International Labour Organization

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Workers' representatives in selected Central and Eastern European countries:

Filling a gap in labour rights protection or trade union competition?

Edited by Cristina Mihes

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Contents

▶ List of Abbreviations and Acronyms

ADEDY	Civil Servants Confederation
ARISTOS	Archives of Trade Union History
ASE	Supreme Labour Council
BD BiH	Brčko District of Bosnia and Herzegovina
BiH	Bosnia and Herzegovina
CA	Collective Agreement
CEECs	Central and Eastern European countries
CSRD	Corporate Sustainability Reporting Directive
EEKE	Employed Consumers Union of Greece
EESC	Economic and Social Committee of the European Union
EFAs	European company-level framework agreements
EIP	Employee involvement and participation
ELINYAE	Hellenic Institute for Occupational Health and Safety
ERGANI	Information System for the submission of Labour Inspectorate/OAED forms
ESEE	Hellenic Confederation of Commerce and Entrepreneurship
ETUC	European Trade Union Confederation
EWC	European Works Councils
GCA	General Collective Agreement
GEMHSOE	General Register of Trade Unions of Employees
GEMHOE	General Register of Employers
GSEE	Greek General Confederation of Labour
GSEVEE	Hellenic Confederation of Professionals, Craftsmen and Merchants
FBiH	Federation of Bosnia and Herzegovina
HLC	Hungarian Labour Code
I & C	Information and consultation
ICFTU	International Confederation of Free Trade Unions
ICFD	Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community
ILO	International Labour Organization
INE GSEE	Labour Institute of the Greek General Confederation of Labour
ITUC	International Trade Union Confederation
KANEP GSEE	Development Centre for Educational Policy
KEPEA GSEE	Information Centre for Workers and Unemployed
LC	Labour Code
LL BD BiH	Labour Law of Brčko District of Bosnia and Herzegovina
LL FBiH	Labour Law of the Federation of Bosnia and Herzegovina
LL in the Institutions of BiH	Labour Law in the Institutions of Bosnia and Herzegovina
LL RS	Labour Law of Republika Srpska
LLR	Law on Labour Relations
LPAHW	Law on Protection against Harassment at the Workplace
NCA	National Classification of Activities
NGCA	National General Collective Agreement
OBES	Federation of Industrial Trade Unions
OECD	Organisation for Economic Cooperation and Development
OKE	Economic and Social Committee of Greece

OMED Organization for Mediation and Arbitration
OSH Occupational Health and Safety
RS Republika Srpska
SETE Association of Greek Tourism Enterprises
SEV Hellenic Federation of Enterprises
SFRY Socialist Federal Republic of Yugoslavia
SKEEE Social Inspection Council of the Labour Inspectorate
SVE Federation of Industries of Greece
SMEs Small and medium-sized enterprises
TUAC Trade Union Advisory Committee of the Organization for Economic Cooperation and Development
WCC Working Conditions Committees
WCG Working Conditions Groups

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The case of North Macedonia

By Aleksandar Ristovski

▶ Introduction

The establishment of a proper legal mechanism that enables the collective voice of workers to be heard and considered by their employers is one of the main prerequisites for the existence of industrial democracy in the workplace. This mechanism is usually called "involvement" or "participation" of workers in the decision-making process at the employer (that is, participatory management), an alternative to autocratic staff management (Servais 2017). In theory, there is no real difference between the meaning and use of the terms "involvement" and "participation" of workers. A certain nuance between these terms can be made depending on the regulatory context (see Njoya 2016). In the literature, the term "participation" is used generically, covering a wide range of rights, which consist of information, consultation, collective bargaining, co-decision and partaking in decision-making bodies of a company (Hanami 1982). Participation rights, according to their intensity, can start from the right to receive information and to be consulted and exchange opinions, through the right of workers' representatives to veto and to decide jointly with management representatives, to the right to participate in decision-making within the management body of the company (Bruun 2011). The heterogeneity of different national industrial relations systems also is reflected in the legal sources regulating employee participation (in some countries, exclusively based on legislation; in others, on collective agreements; or a mixture of both) (Weiss 2004). Participation can be obtained by means of collective representation of workers through their representatives (so-called "indirect" or "representative" participation) or by means of "direct" and immediate involvement of individual or groups of workers in decision-making (Eurofound 2023), or other processes in the company (for example, profit-related pay or ownership sharing) (Barnard 2012). While direct participation is a subject of human resource management science and integral to companies' human resource strategies (Blanapin 2013), labour law and industrial relations traditionally have dealt with indirect participation (obtained through workers' representatives). Both ILO Workers' Representatives Convention, 1971 (No. 135) and ILO Recommendation, 1971 (No.143) leave ILO member states free to choose the most appropriate form of dialogue between employers and workers. In that regard, these two international labour standards provide for two traditional formulas through which the representation of workers is obtained: either through trade union representatives (appointed or elected by the unions or their members), or through representatives freely elected by the undertaking's workers (for example, works councils) (Servais 2017). The way in which these formulas are implemented in national legislation and practice are different. They usually include "dual" (or multi-layered) or "single" participation channels, depending on whether the institutionalized representation of workers at the employer consists of the presence of two structures (works council/employee representative and trade union/trade union representative), or only one of them (works council/employee representative or trade union/trade union representative) (Eurofound 2009, 8). In countries with a tradition of "dual" (or multi-layered) channels of participation (for example, Germany), trade unions usually are authorized to participate in collective bargaining, while the other aspects of participation (information, consultation, co-decision) are carried out through works' councils. In countries with a tradition of "single" channel participation (for example, the United Kingdom), the involvement and collective voice of workers historically took place only through trade unions, that is, their representatives in the company (Davies 2012, 218–219).

With the independence of the Republic of North Macedonia (then the Republic of Macedonia) from the former Socialist Federal Republic of Yugoslavia (SFRY) in 1991 and the introduction of political pluralism, a market economy, and the contractual nature of labour relations, industrial relations abandoned all elements and relics of the "workers' self-management" system characterizing SFR Yugoslavia. From that point, trade unions, that is, their representatives within the undertaking (so-called trade union representatives), gained a central role in the collective representation of workers in industrial relations, including in decision-making within the undertaking. Collective bargaining is the most significant type of workers' participation compared to other types. However, North Macedonia – like other former communist and socialist countries from Central and Eastern Europe – has witnessed a tremendous decline in trade union membership and density rates as a result of several significant factors, chief among them being: privatization of state-owned or socially-owned undertakings, restructuring of socialist-era enterprises, growth of the service sector, and others (Bagić 2010, 71). Currently, more than 30 years since the independence of the country, the trade union density rate in North Macedonia is estimated at just over 17 per cent, while the representativeness rate of trade unions in the private sector is only 6 per cent (Ristovski 2023, 142).

The institutionalization of other opportunities for the collective representation of workers besides trade unions, and other types of workers' representatives apart from trade union representatives, gained significance since the rights to information and consultation were recognized in North Macedonia's national labour legislation. In this regard, with the 2010

amendments to the Law on Labour Relations, both the general framework of informing and consulting (regulated by the Information and Consultation Directive 2002/14/EC) and some of the context-specific directives (namely, Collective Redundancies Directive 98/59/EC and Transfers of Undertakings Directive 2001/23/EC) became subject to statutory regulation. In 2007, the Law on Safety and Health at Work (LSHW) was adopted with the aim of complying with the Framework Directive for occupational safety and health 89/391/EEC, while in 2012, the European Works Council Directive 2009/28/EC (recast) was introduced into the Macedonian labour law system through the adoption of the Law on European Works Councils, although its application is conditional upon the accession of North Macedonia to the European Union. The introduction of the said directives in Macedonian labour legislation was more a consequence of the duty to comply with the EU acquis rather than a result of the preferences or the initiative of the social partners to improve industrial democracy on the shopfloor or enterprise level. Regardless of the motives, Macedonian labour legislation has not yet established an in-depth and systematic approach for involving workers in decision-making at the employer – addressing both procedural and material aspects of the rights to information and consultation as well as the construction of an appropriate structure for collective representation of workers in the exercise of these rights.

▶ 1. Participation of elected workers' representatives at the workplace

The right to participation has been elevated to the rank of a constitutionally guaranteed right, provided for in article 58 of the Constitution of North Macedonia from 1991. The constitutional provision implicitly refers to two types of employee participation, namely: employee participation in the management of the company (board-level) and employee involvement related to work processes (work-related) (Kalamatiev and Ristovski 2012, 509–510). The right to participation of employees in the management of the company is provided by the Law on Trade Companies from 2004, which in article 342, paragraph 4, refers to regulating this right with a special law. However, there are some roadblocks: not only has a special law on employee participation in company management yet to be adopted, but the Law on Trade Companies itself contains contradictory provisions that prohibit the participation of employees in the companies' supervisory bodies. It is worth noting that certain special laws in the field of social insurance and social policy provide for the participation of trade union representatives in the management of certain state administration bodies.

The right to participation, that is, involvement of employees related to the work process, primarily is regulated by the Law on Labour Relations (LLR). In this regard, the LLR regulates the rights to information and consultation, both in the context of the general framework for information and consultation, and the special legal regimes in the event of collective redundancies and transfers of ownership. An essential issue on which the effective application of the rights to information and consultation depends regardless of the context in which they are applied, is the issue of specifying the representatives of the workers (workforce delegates, trade union delegates and so on, if they appear as individual representatives) or the representative body (works council and so on in case of a collegiate form of representation), through which these rights may be exercised. Considering the fact that the right to participation is a fundamental right regulated by articles 21, 22 and 29 of the revised European Social Charter (ratified by North Macedonia) and by article 27 of the Charter of Fundamental Rights of the EU, it is not the same whether, in ensuring its effective realization, a member state has arranged the issue of determining a representative structure through which this right will be exercised or not. It is considered that the effective realization of the rights to information and consultation (usually regarded as a continuum – information followed by consultation) must be supported by some kind of collective workers' representation (Ales 2015, 524). This is of particular importance for North Macedonia as a candidate country for EU membership, and for the sake of proper and expedient harmonization with the European directives on information and consultation. Yet, Macedonian legislation provides for a literal translation of the relevant provisions of the directives in relation to the definition of the term "employees' representatives". Thus, according to the LLR, "employees' representatives" means employees' representatives provided for by law and by the laws of the member states of the European Union. This provision does not prescribe any legal ground for the effective exercise of the right to information and consultation. The vaguely defined concept 'employees' representatives', in addition to the general framework for information and consultation, is also used in the context-specific framework of collective redundancies. On the other hand, the Law on Labour Relations sets out the right to information and consultation with trade union organizations, that is, their representatives, in the

event of transfers of undertakings (that is, change of employer). The LLR also stipulates an obligation for the employer to consult with the representative trade union at the employer, and if there is none, with the employees' representative, on certain issues related to night work, such as: the time that is considered night work, the forms of organizing night shifts, measures for protection at work, as well as measures for social protection.

In the context of the general framework for information and consultation, the LLR provides for several minimum provisions in an attempt to comply with Directive 2002/14/EC. In article 94 (a) entitled "informing and consulting the workers", provisions, which to a greater or lesser extent are literally translated from the Directive, are those concerning: the definition of the terms "information and consultation" (article 2, paragraph 1 (f) and (g) from the Directive); the content of the information and consultation (article 4, paragraph 2 of the Directive); the scope of application of the right to information and consultation (article 3, paragraph 1) and the manner of implementation of the information and consultation (article 4, paragraphs 3 and 4 of the Directive). Provisions of the Directive which have not been taken fully into account throughout harmonizing are those referring to the objectives and principles of the Directive (article 1), the possibility of regulating the practical arrangements of information and consultation by means of an agreement (article 5), the protection of employees' representatives (article 7), the protection of rights (article 8). The legal framework neither specifies more closely nor refer to the negotiation of the practical arrangements related to the time and manner of implementation of the information and consultation; it also does not operationalize and systematize the issues (content) that can be the subject of information sharing and/or consultation with employees like economic, financial, or production processes; staff management (working time arrangement, protection of the right to privacy, access to training and so on); collective matters affecting staff (issues that may be subject to regulation by general acts of the employer) and matters affecting individual workers (dismissals, deployments and so on).

Collective agreements go "one step beyond" the law. Regarding the time, a range of agreements stipulate that it must take place at least annually, as needed or regularly and in due time. Similarly at the discretion of the respective agreement, the manner may be regulated, whether written or verbal, newsletter, bulletin or meeting. Regarding the content, collective agreements may cover annual and multi-year development plans, organizational changes, decisions governing employees' employment rights, annual business results, other issues of common interest , drafts, i.e. proposals of acts that regulate certain issues in the field of labour relations, wages, annual reports on the use of funds from donations, sponsorships and funds received from own revenues, measures and regulations for protection at work and of the working environment etc.

The Law on Labour Relations envisages compliance with the context-specific Directives on information and consultation in relation to collective redundancies (Collective Redundancies Directive 98/59/EC) and transfers of undertakings (Transfers of Undertakings Directive 2001/23/EC). Article 95 on collective redundancies is an example of a near perfect transposition of the Directive's language (article 2) into local legislation. On the other hand, the right to information and consultation in the event of transfer of an undertaking (i.e. change of employer) regulated by articles 68 (b), 68 (c) and 68 (d) of the LLR, is harmonized with the corresponding provisions of the Transfers of Undertakings Directive 2001/23/EC (for example articles 7 and 9 of the Directive).

Macedonian legislation also provides for information sharing and consultation with employees on issues related to their occupational safety and health (OSH). The Framework Directive on Safety and Health at Work 89/391/EEC draws a distinction between two types of workers' representatives (workers' general representatives and workers' representatives for safety and health) and delimits the issues that are subject to their consultation and participation (Bercusson 1996, 514). Macedonia's Law on Safety and Health at Work, however, narrowly defines only "'workers' representatives for safety and health at work". These representative can be elected by employees from among their ranks at a trade union meeting of the majority union or at an employee general meeting. The Law prescribes their minimum amount that hinges on the number of employees employed with an employer, regulates their competences and obliges employers to enable the adequate performance of their functions, including a guarantee of their special protection as enjoyed by trade union representative at an employer. An employer, by an act, determines the number of workers' representatives for safety and health at work, the manner of their training, as well as the manner and form of their functioning. In practice, the number of employers who thoroughly carry out their duties to inform and consult workers' representatives for health and safety seems to be insignificant. Frequently, workers' representatives are present formally at an employer but ineffective.

Workers' representatives have a certain role in the procedure for attainment, that is, protection of workers' rights (for instance, grievance procedures). In the Macedonian labour law system, attainment is conducted in two phases: before the employer (primary or internal protection) and before the competent court (external protection). The LLR explicitly provides for the involvement of a trade union representative when representing an employee before their employer in a grievance procedure. However, this only applies in cases of the termination of employment by dismissal (with or

without a notice period) or temporary suspension of an employee. According to the collective agreements, trade union representation for an employee before a company tribunal applies to all cases of violation of a right defined by law, collective agreement or employment contract. Neither the LLR nor collective agreements oblige an employer to inform and/or consult an employees' representative (including a trade union representative) prior to an individual decision on dismissal, deployment and so on. The legal framework also enables an employee to be represented in labour dispute proceedings by a law graduate employed by their trade union or in an affiliated trade union federation or confederation. Certain trade unions at a higher level (national, branch or section) also provide free representation in labour dispute proceedings for their members.

The LLR also provides for two cases of "vetoing" or "co-deciding" the dismissal of special categories of workers. Workers in cases of pregnancy, maternity and parenthood are protected from dismissal – unless the employee commits a severe breach of the contractual duties or violation of working order and discipline which is sanctioned by dismissal without a notice period. In such a case, the LLR requires consent from the trade union about the case, or if no trade union is established or the employee is not a member of a trade union, consent of the competent labour inspector. In the event that a trade union, that is, the competent labour inspector, does not give consent for termination of the employment contract, the employer may, within a period of 15 days, initiate a procedure for its re-consideration by a court decision or arbitration award. The second case refers to the protection of trade union representatives. The employer is prohibited from any form of salary reduction or contract termination of a union representative due to trade union activities. The protection prior to dismissal shall last during the whole period of the union's representative term of office, and at least two years after its expiry. Any termination of the employment contract includes a mandatory request for prior consent from the trade union. The union has eight days in which to state whether to grant or deny consent on the termination . If the union does not state its opinion on granting or denying a consent, it shall be deemed to have agreed with the employer's decision. If the union does not grant consent, the consent may be compensated by a court decision. In practice, the request for prior consent by the trade union before the dismissal of a trade union representative and the procedure following a lawsuit filed by an employer for compensation, which is, repealing of the denied consent, causes multiple dilemmas and ambiguities. The LLR neither specifies the moment (phase) of the union's involvement in co-deciding on the termination of an employment contract of a union representative (either before or after the adoption, but before the finality of the decision on termination), nor does it oblige a union that denied the request for consent to justify its decision, nor does it stipulate a time limit in which a court of first instance should decide on an employer's claim for compensation for a denial of consent from a trade union. It is also unclear whether the proceedings for compensating, that is, repealing a union's denial before the competent court, should be reduced to a genuine preliminary proceedings – in which the court will expeditiously determine whether there is a well-founded reason for dismissal and a lawful procedure for dismissing a union representative, or the proceedings should take place as any regular proceedings in the event of a dismissal by an employer. It is important to mention that the legal protection for the trade union representative does not apply to employees' representatives (for information and consultation).

Macedonian legislation recognizes certain forms of involvement of an employees' representative in exercising the right to protection against harassment at the workplace. Pursuant to the Law on Protection against Harassment at the Workplace (LPAHW), employees' representatives can submit written requests for protection against harassment at the workplace to the employer, with the prior written consent of the employee who considers themselves exposed to harassment at the workplace. They can also participate in the mediation procedure, at the request of the parties. LPAHW, similarly to the LLR (in the part of the general framework for information and consultation and the special framework for information and consultation in the event of collective redundancies), neither defines nor determines the manner of electing the employees' representative for protection against harassment in the workplace, nor does it provide for an obligation on the part of the employer to inform and consult employees' representatives about how complaints are handled.

▶ 2. Role of workers' representatives in collective bargaining

Collective bargaining in North Macedonia takes place at three levels: the level of the Republic (i.e. at national level) the branch or section level according to the National Classification of Activities (NCA) and at the employer level. The highest level of collective bargaining (i.e. national level)is conducted to conclude General Collective Agreements. A General Collective Agreement can be concluded either in the private or public sector. Branch or section level collective bargaining, in accordance with the National Classification of Activities, is conducted for concluding Specific Collective Agreements. The employer level is covered by Individual Collective Agreements. Of note, tan individual collective agreement is concluded at the level of an entire company/employer (regardless of whether the company has one or more branches/ subsidiaries located in different municipalities across the country) (Ristovski 2022, 33).

Regardless of the level, the right to collective bargaining is an exclusive trade union competence; only a trade union can be the sole, organic holder of this right on the behalf of workers. Argumentum a contrario, Macedonian labour legislation does not recognize and legitimize the right to collective bargaining of non-unionized workers. Pursuant to the LLR, a trade union is defined as an "autonomous, independent and democratic organization of the workers, which they join voluntarily for the purposes of representation, promotion and protection of their economic, social and other individual and collective interests". This definition create some dilemmas in terms of the personal scope of the freedom of trade union association (and the right to collective bargaining), since the LLR formally attributes this right to "workers" which, according to current legislation include only "employees" in the narrowest sense (meaning only those persons who have entered into an employment relationship by signing a written employment contract. Given that the Law implicitly levels the terms "employment relationship" and "employment contract", while simultaneously requiring a written form as a prerequisite for valid contract, and in the absence of an adequate legal mechanism for combating disguised employment (such as presumption for determining the existence of an employment relationship), many categories of workers are formally deprived from exercising their right to trade union organization and collective bargaining. The "list" includes not only informal (undeclared) workers and workers in a disguised employment relationship (bogus self-employed) but also casual workers and genuine self-employed including freelancers. Macedonian labour legislation neither sets out clear rules on the manner and levels of organizing trade unions nor differentiates much between "trade union" and "higher-level trade union". More problematic are amendments to the LLR from 2012 initiated by national trade unions (federations and confederations), which abolished the possibility to register and acquire legal personality at the employer-level. Their main reason for the amendments was budgetary due to the expense of registration. Of course, their prevailing motive was to strengthen the financial and organizational capacities of the trade unions at a higher level (primarily at the branch or section level), while the only way in which trade union organizations established at an employer-level were allowed to function was through and within the higher-level trade unions (Kalamatiev and Ristovski 2019, 12–13). From then on, the registration and functioning, and thus the very existence of the trade unions, at the level of an employer depends either joining a newly formed trade union or accession to an existing trade union at a higher level (for example, a branch trade union or federation, or a national confederation). Such limits seriously restrict workers' freedom of association and their right to organize (particularly at a company level) and as such are considered to be contrary to ILO Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87) (and in particular to articles 2 and 7).

Only representative trade unions have the right to participate in collective bargaining. Determining the representativeness of trade unions for the first two levels of collective bargaining depends on the fulfilment of two cumulative conditions: (1) the union needs to be registered in the Ministry of Labour's register, and (2) it should include at least 20 per cent of the total number of employees in the public/private sector who pay membership fees, no matter whether branch or section. Considering that the LLR does not specify the direct and immediate registration of trade unions at the employer level in the Ministry of Labour's register, the only condition for representativeness is that at least 20 per cent of workers must be current fee-paying members of the union. The legal framework also provides for two other alternatives to gain representativeness in special circumstances, for example,. when no single union (based on the level of collective bargaining) can meet the legally prescribed conditions for gaining representativeness. The first alternative assumes the recognition of the representativeness of the "majority" union in cases when the union has submitted a request

for representativeness but does not meet the threshold criterion. Here, the Law allows the trade union with the largest number of members to participate in collective bargaining until the threshold of representativeness is met. The second alternative for participation in collective bargaining includes an "association agreement" of two or more non-representative trade unions. Although the LLR does not explicitly qualify this way of gaining eligibility to participate in collective bargaining as a way of gaining representativeness, it deserves inclusion as a special way of achieving "collective" representativeness, only if none of the unions meet the requirements for representativeness. Keeping in mind the two alternative ways to gain representativeness and eligibility for participation in collective bargaining, the following dilemma appears as a theoretical possibility: which of these ways will have an advantage in terms of their application if, at the appropriate collective bargaining level, there are several non-representative trade unions; was the legislature's first option the "majority" union, or was it the "association agreement" for the purposes of collective bargaining? It seems that the "association agreement" will be applied for gaining eligibility for participation in collective bargaining if the sum of the individual percentages (thresholds) of the joined unions, is at least 20 per cent, which is the general minimum threshold to determine representativeness. If this is not the case, or if, at the collective bargaining level, only one trade union is established, then priority should be given to the majority trade union or employers' association (see Ristovski 2022, 33).

If more representative trade unions participate in a General or a Special Collective Agreement, a negotiation board is established, whose composition is determined by the representative trade unions. The LLR fails to provide for this possibility when concluding an Individual Collective Agreement, where there is a presence of several representative trade unions at the level of the employer. Neither the LLR nor the collective agreements regulate the composition of the negotiation board.

Concerning the procedure of collective bargaining, the LLR skims over the minimum requirements (formal preconditions) such as an obligation for the persons representing the parties in collective bargaining to have an authorization and to hold power of attorney, and the obligation to bargain collectively in good faith. On the side of the union, such persons, are called representatives of a trade union, in the broadest sense. In the Macedonian context, a distinction should be made between "representatives of a trade union" in the broadest sense and "trade union representatives". A "trade union representative" primarily is associated with the representation of a trade union at the employer. The authority of a trade union representative derives from a trade union's internal acts or statutes. The LLR neither specifies nor limits the number of trade union representatives entitled to represent union members at a particular employer. Considering the special protection that trade union representatives enjoy against dismissal, in practice, the question of a closer account of these persons and their number at the employer is also important. Although employers' organizations advocate for specific identification of and limits to the number of trade union representatives, the persons with a status of trade union representatives usually are determined by an internal act of the trade union and by a collective agreement. Collective agreements provide an indicative framework for persons who may obtain the status of trade union representatives. Such persons are usually: presidents and members of executive bodies in basic organizations, and elected representatives in higher union bodies. Certain specific collective agreements expand the scope of trade union representatives (with, for example, vice-presidents of trade unions, members of the supervisory boar and the statutory commission among others), while others narrow it down only to the president of the trade union organization with the employer. The method and term of appointment or electionare determined by a union's internal acts. Trade union representatives can perform their function voluntarily or professionally. If the function is voluntary, they usually are entitled to paid leave provided for by a collective agreement. If the function is performed professionally and requires a temporary pause in work for the employer, the LLR provides for the right to return to work within five days.

Finally, the exclusive competence of the trade unions in North Macedonia also includes the right to organize a strike. The labour legislation currently in force determines that a trade union, that is, its associations at a higher level, as the sole holder of the right to strike. A strike, which is initiated by a group of workers who are not organized in a trade union, including "wildcat strikes" as a cessation of work by employees without consent of the trade union, shall be considered illegal. A distinction, though should be made between who is entitled to exercise the right to strike and who is capable of calling a strike (see, for example, Evju 2011, 213). In a Macedonian context, the legal nature of the right to strike can be described as a mixture between the "individualist" and the "organic" (collective) doctrine (see Kovacs 2005, 457). It means that the exercise of the right to strike is an individual right of workers from an employment relationship that is due to them as members of the trade union that organized the strike, members of another trade union or non-unionized employees, but at the same time, the right to organize and call a strike belongs exclusively to the trade union, that is, the trade union at a higher-level. International instruments governing the right to strike (for example, the Revised European Social Charter) and bodies responsible for monitoring the compliance of national laws and practices with such instruments (for example, the European Committee on Social Rights of the Council of Europe) provide a wide personal scope in the realization of this right, which

includes both the workers (as a group) and the trade union. The European Committee of Social Rights of the Council of Europe, in addition to ascribing the right to call a strike as the right of any ordinary group of workers without any legal status, also legitimizes the possibility of reserving the right to call a strike exclusively to a trade union, but only if workers may "easily, and without excessive requirements form a trade union for the purpose of a strike" (Birk 2007, 28–29), that is, under the condition of existence of "complete freedom to form trade unions... in a ... process that is not subject to excessive formalities" (Birk 2004, 565). Given the limitations in Macedonian labour legislation and practice regarding the exercise of the right of workers to form a union of their choice (primarily with regard to forming a union at the employer level), it is debatable how much the exclusive union right to call a strike is aligned with the positions of the European Committee on Social Rights of the Council of Europe.

▶ 3. Workers' representatives and trade union(s)

Why does it matter what form of representation of workers will take in the context of the realization of participation rights in decision-making at an employer? The answer is at the heart of theoretical debates about the relationship between rights to information and consultation versus the right to collective bargaining, not to mention filling gaps in workers' representation caused by the decline of trade unions versus the risks of undermining the role of trade unions, their eventual substitution with alternative representative structures and the existence of a model of "cooperative" versus "conflictual" partnership between workers and employers (see Njoya 2016). There is an essential difference between rights of information and consultation and rights of collective bargaining: while the common goal of collective bargaining is the regulation of employment and working conditions of workers, the common goal of information and consultation is the regulation of organizational-supervisory aspects and control over the implementation of workers' rights within the enterprise (Kalamatiev and Ristovski 2012, 509–510). Collective bargaining is an expression of the fundamental values of freedom of association and voluntary organization of workers in trade unions that are independent of the employers' influence, while information and consultation traditionally are achieved through "institutionally compromised" representative structures of workers (for instance, works councils) whose competences include, inter alia, the resolution of companies' production and operational problems with the aim of increasing efficiency and economic performance. The relationship between trade unions and works councils also can be analysed from the aspect of the need to fill the void in the collective representation of workers in terms of the decline of union power. Taking into account the EU's approach in regulating the rights to information and consultation, as well as the normative and institutional shaping of the representation of workers in decision-making which leans towards the model of "dual" or "multi-channel" representation, it seems that a "free space" for the representation of workers is more likely to be occupied by works' councils than trade unions. The mere existence of any consultative representative structure (including a works council) within the undertakings where there were no workers' representatives before, could in itself be a "steppingstone" for workers' unionization. The risk that works' councils may transform into company unions would call into question their independence and limit the possibility of the workforce establishing broader solidarities beyond company boundaries should not be underestimated (see Njoya 2016, 378). The form or model of representation of workers should be tailored to meet the essence and purpose of the participatory rights in question. Thus, the approach taken in the European directives governing workers' participation implies that its aim is to establish a cooperative partnership between labour and capital. Forms of workers' representation that may better fit such a cooperative aim are works' councils compared to unions that traditionally establish a so-called "conflictual" partnership with employers based on their adversarial interests related to income distribution. Hence, works' councils are considered as bodies intended to resolve companies' production problems in contrast to trade unions oriented towards resolving distribution problems (see Estreicher 2009, 255). By accommodating the model of cooperative partnership, the EU legal framework for workers' participation implicitly supports a model of "dual" or "multi-channel" representation of workers, requiring a mandatory presence of a certain consultative structure (regardless of whether individual or collegial) which will guarantee the effective application of the rights to information and consultation. However, this approach to the regulation of the forms of workers' representation faces serious challenges in countries where industrial relations are traditional or where a "single" channel of worker representation (through a trade union) prevails, frequently characterized by a conflictual partnership in the relations between labour and capital - a situation undoubtedly familiar to North Macedonia.

▶ Conclusion

The harmonization of Macedonian labour legislation with the EU directives on information and consultation, at least "on paper", has opened the way for the establishment and coexistence of a "double channel" of collective representation for workers at the employer: through a trade union (union representative) and through "employees' representatives". The role and competences of a trade union remain unchanged: it continues to have exclusive competence to engage in bipartite social dialogue (that is, collective bargaining at the national level, at the level of the branch or section and at the level of an employer) and tripartite social dialogue (that is, participation in the Economic and Social Council), as well as in collective labour disputes, including the right to call strikes. Meanwhile, the role and competences of the so-called "employees' representatives" are or should be reduced to information and consultation. In fact, Macedonian labour legislation neither adequately defines the term "employees' representative" or other type of statutory body (for instance, works council) for information and consultation, nor provides for any procedure for their election, nor does it distinguish their competencies from those of trade union representatives. The embryonic development of the representation model for information and consultation rights is also mirrored in the system for the exercise of those rights – both in terms of their scope (production versus personnel management matters; collective matters affecting the entire staff versus individual matters affecting single workers), as well as of their intensity (information, consultation, co-decision). Hence, in practice, workers usually exercise their rights to information and consultation through a trade union, that is, trade union representative (where present), regardless of the framework and legal situations in which these rights are exercised. Confirmation of this can also be found in the collective agreements, where, almost without exception, elected or appointed union representatives at the employer's level are determined as employees' representatives responsible for information and consultation for all purposes. Problems in the application of the rights to information and consultation primarily arise in workplaces where there are no trade union representatives present. In such circumstances, the trade unions highlight various negative practices in which employers exercise influence over the election, that is, appointment or activities and decisions of the employees' representatives to the detriment of the interests of the employees in the enterprise. Such actions create a hostile perception by the unions towards "employees' representatives" as a "Trojan horse" in Macedonian industrial relations. However, a reliance on trade unions to implement participatory rights of workers at an employer creates other dilemmas: What if the workers at the specific employer are not unionized? Is it reasonable and justified to expect trade unions to be the main and only legal channel through which the exercise of the rights to information and consultation of employees shall be carried out, given that trade union representativeness in the private sector is estimated at around six per cent of the total number of private sector employees in the country? Can it be expected from employer-level trade union organizations to appropriately represent the rights and interests of all employees within the undertaking when they primarily represent and act on the behalf of their members, as well as in situations where Macedonian labour legislation and practice questions the legal personality status of trade union organizations at the employer level? If Macedonia's labour legislation and the "new" Law on Labour Relations (in drafting for over five years) really stand for a functional system of participation and involvement of workers in decision-making processes which should be substantively and not only superficially aligned to European directives, then they might consider the issues flagged in the course of this analysis.

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