



Liber amicorum Wilfried Rauws

Werk opgedragen aan een
onvolprezen jurist

Koen NEVENS
Kristof SALOMEZ
Evelien TIMBERMONT
Guido VAN LIMBERGHEN
(eds.)

 INTERSENTIA

Antwerpen – Gent – Cambridge

VOORWOORD

Dit huldeboek eert em. prof. dr. Wilfried RAUWS naar aanleiding van zijn verplichte opruststelling, in academische kringen beter bekend als het 'emeritaat'. Het huldeboek draagt de weloverwogen titel *Liber amicorum Wilfried Rauws. Werk opgedragen aan een onvolprezen jurist*. Onvolprezen – een woord waarmee Wilfried geregeld zijn waardering uitdrukte voor anderen – is immers een adjectief dat ook op hem van toepassing is. Het past niet alleen bij zijn werk, maar ook bij zijn persoon. Werk – niet alleen als werkstuk dat de bijdragen van zovele vrienden van Wilfried bundelt – maar ook in de betekenis van, naar wij durven vermoeden, voldoening schenkend leeswerk dat nu op de plank van Wilfried komt te liggen.

Wilfried kan bogen op een rijkgevulde en veelzijdige carrière. Een academische loopbaan was de rode draad, maar heeft er niet aan in de weg gestaan dat hij ook vele jaren actief is geweest als advocaat aan de balie van Antwerpen en later als plaatsvervangend rechter in de arbeidsrechtbank van Antwerpen. Vervolgens ging hij als plaatsvervangend raadsheer in het hof van beroep van Antwerpen aan de slag, een functie die hij tot op heden nog steeds met veel plezier en inzet vervult. Wilfried was en is met andere woorden op vele terreinen actief. Dat is ook wat hem typeert: een brede interesse in het (sociaal) recht en een uitmuntende kennis ervan. Ondertussen verloor hij nooit de vele andere facetten van het leven uit het oog. Wilfried was er zich immers steeds van bewust dat het leven meer te bieden heeft dan de theorie en de praktijk van het recht. Wilfried had niet alleen een rijkgevulde carrière, maar heeft vooral ook een warme persoonlijkheid. We hoefden als editors van dit boek dan ook weinig overtuigingskracht aan de dag te leggen om een groot aantal van zijn collegae bereid te vinden een bijdrage te schrijven voor dit *Festschrift*. De gezamenlijke inspanningen van de auteurs hebben het mogelijk gemaakt dat we hem dit fraaie *Liber amicorum* kunnen aanbieden.

Tijdens de totstandkoming van dit werk hadden wij gesprekken met verscheidene auteurs die het woord nemen in dit werk. We konden er alleen maar uit afleiden dat Wilfried zowel binnen de Belgische landsgrenzen als erbuiten op een zeer hoge waardering kan rekenen. De bijdragen in dit boek stralen dit ook uit. Wilfried imponeerde met zijn enorme kennis, zijn inzet, zijn werkhijver en zijn nauwgezetheid. Maar ook zijn gevoel voor humor en zijn oog voor de mens achter de academicus maakten van hem een zeer geliefd persoon. Soms streng en kritisch, steeds sympathiek en goedlachs.

Liber amicorum Wilfried Rauws. Werk opgedragen aan een onvolprezen jurist
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Ondanks alle aan de samenstelling van de tekst bestede zorg, kunnen noch de auteurs noch de uitgever aansprakelijkheid aanvaarden voor eventuele schade die zou kunnen voortvloeien uit enige fout die in deze uitgave zou kunnen voorkomen.

Wilfried trok deze lijn ook resoluut door naar de talloze studenten die hij heeft onderwezen. Hij combineerde uitstekende pedagogische kwaliteiten met passie en begeestering voor de materie die hij onderwees. Hij deelde zijn praktijkervaring met veel plezier en voegde hier en daar een kwinkslag toe. Ook de (voormalige) studenten die we spraken zijn hem zeer erkentelijk.

Drie editors hebben het voorrecht genoten onder Wilfrieds vleugels te mogen promoveren. Keer op keer ontloopte Wilfried zich tot een geweldige motivator. Waar nodig stuurde hij met zachte hand bij. Tegelijk bood hij hen en alle andere collegae steeds een luisterend oor aan en stond hij altijd paraat als klankbord.

De buitengewone manier waarop Wilfried met het recht weet om te gaan, vormt voor velen een bron van inspiratie. Tijdens een onnoemelijk aantal voordrachten en in talloze hoogstaande wetenschappelijke publicaties heeft hij op voortreffelijke wijze zijn brede en diepgaande kennis van het recht geëtaleerd. Met zijn praktijkgerichte inzichten die hij naadloos aan de theorie koppelde, droeg hij bij aan de rechtsvorming. Hij overtuigde menigeen met zijn kritische, minutieus uitgedokterde doctrinale en positiefrechtelijke argumenten.

Wilfried zal in academische kringen gemist worden. Dat blijkt uit de vele persoonlijke getuigenissen in dit *Liber amicorum*. Verschillende auteurs drukken de wens uit nog lang te mogen genieten van zijn erudiet vakmanschap. Sommigen geven zelfs grif toe vereenzaming te vrezen. We kunnen iedereen geruststellen: Wilfried is niet van plan plotsklaps van het academische toneel te verdwijnen. Ter illustratie, hij ging recent het engagement aan om het hoofdredacteurschap van een prestigieus juridisch tijdschrift op zich te nemen.

Tegelijk wensen we Wilfried en zijn naasten, in het bijzonder zijn lieve echtgenote Linda, een minder drukke agenda toe, althans op professioneel gebied. Opera en poëzie zullen nu meer op de voorgrond kunnen treden. Wie weet kan er op de dagorde ook nog een plaatsje worden voorbehouden voor de oudste Belgische professionele voetbalclub.

Wij wensen u allen veel leesplezier toe. We zijn ervan overtuigd dat de vele interessante bijdragen in dit *Liber amicorum* hiervoor garant staan.

Koen NEVENS, Kristof SALOMEZ, Evelien TIMBERMONT
en Guido VAN LIMBERGHEN

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binnen de Arbeidsongevallenwet voor ongevallen veroorzaakt door terrorisme.⁶⁵ Principieel zeker niet onbelangrijk, maar in de voorbije veertien jaar – gelukkig – zeer beperkt in aantal. Dit kan bezwaarlijk worden gezegd van het aantal door COVID-19 getroffen werknemers. Zowel voor hen als voor de sector op zich zou een wettelijke tussenkomst alvast kunnen zorgen voor meer zekerheid, iets wat de rechtspraak ten vroegste over enkele jaren kan bieden.

Eindelijk een wettelijke definitie van het begrip arbeidsongeval dan maar, zoals destijds voorgestaan door Wilfried RAUWS? Niet noodzakelijk en wat mij betreft ook niet echt wenselijk. Precies door het ontbreken van een strakke in de wet opgenomen definitie kon de rechtspraak de bestaande regels in telkens evoluerende en moeilijk voorspelbare situaties anders toepassen. Het kan volstaan in te grijpen op het terrein van het causaliteitsbegrip of, als men sowieso in een maximaal aantal situaties uitkeringen wenst toe te kennen, een verhaalsvordering op de overheid te organiseren zoals dit ook voor andere moeilijk te verzekeren risico's reeds gebeurde. Iemand zal finaal immers de rekening gepresenteerd krijgen. Dat laatste beseft men ondertussen in elk geval reeds bij Royal Sporting Club Anderlecht.

Brugge, 13 april 2021

'verzekerbare' van de gevolgen van Covid-19 en de wetsverzekering", *Verzekeringsnieuws* 2021/01, 1-6.

⁶⁵ Art. 21 wet 1 april 2007, BS 15 mei 2007, wijzigde het tweede lid van art. 7 Arbeidsongevallenwet. Art. 22 van dezelfde wet voegde meteen ook een art. 84bis toe aan deze wet, dat voor de uitgaven voortspruitend uit dit type ongevallen een verhaal mogelijk maakt op de Belgische Staat.

COVID-19 AND ITS IMPACT ON LABOUR RELATIONS IN NORTH MACEDONIA

A Critical Review of Measures Used to Protect Workers during the Pandemic

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I. INTRODUCTION

The global health and economic crisis caused by COVID-19 is affecting individuals, households, companies and national economies on a large scale. The economic shocks reverberate through both supply (disrupted supply chains, containment measures, and lockdown of non-essential economic activities) and demand (lower consumption of goods and services due to declining household incomes, restriction of movements, and uncertainty).¹ The impact of COVID-19 has had negative repercussions on people's health and economic well-being in North Macedonia, as well. To a large extent, the data regarding the decrease in employment, i.e. the increase in unemployment are also worrying. A study conducted by the International Labour Organization (ILO) and the European Bank for Reconstruction and Development (EBRD) on the impact assessment of COVID-19 on employment in North Macedonia, published in May 2020,

¹ Annex 2, Policy Note, Western Balkans: Framing national action on policy measures to support workers, families, and enterprises during the COVID-19 emergency and recovery, p. 1.

found that as many as 40,000 workers from the nine most affected sectors of the economy (food and beverages services, retail, transport, warehousing, personal services, food manufacturing, construction and related specialized activities, and services to buildings) are in a particularly vulnerable position and at immediate risk of losing their employment.² According to the Employment Service Agency of the Republic of North Macedonia (hereinafter ESA) data collected from the beginning of the pandemic in March 2020 to the end of March 2021, the total number of persons registered as unemployed as a result of termination of the employment contract, amounts to 16,716.³ To these data of the ESA, however, should also be added the data referring to other categories of newly registered unemployed persons in the country, such as: self-employed persons who have lost their jobs; persons reported in the ESA for the first time as active job seekers (entrants to the labour market) and persons who are registered as unemployed, i.e. active jobseekers (usually, this group includes persons who previously worked informally and as a part of the grey economy in the country or were passive jobseekers for other reasons, but, registered as active jobseekers, in order to obtain certain benefits from the package of anti-crisis measures).⁴ Considering these circumstances, North Macedonia's Government (which during the period of declared state of emergency in the country from March 18, 2020 until June 23, 2020, had the competence of a legislative body authorized to adopt Decrees with a force of Law) has undertaken various policies and measures aimed at tackling health, but also economic and social consequences of the crisis which, inter alia, affect labour relations.

II. OVERVIEW OF POLICY RESPONSES AND MEASURES TO SUPPORT WORKERS AND ENTERPRISES IN NORTH MACEDONIA DURING THE COVID-19 PANDEMIC

Since the World Health Organization declared the outbreak of the COVID-19 pandemic on March 11, 2020⁵ until today, North Macedonia adopted a number of legal regulations aimed at the protection of the population (including workers in the workplace) from the spread of coronavirus and support for employment (job security) and income. The policies and measures applied

² See ILO/EBRD Rapid Assessment of the COVID-19 and the World of Work Employment Impacts and Policy Responses for North Macedonia, p. 7, 2020.

³ See <https://av.gov.mk/nevrabotenost.nspix> (accessed on April 15, 2020).

⁴ See Finance-Think, Standpoint No. 49 for unemployment during COVID-19, <https://www.financethink.mk/en/> (accessed on April 12, 2021).

⁵ See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

in North Macedonia, principally derive from three groups of legal sources: first, *the existing legal regulations* (the Law on Labour Relations,⁶ social security regulations and collective agreements); second, *the Bylaws* (Decisions, Conclusions and Recommendations of the Government, etc.) and third, *the Decrees with a force of Law* (which were adopted in the period from the entry into force of the first Decision on the Declaration of a State of Emergency in the entire country of March 18, 2020,⁷ which was extended several times and lasted until June 23, 2020).

Policies and measures for the protection of workers in the workplace, could be classified into the following three categories: reducing the risk of exposure of workers to the contagion; paid absences from work intended for particular categories of workers and income replacement during illness and isolation. In order to reduce the risk of exposure of workers to contagion, the North Macedonia's Government, generally, acted in accordance with the Recommendations of the Commission for Infectious Diseases at the Ministry of Health, translating the Recommendations of the Commission into Decrees with a force of Law⁸, other bylaws and protocols.⁹ In this context, it is also worth mentioning the Government Conclusions of March 10 and 11, 2020,¹⁰ as well as the Government Decision of March 12, 2020¹¹ which, inter alia, introduced measures for leave of absence of workers-parents of minor children up to 10 years of age who need care, pregnant women and chronically ill persons, indirectly requiring from these groups of workers to work remotely, i.e. from home. The purpose for which the Government of North Macedonia adopted such measures arose primarily from the exigency to protect the health and safety of vulnerable categories of workers (pregnant women and chronically ill workers), but also to meet the needs of workers with family responsibilities (i.e. the parents of minor children up to 10 years of age who need care) who due to the closure of kindergartens and primary schools, found it hard to provide

⁶ Law on Labour Relations, *Official Gazette of the Republic of Macedonia*, No. 62/05.

⁷ See Decision on the Declaration of a State of Emergency in the entire country, *Official Gazette of RNM*, No. 68 of 18.03.2020.

⁸ E.g.: Decree with a force of Law for the application of the Law for the protection of the population from infectious diseases (*Official Gazette of RNM*, No. 72 of 21.03.2020); Decree with a force of Law for mandatory self-isolation during testing for the presence of coronavirus COVID-19 (*Official Gazette of RNM*, No. 44 of 22.04.2020); Decree with a force of Law for wearing personal face protection (*Official Gazette of RNM*, No. 107 of 22.04.2020), etc.

⁹ As a Protocol of particular importance for the protection of health and safety of workers in terms of COVID-19, we single out the *Protocol for preventive measures applicable to all workplaces*. This Protocol applies to all workplaces and all persons in the workplace and includes measures of hand hygiene, respiratory hygiene, physical distancing, reduction and organization of work-related trips, regular cleaning and disinfection of the work environment, communication, training, education and management of persons with COVID-19 or their contacts.

¹⁰ Minutes of the Government of RNM, No. 44-2147/1 of March 10, 2020, items 3 and 20.

¹¹ Decision of the Government of RNM, *Official Gazette of RNM*, No. 62 of March 12, 2020.

care for their children. The measures for absence from work of some of these workers were revised in September, 2020, and as a result, workers with chronic diseases and parents of children up to 10 years of age (due to the reopening of schools and kindergartens) who were previously 'exempted' from going to work, were required to return to their regular working duties. The same requirements applied to women workers-beneficiaries of extended maternity leave (who acquired the right to extended paid maternity leave based on the Decree with a force of Law for the application of the Law on Labour Relations of April 4, 2020).¹² The only categories of workers for whom the measures of absence from work continue to apply are the chronically ill whose disease is in an exacerbation phase or who have a malignant disease and pregnant women. However, it still remains arguable what the legal basis for the 'exemption' (i.e. paid leave) from work of these workers is. This is so, because neither the Law on Labour Relations, nor the regulations on compulsory health insurance (i.e. the Law on Mandatory Health Insurance) provide an adequate legal basis for paid leave of absence for any of the above categories of workers, while the bylaws by which the concerned workers were 'exempted' from work may serve only as legal acts for the implementation of the Laws, but not as primary legal sources that de novo regulate a certain legal situation. Hence, in practice, as a legal basis for the concerned categories of workers to obtain an 'absence' from work, either days of paid annual leave or days of paid leave of absence due to personal and family circumstances are used, whereby the costs for payment of the salary allowance of such absences are entirely borne by the employers. Income replacement of workers during COVID-19 illness and isolation, regardless of whether as a consequence of symptomatic or asymptomatic infection, or self-isolation due to contact with an infected person, is treated in the same way as a regular salary allowance due to sick leave (up to 30 days at the expense of the employer and over 30 days at the expense of the Health Insurance Fund) and is paid less than 100% of the base salary. The only exception to this rule are workers for whom COVID-19 disease has started to be considered an occupational disease determined by the Rulebook on the list of occupational diseases (e.g. health workers and other workers performing similar activities) and whose salary allowance on that basis is paid at 100% of the base salary.¹³

Policy measures to support employment and income, generally, include three types of income schemes: *the first type* refers to the so-called 'employment retention schemes', which can be applied not only to workers but also to self-employed persons; *the second type* refers to the expansion of support to workers who lost their jobs due to the slow-down of economic activities, by

¹² See Decree with a force of Law for the application of the Law on Labour Relations during state of emergency, *Official Gazette of RNM*, No. 95 of 08.04.2020.

¹³ See Rulebook on the list of occupational diseases, *Official Gazette of RNM*, No. 118/2020 од 07.05.2020.

temporarily relaxing the eligibility criteria of the unemployment benefits and the third type encompasses measures to expand social protection tools (minimum guarantee income) for those individuals and households that do not qualify for employment retention measures and protection against unemployment schemes.

The first type of income schemes, or so-called 'employment retention schemes' consists of policies and measures aimed at providing financial support to employers for the payment of wages to workers and the preservation of their jobs, as well as to support self-employed persons and other autonomous workers. During the state of emergency in the country, the Government adopted several Decrees with a force of Law, including: *Decree for financial support of employers from the private sector from April 7, 2020*¹⁴ (with several subsequent amendments) which introduced the possibility of using direct financial assistance to a maximum of 14,500 MKD per month, i.e. 236 EUR (the amount of the minimum wage), for the months of April, May and June by all companies affected by the crisis with the obligation of the employers not to reduce the number of workers to a certain percentage until August, 2020 except in strictly defined cases; *Decree with a force of Law for the application of the Law on Labour Relations from May 1, 2020*¹⁵ which provided for the possibility of consensual return of workers whose employment contracts were terminated in the period from March 11 to April 30, 2020 to their former employer, with an obligation for the employer to retroactively pay the compulsory social insurance contributions of the workers as from the day of termination to the day of concluding the agreement for consensual return to work, and all this, with the purpose to enable employers to use financial support in the amount of the minimum wage, as provided by the Decree for financial support of employers from the private sector; *Decree with a force of Law for subsidizing the payment of compulsory social security contributions from April 6, 2020*¹⁶ (as an alternative to the Decree for financial support for the payment of wages, with the exception of employers from the most affected sectors – hospitality, tourism and transport, that can combine the two measures), covering 50 per cent of actually paid social security contributions for eligible companies and workers, for April, May and June, 2020, as well as, the *Decrees with a force of Law* that provide financial support to individuals who perform independent activity, financial assistance to athletes, professionals in the field of sports and sports administration, independent artists, and the like. After the expiration of the validity of the Decrees with a force of Law, part of the measures envisaged in them, with certain amendments, become subject to regulation of the *Law on Financial Support to Employers*

¹⁴ See Decree with a force of Law for financial support of employers from the private sector, *Official Gazette of RNM*, No. 93.

¹⁵ See Decree with a force of Law for amending the Decree for the application of the Law on Labour Relations during state of emergency, *Official Gazette of RNM*, No. 113.

¹⁶ See Decree with a force of Law for subsidizing the payment of compulsory social security contributions during state of emergency, *Official Gazette of RNM*, No. 92.

Affected by the Health and Economic Crisis Caused by the COVID-19 Virus for Payment of Wages for the months of October, November and December 2020, which is valid from November 9, 2020.¹⁷ In principle, pursuant to this Law, the financial support of employers is determined progressively in accordance with the decline in revenues of companies. For incomes reduced from 30.01% to 40%, payment is provided up to 14,500 MKD per employee, from 40.01% to 50%, up to 15,955 MKD per employee, from 50.01% to 60%, up to 17,410 MKD per employee, from 60.01% up to 70%, up to 18,865 MKD per employee, from 70.01% to 80%, payment up to 20,320 MKD per employee and over 80%, up to 21,776 MKD per employee. The financial support to employers was subsequently extended for the months of February and March, 2021.

Within the framework of the 'second type' of income schemes aimed at the preservation of the income of workers whose employment contracts were terminated, we emphasize the Decree with a force of Law for the application of the Law on Employment and Insurance against Unemployment of May 27, 2020.¹⁸ This Decree introduced the possibility to register workers whose employment contracts were terminated by resignation, mutual agreement or dismissal on the initiative of the employer due to capacity or conduct based reasons, in the period between March 11, 2020 and April 30, 2020, as beneficiaries for using Unemployment Benefits (a monetary allowance that they were not entitled of using, according to the regular insurance against unemployment regulations). Since the expiration of the validity of the Decree until today, no amendments have been made to the Law on Employment and Insurance against Unemployment, thus, the problem of workers whose employment has been terminated by mutual consent of the parties is still open, because such ground for termination does not fall under the grounds for termination for which unemployment benefits are paid.

Finally, within the 'third type' of income schemes, aimed at expanding social protection measures in order to provide income support to persons who do not meet the conditions for obtaining cash benefits through the employment retention schemes (first type of income schemes) and through the unemployment insurance system (second type of income schemes), the Government of North Macedonia enacted the Decree with a force of Law for application of the Law on Social Protection from April 2, 2020¹⁹ and its subsequent amendment of April 24, 2020.²⁰ This Decrees are intended to support persons who were part of the informal economy and were left without income in order to provide them with a monetary compensation for a minimum guaranteed income and a monetary supplement to cover part of the costs of energy consumption.

¹⁷ Official Gazette of RNM, No. 267 /20.

¹⁸ Official Gazette of RNM, No. 136/20.

¹⁹ Official Gazette of RNM, No. 89/20.

²⁰ Official Gazette of RNM, No. 108/20.

III. MEASURES (SCENARIOS) FOR FLEXIBILITY OF EMPLOYERS WHILE MAINTAINING EMPLOYMENT AND INCOME SECURITY OF WORKERS

In North Macedonia, measures (scenarios) for flexibility of employers while maintaining the employment and income security of workers, can be classified in the following groups: measures related to changes in the working hours of the workers (i.e. *temporal flexibility*), measures related to changes in workers' wages (i.e. *financial flexibility*) and measures related to changes in the workplace or place of work (i.e. *functional and spatial flexibility*).²¹

All the aforementioned groups of measures find their legal basis in labour legislation (Law on Labour Relations) and collective agreements.

Table 1. Measures (scenarios) for flexibility of employers while maintaining employment and income security of workers

1. Measures related to changes in the working hours of workers (temporal flexibility)	2. Measures related to changes in workers' wages (financial flexibility)	3. Measures related to changes in workers' workplace or place of work (functional and spatial flexibility)
1.1 Reduced (full) working time (Law on Labour Relations – Art. 116, para. 3)	2.1. Reduction of salary as a result of suspension of work due to force majeure (Law on Labour Relations – Art. 112, para. 7)	3.1 Unilateral deployment of workers (Law on Labour Relations – Art. 30, para. 2 and Art. 153); General Collective Agreement for the private sector – Art. 8
1.2. Part-time work (Law on Labour Relations – Art. 48)	2.2. Reduction of salary as a result of work stoppages due to business reasons (Law on Labour Relations – Art. 112, para. 10)	3.2. Remote/Home Work (telework)
1.3. Unevenly distributed (compressed) working hours (Law on Labour Relations – Art. 123)	2.3. Temporary (unilateral) reduction of the base salary (General Collective Agreement for the private sector – Art. 18)	
1.4. Redistribution (averaging) of working hours (Law on Labour Relations – Art. 124)	2.4. Contractual (agreed) reduction of the base salary (Law on Labour Relations – Art. 28-a)	

²¹ See T. KALAMATIEV and A. RISTOVSKI, *Flexibility and Security of Employment Relationships in the Labour Legislation of the Republic of Macedonia – development and perspective*, Radno I Socijalno Pravo, Beograd, No. 1/2013, p. 78–80.

1. Measures related to changes in the working hours of workers (temporal flexibility)	2. Measures related to changes in workers' wages (financial flexibility)	3. Measures related to changes in workers' workplace or place of work (functional and spatial flexibility)
1.5. Paid leave due to personal and family circumstances (<i>Law on Labour Relations - Art. 126; General Collective Agreement for the private sector - Art. 43</i>)	2.5. Contractual (agreed) reduction of working hours (part-time work) in order to reduce the minimum base salary (<i>Law on Labour Relations - Art. 28-a</i>)	

In the following sections, we look at two of the flexibility measures that, despite the legal dilemmas they pose, have significant application in practice. While the first such measure (*suspension of work due to force majeure*) is regulated by the Law on Labour Relations, the second measure (telework) is not yet specifically regulated in the Law and its application is implemented through other, related forms of work.

A. SUSPENSION OF WORK DUE TO FORCE MAJEURE

Suspension of work due to force majeure (so-called temporary forced leave due to force majeure), in essence, is a suspension of the execution of the employment contract or the inability of the worker to perform the work for which he was employed, due to force majeure. This legal institute is regulated by the Law on Labour Relations, which stipulates that “*if the worker can not perform the work due to force majeure, he is entitled to half of the salary, to which he would otherwise be entitled, if he worked*”.²² Despite its regulation by the Law, the suspension of work due to force majeure caused various dilemmas in practice, as its interpretation by trade unions on the one side and employers on the other was diametrically opposed. This situation was due, primarily because the trade unions challenged the treatment of the crisis caused by COVID-19 as a ‘force majeure’ and cited alternative flexibility measures to which they attributed priority in application. Although the Law on Labour Relations does not define the term ‘force majeure’, in its interpretation and application, the provisions of the general contract law have subsidiary application. In the context of labour relations, as cases of force majeure can be treated certain natural disasters and social events (floods, earthquakes, fires, epidemics, wars, etc.) that are completely ‘external’, independent and unrelated to the employer and that of there was no way the employer could have foreseen or prevented them. The emergence

²² See Law on Labour Relations, Article 112, para. 7.

and spread of COVID-19 on a pandemic scale and the declaration of a state of emergency in the country as a result of the epidemic, are certainly events that employers could not have predicted or avoided. Due to these events, part of the employers were ‘forced’ by the Decisions of the Government of North Macedonia and other temporary measures and bylaws to fully disrupt the business process. Hence, we consider that the application of the measure ‘suspension of work due to force majeure’ by employers who are directly affected by the decisions to lock-down the business-production process or part of it, is legal and justified. An issue that may pose additional dilemmas in this section is the issue related to the basis for calculating the remuneration of workers whose work has been suspended due to force majeure, given that the Law on Labour Relations provides that as such will be considered ‘*the salary to which the employee would have otherwise be entitled to, if he worked*’. In our opinion, this is the usual or expected salary, i.e. wage that the employee would have earned had he worked in accordance with the regular schedule of working hours. The expected salary in any case must not be lower than the base salary of the employee, while we also consider that the allowances for length of service, night work (if the employee was expected to perform night work), and the like, should be attached to it. A question which is often posed in practice is ‘*whether in terms of temporary forced leave due to force majeure, the employer is entitled to pay salary allowance to the employee in an amount that is less than the minimum net wage as set by Law*’? Given the existing legal framework, in our opinion, the answer to this question is affirmative. In determining the amount of the salary allowance in terms of suspension of work due to force majeure, the Law on Labour Relations, implicitly ascertains the salary that cannot be lower than half of the *base net salary* of the worker. According to the Law on Minimum Wage, the minimum wage means the lowest monthly amount of the base salary that the employer is obliged to pay to the worker for work performed on a full time working time²³ (currently, 14,934 MKD / 241 EUR). Hence, we consider that the salary allowance in terms of suspension of work due to force majeure may be lower than the minimum net wage only when it comes to those workers whose base net salary according to their employment contract is equal to the minimum net wage, with a note that such allowance shall in no case be lower than half (50%) of the minimum net wage (currently MKD 7,467/120 EUR). The only exception to the previous interpretation seems to exist in cases where the employer uses financial support to pay workers’ wages in accordance with a special law. In such cases, regardless of whether the execution of work is suspended due to force majeure or other grounds, it is considered that the employer is obliged to pay the worker a net salary, the amount of which must not be less than the minimum amount for which payment support can be obtained, i.e. 14,500 MKD.

²³ See Law on Minimum Wage, Article 2, *Official Gazette of RNM* (consolidate text), No. 90 of 17.05.2018.

B. TELEWORK/WORK FROM HOME

Telework is broadly defined as using Information Communication Technologies (ICTs) to perform work from outside the employer's premises.²⁴ The health and economic crisis caused by the outbreak of COVID-19, increased the need for utilization of telework in North Macedonia as an effective tool for organizing work and protection of occupational health and safety of workers. In this regard, despite the great significance of teleworking, as a measure to enable uninterrupted flow of business processes on the one hand, and to protect safety and health of workers on the other, the Macedonian labour legislation has not yet found a way to properly regulate this non-standard form of work. The Law on Labour Relations does not regulate telework. It only governs the more 'traditional' form of work performed from home (i.e. home work) which is different from telework in that its constituent element is not the use of ICTs. Similar to the Law on Labour Relations, General Collective Agreements for the private and public sector in the Republic of North Macedonia, do not cover the issue of telework at all, and such is the situation regarding the Special (branch) collective agreements. For the duration of the national state of emergency, teleworking was neither regulated by any Decree with a force of law. The only legal acts that implicitly recommended employers from the public and private sector to apply telework/work from home were the bylaws adopted in early March 2019. In meanwhile, according to a recent study conducted by the ILO and the EBRD on the assessment of the impact of COVID-19 on employment in North Macedonia, as many as 15% of employers that responded to the survey have implemented work from home (i.e. telework).²⁵

Despite the fact that in the recent period a large number of employers in North Macedonia, both from the private and the public sector introduced telework (home work), the dilemmas that have occurred in the practice still remain to exist. Such are the dilemmas:

- What is the legal basis for the introduction of telework and what is the legal framework for regulating the rights, obligations and responsibilities of the contracting parties in the execution of telework/work from home?;
- To what extent, employers and workers are flexible to arrange models of work organization that will include a combined performance of the work activities in the worker's home or other place of his/her choice and the employer's premises? and

- Which are the legal ways, i.e. legal basis that can lead to full or partial, permanent or temporary change of the place of carrying out the work activities?

Regarding the *first and second dilemma*, we consider that despite the absence of appropriate provisions for special and separate regulation of telework as a non-standard form of organization of work, the legal void may be filled with the provisions of the existing legal framework that governs the performance of work from home (Articles 50, 51 and 52 of the Law on Labour Relations). The existing provisions governing work from home do not provide for any prohibition to perform work tasks and activities that include the utilization of modern ICTs, neither explicitly limits the 'spatial' flexibility in the organization of work, if such organization requires establishing of a combined model that includes both the performance of work activities from home (i.e. remote place of work) and from the business premises, according to the schedule and dynamics contractually agreed between the employer and the employee.

Regarding the *third dilemma*, our position is that in principle (if conditions and circumstances are normal), work from home/telework, can be introduced only on the basis of mutual consent between the employer and the worker for which an annex to the contract of employment is concluded. Hence, according to the existing legal framework, we consider that when amending the employment contract in order to establish home work/telework, regardless of the model of work organization agreed between the parties (ad-hoc, scheduled or fixed form of home work/telework), it is necessary to conclude an 'annex' to the employment contract (pursuant to Article 28-a of the Law on Labour Relations). However, it should be noted that the Law on Labour Relations, in cases of exceptional circumstances (natural and other disasters) contains a ground for unilateral (without worker's consent), temporary change of the place of execution of work, but only during the existing conditions (Article 153). There is no restriction, on the basis of which, such exceptional circumstances would not include the possibility of temporary introduction of home work/telework by unilateral decision of the employer.

IV. CONCLUSION

During the COVID-19 crisis, a multitude of legal regulations aimed at protecting workers in the workplace and supporting their employment security and income, have been adopted in North Macedonia. In the beginning (throughout the state of emergency in the country from March 18 to June 23, 2020), said legal regulations were adopted in the form of Decrees with a force of Law and of Bylaws (Conclusions and Decisions of the Government of North Macedonia).

²⁴ C.J. MESSENGER (2019), *Telework in the 21st Century: An evolutionary perspective*, International Labour Organization, p. 2.

²⁵ See ILO and EBRD, (2020), *Covid-19 and the World of Work – Rapid Assessment of the Employment Impacts and Policy Responses for North Macedonia*, p. 21.

In parallel, regular labour and social security legislation were also applied. However, dilemmas remain regarding the adequacy of the measures taken in the field of labour relations. Undoubtedly, the legislator had to find more adequate legal basis for the 'exemption' from work of the vulnerable categories of workers (*pregnant women* and *chronically ill*) through amendments in health insurance regulations (i.e. the Law on Health Insurance) and extension (assimilation) of paid leave of absence due to illness (given that the costs of such leave for more than 30 days, are supposed to be borne by the Health Insurance Fund, as in regular cases of paid leave due to temporary incapacity for work due to illness or injury). The paid leave from work of these categories of workers should have been conditioned, with the inability of the workers to perform the work from home/remotely. In this or similar manner, the paid leave from work of *workers with family responsibilities* should have been regulated, as well. The protection of employment security and the income of *workers whose employment contracts were consensually terminated* should have been carried out through one or a combination of the following measures: conditioning the consensual termination of the employment contract with mandatory payment of severance pay (monetary compensation) to the workers by the employer; entangling the procedure for consensual termination and enabling workers whose employment contracts were terminated consensually to obtain unemployment benefits paid by the Employment Service Agency of North Macedonia for the entire period of the pandemic.

This paper also illustrates the various measures (scenarios) arising from the Law on Labour Relations, through which, on the one hand, the interests of employers to reduce their operating costs, and on the other hand, the interests of workers to preserve their employment and income security, are expressed. Throughout the pandemic, several such measures of the existing labour legislation have been particularly applied by employers in practice. Such are, for example, the measures (provisions) for *suspension of work due to force majeure* (so-called temporary forced leave due to force majeure) and the practices of *home working/teleworking*. Given the difficulties in the interpretation and proper application of the institute '*suspension of work due to force majeure*', we believe that certain improvements in labour legislation are necessary. In future, the Law on Labour Relations, should make a more comprehensive distinction between '*suspension of work due to force majeure*' and other similar cases leading to suspension of work (e.g. work stoppage due to business reasons on the side of the employer or due to a decision of the labour inspection). Additionally, it is important for the protection of the income of the workers affected by the suspension of work due to force majeure to determine that their salary allowance paid by the employer, must not be lower than the amount of the minimum net wage or a certain percentage of the minimum net wage (e.g., 80 per cent).

Telework/Home work was, and still remains to be, one of the most widely used measures for the smooth running of business operations by employers and for the protection of the safety and health of workers during the pandemic. However, despite its widespread utilization in practice, telework (as a form of organization of work) is not explicitly regulated neither with North Macedonia's existing labour legislation and collective agreements, nor with Decrees with a force of Law (adopted for the duration of the state of emergency in the country) or Bylaws. Its application is emanated indirectly through the institute 'work from home' as a special non-standard form of employment, which is regulated by the Law on Labour Relations. Considering the need for introduction and regulation of telework with all its specifics, it is expected that telework will sooner rather than later become part of Macedonian labour law system. Naturally, in the process of future regulation of telework, it is necessary to take into account the solutions provided under the European Framework Agreement on Telework of 2002.