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COMMITTEE FOR HUMAN RIGHTS OF THE REPUBLIC OF MACEDONIA

ANALYSIS OF THE LEVEL OF SATISFACTION WITH MECHANISMS SAFEGUARDING WORKERS' RIGHTS

IMPROVED PRODUCTIVITY THROUGH BETTER LABOUR LEGISLATION IN MACEDONIA

British Embassy Skopje

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Analysis of the level of satisfaction with the mechanisms for safeguarding of workers' rights in the Republic of North Macedonia

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LIST OF ABBREVIATIONS

ESA	Employment Service Agency
SSO	State Statistical Office of the Republic of North Macedonia
SLI	SLI State Labour Inspectorate
ESC	Economic and Social Council
EU	European Union
LSHW	Law on Safety and Health at Work
LEICU	Law on Employment and Insurance in the Case of Unemployment
LIS	Law on Inspection Supervision
LLI	Law on Labour Inspection
LPRLD	Law on the Peaceful Resolution of Labour Disputes
LGAP	Law on General Administrative Procedure
LM	Law on Misdemeanours
LCP	Law on Civil Procedure
LPPD	Law on Prevention and Protection against Discrimination
LLR	Law on Labour Relations
CPD	Commission for Protection against Discrimination
CFA	Committee on Freedom of Association
ILO	International Labour Organisation
MLSP	Ministry of Labour and Social Policy
OECD	Organisation for Economic Cooperation and Development
RLI	Regional Labour Inspectorate
RNM	Republic of North Macedonia
SONK	Independent Trade Union for Education, Science and Culture of the Republic of North Macedonia

SUMMARY

This analysis titled "Measuring the Level of Satisfaction with the Mechanisms Safeguarding Workers' Rights in the Republic of North Macedonia" aims to investigate the attitudes of workers in regard to the satisfaction and efficiency from the mechanisms safeguarding workers' for labours rights. In assessing these mechanisms, the study concludes that trade unions are the most unpopular protective mechanism, and the least unpopular are non-governmental organisations and Courts of Appeal. The aim of this study is to indicate to workers and employers the mechanisms through which they can quickly get the outcome from labour disputes from the institutions, without having to enter into the content of such outcomes. The study brings these conclusions through three research tools, such as: public opinion research, organising focus groups, and gathering publicly available information on the work of the institutions.

INTRODUCTION AND METHODOLOGY

The level of satisfaction with the mechanisms safeguarding workers' largely depends on the institutional setup and the effectiveness of the legal framework that incorporates labour rights. Consequently, the analysis of this framework is an essential prerequisite for evaluating the mechanisms for the protection of labour norms. Therefore, this study begins with an analysis of the existing protective mechanisms in the case of violation of the individual and collective rights, and through a survey, focus groups and the collection of information of public character it measures the satisfaction of workers with the functioning of the institutional mechanisms for the protection of labour rights. Given the complexity of the topic and the lack of research materials that can support such a study, the research team decided to start the analysis with a desk analysis. The desk analysis was necessary in order to detect all the positive rights and existing mechanisms that constitute the institutional framework. That framework, later in the analysis, sets the basis for measuring the satisfaction of workers with the positive regulations and the detected institutional mechanisms.

The measurement of the satisfaction with the institutional mechanisms of protection is carried out in the study through three tools. The first tool is a survey questionnaire implemented by using social networks: Facebook, Instagram and Twitter. The survey provided 839 responses. The survey is comprised of 15 general and 9 demographic questions. When conducting the survey, special attention was paid to the regional, gender, age and ethnic diversity of the population. For the purposes of the study, all general questions are cross-linked with demographics. Some of these findings are presented in the study, and the rest are enclosed in the Annex.

Furthermore, four focus groups have been implemented as a second tool for measuring employee satisfaction from the protective mechanisms. Two of the focus groups were conducted in Skopje; one was conducted in Shtip and one in Bitola. Each focus group was composed of six people; the first group had only trade union representatives, and in the other three groups there were mixed employees in regard to their contract agreements, indefinite, determined and freelancers. Given that the main findings of the survey are in the regions of the Court of Appeal - Skopje, Court of Appeal - Gostivar, Court of Appeal - Bitola and Court of Appeal - Shtip, there is a lack in the focus groups since there was no focus group created for the region of the Court of Appeal in Gostivar. The shortage is due to the short time available for conducting the study and the complication in organising focus groups.

The third tool, which is used to measure the productivity of institutional mechanisms, is the gathering of information of public character. This information primarily evaluates the effectiveness of institutional mechanisms in respect of their actions to protect workers and the rights they enjoy. It must be emphasised that few of the institutions were transparent and shared the data that we requested; the courts of appeal were first, whereas others did not respond at all to our official requests, such as the Ombudsman and the Public Revenue Office. The criticism towards these institutions is even greater given that we tried to obtain the data with the help of the Helsinki Committee for Human Rights and with the assistance of the Ministry of Labour and Social Policy.

It is important to note that at least two of the three available tools have been used to measure the satisfaction of each institutional mechanism. The use of a minimum of two sources gives a greater objectivity to the analysis. While going through the analysis, you shall notice that methodology is set up as follows: first is the description of the institutional mechanism and the positive legal regulations, followed by the results from the tools. On the basis of this methodology, conclusions and findings are then drawn up which are intended for each institutional mechanism separately. At the end of the analysis are attached all data collected in the form of an Annex. The purpose of these annexes is to share the results with social scientists who shall later be able to use this data for other analysis and findings.

I

The state of labour affairs in the Republic of North Macedonia: unemployment and employment

Section 1 - The state of labour affairs in the Republic of North Macedonia: unemployment and employment

The Republic of North Macedonia, since its independence up to today, faces a high unemployment rate. Unemployment is one of the main social factors that dictate social relations, culture and the functioning of institutions. Unemployment and labour rights have a causal relationship, that is, the higher the unemployment rate, the lower the rights of employees**.** The analytical picture of the Republic of North Macedonia shows that the total number of employees is 759,445 persons (45.1%), while the total number of unemployed is 199.325 persons (20.8%).[1] The majority of the employees are in the processing industry sector - 153,430, while the lowest number of employees is in the mining and quarrying sector - 6,470 persons. The active labour force rate however is 57%, i.e. 958,770 persons are registered as active working population.[2] Compared with the countries of Central and Eastern Europe, in the period from 2013 to 2017, the average employment rate in North Macedonia is extremely low, while the average unemployment rate is significantly higher than the average of the OECD countries.[3]

North Macedonia also has a high rate of class stratification. According to the World Bank data, North Macedonia in 2009 had the highest rate of class breakdown in Europe with a GINI index of 42.2, but over the years this rate has fallen to reach 35.6 in 2014.[4] As far as the salaries are concerned, the average monthly net wage paid per employee in the Republic of North Macedonia in October 2018 was 24,817 denars, whereas the highest average monthly net salary paid was in the field of "Computer programming, consulting and related activities" is in the amount of 59,443 denars. The lowest paid salary is in the field of "Fisheries and aquaculture" in the amount of 12.711 denars.[5] These data give us a picture of the labour map in North Macedonia, i.e., capture the structural position of the North Macedonian economy. This structural setup dictates the framework for the work of institutions and mechanisms for the protection of workers' rights.

[1] State Statistical Office - Active population, Labour Force Survey results III quarter of 2018, Information number 2.1.18.34 from 07.12.2018.

[2] State Statistical Office, Active population in the Republic of North Macedonia Labour Force Survey results, III quarter of 2018 Friday, December 07, 2018, available at: https://bit.ly/1KUTnax, last time accessed: 10.12 .2018.

[3] Eurostat.

[4] Gini index, World Estimate, FYR North Macedonia, available at: https://bit.ly/2GI2JuX, last accessed on December 10, 2018.

[5] State Statistical Office, Active population in the Republic of North Macedonia, Results from the Labour Force Survey, III quarter of 2018 Friday, December 07, 2018.

II

General Legal Framework

Section 2 – General Legal Framework

2.1 Constitution of the Republic of North Macedonia

The Constitution of the Republic of North Macedonia sets the postulates of the framework which regulates labour relations. In the Constitution of the Republic of North Macedonia, the rights of labour relations are grounded as basic human freedoms and rights of people and citizens. Labours rights are part of the economic, social and cultural rights and constitute a fundamental value of our constitutional order. Taking into consideration labour rights as human rights, the Constitution of the Republic of North Macedonia guarantees the right to work and stipulates that everyone has the right to work, free choice of employment, protection at work and financial security during temporary unemployment.[6] Hence, the Constitution stipulates that every employee is entitled to equal employment under equal conditions, that every employee is entitled to adequate earnings and that every employee is entitled to a paid day, weekly and annual leave.[7] This means that the right to work, the right to protection at work, the right to financial security during the period of temporary unemployment, the right to adequate earnings and the right to paid daily, weekly and annual leave constitute absolute personal rights that cannot be alienated, nor be transferred to other persons. Citizens cannot give up on these rights**.** The accomplishments of these rights are further regulated by laws and collective agreements.

2.2 Law on Labour Relations

The Law on Labour Relations (LLR)[8] as a systemic law, represents a kind of Constitution for labour relations. The LLR sets the general framework of all labour issues. Consequently, starting from the importance and essence of the area that this law regulates, our recommendation is that for its adoption, at least a qualified majority should be foreseen, which in practice is not the case having in mind its adoption from 2005 and the amendments which follow afterwards. For such an incompetent approach and unspecified treatment about sensitive issues from the field of labour, the fact that it has undergone a total of 22 amendments and 13 cessation decisions of the Constitutional Court of the Republic of North Macedonia.

Workers' rights are integral part of any democratic society; hence the preparation and adoption of such an extremely important law must be part of an inclusive and transparent process. A key tool in the implementation of such a process is the social dialogue, which, in the last decade, seems to have been only a formal "veil" under which labour regulations have been adopted. One key example, which confirms this conclusion, is the numerous amendments to the LLR adopted in the shortened

[6] Constitution of the Republic of North Macedonia with the amendments to Constitution I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI and XXXII.

[7] Article 32 of the Constitution of the Republic of North Macedonia.

[8] Law on Labour Relations, Official Gazette of the Republic of North Macedonia No. 62/05, 106/08, 161/08, 114/09, 130/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13, 187/13, 113/14, 20/15, 33/15, 72/15, 129/15, 27/16 and 120 / 18.

procedure, and another is the answer to the survey, in which only 7.2% are in some ways satisfied by the LLR as oppose to 51% of the respondents who are dissatisfied with LLR. Focus groups on the other hand, in terms of the LLR, showed great distrust and scepticism, and on one occasion one of the trade union representatives stated:

> "*No significant changes shall be brought forward by changing legal regulations and certain systemic interventions regarding the situation of the workers. Even the increase of rights in relation to the law. It is not of interest for the employers.*"

(Focus group 1)

The LLR is also important in terms of regulating access to employment, establishment of employment, rights and obligations for the duration of employment, termination of employment, protection of rights, freedom of association in labour relations, and the framework under which the process of collective negotiations is conducted and the conditions in which the strike takes place. The LLR sets the foundation for labour rights, and those rights further regulate the collective agreements and employment contracts based on the principle of *infavorem labouratoris*.[9] In accordance to this legal principle, collective agreements can only determine rights that are more favourable for workers in relation to the rights regulated by law. The essential regulation of the issues of the topic of labour relations determines the rigidity or flexibility of the system of labour relations and labour market system. The increased degree of protection of labour rights leads to greater rigidity and vice versa, if the degree of protection is decreased then it leads to greater flexibility.

2.3 OECD Index of Protective Legislation

The OECD methodology evaluates three aspects of the protective legislation: the protection at regular working relationships,[10] protection in cases of collective layoffs and protection during temporary employments.[11] Each of the indices is composed of a different set of indicators with a value of 0 to 6. The low values are associated with flexible and high values with rigid labour legislation. Regarding the strictness of the protective legislation, in relation to the employment in the Republic of North Macedonia, OECD has three findings.

1. The index of the Republic of North Macedonia about labour relations for an indefinite period is 1.9, which is below the average of the OECD countries. This means that according to the OECD methodology, Republic of North Macedonia has flexible legislation for protection of indefinite term employments.[12]

[9] Article 12 (3) of the Law on Labour Relations.
[10] Indefinite term employments.
[11] Fixed term employments.
[12] OECD, Latest data on the OECD indicators of employment protection, OECD Indicator of Employment Protection, available at: https://bit.ly/2X171Dj, the latest on December 10, 2018.

2. Unlike the indefinite employment index, the legislative index about the legislation pertaining to collective redundancies is 3.3, which is above the average of 2.9 for the OECD countries. In other words, the Republic of North Macedonia has stricter protective legislation in relation to collective layoffs.[13]
3. Protective legislation for fixed-term employment, that is, fixed-term employment contracts and temporary employment has an index of 3.5, which is exceptionally above the average of 2.1 in the OECD countries. This means that in the Republic of North Macedonia the existing protective legislation for this kind of employment contracts is more rigid than the legislation in the OECD countries covered by this methodology. However, in terms of the index, it is important to note that the legal framework is misinterpreted in the section of fixed-term employment contracts in relation to the indicators of the OECD methodology. Indicators require the existence of objective conditions or reasonable grounds for establishing fixed-term employment contracts, which represent a condition for the use of this type of contract. Our legislation states the objective conditions for employment contracts, but only in the definition of a fixed-term employment and those do not constitute special conditions on which the possibility of establishing this type of employment depends. Consequently, the OECD's index about fixed-term employment contracts is unjustifiably high, that is, it is based on an erroneous legal interpretation.

[13] OECD, Latest Data on the OECD indicators of employment protection, OECD Indicator of Employment Protection, available at: https://bit.ly/2X171Dj, received on Dec. 10, 2016.

III

Institutional mechanisms of protection

Section 3 - Institutional mechanisms of protection

In the North Macedonian legal system, procedures for the protection of workers' rights are exercised based on established imperative norms and adequate mechanisms that guarantee their implementation. The imperative norms stipulate an obligation for the employer and the employee in relation to a particular right from the employment. The obligation is contained in the possibility to take or not take action in order to enforce the employee's right. Disrespect and violation of certain imperative norms, or non-fulfilment of the obligation, must be defined as non-compliance in the legal norms and for those, a proper sanction must be stipulated.

Sanctions aim to influence the conduct of perpetrators and potential perpetrators and to guarantee the respect for legal rights and obligations. This guarantee is implemented through institutional mechanisms of protection, where the authorities and institutions play a key role. Judicial protection, on the other hand, represents protection of the employment rights in the procedure substantiating and determining the objective factual situation of the two opposing parties - the employee and the employer. All these mechanisms are available to the employee in order to protect their rights determined by positive legal regulations. Nevertheless, through the survey we came to the general conclusion that the workers are not satisfied at all by the functioning of these mechanisms. The rates of dissatisfaction are so high that in the further explanation of the survey, the starting point is the dissatisfaction instead of the satisfaction of workers because satisfaction with the work of certain institutions ranges from 0.1% to 1%, while dissatisfaction with the work of the institutions ranges from 58% to 86%.

The graphic presentation summarises the dissatisfaction with the work of the institutional mechanisms. Trade unions have the greatest distrust, followed by employers' associations, then city labour inspectorates, State Labour Inspectorate and so on. The smallest dissatisfaction of workers is with the non-governmental organisations.

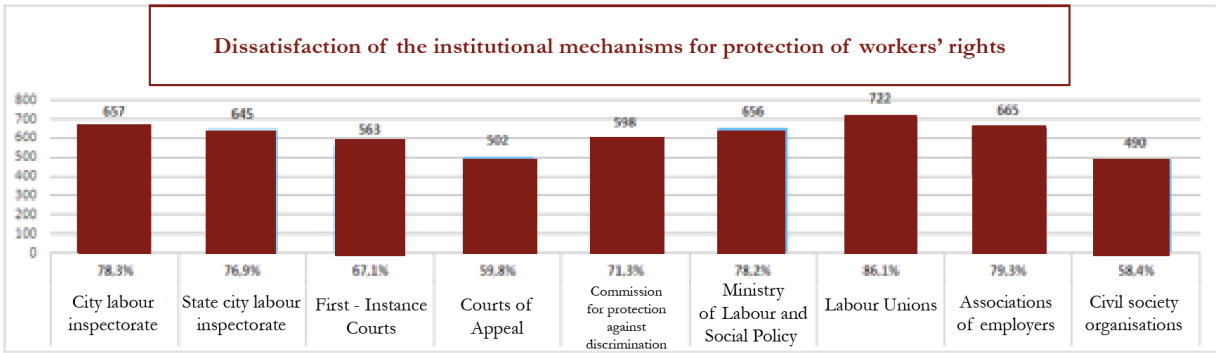

Figure 1 - Graphic presentation of the dissatisfaction of the respondents with the institutional mechanisms

3.1 Labour Inspectorate

The citizens of the Republic of North Macedonia realise the institutional protection of the rights from employment through the State Labour Inspectorate (SLI). Labour inspection plays an important role in the protection of workers' rights and in the process of guaranteeing permanent respect and application of labour regulations. The International Labour Organisation (ILO) Convention No. 81,[14] in accordance with the administrative practice of the state, places the labour inspection in the system of central government. The recommendation of this Convention is that the labour inspection should be placed under the supervision and control of the central government. Consequently, the State Labour Inspectorate is a body defined as legal entity within the Ministry of Labour and Social Policy. The legal framework for the work of the labour inspection is set up by the process laws: the Law on Inspection Supervision (LIS)[15] and the Law on Labour Inspection (LLI).[16] Apart from those, the misdemeanour procedure is regulated by the Law on Misdemeanours (LM),[17] which shall be analysed briefly in the part of the misdemeanour procedure and the imposition of penalties.

The LIS as *lex generalis* establishes the general framework for the performance of inspection supervision. It determines the rights and duties of the inspectors, the basics for the organisation and operation of the inspection services, the basic rights and obligations of the subjects of the inspection supervision, the method and the procedure for performing inspection supervision and other issues related to the inspection supervision.[18] LLI, as *lex specialis*, regulates the legal framework of labour inspection oversight. The powers and competencies of the SLI are further regulated by the set of regulations from the area of labour relations, employment and occupational safety.

> *"For example, Article 256 of the Law on Labour Relations stipulates that supervision over the application of this Law, the employment regulations and other regulations in the field of labour, collective agreements and labour contracts that regulate the rights and obligations of the employee and the employer from the employment relationship and other contracts with which the compensation for the performed work is determined in the amount higher than the amount of the minimum wage stipulated by law, shall be performed by the state administrative body competent for the labour inspection work."*
>
> (LLR, 2018)

Regarding the setup, the SLI is only a legal entity within the Ministry of Labour and Social Policy. This is due to the fact that with the adoption of the LIS in 2010 it has been stipulated that the

[14] International Labour Organisation, C081 - Labour Inspection Convention, 1947 (No.81).
[15] Law on Inspection Supervision, Official Gazette of the Republic of North Macedonia No. 50/10, 162/10, 157/11, 147/13, 41/14, 33/15, 193/15, 53/16, 11/18, 83/18 and 120/18.
[16] Law on Labor Inspection, Official Gazette of the Republic of North Macedonia No. 35/97, 29/02, 36/11, 164/13, 44/14, 33/15, 147/15 and 21/18.
[17] Law on Misdemeanours, Official Gazette of the Republic of North Macedonia No. 124/15.
[18] Article 1 of the Law on Labor Inspection.

director of LIS is appointed and dismissed by the Government of the Republic of North Macedonia,[19] while the amendments to the LIS in 2013 further regulate that the inspectorates, as bodies within the ministries with the capacity of a legal entity, have their own budget account as first-line budget users and employ staff independently.[20] With these changes and amendments to the LLS in 2014, new rules are introduced that regulate the status and responsibilities of the Inspection Council, disciplinary responsibility for the inspectors, the evaluation and monitoring of the success of the work of the inspectors, as well as the determination of the levels of work places and titles for inspectors. The assessment of the inspectors is carried out on the basis of quantitative and qualitative criteria. The Director of the Inspectorate determines and adopts the Annual Work Programme and the Regular Supervision Plan, while in terms of the quantitative criteria, with an internal act, prescribes at least five coefficients of complexity of supervision.[21]

The procedure of inspection supervision is carried out by officials with special entitlements, i.e. state labour inspectors,[22] who are independent in carrying out inspection supervision. Also, they are independent in undertaking administrative and other measures determined by law. Labour inspectors, in addition to the general entitlements pursuant to Article 24 of the LLS, have special entitlements in accordance to the LLI in carrying out the inspection supervision.[23] In the procedure for inspection supervision, the provisions from the regulations are applied: the Law on General Administrative Procedure (LGAP),[24], the Law on Inspection Supervision and the Law on Prohibition and Prevention of Unregistered Activity, on the basis of the principle of subsidiarity in cases where by provisions of LLI, it has not been regulated otherwise.[25] This means that in terms of the formal legal procedure for inspection, if certain issues are not regulated by the LLI in relation to the conduct of the procedure,[26] provisions of the LIS and the LGAP governing those issues shall be applied accordingly. In other words, the procedure for inspection is a separate administrative procedure.

3.2 Administrative measure, sanction and misdemeanour violation

The inspectors in the procedure of inspection supervision are entitled to impose inspection measures in the form of administrative measures and sanctions. These measures and sanctions, in addition to being stipulated by the laws that regulate the procedure for inspection supervision, are regulated by the material laws, within the implementation of which, supervision is carried out by inspectors. In this case, administrative measures are measures that the inspectors impose on the subject of supervision in order to eliminate the irregularities and defects in the event of incorrect

[19] Article 14 of the Law on Labour Inspection.
[20] Article 13 of the Law on Labour Inspection.
[21] Law on Inspection Supervision, Official Gazette of the Republic of North Macedonia No. 147/13 and 41/14.
[22] Article 5 and Article 6 of the Law on Labour Inspection.
[23] Article 11 and Article 12 of the Law on Labour Inspection.
[24] Law on General Administrative Procedure, Official Gazette of the Republic of North Macedonia No. 124/2015.
[25] Article 9 of the Law on Labour Inspection.
[26] Such as deadlines, elements to a solution, and the like.

application or violation of certain legal provisions. Sanctions are measures that the inspector pronounces in cases when an administrative measure for removing an irregularity or deficiency is not respected, i.e. in special legally determined cases.

- An example of an administrative measure would be when the labour inspector determines a violation of a law, other regulation, collective agreement, employment contract and other acts over which the inspection supervision is carried out and with a decision, it shall order the employer to pass or annul an act with which it shall remove the identified irregularities and defects.[27]
- An example of the right to a sanction is a situation where the inspector of labour shall again find persons with whom the employment is not established in accordance with the Law, and on the basis of this condition a decision may be adopted prohibiting the work in certain work space, for a period of 30 days.[28]
- Disrespect or non-fulfilment of the legal obligation, which violates the material laws related to the right to employment, can be defined as a misdemeanour. Thus, despite of the fact that the inspector may impose an administrative measure and a sanction for removing the identified irregularity, in those cases he/she is obliged to initiate a misdemeanour procedure for determining responsibility and sanctioning the perpetrator of the misdemeanour.[29]

3.3 Misdemeanour Violation Procedure

The misdemeanour procedure is initiated at the request of an authorised body or at the request of the suffering employee.[30] Authorised body for initiation of misdemeanour procedure is the State Labour Inspectorate while the employee is part of the procedure as party which has suffered the damage. Only the competent court, as a rule, can conduct a misdemeanour procedure and impose a misdemeanour sanction. Nevertheless, in addition to the court, a misdemeanour authority (Commission) may also charge misdemeanour sanctions for certain offenses established by special laws.[31] This is of particular importance because the employee as an injured party can initiate a misdemeanour procedure only before the appropriate body for misdemeanour violations.

The injured party may submit a request to the competent court only if he has reported the misdemeanour to the inspection body and has asked it to act, and within 30 days from the reporting,

[27] Article 258 of the Law on Labour Relations and Article 49 of the Law on Safety and Health at Work, Official Gazette of the Republic of North Macedonia No. 92/07, 136/11, 23/13, 25/13, 137/13, 164/13, 158 / 14, 15/15, 129/15, 192/15 and 30/16.

[28] Article 259 of the Law on Labour Relations.

[29] Article 20 of the LLI, when the Labour Inspector determines that the violation of the regulation is a misdemeanour or a criminal offense, is obliged to submit a request to the competent authority, i.e. an application for initiation of an appropriate procedure. Article 261 of the LLR, the Labour Inspector will submit a request for initiating a misdemeanour procedure if he/she finds that the employer, i.e. the person in charge, by violating the law or other regulations, collective agreements or the employment contract that regulate the working relations, has committed an offense.

[30] Article 89 of the Law on Misdemeanours.

[31] Article 54 of the Law on Misdemeanours.

the injured party has received a negative answer or did not get an answer at all.[32] This means that a pre-requisite for initiating a misdemeanour procedure before a competent court is the previously submitted request to the competent inspection body. Contrary to the above is the case when the request for inspection procedure is submitted by an anonymous person. In such a case, the determination of the misdemeanour liability of the perpetrator stops by the completion of the inspection supervision, when the inspector has not determined the existence of violations. The anonymous complainant has no right to a procedure before a competent court.

3.4. Penalties

For an established violation, penalties are prescribed pronounced as main sanction, which can be comprised of paying a certain amount, which is established as a fixed amount, in accordance with the legal provisions.[33] The monetary fixed amount represents the maximum amount of the penalty, while in accordance with certain criteria, the penalty imposed may be less than the maximum.[34] This way of determining the penalty in its essence has the purpose of fairer sanctioning the perpetrators of the misdemeanour. This system is considered to provide a proportional measurement of the penalty depending on the size and economic liquidity of the subject of supervision.

Rapid proceedings may also be initiated for committed offenses by issuing a misdemeanour or mandatory payment order.[35] Misdemeanour payment order foresees payment of a certain amount before the initiation of misdemeanour procedure. The misdemeanour procedure shall be processed only if the perpetrator of the misdemeanour does not act upon the mandatory payment order, i.e. the perpetrator does not pay half of the determined penalty within 8 days from the day of issuing the misdemeanour payment order. The mandatory payment order has an executive title. This means that if it is issued but the determined amount is not paid within the specified deadline, no misdemeanour procedure is initiated, but rather a forced execution is directly initiated.

3.5 Initiating a procedure before the State Labour Inspectorate

Inspection supervision, pursuant to Article 4 of the LIS is conducted as official duty. Anyone can file an initiative for initiating a procedure for inspection. This means that that every person, be it legal or physical, has active legitimacy to file an initiative for initiating a procedure for inspection supervision. The initiative for initiating an inspection procedure can also be submitted anonymously.

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[32] Competent misdemeanour bodies are designated in the Law on Labour Relations, Article 266-a and 266-b as well as Law on Safety and Health During Work, i.e. forms the basis for the establishment of Commission for Misdemeanour, which lead the procedure and pronounce misdemeanour sanctions for committed violations determined by the laws in the field of labour relations and protection at work.

[33] Article 15 and Article 38 of the Law on Misdemeanours.

[34] Article 39 of the Law on Misdemeanours: "The assessment of the amount of the penalty for a Legal Entity and for a Sole Proprietor in accordance with **Article 39** of the LM is done according to *three criteria*. These criteria refer to: (1) the total revenue collected in the previous fiscal year, (2) the average number of employees based on the situation at the end of the previous month, and (3) the previous conduct of the perpetrator. This means that depending on these criteria, the final amount of the penalty shall be determined, as a percentage of the maximum fixed amount of the penalty."

[35] Article 48 of the Law on Misdemeanours.

The inspector is obliged to act upon each submitted initiative as well as to inform the submitter of the initiative for the determined condition. Apart from the workers, this protection mechanism may be used by persons applying for an employment upon a public announcement.[36]

Inspection supervisions can be regular, extraordinary and controlling.[37] Extraordinary inspection surveillance according to the above may be performed *ex officio,* that is, the inspector may initiate a procedure in case of suspicion or on the basis of an initiative by a person. In summary, the procedure through this protection mechanism would take place as follows:

> -A citizen, when his rights is violated or he/she is prevented from exercising his/her right from or in connection with employment, may submit a request to the SLI. The request may be submitted in writing or verbally through a statement given in front of a labour inspector. After doing so, the labour inspector is obliged to act upon it and to conduct an inspection procedure. In this case, because there are no deadlines stipulated in LSI and LLS, according to the principle of subsidiarity, the general deadline of 30 days from the day of submission of the request provided for in the LGAP is valid.[38]
> -The labour inspector in this case is entitled to that without prior notice, at any time of the day and night, to enter the premises of the employer and to carry out the inspection supervision.[39] In carrying out the inspection supervision, the inspector is obliged to undertake all legal actions necessary for determining the factual situation, that is, in accordance with the above, to inspect, to collect all necessary information, to demand personal documents, take statements from the persons found with the employer and similar. When the labour inspector determines an infringement of a right of a citizen who has submitted a request or a denial of a right, in accordance with the law shall prescribe appropriate inspection measures in order to eliminate the irregularities that led to the injury or disabling of law enforcement. In such a case, the inspector shall, with a decision, order the employer to take appropriate actions within a specified period to eliminate the identified irregularities.
> - When the determined irregularity is determined as a misdemeanour by the material laws, the inspector shall initiate an appropriate misdemeanour procedure before a misdemeanour body or competent court.
> - If the established violation is punishable by a misdemeanour or mandatory payment order, the inspector shall issue an appropriate payment order before initiating a misdemeanour procedure.

In the established legal framework for conducting the inspection supervision, of special importance are the established deadlines, administrative measures and actions, as well as the categorisation of the misdemeanours with the stipulated penalties. As far as the deadlines are concerned, it can be

[36] Article 16 of the Law on Labour Inspection.
[37] Article 32 of the Law on Inspection Supervision.
[38] Article 93 of the Law on General Administrative Procedure.
[39] Article 10 of the Law on Labour Inspection.

concluded that the period of 30 days to act upon a request for inspection is too long. This term is inappropriate because the matter has to do with labour issues that are directly related to existential status of the citizen and such protection requires special priority and urgency. The long deadline further complicates the situation of the employee, since at the same time, the period of 8 days for submitting an objection or a request to the employer regarding the committed violation, and then the deadline of 15 days for initiating litigation. In this situation, the employee would simultaneously submit a request to the SLI and a complaint to the employer. Thus, if the inspector does not act in the period of the duration and the termination of the procedure on the objection with the employer, and the employee subsequently has initiated litigation, the inspector shall only have the possibility to suspend the execution of the decision for employment termination until the completion of the dispute.[40]

The suspense effect of the appeal on the decision of the inspector for elimination of irregularities contributes to the length of the deadlines.[41] If the employer contests the decision with an appeal, the protection procedure is extended for additional 30 days, that is, until the decision on the appeal by the State Commission for decision-making in administrative procedure and the second-instance employment procedure is adopted. Also, no legal deadline for acting upon the inspector's decision to remove the identified irregularity has been foreseen.[42] In this case, the determination of the terms for removing the irregularity is in the absolute disposition of the inspector.

Further, the inspector's decision to remove the irregularity or annul the decision of the employer does not produce a retroactive effect. This is reflected in the cases where the employer terminates the employee's employment contract without grounds for doing so and shall unregister the employee from social benefits insurance with ASE by filing a report which nowadays can even be done electronically,[43] - and this for reasons that the ASE[44] does not have jurisdiction to check the legality of the termination of employment during the filing of the deregistration report in the system of records. The employee, although after the intervention by the inspector and the cancellation of the dismissal by the employer, shall return to work, he or she shall face an interruption of employment and lost days in terms of unpaid salary and benefits contributions. Consequently ESA, the employee can receive compensation only through the courts.

Moreover, the gradation is not appropriate, i.e. the categorisation of the severity and consequences of the violation of the rights, and hence the determination of the amount of the penalty for the committed misdemeanour in the misdemeanour provisions of the LLR. A revision of existing

[40] Article 262 of the Law on Labour Relations.
[41] Article 263 of the Law on Labour Relations.
[42] Article 258 of the Law on Labour Relations.
[43] Article 13 of the Labour Relations Law.
[44] Article 51 of the Law on Employment and Insurance in Case of Unemployment, Official Gazette of the Republic of North Macedonia No.37/97, 25/2000, 101/2000, 50/2001, 25/2003, 37/2004, 4/2005, 50/2006, 29/2007, 102/2008, 161/2008, 50/10, 88/10, 51/11, 11/12, 80/12, 114/12, 39/14, 44/14, 113 / 14, 56/15, 129/15, 147/15, 54/15, 27/16, 118/16, 21/18 and 113/18) and Article 16 of the Law on Labour Records, Official Gazette of the Republic of North Macedonia No. 16/04, 102/08, 17/11, 166/12, 11/13 and 147/15.

administrative measures that can be undertaken by during inspection oversight. This is especially necessary in the area of education of perpetrators about the offenses.[45] A characteristic for an inspection measure "Education" is that after it is carried out and the irregularity is removed, the inspection supervision is stopped. Consequently, it is concluded that by stopping, the misdemeanour responsibility of the perpetrator is avoided. On the other hand, it is not completely clear what happens when the perpetrator, that is, the employer in this case, repeats the violation. Such an inspection measure should, as a rule, refer to minor injuries or disregard for obligations of a formal and procedural nature, which do not affect to a great extent the realisation of the rights arising from employment. This is not the case with regard to Articles 195,[46] 213-c[47] and 252 of the LLR,[48] for whose injuries, the measure of education are prescribed. This is especially important given the seriousness of the injuries, that is, the possible consequences of the injuries. It is a mistake to treat this type of violations by measure of education. In this case, a maximum penalty in the amount of 1000 euro in MKD equivalent for the employer is possible only if the measure of educational was not successful, that is, if the irregularity has not been eliminated. These cases pertain to fundamental rights of the citizens, which are founded in the constitutional order.

As an example of the inadequate gradation of penalties, the imposed fine of EUR 1200 paid in MKD equivalent for a violation committed by an union that shall fail to report the changes in the data to the competent authority which maintains the register of unions within a period of 30 days, as opposed to the penalty of EUR 1000 for a committed misdemeanour by an employer who monitors the establishment and the activity of the trade union.[49] Also, as a result from the current legal framework, special attention is drawn to informing the applicant of the outcome of the conducted inspection. Here, it is not clearly defined whether along with the notification to the applicant, the decision of the inspector for removal of irregularity is provided. This is of particular importance for the applicant in case he/she does not agree with how the inspector has established the factual situations is that he/she can exercise the right to appeal to the State Commission for decision-making in administrative procedure and procedure of employment in the second instance.[50]

[45] For example, Article 258-a of the Law on Labour Relations stipulates a procedure of Invitation to Education for committed violations, i.e. for disrespect of imperative obligations from Articles 19, 23, 24, 50, 70, 71, 182, 183, 195, 213-c and 252. When the inspector determines a committed irregularity and prepares a report in which he shall instruct the employer to remove the irregularity within 8 days and at the same time shall give him/her an invitation to attend education within the same period.

[46] Article 195 of the Law on Labour Relations refers to the prohibition on employers and employers' associations to exercise surveillance over the activities and of the establishment of trade unions.

[47] Article 213-c refers to the obligation of the employer to issue a certificate with a list of employees who pay membership fees to the trade union, for the purpose of determining which union has the right to representation.

[48] Article 252 refers to the possibility for the employer to hire persons for performing certain physical or intellectual duties outside the employer's activity by way of a separate contract. The violation occurs when the employer contracts such services in violation to Article 252.

[49] Article 265-a and Article 266 of the Law on Labour Relations.

[50] Article 263 of the Law on Labour Relations.

3.6. Satisfaction of workers with the Labour Inspectorate

The legal framework, in which the work of the Labour Inspectorate is determined, although with its own shortcomings, provides inspectors with sufficient independence in the protection of the rights of the workers. SLI has a total of 103 inspectors in the areas of labour relations and occupational safety and health deployed in 30 areas, of which, 88 inspectors can carry out independent supervisions.[51] Regarding the data on the total number of inspections carried out, this would mean that in 2017, a total of 31,690 inspection supervisions were carried out, or 1,2 inspections per day per inspector. It is not a surprise that the survey shows that satisfaction among citizens of this type of institutional protection is extremely low. Consequently, the conclusion is that labour inspectorates do not enjoy trust among citizens.

Namely, out of the conducted survey on a total of 839 respondents, complete dissatisfaction with the work of the SLI expressed 64.2%, and partly dissatisfaction 12.6% of the respondents. About the regional labour inspectorates, 66.9% expressed complete dissatisfaction while partly dissatisfied were 11.4% of the respondents. By demographic categorisation, the Regional Labour Inspectorate enjoys the least confidence in the group of citizens from North Macedonian (43.7%) and Albanian ethnicity (18.5%) who have indefinite term employment contracts (42.9%) with incomes from MKD 12.000 to MKD 18.000 (22.6%) and MKD 18.000 to MKD 25.000 (18.7%) who work in the private sector (41.1%).On the other hand, the State Labour Inspectorate enjoys least confidence among the North Macedonian population with 42%, workers with indefinite term employment contracts (42.3%) and salary from MKD 12.000 to MKD 18.000 (21.9%) and MKD 18.000 to MKD 25.000 (18, 6%) who work in the private sector (38.7%).

By regions, the image about the distrust of the Regional Labour Inspectorate (RLI) looks like this: in the Skopje region, the survey included 446 citizens, of which 58.5% are not at all satisfied, while 12.8% of the respondents are partially dissatisfied with the regional labour inspectorate. The satisfaction with the RLI ranges in very small margins of 1.3% of respondents who are partly satisfied and 0.7% of respondents who are fully satisfied with the work of RLI. Regarding the State Labour Inspectorate, out of the total number of respondents in the Skopje region, 56.3% declared themselves completely dissatisfied and 14.3% were partially dissatisfied. Also, the satisfaction with SLI in this region ranges from 0% satisfied to 2.7% of partially satisfied surveyed workers. In any case, the respondents from the Skopje region are less dissatisfied with the work of the SLI than the work of the RLI.

In the Bitola region, 114 workers answered the poll, of which 70.2% are not satisfied at all and 14.9% are partially dissatisfied with the work of the RLI. Satisfaction with the work of the RLI in the Bitola region hardly exists. Regarding the SLI, the respondents in the Bitola region also expressed great dissatisfaction with 69.3% of the respondents who expressed complete

[51] Strategic Plan of the State Labour Inspectorate 2018-2020, available at: https://bit.ly/2DCoQQv last accessed on: 15.12.2018.

dissatisfaction and 13.2% who expressed partial dissatisfaction with the SLI. The satisfaction with SLI, as well as the satisfaction with RLI almost does not exist. As in the Skopje region, in the Bitola region as well, the surveyed workers are less dissatisfied with the work of the SLI than the work of the local inspectors.

In the same line is the Shtip region, where the survey yielded similar results as in the previous two regions. Of the total of 108 respondents, 75% are completely dissatisfied, and 11.1% are partially dissatisfied with the RLI. Only two respondents expressed satisfaction from the RLI in Shtip, and in terms of the SLI, Shtip region displays similar findings. Out of the total number of respondents, 73.1% are completely dissatisfied and 10.2% are partially dissatisfied. Only one worker expressed satisfaction with the work of the SIT.

Finally, in the Gostivar region out of 154 respondents, 80.5% said that they were not satisfied at all with the work of the Inspectorate in their city, and 6.5% that they were partially dissatisfied. Only one respondent surveyed in this region showed partial satisfaction with the RLI. Also, the SLI in this region does not enjoy any particular trust. Of the total number of respondents 76.6% expressed complete dissatisfaction and 9.7% partial dissatisfaction with the SLI. However, unlike other regions, in Gostivar, partial satisfaction expressed 2.6% or respondents while 1.3% expressed their complete satisfaction. As in other regions, in Gostivar, the surveyed citizens show less dissatisfaction with the work of the SLI.

> "*I have submitted reports to SLI about various companies. In most of the cases, the SLI concluded that the rights were not violated, although they were clearly violated. With the judiciary I do not have any experience directly. The problem with us is that justice is too expensive. You need to invest a lot in order to come to court. An employee who works for minimum or average salary cannot afford it, and there is neither neither time nor funds. Here the employer is strong from the very start because they are able to pay lawyers, find good legal experts or bribe judges. The court system is not neutral at all and stands on the side of the more powerful. And as far as SLI it happens so that some complaints pass but with some mathematics ... Of them, two shall pass, eight shall not pass. So 80% of the complaints for which there are reasonable grounds that the workers' rights are violated, do not pass. Before the inspection is carried out, they inform the employers. He/she is not regular, but he is an extraordinary, and the boss shall whitewash it somehow. Generally I'm not satisfied*"

(Focus Group in Bitola)

To the question "Do you know someone who has had the employment rights violated and whether they have used some of the mechanisms for protection?" The workers from the Bitola and Shtip focus groups highlight experiences similar to what the survey shows us. As a positive side, they define the possibility of anonymous reporting of violations of workers' rights. However, according to the workers' statements, after the report, inspectors immediately contact the employers and thus neutralise the possible violations and irregularities or do not perform inspection supervision at all.

Even when inspection oversight is carried out, employers have their own methods of circumventing the process by compelling the workers to declare to inspectors that they are on the first or second day of employment.

However, there are also positive experiences. The experience of a worker from Bitola is quite remarkable. She reported several instances for non-payment of K-15 to local inspectors, but, in her words, she was met with unresponsiveness and indifference. Later, the worker reported several times at the headquarters in Skopje, and finally this initiative has resulted in a positive outcome, the worker has received the funds.

Inspection oversight, dynamics, content and outcome

In terms of the total number of inspections in the field of labour relations and occupational health and safety, according to the data obtained from the SLI for the period from 2015 to 2017, a statistical overview of the dynamics, content and outcomes of the inspection oversight can be made. The data show that the average number of inspections carried out annually for the given period amounts to 36,424 inspections, including regular, extraordinary and controlling supervisions in the field of labour relations and in the field of occupational health and safety. The majority of these surveys (47,283) were carried out in 2015. Data show that there is a sharp drop in the number of inspections carried out in 2016 and 2017. In percentage terms, there is a 36% drop in inspection oversight in 2016, or a decline of 16,984 oversights compared to 2015.

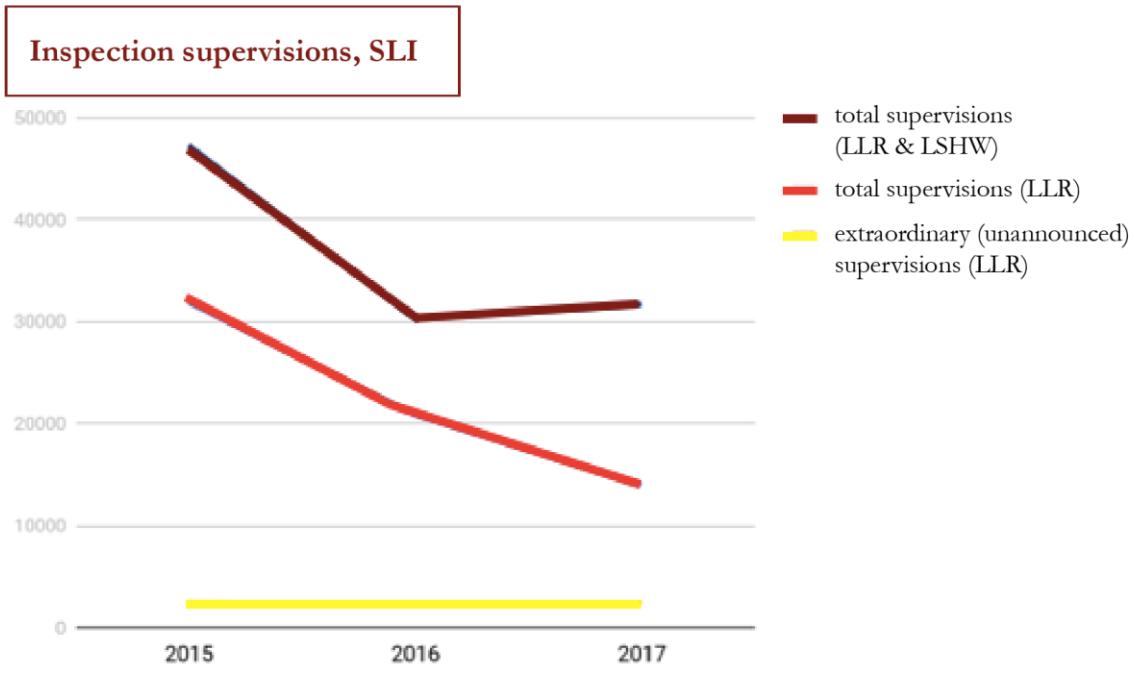


Figure No. 2 - Graphical overview of the SLI inspections in the period from 2015 to 2017

In the area of labour relations, in the period from 2015 to 2017, the inspection supervisions registered an average drop of 33.7%. Out of 31.899 surveys conducted in 2015, in 2017, the number of inspection supervisions is reduced to 13.988. This tendency coincides with the aforementioned amendments in the LIS from 2013 and 2014, which were related to the position and status of SLI and the introduction of monitoring and evaluation of the success of the work of the inspectors. These changes give the managing authority the right to: (1) establish the Annual Work Programme, which makes provisions for an annual number of planned regular inspection supervisions, and (2) to determine the coefficients of complexity of oversight through an internal act. Unlike the regular inspections, the extraordinary inspections in the field of labour relations show a stable development line, with the average number of performed surveillance on annual level of 2433.

Regarding the total number of identified irregularities, a total of 6,599 irregularities were identified in 2015 and decisions for their removal were issued, in 2016 this number is 4,362, and in 2017 the number is 4,151.Regarding the number of submitted misdemeanour charges, in 2015, a total of 255 misdemeanour charges were filed and 264 misdemeanour payment orders were issued, while in 2016 115 misdemeanour charges and 133 orders were filed as well as 82 misdemeanour charges and 96 orders in 2017 year.

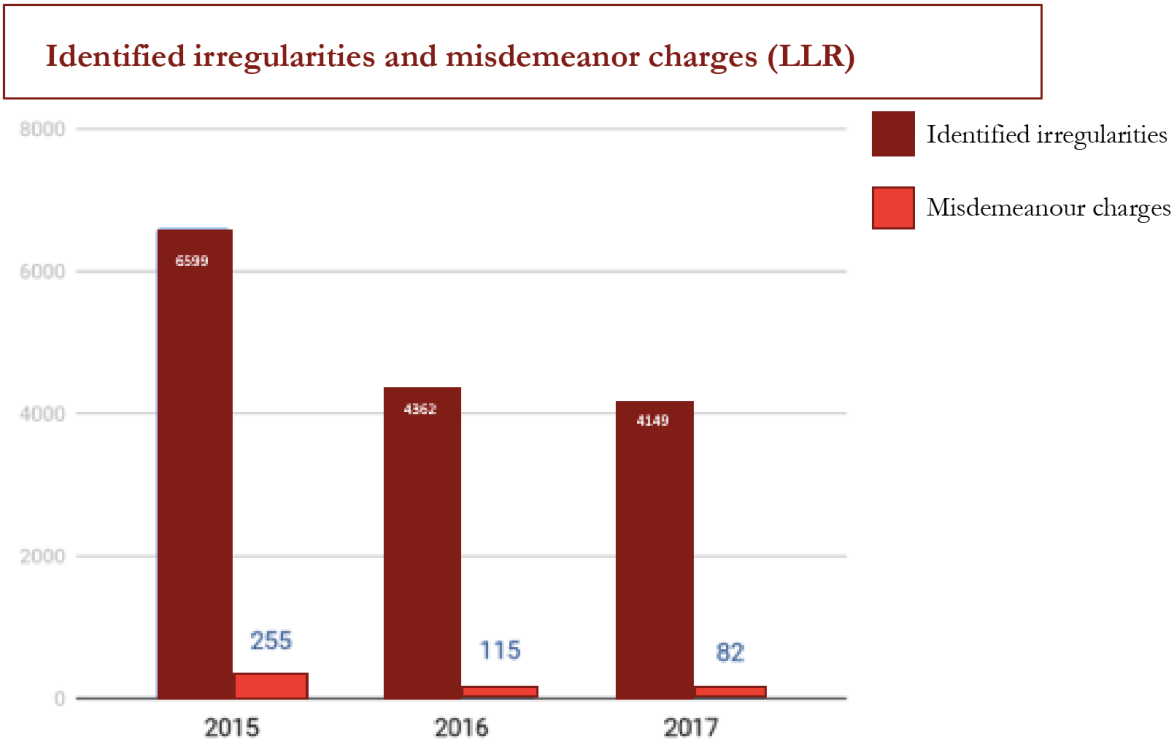


Figure 3 - Graphic presentation of the identified irregularities in the period from 2015 to 2017

According to publicly available information, the largest number of submitted complaints to the SLI refer to salaries and allowances from employment and termination of employment. Consequently, by the SLI, the highest number of violations was found in the rights to salaries and allowances from

employment and paid overtime, while most misdemeanour charges were filed in relation to the undeclared workers, that is, persons without employment contract. Hence, it can be noted that the identified violations correspond with the submitted complaints only in with regard to salaries and remunerations from labour relations, and not with the complaints about the termination of the employment. All this leads to believe that the SLI has failed to determine irregularities, i.e. injuries in relation with termination of employment, or failed to act effectively upon this type of complaints. In 2015, a total of 2,412 injuries were found in connection with salaries and allowances, in 2016 this number was 912, and in 2017, 765 such cases were registered. This means that this practice, although still present, is in constant decline.

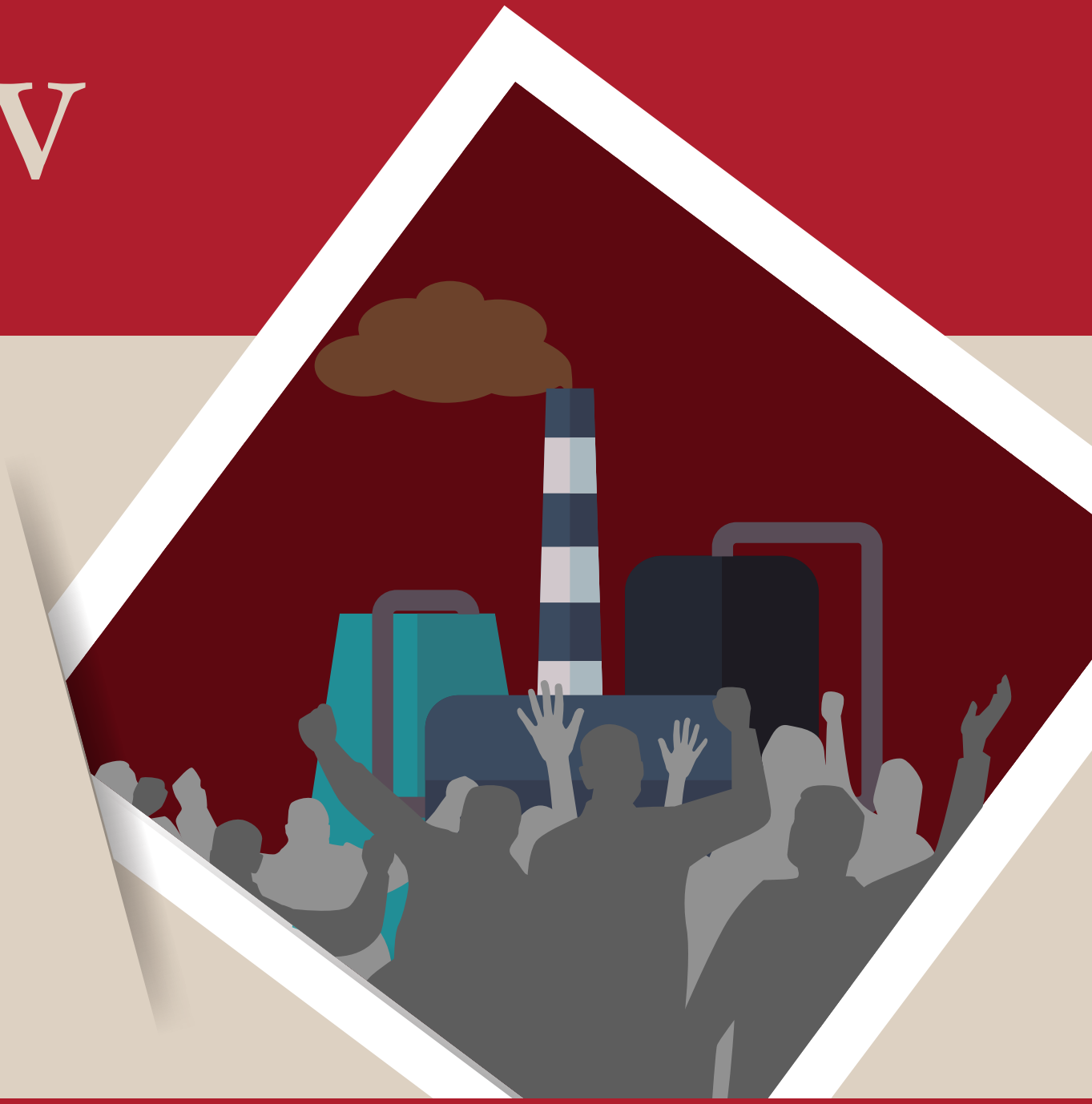
From this it can be expected that court protection shall be much more used as a form of protection due to the long deadlines for inspection protection. Such deadlines should be shortened in accordance with the principle of urgency and priority, following the example of deadlines in labour relations judicial proceedings. In these disputes, the first hearing is held no later than 30 days from the date of the filing of the lawsuit. Regarding the institutional framework for the functioning of this protection mechanism, the findings from the survey point to that the decision to initiate a misdemeanour procedure is in full disposition of the labour inspectors despite the legal duty they have to initiate such a procedure. Further, the determination of the fine based on the established infringement after the conducted inspection supervision requires the preliminary collection of necessary data for the employer, which requires quick and easy access of the inspector to data from relevant institutions such as the PRO, SEA, or the courts. The findings from the survey show that there is no interconnected data system between the State Labour Inspectorate and the relevant institutions, which suggests that this is could be one of the possible reason for the small number of issued misdemeanour payment orders, or initiated misdemeanour procedures. The data on the number of inspections carried out and initiated misdemeanour procedures as well as the pronounced fines, suggest that the initiation of a misdemeanour procedure is not a duty of labour inspectors, but rather their discretion.

The rights, for whose violation education is foreseen, as stated earlier, must be guaranteed through a more rigorous protection mechanism, because the employer's intention cannot be treated as negligence, and for that purpose an education procedure to be prescribed. Such rights could be protected more appropriately by introducing the possibility of issuing a mandatory payment order. This would have the effect of deterring employers from taking actions that would violate or limit the freedom of association or failure to report employments of workers. Also, the possibility of larger utilization of prohibition as sanction for repeated violations of rights should be taken into consideration. This is primarily the case in situations of violation of the employee's substantive rights, where the consequences directly affect the material condition and personal dignity of the employee.

Hence, the conclusion can be drawn that institutional protection is not a prerequisite for judicial protection. The way the current system is set up brings forth the conclusion that the worker, from the mechanisms of protection, has only judicial protection and only partial institutional protection at

his disposal, because of the fact that the chances of quick reaction of the inspector to the requests of the inspection supervision and the adoption of appropriate inspection measures for removal the injury are reduced.

IV



Court Protection

Section 4 - Court Protection

Independent from the institutional protection, citizens also have the right to judicial protection of their labour rights. Article 50 of the Constitution of the Republic of North Macedonia guarantees the basic rights and freedoms of citizens by stipulating that every citizen has the right to judicial protection of the rights and freedoms set forth by the Constitution before the courts and the Constitutional Court of the Republic of North Macedonia in a procedure based on the principles of urgency and priority. Bearing in mind that labour rights are human rights, the judicial protection of these rights is regulated by a set of regulations that regulate the labour area.

The formal and legal aspect of the judicial protection of labour rights is regulated by the Law on Civil Procedure (LCP).[52] Having in mind the nature of labour rights, the implementation and enjoyment of which impacts the material and social status of the citizen, the legislator envisaged shorter procedural deadlines for resolving court disputes from labour relations. In that sense, the court shall always pay special attention to the need for urgent resolution of labour disputes in the procedure for disputes arising from labour relations, and especially in the determination of deadlines and hearings.[53] Consequently, for this type of disputes the deadline for responding to the complaint is 8 days, opposite to the general one of 15 days, while the hearing for the main hearing must be held within 30 days from the day of the receipt of the lawsuit. The procedure before the first instance a court must be completed within six months from the date of filing the complaint, while the second instance court is obliged to bring the decision after the lodged appeal in a 30-day period from the day of the receipt of the appeal or within two months if a hearing is held.

In accordance with the expediency, the 8-day grace period for voluntary obligation fulfilment deadline of a court decision amount determined in the verdict, as well as the deadline for filing an appeal, which is also 8 days. Particularly significant to the employee is the possibility of being represented by a graduate lawyer employed by the union whose member is the employee, which is a mitigating circumstance for these workers, having in mind the amount of the costs for legal services in court proceedings.[54]

The material and legal aspect of the judicial protection is covered by the material regulations that regulate the right of judicial protection of the employee. The Labour Law stipulates the right of the employee to submit a written request to the employer requesting him to remove the violation of the right and to fulfil the contractual obligation.[55] This stipulated right is realised by the employee in two situations: (1) when the employer is obliged to secure or recognise a certain right of the employee, which the employer failed to do; (2) in the case when the employee is recognised a right respectively it is stipulated by law, and the employer does not respect it in whole or partially. An example of the first situation would be when the employer would not respect the ban on overtime work for a

[52] Article 405 of the Law on Civil Procedure.
[53] Article 406 of the Law on Civil Procedure.
[54] Article 181 of the Labour Law.
[55] Article 164 of the Labour Relations Law.

pregnant worker.[56] Second situation would be when a worker has a break from working for a time of 30 minutes, and the employer allows him to use a break in duration of 15 minutes.
Furthermore, in case when a written decision by the employer has violated a certain right of the employee, the employee has to request in written to the employer for the violation of the right to be removed within 8 days of the delivery of the decision. The effectiveness in achieving this protection is closely linked to the familiarity of the workers with their labour rights. This is especially the case when there is no provision in the LLR which stipulates the mandatory listing of legal advice in the written decision of the employer. When the violation of the right shall not be removed or the decision for dismissal in the procedure for objection to the employer is not annulled, the employee has the right to request court protection within a period of 15 days before a competent court.[57]

Satisfaction from the Primary and Courts of Appeal

The results from the conducted survey questionnaire regarding the primary and courts of appeal in total figures look like this: 49.9% of the respondents reported that they are not satisfied at all from the work of the first – instance courts on the entire territory of the Republic of North Macedonia, and 17.2% answered that they are partly not satisfied with the work of the first - instance courts. Only 1% of the respondents were completely satisfied with the work of the first - instance courts on the entire territory of the Republic of North Macedonia, and 3.3% of the respondents were partly satisfied. The situation is similar with the courts of appeal. Out of the total number of respondents, 44.2% expressed total dissatisfaction with the courts of appeal, while15.6% expressed their partial dissatisfaction. Regarding satisfaction with the courts of appeal, 3.1% expressed total satisfaction whereas 0.8% partial satisfaction.

Regarding the demographic characteristics of the population and their dissatisfaction, by crossing the variables, it can be noted that the greatest dissatisfaction with the work of the first - instance courts is in the age group of 26-35 years (15.6%) and 36-45 years (17.5%), of North Macedonian ethnicity (30.6%), with fixed-term contracts (32.9%), with salaries from MKD 12.000 to MKD 25.000 (15.3%) working in the private sector (27.3%).

The demographic characteristics also show a similar situation with the dissatisfaction from the courts of appeal. However, apart from the first - instance courts where men and women are equally dissatisfied, more men (25.4%) are dissatisfied from the court of appeal versus women (7.3%), of North Macedonian ethnicity (26.3%), with contracts on indefinite time (28.2%), with monthly income from MKD 12.000 to MKD 25.000 (13.1%) employed in the private sector (24.4%).

Regarding the dissatisfaction with the work of the first - instance courts, divided by regions:

- In the Skopje region, out of 446 respondents, 42.8% show complete dissatisfaction whereas partly dissatisfied are 17.3%.4.3% show partial satisfaction from the work of the First - instance courts in the Skopje region again.

[56] Article 164 of the Labour Relations Law.
[57] Article 181 of the Labour Law.

- In the Bitola region, out of 114 respondents, 55.3% are not at all satisfied with the work of the court, and21.1% are partially dissatisfied with the work of the first - instance court. The satisfaction from the work of the first - instance courts regarding labour disputes in this region is insignificant.
- In the Shtip region, out of 108 respondents, 50% are completely dissatisfied and 24.1% are partially dissatisfied with the work of the first - instance courts of that region.
- In the Gostivar region, out of 154 questionnaires answered, 64.9% are not satisfied with the work of the first - instance courts, and11% are partially dissatisfied .1.9% of the respondents are fully satisfied with the work of the first - instance courts in this region, and 1.3% are partially satisfied.

As far as the satisfaction of the surveyed workers on the work of the courts of appeal, the mood among the respondents is as follows:

- As for the Court of Appeal - Skopje, out of 446 answered questionnaires, 37.4% are completely dissatisfied, while 16.8% are partially dissatisfied. The satisfaction from the work of the Court of Appeal - Skopje ranges from 3.6% partially to 0.9% completely satisfied.
- From the Bitola Court of Appeal, out of 114 respondents, 50% said that they were not satisfied at all and 14% were partially dissatisfied. Respondents are partially satisfied with the work of the Court of Appeal -Bitola in terms of the verdicts on labour issues which are 4.4%, while there are no completely satisfied respondents.
- There is a similar mood in the region of Shtip regarding the Court of Appeal. Of the total of 108 respondents, 43.5% stated total distrust, and 18.5% partial mistrust. The trust in the Court of Appeal -Shtip is insignificant.
- Finally, as for the Court of Appeal - Gostivar, out of a total of 154 respondents, 59.1% stated total dissatisfaction and 11.7% said they were partially dissatisfied. However, apart from Shtip, 2.6% are partially satisfied from the Court of Appeal -Gostivar and 1.3% of the respondents are completely satisfied.

Information of Public Character

From the processing of data obtained through the requests for access to information of public character, regarding court cases on labour relations, in the period from 2015 to 2017, the average number of court cases on labour issues annually with the first - instance courts in the Republic of North Macedonia is 9706 cases, out of which on average annually in the given period 27.33% are cases on labour issues in the First - Instance Court Skopje 2 Skopje. In this period on average annually there are 57% of cases resolved on labour issues in this Court. Judicial Department on labour disputes in the First – Instance Court Skopje 2 has a total of 6 judges for labour disputes that have an average of 2736 cases annually. The average deadline for completing court proceedings before this court is 5 months, which is less than the legal deadline of 6 months.

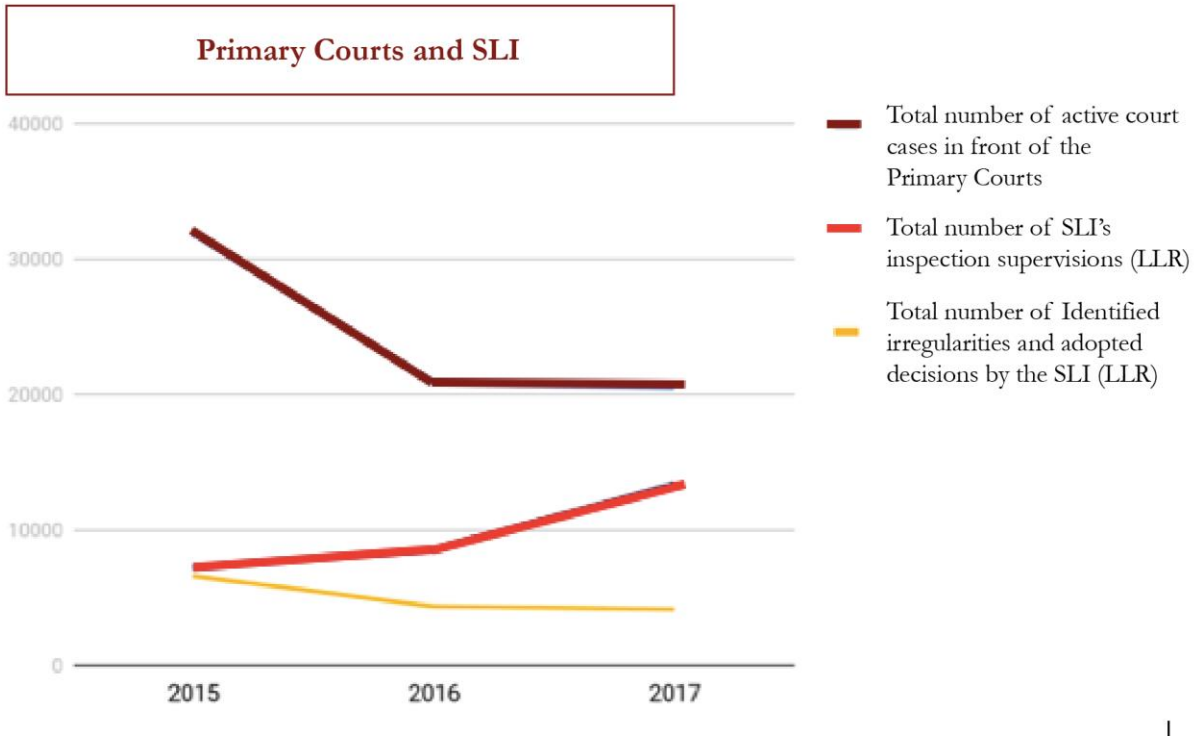


Figure 4 - Data on the total number of first-instance court cases in operation

Of particular interest is the comparison between the number of inspections carried out, the degree of established irregularities and the number of court cases on labour relations in the first - instance courts in the time series from 2015-2017. From such a comparison, it can be noted that the court cases in operation have increased in spite of the decreasing number of inspection surveillance and adopted decisions after determined irregularities. The average rate of increase in court disputes that come from labour relations in the last years in this period was 33.65%.

In legal disputes arising from labour relations, as legal bases dominating are the financial claims, that is, compensation from employment, compensation of damages from employment, the annulment of the decision and termination of employment. Thus, in the region of the Shtip Court of Appeal , in 2017, the highest number of court cases in the second instance were for labour remuneration with a share of 79% of the total number of cases, followed by cases related to annulment of a decision (3.8 %), in relation to dismissal (2.1%) and the rest (15.1%). The situation is similar in the region of the Gostivar Court of Appeal, where in 2017 court cases related to employment benefits represent 88.7%, before the cases related to compensation of damage (4.8%), annulment of the decision (1.7%) and the rest (4.8%).

In the courts of appeal, with regard to the territorial distribution of cases in the period from 2015 to 2017, the data show that the majority from the total number of court cases on labour relations in the second instance is processed in the Court of Appeal Skopje, or an average of annually 53, 64% of the total number of cases in the Republic of North Macedonia. In the same period, on average

annually in the courts of appeal are 4369 court cases, a total of 3258 cases are solved on average, while there are 2924 cases received on average annually. Regarding the outcome, the courts of appeal in Bitola, Shtip and Gostivar for the same period annually settle 1908 court cases, of which 70% confirm the first instance verdict, 15% decide on the merits, i.e. they alter the verdict and 15% annul the first instance decision of the first - instance courts in these areas.

Regarding the deadlines for decisions of courts of appeal in appeals procedures, the average cases are within the legal deadline of 30 days, with the exception of the Skopje Court of Appeal, where the second instance proceedings end in an average period of 6 months.

Having in mind the set deadlines, and in relation to the existing deadlines for acting by the inspection body, it can be concluded that it is necessary to increase the deadlines for filing an objection and a lawsuit. This is primarily due to the fact that such an increase would enable more efficient institutional protection of workers.

V

Alternative Mechanisms of Protection

Section 5 - Alternative Mechanisms of Protection

Out-of-court alternative mechanisms for protection in the area of labour disputes were for the first time regulated with a special law, in 2007 by the Law on Peaceful Resolution of Labour Disputes (LPRLD).[58] The purpose of such alternative out-of-court mechanisms is to achieve an efficient and cost-effective resolution of labour disputes, with which the workers and employers would jointly benefit. LPRLD did not come to live in practice for seven years until the amendments were made to the Law of 2014. With these amendments, the Law removed the provisions that stipulate the establishment and functioning of the Republican Council for the peaceful settlement of labour disputes and that Council was replaced by a special Tripartite Commission formed by the Economic and Social Council (ESC).[59] The Commission is in charge of granting proposals for licensing conciliators and arbitrators, while the overall professional and administrative support in the implementation of these procedures has been transferred to the Ministry of Labour and Social Policy (MLSP).

The peaceful resolution of labour disputes is conducted for collective and individual labour disputes, and is based on the principles of voluntariness, independence, neutrality and impartiality.[60] This means that the parties of the dispute voluntarily decide to approach a peaceful settlement to the dispute. In this dispute, as a third, neutral, independent and impartial party, as a participant is the conciliator in the collective and an arbiter in the individual labour disputes. The legal bases for initiating this type of procedure are limited. In collective labour disputes, the basis is the conclusion, amendment, supplement or the application of a collective agreement, the exercising the right for a trade union organisation and strike. Basics to the individual labour dispute are the cancellation of a contract for employment and non-payment of salaries. Collective labour disputes are settled peacefully through a conciliation procedure, while individual labour disputes through arbitration.[61] Arbitration in individual labour disputes means that the decision taken by the arbitrator is final and enforceable after the expiration of a certain grace period.[62]An appeal is not allowed against the arbitrator's decision.

The main characteristic of this type of procedure is voluntary and optional, while for the attractiveness of the procedure, the legislator foresaw the compensation for the arbitrator and the conciliator to be borne by the MLSP.[63] The voluntary and free procedure for peaceful resolution of collective disputes is regulated in LPRLD in accordance with ILO Recommendation no. 92.[64]

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[58] Law on the Peaceful Resolution of Labour Disputes, Official Gazette of the Republic of North Macedonia No. 87/07, 27/14, 102/14 and 30/16.
[59] Article 8 of the Law on the Peaceful Resolution of Labour Disputes.
[60] Article 2, Article 3, Article 5 and Article 6 of the Law on the Peaceful Resolution of Labour Disputes.

[61] Article 4 of the Law on the Peaceful Resolution of Labour Disputes.
[62] Article 35 of the Law on the Peaceful Resolution of Labour Disputes.
[63] Article 14 of the Law on Peaceful Resolution of Labour Disputes.
[64] The recommendation suggests that a voluntary reconciliation mechanism, which would help prevent and resolve industrial disputes between workers and employers, should be established according to national conditions.

Accordingly, the same principle of voluntarism in LPRLD applies to individual labour disputes. The procedure for peaceful resolution of labour disputes shall be initiated by written proposal to the MLSP, which proposal may be submitted by the parties jointly or individually.[65] When the proposal is submitted by one of the parties, then the MLSP delivers it to the opposite side, which, upon receipt of the proposal, has a period of 5 days to declare whether it accepts a peaceful settlement of the dispute[66] failure to declare within the deadline is considered as non-acceptance of the proposal.

At first glance, the maximum deadlines according to LPRLD are 30 days for the collective and 45 days for individual labour disputes. However, if we analyse Article 11 of the LPRLD it can be seen that it is not foreseen in which deadline the MLSP should submit the proposal to the other party. Here, having in mind that it is a state administration body, it is assumed that after receiving the proposal, the MLSP shall act in accordance with the general deadline of 30 days foreseen in the LGAP. Consequently, the MLSP in this case, when it is not limited by the deadline for acting in the LPRLD, has the discretion to decide, i.e. to influence the duration of the procedure for peaceful resolution of labour disputes.

Furthermore, there are no provisions in LPRLD that would foresee the termination of the deadlines for submitting an objection to the employer, i.e. a lawsuit for initiating litigation. This is of particular importance in cases where the employee would submit an individual proposal for initiating a procedure for peaceful resolution of an individual labour dispute in the case of cancellation of the employment contract. In this case, the employee, who although submitted a proposal for peaceful settlement of the dispute, simultaneously runs the deadline for lodging an objection to the employer, that is, the deadline for filing a complaint to the competent court.

Regarding this mechanism, a dilemma is raised about the sufficiency of the legal base for arbitrary resolution of individual labour disputes. From 2015 until today, this mechanism has been used 7 times, 4 times in the case of collective labour disputes and 3 times for individual labour disputes. There are positive outcomes in two of the collective labour disputes, while negative in the remaining two, while the outcome of all three procedures for individual labour disputes is positive. In all 7 cases, the parties submitted the proposal jointly.

[65] Article 10 of the Law on the Peaceful Resolution of Labour Disputes.
[66] Article 11 of the Law on the Peaceful Resolution of Labour Disputes.

VI

Discrimination

Section 6 - Discrimination

The LLR foresees a ban for discrimination against the employee and the candidate for employment. It is stipulated that the employer cannot place employees in an unequal position due to racial or ethnic origin, skin colour, gender, age, health status, religious, political or other opinion, union membership, national or social origin, family status, property, sexual orientation or other personal circumstances.[67] Furthermore, equal treatment and opportunities for women and men are regulated, i.e. it is emphasised that equal opportunities and equal treatment must be provided for them: access to employment, including promotion and vocational and professional training at work; working conditions; equal pay for equal work; professional social security schemes; absence from work and working hours and cancellation of the employment contract.

Discrimination is exclusively prohibited in regards to:

1. the conditions for employment, including the criteria and conditions for selecting candidates for performing a particular job, in any branch or department, in accordance with the National Classification of Activities and at all levels of the professional hierarchy;
2. progress in work;
3. access to all types and degrees of vocational training, retraining and additional qualification;
4. working conditions and all rights from employment and with regards to employment, including equality of wages;
5. cancellation of the working contract and
6. the rights of members and actions in associations of workers and employers or in any other professional organisation, including the benefits deriving from that membership.

The established provisions against discrimination and equal treatment and equal opportunities are in line with ILO Convention No. 111,[68] as well as the EU Directive 2006/54 / EC.[69]

Also, it stipulates the prohibition of discrimination for a special category of citizens, that is, a candidate for employment and worker due to pregnancy, birth and parenthood, regardless of the duration and type of employment based on the law, which prohibits their access to employment, the conditions for work and all rights of employment and the termination of the employment contract for workers who are in a state of pregnancy or use rights arising from birth and parenting.[70]

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[67] Article 6 of the Law on Labour Relations.
[68] ILO,C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
[69] Directive 2006/54 / EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204, 26.7.2006, p.23-36.
[70] Article 9-b of the Law on Labour Relations.

Regarding discrimination, the LLR determines that the burden of proof falls on the employer.[71] However, in addition to the established prohibitions on discrimination in relation to employment and labour relations, the LLR does not have misdemeanour provisions. Misdemeanour provisions for violations with elements of discrimination are foreseen only in the access to employment for the prohibition for gender determination of a vacancy, the prohibition on requesting information on family, marital status, family planning and the request for a pregnancy test and a ban on dismissing a pregnant worker.[72] In all other cases of violations with elements of discrimination, the labour inspector may act as in cases of violation of labour rights. Consequently, the inspector through issuing inspection measures shall act in the direction of removing the identified irregularities and issue a misdemeanour order for violations to the labour law.

Hence, several questions arise. First, how would the employer's responsibility for the perpetrated discrimination is sanctioned? Second, would the inspector conduct a misdemeanour procedure in accordance with the misdemeanour provisions of the Law on Prevention and Protection against Discrimination (LPPD)?[73] Third, can an employee as an injured party initiate a misdemeanour procedure before the competent court having in mind the provisions of the LPPD?

The LLR defines harassment and sexual harassment as discrimination as in the meaning in Article 6 of the Act.[74] Harassment is any unwanted behaviour that has the purpose or constitutes a violation of the dignity of the candidate for employment or of the employee and which causes fear or creates a hostile, degrading or offensive behaviour. Sexual harassment is any gender based verbal, nonverbal or physical behaviour that has the purpose to violate or constitutes a violation of the dignity of the candidate for employment or of the employee, which causes fear or creates hostile, degrading or offensive behaviour.

Such forms of discrimination, especially in terms of sexual harassment, are partly in line with the definitions contained in the Istanbul Convention for the Prevention and Combating Violence against Women and Domestic Violence,[75] EU Directive 2006/54 / EC,[76] as well as the guidelines of ILO for determining sexual harassment. This is reflected in terminological incompliance, in the sense that instead of gender, it should be defined as sexual harassment. Furthermore, the definition should include the existence of a hostile environment.

[71] Article 11 of the Law on Labour Relations.
[72] Article 24, Article 25 and Article 101 of the Labour Law.
[73] Law on Prevention and Protection Against Discrimination, Official Gazette of the Republic of North Macedonia No. 50/10, 44/14, 150/15, 31/16 and 21/18.
[74] Article 9 of the Law on Labour Relations.
[75] Council of Europe Convention on the prevention and combating of violence against women and domestic violence, Istanbul, 11.V.2011
[76] Convention and the Directive define sexual harassment as any form of unwanted verbal, nonverbal or physical conduct of a sexual nature, which aims to violate the dignity of a person, specifically creating a threatening, hostile, degrading, humiliating or offensive environment.

Regarding the issues of workers, the ILO guidelines and guidelines that complement the Declaration on Fundamental Principles and Rights at the Workplace are even more important. They determine two forms of sexual harassment, *Quid Pro Quo*, that is, when the exercise of certain employment-related rights or benefits arising from work is conditioned by a person's request to approach certain sexual behaviour and the other form is the hostile working environment in which certain behaviour creates conditions that are threatening or humiliating for the victim.

From the focus groups we received findings that Roma workers are most discriminated. Almost all participants in the focus group in Bitola, on the issue of discrimination in the workplace in terms of sex / gender, sexual orientation and ethnic / racial characteristic, responded that everyone has at least one experience where ethnic Roma are discriminated.

> "*I do not know sexually, but I know that Roma were discriminated against and there were about 70% of Roma at work. If one Roma did something is wrong, everyone else gets punished.*"

Participant in a focus group in Bitola

Apart from ethnic and racial discrimination against Roma, there have also been cases of sexual discrimination and oppression, but these cases are quickly sanctioned and resolved by the employer. Also, discrimination in terms of cultural peculiarities and the way of dressing resulted in not accepting a person for work only due to appearance is the experience of a worker in a foreign company. A general conclusion from the focus groups is that among the workers the attitude that dominates from these types of discrimination are most common in female textile workers, while the goal is to create discord among workers and to erode the collectively.

6.1 Commission for Protection against Discrimination

The candidate for employment and the employee also have as a protective mechanism the procedure before the Commission for Protection against Discrimination (CPD), which can act in cases of discrimination in the area of labour and labour relations.[77] The procedure before the Commission has a deadline of 90 days.[78] Commission has exclusive competence to give opinions and recommendations in case it determines the existence of discrimination, after which the offender is obliged to act upon the recommendation within 30 days from the day of its receipt. If it is not acted upon the recommendation in the determined deadline, the Commission may initiate for the initiation of a procedure before a competent body for determining its liability.

From this position, it is evident in the Law that the competencies of CPD are limited only to giving opinions and recommendations after determining the factual situation when acting upon a complaint, while it is not clear as to what kind of active legitimacy the Commission has in terms of what kind of procedures can it initiate and in front of which authority. The LPPD authorises a person who believes that as a result of discrimination his/her rights have been violated to file a

[77] Article 4 of the Law on Prevention and Protection against Discrimination.
[78] Article 28 of the Law on Prevention and Protection Against Discrimination.

lawsuit before a competent court in accordance with the Law on Civil Procedure.[79] Consequently, the Commission for Protection against Discrimination may also appear as an interlocutor in a civil litigation process in the party of the person who claims to be discriminated against.[80] Taking into account the role of the CPD and the maximum deadlines for completing the discrimination proceedings, it can be concluded that such deadlines are not in the function of protecting citizens.

6.2 Survey questionnaire

When asked how satisfied the respondents were from the Commission for Protection against Discrimination regarding labour relations, several domains were crossed as gender, ethnicity, income and region. Thus the results in general figures look like this:

Of the 839 questionnaires answered, 56.4% are completely dissatisfied with the Commission for Protection against Discrimination, while 14.9% are partially dissatisfied. Of the dissatisfied, 30.2% are men and 25.6% are women. Regarding the ethnic segment, 35.9% North Macedonians, as well as 15.9% Albanians, stated that they were not satisfied with the work of the Commission at all. CPD is least popular among respondents from the Skopje region (26.3%), among the workers with an indefinite contract (36.8%) from the private sector (32.4%) with monthly income from MKD 12.000 to MKD 18.000 (15.5 %).

As far as the data obtained from the Commission for Protection against Discrimination is concerned, it can be seen that out of 317 cases in 2018, 127 were in the field of employment and labour relations. Of them, 107 cases have been solved, 37 have not been acted upon, and discrimination has been found in only 19 cases. In cases where discrimination was found, discrimination on grounds of gender was mostly present (11 cases), age (4 cases), personal and social status (3 cases) and family status, education and language (one case). Regarding the court procedures, from the obtained data from the courts, only 2 court cases on grounds of discrimination have been recorded in the area of the Court of Appeal Gostivar, and records of such cases in the data from the SLI are also missing.

Having in mind the above, regarding the legal framework, it can be concluded that in the absence of established appropriate misdemeanour provisions in the LLR, especially if it were a serious type of discrimination during the duration of employment, the citizens do not have the mechanism of primary protection with the purpose of deterring the employer or other persons from taking or not taking actions that would cause discrimination. The existence of appropriate misdemeanour provisions in the LLR would significantly affect the behaviour of the employer and other persons with regard to discrimination. Furthermore, having in mind the wording of Article 6 of the LLR for the prohibition of discrimination, one can see that such a formulation is restrictive and applies only to the employer as a perpetrator, despite the fact that the perpetrator of discrimination could be any person within the workplace. In this regard, there is a need for re-formulation of such an imperative

[79]Article 34 of the Law on Prevention and Protection Against Discrimination.
[80]Article 39 of the Law on Prevention and Protection Against Discrimination.

norm. Also, the provisions that define the harassment and sexual harassment in the LLR do not determine the existence of a hostile working environment in the sense of the definitions of the Convention and the Directive and the situation of *Quid Pro Quo* coercion of a sexual nature, which should undergo certain changes in order to cover these two legal assumptions for the existence of harassment and sexual harassment.

VII

Establishing a Labour Relation

Section 7 - Establishing a Labour Relation

The legal basis for the existence of a labour relation is the employment contract, which contains the elements referred to in Article 28 of the LLR. The formulation of the provision of this Article in the Law clearly states that the employment contract must compulsorily contain these elements. However, the legislator did not foresee an appropriate misdemeanour provision that would ensure effective sanctioning for non-compliance with the provision that regulates the mandatory content of the employment contract.

In practice, it is expected that the employer is more familiar with this provision from the Labour Law than the employee is at the beginning of the employment relation. This is also due to the fact that the employment relation is a contractual relation, so in the case when both parties conclude such an agreement without any of the mandatory elements being mentioned, an issue arises as to who would have the responsibility for that omission. In the case of a lack of a mechanism that would guarantee the compliance with the norm, the question arises as to how effectively the employee can, in case the employment contract does not contain some of the mandatory elements, by way of a court protection to remove such an irregularity or to accomplish effective protection in the event of a violation of a right that arises from the content of the contract?

The consequences of the absence of any of the compulsory elements of the employment contract are best seen when the contract does not specify the amount of the salary. In such a case, only the minimum wage is provided in accordance with the provision of Article 7 of the Law on Minimum Wage.[81] Furthermore, the employer is obliged to keep the employment contract in his premises and to give one copy to the employee on the day when the contract is signed.[82] Additionally, a certified photocopy of the application or excerpt from a computer record from the information system of the EARM shall be handed over to the employee within three days from the date of beginning the employment.[83]

The employment relation can be based on a definite and indefinite time. The fixed-term contract is related to certain objective conditions, that is, by the expiration of the time for which it is concluded i.e. by coming to a specified date, by fulfilling a specific task or by the occurrence of a particular event.[84] In practice, fixed-term contracts are concluded exclusively with the flow of a certain period of time, that is, the coming to a specified date. The legal framework establish in this way, in the absence of defined basic reasons for establishing a fixed-term employment relation, makes the use of fixed-term employment contracts flexible to a large extent. At the moment, these contracts are the

[81] If the labour inspector during the inspection supervision determines that the employer of the employee has not paid the minimum wage in accordance with this law, he/she shall order the employer to pay the minimum wage and contributions to the employee, within eight days from the day of receipt of the decision according to the law and shall give aproposal for settlement by issuing a misdemeanour payment order to the responsible person with the employer in accordance with the Law on Misdemeanours. If the employer does not accept the misdemeanour payment order, the competent inspector shall file a request for initiation of a misdemeanour procedure.

[82] Article 14 of the Labour on Labour Relations.

[83] Article 13 of the Law on Labour Relations.

[84] Article 5 of the Law on Labour Relations.

rule, not the exception. The total time period in which a contract can be made for a fixed-term employment with a person for an unlimited number of times is too long.[85] In addition to the fact that fixed-term workers have the same position regarding rights and obligations as indefinite workers, they can still be limited in exercising of certain employment rights. This is the case with the rights for which certain conditions are envisaged related to a certain flow of time, such as annual leave allowance, paid annual leave, paid leave due to pregnancy and birth and so on. Employers, on the other hand, usually conclude fixed-term contracts with the intention of avoiding the legal obligations they would otherwise have with indefinite contracts in the event of termination of employment. By that, the obligations from Convention No. 158 ILO and obligations under the LLR are avoided. The obligations arising from this convention require that dismissal should be founded, the employee must be warned in writing before dismissal, to have the right to an objection, and later to have the right to initiate a litigation. In this way, workers are not able to effectively use the institutional protection.

This is supported by the data collected through the survey which show that only 53.2% of the respondents are familiar with the content of the employment contract, 14.8% are not familiar, 23% are partially familiar while 7.6% of the respondents answered that they have not signed an employment contract. The latter could be considered to be in full-time employment without the employment contract being given to the employee for review so that the total percentage of respondents who are not familiar would be 22.4%. Of those who have not signed a contract, 4.8% are in the private sector and most often work for a salary of MKD 6,000 to MKD 12,000. Of the total number of people without a contract in the survey, 3.1% are in the Skopje region, and 2.5% are in the Gostivar region. According to the survey, most often without a contract are workers from 26 to 35 years of age.

The focus groups also highlight the experiences of employments without a contract or a with a blank agreement. To the question "Are you familiar with your employment contract?" the responses of the workers participating in the focus groups say that the contracts are read just superficially, without much interest. However, even when workers are willing to read contracts, the superiors have the habit of speeding up this process and to underestimate it.

> *"The director told me: "Come on, what you are waiting for, don't just tread water, I need to go to Skopje"*
> *I read half of it because everyone was in a hurry. "*

A participant in a focus group in Bitola

When it comes to employment contracts for an indefinite and definite term, 64.6% of the respondents answered that their employment is for an indefinite term, 25.7% for a definite term, 4.2% that they are employed part-time while 4, 9% of the respondents answered that they are

[85] Article 46 of the Law on Labour Relations, an employment contract may be concluded for a limited period of time to perform the same work, with or without interruption of up to five years.

unemployed. In a similar relation are also the data that ESA has regarding the registered number for workers employed as definite and indefinite term employees. The frequency of registered applications in the ESA for 2018, as of December 31, is 86,491 applications for employment for an indefinite period, compared to 118,867 applications for fixed-term employment.[86] If it is assumed that the most frequent time period for signing fixed-term contracts is to a period of 6 months and consequently the employee is reported twice in the ESA records, and it could be assumed that in 2018 there were approximately 59,433 fixed term employments. Such data speak in favour of the flexibility of the legal framework that regulates fixed-term employment contracts for fixed-term and the fact that these agreements are a rule, and not an exception, thus losing the sense of the probationary work that is specifically regulated in the LLR.

From the Focus groups in Shtip and Bitola, the workers share experiences of signing a contract for a specific period of 6 months, and one of the employees from Shtip interviewed by the Focus Group pointed out that he has been employed by the company for 12 years and for 12 years he has signed a contract in every six months for a fixed-term. Hence, narrowing the flexible legal framework for the benefit of indefinite working relations is possible through its rearrangement in several directions. For example, by establishing reasonable grounds for concluding such types of contracts, then the first time an employment contract is signed with the same person it can be for a fixed term within a maximum period of time, and if it is signed again, it should be possible only if it is in accordance with the established reasons. Another alternative is to conclude fixed-term employment contracts with a person for up to two years, after which the employment relationship would be transformed into an employment relationship for an indefinite period of time.

Furthermore, it is necessary to prescribe a stricter enforcement mechanism for respecting the employer's obligation to hand a copy of the employment contract to the employee. This could be done by establishing tougher sanctions in terms of higher fines for this type of offense. Regarding the respect of the legal framework for compulsory elements in the employment contract, provision should be made for a measure of education, obligatory for both parties, as well as adequate fines.

[86] Employment Service Agency of the Republic of North Macedonia, official data, available at: https://bit.ly/2GO4JBR, last accessed on: 31.12.2018.

VIII

Termination of Employment

Section 8 - Termination of Employment

According to the LLR, the employment relation can be terminated only in a manner and under conditions determined by the law and a collective agreement. The law stipulates that the employment contract can be terminated by a settlement between the parties of the contract and with the cancellation by the employee or by the employer. In case of cancellation of the employment contract by the employer, it can be cancelled only if there is a reasonable reason for the cancellation[87] law provides for three types of reasonable grounds for dismissal, that is, personal reasons on the side of the employee, causes of guilt and business reasons. Personal reasons exist when the employee is unable to perform contractual or other obligations arising from his/her employment due to his/her behaviour, lack of knowledge or opportunities or due to non-fulfilment of the special conditions determined by law. Causes of guilt are when there is a breach of contractual obligations or other obligations arising from employment by the employee. Business reasons exist when the need for performing a particular job under the conditions stated in the employment contract cease due to economic, organisational, technological, structural or similar reasons on the part of the employer.

The employment contract can be cancelled by the employer with or without a notice period in cases determined by law and the collective agreement. The grounds of the dismissal due to personal reasons are regulated by Article 79 of the LLR, which states that the employer may cancel the employment contract for personal reasons on the part of the employee, if the employee does not perform the working obligations determined by law, the collective agreement, the employer's act and the employment contract. In case of cancellation of the employment contract by the employer for personal reasons on the part of the employee, the employer can do so only when the employee is provided with the necessary working conditions and is given appropriate instructions, directions and written warning from the employer that he is not satisfied with the manner of performing his duties. If after the given warning within the deadline determined by the employer, which cannot be shorter than 15 days from the day of receiving the written warning, the employee does not improve his work, the employer can cancel the employment contract.[88]

The employer can cancel the employment contract for the employee because of violation of the working order and discipline or failure to meet the obligations stipulated by law, collective agreement, employer's act and employment contract with a notice period and without a notice period (causes of guilt).[89] As reasons for terminating the employment with a notice period are

[87] Article 76 of the Law on Labour Relations.

[88] Article 80 of the Law on Labour Relations.

[89] Article 81 and 82 of the LLR: "with a notice period for reasons of guilt, the employee shall have his employment terminated, especially if: 1) he / she does not respect the working order and discipline in accordance with the rules prescribed by the employer; 2) fails to perform or negligently and untimely performs the working obligations; 3) fails to comply with the regulations that apply to the performance of the duties at the workplace; 4) does not comply with working hours, schedule and use of working hours; 5) does not request leave or does not inform the employer in a timely manner about the absence from work; 6) due to illness or justified reasons, is absent from work, and within 48 hours it does not inform the employer in writing; 7) does not act with conscientious objection or in accordance with the

considered lesser breaches to the employment order and discipline or failure to fulfil obligations. On the other hand, reasons for cancelling the contract without a notice period are the more severe violations of the working order and discipline. The LLR also lists the established causes of guilt in both cases. By collective agreements and by law, other cases of violation of the working order and discipline and working obligations can be determined.

From established grounds for termination of contract stipulated like this, special attention is drawn to several provisions. First, there is ambiguity in the provisions. This is seen in the determination, that is, the overlapping of the features of reasons, the personal and the causes of guilt, in the part of non-fulfilment or failure to fulfil the obligations. Failure to fulfil obligations is determined in Article 79 of the LLR, where it is stipulated that the employer can cancel the employment contract for personal reasons on the part of the employee, if the employee does not fulfil the working obligations determined by law, collective agreement, act of the employer and employment contract. Consequently, in Articles 81 and 82 of the LLR, again, as a ground for cause of guilt, is not fulfilling the obligations determined by law, collective agreement, employer's act and employment contract. Such a legal arrangement leads to non-standard and inconsistent application of these provisions in cases where the employer terminates the employment contract, which leaves the possibility for a substantial derogation of the possibility for the employee to exercise effective institutional or judicial protection.

Apart from part of non-fulfilment of the obligations, the personal reasons and the reasons for the fault also overlap also with the reasons related to the behaviour of the employee. This is the reason why in the case of termination for reasons of guilt, the basics are related to the conduct of the employee, i.e. the violation of the working order and discipline which are closely related to the behaviour of the employee. Furthermore, it is noted that a written warning from the employer to the employee exists only when personal reasons are the case with a fixed deadline for acting on the same which cannot be shorter than 15 days from the date of delivery, and which warning refers to the manner in which the employee performs the work tasks without being provided with an opportunity to defend the employee from such claims of the employer. The ILO Convention No. 158 [90] as well

technical instructions for work; 8) there is damage, mistake in work or loss, and immediately does not inform the employer thereof; 9) fails to comply with the regulations on protection at work or does not maintain the means and equipment for protection at work; 10) causes disorder and violent behavior during the work; and 11) unlawfully or unauthorised uses of the employer's means.
Without a notice period, the contract shall be canceled if the employee: 1) unjustifiably fails to work three consecutive working days or five working days during one year; 2) abuse sick leave; 3) fails to comply with the regulations on health protection, protection at work, fire, explosion, harmful action of poisons and other dangerous substances and violates the regulations for environmental protection; 4) inserts, uses or is under the influence of alcohol and narcotics; 5) commits a theft or in connection with the work deliberately or out of extreme carelessness caused damage to the employer; and 6) recruited a business, official or state secret.

[90] ILO,C158 - Termination of Employment Convention, 1982 (No.158). Article 4 stipulates that the worker's employment shall not be canceled by the employer if there are no reasonable grounds for such cancellation related to the capacities and conduct of the employee. InArticle 7, however, states that the employment of the employee shall be terminated for reasons related to his conduct or proficiency before being allowed to defend against the claims of the employer, except in exceptional situations where it can be expected by the employer. Such provisions of the Convention clearly indicate that the grounds for dismissal are linked to the conduct of the employee and his ability to work, that is,

as ILO Recommendation 166,[91] they foresee and refer to the possibility for an employee to defend himself against the employer's allegations for cancellation of employment, as well as the existence of a written warning for both personal reasons and causes of guilt. It is also referred to the determination of an appropriate pre-trial procedure before the cancellation for both reasons, which is not yet foreseen in the LLR.

In accordance with the stated and in relation to the functioning of the inspection protection in case of cancellation, the data on the number of submitted complaints to the SLI regarding the termination of the employment relation. Thus, in the period from 2015 to 2017, an average of 16.16% of the total number of submitted complaints to the SLI on an annual basis are those related to termination of employment. There are no data on the outcome from the procedures for those complaints, which in turn questions the effectiveness of this type of protection mechanism.

According to the statements of the participants in the focus groups in Bitola, Shtip and Skopje, the employer's non-compliance with the labour rights when cancelling the employment contract by the employer goes in several directions. Interviewed workers from Shtip and Skopje point out experiences with blank signed contracts and cancellations. It is emphasised that the workers sign on blank sheets, which are later realised by employers and firms on their own will. Discharges from work are recorded without prior observance of the notice period; the reason for this type of dismissal by employers is that the dismissal was agreed by both parties. This is primarily related to the contractual termination of the agreed employment contract, that is, its implementation against its legal stipulation.[92] Furthermore, the dismissal period is not respected and the workers learned the news that they were fired, a few hours before the end of the working day. There were cases when workers were returned to work after complaints, appeals were made, but with a change of the position in the workplace, that is, a physically unbearable working position, from which they themselves gave up from that company in the end.

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the work capacities and results, and that it is necessary to provide for the defense and expression of the employee prior to the cancellation of the employment contract and both cases. That, according to North Macedonian LLR, would also refer to the personal reasons and the reasons for guilt by the employee.

[91] ILO, R166 - Termination of Employment Recommendation, 1982 (No. 166).ILO Recommendation No. 166 on termination of employment by the employer, complementary to Article 7 of Convention No.158, at point 9 stipulates that the worker has the right to defense, that is, the right to summon a person as a witness in the defense proceedings against the employer's claims. Point 7 of the same Recommendation refers to compulsory written warning in cases of causes of guilt.

[92] Article 69 of the Law on Labour Relations:

"(1) The employment contract may be terminated by a party by written agreement which must contain a provision on the consequences that arise for the employee due to the contractual termination in the exercise of the rights based on unemployment insurance.

(2) The agreement referred to in paragraph (1) of this Article shall be signed on the day of the termination of the employment and it shall contain a handwritten name and surname of the employee and the employer, a handwritten date of termination of the employment of the employee and the employer and a handwritten signature of the employee and the employer.

(3) If the agreement for termination of the employment contract is concluded contrary to paragraphs (1) and (2) of this Article, it is null and void."

Hence, it can be concluded that employers practice avoiding the legal obligations that derive from cancelling employment contracts often. Non-observance of the cancellation deadlines can be related to the intention of the employer to avoid payment of salary for the duration of the cancellation period, while the abuse of the mutually agreed termination could be a consequence of the way the legal framework is set to be based on the basis for dismissal, reasons of fault or personal reasons.

Taking this into account, a further regulation of the legal framework is required. Introduction of provision for adequate preliminary (investigative) procedure for dismissals for reason of fault in the LLR is necessary. This would facilitate the process of objectively establishing the factual situation in determining the fault and the merits of the dismissal. This is of particular importance to both the employee and the employer in the further procedures of institutional and judicial protection, from the aspect of objective determination of the factual situation, and thus the merits of the dismissal. Furthermore, a clearer distinction and clarification of the grounds for dismissal for personal reasons and reasons of guilt is required. Complementary to the revision of the legal framework is also the increase in the awareness of the workers about their rights in the case termination of employment for personal reasons.

IX

Social Dialogue

Section 9 - Social Dialogue

Regarding collective agreements in the Republic of North Macedonia, there are two general collective agreements, in the public and private sector in the field of economy and 17 special, or branch collective agreements. From the branch collective agreements, 11 were concluded in the private sector in the field of economy and 6 in the public sector.[93] The level of collective agreements at the branch level is 24.61%, i.e., a total of 141,223 employees are covered,[94] which is below the average of 32.2% of the OECD countries.[95] This is due primarily to the trade union structure and the structure of business entities in the Republic of North Macedonia, where 95% of share is owned by micro and small enterprises and 5% by medium and large enterprises.[96] The rate of trade union organisation in the Republic of North Macedonia is 21.6%, which is within the global average of 23.81%, but significantly below the European Union average of 29.76%.[97]

9.1 Freedom of association

The freedom of association as a fundamental human right is guaranteed by the Constitution of the Republic of North Macedonia.[98] The Law on Labour Relations, the freedom of association in the form of a trade union, derives from the Constitution and binds it to the employment relation. According to the LLR, workers have the right, at their own discretion, to establish a union and to be members of it under the conditions prescribed by the statute or the rules of the trade union.[99] The trade union according to the LLR is an independent, democratic organisation of the workers in which they join in order to advocate, represent, promote and protect their economic, social and other individual and collective interests. Unions can be established without any prior approval. Trade union membership is voluntary through the free decision of the employee for entering or leaving the union.[100]

In accordance with the Constitution, in the LLR, the right of trade unions to establish their own alliances or other forms of association in which their interests are connected to a higher level, thus determining the notion of trade union on a higher level.[101] With regard to their establishment and

[93] Strategic Plan of the Ministry of Labour and Social Policy of the Republic of North Macedonia, 2018-2019, available at:https://bit.ly/2GvYcN8, last accessed on: December 31,
[94] Strategic Plan of the Ministry of Labour and Social Policy of the Republic of North Macedonia, 2018-2019, available at: https://bit.ly/2GvYcN8, last accessed on December 31, 2018.
[95] OECD, Collective agreement coverage, available at:https://bit.ly/2CAMmPy, last accessed on December 31, 2018.
[96] Number of active business entities for 2017, State Statistical Office, available at:https://bit.ly/2Na4KkU, last accessed on: December 31, 2018.
[97] ILOSTAT, available athttps://bit.ly/2SYvgD3, last modified on: December 31,2018
[98] Article 20 of the Constitution of the Republic of North Macedonia: "Citizens are guaranteed freedom of association for the purpose of exercising and protecting their political, economic, social, cultural and other rights and beliefs."
Article 37 of the Constitution of the Republic of North Macedonia:"in order to exercise their economic and social rights, citizens have the right to establish trade unions. This right, according to the Constitution, can be restricted by law only in relation to the armed forces, the police and the administrative bodies."
[99] Article 184 of the Labour Relations Law.
[100] Article 185 of the Law on Labour Relations.
[101] Article 187 of the Labour Relations Law.

registration, it is stipulated in the LLR that the higher-level union acquires the status of a legal entity on the day of its registration in the Central Registry of the Republic of North Macedonia, upon prior registration in the trade union register maintained at the Ministry of Labour and Social Policy.[102] The essence of this fundamental right is reflected in the fact that union workers can be represented by trade union in litigation from working relationships through lawyers working in the union. Trade union representatives enjoy a special protection in employment and through the union they implement the process of collective agreement and the right to strike.

At first glance, this legal framework has a seemingly liberal approach to regulating trade union organisation; however special attention is drawn to Article 189, which indirectly establishes a requirement for the unhindered exercise of this right. Namely, by regulating the legal subjectivity of the trade union as a basic form of organizing the workers, the autonomy and independence of the trade unions is brought into question, having in perspective that only the trade union at a higher level acquires the status of a legal entity. This means that trade unions are conditioned to merge and thus acquire the status of a legal entity through the higher form of trade union or the same to join towards already existing unions at a higher level in order to be able to carry out their basic function smoothly. Consequently, lower-level trade unions cannot have their own banking transactional account and a seal and therefore function as a legal entity in legal transactions. This is of particular importance in the exercise of judicial protection of the right of association of trade unions,[103] because the union in a situation of lack of legal personality is prevented directly as a legal entity to file a lawsuit with the competent court. The active legitimacy for filing a lawsuit in this case is transferred to a higher-level trade union, within which the trade union is constituted.

Furthermore, the protection of trade union representatives is of particular interest.[104] The trade union representative is protected from dismissal, that is, because of union activity of the same, one's salary cannot be reduced, or his contract of employment cancelled. The trade union representative's contract may only be cancelled with the trade union's prior consent. In this case, the trade union has a deadline of eight days to declare the employer's decision, and if the union fails to do so within the deadline, it shall be considered that they agree with such a decision. If the trade union expresses a negative view of the decision, then the employer can compensate the consent with a court decision. Having in mind the above, the question arises as to what kind of court protection shall the trade union representative have when the court has previously reached a decision and has compensated the consent for the dismissal? This type of situation indicates the existence of a*res judicata* situation. This essentially inhibits the right of the union representative to judicial protection after receiving the cancellation. Regarding this, it is necessary to mention that the trade union representatives, besides the stated cases of protection from dismissal and salary reduction, also need to be protected from the possibility of being reassigned to another job.

[102] Article 189 of the Labour Relations Law.
[103] Article 197 of the Labour Relations Law.
[104] Article 200 of the Labour Law.

9.2 Survey and Focus Groups

Trade unions as a protective mechanism enjoy the least confidence among the surveyed workers and those workers as participants in focus groups. More precisely, 73.8% of the respondents reported that they are not satisfied with the work of the trade unions. The situation is similar with the focus groups as well. Focus group participants expressed dissatisfaction with the activities of trade unions because part of them believe that trade unions are ineffective, some believe that trade unions are corrupt, and some that unions are co-opted with factory owners.

> "*Trade unions are most often associated with the owner and the steering board and a meaningless membership fee, which ultimately results in chocolate packages before the New Year.*"

Participant in the focus group in Shtip

At the focus group in Shtip, a part of the participants point out that the factories in which they work do not have a union at all. However, even then when a trade union is formed, the union representatives of the company are close to the employers. The dissatisfaction of the workers in Shtip from the trade unions is also reflected in the answers of the survey. Namely, 12.9% of the workers from Shtip responded to this question. Of these, 9.5% are not satisfied at all with the work of trade unions, while 1.3% is partially dissatisfied.

In conditions without the right to autonomous trade union organisation, there are examples that testify to the organisation of workers in boards or workers' councils. These councils are mobilised whenever the attitude of the employers towards them is in the edge of endurance. On several occasions, these workers from several companies and companies organised self-strikes due to non-payment of salaries by employers. At the end, the group shared that they received the salaries, some of them partially and some in their entirety, however, the energy spurt and the need for organising were effectuated in the form of strikes and some form of worker self-organisation, outside of the centralised channels of major trade unions.

Bitola focus group employees stated that the trade union representatives are often close to the employers. An example is highlighted where the trade union leader advised the employer in an indiscreet manner to avoid paying K-15 in a restaurant in Bitola. Thus, the experience of Bitola workers the only thing that they define as positive about trade unions, is the act of distributing New Year's packages or processed meat products. The answers to the survey for the Bitola appellate region look like the following: out of 839 citizens surveyed, 114 are from the Bitola region, 78.1% of whom are completely dissatisfied and 10% are partially dissatisfied with the work of the trade unions.

New year's gifts and the invisibility of trade unions regarding labour interests are the dominant attitudes of the respondents in the focus group in Skopje. They believe that they lack information about the course of the social dialogue, changes in the LLR, information about the battles between

workers and employers that have won the trials, the number of accepted complaints and more creative familiarisation of the workers with their rights. The workers in this focus group point out that some foreign firms and organisations prefer workers' councils instead of trade unions. These boards meet over a period of time meet with the employers and are in constant negotiations and agreements. This focus group emphasised the reality of the digital workers who work for foreign companies and who have so far not had any experience with trade union association and protection. In the direction of the views expressed at the focus group in Skopje, the analogy with the survey questionnaire is convergent. A total of 53.2% of workers in this region responded to the questionnaire, of which 38.5% are not at all satisfied with the work of the trade unions, while 6.4% are partially dissatisfied.

At the conducted focus group with the trade union representatives, the main discussion on improving the functioning of trade unions in terms of labour rights, as well as gaining greater trust as workers for trade unions, was in the direction of the issue of trade union pluralism and the adoption of the new Law on Trade Unions, Employers and Collective Negotiations, as well as the new Law on Labour Relations.

Some trade union representatives believe that trade union pluralism and the inclusion of most of the trade unions in the social dialogue processes is one of the exit positions. In this regard, the support of the initiative for separation of the chapter on trade unions from the Law on Labour Relations, according to them, is an important element. As opposed to them, others consider that union pluralism can weaken the worker, and not to contribute with anything towards the realization of his rights. One of the remarks is also directed to the provision that" 10 people able to work can form a union". They believe that this undermines the fight of workers and creates quasi-pluralism and quasi-decentralisation. They also believe that the need for some syndicate centralisation can lead to an improvement in the position of some trade unions in terms of social dialogue, as well as the improvement of some segments of workers' freedoms and rights. However, a joint commitment on both sides is that the lack of information and education in terms of labour and trade union rights should be targeted both for workers and for trade union activists.

Representatives of independent and non-representative trade unions point out that they have a problem with unfamiliarity of organisational and legal perspectives. These unions, according to their focus group members, emphasise that they need training and support. The non-representative unionists, in this case the union representatives of NACS and NSSF also addressed the problems of the collective agreement that forces the employees in education to not be able to choose which union they shall be members of. Hence, they consider that the collective agreement has provisions that are in direct contradiction with the Law on Labour Relations.

> "*In SONK it is written that an employee that has been employed for 3 years must not and cannot be unsubscribed from a union.*"

Participant in the focus group with trade union representatives

To make matters worse, Article 13 of the SONK Statute, it is said that if the member of SONK used financial assistance from any SONK fund on the principle of solidarity, he/she cannot withdraw from the membership. Also, one cannot unsubscribe from SONK in case the member has used the right to secure a collective agreement and exemption from penalties arising from the competent state authorities as merits of measures and activities of SONK. However, according to Article 14, the timing of the unsubscription from the trade union is defined: The SONK member who wishes to voluntarily withdraw from the union, in accordance with the grounds referred to in Article 13 of this Statute, in that case, he/she can withdraw after 3 years from the time of submission of the Request for withdrawal from SONK.[105] On the other hand, one of the participants in the focus group pointed out that the counterpoint of the idea of criticising the collective agreements is that workers can more easily reach out and benefit from some of the mechanisms that can, in some cases, sometimes, and in certain occasions help them to make some kind of protection.

A general opinion among the focus group representatives was that trade unions did not complete their function fully. Namely, the evaluation was that trade unions lack the capacity and opportunities to create some stronger protective mechanisms to connect with workers, nor do they have the opportunity to create a culture of resistance through more generous forms of empowerment and education of workers. However, one of the representatives pointed out that prior to the amendments to the Law on Labour Relations, their trade union branch had activities on the social networks in order to spread the significant parts from the possible changes to the law.

> "*There shall be no significant change in the amendments to the legal regulations and some systemic interventions regarding the situation of workers. Even the increase of rights regarding the law. Employers are not interested in it.*"

Participant of the focus group with Trade Union representatives

The ratio of trade unions and the State Labour Inspectorate (SLI) is quite burdensome and followed by distrust. The lack of competence of the SLI regarding the complaints sent by trade unions related to the violation of labour rights is one of the main objections that trade union activists point out. Still more problematic is the part of the lack of educational and emancipating function in this regard, taking into account the responses witness that SLI is not competent for solving the problem for which the complaint was sent. In addition to the incompetence response, SLI does not refer the workers to a competent institution or take the next step to realize their rights.

> *"The experiences in the private sector are: Please (inspector) don't defend me."*

Participant in the Focus group with trade union representatives

[105] Statute of SONK, available at: https://bit.ly/2tuvRy2, last accessed on December 31, 2018.

There is also a very significant point that is present in the statements of the workers interviewed in the other Focus groups. In particular, the workers from the other cities in North Macedonia do not trust the SLI in their local municipalities. Preferences for appeals go to the central core of SLI in Skopje, and not to their local offices. The experience of the workers, but of the trade unions as well shows that inspectors that are out of Skopje have some relations with the employers and thus the service that workers should receive they most often do not get. Often volunteerism and negligence are observed among inspectors, while the reasons for this are the lack of capacity in the inspectorate itself, as well as the insufficient personal capacities of certain inspectors. Therefore, the results are quite disappointing for trade union representatives and workers as well.

> "*There are employers where inspectors cannot even pass the threshold of the door. There are examples where they enter, but do not receive the documentation and everything in order, as the law requires.*"

(Focus group with trade union representatives)

One of the experiences of the participants in the Focus Group is the example of a newly formed trade union within one of the factories as foreign direct investment. The six-month contracts for the workers were changed into one - month contracts despite the fact that the initial contracts had not yet expired, while the ones that were involved in the union were sent on annual leave. Employers do not allow trade unions in factories, which complicates the possibility of using any rights that come from its law.

Finally, as a general conclusion from the union members interviewed in the focus group is that workers are in a very disadvantageous situation. Particular emphasis is put on private sector workers where treatment by employers in some cases is dishonest and degrading. Every attempt to create a trade union is awaited by the management of factories with an appropriate response for dismissal from work.

Non-governmental organisations appear as a special curiosity in this research. The percentage of dissatisfaction among citizens from the institutional mechanisms for protection is high, but in that percentage, the least dissatisfaction is shown for non-governmental organisations. Namely, 7.4% are partially satisfied and 3.8% are fully satisfied with the work of NGOs in terms of protection of the labour rights. One of the participants in the focus group with trade union representatives verbally concluded this by saying:

> "*We allowed various civil society associations to fight for workers' rights. It's a shame. The association for protection of textiles workers, the association for protection of this, of that, take our primacy as unions*"

Participant in the focus group in Skopje

From what is stated in regard to the legal and institutional arrangement of the trade unions, it is concluded that it is essential that an appropriate intervention should be made in the Law on Labour

Relations in the chapter on the organisations of workers and employers. There needs to be an amendment to the provisions related to the establishment and registration of trade unions in order to determine the acquisition of the status of a legal entity also for lower level unions. This is essential for the autonomous functioning of the trade union as the basic organisation of workers in which they join together to protect their economic and social interests. Thus, the absolute exercise of the freedom of association would be legally ensured, and the exercise of which was prevented by the existing legal regulation. The inability to independently organise workers at the employer has been pointed out on several occasions by the workers in the focus groups.

Furthermore, it is necessary to amend the LLR in the part of the provisions for the protection of trade union representatives and to establish their greater protection. It is necessary to remove the possibility that the consent of the trade union for the dismissal of the trade union representative to be replaced by a court decision. Increasing the protection of trade union representatives would reduce and disable the impact that the employer may have on them, something that has also been repeatedly pointed out by workers in the focus groups.

X

Strike

Section 10 – Strike

The right to strike is an essential right of workers in the process of exercising and promoting their labour rights. The strike in certain situations represents the only means for workers to protect their rights from the labour relation. The LLR stipulates that the trade union and its associations at a higher level have the right to call for a strike and to lead it to protect the economic and social rights from the labour relations of its members.[106] The LLR establishes the procedure for organising a strike, stating the rights and obligations of both trade unions and employers. Consequently, the strike must be announced in writing to the employer, that is, the association of employers against whom it is directed, and the strike of solidarity should be announced to the employer on where the strike is organised. The strike must not start before the conciliation procedure is completed in accordance with the LLR.

Furthermore, the LLR regulates the rules for issues that must not be interrupted during a strike. On the proposal of the employer, the trade union and the employer shall mutually determine the rules for productive maintenance and necessary matters that must not be interrupted during a strike.[107] Consequently, productive maintenance matters are matters that relate to enabling the renewal of the work after the strike, while the necessary matters are those that are indispensable in order to prevent the endangerment of life, personal safety or the health of the citizens. In the event that both parties fail to agree within 15 days from the submission of the proposal, the trade union and the employer may request for an arbitration during the next 15 days for these matters.

From this set legal framework for the right to organise a strike, several conclusions can be drawn:

- The legislation connects the right to strike exclusively with the union, which means that with employers who do not have a trade union, workers are not able to use this right without being previously organised in a union.
- Peaceful resolution of the dispute is compulsory in the sense that a strike cannot start before the conciliation procedure is completed. The legal determination of this provision and the terminology used is referred to in Article 182 of the LLR, which indirectly refers to the LRLD. In the LRLD the conciliation procedure under the most ideal conditions is carried out within a maximum period of 30 days. Considering that the employer can participate in the procedure contrary to the *bona fide* principle, the question arises whether done in this way it does not limit the right to strike. In this case, it is sufficient for the law to foresee a compulsory reconciliation attempt as a condition, despite the completion of the procedure or the conciliation procedure to be positioned before the announcement of the strike.
- Furthermore, the law does not clearly state whether the agreement on the matters that must not be interrupted during a strike is part of a procedure that is an integral part of the organisation of the strike or a preliminary procedure. Here, in determining the types of work, the law determines matters that are related to the production-economic process with the employer, which

[106] Article 236 of the Law on Labour Relations.
[107] Article 238 of the Law on Labour Relations.

undermines the very essence of the strike as a means of coercion available to the workers against the employer. This is of interest, for reasons that those matters that should not be interrupted should represent necessary matters. Necessary matters are determined or connected with a particular sector, department or activity, most often with activities of general interest, essential activities, and which activities should be exclusively specified, which is not the case with the legal regulation of the strike in the LLR.[108]

The currently defined framework thus significantly prevents the workers, that is, the unions in exercising the right to strike.

Focus groups

Participants in the focus groups were quite vocal with their experiences with regard to strike. Probably the most interesting discussion happened on the focus group in Shtip. The workers from Shtip do not have any trust, nor have any particular experience with trade union organisation and trade union activism. Their rights to form a union and to organise in such a way in protecting their rights is prevented. There are several reasons that prevent this way of association, however the main reason is the influence of employers.

One of the female workers, employed in one of the textile factories in Shtip, believes that they do not have the right to a union, that the union is composed of several individuals close to the owner and that all agreements and everything is decided between those few beyond the interests of the workers. However, in conditions with a lack of trade union rights and autonomous trade union organisation, there are examples that go in the direction of organising workers in boards or workers' councils. These councils are mobilized whenever the attitude of the owner towards them is on the brink of endurance. Several times these workers from several firms and companies have independently organised strikes, due to the non-payment of salaries by the employer. At the end, they received salaries, some of them partially and some in their entirety, however, the energy spurt and the need for organising were effectuated in the form of strikes and some form of worker self-organisation, outside of the centralised channels of major trade unions and the legal-institutional set-up of the strike.

As for the textile factories, the workers are forced to sign blank agreements with which they shall receive K-15, which is complemented by an oral promise of the amount that is to be received by the workers which is from 36 to 150 euro as the total amount, although K-15 according to the law

[108] Freedom of association - Compilation of decisions of the Committee on Freedom of Association, Sixth edition. According to the Committee on Freedom of Association, the core activities are: health care in the activities of hospitals, the activities of electricity and water supply, telecommunications activities, the police and the armed forces, firefighting, penitentiary institutions, food supply activities and maintaining school hygiene and air traffic control. Activities that are not considered as essential activities are: radio-television activity, oil sector, fuel distribution activities for continuous operation of flights, gas supply activities, gas charging and sales activities, ports, banking, central bank, insurance activities, computer activities for tax collection and excise, activities related to department stores and amusement parks, metallurgy and mining, transport, including city transport, activities related to the activities of the railways, the activities of postal services, construction, pharmacy, car manufacturing, education, hotel service activities, etc., are included in the programme.

should be MKD 9,600. Some workers receive K-15 in the form of vouchers from certain markets where the products are with a higher price other than usual and the markets are either owned by the employer or by people from his circle. There are frequent examples where the K-15 is returned to the owner on hand. K-15 is not the only problem with the breaching of contracts and labour rights stemming from the contracts; this includes the payment of salaries that some of the workers are receiving on time, and part does not. They often go on strike to receive a salary and that practice is repeated every month. Although illegal, their strikes are organised every month despite the union demanding them to return to work. Hence, mistrust of the trade union and trade union structures that are close to the employers.

> "*The cancellation deadline is not respected in the textile industry. Last year, a collective dismissal from work took place without any previous warning as required by the agreement and the law.*"

Participant in the focus group in Shtip

Regarding the Law on Minimum Wage, workers are dissatisfied with the way this law is implemented. They return part of the salary back on hand. They are also furious at the fact that their bosses receive higher salaries than they do, also, the bosses, are not fully responsible and often the quality of the products that they produce, and that they need to approve, is quite low. Guilt is passed to the ordinary workers and they are penalised, while the bosses, because of their closeness with the owners, nothing touches them. Hence, there are many implications in terms of labour movements and solidarity, which degenerated by employers lose their capacities for a wider workers' union.

> "The *willingness of the owner and the superiors around the working hours is quite present. They come with a list of names of workers who are forced to work overtime. Those workers who defy the will of the owner and the bosses are laid off.*"

Participant in the focus group in Shtip

Worker disunity is one of the most obstructive factors for the failure of workers' movements, state the workers. This also includes the moments of the bribing of union leaders with the owners. Workers are more afraid of other workers than the owners.

XI

Hidden Employment

Section 11 - Hidden Employment

The employment relationship according to the LLR is a contractual relationship between the employee and the employer established by concluding an employment contract, in which the employee voluntarily joins the organized work process with the employer for salary and other incomes and personally and continuously performs the work according to the instructions and under the supervision of the employer.[109] It follows that the employment relationship cannot be based on any other type of contract, except with the employment contract defined in the LLR.

However, the LLR provides an opportunity for the employer to be able to conclude a contract with a certain person for performing tasks that are outside of the employer's scope of work, which have as the subject of work an independent preparation or repair of certain objects or the independent exercise of certain physical or intellectual work.[110] Regarding the form and content of these agreements, it can be concluded that they are being done in accordance with the rules established by the regulations in the field of obligatory relations. Hence, such contracts have the character of civil contracts.

The existence of such an opportunity in the LLR allows for the occurrence of hidden employment, for reasons that this type of legal action can be abused and engage persons who would actually be part of the work process with the employer. This is also due to the absence of a wider definition of a worker and an employer in the LLR, which would establish a legal presumption of a labour relation based on clearly defined elements of employment. In this respect, it is necessary to have an appropriate prohibition provision that would regulate the case that if there are elements of an employment relation, no work may be performed on the basis of a civil contract.

> *In regulating this issue, the legislature should consider taking into consideration Recommendation No. 198 of the ILO, where in paragraph 13 possible indicators are recommended for determining the existence of a working relationship.*[111]

Hidden employment is frequent in the Republic of North Macedonia, for the employers to avoid obligations that otherwise one would have with the establishment of regular employment, and to the detriment of those engaged in this manner. These persons are denied their rights to work and

[109] Article 5 of the Law on Labour Relations.
[110] Article 252 of the Law on Labour Relations.
[111] ILO, R198 - Employment Relationship Recommendation, 2006 (No.198). Paragraph 13, Member States should consider the possibility of defining in their laws and other regulations, or otherwise, specific indicators of the existence of a working relationship. These indicators may include: (a) the fact that the work: is performed according to the instructions and under the control of another party; Includes integration of the employee into the organisation of the enterprise; is performed exclusively or mainly for the benefit of another person; must be carried out personally by the employee; is performed at a fixed working time or at a workplace specified or agreed upon by the party requesting the work; is of a certain duration and has a certain continuity; requires access to the worker; or involves the provision of tools, materials and machinery by the employer; (b) periodic payment of the remuneration of the employee; the fact that such remuneration is the sole or main source of income of the employee; providing payment in kind, such as food, accommodation or transport; recognition of rights such as weekly rest and annual leave;

protection of their rights through such an engagement, thus putting them at a disadvantage with those workers that have employment agreements with the employer.

General conclusion

The general conclusion of the analysis is that there is great mistrust towards the work of the protective mechanisms for labour rights, but also that 60% of the respondents have never used the protective mechanisms. Of those who did not use the protection mechanisms, a quarter are not even familiar with their workers' rights, and one in seven people are not familiar with the content of their employment contract. This leads us to conclude that on the one hand, there is great dissatisfaction with the mechanisms for protecting workers' rights, but on the other hand, there is a relative lack of information among workers about their rights and their work responsibilities.

After the implementation of the focus groups with workers in Bitola, Shtip and Skopje, several conclusions can be drawn. The general opinion of the workers is that formal protective mechanisms are dysfunctional. However, if one comparatively looks at the processed data of information of public character, one can conclude that certain protective mechanisms, such as the primary and courts of appeal, perform their basic function of meritorious resolution of labour disputes. It is therefore no coincidence that the number of litigations are increasing compared to the number of complaints submitted to the SLI. This is primarily due to the fact that the inspection and court protection are set up in parallel, that is, one protection is not a prerequisite in using the other one, and the deadlines for the realization of protection from these two independent mechanisms run in parallel. Therefore, one obvious recommendation is to reduce the deadlines for the handling and implementation of inspection oversight and increase the deadlines for the initiation of litigation. In this way, priority is given to the institutional care as a primary protection that shall have no fiscal implications for workers.

Focus groups and the survey indicate great dissatisfaction with the work of the SLI. Aside from the fact that certain participants highlight positive experiences with the work of SLI the majority of respondents think that the SLI is ruled with the corrupt practices of cooperation between the inspectors, employers and union leaders. Additionally, the mild penalties policy, which represents an important landmark in the implementation of inspection oversight in the past period, contributes to the shaping of public opinion for the satisfaction of the functioning of this safeguard mechanism. In addition to corrupt practices, the inspectors inefficiency is another reason for the workers' distrust of this mechanism. If you look at the number of inspection oversights during 2017, one concludes that on average, one inspector has carried out 1.2 inspection oversights per day. Therefore, the focus group participants emphasize the inspectors' inefficiency, that is, they emphasise the long period of time for their actions. However, without downplaying the poor work of the SLI, it must be emphasised that that institution has its own problems especially with regard to the lack of inspection staff, infrastructure and working conditions. The general finding of this analysis is that labour inspectorates have been neglected for decades and, instead of improving their work, it seems it is being degraded.

From the polls and the focus groups, the conclusion is that workers have the biggest objections to the work of trade unions and trade union representatives. Workers believe that trade unions are dysfunctional due to the outdated work based on links with the company owners, while interviewed members of trade unions in the focus group believe that the unions have not created mechanisms for emancipating and for an adequate protection of workers. The biggest curiosity is that some of the union representatives, participants in one of the focus groups, mention that NGOs take the primacy over trade unions. This is confirmed by a survey that suggests that the respondents are least dissatisfied with the work of non-governmental organisations. Nevertheless, the work of non-governmental organisations can be limited in terms of participation in social dialogue and is usually reduced to providing legal advice, advocating and conducting campaigns for workers.

Regarding other protection mechanisms, such as the Ministry of Labour and Social Policy, the alternative protection mechanisms and the Commission Against Discrimination, these institutions, although they can play a significant role, are often not perceived by workers as mechanisms through which they can protect their own rights. This is particularly interesting because the failure to use these mechanisms undermines social dialogue, the peaceful resolution of labour disputes and protection against discrimination. Therefore, the general conclusion remains that these mechanisms should be more frequently promoted and thus strengthen their role.

Finally, the analysis shows great dissatisfaction due to the large number of shortcomings in terms of the efficiency of work of protective mechanisms for labour rights. The ineffectiveness of these mechanisms, on the other hand, is due to the lack of political commitment necessary for a substantial reform of this sector. The lack of information available on this issue additionally complicates the process of creating policies for regulating this issue. Since this issue dictates social relations, with empirical data-based policies, the entire system of protection of workers' rights can be raised to a higher level. How and when should this be done is an issue that remains open for discussion.

Bibliography

CHANG D. (200) *Reclaiming Labour Law and Beyond.* Asian Labour Law Review.

HARVEY D. (2005) *A Brief History of Neolibiralism.*Oxford: Oxford University Press.

IVANOVSKA M. (2007) *Structure and Agency during Transition: Labour Representation Strength in Slovenia and Serbia* in KHAN M.H. (2007) Governance, Economic Growth and Development since the 1960s. DESA Working Paper No. 54.

IVANOVSKA M. (2014) *Organized Labour In Post Socialist North Macedonia: The Path To Marginalization.* Central European University Department of Political Science.

MAJHOSHEV A., MITKOVA V. & MAJHOSHEV D. (2014) *Results From The Research On The Collective Negotiation In Republic Of North Macedonia During The Transition.*Journal of Process Management - New Technologies, International.

STANDING G. (2011) *The Precariat: The New Dangerous Class.*London: Bloomsbury Academic.

BASHEVSKA M. & STAVREVSKA E. (2016) *Women and trade unions: representation and labour rights in the Republic of North Macedonia.*Skopje: Leftist Movement - Solidarity.

BLIZNAKOVSKA D. & KOLEKESKI A. (2015) The*Quality of Jobs Offered by Companies Established in TIDZ.*Skopje: North Macedonian Center for European Education.

JOVANOVIC B. (2017) The*Real Cost of Cheap Labour.*Skopje: Institute for Social Sciences and Humanities - Skopje.

KRALJEVSKI M., LUTOVSKI D. & KOSTOVSKI I. (2015)*Labour Degradation 2.*Skopje: Leftist Movement - Solidarity.

SAVESKI Z., APASIEV D., KOVACHEVSKI A. & VASILEV K. (2010) *Degradation of Labour, Analysis of Labour Legislation in the Transition Period.* Skopje: Movement for Social Justice - Lenka.

Constitution of the Republic of North Macedonia with the constitutional amendments I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII , XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI and XXXII.

State Statistical Office - Active Population, Labour Force Survey Results III Quarter of 2018, Announcement Number 2.1.18.34 of 07.12.2018.

State Statistical Office, Active Population in the Republic of North Macedonia, Labour Force Survey Results, III Quarter of 2018 Friday, December 07, 2018.
Eurostat, European Commission, NUTS, Statistical Region Outside the EU.

The World Bank, Gini index, World Estimate, FYR North Macedonia.

Law on Labour Relations, Official Gazette of the Republic of North Macedonia 62/05, 106/08, 161/08, 114/09, 130/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13, 187/13, 113/14, 20/15, 33/15, 72/15, 129/15, 27/16 and 120/18.

OECD, Latest Data on the OECD indicators of employment protection, OECD Indicator of Employment Protection.

International Labour Organisation, C081 - Labour Inspection Convention, 1947 (No.81).

Law on Inspection Supervision, Official Gazette of the Republic of North Macedonia number 50/10, 162/10, 157/11, 147/13, 41/14, 33/15, 193/15, 53/16, 11/18, 83/18 and 120/18.

Law on Labour Inspection, Official Gazette of the Republic of North Macedonia No. 35/97, 29/02, 36/11, 164/13, 44/14, 33/15, 147/15 and 21/18.

Law on Misdemeanours, Official Gazette of the Republic of North Macedonia No. 124/15.

Law on Inspection Supervision, Official Gazette of the Republic of North Macedonia No. 147/13 and 41/14.

Law on General Administrative Procedure, Official Gazette of the Republic of North Macedonia No. 124/2015.

Law on Safety and Health at Work, Official Gazette of the Republic of North Macedonia No. 92/07, 136/11, 23/13, 25/13, 137/13, 164/13, 158/14, 15/15, 129/15, 192/15 and 30/16.

Law on Employment and Insurance in Case of Unemployment, Official Gazette of the Republic of North Macedonia No.37/97, 25/2000, 101/2000, 50/2001, 25/2003, 37/2004, 4/2005, 50/2006, 29/2007, 102/2008, 161/2008, 50/10, 88/10, 51/11, 11/12, 80/12, 114/12, 39/14, 44/14, 113/14, 56/15, 129/15, 147/15, 54/15, 27/16, 118/16, 21/18 and 113/18.

Law on Labour Records, Official Gazette of the Republic of North Macedonia No. 16/04, 102/08, 17/11, 166/12, 11/13 and 147/15.

Strategic Plan of the State Labour Inspectorate 2018-2020.

Law on Civil Procedure, Official Gazette of the Republic of North Macedonia No. 79/05, 110/08, 83/09, 116/10, 7/11 and 124/15.

Law on the Peaceful Resolution of Labour Disputes, Official Gazette of the Republic of North Macedonia No. 87/07, 27/14, 102/14 and 30/16.

ILO, C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Directive 2006/54/EC of the European Parliament of the Council of July 5, 2006 on the implementation of this principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204, 26.7.2006.

Law on Prevention and Protection against Discrimination, Official Gazette of the Republic of North Macedonia No. 50/10, 44/14, 150/15, 31/16 and 21/18.

Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence, Istanbul, 11.V.

Employment Agency of the Republic of North Macedonia, Review of Registered Applications for Establishing Labour Relations from the Records and Outside of the Records of Unemployed Persons.

ILO, C158 - Termination of Employment Convention, 1982 (No. 158).

ILO, R166 - Termination of Employment Recommendation, 1982 (No. 166).

Strategic Plan of the Ministry of Labour and Social Policy of the Republic of North Macedonia, 2018-2019.

OECD, Collective Bargaining Coverage.

Number of Active Business Entities for 2017, State Statistical Office.

ILOSTAT, International Labour Organisation, Industrial Relation.

Statute of the Trade Union of Education Science and Culture (SONK).

Freedom of Association - Compilation of Decisions of the Committee on Freedom of Association, Sixth Edition.

ILO,R 198 - Employment Relationship Recommendation, 2006 (No.198).

Public Information, State Labour Inspectorate, Annual Report on Inspection Supervisions for 2015.

Public Information, State Labour Inspectorate, Annual Report on Inspection Supervisions for 2016.

Public Information, State Labour Inspectorate, Annual Report on Inspection Supervisions for 2017.

Public Information, First – Instance Courts Courts in the Republic of North Macedonia, Annual Report on Labour Court Disputes for 2015.

Public Information, First – Instance Courts in the Republic of North Macedonia, Annual Report on Labour Court Disputes for 2016.

Public Information, First – Instance Courts in the Republic of North Macedonia, Annual Report on Labour Court Disputes for 2017.

Public information, Courts of Appeal in the Republic of North Macedonia, Annual Report on Labour Court Disputes for 2015.

Public Information, Courts of Appeal in the Republic of North Macedonia, Annual Report on Labour Court Disputes for 2016.

Public Information, Courts of Appeal in the Republic of North Macedonia, Annual Report on Labour Court Disputes for 2017.

Public Information, Commission for Protection Against Discrimination, Annual Report on the Work of the Commission for 2015.

Public Information, Commission for Protection Against Discrimination, Annual Report on the Work of the Commission for 2016.

Public Information, Commission for Protection against Discrimination, Annual Report on the Work of the Commission for 2017.

Public Information, Ministry of Labour and Social Policy, Trade Unions Register, Employers Register, Registry of Conciliators and Arbitrators.