

Flygtningenævnets baggrundsmateriale

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Fråga-svar

Syrien. Lärare som avvikit från sin tjänst

Fråga

Frågan gäller en asylsökande kvinna som arbetat som lärare för flickor i kvinnlig slöjd i Tljoma i Hasake i Syrien. Hon hade tjänstledighet under ett år och sedan lämnade hon sin tjänst. Hon säger att hon riskerar rättsliga åtgärder för att hon lämnat jobbet olagligt. Hon har lämnat in kopia på intyg angående tjänstledighet och där står att hon riskerar rättsliga åtgärder om hon inte återvänder till sitt arbete innan tjänstledigheten är slut. Hon tror att hon riskerar fängelse och böter. Hon uppger också att hon riskerar att straffas för att hon lämnat Syrien illegalt.

Vilka rättsliga åtgärder riskerar hon för att hon lämnat sin statliga tjänst?

Riskerar hon något särskilt för att hon lämnat tjänsten som lärare?

Vad riskerar hon för att hon lämnat Syrien illegalt?

Svar

Statlig anställd som lämnar sin tjänst

Utrikesdepartementet (2013)

” Lämnar en statligt anställd sitt arbete utan officiellt godkännande riskerar han/hon ett fängelsestraff från tre månader upp till tre år, oaktat vilket yrke han/hon har. Bestämmelserna är inte uppkomna

med anledning av resningen i Syrien, utan var i kraft även innan den.

I fall den statligt anställda återvänder till Syrien har han/hon rätt att överklaga beslutet eftersom det har fattats i hans/hennes frånvaro. Det kan ta år att avgöra sådana fall. Under denna tid är dessa personer fria (ej fängslade), men utan arbeten. För det fallet att personen behövs på arbetsplatsen, kommer han/hon dock att återanställas utan att behöva avtjäna straffet.”

Illegal utresa

Enligt nedanstående källa åtalas de som reser ut från Syrien sällan. Undantag på grund av korruption är möjligt.

Schweiz. Bundesamt für Migration (2009):

“All Syrian nationals who are not prohibited from travelling may obtain a passport. The majority of the population has not required an exit visa since 2003.

Border controls in Syria are strict and efficient. Returnees who are not in possession of a passport are subject to a rigorous identity check when entering the country. The returnee undergoes an interview and may be detained for anywhere between several hours and 12 days. Leaving Syria illegally (that means without a valid or with a forged travel document) is a punishable offence. However, in practice it is usually only punished with a fine, or a passport or travel ban, seldom with imprisonment.

Most people leave Syria legally. Any person leaving the country legally via the airport in Damascus is hardly subject to persecution. Corruption, however, renders exceptions to this rule. The Swiss Embassy in Damascus can verify how, when and where a person has left the country and whether a person is wanted...”

Lagstiftning

United States Department of State (2013):

"The labor code and relevant protections do not apply to workers covered under the Civil Service Law, under which employees neither have nor are deemed to need collective bargaining rights, nor does it apply to domestic servants, agricultural workers, NGO employees, or informal sector workers. There are no legal protections for self-employed workers, although they composed at least 55 percent of the total workforce..."

"There was little information available on employer practices with regard to antiunion discrimination. Unrest and economic decline during the year caused many workers to lose their private sector jobs, giving employers the stronger hand in disputes."

Migrationsverket (2013):

”Arbetstagaren kan säga upp det tidsbegränsade anställningsavtalet när som helst, förutsatt att han skickar ett skriftligt meddelande till arbetsgivaren två månader före slutdatum, annars skall arbetstagaren betala arbetsgivaren ersättning lika lönen för uppsägningstiden eller återstående del där av.

Vid tvist vid uppsägning skall domstol ha rätt att besluta. Alla eller vissa av de juridiska kostnaderna betalas av käranden.

International Labour Office (ILO), Basic Law on State Employees No. 50/2004, Al Jarida Al Rasmiyah, Syria, 2004-12-15: Part Fourteen: Termination of Employment.

Lagen finns att tillgå på arabiska på UNODCs hemsida: United Nations Office on Drugs and Crime (UNODC), Legal Resources for Syria, Civil servants Law No 50 (2004)”

Syrian Arab Republic, Labour Law (No. 17 of 2010):

"Article 6:

a- Every term or agreement contrary to the present Law shall be null and void, even if made prior to the effective date hereof, whenever it entails diminishment of the rights awarded to workers hereunder.

b- Any and all benefits or terms more favourable to workers, which are or may be awarded under individual employment contracts, collective labour agreements, internal labour regulations or other firm regulations, or habits and customs, shall remain in force.

c- Any settlement contrary to the provisions of this Law and entailing the diminishment or waiver of the rights granted to workers under the employment contract, during the employment contract or within three months of contract termination, shall be considered null and void."

"Article 56:

Without prejudice to article 208 herein:

a- Either the employer or the worker may terminate the unspecified-term contract provided they send the other party written notice prior to termination, as follows:

1- Notice shall be sent two months prior to termination, subject to article 140 herein.

2- Termination notice may not be conditional upon a suspensive or resolutive condition.

3- Notice shall be served upon the party concerned and shall start running from the date of receipt thereof.

4- Employers may not dispense with or shorten the notice period. However, both parties may agree to extend the notice period.

5- The employer may dispense the worker from the notice period, in whole or in part, whenever the employment contract is terminated at the initiative of the worker.

b- The party terminating the employment contract without notice or before the completion of the notice period shall pay the other party compensation equal to the wage of the worker for the whole or remaining duration of the notice period, unless the worker is dispensed from the notice period."

"Article 58:

Employment contracts shall remain in force and contracting parties shall discharge all obligations thereunder throughout the notice period. Employment contracts shall terminate upon completion of the notice period."

"Article 64:

4- Whenever the worker is absent from work for no valid reason for more than twenty intermittent days or more than ten consecutive days per year, provided the employer sends him written warning after ten days absence in the first instance and five days absence in the second instance, as per the Code of Procedure.

b- In the instances above, the burden of proof by all legal methods shall rest on the employer. In these instances, contract termination is considered to be lawful."

"Article 66:

a- Workers may leave work before contract expiry, without giving notice to the employer, in the following instances:

1- If the employer or his representative has misled the worker upon contract conclusion as to the terms and conditions of work.

2- If the employer fails to honour his material obligations towards the worker under the present Law.

3- If the employer or his representative commits an immoral act upon the worker or any of his family members.

4- If the employer or his representative commits an assault against the worker

5- If a serious hazard threatens the safety or health of the worker, provided that the employer is aware of such hazard and fails to take the needed action or the measures prescribed by the competent authority in due time.

b- The worker who, for any of the foregoing reasons, leaves work before contract expiry shall be entitled to initiate unfair dismissal claim in court. In this case, the burden of proof shall rest on the worker. If proved, the worker shall be entitled to the rights prescribed in article 65 herein."

"Article 97:

Any act that exposes workers to disciplinary action must be work-related. The penalty list shall determine the violations and penalties prescribed under article 98 herein.

Article 98:

The following penalties may be inflicted upon a worker for the infringement of his obligations under the present Law, the employment contract or the internal labour regulations:

a- Verbal warning.

b- Written warning.

c- Deduction of one-day wage.

d- Deductions from the basic wage by no more than five-day wage per one single violation, provided that wage deduction for penalty payment does not exceed five-day wage per month.

e- Deferment of the periodic promotion increment by no more than one year.

f- Cancellation of the periodic promotion increment.

g- Dismissal pursuant to the present Law."

"Article 100:

Penalties may be strengthened if the worker reoffends within six months from the date he is informed of the previous penalty."

Institute for War and Peace (2009):

"Between March 1 and April 10, the government instructed 27 teachers and three other school staff members from cities across Syria to change their workplace. The decision was based on a security service order derived from Article 31 of Syria's Labour Law, which allows for the transfer of employees "in the public interest". "

""No one knows why these individuals in particular were targeted," said the human rights activist. "But authorities view the education system as an important way of shaping the thinking of the younger generation. I suspect that the criterion they use is not just whether a teacher is an activist, but also whether he or she is an independent thinker who does not adhere to the regime's ideology.""

UN Committee on Economic, Social and Cultural Rights (1999):

sid. 7

"... article 307 of the Syrian Penal Code promulgated in 1949 prescribes penalties for any act or written or oral communication that provokes, or is intended to provoke, confessional or racial bigotry or strife among the various communities and component elements of the nation..."

sid. 14

"57. Under the terms of article 65 of the Basic Act concerning State employees, it is prohibited for workers to participate in the organization of meetings at their place of work in violation of the provisions of the laws in force. They are not permitted to abandon,

suspend or obstruct the work with a view to disrupting order or halting or impeding production, nor are they permitted to incite other workers to do so."

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

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