ORGANISATION FOR MEDIATION AND ARBITRATION (O.ME.D.) -
LAW SCHOOLS OF ATHENS (NKUA) AND THESSALONIKI (AUTH)
UNIVERSITIES

RECENT TRENDS OF COLLECTIVE BARGAINING IN BALKAN & SOUTH-EASTERN EUROPEAN STATES

International Conference on the occasion of the 30th Anniversary of the functioning of O.ME.D.

Thessaloniki, 12 March 2022
Teloglion Foundation AUTH

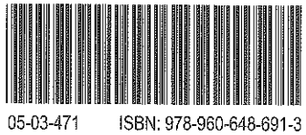
Editor: Prof. Costas Papadimitriou

- Raluca Dimitriu
- Kübra Doğan Yenisey
- Ivana Grgurev
- Senad Jašarević
- Ioannis Koukiadis
- Costas Papadimitriou
- Aleksandar Ristovski
- Vesna Simović-Zvicer
- Krassimira Sredkova
- Nicos Trimikliniotis

SAKKOULAS PUBLICATIONS
ATHENS - THESSALONIKI
2023

SAKKOULAS PUBLICATIONS S.A.
ATHENS - THESSALONIKI

Athens
23, Ippokratous Str. - 106 79 Athens
Tel.: (+30 210) 33.87.500, Fax: (+30 210) 33.90.075
Thessaloniki
1, Fragon Str. - 546 26 Thessaloniki
Tel.: (+30 2310) 535.381, Fax: (+30 2310) 546.812
42, Ethnikis Aminis Str. - 546 21 Thessaloniki
Tel.: (+30 2310) 244.228, 9, Fax: (+30 2310) 244.230
http://www.sakkoulas.gr • email: info@sakkoulas.gr



05-03-471 ISBN: 978-960-648-691-3

CONTENTS

Grgurev, Ivana; Potočnjak, Željko (2021). Radni odnosi u vrijeme pandemije COVID-19, u: Primjena prava u vrijeme pandemije COVID-19 (ur. Barbić, Jakša), Zagreb, Hrvatska akademija znanosti i umjetnosti, p. 47-68.

Grgurev, Ivana; Vukorepa, Ivana (2013). Minimum Wage as a Tool in the Fight against Poverty: Croatian Labour Law Perspective, in: Staatliche Eingriffe in das System der Mindestentgelte im internationalen Vergleich (ed. Günther Löschnigg), Wien, Verlag de ÖGB GmbH, p.280-208.

Grgurev, Ivana; Vukorepa, Ivana (2015). Uloga sindikata u doba gospodarske krize u Hrvatskoj, Zbornik Pravnog fakulteta u Zagrebu, 65, 3-4, p. 387-408.

Potočnjak, Željko (2016). Reprezentativnost sindikata i udruga poslodavaca u Hrvatskoj, Delavci in Delodajalci, 16, 1, p. 83-111.

Ravnić, Anton (2004). Osnove radnog prava – domaćeg, usporednog i međunarodnog, Pravni fakultet u Zagrebu, Zagreb.

Smokvina, Vanja; Laleta, Sandra (2019). Croatia, in: Collective Bargaining in Labour Law Regimes. Ius Comparatum – Global Studies in Comparative Law (ed. Liukkunen, U.), vol. 32, Springer, p. 183-205.

11.2. Other sources

Collective agreements and bargaining coverage in the EU: A mapping of types, regulations and first findings from the European Company Survey 2019, Eurofound, 2019, https://www.newtral.es/wp-content/ uploads/2021/09/collective-agreements-and-bargaining-coverage-EU-Eurofound2019.pdf?x24211 (8.9.2022).

Croatian Employers' Association, Collective Agreement, https://www.hup.hr/kolektivni-ugovor-24.aspx (20.09.2022).

Government of the Republic of Croatia, Draft of the Amendment to the Labour Act, July 2022, https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=21184.

Istraživanje SSSH o informiranosti i stavovima javnosti o kolektivnom pregovaranju i sindikalnom organiziranju, 2021, http://www.sssh.hr/uplcad_data/site_files/istrazivanje-sssh-o-kolektivnim-ugovorima-i-sindikalnom-organiziranju.pdf.

Rješenje Povjerenstva za utvrđivanje reprezentativnosti, Klasa: 006-04/17-06/11, Urbroj: 689/2-18-35, 7.06.2018, Official Gazette No 59/2018.

Recent trends of collective bargaining in North Macedonia

Aleksandar RISTOVSKI*

INTRODUCTION

The legal framework that regulates the freedom of association and the right to collective bargaining in North Macedonia consists of the ratified ILO Conventions[1] and the key domestic sources of labour law, the most significant ones being the Constitution of the Republic of North Macedonia[2] and the Labour Relations Law[3]. The Labour Relations Law from 2005 is the basic and most essential regulation which governs the legal framework of collective bargaining in North Macedonia. With more than 15 years since its adoption and almost 40 amendments to the existing law, North Macedonia is about to adopt a new Labour Relations Law which is in the process of drafting and consonance by the social partners. The new Law is expected to address several important issues related to the freedom of association and the right to collective bargaining that have been producing dilemmas in practice and have been drawing the attention of the expert community in the country. Such are, for example, the issues about: regulation of the structure (levels) of organizing workers and employers; legal subjectivity of trade unions; clarification of the functional and personal scope of application of the collective agreements; extension of the validity of the collective agreements concluded at the level of a

* Associate Professor at the Ss. Cyril and Methodius' in Skopje (North Macedonia).

1. North Macedonia has ratified the two fundamental ILO conventions on freedom of association and protection of the right to organize (Convention No. 87) and protection of the right to organize and collective bargaining (Convention No. 98) as well as the other relevant standards in the field of freedom of association and collective bargaining (Collective Bargaining Convention No. 154, Workers' Representatives Convention No. 135, Labour Relations (Public Service Convention) No. 151).
2. Constitution of the Republic of North Macedonia (Official Gazette of the Republic of Macedonia, No. 52/1991).
3. Labour Relations Law (Official Gazette of the Republic of Macedonia, No. 62/2005).

branch, i.e. section; duration, automatic renewal and termination of collective agreements, etc.

1. THE MAIN TRENDS OF COLLECTIVE BARGAINING IN NORTH MACEDONIA

After North Macedonia (at that time Republic of Macedonia) gained its independence from former SFRY in 1991, the trends concerning the industrial relations in the country were more or less the same compared to other former communist and socialist countries from Central and Eastern Europe. At least at the outset of establishing political pluralism and market economy, all of these countries witnessed a tremendous decline of trade union membership and density rates as a result of several significant factors, chief among them being: privatization of state-owned or socially owned undertakings, restructuring of socialist-era enterprises, growth of the service sector and others.[4] Against such a background, North Macedonia started building the new legal framework for regulating industrial relations. The specifics of the industrial relations in North Macedonia may be divided into two developmental stages: *first stage* (encompassing the period from the adoption of the first Labour Relations Law of 1993[5] until the adoption of the second Labour Relations Law of 2005) and *second stage* (encompassing the period from the adoption of the second Labour Relations Law of 2005 to date).

Industrial relations in the Labour Relations Law of 1993 were regulated in a superficial way. Such a regulatory framework, on the one hand, left wide room for autonomous development of different segments of collective labour relations (e.g. establishment, organization, functioning and competencies of trade unions and employer's associations, collective bargaining, etc.), but on the other, it created uncertainty and legal gaps that generated problems in the functioning of industrial relations and social dialogue. Labour legislation did not regulate tripartite social dialogue at all, or more precisely, didn't envisage any provisions on the establishment, functioning and competencies of the Economic and Social Council. It also did not adequately stipulate the structure of trade unions and employers' associations and their forms of organizing at a higher level. At the expense

4. Bagić.D, *Industriski odnosi u Hrvatskoj – Društvena integracija ili trźišni sukob*, TIM press, Zagreb (2010), 71.
5. *Official Gazette of the Republic of Macedonia*, No. 80/93.

of clear and objective criteria for determining the representativeness of the workers' and employers' organizations, the 1993 Law on Labour Relations provided for a "majority" model of representation, based on which the "majority" union and employers' organizations had the right to enter into collective bargaining and to conclude collective agreements.[6] On the workers' side there were two trade union confederations: the Federation of Trade Unions of Macedonia (SSM) and the Union of Independent and Autonomous Trade Unions of Macedonia (UNASM).[7] As for the organization of the employers, they were represented by the Economic Chamber of Macedonia. This type of representation was rather a consequence of the lack of an adequate regulatory framework for establishing specialized employers' organizations aimed at protecting and representing the interests of employers in social dialogue and collective bargaining, than a real need for affiliated employers to be represented by the Economic Chamber which required a mandatory membership and whose competencies were primarily focused on promotion of companies' business and commercial interests.[8] In fact, the absence of statutory provisions and procedures for establishing and registering employers' organizations was also noted by the ILO supervisory bodies, which in 2001 required from the Government to act upon the complaint of the Organization of Employers of Macedonia (ORM) and to create the conditions necessary for the effective exercise of the freedom of association in accordance with Convention No. 87 on Freedom of Association and Protection of the Right to Organize.[9] Taking

6. See: Kalamatiev.T and A.Ristovski, *Trade union pluralism – progression or regression in the protection of workers' rights in the Republic of Macedonia?* SEER Journal for Labour and Social Affairs in Eastern Europe, Volume 15, (2012), 396.
7. See: Kalamatiev.T and A.Ristovski, The Law on Labour Relations and the Pluralisation of Trade Unionism - an advantage or disadvantage of modern social dialogue, Business Law, (2012), 144-145.
8. See: L.Hristova, A.Majhosev, *Former Yugoslav Republic of Macedonia (FYROM): Industrial Relations Profile*, EUROFOND (2012), 5.
9. In the complain submitted to the ILO on June 11, 2001, the Organization of Employers of Macedonia (ORM) outlined the legal obstacles that hindered its registration and thus the recruitment of new members, opening a bank account, use of its proper stamp and collection of membership fees. ORM (formally established as a civil society association in 1998) noted that the industrial relations legislation in North Macedonia only regulates the procedure for registration of trade unions, but not the employers' associations. See: Case *No. 2133 (North*

into consideration the regulatory framework in the first stage of the development of North Macedonia's industrial relations, it may be concluded that in the effectuation of collective labour relations "monism" prevailed over "pluralism".

The second stage of development of the industrial relations in North Macedonia began with the adoption of the *Labour Relations Law of 2005* (hereinafter LRL) which is still in force. Considering the numerous amendments and modifications to the LRL of 2005 (39 in total) that significantly altered the original industrial relations regulations, the second stage can be divided into two sub-stages: *first sub-stage* (from the adoption of the basic text of the LRL of 2005 to the amendments and modifications to the LRL of 2009) and *second sub-stage* (from the adoption of the 2009 amendments and modifications to the LRL to date).

The basic text of the LRL of 2005 (and thus the *first sub-stage*) created a more comprehensive statutory framework of industrial relations and managed to improve some of the shortcomings of the previous Law of 1993. In this respect, the LRL of 2005 established a procedure for registering and obtaining legal personality status of trade unions and employers' associations as well as of their organizations at a higher level, improved the protection against anti-union discrimination of workers and union representatives, and inaugurated the Economic and Social Council as a body of tripartite social dialogue. Of particular importance is the introduction of new criteria and conditions for representativeness of the social partners for participation in collective bargaining and concluding collective agreements, i.e. the introduction of "representativeness" (minimum threshold of 33% of employees) at the expense of the "majority" clause (minimum half of the employees). Thus, according to the labour legislation of that time, a prerequisite for acquiring representativeness of trade unions and employers' associations was to meet a minimum threshold of 33% of the members, depending on the level of organization and collective bargaining. However, given the fact that North Macedonia's industrial actors were still in a phase of "post-transition agony", even such a reduced representational threshold (from at least 50% to minimum 33%) has also appeared to be problematic in terms of establishing pluralism in industrial relations. Additionally, industrial relations legislation in the period from 2005 to 2009, had not yet developed a comprehensive and coherent system of le-

Macedonia) - Complaint date: 01-JUN-01.

gal conditions for acquiring representativeness of the social partners for the purpose of participating in tripartite social dialogue. While SSM and ORM emerged as the main representatives of workers and employers and signatory parties to the General Collective Agreement for the private sector of the economy in 2006[10] and then in 2009[11], new industrial actors on both the workers (Confederation of Free Trade Unions of Macedonia – KSS) and employers' (Business Confederation of Macedonia – BKM) side appeared. KSS acquired a representativeness status for the public sector which enabled the conclusion of the first General Collective Agreement for the public sector of 2008.[12] BKM never met the requirements to obtain representativeness. Problems with the conditions and criteria for acquiring representativeness of the workers and employers' organizations were also highlighted in the Observation of the Committee of Experts on the Application of the ILO Conventions and Recommendations of 2006. In the Observation, the Committee requested the Government *to modify the requirement to collective bargaining that a trade union and the employers (or the organization of employers) must represent 33 per cent of employees (for all levels) and to introduce fair determination of the representativeness of the highest level based on objective and pre-established criteria and for the composition of the negotiation board when no trade union organization represents 33 per cent of employees or no employers' organization meets the same requirement.*[13] It was only in 2009 when the Government complied with the requests of the ILO on the identified segments of the industrial relations legislation.

The *amendments to the Labour Relations Law of 2009*[14] (*second sub-stage*) have introduced four types of representativeness of trade unions and employers' associations for tripartite and bipartite social dialogue.[15] While the first type of representativeness (or representativeness at na-

10. *Official Gazette of the Republic of Macedonia, No. 76/2006.*
11. *Official Gazette of the Republic of Macedonia, No. 88/2009.*
12. *Official Gazette of the Republic of Macedonia, No. 10/08.*
13. See: Observation (CEACR) – adopted 2006, published 96th ILC Session (2007).
14. Law on amending and supplementing the LRL, Official Gazette of the Republic of Macedonia, No. 130/09.
15. See: Kalamatiev.T and A.Ristovski, Collective bargaining in the public sector of the Republic of Macedonia with a particular review of the collective bargaining in the health care, Business Law, (2013), 266.

tional level) presupposes stipulating conditions for the institutionalization of tripartite social dialogue, the other three types of representativeness (at the level of private or public sector; at branch, that is section level and at the level of an employer) are directed solely towards bipartite social dialogue, ie collective bargaining at different levels. The minimum threshold *for representativeness of trade unions for the territory of North Macedonia (i.e. at national level)* shall be at least 10% of the total number of employees in North Macedonia paying union membership fee. In addition to this requirement, trade unions must meet other cumulative requirements as well, such as: to be registered in the register of trade unions kept by the ministry responsible for issues in the field of labour; to associate at least three unions at a national level from different branches, that is, sections, which are registered in the register of trade unions kept by the ministry responsible for issues in the field of labour; to act at a national level and to have members registered in at least 1/5 of the municipalities in the Republic of North Macedonia; to act in accordance with its statute and its democratic principles and to have membership of trade unions that have signed or acceded to at least three collective agreements at a branch, that is, section level. Identical criteria for acquiring representativeness at a national level are stipulated for *employers' associations*, with the difference that the minimum representativeness threshold at a national level should be at least 5% of the total number of employers in the private sector or the employers members of the association should employ at least 5% of the total number of employees in the private sector of the country. As regards the minimum threshold for representativeness of trade unions for the purpose of participating in collective bargaining at the level of *private/public sector, branch, that is section level or at the level of an employer*, the 2009 amendments to the LRL require at least 20% of the employees employed at any level respectively to be members and pay membership fees. Employers' associations obtain representativeness status at a level of private sector in the economy or at a branch that is section level, if at least 10% of the total number of employers in the private sector are members or employ at least 10% of the total number of employees in the private sector. What is also worth mentioning is that in 2012 a controversial amendment to the LRL concerning the conditions for registration and obtaining legal personality status of trade unions was enacted.[16] The

16. See: Law on amending and suplementing the Labour Relations Law, Official Gazette of the Republic of Macedonia, No. 11/2012.

amendment has given exclusive right to obtaining legal personality status only to higher-level trade unions (i.e. organized at a branch level – federations or at a national level – confederations), but not to trade union organizations organized at an employer-level. Such a situation is considered to be contrary to Article 37, paragraph 1 of the Constitution of the Republic of North Macedonia as well as to Art.7 of the ILO Convention No. 87, because it limits the workers' freedom of trade union association.[17]

The improved legal framework for the representativeness of social partners had a positive impact on the development of trade union pluralism, which resulted in the adoption of the new 2010 Agreement on the establishing of the Economic and Social Council and led to increased dynamics of collective bargaining and conclusion of collective agreements.[18] However, from 2016 there has been a setback in the dynamics of collective bargaining in the private sector, considering the fact that neither a new collective agreement at a branch level in the private sector has been concluded, nor have the existing ones been extended or amended. The possible reasons for this state of affairs can be attributed to the lethargy of the

17. See: Kalamatiev.T and A.Ristovski, *Industrial Relations in North Macedonia 30 Years After the Fall of the Berlin Wall – Key Challenges Faced by Industrial Actors*, Iustinianus Primus Law Review, (2019), 12-13.

18. In the period from 2005 to 2016, a total of 16 collective agreements have been concluded, including 14 branch-level, i.e. specific collective agreements such as: *CA for the Health Sector* (Official Gazette, No. 60, 2006); *CA for the Public Utilities of Macedonia* (Official Gazette, No. 107, 2006); *CA for the Hospitality Sector of Macedonia* (Official Gazette, No. 2. 2008); *Collective Agreement for the Primary Education in the Republic of Macedonia* (Official Gazette, No. 24, 2009); *Collective Agreement for the Secondary Education in the Republic of Macedonia* (Official Gazette, No. 24, 2009); *CA for the Employees in the Tobacco Industry* (Official Gazette, No. 135, 2009); *CA of Companies of Other Monetary Intermediation and the Activity of Intermediation in Operations with Securities and Commodity Contracts* (Official Gazette, No. 97, 2011); *CA for the Chemical Industry* (Official Gazette, No. 10, 2013); *CA for the Protective Associations of Macedonia* (Official Gazette, No. 151, 2014); *CA for Leather and Footwear Industry of the Republic of Macedonia* (Official Gazette, No. 220, 2015); The *CA for the Textile Industry of the Republic of Macedonia* (Official Gazette, No. 220, 2015); *CA for the Employees of the Agriculture and Food Industry* (Offical Gazette, No. 175/15); *CA of the Independent Regulatory Bodies* (Offical Gazette, No. 74, 2015) and *CA for the Energy Sector* (Official Gazette, No. 47, 2016).

parties involved in the collective bargaining, and lack of willingness to find mutually acceptable solutions in conditions of collective bargaining. The inertia in the approach to collective bargaining is sometimes a result of the fact that many collective agreements are concluded for an indefinite period or contain clauses for automatic extension of their validity, which in some cases has a deterrent effect on the dynamics of collective bargaining. The parties to collective bargaining often highlight the protracted adoption of the new Labour Relations Law as a reason for the reduced dynamics in collective bargaining. A true picture of the state of collective bargaining in the country is also revealed by the data on the representativeness threshold of trade unions (only 6%) and employers' associations (only 11.15%) in the private sector, as well as the union density (which at a rate of 17, 29% is lower than the EU average rate of 23%). The dynamics of collective bargaining in the public sector is significantly better compared to the private sector[19], but in this sector as well, no new collective agreement has been concluded at the national level for more than a decade now.

2. COLLECTIVE BARGAINING ISSUES

The material scope (i.e. subject and content) of collective bargaining in North Macedonia is determined indirectly through the Labour Relations Law.[20] The subject and content of the collective agreements make reference to two significant groups of provisions (obligatory and normative), through which the content of collective bargaining is expressed.

The first group of provisions covers the *rights and obligations* which bind the contracting parties (usually the trade union and the employer, i.e. the employers' association). These provisions make up the so-called

19. In the period from 2016 to date, a total of 5 branch-level collective agreements in the public sector have been concluded: *CA for the Social Protection* (Official Gazette, No. 249, 2019); *CA for the Public Institutions for Children in the Activity for Care and Education of Children from Preschool Age and the Activity for Holiday and Recreation of Children* (Official Gazette, No. 133, 2019); *CA for the Culture* (Official Gazette, No. 10, 2020); *CA for the State Administration Bodies* (Official Gazette, No. 51, 2021); *CA for the Higher Education and Science* (Official Gazette, No. 102, 2021).
20. See: LRL, article 206, paragraph 1.

"obligatory part" of the collective agreement. The second group of provisions covers the *conclusion, content and termination of the employment relationship and other issues in the sphere of, or in relation to, the employment relationship*, or the so-called "normative part" of the collective agreement. Thus determined, the subject and content of collective agreements are narrowed down to a range of issues through which the freedom of bargaining of the parties is expressed.[21]

The *obligatory part* of collective agreements in North Macedonia consists of the obligations and rights that apply to and bind the contracting parties (e.g. *conditions and procedures for amending and supplementing, procedures for amicable settlement of collective labour disputes, monitoring and interpretation, cancellation of the collective agreement, etc.*). Collective agreements in North Macedonia also contain provisions that regulate issues concerning relations between employers and workers (e.g. *certain aspects of participation, i.e. information and consultation of workers; procedures for protection of individual employment rights of workers*) as well as issues concerning relations between employers and their organizations and trade unions (e.g. *protection against anti-union discrimination* and *support of trade union activities*). In North Macedonia's labour law literature, these provisions of the collective agreements are usually considered provisions of an obligatory nature[22]. Yet, considering that they indirectly have a normative effect on the working and employment conditions of workers, certain approaches of comparative labour law consider these types of provisions as special, i.e. normative provisions of a collective nature.[23]

The *normative part* of the collective agreements in North Macedonia covers issues that are part of all essential stages of the existence of an employment relationship (conclusion, content and termination). These issues commonly regulate working conditions (e.g. *wages, including their structure and composition; working time, holidays and leave*) and employment conditions (e.g. *prohibition of discrimination; special cases of unilateral deployment of workers by the employer; probation and internships; vocational training and education; certain aspects of dismissals, etc.*).

21. See: Ristovski.A, *Collective Bargaining in North Macedonia – an analysis*, ILO, (2022), 13.
22. See: Starova.G, *Labour Law*, (2009), 68.
23. See: Engels.C and L.Salas, *Collective Bargaining in Belgium: Collective Bargaining in Europe*, Collecion Informes y Estudios, Num.70, (2005).

In practice, the most important issues for collective bargaining are related to the wages, certain aspects of the working time, leave and absences from work, as well as issues related to the termination of employment contracts by dismissal on the initiative of the employer. In this regard, the provisions contained in the collective agreements are more specific than the provisions provided in the Law.

Concerning the *wages*, collective agreements usually regulate the following issues: wage payment system and methodology; the amount of the lowest wage and the job groups based on their degree of complexity, which are used to determine the lowest basic wage for a specific job; criteria and measures for determining performance-related payments; the amount of wage supplements for special working conditions at the workplace or arrangement of working hours; the amount of allowances for work-related costs; the amount of other allowances and benefits; the amount of allowances for leave of absence from work and so on.[24] However, the determination of one of the most important components of remuneration (the amount of the national minimum base wage) is subject to tripartite social dialogue and statutory regulation, not collective bargaining. The importance of the national minimum wage is reflected not only in the protection of the existential minimum threshold of all workers in the country (whether or not they are covered by a collective agreement), but also in the cases where workers are covered by a collective agreement, in its contribution in establishing the lowest base salary for different jobs depending on the group in which the jobs are ranked and the coefficient of complexity assigned to them. In the past ten years, the national minimum net wage has soared by more than 100% (i.e. 130 EUR in 2012 to 18,000 MKD, i.e. 292 EUR as of April, 2022). However, the increase in the national minimum wage has not been reflected in a symmetrical, spiral increase in other wages regulated by collective agreements. The reasons for that, to a certain extent, can be attributed to the fact that the lowest sectoral wage (as a calculation value for determining the other wages for higher-ranked jobs) in several branch-level, i.e. Specific collective agreements, is set at a lower amount than the national minimum wage. In other collective agreements, the amount of the lowest sectoral wage is not determined at all. All this shows that at the expense of substantial regulation of the

24. See: Petreski.M and A.Ristovski, *Country review on the setting of wages through collective bargaining in North Macedonia*, ILO, (2020), 12-19.

amount of base wages, in collective bargaining in North Macedonia, more attention is paid to certain, additional quantitative aspects of remuneration (for example, of wage supplements for overtime work, night work, holidays' work, etc.), which, despite having undoubted importance in determining the overall salary of workers, are of secondary importance in relation to the base wage.

Despite the explicit possibility to reduce the duration of the statutory full-time *working hours* with a collective agreement prescribed by the LLR, none of the collective agreements stipulates a provision that introduces a collective reduction of working hours shorter than the standard 40 hours per week. However, they usually regulate the manner of introducing overtime work. In relation to *annual leave*, collective agreements lay down specific provisions regarding the criteria for determining the days for annual leave. In relation to a *leave of absence*, the specific character of the collective agreements, when compared to the Labour Relations Law, is reflected, above all, in the regulation of the grounds (cases) for exercising the right to paid leave of absence due to personal and family circumstances and the right to unpaid leave of absence.

Collective agreements (specific collective agreements, in particular) also regulate the termination of an employment relationship by *dismissal*. In this regard, collective agreements contain important provisions for further regulation of the established reasons (cases) and the procedure for cancellation of employment contracts at the initiative of the employer.

The negotiations for new, innovative content in collective agreements, such as the introduction of certain forms of flexible working time organization or work-family balance policies oriented towards the needs of workers, or the prevention and protection against harassment and sexual harassment in the workplace, are still far from the focus of trade unions and employers' associations in collective bargaining. Unfortunately, in conditions of a Covid-19 pandemic, a significant issue which, despite its great application in practice, still remains unregulated both within the Law and by collective agreement, is telework.[25] Collective bargaining was initiated between the representative trade unions and employers' associations for regulating telework through the General collective agreement for the

25. See: Kalamatiev.T and A.Ristovski, *COVID-19 and its impact on labour relations in North Macedonia – a critical review of measures used to protect workers during the pandemic*, Intersentia, (2021), 429.

private sector, but due to opposing views on certain issues (such as the organization of working hours and the operationalization of the OSH liabilities of the employers) failed to find agreement.[26]

3. THE LEVEL OF COLLECTIVE BARGAINING

Collective bargaining in North Macedonia, takes place at three levels: *at a state level* (i.e. national level), *at a branch, that is section level* according to the National Classification of Activities (NCA) and *at an employer level.* The system of collective bargaining is based on a sectoral, i.e. industrial-based vertical approach. North Macedonia's industrial relations legislation does not recognize collective bargaining for a particular area, i.e. territory (municipality, region, etc.).

The highest level of collective bargaining, i.e. collective bargaining at the *national level* is conducted for the conclusion of the so-called General collective agreement (hereinafter GCA). The GCA is concluded for the private sector in the field of economy and for the public sector. According to the Labour Relations Law, the parties to the GCA for the private sector are the representative association of employers and the representative trade union for the private sector in the field of economy, while the parties to the GCA for the public sector are the representative trade union in the public sector and the minister with competencies in the field of labour, with prior authorization by the Government of North Macedonia.[27] The LRL explicitly defines only the functional area of collective bargaining in the public sector. In this regard, the public sector GCA covers *state government bodies and other state bodies, bodies of local self-government units, institutions, public enterprises, institutes, agencies, funds and other legal entities that perform activities in the public interest.*[28] The functional area of the GCA for the private sector is determined in a "residual" manner. Thus, the private sector GCA covers those activities and applies to those employers and employees who are not covered by the public sector GCA. Although at first glance it seems that there is a clear distinction between the functional scope of the private and public sectors, in practice there are several "borderline" subjects or activities, for which it is problem-

26. See: Ristovski.A and C.Mihes, Legal Analysis on Regulation and Implementation of "telework" in the Macedonian Labour Legal Context, ILO (2020), 6.

27. See: LLR, article 216.

28. See: LLR, article 204, paragraph 2.

atic or debatable, which one of the two GCAs will apply. This particularly refers to the legal entities that perform activities of public interest that could be also private institutions (e.g. private kindergartens, schools and universities, hospitals, nursing homes, etc.) or to independent performers of activities of public interest (enforcement agents, notaries and the like).

When determining the functional area of application of the general collective agreements for the private and public sector, the classification of activities enumerated in the national classification of activities (NCA) should also be considered. Having in mind the NCA, it becomes evident that the term sector in the NCA and the term sector in the Labour Relations Law are completely different terms.[29] Collective bargaining in the private sector or in the public sector, according to the LRL, primarily means collective bargaining which, by its function (type of work, i.e. activities), covers all sectors, sections, groups and classes of the NCA, differentiated on the basis of their affiliation to the "private" or "public" sector. Hence, collective bargaining at the national level can also be defined as collective bargaining at an "inter-sectoral" or "multi-sectoral" level within the private and public sector.[30]

The middle level of collective bargaining, i.e. the collective bargaining at the *branch, that is section level* according to the national classification of activities, is conducted for concluding the so-called Specific collective

29. The NCA categorizes activities into 4 fields (starting from the most general, to the most specific activities). The most general field of activities according to NCA are "sectors", followed by "sections", then "groups" and finally "classes" (e.g. Sector C/B – Manufacturing; Section 13 – Manufacture of textiles; Group 13.9 – Manufacture of other textiles and Class 13.93 – Manufacture of carpets and rugs).

30. For example, according to the NCA, in the functional scope of application of the **GCA for the private sector** the following sectors could be listed (A – Agriculture, forestry and fisheries, B – Mining and quarrying, C – Manufacturing, D – Electricity, gas, steam and air conditioning supply, F – Construction, G – Trade and so on). Although the activities covered in the aforementioned sectors belong predominantly to the private sector, this does not preclude the fact that the activities listed in some sections, groups or classes may also fall within the functional scope of the GCA for the public sector (for example: Sector A, Section 02 – Forestry and Forest Utilization; Sector D, Section 35.1 – generation, transmission and distribution of electricity, etc.). On the other hand, in the functional scope of application of the **GCA for the public sector,** the following sectors could be listed (O - Public Administration and Defense; Compulsory Social Insurance; R – Education; Q – Health and Social Protection Activities, etc.).

agreements (hereinafter SCAs). Although the legal framework limits branch collective bargaining to the level of *"section"*[31] (as the second field, by scope, in the NCA), in practice, SCAs are concluded at the level of *several sections within the same sector* according to the NCA,[32] at the level of *several sections within different sectors* according to the NCA,[33] at *the level of a group within the same section* according to the NCA,[34] at the level of *several groups within different sections* according to the NCA,[35] and even at *sectoral level*, as the highest field, by scope, in the NCA.[36] Finally, as part of the collective bargaining at the level of branch, i.e. section, there are SCAs which, according to their functional scope, bear more resemblance to being concluded at the *level of profession (occupation) with a horizontal applicability*[37] than at the level of sector, section or group according to the NCA, with a vertical applicability.

Collective bargaining at an employer level is conducted for concluding the so-called Individual collective agreements (ICAs). The ICA is concluded at the level of private or public sector employers. Dilemmas related to the proper determination of the parties of the ICAs also exist in relation to the trade union party. Keeping in mind the legal framework that regulates the issue of obtaining legal capacity of trade unions whereby only higher-level trade unions can acquire the status of legal entities (for example, at the level of branch – federation, or at national level – confederation), it is questionable whether a trade union organization established at an employer level can occur as a party to an individual collective agreement, and if so, in what capacity.

31. Specific collective agreements, concluded at the level of one "section" according to the NCA, are: CA for the leather and shoe industry, CA for the tobacco industry, CA for the healthcare, CA for social protection.
32. For example: CA for the textile industry, CA for the hospitality sector, CA for the chemical industry, CA for culture and so on.
33. For example: CA for employees of the agriculture and food processing.
34. For example: CA for higher education and science, CA for secondary education, CA for primary education.
35. For example: CA of companies of other monetary intermediation and the activity of intermediation in operations with securities and commodity contracts.
36. For example: CA for the energy sector, CA for public utilities.
37. For example: CA for independent regulatory bodies and CA for the protective associations.

4. THE PRINCIPLE OF FAVOUR

North Macedonia's labour legislation provides for the principle of "favour" in labour relations, which assumes that in the hierarchical scale of labour law sources, lower sources must not contradict the higher ones.[38] Collective agreements and individual employment contracts may only provide for more favourable rights and working conditions for workers. Consequently, they cannot provide for less favourable rights and working conditions than the minimum rights guaranteed by law. Although not explicitly prescribed in law, in practice, the "favourability principle" also applies among the different types of collective agreements, as well as among the collective agreements and (individual) employment contracts. In cases when the rights stipulated in a lower source (for example, employment contract or collective agreement) are less favourable, i.e. contrary to the identical rights governed by a higher source (for example, higher-level collective agreement or law), such rights are invalid and the rights prescribed in the immediate higher source apply. On the other hand, North Macedonia's labour legislation (i.e. the Law on Labour Relations) does not explicitly provide for the principle of derogation "in peius" which would allow parties of collective agreements to derogate the imperative norms set by law and introduce less favourable rights for employees, even in a situation when a company faces financial hardship. However, in practice, there are cases when certain rights set out in the collective agreements are formally or quantitatively less favourable for workers and therefore differ from the provisions of the LRL.[39]

38. See LLR, Art.12, para.2 and 3.
39. For example, the GCA for the private sector provides for the possibility of temporary reduction of the minimum basic wage of workers of up to a maximum of 20 per cent and for no longer than 6 months, whereby the employer is required to pay the reduced amount within 6 months after overcoming the difficulties in operation (article 18), without having an appropriate legal basis. Another example are the provisions of the Collective Agreements for the leather and shoe industry (article 71, paragraph 1) and the textile industry (article 71, paragraph 1), which prescribe that the duration of the temporary forced leave/furlough that the employee may be referred to is maximum 6 months, despite of the fact that for the same grounds, the Labour Relations Law provides for termination of the work process for a maximum of 3 months (article 112, paragraph 7 of the Labour Relations Law).

The possibility of derogation, operationalized through the principle of "favourability", however, is not absolute. The margins of freedom of collective bargaining in North Macedonia are determined by the *absolutely imperative* (inderogable) provisions determined by law (i.e. the cogent rules of public order) and the *relatively imperative* (inderogable) legal provisions that determine the lowest and highest limits (days, deadlines, etc.), unless otherwise specified by law or collective agreement. Thus, for example, absolutely imperative provisions that could not be subject to derogation are legal provisions that regulate issues related to: payroll taxes; minimum age for employment; protection of occupational safety and health; mandatory pregnancy and maternity leave and the like. Similarly, relatively imperative provisions that could not be subject to derogation by collective agreements (even if more favourable to workers) are, for example, legal provisions setting forth the maximum age of employment; statutory minimum and maximum notice periods; rest breaks at work, etc.

When determining certain rights, the Labour Relations Law unnecessarily and unjustifiably sets upper limits which, taking into consideration the principle of inderogability of the relatively imperative provisions, would be regarded as rights that cannot be regulated otherwise by a collective agreement, even when more favourable to workers. Examples include the upper limits set by the Law in relation to annual leave (at least 20 working days which can be extended to up to 26 working days) or paid leave of absence due to personal and family circumstances (which, according to the Law, cannot be more than seven working days). Despite their relatively imperative nature, these limits are in practice subject to derogation by collective bargaining.

5. APPLICATION OF COLLECTIVE AGREEMENTS

The Labour Relations Law establishes a combined system for the application of collective agreements which depends on the level of collective bargaining, i.e. the type of collective agreement concluded. In that sense, general collective agreements are directly applicable to and are mandatory for all employers and employees in the private or public sector (depending on the sector for which the general collective agreement is concluded),[40] and individual collective agreements apply to the signatories to

40. See: LRL, article 205, paragraph 1 and paragraph 2.

the collective agreement, binding all workers at the employer level, including workers who are not members of the trade union.[41]

While the legal effect of GCAs and ICAs is *erga omnes*, the Labour Relations Law defines a limited application of specific collective agreements. The application of collective agreements is regulated in two separate articles of the Law (application and validity of collective agreements[42] and persons bound by the collective agreement[43]). However, the aforementioned articles do not provide clear rules regarding the personal scope of application and do not distinguish the terms "party" and "person" of a specific collective agreement. In principle, it is considered that the Law limits the application of the SCAs primarily in regards to the obligatory part of their content to the *parties* (trade unions and employers' associations signatories and trade unions and employers' associations that additionally accessed the concluded collective agreements) while normative contents of the SCAs only apply to *persons* (employees and employers) who are members of the signatory parties or of the parties that additionally accessed the concluded collective agreement. In order for a trade union or employers' association to be able to accede to a collective agreement, it should submit a statement of accession to the collective agreement to all parties, signatories of the collective agreement, and to parties that additionally acceded to the collective agreement.[44] However, LRL does not condition the accession to the concluded collective agreement with fulfilment of additional material requirements or obligations (certain threshold of representativeness, payment of an accession fee and so on) that would have to be fulfilled by the party that submitted the accession statement, nor does it refer to regulating such requirements or obligations in the collective agreement. In practice, parties use different ways to regulate the issue related to the application and accession to the concluded specific collective agreement. Certain collective agreements stipulate that their provisions *"apply to all workers and employers in the respective branch, i.e. section"* for which the collective agreement has been concluded.[45] The provisions of these collective agreements providing *erga*

41. See: LRL, article 208, paragraph 3.

42. See: LRL, article 205, paragraph 3.

43. See: LRL, article 208, paragraphs (1) and (2).

44. See: LRL, article 233, paragraph 2.

45. See: CA for the energy sector, article 3; CA for public utilities, article 3; CA for the

omnes legal effect without having an appropriate legal ground are inapplicable. Such an interpretation is implicitly confirmed by the Constitutional Court of North Macedonia, which, acting on the initiative to assess the constitutionality and legality of the provisions on the personal scope of application of several specific collective agreements in the public sector, has stated that *"the established rights and obligations in the branch collective agreements cover and apply to the members of the signatory unions"*.[46] Other collective agreements provide the possibility for *"additional accession to the collective agreement of employers who are not members of the association of employers – signatory to the collective agreement, by joining the association"*.[47] A third group of collective agreements provide the possibility for *"additional accession by unions that are not signatories to the collective agreement, based on prior written notification and consent obtained for accession by the signatories to the collective agreement"*.[48] The collective agreements of this group do not specify the conditions for giving consent for accession to the collective agreement, which can be problematic in terms of the unlimited discretion attributed to the signatory parties in deciding whether to approve the accession to the collective agreement of the interested party.

hospitality sector, article 3; CA for the healthcare sector, article 4.

46. See: Decision of the Constitutional Court of the Republic of Macedonia, У.бр.74/2018 from 21 November 2018, Skopje. In the present case, the Constitutional Court was faced with the challenge to act on an initiative to assess the constitutionality and legality of the provisions in several specific collective agreements (article 3, paragraph 2 of the CA for public institutions for care and education of children and institutions of recreation of children; articles 3 and 99 of the CA for elementary education and article 3 of the CA for secondary education). The applicants (group of workers members of the Independent Union of Education and Science) challenged the said collective agreements precisely in their personal scope of application. They stated that the collective agreements only apply to workers who are members of the trade union party to the concluded collective agreements (Autonomous Trade Union for Education, Science and Culture – SONK), but not to workers who are members of other trade unions, or are not members of any trade union.
47. See: CA for the textile industry, article 2; CA for the leather and shoe industry, article 2.
48. See: CA for primary education, article 1, paragraph 3; CA for secondary education, article 1, paragraph 3; CA for higher education, article 3.

Labour legislation and collective agreements do not provide answers to the question of whether SCAs binding a certain employer will apply to all of its employees, or only to unionized workers. In practice, employers usually apply the normative part of the applicable SCA also to workers who are not members of a trade union. This situation is the result of the implicit application of the constitutional and legal provisions which prohibit discrimination on any grounds, including membership, i.e. non-membership in a trade union.[49]

6. ENFORCEMENT OF COLLECTIVE AGREEMENTS

First steps to ensuring enforcement of the concluded collective agreements, include their submission for *registration* to the ministry responsible for issues in the field of labour[50] and their *public announcement*.[51] GCAs and SCAs, i.e. each of their modifications (amendments, cancellations or accessions) must be submitted for registration to the ministry. Concerning the ICAs, bargaining parties are only required to notify the competent ministry regarding the conclusion of the collective agreement and the time for which it is concluded. After their registration, collective agreements must be announced publicly. While GCAs and SCAs and their modifications are published in the "Official Gazette of the Republic of North Macedonia", ICAs are announced in the manner determined by the signatory parties in the Agreement (usually on the company and/or union website, on a bulletin board, etc.). The registration, i.e. deposit of a collective agreement with the labour administration, primarily serves for the purpose of reviewing that its provisions do not contradict minimum standards (absolutely and relatively imperative statutory provisions). However, in practice, one gets the impression that this purpose of registration seems to have negligible significance, because the ministry does not have any special competencies to initiate a judicial procedure for annulment of the disputed provisions of the collective agreement which are contrary to the law, nor to exercise any significant control over the content of the collective agreement prior to its registration and public announcement. The registration of collective agreements is also a means for the public authorities

49. See: Kalamatiev.T and A.Ristovski, Un*ion Security Clauses versus Freedom of Trade Union Association*, Faculty of Law, University of Niš, (2017), 74.
50. See: LRL, Art. 231.
51. See: LRL, Art. 232.

to be better prepared to deal with disputes arising from the non-application or interpretation of a collective agreement.

An important principle for the enforcement of collective agreements is that the parties to the collective agreements and the persons to whom they apply are obliged to implement their provisions.[52] However, during collective bargaining and in the enforcement (application and interpretation) of collective agreements, a dispute may arise between the contracting parties. Collective labour disputes are defined in the Law on Amicable Settlement of Labour Disputes (hereinafter LASLD), and they refer to disputes over the concluding, amendment, supplementation or application of a collective agreement, exercising the rights to trade union organization and strike.[53] LASLD implicitly distinguishes between *collective "interests" disputes* (as disputes concerning the concluding, amending or supplementing the collective agreement) and *collective "rights" disputes* (as disputes concerning the application of the collective agreement)[54]. It also provides for selective labour disputes concerning the *exercising of the right to trade union organization* (for instance, freedom of association, including prohibition of unlawful interference or supervision)[55] and *to strike* (as a collective labour dispute that can be initiated both for reasons that are "interest" and "rights" related).

An important issue in the course of the validity of the collective agreement is the issue of admissibility of *industrial (social) peace clauses*. Neither North Macedonia's labour legislation nor the current collective bargaining practice recognize industrial (social) peace clauses, i.e. the possibility to restrict or prohibit industrial action (primarily strike) by mutual agreement and for the duration of the concluded collective agreement. This situation does not necessarily mean that the parties to the collective bargaining have an *en bloc* ban on negotiating industrial peace clauses, but still, considering the constitutional guarantee of the right to strike,[56] we believe that the odds for such clauses to be declared invalid are high.

52. See: LRL, article 223.
53. See: LASLD, article 2 paragraph (1).
54. See: ILO, *Collective Bargaining – Policy Guide*, (2015), 57.
55. See: LRL, article 197 (judicial protection of the right to association) and article 195 (activities of the trade union, i.e. the association of employers, and prohibition of supervision over the other party).
56. See: Constitution of the Republic of North Macedonia, article 37.

The enforcement of collective agreements through a *judicial protection* before regular, competent courts is rarely tested. The Labour Relations Law provides for the possibility of obtaining *judicial protection of the rights arising from a collective agreement*, where one of the parties to the collective agreement may file a lawsuit before the competent court to request protection of those rights.[57] In principle, the intention of the legislator is to enable the protection of the rights arising from a collective agreement through initiating a collective "rights" dispute, while any dispute related to conclusion or modification of a collective agreement (collective "interest" dispute) should be resolved extra-judicially. A precondition for initiating a collective labour dispute to seek judicial protection of the rights arising from the collective agreement is the party that initiates the dispute to have the capacity of a party in the procedure (litigation capacity) in accordance with the regulations of the procedural law.[58] Considering the rules on the legal capacity of trade unions (i.e. the acquisition of the legal personality status) regulated in the existing labour legislation, only a trade union established at a higher level shall qualify as a party to a collective dispute.[59] In principle, a party to a collective agreement may seek judicial protection of the rights arising from the *obligatory part* of the collective agreement, including protection against anti-union discrimination and support of trade union activities, information and consultation of workers, etc. There is no legal impediment to seek judicial protection of the rights arising from the normative part of the content of a collective agreement (working and employment conditions) if the other party to a collective agreement or the person to whom a collective agreement applies (for example, a certain employer) fails to fulfil the rights of all or a larger group of workers stipulated in the collective agreement. However, a common practice for protection of the individual rights of workers arising from an employment relationship, including the normative provisions of a collective agreement, is protection by initiating an individual labour dispute.

Labour inspectors in North Macedonia also play an important role in securing the enforcement of the normative parts of collective agreements. They have the authority to monitor and supervise the enforcement of applicable collective agreements (among other labour law

57. See: LRL, article 234.
58. See: Law on Civil Procedure, article 70.
59. See: LRL, article 189.

sources), and order the employers, to eliminate the ascertained violations and deficiencies.[60]

7. AMICABLE SETTLEMENT OF LABOUR DISPUTES

Amicable settlement of collective labour disputes is a way to quickly, efficiently and effectively resolve disputes that arise in collective bargaining (interest disputes) and in relation to the application and interpretation of concluded collective agreements (rights disputes). Amicable settlement is also a way to encourage and maintain the initiative and dynamics of collective bargaining. The system of amicable settlement of labour disputes in North Macedonia is being built for more than a decade now. A key role in this process is played by the Law on Amicable Settlement of Labour Disputes, which establishes the necessary normative basis for providing an easier and financially more cost-effective way for the peaceful settlement of collective labour disputes through *conciliation*. North Macedonia's legislation, in addition to conciliation regulated by LASLD, provides for a special legal regime (i.e. Law on Mediation[61]) for out-of-court settlement of disputes over different kinds of legal relationships, including employment relationships. In practice, these two laws compete with one another, often to the detriment of the coherence of the legal framework for peaceful settlement of labour disputes (collective labour disputes included) through conciliation and the purposefulness of "external" assistance to parties during voluntary collective bargaining. However, the LASLD is of paramount importance and relevance as it prescribes the procedure and the participation of the conciliator in the collective bargaining process (with the purpose of providing assistance and preventing the occurrence of a dispute) and in the collective labour dispute (with the purpose of providing assistance in resolving the dispute). In addition to the procedure regulated by Law, the amicable settlement of collective labour disputes through conciliation, is subject to regulation with collective agreements. Collective agreements usually provide for a conciliation procedure that takes place before a conciliation council composed of representatives of each of the parties to the dispute and a jointly elected conciliator who chairs the conciliation council and helps the parties in finding a solution to the dispute. In fact, collective agreements establish another, additional "channel" of

60. See: LRL, article 256.

61. *Official Gazette of Republic of Macedonia,* No.188, 2013.

conciliation, different from the conciliation provided for in the LASLD.[62] Whether the basis for conciliation is a collective agreement or the law, conciliation is envisaged as a voluntary manner of resolving collective labour disputes. Compulsory conciliation is foreseen only in the case of a strike, including a strike or a dispute within the activities of general interest.[63]

In addition to resolving collective labour disputes through conciliation, collective agreements usually provide for procedures for *consonance* and *arbitration*. Consonance is usually applied when amending or supplementing a collective agreement, when the other party does not accept or pronounce itself on the proposal to amend or supplement the collective agreement within the prescribed period. Although consonance is formally a separate procedure intended for the joint settlement of the parties to the dispute and which occurs before the start of the peaceful resolution of the "interest" collective labour dispute through conciliation, there is no essential difference between this procedure and conciliation. Collective agreements may also provide for a procedure for resolving collective labour disputes through arbitration. Arbitration is voluntary, and collective agreements stipulate that it can be applied either as an alternative to conciliation, or more commonly, as a procedure for peaceful settlement of a collective dispute after a failed conciliation. Collective agreements that contain provisions for arbitration usually regulate the procedure that is usually carried out before an arbitration council.[64]

CONCLUSION

The successfulness of collective bargaining in North Macedonia depends on a number of different factors. Some of these factors are external to the parties involved in the collective bargaining (workers' and employers' organizations), and despite the political and economic conditions and the level of democracy in society, they largely relate to the legal framework governing

62. The only collective agreement which explicitly refers to the selection of conciliators from the Register of conciliators of the Ministry of labour and social policy, according to the Law on Amicable Settlement of Labour Disputes is the collective agreement for agriculture and food industry (article 106, paragraph 3).

63. See: LRL, article 236 (paragraph 3) and LASLD, article 18 (paragraph 1 and paragraph 2).

64. See: GCA for the private sector, article 51; GCA for the public sector, article 32.

the industrial relations. Others, primarily refer to the internal capacities of the workers' and employers' organizations, the size and diffusion of their membership, the culture and dynamics of the social dialogue, etc.

North Macedonia's legal framework establishes the optimal conditions for proper development of social dialogue and collective bargaining. Yet, the *perspectives* of collective bargaining largely depend on the manner of future regulation of several important issues such as the: regulation of the structure (levels) of organizing workers and employers; legal subjectivity of trade unions; clarification of the functional and personal scope of application of the collective agreements; extension of the validity of the collective agreements concluded at the level of a branch, i.e. section; duration, automatic renewal and termination of collective agreements, etc.

Although the legal framework provides a broad *material scope of issues* that may be the subject of collective bargaining, the parties to the collective bargaining do not sufficiently use of the opportunity for thorough and substantive collective bargaining. The normative part (i.e. the working and employment conditions) of the content of the collective agreements is usually reduced to issues that are regulated by the Labour Relations Law either in the form of minimum standards, or by explicitly referring to the collective agreement for their further regulation. In rare cases, collective agreements regulate other labour relations issues, or other issues related to labour relations that are not regulated by law, and therefore they have the character of primary normative provisions. The situation is similar when it comes to the collective agreement hierarchy – the lower-ranking vis-à-vis the higher-ranking collective agreements. Most of the collective agreements are copying each other, without adequately reflecting the specific sectoral interests and needs of workers and employers. Moreover, in certain sectors that employ a large number of workers (trade, transport, construction) and which were significantly affected by the crisis caused by the COVID-19 pandemic, no collective bargaining, i.e. no specific collective agreement has been concluded.

North Macedonia's collective bargaining system recognizes *the principle of favour* in labour relations. However, in practice there are certain ambiguities regarding its implementation in the context of the hierarchically different levels of labour law sources.

The collective bargaining system in North Macedonia is based on a sectoral, i.e. vertical approach. In principle, there is collective bargaining in the private and public sectors which takes place at three *levels* (national, branch,

i.e. section and employer) and may result in the conclusion of a General collective agreement for the private or public sector, Specific collective agreements for certain branches, i.e. sections belonging to the private sector or to certain public enterprises or institutions and Individual collective agreements with private employers or public sector employers. In order to differentiate collective bargaining in the public versus the private sector, the Labour Relations Law determines the functional scope of application of the General Collective Agreement for the public sector. Among other entities (state bodies, local self-government units, institutions, public enterprises), the Law stipulates that collective bargaining in the public sector includes legal entities that perform activities of public interest. Such an ill-suited formulation leads to an unrealistic situation, where, formally, the GCA for the public sector would be applied to certain private institutions that perform activities of public interest (e.g. private kindergartens, schools and universities, hospitals, nursing homes, etc.) or, at least, it would be unclear, whether collective bargaining in the said private institutions falls within the functional scope of the public or private sector collective bargaining. Similar dilemmas are faced by the collective bargaining with the independent performers of activities of public interest (enforcement agents, notaries and so forth), as well as in several economic activities (energy, communal activities, transport, etc.) operated by employers who by their functional characteristics belong to both the private and the public sector. The new Labour Relations Law is expected to address these dilemmas by introducing more adequate criteria for distinguishing between collective bargaining in the public versus the private sector (for example, whether an enterprise is in majority state or private ownership or whether is financed from state budget funds or self-financed).

North Macedonia's labour legislation establishes a solid legal framework for extra-judicial (out-of-court) amicable settlement of collective labour disputes through conciliation, mediation and voluntary arbitration. Despite the parallel existence of diverse "channels" for amicable settlement of collective labour disputes, parties rarely entrust "external" facilitators (conciliators or arbitrators) with the resolution of such disputes. In the absence of any official data, anecdotal evidence shows that the number of successfully resolved collective disputes by conciliation in North Macedonia is in single digits. The reasons for this situation could be sought in the lack of will, information and trust of the parties involved in the collective labour disputes in the legal mechanism for peaceful settlement of la-

bour disputes and impartial and professional conciliation. In the future, additional efforts are needed, both in informing and educating workers' and employers' organizations about the benefits and significance of conciliation in the overall development of social dialogue, and in strengthening the capacity of professional conciliators and arbitrators in resolving labour disputes.

Recent trends of collective bargaining in Türkiye

Kübra DOĞAN YENISEY*

1. LEGAL DEVELOPMENT OF COLLECTIVE LABOUR RIGHTS

1.1. Historical trends of collective bargaining

Under Turkish law, though the freedom of association was recognized by the first Constitution of 1924, there had been many restrictions and prohibitions in terms of the establishment of trade unions and strikes. It was only after the Second World War that unions achieved a clear legal status with a specific act. Act No. 5018 was adopted in 1947; nevertheless, restrictions in respect of the right of workers to establish and join trade unions have always been part of the statutory regulations[1].

The Constitution of 1961 guaranteed trade union rights, in today's context, for the first time. It was in July 1963, special acts (Act No. 274 on Trade Unions and Act No. 275 on Collective Agreement, Strike and Lock-out) which governed trade unions, collective bargaining and the right to strike and lock-out were adopted by the Parliament. The legal and sociological reasons behind this development are explained as follows: "*Among the major factors facilitating the introduction of the new industrial relations system, one could cite the impact of external forces, such as ILO Conventions and Recommendations, as well as softening government attitudes towards organized labour, the emerging belief that collective bargaining with the right to strike was an indispensable component of pluralistic democracy, and the threats triggered by the gradual growth of left-wing ideologies in Turkish society. The adoption of a decentralized decision-making system in industrial relations was viewed as an urgent matter despite the resistance of certain anti-union forces. But the most salient feature was the fact that these new rights, for which workers in the West had striven for almost a*

* Professor of Labor and Social Security Law at Istanbul Bilgi University, Faculty of Law.

1. See T. Esener/Y. Bozkurt Gümrükçüoglu, 2017, Sendika Hukuku, 2. ed., Istanbul, pp. 15-19.