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PRESS RELEASE

People's Advocate Recommendations reflected in the New Labor Code

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The People's Advocate Mr. Igli Totozani has been closely following the whole process of drafting, discussion and approval of the new Labor Code, by preparing and issuing opinions and recommendations concerning its specific provisions. Mr. Totozani commends the work carried out by relevant institutions involved in this process, such as the Albanian Parliament, the Council of Ministers and the Ministry of Youth and Social Welfare, for acceptance and endorsement of the People's Advocate proposals and their inclusion in the new Labor Code. According to the People's Advocate, the draft law has brought some important innovations according to international standards and in keeping up with the Conventions ratified by our country.

The People's Advocate had proposed the inclusion – for the first time – in the Labor Code of provisos stipulating the prohibition of moral harassment by the employer, by including the following provisions:

- Guarantees for the safety and protection of physical and mental health of employees;
- Inclusion of whistleblowers under protection in cases of identification of moral harassment of employees;
- Obligation of the employer with the burden of proof that his/her actions did not aim at moral harassment of the employee;
- Guarantees of employees reporting such cases, ensuring that they incur no penalties and are not subject to dismissal or any discriminatory actions.

The abovementioned recommendations are included in Article 32 of the New Labor Code, in keeping with the propositions of the People's Advocate Institution, as follows:

“The employer has the obligation to respect and protect the personality of employees in labor relations, as well as:

- a) Taking all necessary measures to ensure the safety and protection of the workers' physical and mental health;

- b) Taking all necessary measures to stop moral harassment enacted by the employer or other employees, as well as to display provisions on moral and sexual harassment and the pertinent legal sanctions;
- c) Preventing any stances that infringe upon the dignity of employees.

The employer is prohibited from harassing employees through actions which aim at or effectively result in the degradation of working conditions, leading to violations of the rights and dignity of the employee, and undermining the latter's physical and mental health or professional prospective.

Every person who identifies or receives information – from any employee who might have been subject to violations of his/her rights, under provisos of Article 32, and in particular might have suffered from infringements of physical and mental health or personal freedom, on grounds that cannot be justified by the job description or the fulfillment of particular objectives foreseen by the job placement – ought to immediately indicate the case to the employer or relevant structures in cases where the alleged perpetrator is the employer him/herself.

The employee complaining on grounds of harassment, in accordance with abovementioned stipulations, must present evidence proving the harassment; subsequently it is an obligation of the person against whom the complaint has been lodged, to prove that his/her actions did not aim at harassing and to corroborate with objective facts that the pertinent actions have no bearing on the claims for harassment and pestering.

Employees complaining of being harassed in the manners foreseen by this clause, as well as whistleblowers of harassment cases, should not incur any penalties for initiating the complaint, i.e. they should not be dismissed, be subject to discrimination or be victims to sexual harassments.”

The New Labor Code also integrates other suggestions and recommendations issued by the People's Advocate, including:

- Inclusion of "sexual orientation and gender identity" as part of the definition of the grounds for discrimination;
- Stipulation that the burden of proof lies with the employer, in cases of alleged discrimination or unequal treatment;
- Designation of cases of disciplinary violations as part of the individual work contract;
- Inclusion in the work contracts especially of (h) the types disciplinary measures and pertinent procedures in cases where there is no collective contract.