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FACULTY OF LAW "IUSTINIANUS PRIMUS"

RESTRUCTURING OF COMPANIES AND THEIR CONSEQUENCES IN RELATION TO EMPLOYEES:

Conditions, dilemmas and challenges in the Laws of the EU, Austria, Macedonia and Serbia

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Conditions, dilemmas and challenges in the Laws of the EU, Austria, Macedonia and Serbia

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FOREWORD

ABOUT THE OeAD IMPULSE Project "Restructuring of Companies and the EU Law"

The International Project *"Restructuring of Companies and the EU Law"* (RoCEU) takes place in the period between 1st April 2016 – 31st March 2018. The project is supported by the Austrian Agency for International Cooperation in Education and Research (OeAD) as part of the New Cooperation Program for Higher Education – IMPULSE and is coordinated by the Research Institute of Central and Eastern European Business Law (FOWI) at the Vienna University (WU). FOWI has been engaged in a great number of research projects focusing on business law in CEE countries and established a reliable network of scholars in this region in the last 26 years.

Leading university in the "Restructuring of Companies and the EU Law" IMPULSE project is the Vienna University of Economics and Business (Wirtschaftsuniversität Wien – WU), while the other two partners in the project are the University in Belgrade (Faculty of Law) and the Ss. Cyril and Methodius University in Skopje (Faculty of Law "Iustinianus Primus").

The project aims at conducting a comprehensive research including *company and labour laws* on restructuring of companies from the perspective of the EU requirements. Only the combination of company and labour law can create the delicate balance between flexibility and security which is necessary to achieve the sometimes conflicting aims of economic growth and employment protection at the same time. In the *centre of the research* are

17:15-17:30	**Mr. Aco Petrov** (President of the Chamber of Bankruptcy Administrators of the Republic of Macedonia) *Reorganization plan in the event of bankruptcy – case analysis*
17:30-17:45	**Mr. Ivica Medarski**(Representative of "Insurance Makedonija jsc Skopje - Vienna Insurance Group") *Practical aspects and differences between status changes and takeovers of companies*
17:45–18:00	**Ms. Ana Atanasovska** (Representative of "EVN Macedonia") *Legal unbundling of the Distribution Operator – way and challenges*
18:00-18:15	**Discussion**
18:15	**End of the Conference and Closing Ceremony**

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PROTECTION OF EMPLOYEES' INDIVIDUAL RIGHTS IN THE EVENT OF A CHANGE OF EMPLOYER (TRANSFER OF UNDERTAKINGS) IN THE REPUBLIC OF MACEDONIA

A. Introduction

The Paper was received on 15.10.2018
It was reviewed and accepted for publication

In the modern business environment, labour relations become increasingly dynamic and, as a consequence, there are more frequent changes on the side of the employer as a contractual party in the employment relationship. Usually, such changes are related to changes in the organization of the business and/or in the ownership of the assets with which the business is being performed and which are directed towards a greater competitiveness and more efficient fulfilment of the employers' business objectives.

The change of the employer can lead to a transfer of the employment contracts of the employees and safeguarding of their employment relationships only as a consequence of a so called *'transfer of an undertaking, part of an undertaking, business or part of a business'* from the employer-predecessor (transferor) to the employer-successor (transferee).

The matter related to the 'change of employer' and the consequences of this change for the employees, in the Macedonian legislation was regulated for the first time with the Law on Labour Relations from 2005 (Article 68).[1] The regulation of this matter is first and foremost an expression of the thorough changes in the Macedonian economy that are a consequence of the privatization of the undertakings with social ownership, the different types of restructuring of the companies in terms of increasing their competitiveness on the market

1 See Тодор Каламатиев, Љубинка Ковачевиќ and Александар Ристовски, *Заштита на правата на вработените во случај на промена на работодавачот во Република Македонија и Република Србија (компаративна анализа)*, (Година XVIII), 220.

Judgement of the European Court of Justice in the case C-188/03, 27.1.2005, *Irmtraud Junk* v. *Wolfgang Kühnel*, ECR 2005, I-885

Judgement of the European Court of Justice in the case C-12/08, 16. 7. 2009, *Mono Car Styling SA, in liquidation* v. *Dervis Odemis and others*, ECR 2009, I-06653

Judgement of the European Court of Justice in the case C-44/08, 10. 9. 2009, *Akavan Erityisalojen Keskusliitto AEK ry and Others* v. *Fujitsu Siemens Computers Oy*, Reports of Cases 2009 I-08163

Labour Act (OJRS, no. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17, 113/17)

Act on Peaceful Settlement of Labour Disputes (OJRS, no. 125/04, 104/09, 50/18)

List of abbreviations

CLLPJ - *Comparative Labour Law & Policy Journal*

DD - *Delavci in delodajalci*

DS - *Droit social*

ETS - *European Treaty Series*

ILJ - *Industrial Law Journal*

OJRS – *Official Journal of the Republic of Serbia*

RDCTSS - *Revue de droit comparé du travail et de la sécurité sociale*

RIRES - *Revue de l'IRES*

SLLERJ - *Spanish Labour Law and Employment Relations Journal*

ZRPFNS - *Zbornik radova Pravnog fakulteta u Novom Sadu*

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COLLECTIVE REDUNDANCIES AND THEIR CONSEQUENCES IN RELATION TO EMPLOYEES' RIGHTS – 'CRITICAL POINTS' IN THE ALIGNMENT BETWEEN THE MACEDONIAN AND THE EU LABOUR LAW

A. Introduction

The Paper was received on 22.10.2018
It was reviewed and accepted for publication

In the contemporary labour law system of the Republic of Macedonia, the issue of collective redundancies is regulated by the Law on Labour Relations of 2005[1] (which is still in force). The term 'collective redundancies' itself, has been introduced for the first time by the amendments to the Law on Labour Relations from 2010.[2]

The frequent changes to the legal provisions which regulate the issue of collective redundancies are the result of certain 'internal' and 'external' reasons.[3] The internal reasons stem from the need to mitigate the negative consequences of the collective redundancies on workers. Such consequences have been affecting Macedonian workers since the independence of the country (in 1991), while they had their strongest impact in the so-called phase of 'transition' and 'privatization of the social capital' in the nineties of the last century. The external reasons for continuous changes in the regulation of the

1 The title of the legal provision regulating the issue of collective redundancies within the Original text of the Law on Labour Relations dated 2005 is *'Notification obligations in case of termination of employment of larger number of workers due to business reasons'*. See: Law on Labour Relations, Official Gazette of the Republic of Macedonia, no.62/05, Article 95.

2 The current title of the legal provision regulating the issue of collective redundancies pursuant to the Law on amending and supplementing of the Law on Labour Relations, Official Gazette of the Republic of Macedonia, no.124/10, is *'Information and consultation about collective redundencies due to business reasons'*.

3 Васил Мръчков, Красимира Средкова и Атанас Василев, *Коментар на Кодекса на труда*, (12 издание, 2016), 414.

collective redundancies are a reflection of the need for harmonization of the Macedonian labour legislation, both with the international labour standards[4] and the EU labour law (particularly with Council Directive 98/59/EC on collective redundancies)[5].

Hence, in the paper, the authors will focus on the more 'problematic' issues arising from the system of regulation and implementation of collective redundancies in the country. In this regard, particular emphasize will be put to those segments of the collective redundancies regime which are not harmonized, are not properly harmonized, are not clear enough and create confusions in their implementation.

B. Definition and Scope of Collective Redundancies – Forms (ways) of termination of the employment contracts

Usually, collective redundancies are characterized by three legal features: *the ways (legal grounds) on the basis of which the employment contracts are terminated, the quantitative aspects of the dismissals* (i.e. minimum number of employees whose employment relationships are supposed to be terminated in order the necessary legal presumptions to be met) as well as the *temporal aspects of the dismissals* (i.e. the time period within which, the termination of employment is supposed to be carried out). These three legal features shall be determined as legal assumptions that constitute the definition and scope of "collective redundancies", but also the conditions on the basis of which the implementation of collective dismissals depends.

4 In this context, one should mentioned the ILO Convention No.158 on Termination of Employment from 1982 (ratified by the Parliament of the Republic of Macedonia) as well as the ILO Recommendation No.166 on Termination of Employment from 1982.

5 See: Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, Official Journal L 225, 12/08/1998 P. 0016 – 0021.

The Law on Labour Relations of Macedonia, *defines* the collective redundancies by taking into consideration their quantitative and temporal aspects. In this regard, Macedonian labour legislation is aligned with the EU Directive 98/59/EC on collective redundancies, since it provides that collective redundancies should cover at least 20 employees for a period of 90 days.[6] The biggest gap between Macedonian labour legislation and the EU labour law can be found in the *scope* of the "collective redundancies" and particularly in the determination of the forms (ways) of terminating of the employment contracts of the employees that can be equated to redundancies.

Labour law theory and comparative labour legislation, start from the assumption that the original (initial) cause for the occurrence of the reasons for collective redundancies are the economic, technical, technological, organizational, production or any other similar changes at the employer (so-called business reasons).[7] The business reasons as reasons for the termination of the employment relationship also derive from the international labour standards (primarily from the ILO Convention on Termination of Employment, 1982, No.158 and the eponymous Recommendation, 1982, No.166) and they lay down the foundations on Council Directive 98/59/EC on collective redundancies.[8] Hence, a precondition for the collective redundancies is the occurrence of a minimum number of 'surplus workers' at the employer, whose employment relationship shall be terminated within a specified period of time.[9]

According to the Law on Labour Relations, 'collective redundancy due to business reasons' exists when the employer has an intention to adopt a decision on termination of employment.... due to business reasons .....

6 Law on Labour Relations, Art 95, para 1.

7 See Љубинка Ковачевиќ, *Валвани разлози за отказ уговора о раду*, (2016), 416.

8 For more information, see Jan Heinsius, T*he European Directive on Collective Dismissals and its Implementation Deficits – Six ECJ Judgments as a Potential Incentive for Amending the Directive*, (2009), 263.

9 See Iris Govič, Dušanka Marinkovič Drača и Darko Milkovič, *Zakon o Radu (komentar, sudska praksa I ogledni primjeri)*, (2010), 402.

and in the event of each termination of employment.[10] On the other hand, the legal grounds (reasons) upon which the collective redundancies within the EU Directive are based, should meet the following conditions: to derive, i.e. to be established by the initiative of the employer and not to refer to the individual worker himself/herself.[11]

On the basis of the definition of collective redundancies as regulated by the Law on Labour Relations, we come out with two different interpretations regarding the scope of the collective redundancies. Such interpretations are: the broader (sensu latu) or grammatical interpretation and the narrower (strictu sensu) interpretation.

The *broader (sensu latu) interpretation* of the scope of collective redundancies, implicitly entails *all the forms* of termination of employment contracts. It refers to a possible extension of the ways and legal grounds for termination of the employment relationship that can be subsumed under the collective redundancy. If all the forms of termination of the employment contracts are calculated in the number of redundancies, then this would mean that even terminations which are inherent to the individual worker concerned shall be considered as redundancies as well (for example: termination due to the death of the employee; dismissals due to capacity or conduct related reasons, etc). Such an interpretation is inadequate and contrary to the provisions and the spirit of the Directive 98/59/EC on collective redundancies.

Unlike the broader (sensu latu) interpretation of the scope of collective redundancies which refers to "any termination of the employment relationship", the *narrower (sensu strictu) interpretation* limits the scope of collective redundancies at precisely defined ways (cases) of termination of employment relationships. On the basis of this interpretation, the Law on Labour Relations refers to the *"decision on termination of employment due to business reasons"*[12] *as* the only way to terminate the validity of the employment contract that could be subsumed under the collective redundancy. The occurrence of the 'decision, i.e. notice of termination due to business reasons' as a single way of termination that can be equated to collective redundancy is in contrary to the provisions and the spirit of the Council Directive 98/59/EC which takes a broader (more extensive) approach. This means that the EU labour law establishes a Community concept of collective dismissals which is autonomous and uniform, and it cannot be derogated by the different national legislations of the EU member-states.[13] According to this concept, collective redundancies cannot be restricted only to redundancies for structural, technological or cyclical reasons and they have to comprise the dismissals for any reason not related to individual workers concerned.[14] In fact, collective redundancies should comprise any termination of contract of employment *not sought by the worker* and therefore *without his consent*, but at the same time, *it is not necessary that the underlying reasons should reflect the will of the employer.*[15]

De lege ferenda, under "collective redundancy", Macedonian labour legislation should envisage all the ways of termination of employment contracts that are not related to the individual workers concerned and that are initiated by the employer, including the termination of the fixed-term employment contracts where such a termination takes place prior to the date of expiry or the completion of such contracts. It should also be borne in mind that there should be at least 5 employees of the total number of "surplus" workers

10 Law on Labour Relations, Art 95.

11 Васил Мръчков, *Трудово Право*, (2015), 641.

12 See Law on Labour Relations, Art 71, para 2.

13 See Roger Blanpain, *European Labour Law*, (2012), 744.

14 Ibidem.

15 Such an interpretation derives from the ruling of the European Court of Justice in the case *'European Comission v Republic of Portugal' (C-55/02, Judgement dated 12.10.2004, Rec.32)*, where the Court extends the scope of the collective redundancies to other cases (ways) of termination of employment based on specific 'external' circumstances, which are independent from the will or the initiative of the employer. Such other cases are those due to: employer's insolvency, expropriation, fire or other cases of force majeure, as well as the cases of termination of undertakings' activities due to the death of the employer-natural person.

whose contracts of employment should be terminated on the basis of dismissal due to business reasons. The termination of the employment relationships of the remaining workers (necessary for meeting the statutory minimum in order to achieve the quantitative presumptions of the collective redundancy) may be established both on additional notices of termination of employment due to business reasons as well as on consensual cancellations of the employment contracts.[16]

C. Employees participation in the event of collective redundancies

The right to participation in the event of collective redundancies is a collective and integral right that includes the rights to information and consultation of the employees' representatives during the planning phase of the collective redundancies. Its ultimate goal is to prevent (mitigate) the consequences arising from the termination of the employment contracts of the 'redundant' (surplus) employees encompassed by the collective redundancy.

Information and consultation are separate procedures which move along different lines, having a different contents and relevance. Yet, these procedures are mutually complementary and causally interrelated. A common denominator between the information and consultation procedures of employees i.e. their representatives is the obligation of the employer to conduct these procedures as a result of his *intention* to carry out the collective redundancy.[17] The essential prerequisite for the implementation of the procedure for informing and consulting is the determination of *the moment at which this procedure is supposed to begin.* Directive 98/59/EC on collective redundancies stipulates two "temporal indicators" pointing out to the moment of initiating the procedure of participation of workers in case of collective redundancies. The

16 Ivica Crnčič, Irena Cvitanovič, Viktor Gotovac, Gašpar Lukič, Darko Milkovič, Ilija Tadič, Marija Zuber, Inga Zic, *Veliki Komentar Novog Zakona o Radu*, (2010), 178.

17 See Васил Мръчков (n.11), 643.

first indicator refers to the moment when the employer is *"contemplating"* collective redundancies, while the second (that actually derives from the first indicator) assumes that the beginning of the information and consultation procedure with the employees' representatives shall be *"good time"*.[18] Hence, it appears that the intention of the Directive 98/59/EC is to determine the earliest possible moment when the employers' obligation to information and consultation of the representatives of employees on the upcoming collective redundancy occurs.[19]

While Macedonian labour legislation is characterized by a proper harmonization with the EU labour law in terms of the "temporal aspects" of the information and consultation procedure (and that is "the moment when the employer intends to conduct the collective redundancy, at least one month prior to the commencement of the collective redundancy"[20]), this conclusion cannot be brought in respect *to the subjects who are involved in that procedure.* Namely, employees participation (information and consultation), both as according to the Council Directive 98/59/EC as well as to the Law on Labour Relations is indirectly conducted, with the involvement of *representatives of workers.* However, in Macedonian labour legislation there is neither substantial definition nor a procedure for the election of employees' representatives in regards to rights to participation. In such circumstances the following question should be asked: *Who are the subjects responsible for conducting the information and consultation procedure prior to the commencement of the collective redundancy?* In practice, it is considered that trade unions (trade union representatives) can act in the capacity of employees' representatives, *but what if there is no trade union organization at the employer*? According to us, regardless of the fact whether workers are represented by the trade unions or by other representatives, they have an inalienable right to be informed and consulted, while employers have an obligation to involve them in the process

18 See Council Directive 98/59/EC, Article 2, paragraph 1.

19 See Jan Heinsius, (n.8), 272.

20 See Law on Labour Relations, Art 95, para 2.

of participation prior to the commencement of the collective redundancy. Such a position is aligned with the stance of the European Court of Justice taken in the *European Commission v United Kingdom case*, where the Court states that '*it is no longer possible that there are no workers' representatives in the event where a Member State would not have an overall system of workers' representation*'.[21] Regardless of the fact that Council Directive 98/59/EC does not provide for a specific mechanism for the election of workers' representatives, EU member-states are obliged to take all the necessary measures in order to ensure the information and consultation of the workers, by setting the manner of election of their representatives who will participate in the collective redundancy procedure.[22] In that regard, the Macedonian labour legislation *de lege ferenda* must determine a proper legal regime for participation of workers in the decision-making processes at the employers on the basis of which it will systematically regulate the selection and competences of workers' representatives as well as their relations with other representative bodies of workers (i.e. trade unions).

I. The informing of employees' representatives in the event of collective redundancies

The informing of employees' representatives, is an initial phase within a broader procedure of participation of workers when carrying out the collective redundancy. It must be carried out upfront, before the beginning of the consultations, and in any case before adopting the decision for collective redundancy.[23] This phase, consists of ... *providing by the employer* to the employees' representatives *with all relevant information before the beginning of the consultations...*[24]

21 See *European Commission v. United Kingdom (C-382/92)*.

22 Roger Blanpain, (n.13), 750.

23 Васил Мръчков, (n.11), 643.

24 See Law on Labour Relations, Art 95, para 2.

There is a misalignment between the Macedonian labour legislation and the EU Directive 98/59/EC in relation to the contents that make the information, and then the consultation of the employees, since the Law on Labour Relations does not impose obligation to the employer to inform the employees' representatives on a very important issue such as *the issue of the criteria for the selection of the workers to be made redundant.* The determination of the selection criteria, aims to objectify the process of selection of workers whose employment contracts shall be terminated or safeguarded. For the largest part of its validity, the current Law on Labour Relations of 2005 has not 'touched' upon the issues related to selection of employees in the events of dismissals due to business reasons, including the cases of collective redundancies.[25] The legal void has been settled in practice by the competent courts. Referring to the international labour standards (the ILO Convention on Termination of Employment No.158, and especially the ILO Recommendation on Termination of Employment No.166), the Courts oblige the employer in the event of dismissal due to business reasons, to determine certain criteria in advance (prior to the dismissal) for the selection of employees whose employment relationship shall be terminated.[26] In the event that collective agreements which provide for criteria for selection of the employees are not applicable to the employer, he/she shall be obliged to determine, prior to the commencement of the procedure for termination of the employment contracts due to business reasons, certain criteria and measures with an internal Act, as well as to apply such criteria and measures.[27]

The latest Law on amending and supplementing the Law on Employment Relations from 29th July, 2018 stipulates the following selection criteria in terms of dismissal due to business reasons: the criteria arising from the needs

25 The latest Law on ammending and supplementing the LLR, from 29.06.2018 (Official Gazette of the Republic of Macedonia, no.120/2018) introduces a new provision that sets certain selection criteria (Art.7). In any case, we note that the provision is vague and unclear from a terminological point of view.

26 See Decision of the Basic Court in Tetovo, PO. бр. 42/2013 from 03.07.2013 год.

27 Теофил Томановиќ и Васко Томановиќ, *Договор за работа*, (2011), 111.

for efficient functioning of the employers' work, vocational training and qualification of the employee, work experience, work performance, the type and significance of the employee's working position, length of service and other criteria determined in the collective agreement, including the criteria for protection of disabled persons, single parents and parents of children with special needs whose employment is terminated due to the same reasons.[28] In practice, there are several collective agreements (primarily, concluded at a branch level, that is, department level) which stipulate criteria and measures for the selection of employees with the priority of retaining their working position. In most of them, the prevalent criteria are: vocational training and qualification, length of service, type and value of the working position, work results, age and similar criteria.[29] There are also collective agreements which 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.[30]

II. Consultation of the employees' representatives in the event of collective redundancies

The consultation of the employees' representatives is an essential and crucial phase in the procedure for employees participation in the decision-making process in case of collective redundancies. Thus, according to the Law on Labor Relations, "the employer is obliged to initiate a consultation

28 See, Law on ammending and suplementing the Law on Employment Relations from 29.06.2018, Art.7.

29 Collective Agreements that envisage such criteria are: Collective Agreement for the Employees in the Food Industry; Collective Agreement for the Textile Industry Collective Agreement for the public facilities for children in the field of care and education of children, etc.

30 Collective Agreements that envisage such criteria are: Collective Agreement of companies of other monetary intermediation and the activity of intermediation in operations with securities and commodity contracts; Collective Agreement for Culture; Collective Agreement for the Elementary Education, etc.

procedure with the employees' representatives, at least one month before the commencement of the collective redundancies ... for the purpose of reaching an agreement".[31] The consultations begin to take place after informing the employees' representatives, but at least one month before the carrying out of the collective redundancies. Similar to the legal rules concerning the information procedure, where the Law on Labor Relations regulates its *contents* (that is the "list" of relevant information/data which the employer provides to the employees' representatives) and its *purpose* (and this is enabling the employees' representatives to prepare constructive proposals), the labour legislation regulates the contents and the purpose of consulting the employees. In this regard, the consultations may include "the ways and means for avoiding collective dismissals, reducing the number of dismissed workers, or mitigating the effects of the collective redundancies".[32] Thus, the contents of the consultation of the employees' representatives consist in search of ways and means to minimize the negative consequences to the workers who are encompassed by the collective redundancies. The contents of the consultations lead to the achievement of their purpose, and this is the "*reaching of an agreement*" between the employer and the employees' representatives, which, if it is not possible to avoid collective redundancies, will resort to *associated social measures and help the dismissed workers to be employed or trained again.*[33]

The Law on Labour Relations determines the general time frame during which the consultations between the employer and the employees' representatives should be conducted, but it does not provide any specifics regarding: *the way of conducting the consultations (written or oral)* and *the extent to which the parties are involved in the consultation procedure.* Consequently, it seems that the specific details regarding the implementation of the consultation procedure are left to the employer's will and the employees'

31 See Law on Labour Relations, Art 95, para 6.

32 See Law on Labour Relations, Art 95, para 3.

33 Ibidem.

representatives as parties participating in this procedure.[34] The consultations should start with a *written notification* submitted by the employer, which necessarily contains the relevant information provided by law and which forms the basis for the consultation (submission of opinions and suggestions) from the employees' representative. Usually, the written notification and the information specified in it, in practice, are contained in the so-called "*draft program for fostering the redundant employees*".[35] However, the Macedonian labour legislation does not determine the existence of such a "program" as an act of the employer for the care of workers covered by the collective redundancy, nor does it determine its contents. Furthermore, the degree of involvement of the parties in the consultation procedure remains unclear, i.e. whether the consultations will be reduced to a simple exchange of opinions or will include a more in-depth form of dialogue between the parties for the purpose to reduce or mitigate the negative consequences of the collective redundancies. In addition to fulfilment of its goal, consultations should arise from the will of both parties to put an effort in order to reach an agreement (settlement). This applies in particular to the employer who needs to demonstrate goodwill, readiness and determination to finding a mutually acceptable solution even if at the end no agreement is reached.[36] All this leads to the conclusion that consultations in terms of collective redundancies should be treated as a form of a dialogue which is very close to collective bargaining.[37]

III. Notifying the public authorities for the planned collective redundancy

The legal regime of collective redundancy in Macedonia is completed with the obligation of employers to notify the public authorities about the

34 Мръчков.В, (п.11), 643.

35 Теофил Томановиќ и Васко Томановиќ, (п.27), 98.

36 Васил Мръчков, Красимира Средкова и Атанас Василев, (п.3), 417.

37 Roger Blanpain, (п.13), 750.

planned collective redundancy. Through the notification procedure, the collective redundancies and their consequences are taken "outside of the company boarders" because they have a wider social impact, tangling a wider range of subjects.[38] In this process, the role of the public authority (which in the case of Macedonia is the Service responsible for employment intermediation, i.e. the Employment Service Agency of the Republic of Macedonia) is set to three broader competencies and activities such as: the competence of getting informed about the planned collective redundancies by the employer, the competence of determining the time period for which notices of termination covered by the collective redundancies will not have a legal effect and the activity of searching for solutions to the problems and consequences arising from the planned collective redundancies.[39] Through these three groups of competencies and activities, we analyze the compliance of the Macedonian labour legislation with the Directive 98/59/EC.

The Law on Labour Relations determines an "obligation for the employer after the completion of the consultations with the employees' representative to notify in writing the service responsible for employment intermediation".... In the same provision, the law determines that "the notification contains all relevant information regarding the planned collective redundancies and consultations with the employees' representatives".[40] In this part, the Macedonian labour legislation is complementary with the contents, but also with the spirit of the Directive 98/59/EC, which presumes first, the completion of the consultation procedure, and then the adoption of notices of termination of the employment relationship of employees covered by the collective redundancy. Such interpretation arises from the *Junk v Kühnel (C-188/03)* case, where the European Court of Justice states that "the notification of public authorities must follow the completion of the consultation procedure, while the dismissals can be made only after the completion of the notification

38 Васил Мръчков, (п.11), 644.

39 Roger Blanpain, (п.13), 751.

40 See Law on Labour Relations, Art 95, para 6.

procedure to public authorities". Therefore, "the purpose of the notification is not to prevent an employer from adoption of a decision for collective redundancy, but only the prevention of the unemployment of the employees covered by it".[41]

While the initial part of the notification procedure of the public authorities is in line with the relevant provisions of the Directive 98/59/EC, it can not be ascertained for the rest of it. Council Directive 98/59/EC delegates the authority to the competent public administrative body to determine the time period for which the planned collective redundancies will not have a legal effect. In this regard, the earliest period in which collective redundancies can have a legal effect *is 30 days from the moment of notification to the body of the public authority,*[42] and if this body estimates that the problems arising from collective redundancy can not be resolved within the initial deadline, *it has the right to extend this deadline to 60 days.*[43] Of course, the time period for notification of the public administrative body to the planned dismissals until their implementation should be used to seek solutions to problems arising from collective redundancies in relation to the workers. The Macedonian labour legislation "makes an attempt" to align with this part of the notification procedure. However, it seems that the legislator did not understand the essence of the deadlines for the "suspension" of carrying out the collective redundancy, i.e. the temporary prolongation of the individual dismissals of the workers encompassed by the collective redundancy.

The purpose of determining the deadlines for "temporary suspension" of the legal consequences of the collective redundancy decision is implicitly regulated in the Law on Labour Relations. In fact, for the duration of these deadlines, the Service responsible for employment intermediation requires an opportunity to *provide assistance and services for labour mediation of workers*

41 See Opinion of the Attorney General, in the case ECJ 27 Jan. 2005, *Case C Irmtraud Junk v Wolfgang Kühnel* - 188/03 ECR 2005.

42 See Council Directive 98/59/EC, Article 4, paragraph 1.

43 See Council Directive 98/59/EC, Article 4, paragraph 3.

covered by the collective redundancy, *in accordance with the law* (in particular, the Law on Employment and Insurance in case of Unemployment).[44]

D. Legal consequences of violation of the rights to information, consultation and notification in the event of collective redundancies

In the Macedonian legal system, there is a pronounced legal uncertainty regarding the consequences of violation of the information, consultation and notification procedure in the event of collective redundancy. The Law on Labor Relations does not contain any provisions related to the 'legal fate' of the decisions for termination of the employment relationship of the workers covered by the collective redundancy, which are adopted in terms of violation of the information, consultation and notification procedure. The only legal provision that sanctions the potential breach of the information and consultation procedure is the provision that relates to the misdemeanor liability of the employer. The fine to be paid by the employer-legal entity for such a violation of the rights of the workers amounts to 3,000 euros.[45] In practice there are opinions in which the violation of the obligation of the employer to provide information, consultation and notification will be treated as substantial violation of the collective redundancy procedure and in the event of a dispute before the competent court, it will lead to the annulment of the adopted decisions on dismissal.[46]

44 See Law on employment and insurance against unemployment, Official Gazette of Republic of Macedonia, No.37/1997.

45 See Law on Labour Relations, Art 265, para 1, point 9.

46 See Теофил Томановиќ и Васко Томановиќ, (n.27), 101.

E. Conclusion

In times of changing economic circumstances, global aspiration for greater competitiveness of employers and increased flexibility and deregulation of the labour markets, employees face serious challenges in the protection of their labour rights in the event of collective redundancies.

Collective redundancies form an essential part of the legal regulations of the Republic of Macedonia that cover the termination of employment contracts by dismissals. The initial impression after the comparative analysis between Council Directive 98/59/EC and the legal regime of collective redundancies in Macedonian labour legislation are 'in favor' of a successful and comprehensive harmonization of Macedonian labour law with the EU law. Yet, if an in-depth observation of the legal provisions in the Law on Labour Relations is conducted and if a more profound cross-section of Macedonian labour law system is carried out, one can conclude that the legal regime of collective redundancies is far from a clear and coherent whole which entirely corresponds to the contents and meaning of the EU regulations on collective redundancies and their consequences in relation to workers.

This general conclusion is rooted in several individual segments of the collective redundancy, such as: the definition and scope of 'collective redundancies', the material and formal aspects relating to the procedure for informing and consulting employees' representatives, the material and formal aspects concerning the notification of the public authorities and the legal consequences resulting from the breach of the obligations to inform, consult and notify in the event of collective redundancies.

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Judge in the Basic Court Skopje II

INFLUENCE OF THE STATUS CHANGES IN TRADE COMPANIES UPON WORKERS' RIGHTS WITH A REVIEW UPON THE IMPLEMENTATION OF ARTICLE 78 OF THE LAW ON LABOUR RELATIONS (OFFER OF A NEW CHANGED EMPLOYEMENT CONTRACT)

A. Status changes in the trade companies (changes of the employers)

The Paper was received on 13.09.2018
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Status changes in the trade companies are defined with the Law on Trade Companies. In accordance with Article 3 paragraph (1) item (47) from the Law on Trade Companies "status changes" define merging, incorporating and division of the trade companies on a way and in accordance with the conditions defined with this law and regulated with the articles from 517 to 537. Merging is due to the need of market, assets, resources, capital concentration and etc, the division of trade company is due to capital mincingly, technology and etc. Merging is a handling procedure in which one or more trade companies transfer all the assets and capital with the responsibilities to the other trade company and with that, the trade company is non existing, without implementing the process of liquidation.

Merging is a process in which two or more trade companies are merging in a way in which their assets and mutual obligations are transferred to the established company and they are not existing without implementing the process of their liquidation, two or more companies that are merging are not existing and one new company is established.

In the merging process the company that takes over the other is still existing and the others are non-existing.