

Unlawfull discrimination of Employment Law

Introduction

Article 57 : « A compétence égale, toute personne a droit, sans aucune discrimination, à un salaire égal pour un travail égal. »

The constitution of Burundi guarantees to all, without any kind of discrimination, the legal and same salary to all employees in Burundi. The article 57 above is about that consideration. True meaning of that article “with the same competence, every person has the right, without any discrimination to the same payment for the same kind of work.”

Historical overview

Burundi has undergone a decade of war under which the Burundian population has been overwhelmed by the destruction of war but also has been limited in the development process. Burundi is a country of three community groups called ethnic groups (Hutu,Tutsi,Twa).Hutu and Tutsi are the main groups, the competition for the control of power has been the main reason of the war.

Arusha is the town of Tanzania which sheltered the peace process for Burundi; the politicians have found a common ground on different earthly matters of common Burundian interest. After ten years of discussions, it ended up in a peace agreement; the peace agreement (kind of social contract) breeds this constitution. That constitution is a light brought within the scope of the Arusha peace agreement. The constitution complies with the spirit of the peace agreement. Every law or regulations must also comply with the constitution.

Article 16 of « la loi sur l’organisation et le fonctionnement de la Cour constitutionnelle ainsi que la procédure applicable devant elle »(the law on the organization and the functioning of the Constitutional court its procedures.), states: « Une disposition déclarée inconstitutionnelle ne peut être ni promulguée ni mise en application » it means that every law or part of it declared unconstitutional cannot be promulgated, which is an implicit disposition that every law must comply with the constitution.

The Constitution of Burundi

The constitution is a set of fundamentals principles that a given state has as a guideline. In most of the modern states it is a reference; it is a limitation of the government power. It is a reference in Burundi because every regulations which

is declared against the principles will not be promulgated. Enacted on the 18th March 2005; and its preamble affirmed the compliance with the Arusha peace agreement and its dedication to the respect of the human rights.

The article 26 of the constitution states:” Tous les citoyens sont égaux devant la loi, qui leur assure une protection égale. Nul ne peut être l’objet de discrimination du fait notamment de son origine, de sa race, de son ethnie, de son sexe, de sa couleur, de sa langue, de sa situation sociale, de ses convictions religieuses, philosophiques ou politiques ou du fait d’un handicap physique ou mental ou du fait d’être porteur du VIH/SIDA ou toute autre maladie incurable. »

This article guarantees the non discrimination of any kind by the law in Burundi it says:” All citizens are equal in rights and the law provides the legal protection. Nobody should be discriminated against because of origins, race, ethnicity, sex, color, language, social situation, religious beliefs....

The labour code

The labour code article 123 states: «Toutefois, la femme en congé de maternité bénéficie à charge de l’employeur, de la moitié du salaire moyen mensuel en espèces au moment de la suspension du travail, ainsi qu’au maintien des avantages en nature s’il en existe. »

It means that the employer must pay the half of the salary to the woman who is on a maternity leave; nevertheless the woman will continue to benefit from other social advantages provided by the employer.

Pregnancy and maternity are facts that contribute a significant amount of social welfare in the care of the offspring from the conception till the raise-up. The constitution and the Court in charge of its application in Burundi, agrees with the compliance of every law with it.

“Discrimination is the treatment of a person or particular group of people differently, in a way that is worse than the way people are usually treated¹.

Is it national program of birth control? In the conception process there must be two people, in the caring of the fetus till the birth of the baby women are at their own. The nature endowed to women that power of getting pregnant, carry children and give birth; no one should blame them for that. If there could be a way of changing roles in carrying and giving birth with men, I believe that there

¹.Dictionary.cambridge.org

will be demonstration of happiness from women. The unconstitutionality of the Labour code especially article 123 is flagrant and unlawful.

The Convention on the Elimination of All Forms of Discrimination against Women is against that kind of discrimination ratified by Burundi on 8 Jan 1992. Besides the Constitution of Burundi has integrated these international convention and treaties in the Burundian substantive law (Article 19).