Restatement of Labour Law in Europe

Volume III: Dismissal Protection

edited by

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Volume III of the *Restatement of Labour Law in Europe* focuses on the core area of individual labour law: protection against dismissal. It's impossible to overemphasise the importance of the relevant provisions. One is almost tempted to say: protection against dismissal is not everything, but everything is nothing without it. The volume illuminates all facets of protection against dismissal in the legal systems involved, including the elements of collective law.

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General Editor
Frankfurt, October 2022

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229 According to some collective agreements, the committee is established to issue its opinion on matters regarding the collective agreement. It is then up to the employer to follow the committee's recommendations. The employee can still bring a case before the court if the employer does not comply with the decision or if the employer does not follow the committee's advice. For instance, the Dutch National Railways Society *NS* has such a committee. It can, of course, also attempt to mediate between the parties.

2. Mediation

230 It is possible to agree in the individual employment contract on the use of a mediator in an attempt to settle the dispute amicably. However, the very limited period envisaged for bringing a case before the court makes it difficult to practice mediation in questions of dismissal. In labour law it is more often used in case of conflicts between the parties prior to the dismissal. Occasionally, the parties may agree to start mediation and to suspend the court proceedings while the court procedure is underway.

L. Extra-statutory Dismissal Protection

231 Dismissal law is mandatory for the most part and cannot be set aside by an individual employment contract. However, additional provisions may in principle be included.

I. Employment Contracts

232 Adjustments of the periods of notice in the individual employment contract were already discussed above.

233 The parties may have agreed to severance pay in advance in case of dismissal of the employee. This is the case in particular of high-level executives. It is recommendable for these provisions to make clear whether they include or supplement the transition payment. There is no case law yet on what the consequences are if they did not provide for this in advance. As regards fair payment, the judge may take the already agreed severance payment into account. Case law under previous dismissal law also pointed in that direction.[138]

II. Collective Agreements

234 A collective agreement may replace the transition payment.[139] It is up to the parties to the collective agreement to decide which scheme can properly replace the statutory transition payment system.[140] In some collective agreements, a tide-over payment is included. In other cases, it is plausible that the social plan covers the transition payment and that it is replaced by training to facilitate employees to find other jobs.

[138] HR 7 April 1995, ECLI:NL:HR:1995:ZC1696 (*Staten Bank/Fiet*).

[139] Art 673*b* Netherlands' Civil Code.

[140] Initially, it was required for the scheme to be 'equivalent' with the transition payment. However, this did not work out in practice, because it is difficult to determine what is 'equivalent'. As a result, this requirement was withdrawn by Act of 11 July 2018, Official Gazette (*Staatsblad*) 2018, 234 (Wet houdende maatregelen met betrekking tot de transitievergoeding bij ontslag wegens bedrijfseconomische omstandigheden of langdurige arbeidsongeschiktheid).

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North Macedonia

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Content

A. Introduction

1 The independence of North Macedonia followed by the dissolution of the former Socialist Federal Republic of Yugoslavia (SFRY), the introduction of economic freedom and entrepreneurship, as well as various forms of property ownership and pluralism in politics gave rise to the adoption of the first labour law (Law on Labour Relations of 1993).[1]

2 The Law on Labour Relations (*Закон за работните односи*) of 1993 introduced 'tectonic shifts' by not only setting the legal foundation for establishing employment relationships (with the introduction of the 'employment contract'), but also by setting the legal foundation for terminations of the employment relationship (primarily with the introduction of 'dismissal' (*отказ*) as a ground for termination of employment, which was not covered in the labour legislations of the former SFRY). This new legal regime on employment relationships replaced 'termination of the employment relationship as a disciplinary measure' with 'termination of the employment relationship by dismissal and on the employers' initiative'.[2]

3 This ongoing flexibilization of North Macedonia's labour law continued with the introduction of new labour laws (Law on Labour Relations of 2005, which is still in force, despite numerous amendments – hereinafter LLR).[3] The new Law on Labour Relations has increased the flexibility of dismissal, particularly with regard to the 'quantity' of certain employee rights, such as the minimum duration of the notice period in case of dismissal,[4] the amount of severance pay in the event of termination by dismissal for business reasons,[5] information and consultation of workers' representatives in the event of collective redundancies,[6] etc.

4 The Constitution of the Republic of Macedonia of 1991 (*Устав на Република Македонија*)[7] is the cornerstone of Macedonia's labour law. It specifies the position and competences of the Constitutional Court of North Macedonia (*Уставен Суд на Република Северна Македонија*).[8] In exercising its competence to 'assess the constitutionality and legality of laws and regulations' the Constitutional Court has

[1] The Law on Labour Relations (Закон за работните односи) (Сл. весник на Република Македонија, бр.80/93).

[2] Т Каламатиев, *Работно законодавство – прописи во сферата на трудот* (Labour legislation – regulations in the field of labour), (Скопје, Friedrich Ebert Stiftung, 2012) 26.

[3] The Law on Labour Relations (Закон за работните односи) (Сл. весник на Република Македонија, бр. 62/05).

[4] In comparison with LLR of 1993 (basic text), which stipulated that the minimum duration of the notice period shall be *at least thirty days up to six months* (Art 121), the current LLR of 2005 (consolidated text) provides for a minimum duration of the notice period of *at least one up to two months*, taking into consideration the number of dismissed employees (Art 88).

[5] In comparison with LLR of 1993 (basic text), which provided for severance pay of *at least one up to twelve salaries* taking into consideration the employee's period of service (Art 130), the current LLR of 2005 (consolidated text) provides for severance pay in the amount of *at least one up to seven salaries* taking into account the employee's period of service (Art 97).

[6] In comparison with LLR of 1993 (basic text), which imposed an obligation on the part of the employer to inform and consult workers' representatives *up to six months* before the termination of the employment contract (Art 127), the current LLR of 2005 (consolidated text) provides for a period of *at least one month* before the commencement of collective redundancies (Art 95).

[7] The Constitution of North Macedonia (Сл. весник на Република Македонија, бр.52/1991).

[8] The Constitution of North Macedonia empowers the Constitutional Court of North Macedonia with several basic competencies, such as control of constitutionality and legality, protection of human rights and freedoms, competence to decide conflicts of jurisdiction, competence to decide on liability on the part of the President of North Macedonia, etc (see Art 110).

rendered 13 decisions to date, declaring several provisions of the current Law on Labour Relations void or annulled.[9] Two decisions annulled several provisions included in the Chapter of the Law on Labour Relations related to 'terminations of the employment contract by dismissal'. One of these decisions deals with the legal effects of unlawful termination of the employment contract by dismissal by the employer, ie the right of the employee to seek compensation for unlawful termination of the employment contract.[10] The Constitutional Court thereby annulled the provisions providing for compensation of damages to the employee in the event of unlawful termination if the employee demanded reinstatement[11]. The amount of damage compensation is to consist of '70 per cent of lost income, plus the amounts of contributions for compulsory social insurance.' If the employee requests the court to determine the date of termination of employment,[12] damage compensation is to amount to 'at least three and up to twelve basic monthly salaries based on the employee's basic salary paid in the preceding twelve months.'[13] Another decision by the Constitutional Court was issued on provisions relating to *ex lege* terminations of employment (ie terminations of employment once the employee has reached retirement age). With its decision, the Constitutional Court annulled provisions that sought to protect employee rights[14] and thus introduced the employer's duty to extend the employee's employment contract up to the maximum age provided for both male employees (until the employee reaches 67 years of age) and female employees (until the employee reaches 65 years of age).[15]

The role of European law and its influence on the structure and development of North Macedonia's labour law (including dismissal protection) is reflected in the harmonisation of North Macedonia's labour legislation with that of the European Union and the Council of Europe. 5

Taking into account the obligations arising from the Stabilization and Association Agreement of 2001 (concluded between the EU and its Member States and North Macedonia) and North Macedonia's status as an EU candidate country since 2005, the country's legal order is undergoing continuous harmonisation with EU law, including 6

[9] See Decision No 139/2005 of 12 January 2006, Decision No 161/2005 of 12 January 2006, Decision No 134/2005 of 5 April 2006, Decision No 187/2005 of 29 May 2006, Decision No 111/2006 of 12 February 2007, Decision No 188/2006 of 9 May 2007, Decision No 170/2006 of 20 June 2007, Decision No 200/2008 of 20 May 2009, Decision No 20/2009 of 25 January 2010, Decision No 176/2009 of 27 April 2010, Decision No 263/2009 of 4 October 2010, Decision No 62/2013 of 14 July 2014, Decision No 114/2014 of 21 July 2016.

[10] See Decision of the Constitutional Court of North Macedonia, 139/2005 (Сл. весник на Република Македонија, бр.3/2006).

[11] Art 102, para 2 of the LLR.

[12] Art 102, para 5 of the LLR.

[13] The Constitutional Court found that the 'disputed legal provisions override the general provisions for damage compensation and provide for a different approach, ie scope of compensation for the employee whose employment relationship has been terminated by the employer'. The Constitutional Court emphasised that 'the legislator is not entitled to determine the amount of damage the employee has suffered in percentage or in absolute terms *in advance*, because it is for the competent court before which proceedings are brought to determine.'

[14] Art 104, para 2 of the LLR.

[15] In its decision, the Constitutional Court provided that 'the disputed provisions impose terminations of employment on female employees under different conditions than for male employees.' It rightfully determined that 'the legislator has the constitutional duty, when construing the issues related to the exercise of rights, obligations and responsibilities of employees and employers, including extension of the employment contract before retirement, treating all employees equally, including gender equality.' See Decision of the Constitutional Court of North Macedonia, 114/2014 (Сл. весник на Република Македонија, бр.134/2016).

the legal regulations of the so-called 'social' *acquis communautaire*.[16] The development of North Macedonia's labour legislation (which not only includes the Law on Labour Relations, but other acts on labour law as well) entailed the transposition of 22 European Union Directives.[17] As regards dismissal protection regulations, the most relevant regulations are EU Directive 98/59/EC on collective redundancies and EU Directive 2001/23/EC on transfers of undertakings, businesses or parts of undertakings or businesses.

7 North Macedonia has been a candidate state for EU accession since 2005 and has been a Member State of the Council of Europe since 9 November 1995. As a Member State of the Council of Europe, North Macedonia has ratified the Convention for Protection of Human Rights and Fundamental Freedoms of 1950. Consequently, North Macedonia falls under the jurisdiction of the European Court of Human Rights, thereby entitling its citizens to seek legal protection before the ECHR. The European Court of Human Rights case law has issued decisions that directly or indirectly relate to protection against dismissal in North Macedonia.[18]

8 Since its accession to the ILO on 28 May 1993, North Macedonia has ratified 80 of its Conventions.[19]Among those ratified is the Termination of Employment Convention (Number 158) of 1972. ILO Convention Number 158 and the Termination of Employment Recommendation (Number 166) of 1982 are an integral part of North Macedonia's domestic law and cannot be amended by laws.[20] Employers and employees must comply with these provisions.[21] Convention Number 158 and Recommendation Number 166 have played a significant role in establishing the proper application of the rules on protection against dismissal in North Macedonia. They closed certain 'legal gaps' that existed in the labour legislation of North Macedonia (eg the 'criteria for selection of employees for dismissal due to business reasons', as contrary to point 23 of ILO Recommendation Number 166, the Law on Labour Relations neither stipulates any selection criteria, nor does it authorise the employer to establish any criteria in a specified way).[22] The courts in North Macedonia, as a rule, apply international labour standards when the national legal regulations deviate from the aforementioned international labour standards on terminations of employment.[23]

[16] T Kalamatiev, A Ristovski, *Collective Redundancies and Employees' Rights in the Republic of Macedonia – Current Situation and Degree of (non) Compliance with the EU Law* (Restructuring of Companies and Protection of Employees' Rights: View from the EU, Austria, Serbia and Macedonia, *Collection of extended abstracts* of contributions presented at the international conference held at the University of Belgrade – Faculty of Law on 2 March 2017) 47.

[17] See С Трајанов, *Коментар на Законот за Работните Односи* (Скопје, 2016) 379–380; T Kalamatiev and A Ristovski, *Implementation of the European Social Model in the Labour Legislation of Republic of Macedonia,* (Niš, Collection of Papers, No 68, Year LIII, 2014) 118.

[18] For example, in the case of *Naumovski v Republic of Macedonia (appeal No 25248/05)*, the Court decided on the applicant's appeal regarding the duration of the proceedings on his dismissal. In its judgment, the court accepted the appeal and found that the duration of the disputed proceedings for dismissal (which lasted nearly five years and three months and were dealt with before three instances of the national competent courts) was not in accordance with the right to a fair trial within a 'reasonable time' as stipulated in Art 6, para 1 of the European Convention on Human Rights and Freedoms. See also: Case of *Petreska v Republic of Macedonia* (appeal No 16912/08); Case of *Josifov v Republic of Macedonia* (appeal No 37812/04); Case of *Stojkovikj v Republic of Macedonia* (appeal No 14818/02), etc.

[19] See List of ILO Conventions ratified by the Republic of North Macedonia: http://www.mtsp.gov.mk/content/pdf/dokumenti/dokumenti%202017/MOT_lista_2017.pdf.

[20] See Art 118 of the Constitution of North Macedonia.

[21] See Art 12, para 1 of the LLR.

[22] The most recent amendments to the LLR from 29 June 2018 establish specific selection criteria, which are only vaguely regulated (see section D.IV. below) (Law on amending and supplementing the Law on Labour Relations, Сл. весник на Република Македонија, бр.120/2018).

[23] See 'Bulletin 2' of the Appellate Court in Skopje, 23 July 2011.

B. General Information

I. Legal Sources

The Law on Labour Relations of 2005 (*Закон за работните односи*) serves as an overarching, fundamental and substantive legal source of labour law in North Macedonia. It sets out a number of valid legal grounds for terminating employment relationships,[24] one of them being terminations by *dismissal*. The rules regulating terminations of employment relationships by dismissal are stipulated in a separate chapter of the Law (Chapter VII – Termination of the employment contract by dismissal by the employer and by resignation by the employee). 9

In addition to the Law on Labour Relations (which applies *lex generalis*), unilateral terminations of employment at the initiative of the employer are also covered in other laws (which apply *lex specialis*), such as the Law on Administrative Servants (*Закон за административните службеници*),[25] the Law on Internal Affairs (*Закон за внатрешни работи*),[26] the Law on Military Defence (*Закон за одбрана*)[27] etc. Case law is not considered a legal source of labour law in North Macedonia.[28] In the legal system of North Macedonia only the principle positions and legal opinions of the Supreme Court of North Macedonia are deemed a source of law, since their role is to unify court practice. Such decisions are rendered in general sessions in the Supreme Court and are binding for all of its councils.[29] 10

Although case law in North Macedonia is not deemed to be a formal (direct) and binding legal source, it influences law-making as a 'factual' legal source. Case law significantly contributes to the process of interpretation of the existing legal gaps relating to terminations of employment relationships by dismissal.[30] 11

The Law on Labour Relations explicitly states that the employment contract can regulate certain aspects related to dismissals (such as the grounds for dismissal[31] and a notice period that exceeds the minimum period of notice as provided by law[32]). Yet, individual contracts of employment are not considered to play a significant role within the framework of legal sources on dismissal. 12

There was a widespread practice in North Macedonia of 'misuse' of employees' consent to 'voluntary' (consensual) terminations of the employment contract. Employers would 'extort' statements from the employee that he or she wants to terminate the employment contract or a statement of consent for a consensual termination of the employment contract at the employee's initiative, which are colloquially known as 13

[24] They include expiry of the period for which the employment contract has been concluded; death of the employee or the employer (natural person); termination of the employer's existence in accordance with the law; consensual termination; dismissal; court verdict and other cases defined by law. See Art 62 of the LLR.

[25] Law on Civil Servants (Сл. весник на Република Македонија, бр.27/2014).

[26] Law on Internal Affairs (Сл. весник на Република Македонија, бр.42/2014).

[27] Law on Military Defence (Сл. весник на Република Македонија, бр.42/2001).

[28] Г Старова, *Трудово Право,* (Скопје, Просветно Дело А Д Скопје, 2009) 61.

[29] Art 27(2) of the Law on Courts (Закон за Судовите) (Сл. весник на Република Македонија, бр. 58/2006).

[30] See judgments of the Supreme Court of North Macedonia: *Рев.бр.494/2005* of 28 June 2006, *Рев.бр.85/05* of 30 March 2005 година, *Рев.бр.812/98* of 20 October 1999; judgments of the Appellate Courts of North Macedonia: *РОЖ No 1101/09* of 08 January 2010, *РОЖ No 1217/09* of 26 November 2009, etc.

[31] See Art 71, para 3 of the LLR.

[32] See Art 88, para 1 of the LLR.

'blanco dismissals' (*бланко-откази*).[33] Employees would sign such 'statements' ('blanco dismissals') at the time of conclusion of the employment contract. The 'statement' would contain the employee's signature, but would not list a date, which gave employers the possibility to insert the date at a later date and thus 'activate' the 'blanco dismissal', thereby terminating the employment relationship. Taking into account this abusive conduct on the part of the employer, who only concluded an employment contract if the employee also signed a 'blanco dismissal,'[34] the legislator adopted amendments to several provisions of the Law on Labour Relations to prevent and penalise such unlawful practice.[35] The Law explicitly prohibits the employer from requesting an employee to sign a statement of consent for the termination of the employment contract as a condition for concluding the contract.[36] If the employer/legal entity acts contrary to this prohibition, the employer will be deemed to have committed a misdemeanour, and shall be liable to pay a fine of EUR 3,000.[37] Additionally, the Law specifies the mandatory elements a written consensual termination of the employment contract must contain. It states that a consensual termination must be signed on the date of the actual termination of the employment relationship, and must contain the handwritten name and surname of both the employee and the employer, the handwritten date of the termination of the employment relationship by both parties, and the signatures of both parties.[38] If the consensual termination is not concluded in line with these requirements (ie if the termination does not contain the necessary elements) it is deemed void.[39]

14 Collective agreements are one of the main legal sources of labour law in North Macedonia.[40] The value of these legal sources is denoted in the Constitution of North Macedonia which stipulates that the exercise of employee rights and their status is regulated in laws and collective agreements.[41] Moreover, the Law on Labour Relations provides that collective agreements shall regulate the rights and obligations of the parties to the agreement and may also include legal rules regulating the conclusion, content and *termination* of the employment relationship and other issues arising from or related to the employment relationship.[42] Unlike general collective agreements (*Општи колективни договори*), which practically contain no significant provisions on terminations of the employment contract by dismissal, special collective agreements (*Посебни колективни договори*), ie collective agreements at branch or department level, on the other hand, contain significant provisions on terminations of the employment contract, which are primarily governed by the Law on Labour Relations.

15 Apart from collective agreements, so-called 'employer's acts' (*акти на работодавачот*) can also represent a legal source as certain regulations on terminations by dismissal can be included. Despite their application in practice as 'regulations through

[33] See https://faktor.mk/pogolemi-kazni-za-neprijaveni-rabotn.

[34] For example, according to publicly available unofficial surveys and data, it is assumed that up to 64 % of unemployed young persons signed a 'blanco dismissal' to get employment. See http://sitel.com.mk/64-od-nevrabotenite-mladi-potpishale-blanko-otkaz-samo-da-dojdat-do-rabota.

[35] See Law on ammending and supplementing the Law on Labour Relations (Сл. весник на Република Македонија, бр.25/2013).

[36] See Art 25, para 5 of the LLR.

[37] See Art 265, para 1 point 4-b of the LLR.

[38] See Art 69, para 2 of the LLR.

[39] See Art 69, para 3 of the LLR.

[40] In North Macedonia, there are two General Collective Agreements (collective agreement for the private sector in the field of economy/Сл. весник на Република Македонија, бр.88/2009 and collective agreement for the public sector/Сл. весник на Република Македонија, бр. 10/08) and more than 20 applicable Special Collective Agreements.

[41] Art 32 of the Constitution of North Macedonia.

[42] Art 206 of the LLR.

which the normative and disciplinary power of the employer is exercised', the Law on Labour Relations does not consider these regulations to be of great significance.[43] Employers' acts have different titles (for example, Acts for systematisation and classification of posts (*Акти за систематизација и класификација на работните места*), Rulebooks for salaries (*Правилници за плата*) and Rulebooks for work (*Правила за работа*, etc), whereas any acts relating to terminations of the employment relationship by dismissal are usually labelled 'Rules on workplace discipline (*Правила за работниот ред и дисциплина*).[44]

II. Types of Giving Notice

By contrast to the labour law systems of other countries, which classify dismissal in two major groups, ie dismissals with or without giving notice (so-called ordinary and extraordinary dismissals), the labour legislation of North Macedonia – at least formally – does not recognise such classifications. Dismissal with giving notice (*отказ со отказен рок*) applies in the following three cases according to the Law on Labour Relations: 1) for personal reasons on the part of the employee (*лични причини*),[45] 2) for employee misconduct (*причини на вина*) (but only in cases where the reason for dismissal is for 'less severe' violations of work duties or workplace discipline)[46] and for business reasons (*деловни причини*).[47] 16

The employer may terminate the employment contract by dismissal due to violation of workplace discipline or work duties (for 'less severe' disciplinary violations) by giving notice in eleven cases that are explicitly specified in the provisions of the Law.[48] 17

Dismissal without giving notice (*отказ без отказен рок*) primarily applies to cases of termination by dismissal due to the employee's own fault, but only if 'more severe' violations of workplace discipline or of the work duties have been committed. The Law on Labour Relations explicitly states six cases of disciplinary violations by the employee which warrant termination of the employment contract without giving notice.[49] 18

Aside from cases of dismissal without giving notice due to the employee's own fault, the Law on Labour Relations provides for two other cases that indirectly refer to dismissals without a notice period. One of these cases relates to situations in which the employee, based on a legally valid decision, is prohibited from carrying out certain work duties or certain protection or safety measures have been issued according to which the employee cannot carry out the work agreed in the employment contract for a period of more than six months or if he or she is absent from work for a period of more than six months to serve a prison sentence, for example.[50] The other case refers to terminations of the employment relationship by dismissal in situations in which the employee fails to 19

[43] А Ристовски, *Редефинирање на бинарниот модел на работните односи и регулирање на нестандардната работа*, (Скопје, докторска дисертација, 2015) 63–64.

[44] The rules on workplace discipline (or any other employer's act, regardless of how they are named) are internal acts adopted unilaterally by the employer. Cases of violations of workplace discipline which may result in dismissal (for misconduct on the part of the employee) may be established in the provisions of such acts. They can also expand the 'list' of cases of violation of workplace discipline as provided in the Art 81 of the LLR.

[45] See Art 76, para 1, point 1 of the LLR.

[46] See Art 76, para 1, point 2 of the LLR.

[47] See Art 76, para 1 point 3 of the LLR.

[48] See section D.IV. below.

[49] See section D.IV. below.

[50] See Art 99, para 1 point 1 of the LLR.

successfully complete the probation period.[51] A notice period for dismissal is not provided in the Law on Labour Relations for the aforementioned cases.

20 In case of 'termination by offering a new, modified contract'[52], the current employment contract is terminated, but the employee is offered a new employment contract under modified conditions. Both the termination of the employment contract and the offer of a new and modified contract must be connected and jointly form part of one legal act, namely 'dismissal notice and offer of a new modified contract'.[53] The Law on Labour Relations stipulates that: 'the provisions of this Law relating to the termination of the employment contract shall also apply when the employer terminates the employment contract and simultaneously offers to conclude a new, modified employment contract with the employee.'[54]

21 Consequently, this concept of 'offering a new, modified contract prior to dismissal' only applies in cases when the employer has *justified reasons for dismissal* such as personal reasons or business reasons.[55] However, termination by offering a new modified contract applies in particular in case an employee is dismissed for business reasons (for example, when the employee's post becomes redundant or when the employer's volume of work decreases).[56] In that case, *the employee must state his or her opinion about the new, modified employment contract within 15 days from the date of receipt of the offer.*[57] According to North Macedonia's labour law, termination by offering a new, modified employment contract may have two different legal consequences: acceptance and non-acceptance of the offer by the employee of the new modified employment contract.[58]

22 The labour legislation of North Macedonia explicitly excludes the possibility of partial termination of the employment contract. Thus, the parties to an employment contract may only terminate it in its entirety.[59]

III. Termination of Specific Employment Relationships

23 When an employment contract which includes a probation period, a clause that specifies the working conditions during that period must be added to the contract. In addition to clauses on the rights and obligations of the parties, the contract must also specify the amount of salary and the duration of the probation period, which may not exceed four months.[60]

[51] See Art 99, para 1, point 2 of the LLR.

[52] It should be noted that instead of the term 'termination by offering a new, modified contract' (*отказ со понуда на нов, променет договор*), the Law on Labour Relations uses the term 'offer of a new, modified contract prior to dismissal' (*нов променет договор пред отказ*). In our view, the term 'offer of a new, modified contract prior to dismissal' is incorrect, we therefore use the term 'termination by offering a new, modified contract' in the remainder of this paper, or both terms will be used interchangeably.

[53] Conclusion of the Appellate Courts of Macedonia to unify the legal system, adopted on 2 March 2007.

[54] See Art 78, para 1 of the LLR.

[55] Т Томановиќ and В Томановиќ, *Договор за Работа*, (Скопје, 2011) 164.

[56] Т Каламатиев, *Прирачник за синдикални претставници*, (Скопје, Friedrich Ebert Stiftung, 2010) 84.

[57] Art 78, para 2 of the LER.

[58] А Ристовски, *Права на младите на работното место во Република Македонија – Пристојна работа за младите луѓе*, (Скопје, Канцеларија на МОТ во Република Македонија, 2018) 73.

[59] See Art 70, para 3) of the LLR.

[60] See Art 5 of the Law on amending and supplementing the Law on Labour Relations (Сл. весник на Република Македонија, бр. 120/2008 of 29 June 2018).

The legal consequences of a probation contract (ie its continuation or termination) 24
depend on the employee's performance. If the employer is dissatisfied with the employee's performance, he or she may terminate the employment contract after the expiry of the probation period.[61] If the employee's performance during the probation period is unsatisfactory, the employer may dismiss him or her for a justified reason as stipulated in the Law.[62] Labour law theory and practice generally assert that dismissal due to unsatisfactory completion of the probation period should not be treated as a 'regular' dismissal, which would require the employer to provide the employee with prior written warning for unsatisfactory performance or violation of the duties deriving from the employment relationship. The written warning is a necessary precondition in the 'regular' procedure to terminate the employment contract for reasons on the part of the employee.

The labour legislation of North Macedonia sets out the conditions for dismissal in 25
another specific case concerning employment contracts with a probation period. This is the case for contracts of employment for seasonal work with a clause on a probation period. The Law on Labour Relations stipulates that the probation period for seasonal work must be limited to three working days[63] and the employer may terminate such an employment contract within a period of three days from the date of conclusion of the employment contract.[64]

Fixed-term employment contracts may end upon the expiration of the period for 26
which they are concluded or if the condition for which the contract was concluded has been met. In practice, there are several ways to set the term of fixed-term employment relationships. The term may be fixed by *a calendar date*, by *meeting a certain condition*, ie *upon the completion of certain tasks* and by *the occurrence of a certain event*.[65]

Compared to *ex lege* terminations, terminations of fixed-term employment contracts 27
due to the expiration of the period for which it was concluded, the Law on Labour Relations does not stipulate any special provision on the termination of the fixed-term employment contract by dismissal and the legal consequences of such a termination. Under such circumstances, the standard rights and obligations related to terminations of employment contracts of indefinite duration apply, including the existence of a justified reason for dismissal, implementation of the procedure prior to termination of the employment contract by dismissal, the notice periods and so on.

The legal framework governing the termination of employment relationships by 28
dismissal also includes details on dismissals of non-standard (atypical) forms of employment such as 'additional employment' (*дополнително работење*) and 'temporary agency employment' (*привремено агенциско вработување*).

The Law on Labour Relations stipulates that an employee who works full-time, may 29
as an exception, conclude a part-time employment contract with another employer(s) for 'additional employment,' yet for not more than ten hours a week, with previous consent of the employer/s employing the employee full time.[66] The Law provides for two ways to terminate contracts for additional employment, namely the expiration of the agreed period or the withdrawal of the full-time employer(s)'consent.[67] In the

[61] See Art 60, para 6 of the LLR.

[62] See Art 60, para 6 of the LLR.

[63] See Art 60, para 3 of the LLR.

[64] See Art 60, para 4 of the LLR.

[65] Т Каламатиев and А Ристовски, *Работа на определено време и работа со неполно работно време – нестандардни форми на работа во работното законодавство на Република Македонија*, (Скопје, Деловно Право, Бр 34, 2016) 662.

[66] See Art 121, para 1 of the LLR.

[67] See Art 121, para 3 of the LLR.

authors' view, 'withdrawals of consent' should be considered a justified reason for termination of the additional employment contract by the employer without having to give notice.

30 Notwithstanding the general provisions stipulated in the Law on Labour Relations, the termination of employment contracts of temporary agency workers is also regulated in the Law on Agencies for Temporary Employment (*Закон за агенциите за привремени вработувања*).[68] The Law on the Agencies for Temporary Employment provides details on the termination of the employment contracts of temporary agency workers with regard to notice periods as well as to unjustified reasons for dismissal. This Law provides for the possibility of the temporary work agency to terminate the contract of employment (in the capacity of the employer), as well as for terminations by the temporary agency worker (in the capacity of the employee), but a written notice must be provided to the other party five days prior to terminations of contracts concluded for a period of up to 30 days, or ten days prior to terminations of contracts concluded for a period of more than 30 days.[69] Additionally, the Law on Agencies for Temporary Employment puts down unjustified reasons for the temporary work agency to terminate temporary work contracts by dismissal. The Law on Agencies for Temporary Employment establishes that:

> *the cessation of the employer-user's need for the employee before the term established in the employment contract may not be a reason for cancelling the contract concluded between the employer-user and the temporary work agency or between the temporary work agency and the temporary agency worker.*[70]

C. Scope of Dismissal Protection

31 The Law on Labour Relations as well as other legal sources that regulate dismissal protection are, in principle, applicable to the entire territory of North Macedonia. Employers with headquarters or that are temporarily established in North Macedonia and their employees must apply the rules on employment relationships (including the rules on terminations of the employment relationship by dismissal) when the work is continually performed on the territory of North Macedonia, as well as in case the employer temporarily posts the employee to work abroad.[71]

32 The labour legislation of North Macedonia does not set forth any qualifying period for the employee's right to seek dismissal protection. Employees are entitled to dismissal protection from the date the employment contract is concluded (or more specifically, from the date on which the employee starts working[72]).

33 The Law on Labour Relations distinguishes between 'small' and other employers. 'Small employer' refers to any employer who employs less than 50 employees.[73] However, this differentiation is fairly insignificant with regard to the establishment of rights, obligations and further duties that arise from the employment relationship. Small

[68] Law on Agencies for Temporary Employment (Сл. весник на Република Македонија, бр.49/2006).
[69] See Art 17, para 1 of the LATE.
[70] Art 17, para 2 of the LATE.
[71] See Art 4, para 1 of the LLR.
[72] The day the employee starts working is considered the date that the employee starts exercising the rights, obligations and responsibilities arising from the employment relationship and the date the employee is included in the mandatory social insurance system based on employment. See Art 13, para 3 of the LLR.
[73] See Art 5, para 7 of the LLR.

employers, for example, are excluded from the obligation to set down specific requirements for the performance of work for each individual post in an employer's act.[74] Additionally, employers that employ up to 25 employees do not have the obligation to maintain electronic records of employees' full-time working hours and overtime work.[75]

With reference to enterprises that serve a specific purpose, a specific disposition can 34 be found in the Law on Employment of People with Disabilities. This Law introduces the possibility to establish a so-called 'Protected Company' (*заштитно друштво*), in which at least 40 per cent of a minimum of 10 employees employed on an open-ended contract must be people with disabilities for the company to benefit from a more favourable tax regime and to be exempt from compulsory payments of social insurance contributions for the employees. However, the Law on Employment of People with Disabilities does not stipulate any specific provisions on the employment relationships of persons with disabilities, including their dismissal protection.

D. Possible Reasons for Dismissal

I. General Issues

An employer may only terminate the contract of employment by dismissal for a 35 justified reason. There is no single legal classification in the labour legislation of North Macedonia of possible reasons for dismissal. The most comprehensive and reliable classification is based on the 'trichotomous' division of grounds for dismissal, ie based on *personal reasons* (*лични причини*), *conduct-related reasons* (*причини на вина*) *and business reasons* (*деловни причини*).[76] Since the independence of North Macedonia until the present day, these three valid reasons for dismissal (notwithstanding certain terminological modifications) have remained unchanged in North Macedonia's labour law system. During the period in which the Law on Labour Relations of 1993 was still in force, or more specifically, with its amendment of 2001, a new valid reason for dismissal at the employer's initiative was introduced (so-called 'needs of service').[77] The introduction of this ground for dismissal as a consequence of the need to rationalise the number of public sector employees allowed public sector employers to terminate employment contracts for certain reasons (for example, closure of the public sector employer, organisational changes resulting in the redundancy of the post, etc), which in many respects resembled the traditional reasons for dismissal due to 'economic, technological, structural or similar changes'. Yet these amendments were rightfully annulled by the Constitutional Court of North Macedonia within months of their application.[78]

Notwithstanding the comprehensiveness of the 'trichotomous' division of grounds for 36 dismissal and their compliance with international labour standards, the Law on Labour Relations is not 'immune' to criticisms with regard to the description and further

[74] See Art 19, para 2 of the LLR.
[75] See Art 116, paras 7 and 8 of the LLR.
[76] See Art 71, para 2 of the LLR.
[77] See Art 4 of the Law on amending and supplementing the Law on Labour Relations (Сл. весник на Република Македонија, бр.3/2001), of 16 January 2001.
[78] In its decision, No 10/2001, the Constitutional Court of North Macedonia annulled the Law on amending and supplementing the Law on Labour Relations of 16 January 2001. The Court based the explanation of its decision on the fact that the introduction of 'terminations of the employment relationship by dismissal due to 'the need for the service', makes a distinction and puts employees from the public and private sector in an unequal position, since 'dismissal due to the need for the service' can only be applied to one category of employees, namely public sector employees.

explanations of the valid reasons for dismissal. This criticism refers in particular to 'personal reasons' for dismissal on the part of the employee, which in several provisions of the Law are misinterpreted as reasons related to *the employee's conduct*.[79] One consequence thereof is that in practice, personal reasons for dismissal are rarely used to dismiss employees.[80] On the other hand, reasons attributed to the employee's own fault are deemed to be valid grounds for dismissal and entail 'violations of workplace discipline or of work duties.'[81] The Law further determines that such reasons occur due to 'a breach of the contractual obligations or other obligations arising from the employment relationship.'[82]

II. Basic Freedom of Termination

37 The labour legislation of North Macedonia guarantees both parties to the employment relationship (the employee and the employer) the freedom to terminate the employment contract. Unlike the employee's unrestricted freedom to terminate the employment contract,[83] the employer's freedom to terminate the employment relationship is limited, which derives from the obligation to respect the valid reasons for dismissal defined by law, collective agreement, rules on workplace discipline and the employment contract.[84]

38 Compared to the formulations used in the previous Law on Labour Relations of 1993, the current legal provisions use the more flexible formulation '...the employer *may* terminate the employment contract...'[85], thereby giving the employer the freedom to make the decision to terminate the employment contract by dismissal.

39 The employer also has the freedom to impose a 'fine' (*парична казна*) on the employee as a disciplinary measure against the employee's misconduct. This means that the employer can decide to terminate the employment contract or to impose a fine.[86] During the decision-making process, the employer must consider all relevant

[79] See Arts 71, para 2, and 76, para 1, point 1 of the LLR.

[80] Т Томановиќ, *Некои проблеми сврзани со прашањата на престанок на работниот однос според одредбите од Законот за работните односи* (Скопје, Деловно Право, бр,9, 2003) 162.

[81] See Art 71, para 2 of the LLR.

[82] See Art 76, paras 1, point 2 of the LLR.

[83] The Law on Labour Relations states that the employee may terminate the employment contract if he or she states in writing that he or she wants to terminate the employment relationship (Art 71, para 1 of the LLR). This means that the employee is under no obligation to provide a justifiable reason for the termination, nor is he or she required to provide a justification in his or her explanation for terminating the employment relationship. If the employee terminates the employment contract, he or she is only required to respect the minimum notice period, which is one month in case the contract is terminated by the employee (Art 88, paras. 1 of the LLR).

[84] See Art 71, para 3 of the LLR.

[85] See Arts 71, para 2, and 76, para 1 of the LLR.

[86] The written warning about the non-fulfilment or violation of the obligations and work duties, which is issued by the employer prior to the employee's dismissal, could arguably be treated as a disciplinary sanction in addition to the 'fine'. According to the labour legislation of North Macedonia the written warning, at least formally, is not treated as a disciplinary sanction against the employee, but rather as part of the mandatory procedure prior to the termination of the employment contract due to the employee's own fault (for misconduct) when the employee commits 'less severe' violations of workplace discipline or work duties. The recent Law on amending and supplementing the LLR of 29 June 2018 completely abolishes this element. The outcome of such a situation can be a notice of dismissal for misconduct, without prior written warning given to the employee, even in situations in which the employee has committed a 'less severe' violation of workplace discipline (for example, arriving to work late, non-observance of working time). This contradicts the international labour standards ratified by North Macedonia and leaves a huge 'legal void'. The labour legislation of North Macedonia also envisages 'Suspension from work until a decision on the termination of the employment contract is reached'. The

circumstances related to the breach of work duties and violation of workplace discipline, most importantly: the *level of liability* (malicious or negligent conduct), *the conditions under which the breach occurred* (for example, whether the breach was an act or omission by the employee, whether the violation endangered or could have endangered the life and health of the other employees, whether a substantive breach of the work procedures occurred, etc), *former work and conduct of the employee* (circumstances for which certain data are available at the employer, furthermore, repeated disciplinary violations, etc) and *the degree of violation and its consequences* (objective evaluation of the violation and its consequences which can be either 'less severe' or 'more severe').[87] Taking into account the aforementioned circumstances, the Law on Labour Relations stipulates that the fine imposed on the employee cannot be higher than 15 per cent of his or her last monthly net salary for a period from one to six months.[88] Within this framework, the employer is free to set the amount of the fine (from 1 per cent up to 15 per cent) and the duration period (from one to six months).[89]

III. Restrictions

The limitations to the employer's freedom to terminate the employment contract 40
demonstrates that North Macedonia's labour law system is a 'hybrid' model for employee protection against dismissal which is based on a combination of open (general) and exhaustive (more specific) clauses. The Law on Labour Relations primarily regulates the three main groups of justified reasons for dismissal in a fairly open manner. As regards personal reasons for dismissal (reasons related to the person of the employee), the Law covers cases in which the employee is deemed incapable of performing his or her contractual or other obligations arising from the employment relationship due to misconduct, lack of knowledge or capabilities, or due to the non-fulfilment of the special requirements defined by law.[90] Reasons attributed to the employee's own fault refer to cases in which the employee breaches the contractual or other obligations arising from the employment relationship.[91] Finally, reasons relating to the employer's operational needs (business reasons) refer to cases where the employee's post becomes redundant under the conditions stated in the employment contract due to economic, organisational, technological, structural or other reasons on the part of the employer (business reasons).[92] The occurrence of certain business reasons may result in 'individual dismissals' (ie dismissals of a small number of employees) or 'collective redundancies' (ie dismissals of a larger number of employees).[93] Collective redundancies due to business reasons shall be considered terminations of employment

employer can suspend the employee from work in several cases, for example if the employee, by his or her presence at the employer's premises endangers the life or health of the employees or other persons, or damages means of higher value; when criminal charges have been brought against the employee for a criminal act committed at work, etc. However, the suspension cannot be treated as a disciplinary sanction, but rather as a 'temporary measure' prior to determining whether the employee is disciplinarily responsible or not for a certain act.

[87] Т Томановиќ, *Откажување на договорот за вработување и заштита на работникот кај работодавачот* (Скопје, Деловно Право, Бр.14, 2005) 90.

[88] See Art 84 of the LLR.

[89] See Art 84 of the LLR.

[90] See Art 76, para 1, point 1 of the LLR.

[91] See Art 76, para 1, point 2 of the LLR.

[92] See Art 76, para 1, point 3 of the LLR.

[93] See Т Каламатиев and А Ристовски, *Отказ уговора о раду и заштита права радника услед престанка потребе за обављањем одређених послова у македонском радноправном систему* (Београд, Радно и Социјално Право, Бр.1/2017), 25.

of a larger number of employees, that is, at least 20 employees over a period of 90 days, regardless of the number of employees employed with the employer.[94] In the labour legislation of North Macedonia collective redundancies are treated as a subtype of dismissal due to business reasons.

41 Of the three groups of valid reasons for dismissal, only those reasons attributed to the employee's own fault are further developed in detailed and cases that can lead to dismissal by the employer specifically formulated. By specifying the reasons attributed to the employee's own fault, the Law on Labour Relations provides for an exhaustive list (catalogue) of cases of violation by the employee of workplace discipline and of work duties for which termination by dismissal with or without notice can be imposed.[95]

42 Dismissal protection for employees in the North Macedonia's labour law system is further developed with a list (catalogue) of unjustified reasons for dismissal. The Law on Labour Relations states that the following grounds are invalid reasons for terminating the employment relationship: 1) membership of the employee in a trade union or participation in trade union activities in accordance with the law and collective agreement; 2) for bringing charges or participating in proceedings against the employer to provide evidence of violations by the employer of the contractual and other obligations deriving from the employment relationship before arbitration, judicial or administrative bodies; 3) during approved leave of absence due to illness or injury, pregnancy, childbirth and parenthood, care for a family member and unpaid parental leave; 4) for using approved leave of absence from work and annual leave; 5) while serving or completing military obligations or a military drill; and 6) other cases of abeyance of the employment contract as defined by this Law (such as abeyance in the event of the employee's election or appointment to a state or public office; abeyance in the event of the employee's assignment to work abroad within the framework of international and technical cooperation, education, cultural and scientific cooperation, in diplomatic and consular representative offices, etc).[96]

43 In addition to this list, the Law on Labour Relations includes two additional cases of unlawful, ie unjustified reasons for dismissal, namely termination of the contract by dismissal which directly or indirectly discriminates the employee, taking into consideration the legal grounds for discrimination[97] and dismissal in the event of a transfer of undertaking or parts thereof, except in cases where dismissal occurred for economic, technological or organisational reasons which required staff changes.[98]

IV. Reasons for Dismissal

44 An employee who is temporarily incapacitated for work due to sickness or injury enjoys certain rights according to the compulsory health insurance regulations and labour law regulations. Depending on the duration of his or her temporary incapacity for work due to sickness, salary compensation is to be paid by the employer if the absence is less than 30 days, while the compensation is paid by the Health Insurance Fund (*Фонд за здравствено осигурување на Република Македонија*) for each day of absence from work in case of absence of more than 30 days.[99] The employer may not terminate the employment contract while the employee is on paid sick leave. Labour

[94] See Art 95, para 1 of the LLR.
[95] See Arts 81 and 82 of the LLR.
[96] See Art 77 of the LLR.
[97] See Art 71, para 4 of the LLR.
[98] See Art 68-d, para 4 of the LLR.
[99] See Art 112, para 3 of the LER and Art 18, para. 1) of the LHI.

legislation and social insurance regulations do not provide for a maximum period for which the employee may be absent from work due to sickness. However, if the employee's temporary incapacity for work lasts for a longer period of time, the employee might be requested to undergo an assessment of his or her capacity for work (the so-called procedure for determining the employee's disability). According to the Law on Health Insurance (hereinafter LHI),[100] in the event of a longer duration of incapacity for work of up to 12 months, the Medical Commission of the Health Insurance Fund, which determines employees' capacity for work, refers the insured person to the competent authority to evaluate the employee's capacity for work in accordance with the regulations of pension and disability insurance.[101] A request to initiate the procedure to determine disability can also be submitted by the employer.[102] The competent body for assessing the factual situation of the employee's incapacity for work is the Commission for Evaluation of Capacity for Work which is established within the Pension and Disability Insurance Fund of North Macedonia (*Фонд за пензиско и инвалидско осигурување на Република Северна Македонија*). The Pension and Disability Fund shall issue a decision on the general or professional incapacity of the employee for work. In case of general incapacity for work, the employment contract shall cease to be valid by virtue of the law (*ex lege*) from the date of submission of the legally valid decision on the employee's loss of capacity for work.[103] When an incapacity for work is determined, the employment relationship continues to exist with the same employer, but with reduced working hours (in the same post) or the employee is moved to another suitable post with the right to be paid the salary established the collective agreement.[104] In practice, a dilemma arises about whether the employer may dismiss an employee for personal reasons if he or she needs to reduce his or her working hours or if he or she needs to be reassigned to another suitable post as a consequence of his or her incapacity for work. In the authors' view, such a dismissal would only be legal if the employer complies with the necessary procedure prior to dismissal and can justify the decision to dismiss the employee.

45 Although the labour legislation of North Macedonia does not identify 'insufficient suitability' as a valid reason for dismissal, this particular reason is covered by the general notion 'personal reasons' for dismissal on the part of the employee. In this regard, the Law on Labour Relations stipulates that the employer may terminate the employment contract for personal reasons if the employee fails to comply with the obligations set forth in laws, collective agreements, rules of the employer and the employment contract.[105] However, whether 'failure to carry out work-related tasks' is a consequence of 'objective' circumstances[106] (for example, incapacity of the employee) or 'subjective'

[100] Law on Health Insurance (*Закон за Здравствено Осигурување*) (Сл. весник на Република Македонија, бр. 65/12).
[101] See Art 22 of the LHI.
[102] See Art 126 para 2 of the Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско Осигурување*) (Сл. весник на Република Македонија, бр.53/13, Пречистен Текст).
[103] See Art 103 of the LLR.
[104] See Art 78, para 3 of the LLR.
[105] Art 79 of the LLR.
[106] By 'objective' circumstances, we mean circumstances such as 'lack of knowledge, ignorance, lack of skills' and not action/conduct of the employee which is of a disciplinary nature.
The Law is vague about cases of lack of objective qualifications (eg revocation of a license to exercise a certain profession as a possible personal/capacity-related reason for dismissal). On the one hand, LLR (in Art 76, para 1, point 1) defines personal reasons for dismissal as reasons related to an employee who, inter alia, does not meet the conditions as defined by law that would make him/her incapable of carrying out the contractual or other obligations associated with the employment relationship. This definition could lead to the conclusion that the aforementioned example ought to fall under Art 76, para 1, point 1

circumstances where the fault lies with the employee (for example, refusal to execute an order of the employer) is ambiguous. The term 'dismissal due to insufficient suitability' of the employee is synonymous with 'dismissal due to unsatisfactory performance of work duties.'[107] In any event, in practice this type of dismissal is 'reduced to a minimum', due primarily to the fact that the North Macedonia's legislator has not established any principles for monitoring and assessing the employee's capability and results (performance) of his or her work.

46 A valid termination of the employment contract by dismissal due to 'insufficient suitability of the employee' must be based on the fulfilment of the following preconditions: 1) that the employee was provided with the necessary working conditions; 2) that he or she was given appropriate instructions, guidelines or a written warning that the employer is dissatisfied with the employee's performance; 3) that the employee's performance did not improve within the period set by the employer in the written warning, which cannot be less than 15 days from the date of receipt of the warning or as specified in a collective agreement at the branch, department or employer level.[108] In practice, the most delicate issue is 'whether the employee's performance has improved' within the period set by the employer in the prior written warning. In practice, such an assessment is carried out by the employer (or an assessment by the employee's supervisor who is employed with the same employer and is responsible for evaluating the employee concerned). However, such an assessment must be thorough and should be based on objective criteria and values (including a written document containing records from the authorised institutions, examinations, etc) to reinforce the rightfulness of the assessment's result on the employee's performance.[109]

47 Legal gaps on the specification of cases that can be treated as 'insufficient suitability' (ie personal reasons for dismissal) that arise from the Law on Labour Relations are, to a certain extent, supplemented by collective agreements.[110] Similarly, certain collective

(personal reasons for dismissal). Yet another provision (Art 99, para 1) states that the employer may terminate the employment contract if the employee, based on a legally valid decision, is prohibited from carrying out specific work in accordance with the employment contract. This could include situations such as the revocation of a license. The difference between the first and second provision is that the LLR in the first provision explicitly refers to 'personal reasons for dismissal' which may warrant termination of employment with a period of notice, while the LLR in the second provision does not explicitly mention whether dismissal is due to personal reasons or not. Additionally, the second provision (Art 99, para 1) does not entitle the employee to a notice period. To date, there is no case law on this issue. In the authors' view, the revocation of a license, for example, is treated as a special reason for dismissal (based on Art 99, para 1), the legal consequence being the termination of the employment contract without notice.

[107] See Томановиќ (n 80) 162–163.

[108] See Art 8 of the Law on amending and supplementing the Law on Labour Relations (Сл. весник на Република Македонија, бр. 120/2008 of 29 June 2018).

[109] See Томановиќ (n 80) 164.

[110] For example, the Collective Agreement of companies of other monetary intermediation and the activity of intermediation in operations with securities and commodity contracts (*Колективниот договор на друштвата од друго монетарно посредување и дејноста посредување во работењето во хартии од вредност и стокови договори*), (Сл.весник на Република Македонија, бр.97/2011) under *'personal reasons'* for dismissal sets forth the following: 1) unsatisfactory overall performance of work; failure to meet the predetermined individual goals (targets); 2) frequent mistakes in the performance of work tasks and obligations; 3) insufficient capacity to understand the assigned duties, responsibilities and tasks of the employee; 4) untimely fulfilment of the given tasks, with frequent delays; lack of customer orientation, failure to meet the demand for servicing, maintenance and development of the business relationship with clients (inability to provide services, kindness, flexibility, appropriate use of sales skills, acquisition of new clients); 5) lack of ability and engagement for inclusion and encouragement of team work; inefficient communication skills, inability to express their views and ideas in individual or group settings, low level of ability to transmit messages in a clear, precise and understandable way in an oral or written expression of attitudes and ideas; 6) and in other cases determined by the collective agreement at the level of the employer or by an internal act (Art 71, para 3). The Collective Agreement on

agreements regulate the procedure to assess the employee's capability to perform his or her work-related tasks.[111]

Reasons attributed to the employee's conduct (ie reasons of fault) are one of the most 48
widespread justified reasons for dismissal of an employee. The Law on Labour Relations exhaustively stipulates cases of violation of workplace discipline and breach of work duties that warrant termination of the employment contract with or without notice. The Law makes no formal distinction between cases of 'violation of workplace discipline' and cases of 'violation of work duties', ie both categories fall under the general notion of 'reasons attributed to the employee's own fault'.

Cases that warrant terminations of the employment contract with notice include 'less 49
severe' disciplinary violations by the employee. Such violations occur if the employee: 1) does not observe workplace discipline in accordance with the employer's rules; 2) fails to fulfil work obligations or does not fulfil them responsibly and in a timely manner; 3) does not observe the regulations that apply to carry out his or her work-related duties; 4) does not observe the working hours and the working time schedule; 5) does not request authorised absence or does not notify the employer on time about absences from work; 6) is absent from work due to illness or a justifiable reason, but does not notify the employer in writing within 48 hours thereof; 7) fails to treat the means of work responsibly and in line with the technical operating instructions; 8) fails to notify forthwith the employer about the occurrence of damage, error in the operation, or loss; 9) does not observe the regulations for safety at work or does not maintain the means and equipment for safety at work; 10) causes disorder and acts violently during working hours, and 11) uses the employer's means illegally or without authorisation.[112] To determine cases of violation of workplace discipline and of work duties, which may lead to justified terminations by dismissal with notice, the principle of *numerus clausus* does not apply. This means that the Law, collective agreements and acts of the employer on workplace discipline may also prescribe other cases of violations of workplace discipline.[113] For example, the Law on Protection Against Harassment at the Workplace (*Закон за заштита од вознемирување на работното место*) covers cases of harassment at the workplace involving employees, authorising the employer to impose a disciplinary measure against the employee in accordance with the Law. If a disciplinary measure has been imposed against the employee, and if the employee commits another act of harassment within six months of the disciplinary measure, the employer may terminate his or her employment contract in accordance with the Law.[114] In

the Textile Industry of North Macedonia (*Колективен договор за текстилната индустрија на Република Македонија* (Сл. весник на Република Македонија, бр.220/2010), under *'lack of knowledge and abilities of the employee'*, as a valid reason for dismissal due to personal reasons, outlines the case in which the employee does not fullfill 70 per cent of the normative tasks and the standard quality for a period of more than two months (Art 17, para 1, point 1).

[111] For example, the Collective Agreement for Employees of the Agriculture and Food Industry (*Колективен договор за вработените од земјоделството и прехрамбената индустрија)* (Сл. весник на Република Македонија, бр.175/2015) envisages the following stages: the employee's supervisor determines that the employee's performance is unsatisfactory and submits a report to the person representing the employer; he or she issues a written warning to the employee and gives him or her a period of 30 days to improve his or her performance; the individual representing the employer issues a decision to establish a Commission assigned with the task to collect all the necessary information to evaluate the conditions, circumstances and reasons of the employee's inability to carry out his or her contractual obligations; based on the Commission's evaluation, the representative of the employer may render a decision to terminate the contract of employment by dismissal with notice (Art 25).

[112] Art 81, para 1 of the LLR.

[113] Art 81, para 2 of the LLR.

[114] See Art 29 of the Law on Protection Against Harassment at the Workplace (Сл. весник на Република Македонија, бр.79/2013).

addition, a number of collective agreements in North Macedonia extend the 'list' of cases that may result in dismissal of the employee with notice.[115]

50 Cases in which the employer is entitled to terminate the employment contract without giving notice entail 'more severe' disciplinary violations by the employee. Such violations occur when the employee: 1) is unjustifiably absent from work for three consecutive working days or five working days in total during one year; 2) abuses sick leave; 3) does not observe the regulations on health protection, safety at work, protection from fire, explosion or harmful effects of poisons and other dangerous materials, and violates the regulations on environmental protection; 4) consumes, uses or is under the influence of alcohol and narcotics; 5) commits theft, or in connection with the work, intentionally or through extreme negligence, causes damage to the employer; and 6) discloses business, official or state secrets.[116] One of the most frequent cases of violation of workplace discipline brought before the competent courts are cases relating to unjustifiable absence from work for three consecutive working days or five working days in total during one year.[117] In addition, the competent courts[118] often decide cases involving criminal activities, such as theft. In this regard, the Supreme Court of North Macedonia has decided that '*commitment of a theft is a violation of workplace discipline, regardless whether the employee returns the stolen items and the employer did not suffer any damage*'.[119] The Supreme Court's interpretation of the employee's disciplinary liability in case of disclosing a business secret is also worth mentioning. According to the Supreme Court, 'the lawsuit submitted to the Court by an employee of the Intelligence Agency in which the employee refers to Acts of the Intelligence Agency, does not constitute a disclosure of a business secret.'[120]

51 Similarly, as is the case in dismissals with notice for reasons attributed to the employee's own fault (ie in case of 'less severe' disciplinary violations by the employee), in cases of dismissal without notice for reasons attributed to the employee's own fault

[115] Such cases include failure of the employee to undergo the health examination to determine his or her health capacity without a justifiable reason; if he or she deals with private matters during working hours, Art 27 para 1 points 12 and 14 of the Collective Agreement for the Chemical Industry (*Колективен Договор за Хемиска Индустрија*); does not abide to the provisions for organising and participating in a strike provided for in the Law and the collective agreement, Art 20 para 1 point 13 of the Collective Agreement for the Textile Industry (*Колективен Договор за текстилна индустрија на Република Македонија*); uses the business vehicle for inappropriate purposes; refusal to work overtime; comes to work in inadequate and improper clothes or has an attitude towards clients (eating, smoking, reading newspapers or other printed material which is not related to work, etc); discredits the employer; does not share acquired knowledge and work experience with colleagues; leaves data, documents, envelopes and other printed materials on his or her desk or counter, which an unauthorised person could read, ie could view its content, Art 74 para 1 of the Collective Agreement of Companies of Other Monetary Intermediation and Activity of Intermediation in Operations with Securities and Commodity Contracts (*Колективен Договор на друштвата од друго монетарно посредување и дејноста на посредување во работењето во хартии од вредност и стокови договори*); presence of evidence on behalf of another employee, Art 39 para 1 point 14 of the Collective Agreement on Utility Services (*Колективен Договор за комуналните дејности на Република Македонија*); misuses or overrides acquired authorisations, Art 95 para 1 point 12 of the Collective Agreement on Health Service (*Колективен Договор за здравствената дејност на Република Македонија*), etc.

[116] Art 82, para 1 of the LLR.

[117] For example, see cases: *Ро.бр.1232/09* of 26 February 2010 before the Basic Court in Skopje II; *Ро.бр.8/16* of 15 April 2016 before the Basic Court in Radovish, etc.

[118] Competent courts that decide labour disputes in North Macedonia are the Basic Courts (*Основни Судови*) (ie courts of first instance that decide civil law disputes); the Appellate Courts (*Апелациони Судови*) and the Supreme Court of North Macedonia (*Врховен Суд на Република Македонија*). See section K.I. below.

[119] Judgment of the Supreme Court of North Macedonia, *Рев.бр.494/2005* of 28 June 2006.

[120] See Judgment of the Supreme Court of North Macedonia, Рев.бр.85/05 of 30 March 2005 година.

(ie in case of 'more severe' disciplinary violations by the employee), the principle of *numerus clausus* does not apply. Legal sources that can provide for 'other' cases of violations of workplace discipline are laws and collective agreements.[121] Several collective agreements stipulate cases of 'more severe' disciplinary violations by the employee.[122] The labour legislation of North Macedonia requires a written warning to be issued to the employee by the employer in the procedure for dismissal for reasons attributed to the employee's own fault.[123] However, the Law does not specify whether the mandatory warning in writing is only required for 'less severe' disciplinary violations or for 'more severe' disciplinary violations. Taking into consideration the provisions envisaged in ILO Termination of Employment Recommendation (No. 166)[124], as well as the principal approaches discussed in the relevant literature, the employer's obligation to issue a written warning to the employee only applies to cases of 'less severe' violations of workplace discipline and of work duties.[125]

The warning can be deemed a declaration by the employer that the employee 52
breached workplace discipline, which if repeated, might lead to termination by dismissal.[126] In this case, the employer would be entitled to terminate the employment contract by dismissal, regardless whether the employee had committed the same disciplinary violation (so-called continuous disciplinary violations) or had committed a completely different violation of workplace discipline, ie work obligations (so-called propensity for committing disciplinary violations). The employee is not entitled to seek legal protection before the competent court for any rights the employer's written warning may have violated. The reason for this is that according to North Macedonia's labour law system, such a warning is considered an act of the employer, which gives the employee the opportunity to correct his or her behaviour and avoid having to terminate the employment contract by dismissal.[127]

Employers in North Macedonia enjoy independence and autonomy in managing 53
their undertakings and business operations, including the freedom of termination of employment contracts by dismissal due to business reasons. This primarily derives from the constitutionally established rights of freedom of market and entrepreneurship,[128]

[121] Art 82, para 2 of the LER.

[122] Such violations are forging documents or giving incorrect information; receiving or offering bribes or other gains related to work (Collective Agreement of Companies of Other Monetary Intermediation and the Activity of Intermediation in Operations with Securities and Commodity Contracts, Art 76, para 1, points 8 and 9); involvement in illicit trafficking at the employer's premises (Collective Agreement for the Chemical Industry, Art 28, para 1, point 14), etc.

[123] Before the entry into force of the Law on amending and supplementing the Law on Labour Relations from 29 June 2018, the then-text of the LLR stipulated that the *employer must warn the employee in writing about the non-fulfillment of obligations and the possibility of termination in case of repeated breaches* (Art 73). The new amendments to the Law completely abolish the requirement of issuing a warning prior to dismissal attributed to the employee's own fault (причини на вина), and instead stipulate the requirement to issue a warning prior to dismissal for personal reasons on the part of the employee (лични причини) (See Art 6 of the Law on amending and supplementing the LLR). In the authors' view, this legal situation is the result of editorial error in compiling the text of the amendments.

[124] ILO Recommendation No 166, 7.

[125] See T Томановиќ and B Томановиќ (n 55) 46.

[126] In the judgment of 14 June 2017, the Basic Court Skopje II – Skopje rejected the plaintiff's (employee's) claim for annulment of the dismissal by the employer (defendant) with notice for reasons attributed to the employee's own fault. The Court found that even after the written warning had been issued by the employer, the employee continued to perform the duties (officer in the Anti-Money Laundering Department), without focusing and with negligence, failing to carry out the work obligations within the given deadline and treating documents that had a 'strictly confidential' note attached to them in an unsuitable manner.

[127] Томановиќ.Т и В.Томановиќ (n 55), 47.

[128] See Art 8, para 1 point 7 of the Constitution of North Macedonia.

which are further incorporated in labour legislation. By defining the term 'employment relationship'[129] and determining the legal content of subordination, reference is made to the employer's managerial, normative and disciplinary prerogatives.[130] The freedom to make entrepreneurial decisions (ie managerial prerogatives of the employer), the consequence being dismissal for business reasons, is also recognised by the courts in North Macedonia. It has been established that the courts do not have competence 'to evaluate the employer's business needs and to justify the business changes introduced by the employer that have resulted in dismissal… assessment for the need of such changes is only made by the employer.'[131] However, this should not be regarded as a situation in which the courts have no control at all over the legality of the decisions for termination by dismissal. On the contrary, they have power of a limited control, which is primarily limited to assessing whether the employment relationship was terminated *in accordance with the conditions and procedures established by law, collective agreements and the employment contract.*[132]

54 The Law on Labour Relations provides that:

> *the employer may terminate the employment contract with the employee if there is no possibility to extend the employment relationship if the need for the performance of work ceases under the conditions established in the employment contract due to economic, organisational, technological, structural or similar reasons of the employer (business reasons).*[133]

55 The following elements of the provision require special emphasis. Firstly, termination of the employment contract due to business reasons is deemed an *ultima ratio* right of the employer, which can be used as 'a last resort' measure in circumstances *when there is no possibility to extend the employment relationship of the employee.* Secondly, to be able to exercise this right, certain 'business reasons' must have arisen in the company, which may be of an economic, organisational, technological, structural or similar nature. Thirdly, the occurrence of these justified reasons for dismissal should lead to immediate termination of the employment contract to reflect that it is a *cessation of the need for the performance of work* under the conditions established in the employment contract.[134] The first component (ie, the termination of the employment contract by dismissal as a 'last resort') finds additional support in the Law on Labour Relations. The Law provides for three alternatives to extend the employment relationship, which the employer can fall back on before resorting to termination by dismissal for business reasons. The employer may offer *employment with another employer; conclude a new employment contract* with the employee to perform work that corresponds to his or her

[129] See T Kalamatiev and A Ristovski, The Concept of 'Employee': The position in North Macedonia, (Restatement of Labour Law in Europe, Volume I, 2017) 223.

[130] See Т Каламатиев and А Ристовски, *Subordination in labour law and contemporary challenges in distinguishing between employment contracts and service contracts* (Niš, Collection of Papers, no 70, 2015) 176–177.

[131] See Decision of Appellate Court – Skopje, РОЖ. бр. – 1260/12 from 14 November 2012.

[132] In the present case, the Appellate Court upheld the decision of the court of first instance. The court of first instance, in turn, found that the defendant (employer) had lawfully conducted the procedure for dismissal due to business reasons (ie adopted a programme on the termination of employment in which all important components relating to the redundancy of the employee were addressed, adopted a decision on determining the selection criteria and measures for employees deemed 'redundant', informed the Employment Agency and the trade union organisation and eventually the plaintiff (dismissed employee) was ranked in accordance with the established selection criteria and measures by an authorised person. Ibidem.

[133] Art 76, para 1 point 3 of the LLR.

[134] See Каламатиев and Ристовски (n 82) 7.

qualifications without previously announcing the vacancy; provide the employee with *professional training* (training, retraining or upskilling for work with the same or with another employer).[135] The employer must prove the (im)possibility of providing these alternatives before terminating the employment contract for business reasons, which is also subject to assessment of the courts of North Macedonia.[136] If the employer does not have the possibility to extend the employment relationship of the employee by offering one of the legal alternatives provided by law, and the termination of the contract is inevitable, the employee is entitled to severance pay.[137] The second and third component relate to whether the dismissal is based on real and objective reasons, or whether the employer has stated a fictitious ground for dismissal. In this regard, the judicial review in North Macedonia extends to dismissals for business reasons that qualify as 'extremely tendentious and in which it is evident that the employer intends to cancel the contract of employment at all costs.'[138]

The following business reasons are found in practice: the need for rationalisation of 56
the employer's costs due to increased competition, a work volume that is below the expectations, non-achievement of positive financial results,[139] unfavourable financial condition, decreased volume of work,[140] etc.

The 'closure of the undertaking' in North Macedonia's labour legislation is not 57
considered a business reason for the termination of the employment contract. It is treated as a special case for terminating the validity of the employment contract – termination of the employer's existence in accordance with the law.[141] The reasons for the termination of the employer's existence (trade company) can be classified into three categories: automatic termination; termination based on the partners' decision, ie shareholders' decision; and termination based on a court decision.[142] In practice, the 'closure of the undertaking' can be carried out via liquidation or bankruptcy procedures. The rules on the liquidation procedure are provided in the Law on Trade Companies (*Закон за трговските друштва*).[143] This Law stipulates that if no bankruptcy procedure is initiated following the issuance of the decision for termination, the commercial entity shall undergo a liquidation procedure.[144] Any aspects related to the bankruptcy procedure are regulated in the Law on Bankruptcy (*Закон за стечај*).[145]

[135] See Art 96 of the LLR.

[136] The present case concerns the cancelation of the employment contract of a construction engineer. The Court found that the decision adopted by the defendant (employer) on the termination of the plaintiff's (employee) employment contract for business reasons did not contain an explanation of the reasons for dismissal which would result in the reduction of the number of employees. In addition, the defendant did not prove that the employee could not be offered continuation of the employment relationship in accordance with Art 96 of the LLR. See Decision of the Basic Court in Radovish, PO. бр. 21/13 of 10 October 2013.

[137] See Art 97 of the LLR.

[138] In this particular case, the claimant (employer) terminated the employment contract of the respondent (employee) for business reasons (economic, financial and technological changes), resulting in the redundancy of the employee's post – *locksmith*. It was found in the proceedings that the employer had not provided evidence of the claim that the post had become redundant (was abolished), nor did it provide a systematic description and records of the posts based on which the assessment could be made on the non-existence of a suitable post for reassignment that corresponds to the employee's qualifications. See Decision of the Basic Court in Resen, PO-27/13 of 10 February 2014.

[139] See Decision of the Basic Court in Tetovo, PO. бр. 42/2013 of 03 July 2013 год.

[140] See Decision of the Basic Court in Kratovo, PO. бр. 49/12 of 18 February 2013 година.

[141] See Art. 62, para 1, point 3 of the LER.

[142] See М Недков and Т Беличанец, *Право на Друштвата*, (USAID, 2008, Скопје) 407.

[143] Law on Trade Companies (*Закон за трговските друштва*) (Сл. весник на Република Македонија, бр.28/04).

[144] Art 538 para 1 of the Law on Trade Companies.

[145] Law on Bankruptcy (*Закон за стечај*) (Службен Весник на Република Македонија, бр 34/2006).

Hence, the employment contracts concluded between the employee and the employer-debtor cease to be valid on the date of the commencement of the bankruptcy procedure.[146] Positioning 'termination due to the cessation of the employer in accordance with the law' (ie 'closure of the undertaking') along with terminations other than the termination of the employment relationship 'by dismissal' limits the employees from seeking adequate employment protection (for example, in the exercise of their rights to a notice period, severance pay, etc).

58 The legal rules for termination in case of a 'transfer of undertaking' are drafted in compliance with EU Directive 2001/23/EC on safeguarding employee rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. The Law on Labour Relations 'prohibits' dismissals of employees in cases of transfers of undertaking, but 'allows' dismissals for economic, technological or organisational reasons that require changes to be made to the workforce.[147] As regards the rules on transfers of undertaking, the labour legislation of North Macedonia implicitly refers to 'outsourcing' and the possible legal consequences for the employment relationship of the employees employed with the transferor. The Law on Labour Relations stipulates that:

> *in the event of the transfer of activities or tasks or part of these from the employer (transferor) to another employer (transferee), the rights and obligations deriving from employment shall be fully transferred to the employer (transferee). The transfer of the rights and obligations deriving from the employment relationship takes place regardless of the legal reason of the transfer and regardless of the fact whether the ownership rights are transferred to the transferee or not. The tasks and activities related to production or service provision or similar activities offered by the legal entity or natural person on their behalf and their responsibility in the facilities or premises determined for the performance of their work shall be considered tasks or activities of the employer.*[148]

59 In practice, the legal consequences in relation to the employees that arise after the transfer of the activity/task has taken place are diametrically opposite to those stipulated in the Law. If the employer decides to 'outsource' a certain activity or task to an external contractor (regardless whether the activity is capital-intensive or labour-intensive), the employment contracts of the employees who were previously employed by the employer organising the work are *terminated*, or are *taken over by the new employer, but under different (deteriorated) conditions* than the employees' previous conditions.[149]

60 The Law on Labour Relations explicitly stipulates three alternatives that should be taken into account by the employer for the extension of the employment relationship of the employee (ie offers to the employee) before termination of the employment contract by dismissal for business reasons. The first alternative is the *possibility of employment by another employer* to carry out work that corresponds to the employee's qualifications. In that case, the employee is hired without the employer previously announcing the vacancy, taken over by another employer and concluding an employment contract with that employer.[150] The Law does not specify whether employment with another employer refers to an employer within or outside the group of companies to which the current employer belongs.

[146] See Art 166 para 1) of the Law on Bankruptcy.

[147] See Art 68-g, para 4 of the LLR.

[148] See Art 68-a, para 4 of the LLR.

[149] See Т Каламатиев, Љ Ковачевиќ and А Ристовски, *Заштита на правата на вработените во случај на промена на работодавачот во Република Македонија и Република Србија (Компаративна Анализа)*, (Скопје, Деловно Право, бр.37, 2017) 221.

[150] See Art 96, para 1 point 1 of the LLR.

Prior to termination of the employment contract for business reasons, the employer 61 may offer the employee a *new employment contract*.[151] Neither the Law on Labour Relations nor case law resolve the dilemma whether the offer of a 'new employment contract' (Article 96 para. 1, point 3) is identical or different from the 'offer of a new modified employment contract prior to dismissal' (Article 78). In the authors' view, these two legal concepts are equated and, as a consequence, the rules that apply in the event of 'an offer of a new modified employment contract prior to dismissal'[152] should also apply in the event of an offer of a 'new employment contract' by the employer prior to termination of the employment contract for business reasons.

Finally, prior to termination of the employment contract for business reasons, the 62 employer may provide the employee with professional training (training, retraining or upskilling for work with the original employer or with another employer).[153]

The Law on Labour Relations of 2005 has not 'touched' upon aspects related to the 63 selection of employees due to business reasons, including in case of collective redundancies.[154] The legal void has been settled in case law by the competent courts, which have set down the compulsory application of criteria for the selection of employees with the right to priority for safeguarding employment, which is of significance primarily when several executors are employed in a certain post and the post is not made redundant.[155]

Referring to international labour standards, the courts in the event of dismissal due to 64 business reasons require employers *to specify certain criteria in advance (prior to the dismissal) for the selection of employees* whose employment relationship shall be terminated.[156] It is up to the employer, which criteria will be used for selection. The employer is entitled to determining the criteria. The courts are firm in their position that prior to dismissing employees for business reasons, the employer must have selection criteria in place that were determined in advance (prior to dismissing the employees) to make the dismissal more transparent. If a collective agreement that provides for selection criteria of employees to be dismissed for business reasons does not apply to the employer, *the employer would be obliged, prior to the commencement of the procedure for termination of the employment contracts due to business reasons, to determine certain criteria and measures in an internal act, and apply such criteria and measures.*[157]

The Law on amending and supplementing the Law on Labour Relations of 29 July 65 2018 stipulates the following selection criteria for dismissal due to business reasons: the criteria arising from the need for efficient operations of the employer, vocational training and qualifications of the employee, work experience, work performance, the type and significance of the employee's post, the length of service and other criteria determined in the collective agreement, including the criteria for the protection of disabled persons, single parents and parents of children with special needs, whose employment contract is terminated for the same reasons.[158] In practice, there are several collective agreements (concluded primarily at branch level, that is, department level) stipulating criteria and measures for the selection of employees with the priority of

[151] See Art 96, para 1 point 3 of the LLR.

[152] See above, section B.II.

[153] See Art 96 para 1, point 3 of the LLR.

[154] Art 7 of the latest Law on amending and supplementing the LLR of 29 June 2018 introduces a new provision that specifies certain selection criteria. The provision is vague and unclear from a terminological perspective.

[155] Judgment of the Supreme Court of the Republic of North Macedonia, Рев.бр.812/98 of 20 November 1999.

[156] See Decision of the Basic Court in Tetovo, РО бр. 42/2013 of 03 July 2013 год.

[157] See Т Томановиќ and В Томановиќ (n 55) 111.

[158] See Art 7 of the Law on amending and supplementing the Law on Labour Relations of 29 June 2018.

retaining their posts. The main criteria included in the majority of collective agreements are: *vocational training and qualifications, length of service, type and value of the post, work results, age* and similar criteria.[159] Some collective agreements provide for certain social criteria (such as *health condition or economic and social position of the employee*), but although these are stipulated in the agreements, such criteria are given less value compared to the other criteria mentioned above.[160] Each individual criterion that applies at the employer carries a certain number of points. Those employees affected by dismissal/collective redundancy who are allocated the highest number of points, have priority in retaining their employment. Since the LLR does not prioritise certain selection criteria in relation to others and employers are not required to give a higher value to 'social criteria' in comparison to the 'other criteria', the selection criteria are in practice regulated in a way that is more suitable for the employers. In that sense, higher value is assigned to criteria such as vocational training and qualifications, length of service, work performance and results, etc.

66 The labour legislation of North Macedonia gives *workers' representatives* a significant role, especially in relation to the procedures for collective redundancies. The Law on Labour Relations envisages substantial and formal aspects related to participation (information and consultation) of workers' representatives, aligning its content with the content of EU Directive 98/59/EC on collective redundancies.[161]

E. Formal and Procedural Requirements

67 The Law on Labour Relations does not provide a detailed specification of the procedure to be implemented prior to dismissal. However, in practice, the employer is usually required to establish the factual situation before terminating the employee's employment contract.[162] Employers most frequently err in the process of establishing the facts to assess the employee's conduct or his or her work performance due to the lack of a legal obligation on the part of the employer to hold a pre-dismissal meeting/hearing of the employee. The procedure of termination by dismissal lacks the element of an 'adversarial procedure,' which seems necessary in these cases.[163]

68 The requirement of a pre-dismissal meeting/hearing is included in several collective agreements. Certain collective agreements stipulate the right of the employee to be heard,[164] others, explicitly envisage the right of the employee to issue a written statement on the alleged violation of the rights and duties derived from the employment

[159] Collective agreements that envisage such criteria are: Collective Agreement for the Food Industry (*Колективен Договор за вработените од земјоделство и прехрамбена индустрија*); Collective Agreement for the Textile Industry (*Колективен Договор за текстилна индустрија на Република Македонија*); Collective Agreement for Public Facilities for Children in the areas of care and education of children (*Колективен Договор за јавните установи за деца во дејноста згрижување и воспитание на децата и во дејноста одмор и рекреација на децата*), etc.

[160] Collective agreements that include such criteria are: Collective Agreement of Companies of Other Monetary Intermediation and the Activity of Intermediation in Operations with Securities and Commodity Contracts (*Колективен Договор на друштвата од друго монетарно посредување и дејноста на посредување во работењето во хартии од вредност и стокови договори*); Collective Agreement for Culture (*Колективен Договор за култура*); Collective Agreement for Elementary Education (*Колективен Договор за основното образование во Република Македонија*), etc.

[161] See Arts 94-a and 95 of the LLR.

[162] See Томановиќ (n 87) 71.

[163] See Томановиќ (n 80) 157.

[164] For example, see Art 24 of the Collective Agreement for the Food Industry (*Колективен Договор за вработените од земјоделство и прехрамбена индустрија*).

relationship,[165] while others provide for the possibility of both an oral hearing (which is put on record) and a written statement of the employee.[166] The importance attributed to the employer's duty to hold a pre-dismissal hearing (if required by the applicable collective agreement) is also recognised by the competent courts.[167]

The employer is required to state the reason for dismissal in the decision for 69 termination of the employment contract by dismissal as provided in the law, collective agreement or employer's act. Additionally, the Law on Labour Relations stipulates the employer's duty to prove the validity of the reasons for dismissal and to state these in the explanation of the notice.[168] This duty of the employer is substantial, since the explanation in the notice of dismissal is subject to evaluation during the court proceedings. In practice, general formulations and explanations are often used in notices of dismissal, and it is impossible to determine whether, when and how the employee violated workplace discipline. Such serious shortcomings invalidate the dismissal notice and result in its annulment.[169] Notices of dismissal for business reasons *that do not provide for an explanation and where the business reasons do not justify the reduction of the number of employees* are also deemed invalid.[170] In addition to providing an explanation of the reasons for dismissal in the notice of dismissal, the employer is required to depict the procedure followed prior to the employee's dismissal.

The notice of dismissal must be issued in writing.[171] The employer must explain the 70 reason for termination of the employment contract in writing, as well as state the legal remedies available to the employee and his or her rights arising from insurance against unemployment in accordance with the law.[172]

The Law on Labour Relations regulates the procedure for delivery of the notice of 71 termination in detail. The employer can deliver the notice of termination in one of three ways. He or she can hand the notice of termination to the employee in person, usually at the employer's premises.[173] The notice of termination can also be delivered to the employee's permanent or temporary residence from where the employee travels to and from work every day.[174] In that case, the notice of termination is usually delivered by mail with an enclosed letter and a return receipt. The third option of delivery of the notice of termination is announcement of the dismissal on the notice board at the employer's headquarters. This form of delivery is used when the employee refuses to accept the dismissal notice in person or cannot be reached at his or her address of residence from where he or she travels to and from work every day (except in case of justified absence from work) or if he or she does not have a permanent or temporary residence in North Macedonia. Upon the expiry of eight working days from the date on

[165] For example, see Art 23 of the Collective Agreement for the Leather and Shoe Industry of North Macedonia (*Колективен Договор за кожарска и чевларска индустрија на Република Македонија*).

[166] For example, see Art 81 paras 3 and 4 of the Collective Agreement of Companies of Other Monetary Intermediation and the Activity of Intermediation in Operations with Securities and Commodity Contracts (*Колективен Договор на друштвата од друго монетарно посредување и дејноста на посредување во работењето во хартии од вредност и стокови договори*).

[167] Wit *Decision No 8/13*, the Basic Court in Strumica annulled the notice of termination of the employment contract, since, inter alia, the Employer's Disciplinary Commission failed to substantively verify the facts (by pre-dismissal hearing of the claimant, ie the employee), which the assessment of the employee's conduct was based on.

[168] See Art 72 of the LLR.

[169] See Томановиќ (n 80) 161.

[170] See Basic Court in Radovish, PO. бр. 21/13 from 10 October 2013.

[171] Art 74 para 1 of the LLR.

[172] Art 74 para 2 of the LLR.

[173] See Art 75 para 2 of the LLR.

[174] Ibidem.

which the announcement is published on the notice board at the employer's premises, the handing over of the notice of dismissal will be considered to have been completed.[175]

72 The Law on Labour Relations neither explicitly allows, nor prohibits the employee from choosing a legal representative during the procedure prior to termination of the employment contract by dismissal (for example, in the pre-dismissal hearing). Unlike for the stages of the procedure prior to dismissal, the Law explicitly envisages the possibility of the employee to choose a legal representative in case of objection to the notice of termination (that is, during the so-called internal procedure for protection of the employee's rights deriving from the employment relationship). The employee can be represented by the trade union upon request.[176] He or she has the right to representation by the trade union both in the procedure that applies when filing an objection to the notice of termination with a notice period,[177] as well as in the procedure that applies when filing an objection to the notice of termination without a notice period or in case of suspension from service with the employer.[178] In practice, the employee may be represented by a lawyer during the procedure prior to dismissal as well as during the procedure after having filed an objection to the notice of termination.

73 The employee may file an objection (*приговор*) to the decision of termination of the employment contract (ie notice of dismissal). The objection shall be submitted to the managing body, ie, the employer, within eight days from the date of its receipt.[179] The objection can have *suspensive effect (суспензивно дејство)*, ie it shall postpone the enforcement of the decision on dismissal (in cases when the employer terminates the employment contract with notice),[180] or not (in cases when the employer terminates the employment contract without giving notice or when the employee is suspended from duty). The period during which the objection can be filed is limited. Finally, the objection against the decision of termination has the *effect of devolution (деволутивно дејство)*, regardless of the fact whether the employment contract is terminated with or without notice. This in principle means that the 'second (higher) instance body' of the employer is in charge of making a decision on the objection within the term provided by law, namely eight days from the date on which the employee's objection was filed.[181] If the employer (ie second instance) issues a decision within the term provided by law, his or her decision shall be treated as the final decision. The employer can take one of three possible final decisions. The employer can 1) reject the objection as untimely, 2) decline the objection as unjustified, or 3) agree with the objection. If the employer agrees with the objection, the final decision might nullify (*ex tunc*) the notice of termination or annul the notice of termination, thereby returning the case to the employer's 'body of first instance' for re-evaluation.[182] The employer can also modify the disputed notice of termination by providing a meritorious decision on the rights of the employee. The notice of termination is then usually replaced by a notice of imposition of a fine (if disciplinary liability of the employee applies to the case).[183]

74 The labour legislation of North Macedonia does not recognise the concept of 'revocation' of the rendered decisions on termination by dismissal.

[175] See Art 75 para 3 of the LLR.
[176] See Arts 91, para 6, and 93, para 5 of the LLR.
[177] See Art 93, para 5 of the LLR.
[178] See Art 91, para 6 of the LLR.
[179] See Art 181, para 4 of the LLR.
[180] See Art 93, para 3 of the LLR.
[181] See Art 181, para 5 of the LLR.
[182] See T. Томановиќ and B Томановиќ (n 55) 217.
[183] Ibidem.

F. Notice Periods

I. Minimum Notice Periods and Admissible Dates of Termination

In case of termination of the employment contract by the employer, the duration of the 75 minimum notice period *(минимален отказен рок)* depends on the *number of employees* whose contracts of employment are terminated. If the employer terminates the employment contract of an employee or of a 'small number' of employees, the notice period is *one month*; it is *two months* if more than 150 employees or five per cent of the employer's total number of employees are dismissed.[184] In practice, the relation between the 'number of employees' as an integral part of the formula to determine the minimum notice period and the length of the minimum notice period raises certain dilemmas. The dilemmas relate primarily to the term 'small number of employees' and the need to specify said term.[185] A 'small number of employees' (with the right to a minimum notice period of one month) refers to any number of employees between one and less than 150 employees, or five per cent of the total number of employees. The potential problem in practice is caused by the wide numerical range used to determine the total number of employees whose employment contracts shall be terminated with a minimum period of notice of two months. Taking into consideration that the number of employees whose contract of employment shall be terminated with a minimum notice period of two months is determined in a different way (at least 150 employees *or* five per cent of the total number of employees), it is unclear what the minimum notice period is if the employer dismisses an individual employee and has a total number of 20 employees (that is, five per cent of the employer's total number of employees). In determining the duration of the minimum notice period (either one or two months), the Law on Labour Relations does not distinguish between the reasons for dismissal (personal reasons, reasons attributed to the employee's own fault, business reasons). In practice, the minimum notice period of one month is mostly applied in cases of dismissal due to reasons attributed to the employee's own fault (ie less severe disciplinary violations) and as a consequence of the 'individual features' of the employee's disciplinary liability, whereas the application of the minimum notice period of two months is more frequently found in cases of dismissal for business reasons and/or collective redundancies.

The notice period commences on the date following the day the notice of termination 76 of the employment contract has been handed to the employee.[186] The duration is calculated in calendar days rather than working days.

II. Legal Principles

The principle of seniority is not included in the labour legislation of North Macedonia. 77 Consequently, the length of the notice period is unrelated to the length of the employee's employment relationship with the current employer, or the employee's total length of service. However, the lack of statutory provisions on the application of the principle of seniority does not preclude the possibility of regulating it in a collective agreement.[187]

[184] See Art 88 para 2 of the LLR.
[185] See T. Томановиќ and B Томановиќ (n 55) 88.
[186] See Art 89 of the LLR.
[187] For example, Art 71 of the *Collective Agreement for Culture* stipulates that the length of the notice period is up to one month (if the employee's length of service is from one to nine years), two

III. Contracts with a Probation Period

78 The Law on Labour Relations does not include provisions on notice periods in cases when the employer terminates the employment contract due to failure to successfully complete the probation period. Such a dismissal should be treated as a dismissal without notice.

IV. Periods of Notice and Freedom of Contract

79 Aside from the notice periods provided by law, the employee and the employer may terminate the contract of employment within the contractually agreed notice period.[188] The Law on Labour Relations explicitly provides for the option of a contractually determined notice period in case of resignation by the employee. However, its length cannot be less than the legally provided minimum notice period of one month, nor may it exceed the legally provided maximum notice period of three months.[189] Certain collective agreements provide for specific reasons and circumstances that may serve as a basis for an extension of the length of the notice period up to the maximum limit of three months.[190]

80 The contracting parties have limited freedom in determining the length of the notice period in case of termination of the employment contract by the employer. The Law on Labour Relations only stipulates the minimum, but not the maximum limit of the duration of notice periods. Therefore, no legal obstacle exists to extending the duration of the employee's notice period to more than one month, ie two months (conditioned by the number of employees whose contracts of employment have been terminated).

81 Additionally, the employer and the employee may agree on pecuniary compensation instead of a notice period.[191] According to the law, the replacement of the notice period by pecuniary compensation, and thus the 'release' of the employee from the obligation to perform work during the notice period, cannot be unilaterally decided by the employer, but must be mutually agreed by both contracting parties. If an agreement for pecuniary compensation instead of a notice period is reached, the employer will be required to pay the pecuniary compensation to the employee with the delivery of the notice of dismissal, that is, on the date the employment contract is terminated.[192] In practice, the pecuniary compensation amounts to the salary the employee would have been entitled to during the notice period, had he or she continued to carry out his or her work-related tasks during the notice period.[193] This option is occasionally found in collective agreements, which go 'one step further'

months (if the employee's length of service is from 10–15 years), and up to three months (if the employee's length of service is over 15 years). Stipulations with identical content can also be found in Art 66 of the *Collective Agreement for Primary Education* and Art 63 of the *Collective Agreement for Secondary Education*.

[188] See Art 87 of the LLR.

[189] See Art 88, para 1 of the LLR.

[190] For example, if the employment contract is terminated by a person with special rights and obligations, the notice period is three months, unless the employer and the employee agree otherwise (see Art 97, para 3) of the Collective Agreement of Companies of Other Monetary Intermediation and the Activity of Intermediation in Operations with Securities and Commodity Contracts).

[191] Art 90, para 1 of the LLR.

[192] Art 90, para 2 of the LLR.

[193] See T Томановић and B Томановић (n 55) 80.

by determining the amount of salary compensation to which the employee is entitled during the notice period.[194]

During the notice period, the employer is required to give the employee the option to 82 use paid leave from work to look for a new job. Such paid leave shall amount to four hours during the work week.[195] According to some collective agreements, the total amount of time an employee can take paid leave with the purpose of looking for a new job is to be determined by the employer (with the employee's consent),[196] other collective agreements state that the time is to be determined by the employee (with the employer's consent),[197] while still other collective agreements provide that the time of such paid leave is to be determined exclusively by the employer (ie, unilaterally).[198]

G. Involvement of Specific Bodies

De lege lata, trade unions/workers' representatives play a significant role in the 83 participation procedure (information and consultation) in case of collective redundancies. The Law on Labour Relations states that the information and consultation procedure *commences* as soon as the employer expresses the *intention* to carry out collective redundancies, which must be *at least one month* prior to *the commencement of the collective redundancy*.[199]

The *information procedure* consists of the provision of all relevant information to the 84 trade union/workers' representatives by the employer prior to the commencement of the consultations.[200] This information includes *the reason for the dismissals; the number and categories of employees being laid off; the total number and categories of employees employed and the period for when the layoffs are planned*.[201] Such information ought to be an integral part of a *written notification* provided by the employer, which marks the commencement of the information and consultation procedure with the workers' representatives prior to the commencement of the collective redundancy. In practice, such written notification should be supported by evidence, clearly stating *the reasons* for the cessation of the need for the employee, along with other relevant information in accordance with the Law on Labour Relations.

The *consultation procedure* entails finding methods and means to mitigate the 85 negative consequences of the collective redundancy for the employees.[202] The ultimate goal of the consultation procedure is to *'reach an agreement'* between the employer and the workers' representatives, which should refer to *accompanying social measures to support the redundant employees in re-employment or training*, in case collective redundancy is unavoidable.[203] The Law on Labour Relations does not specify how the consultation procedure is to be conducted (orally or in writing) and the extent to which the parties shall be involved in the consultation procedure. Consequently, it appears that

[194] For example, salary compensation for the duration of the notice period amounts to the salary the employee received until then (Art 72, para 2) of the Collective Agreement for Culture and Art 26, para 2) of the Collective Agreement for the Chemical Industry).

[195] See Art 92, paras 1 and 2 of the LLR.

[196] See Art 98, para 2 of the Collective Agreement of Companies of Other Monetary Intermediation and the Activity of Intermediation in Operations with Securities and Commodity Contracts.

[197] See Art 110, para 2 of the Collective Agreement for Social Protection of North Macedonia.

[198] See Art 37, para 1 of the Collective Agreement for Employees of the Agriculture and Food Industry.

[199] See Art 95, para 2 of the LLR.

[200] Ibidem.

[201] See Art 95, para 4 of the LLR.

[202] See Art 95, para 3 of the LLR.

[203] Ibidem.

the details on the implementation of the consultation procedure are left to the will of the employer and the workers' representatives as parties participating in this procedure. In practice, consultation is usually followed by the delivery of a so called *'draft programme for settling the rights of the redundant employees'* (*нацрт програма за решавање на правата на работниците за чија работа престанала потребата*) by the employer.[204] However, Macedonian labour legislation does not prescribe the existence of such a 'programme', nor does it regulate its content. Furthermore, the extent to which the parties shall be involved in the consultation procedure, ie whether the consultations shall be reduced to a simple exchange of opinions or shall include a more in-depth form of dialogue between the parties, remains unclear.

86 Legislation on employee protection against dismissal does not regulate the right to co-determination in a systematic and comprehensible manner. The amendments to the Law on Labour Relations of 2013, which introduced a 'broader package' of provisions on the protection of women against employment discrimination and special protection of employees who are on maternal or parental leave, also included a ban on terminations of employment contracts of employees in such or similar situations without previous consent of the trade union of which the employee is a member, or if no union has been established with the employer or the employee is not a member of the trade union, without the previous consent of the competent labour inspector.[205] According to current legislation, the process of co-determination of the trade union or of the competent labour inspector in the procedure of termination of the employment contract of 'special groups of employees protected by Law,' may result in three different legal consequences: 1) refusal of consent, 2) consent or 3) failure to express any position within a period of eight days as provided by law. In the event that the trade union or the competent labour inspector does not give consent to the termination of the employment contract, the employer may, within a period of 15 days from the date of publication of the refusal of consent, initiate a procedure for re-consideration by a court decision or arbitration award.[206] However, if the competent bodies give their consent or if they do not state their opinion about the termination within the period provided by law, the notice of dismissal will be considered valid and the employer will have thus received consent to terminate the employment contract.[207]

87 A similar form of co-determination exists in the dismissal protection procedure of trade union representatives.[208] The procedure for termination of the employment contract of a trade union representative includes a mandatory request to seek prior consent for the termination from the union. The union has eight days to issue its opinion *'in favour of' or 'against'* the termination of the union representative's employment contract. If the union does not issue its opinion 'in favour of' or 'against' the termination within eight days, it shall be deemed to have agreed with the employer's decision.[209] If the union does not give its consent, the consent may be substituted by a court decision.[210]

88 The involvement of public authorities primarily exists in the procedure for protection of employee rights in the event of collective redundancies. According to North

[204] See T Томановиќ and B Томановиќ (n 55) 98.

[205] See Art 4 of the Law on Amending and Supplementing the Law on Labour Relations (Сл весник на Република Македонија, No 13/2013).

[206] See Art 101, para 7 of the LER.

[207] More on dismissal protection of employees in case of maternity or parental leave, see below section H.I.

[208] More on dismissal protection of union representatives, see below section H.I.

[209] See Art 200, para 4 of the LLR.

[210] See Art 200, para 5 of the LLR.

Macedonian labour legislation, 'public authority' in this regard entails *'the service responsible for employment intermediation'*, ie, the Employment Agency of North Macedonia, (*Агенција за вработување на Република Северна Македонија*). Pursuant to the Law on Labour Relations, an *obligation is imposed on the employer to notify the service responsible for employment intermediation in writing, upon completion of the consultations with the workers' representative.* In the same provision, the Law further stipulates that the notification should include *all relevant information related to the planned collective redundancy and the consultations with workers' representatives, in particular the reasons for the dismissals, the number of employees being laid off, the total number of workers with the employer, and the period within which the layoffs are to occur.*[211]

Notification of the Employment Agency about the planned collective redundancies 89 already constitutes a notice of collective dismissals by the employer, which includes individual notices of termination of the employment contracts of employees.

The Employment Agency may, under such circumstances, 'temporarily suspend' the 90 legal consequences that derive from the notice of collective dismissals, ie it may postpone the time period from the legal (de jure) to the factual (de facto) termination of the employment relationship of the employees affected by the collective redundancy by up to 30 days, or, upon request, up to 60 days, provided that the problems arising from the planned dismissals cannot be resolved within the initial period.[212] For the duration of this time period, the Agency shall seek for opportunities to provide assistance and intermediation services in employment to the redundant employees in accordance *with the law* (in particular, the Law on Employment and Insurance Against Unemployment).[213]

H. Specific Dismissal Protection

I. Protection for Specific Groups

1. Civil Servants

The term *'administrative servant'* (*административен службеник*) refers to all 91 persons who establish an employment relationship to perform administrative work in State and municipal bodies, as well as other State organs and institutions.[214] The legal regime for dismissal protection of administrative servants differs in several aspects to that of employees covered by the general provisions for employment relationships. The Law on Administrative Servants (*Закон за административни службеници*) does not include the notion of 'dismissal'. A unilateral termination of the employment relationship (ie dismissal) for this category of employees is put in the context of a disciplinary liability and is qualified as the most severe disciplinary measure issued under the conditions and procedure provided by law.

In comparison to the Law on Labour Relations, the Law on Administrative Servants 92 provides for a more detailed gradation of disciplinary liability of administrative servants, thereby stipulating pertinent disciplinary measures related to the type of disciplinary liability which may arise in the form of *'disciplinary irregularity'* (*дисциплинска неуредност*) and *'disciplinary offence'* (*дисциплински престап*).[215] Whereas disciplin-

[211] See Art 95, para 6 of the LLR.

[212] See Art 95, para 8 and 9 of the LLR.

[213] See Art 95, para 6 of the LLR.

[214] See Art 3, para 1 of the Law on Administrative Servants (LAS).

[215] See Art 71 of the LAS.

ary irregularity is a less severe violation, disciplinary offence is considered a more severe form of violation of workplace discipline, work tasks or the reputation of the institution or of the administrative servant.[216] The consequence of disciplinary irregularity cannot be termination of the employment relationship (dismissal). The employment relationship can only be terminated if the administrative servant committed a disciplinary offence,[217] when there were harmful consequences for the institution and when no mitigating circumstances were found on the part of the administrative servant who committed the offence.[218] Compared to the Law on Labour Relations, which does not envisage a detailed procedure prior to the termination of the employment contract, the Law on Administrative Servants specifies who is entitled to submit a proposal to initiate a disciplinary procedure against an administrative servant.[219] Furthermore, it entails the compulsory establishment of a Disciplinary Commission in case of disciplinary offence, detailing its structure and competencies and emphasises the right of the administrative servant in a disciplinary procedure to personally state his or her position against the alleged disciplinary offence.[220]

2. Workers' Representatives

93 The Law on Labour Relations provides for special dismissal protection of trade union representatives.[221] The employer is explicitly prohibited from reducing a trade union representative's salary or to terminate his or her contract of employment due to trade union activities.[222] However, this prohibition does not prevent the employer from terminating the employment contract of a trade union representative if justified reasons for dismissal with or without notice exist. The Law on Labour Relations envisages special protection for trade union representatives prior to dismissal and a special procedure for terminating the contract of employment. The special protection prior to dismissal shall apply throughout the entire period of the trade union representative's term of office, and at least two years after its expiry.[223] The health and safety representatives of employees are also entitled to special protection in the employment relationship. Dismissal protection for this group of workers is identical to that of union representatives.[224]

3. Particularly Vulnerable Persons

94 The group of particularly vulnerable persons entitled to special dismissal protection includes employees who are pregnant, recently gave birth, are on parental leave, have recently adopted a child, paternity leave, adoption leave, and those who have reduced working hours to care for a child with developmental impairments and special educational needs, and absence from work to care for a child up to the age of three years.[225] An employer may not terminate the employment contracts of these categories of

[216] See Arts 72, para 1 and 73, para 1 of the LAS.
[217] Art 73 of the Law on Administrative Servants enumerates 27 cases of disciplinary offence of the administrative servant.
[218] See Art 74, para 2, point 3 of the LAS.
[219] See Art 77 of the LAS.
[220] See Art 76 of the LAS.
[221] See Art 200 of the LLR.
[222] See Art 200, para 2 of the LLR.
[223] Art 200, para 6 of the LLR.
[224] See Art 28 of the Law on Safety and Health at Work *(Закон за безбедност и здравје при работа)* (Сл весник на Република Македонија, No 92/2007).
[225] See Art 101, para 1) of the LLR.

employees if the reasons for termination are related to their circumstances, ie for absence from work, and in all other cases that may be treated as justified reasons for dismissal. The only exception to such prohibition of termination is cases of employee misconduct, ie reason attributed to the employee's own fault, which warrant termination of the employment contract without giving notice.[226] However, even in such cases (ie cases of dismissal for severe violations of contractual obligations, ie violation of workplace discipline or of work duties), the employees who fall under the category of particularly vulnerable persons are entitled to special dismissal protection. The special dismissal protection of these categories of employees entails mandatory co-determination of the trade union/competent labour inspector, ie limitation of the employer's freedom to terminate the employment contract of such employees by requiring the employer to obtain prior consent for the dismissal.[227]

II. Protection Due to Specific Circumstances

1. Transfer of Undertaking

Employees in North Macedonia, *de lege lata*, are entitled to dismissal protection in 95
the event of a transfer of undertaking (change of employer).[228] However, apart from the general prohibition of dismissal of employees due to the transfer itself, frequent examples of misuse of this prohibition of dismissal exist in practice.[229]

J. Legal Consequences

I. Consequences of Lawful Termination

The labour legislation of North Macedonia only guarantees the right to severance pay 96
to employees in case of termination of the employment contract by dismissal for business reasons, including collective redundancies.

The right of employees to 'severance pay' *(испратнина)* in the event of dismissal for 97
business reasons should not be confused with the right to receive 'severance pay' *(отпремнина)* when retiring. Although the employer is required to pay a one-time pecuniary compensation to the employee in both cases, 'severance pay' in the event of dismissal for business reasons is calculated on the basis of the amount with the lowest threshold provided by law, while the calculation and payment of 'severance pay' when retiring is specified in the collective agreement.[230]

[226] See Art 101, para 4) of the LLR.
[227] See above section G.
[228] See above section D.IV.
[229] First and foremost, it concerns cases in which one company ceases to exist (by *closure of the undertaking*), but, at the same time (or in a very short period of time), another company is established (*newly established company*) that continues to perform the same or similar business. The closure of the undertaking leads to terminations of the employment relationship of employees (whose employment contracts most often formally and legally are terminated on the basis of 'consensual termination'), while the newly established company becomes the new employer of the same employees who *sign new employment contracts, but with less favourable conditions.*
[230] For example, employees in the private sector are entitled to severance pay when retiring, in the sum of at least twice the amount of the basic rate of its calculation, and that is the average net salary of an employee in North Macedonia over the last three months (see: *General Collective Agreement for the Private Sector in Commerce*, Art 35, para 2, line 6 and para 3).

98 The labour legislation of North Macedonia establishes two general criteria for calculating the amount of the employee's severance pay, namely: the length of service of the employee and the amount based on the calculation of the severance payment. The length of service encompasses the period of employment with the same employer as well as the period of employment with the previous employer, whose legal successor, due to the status change, is the employee's last employer.[231] The calculation of the severance pay is the employee's average net salary over the six months preceding the dismissal, and should not be lower than 50 per cent of the average net salary an employee in North Macedonia earned in the month preceding the dismissal.[232] Taking into consideration the said criteria for the calculation of the amount of severance pay, the employee may receive severance pay in the amount of *one to seven net salaries*, which are paid as follows: up to five years of employment – in the amount of one net salary; from 5 to 10 years of employment – in the amount of two and a half net salaries; from 10 to 15 years of employment – in the amount of three and a half net salaries; from 15 to 20 years of employment – in the amount of four and a half net salaries; from 20 to 25 years of employment – in the amount of six net salaries; and over 25 years of employment – in the amount of seven net salaries.[233] The contracting parties may agree on a more favourable amount and conditions of severance payment than the conditions laid down by the Law.[234] Severance pay shall be paid on the date of termination of the employment relationship,[235] that usually being the day the notice period ends.

99 Severance pay is paid as a net amount. According to the tax regulations, a net salary is the full salary subtracted by the amount of mandatory social insurance contributions (rate of 27 per cent) and the amount of personal income tax (rate of 10 per cent).[236]

100 However, although the amount of severance pay is determined as a net salary, it falls under a different tax regime than that of the salary. This means that the employer is not required to pay social insurance contributions for the severance payment. The severance payment is also exempt from personal income tax.[237]

101 Pecuniary compensation for unemployment is a basic right of insured persons, which derives from social insurance against unemployment in North Macedonia. An unemployed person who was in an employment relationship (and for whom contributions for insurance against unemployment were paid) for at least nine months without interruption, or 12 months with interruptions over the last 18 months is entitled to pecuniary compensation.[238] The insured person shall not be entitled to pecuniary compensation if

[231] Art 97, para 3 of the LLR.
[232] Art 97, para 2 of the LLR.
[233] See Art 97, para 1 (line 1–6) of the LLR.
[234] For example, see Art 93 para 2 of the *Collective Agreement of Companies of Other Monetary Intermediation and the Activity of Intermediation in Operations with Securities and Commodity Contracts*; Art 51 para 3 of the *Collective Agreement for Employees of the Agriculture and Food Industry*; Art 34 para 1 of the *Collective Agreement on Communal Services*, etc.
[235] Art 97, para 4 of the LLR.
[236] See Art 25 of the Law on Contributions for Compulsory Social Insurance (*Закон за придонеси за задолжително социјално осигурување*) (Сл. весник на Република Македонија No 142/08) and Art 3, para 4 of the Rulebook on the manner of calculation and payment of contributions for compulsory social insurance (Сл весник на Република Македонија, бр.249/2008).
[237] See Art 6, para 1, point 25 of the Personal Income Tax Law (*Закон за персоналниот данок на доход*) (Сл весник на Република Македонија No 80/1993).
[238] See Art 65 of the Law on Employment and Insurance Against Unemployment (LEIAU) (*Закон за вработувањето и осигурување во случај на невработеност*) (Сл. весник на Република Македонија No 37/1997).

the employment relationship was terminated due *to voluntary resignation*, a *fault of his or her own* or in *other cases provided by law*.[239]

An unemployed person is, in principle, entitled to pecuniary compensation from the 102
date of termination of his or her employment relationship.[240] The period for which compensation shall be paid depends on the duration for which contributions for insurance against unemployment were paid on behalf of the insured person.[241] Pecuniary compensation is paid for a period of *at least one month* (if a minimum period of insurance contributions of nine months without interruption, or 12 months with interruptions over the last 18 months were paid) *up to 12 months* (when contributions for the insured person were paid for a maximum period of insurance of over 25 years).[242] The provisions on insurance against unemployment lay down certain exemptions, which allow for an extension of payment of pecuniary compensation for a period of more than 12 months.[243]

The amount of monthly pecuniary compensation due to unemployment is 50 per 103
cent of the employee's average monthly net salary in the last 24 months (for persons who are entitled to pecuniary compensation of up to 12 months) or 50 per cent of the employee's average monthly net salary for the last 24 months and 40 per cent of the employee's monthly net salary for the remaining period (for persons who are entitled to pecuniary compensation of more than 12 months).[244]

II. Consequences of Unlawful Termination

Macedonian labour legislation penalises 'unlawful terminations of the employment 104
relationship'. An unlawful termination may be a consequence of a violation of substantive provisions (for example, in cases in which the employer terminates the contract of employment due to a reason that is treated as 'unjustified, ie 'unjustified reasons for dismissal' or if the employer does not have a justified reason for the termination or does not substantiate the reason for dismissal) or fails to properly apply the procedural provisions (for example, in cases in which the employer terminates the employment contract after the expiry of the time limit for dismissing the employee, does not adhere to the obligation of issuing a written warning to the employee prior to dismissal in cases provided by law, breaches the rules of the information and consultation procedure in the event of collective redundancies, as well as other cases of violation of the rules of the dismissal procedure).

The Law on Labour Relations states that: 105

> *if the court renders a decision by which it determines that the employment relationship has been unlawfully terminated, the employee shall be entitled to reinstatement after the decision becomes final, if he or she requests it.*[245]

Taking into account the aforementioned rule, the employee (in the capacity of the 106
plaintiff) can file a lawsuit before the competent court and challenge the validity of the notice of dismissal, by submitting the following claims: firstly, *requesting annulment of the notice of dismissal and for the court to find that the termination of the employment*

[239] See Art 67 of the LEIAU.
[240] See Art 74, para 1 of the LEIAU.
[241] See Art 71, para 1 of the LEIAU.
[242] See Art 71, para 2 of the LEIAU.
[243] See Art 72 of the LEIAU.
[244] See Art 68, para 1 of the LEIAU.
[245] Art 102, para 1 of the LLR.

relationship was unlawful and secondly, *requesting an order of reinstatement in employment.*[246] One basic legal consequence of the unlawfulness of the dismissal notice is its nullification, whereas a basic legal right of the unlawfully dismissed employee is the right to reinstatement (ie reintegration in the company). A final court decision annulling the unlawful notice of dismissal has an *ex tunc* effect and it is assumed that the employment contract remains in force and is deemed to never have been terminated.[247] The court usually decides on the employee's claim to reinstatement as well. The majority of serious dilemmas in practice arise with regard to reinstatement in employment since there is a difference whether the employee returns to his or her previous post (reinstatement) or takes up another suitable post (re-engagement) with the employer. As a rule, the court decides within the limits of the claims provided in the procedure.[248] On the other hand, however, courts in North Macedonia do not have a uniform position on the admissible content of the claims, nor on how to decide such claims (for example, *the court may order the employer to reinstate the employee who returns to his or her initial post as locksmith, for example, i.e. to the post the employee held prior to the termination of his or her employment relationship;*[249] *reinstate the employee in a post that is suitable with reference to the employee's professional qualifications,*[250] *etc).*

107 The employee's right to compensation for damages may be another consequence of unlawful termination of the employment relationship. The labour legislation of North Macedonia implicitly provides for two distinct types of compensation for damages to be paid in two different cases, ie under different circumstances.

108 In the first case, compensation for damages is an additional right of the employee, which supplements the employee's basic right, namely the right to reinstatement. The compensation for any damage the employer is required to pay the employee in such cases is treated as *compensation for the loss of earnings (надомест на изгубената заработувачка)* of the employee, ie the income he or she would have earned had the employment relationship not been unlawfully terminated.[251] The amount of damage compensation (ie loss of earnings) is determined by the amount of the employee's gross salary during his or her employment with the employer in accordance with the law, collective agreement and the contract of employment. If upon the (unlawful) termination of the employment contract, the employee earns an income from work, the amount of damages will be reduced by the amount of the earned income.[252] The amount of damage compensation entails the payment of social insurance contributions for the employee's lost gross salaries, as well as pecuniary compensation for annual leave if the employee was entitled to such right, should his or her employment contract not have been unlawfully terminated by the employer. On the other hand, compensation for damages excludes payments for food and transport since those payments depend exclusively on the factual presence of the employee at work and the regular performance of work-related activities.

109 In the second case, the right to claim damage compensation is a basic and the employee's only right if he or she is not reinstated in employment. The exercise of this

[246] See K Чавдар, *Тужби, тужбени барања и пресуди во работните спорови* (Скопје, Деловно Право, бр.14, 2005) 107.

[247] See T Томановиќ and B Томановиќ (n 55) 122–123.

[248] See Art 2, para 1) of the Law on Civil Procedure (LCP) (Сл. весник на Република Македонија, No 79/2005).

[249] See Judgment of the Appellate Court of Skopje, РОЖ No 1101/09 of 08 January 2010.

[250] See Judgment of the Appellate Court of Skopje, РОЖ No 1217/09 of 26 November 2009.

[251] See Principal Position of the Supreme Court of North Macedonia confirmed at the General Session on 17 June 1996.

[252] See Art 102, para 2 of the LLR.

right arises as a consequence of the previous termination of the employment relationship by a court verdict *(престанок со судска пресуда).*[253] A legal prerequisite for obtaining the right to compensation for damages in case of termination of the employment contract by a court verdict, is for a prior court assessment to have found that the employer's notice of dismissal is unlawful. Consequently, an initiative for a court to examine the termination of the employment relationship by determining the date of said termination can be submitted by both parties, that is, by the employee[254] or the employer[255]. The employer and the employee may submit the request for termination of the employment contract prior to the completion of the main hearing before the court of first instance.[256] The compensation for damages to which the employee is entitled in case of termination of the employment contract by a court verdict consists of two components. The first component entails compensation *for the loss of earnings (надоместок на изгубена заработувачка),* which is calculated from the date the employment relationship was terminated by a court verdict, whereas the second component takes on the features of a *one-time compensation (еднократен надоместок)* paid to the employee because the unlawful termination did not result in the employee's reinstatement, ie his or her return to his or her post with the employer.[257] The current provisions of the Law on Labour Relations do not address the amount and criteria for the payment of compensation for damages.[258] The lack of an instructive legal provision on the amount and criteria for determining the compensation for damages has resulted in an inconsistent court practice, ie different court judgments with the same or similar factual situation.

III. Rights and Duties in the Interim Period

The Law on Labour Relations gives employees who dispute their dismissal the 110 opportunity to request the court to order temporary reinstatement until the dispute is decided.[259] When evaluating the employee's request, the court – taking all of the circumstances into account – shall determine whether the conditions for reinstatement of the employee until the settlement of the dispute on the validity of the dismissal with notice have been met. It is unclear what happens if the court orders the temporary return of the employee to work, but the ongoing labour dispute related to the (un-) lawfulness of the dismissal with notice is settled when a final court verdict is issued rejecting the employee's claim for annulment of the notice of dismissal. In that case, the employee will not be required to return the wages he or she received while temporarily working to the employer, since he or she performed *factual work* for the employer during that period.[260]

A temporary postponement of the enforcement of the notice of dismissal may be 111 accomplished both with the assistance of the competent labour inspector. The legal preconditions are: the employee to have initiated a labour dispute against the employer

[253] See Art 102, paras 4, 5 and 6 of the LLR.

[254] See Art 102, para 4 of the LLR.

[255] See Art 102, para 5 of the LLR.

[256] See Art 102, para 6 of the LLR.

[257] See T Томановиќ and B Томановиќ (n 55) 147.

[258] This situation is a consequence of the Decision of the Constitutional Court of North Macedonia No 139/2005 (Official Gazette of North Macedonia, No 3/2006) which abolished the relevant provisions of the Law on Employment Relationships on the determination of the amount and criteria for compensation of damages in the event of unlawful termination of the employment contract by the employer (see above, section A.).

[259] See Art 102, para 3 of the LLR.

[260] See F D Frntič and others, *Detaljni Komentar Zakona o Radu,* (Zagreb, Radno Pravo, 2017) 657.

with the competent court; the employee to have submitted a request to the labour inspector within 30 days from the date of initiation of the labour dispute with the competent court, and the labour inspector to have ascertained that the employee's right has been violated by a final decision of the employer. If the labour inspector accepts the employee's request and ascertains that the employee's right has been violated, he or she shall postpone the enforcement of the employer's notice of termination until the court issues a decision on the disputed dismissal.[261]

K. Court and Other Proceedings

I. Courts

112 In the North Macedonian labour law system, the procedure for protection of the rights of the employee is conducted in two phases: before the employer (so called primary or internal protection) and before the competent court (so called external protection). The procedure before the employer is initiated by filing a complaint against the decision on the termination of the employment contract to the body of second instance at the employer within eight days from the date of issuance by the employer.[262] Once the complaint has been filed, the employer has eight days to state its case. If the employer does not adopt a decision on the complaint or if the employee is not satisfied with the employer's decision, he or she has the right to file a claim before the competent court.[263]

113 The procedure before the competent court is initiated by a lawsuit which must be filed in a timely matter *(навремена)* and must be admissible *(дозволена)*. The lawsuit is timely if the plaintiff (the employee) complies with the legal and preclusive term of 15 days. The lawsuit is admissible if the plaintiff (employee) has previously initiated a procedure for protection of his or her rights before the employer.[264] In the event that the plaintiff failed to do so, the preconditions for establishing the competence of the court and to seek legal protection by the court are not met.[265] The only exemptions to this rule are disputes related to the legal protection of pecuniary claims arising from the employment relationship, as well as disputes related to discrimination of the unselected candidate for employment at the time of the conclusion of the employment relationship.[266]

114 The courts that have jurisdiction to decide labour disputes at first instance *(спорови од работни односи во прв степен)* are the Basic Courts with basic competence *(Основни Судови со основна надлежност)*, ie courts of first instance that decide in civil law disputes.[267] Second instance courts, ie competence in appeal procedures against the decision of the court of first instance, are the Appellate Courts *(Апелационите*

[261] See Art 262, paras 1 and 2 of the LER.
[262] See Art 181, para 4 of the LLR.
[263] See Art 181, para 5 of the LLR.
[264] See K Чавдар (n 247) 96.
[265] In the court practice of North Macedonia, there are certain court decisions which to some extent 'derogate' from the precondition of conducting a prior procedure before the employer (so called internal protection) in order to resort to court protection. For example, in the *Decision of 12 December 1998, Рев.бр.929/96*, the Supreme Court of North Macedonia found that when the notice of dismissal contains an explicit provision that the decision on the termination of the employment contract is final and as a consequence of that the employee immediately initiated a dispute before the competent court, he or she shall not be deprived of the right to seek court protection due to the fact that he or she did not file a complaint against the employer's decision.
[266] See Art 181, para 6 and 7 of the LLR.
[267] See Art 30 para 2, point 9 of the Law on Courts (LC) (*Закон за Судовите*) (Сл. весник на Република Македонија, No 58/06).

судови).[268] The Supreme Court of North Macedonia (*Врховниот Суд на Република Северна Македонија)*, inter alia, has jurisdiction to decide on extraordinary legal remedies against final decisions of the lower courts and decisions of its councils in cases provided by law.[269] Extraordinary legal remedy (revision) against the decision of the court of second instance may be filed in any dispute related to the termination of an employment relationship, regardless of the monetary value of the dispute.[270]

Court proceedings in labour disputes have several distinctive features compared to 115 proceedings in other litigations. Their main characteristic is the urgency in the resolution of such disputes. The hearing of labour disputes on the termination of the employment relationship must be held within 30 days as of the date of submission of the claim.[271] Proceedings before the court of first instance must be completed within six months from the date of submission of the claim.[272]

The Law on Labour Relations stipulates that if the employer terminates the employ- 116 ment contract, among other obligations, it must substantiate the justifiable reason for the termination.[273] Such an approach to determining the burden of proof is further reflected in the eventual court proceedings. In the course of the proceedings before the court, the burden of proof for the justified reasons for the termination of the employment contract principally falls on the employer.[274]

II. Arbitration and Other

Labour disputes in North Macedonia can also be resolved in extra-judicial proceedings 117 (peaceful settlement of labour disputes). The manner and procedure of the peaceful settlement of labour disputes are provided in a special law, the Law on Peaceful Settlement of Labour Disputes (*Закон за мирно решавање на работните спорови)*.[275] According to this Law, only individual labour disputes may be settled by arbitration, such being disputes on the termination of the employment contract and unpaid salary.[276] In any case, the parties of the individual labour dispute may voluntarily opt for peaceful settlement of the dispute.[277] If the parties agree on this procedure to resolve the individual labour dispute, an arbitrator is designated to issue a decision on the subject of the dispute. The arbitrator shall adopt a final and enforceable decision on the subject of the dispute within 30 days from the date of the opening of the hearing.[278]

[268] See Art 33, para 1, point 1 of the LC.
[269] See Art 35, para 1, point 4 of the LC.
[270] See Art 372 para 3, point 3 of the Law on Civil Procedure (LCP).
[271] Art 405, para 3 of the LCP.
[272] Art 405, para 4 of the LCP.
[273] See Art 72 of the LER.
[274] See T Томановиќ and B Томановиќ (n 55) 226.
[275] Law on Peaceful Settlement of Labour Disputes (LPSLD) (Сл. весник на Р. Македонија, бр.87/2007).
[276] See Arts 3, para 1, and 29, para 1 of the LPSLD.
[277] See Art 5 of the LPSLD.
[278] See Art 35 of the LPSLD.