exceeded in the sense that they are not always sufficient to prevent the occurrence of problems and conflicts that escalate into serious situations.

Labor inspector is then called to play a therapeutic role that tends towards a settlement based on reconciliation.

## III. THERAPEUTIC ROLE OF THE LABOR INSPECTOR AND SOCIAL CLIMATE

The settlement of collective labor disputes.

The Labour Code defined in its Article 549 the collective labor disputes as “any dispute that arises in the course of work and which one party is a trade union of employees or a group of employees, designed to the defense of collective and professional interests of such employees. Also considered collective labor disputes, all disputes that arise in relation to work and which one of the parties is one or more employers or professional employer organization, designed to protect the interests of one or more employers or professional employer organization concerned”.

The Labour Code has determined the following levels as responsible for settlement of disputes:

- Labour Inspector
- Regional or provincial Delegate of Labour
- Regional Committee for Research and conciliation
- The National Committee for Research and conciliation
- Arbitration

Article 552 has limited a situation where the labor inspector intervenes to resolve a labor dispute if the dispute concerns a single company, because if the conflict interested more than one company, it will be in Provincial Delegate of Labour’s field of power. If we analyze the provisions of the Labour Code in matter of settlement of collective labor disputes we can see that it provides for levels of the organs of the

solution through the different stages of the evolution of the conflict, and to conclude that legislative intent estd load the labor inspector to manage collective disputes in their primary phase with everything that characterizes this stage, in terms of degree of conflict or the number and volume of sticking points, which are the heart of the conflict. Maybe this kind of dependence on the nature of the labor inspectorate and relationships that weaves with different protagonists of professional relations, and information that has about the nature and circumstances of the company.

However, this dependence is not consolidated by legal authorities or punitive requirements as that is the case for other levels of their responsibility to ensure social peace in a country.

Indeed, the code gives to both the President of the Regional Commission, the National Commission and to the arbitrator the power to conduct research and surveys on the circumstances of the case to be clear that its fractions, and collect various information to properly identify correctly the source of the problem, we notice that this authority is not granted to the inspector of labour nor to the provincial delegate of labour even though he has the quality of the secretary of the Regional Commission of research and the reconciliation.

The non-appearance of a party to labor inspection is followed by any appropriate punitive rather this act during the later stages when a verbal process showed absenteeism and work prepared and sent to the delegate that transmits the judiciary, which impose a substantial

fine between 10,000 to 20,000 Dirhams<sup>3</sup> against the author. It is the same in the event when a party fails to provide the information requested of him.

Generally, the intervention of the labor inspection in the settlement of collective labor disputes is of such importance that it should be supported and approved by introducing more authority necessary and sufficient legal provision for it to good collaborate to provide the right atmosphere for the growth of investment and the company to fulfill its social responsibility.

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<sup>3</sup> Moroccan currency: EUR/MAD = 0,092470  
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