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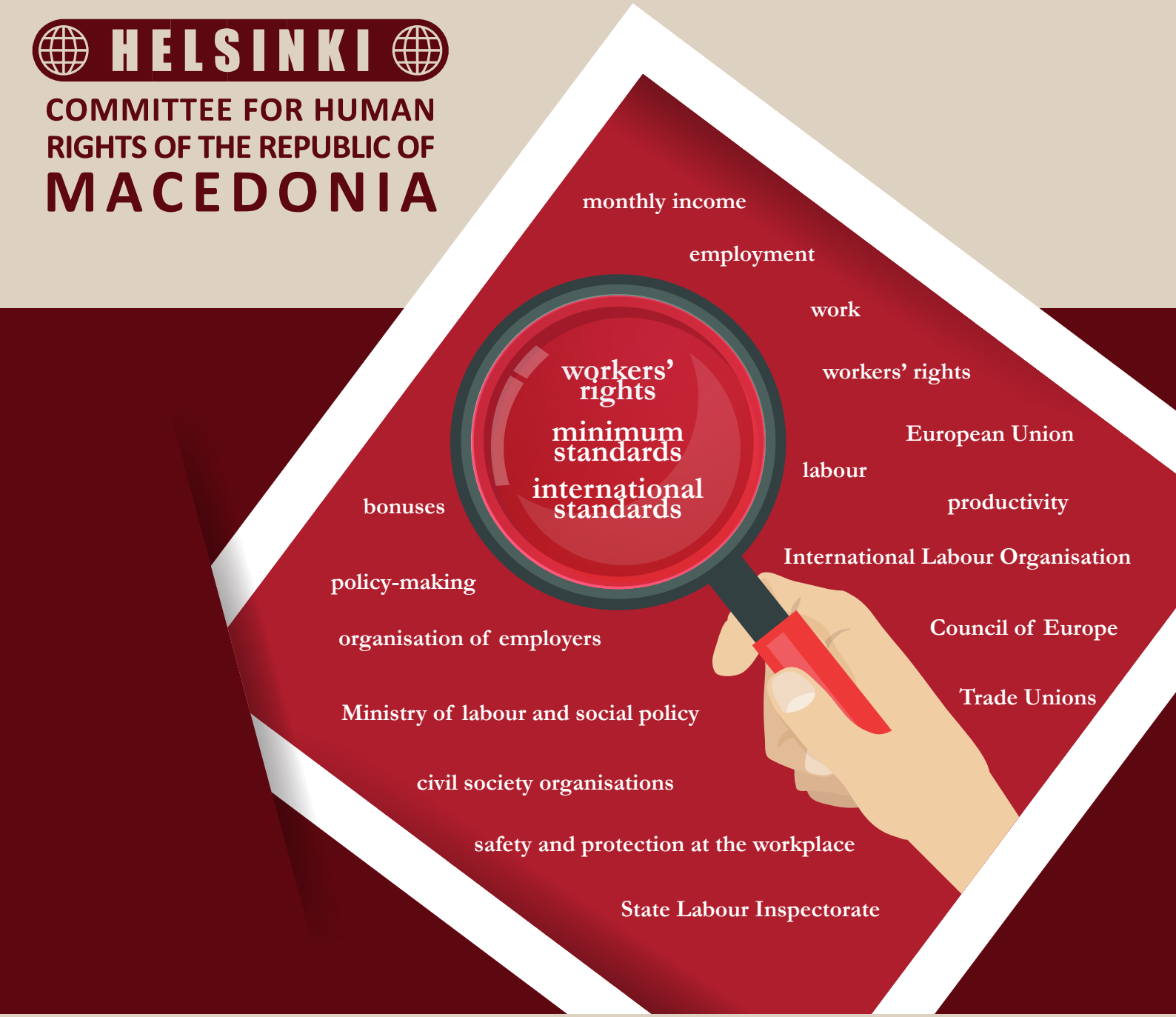

ANALYSIS OF WORKERS' RIGHTS STANDARDS AND THEIR APPLICATION IN THE REPUBLIC OF NORTH MACEDONIA

IMPROVED PRODUCTIVITY THROUGH BETTER LABOUR LEGISLATION IN MACEDONIA

British Embassy Skopje

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List of Abbreviations

ATUM	Alliance of Trade Unions of North Macedonia
BCE	Business Confederation of Employers
CoE	Council of Europe
FTUM	Federation of Trade Unions of North Macedonia
EC	European Commission
OEM	Organisation of Employers of North Macedonia
EU	European Union
EU OSHA	European Agency for Safety and Health at Work
ILO	International Labour Organisation
ITUCWEBM	Independent Trade Union of Construction Workers, Engineers and Builders' Merchants
ITUEEWM	Independent Trade Union of Energy and Economy Workers of North Macedonia
CFTU	Confederation of Free Trade Unions
LLI	Law on Labour Inspectorate
LLR	Law on Labour Relations
LLSP	Law on Safety and Protection at Work
LPPD	Law on Prevention and Protection against Discrimination
LRLD	Law on Resolution of Labour Disputes
MASW	Macedonian Association for Safety at Work
MLSP	Ministry of Labour and Social Policy
NPAA	National Programme for Adoption of Acquis Communitaire
SLI	State Labour Inspectorate
TUCIP	Trade Union on Construction, Industry and Projection of North Macedonia
TUIEM	Trade Union of Industry, Energy and Mining of North Macedonia
UIATUM	Union of Independent and Autonomous Trade Unions of North Macedonia

SUMMARY

The analysis of workers' rights standards and their application in the Republic of North Macedonia has been prepared within the Improved Productivity through Better Labour Legislation in the Republic of North Macedonia Project, funded by the Good Governance Fund of the United Kingdom. The analysis seeks to identify basic guidelines for developing national legislation relating to safeguarding workers' rights, the level of compliance of the national legislation to the recognised international standards and deviations from the practice, both, from the positive legislation, and from international standards. Basic concerns in their application in the legislation are presented by cross-cutting the general international normative framework, treating the protection of workers' rights and the minimum work conditions, along with the basic legal decisions at national level.

On the other hand, problems have been illustrated by summarising the perceptions of direct participants in the processes of drafting policies on workers' rights protection, that is, their immediate protection and also, amendments have been directly addressed, which should be made. The analysis showed that there are problems in the appropriate transposition of the standards and normative decisions of ILO, the Council of Europe and EU Directives, but that main problem is in the practice and non-fulfilment of international obligations and legal decisions. Special attention in the analysis has been paid to the actual institutional framework on protection of workers' rights, which should have the various holders of competences in this area. This is why focus was put on the trade unions and their activity, as key actors in the process of formulating most appropriate normative decisions and in utilisation of existing legal opportunities.

Given the above, the recommendations extended relate to the appropriate tailoring the legislation as per the realistic needs of the workers and employers, by means of filling the gaps of material protection, as well as by simplification and precision of the procedures. These changes would, in practice, ensure utilisation of existing rights and opportunities which are at the disposal of the workers for their protection, through raising the capacities of the institutions themselves, appropriate approximation of legislation to the workers and participation of the state in the creation of conditions for factual protection of workers' rights as guaranteed by international agreements and national laws.

INTRODUCTION

Within the European Union (EU), the workers' rights are treated as integral part of the human rights, and their protection is closely related to the mechanisms for human rights protection. The protection of workers' rights and ensuring minimum work conditions are part of the process of harmonising the national legislation with EU regulations and international standards. Since its independence, the Republic of North Macedonia, by acquiring the EU membership candidate status, and up to today, has introduced many amendments in the legislation relating to defining workers' rights and creating effective mechanisms for their protection. In a given period of transition, the amendments are visibly restrictive for the solutions contained in the legislation of the previous system. However, by amendments of the legislation, aligning the European and global standards contained in the EU legislation, as well as the legislation of the International Labour Organisation (ILO) and the Council of Europe, in formal-juridical manner, a positive step forward was done offering relatively higher control and higher protection of recognised workers' rights. Basic problem the state is facing is that in the majority of cases, the practice does not follow these changes and the transposition of international standards is not manifested in the factual protection of workers' rights.

The violations and cases of death at work, along with the reports on breaking workers' rights in various sectors, the absence of available protection mechanisms and the absence of trade union and administration control, hereby indicate a need of detailed and thorough analysis of the legislation and its application, so as to raise the level of protection of the workers' rights. This condition imposed the need of overall analysis of: the package of laws regulating labour rights in the aspect of protection of these rights and ensuring minimum work conditions, the degrees of alignment with EU legislation in this area, the international ILO standards, the ratified conventions and the recommendations and standards accepted by the Council of Europe, as well as the institutional coverage of the relevant area and the level of implementation of the legal provisions.

The objective of this research has two meanings. In one hand, it is oriented towards identification of problems in application of laws into practice and the problems occurring due to the poor and insufficient protection of workers' rights through the prism of EU and international standards. On the other hand, the research has been developed to offer appropriate solutions coming out from the EU and international standards, which may be tailored as per the requirements set out in the Republic of North Macedonia, both within the legislation and in practice. The analysis was meant, before all, for the civic sector representatives, who may use it in the process of lobbying from legal and procedural amendments, as well as for trade union activists, and for the workers themselves, in articulating their demands.

METHODOLOGY

For the first and second part of the study, the method of analysing the content of the relevant international legislation and of the national legislation was applied,[1] as well as the comparative method determining the alignment of the national legislation with the EU and the international standards.[2] The analysis of the national legislation and the comparison with the international standards and the obligations undertaken from the EU membership candidate status, the material and formal shortcomings should be determined in the protection of workers' rights. Consequently, that aspect shall be used as a starting point from which possible solutions would come out in the further processing of laws and potential supplementary mechanisms for their protection and raising the basic standards for the work conditions.

For wider overview of the field situation in several selected economic sectors, the analysis has been reinforced by semi-structured interviews with: the Federation of Trade Unions of North Macedonia (FTUM); two branch trade unions of FTUM – Trade Union on Construction, Industry and Projections of North Macedonia (TUCIP) and Trade Union on Industry, Energy and Mining of North Macedonia (TUIEM); The Independent Trade Union of Construction Workers, Engineers and Traders in Construction (TUCWETC) of the Confederation of Trade Union Organisations of North Macedonia (KTUOM); two interviews with employers' organisations – Organisation of Employers of North Macedonia (OEM) and the Business Confederation of North Macedonia (BCM); one interview with the Ministry of Labour and Social Policy; two interviews with the State Labour Inspectorate; one interview with the Institute of Labour Medicine and one interview with the Association for Safety and Health at Work.[3]

Two case studies are given in the analysis, as a presentation of the practical problems workers face in the protection of their rights.

[1] Laws, bylaws, collective agreements, strategic documents and government programmes.
[2] Level of transposition of EU directives at national level.
[3] More details on the methodology used in the Section 3, see the introduction of Section 3.

SECTION 1

Workers' rights related to protection

Section 1 – Workers' rights related to protection

The protection of workers and creation of minimum work conditions is a complex and vivid matter under development. The value system building upon international level is based on the basic postulates developed within ILO, but also on the grounds given in broader international acts dealing with human rights protection.[4] The national system of protection of workers should be shaped by having in mind not only the specific international provisions transposed at national level, but it should bear "the spirit" of the entire value framework shaped by the international standards, which should find a manner of implementation into the specific conditions of each state. The Republic of North Macedonia has ratified or has acceded to basic international documents in this area and is in process of transposing EU directives relating to the protection of workers' rights.

1. International system of values: general international framework

1.1 International Labour Organisation (ILO)

The international standards on protection in the workplace are primarily set out by ILO in the form of conventions and recommendations that the member states should ratify and apply in their respective national legislations. In regard to the protection of workers' rights and creation of basic work conditions, ILO has envisaged three basic conventions that are mandatory for the member states. These include: the Occupational Safety and Health Convention No. 155 of 198,[5] Occupational Health Services Convention No. 161 of 1985 and the Promotional Framework for Occupational Safety and Health Convention No. 187 of 2006.[6] So far, the Republic of North Macedonia has ratified 80 ILO conventions, including these three basic conventions and has applied those in its national legislation in the package of laws for protection of workers' rights and work conditions.

Hence, relating to the specific protection of workers working in the sectors where higher number of violations and death cases has been noted, such as construction and industry, the Republic of North Macedonia has not ratified the Safety and Health in Construction Convention No. 167 of 1988. This Convention shall envisage the construction standards relating to the safety of scaffolds, ladders, machinery and the use of construction materials, work at height, tunnel constructions, working over water, demolishing, explosives, workers' health hazards, safety in the event of fire, protective clothing and equipment, and other standards that are mandatory for full safety of workers.

For better implementation of standards in regard to the safety of workers in industry and construction, ILO has produced directions, such as the Prevention of Industrial Accidents Recommendation No. 31 of 1929 and the Working Environment Protection Recommendation No. 156 of 1977. In addition, it is uncontestable that the Republic of North Macedonia faces

[4] The Universal Declaration on Human Rights, The Economic Social and Cultural Rights Treaty, the complex conventions against discriminations, and others.

[5] The Occupational Safety and Health in the working environment, together with the 2002 Protocol regulating the safety of workers from the aspect of occupational diseases, accidents in the workplace and hazardous working positions.

[6] ILO official website, available at: https://bit.ly/2RBzVLr, last accessed on 10.10.2018.

shortcomings in the implementation of conventions and recommendations that particularly regulate the workers' safety in occupations with higher number of death cases and injuries at the workplace.

Conclusion

The laws relating to the workers' safety in the Republic of North Macedonia have been following the ILO standards on occupational safety in all fields. From the formal-legal aspect, the legislation of the Republic of North Macedonia is in compliance with the ILO conventions.

Recommendations

- For better protection and improvement of the legislation relating to the safety in the workplace, especially in the occupations where the injuries and death cases are higher in percentage compared to the remaining occupations, wider consideration is necessary not only of the ILO conventions, but also of the ILO recommendations, that is, their appropriate application.
- The Law on Safety and Health care should include the Prevention of Industrial Accidents No. 31 of 1929 and the Working Environment Protection Recommendation No. 156 of 1977.[7]

1.2 Revised European Social Charter of the Council of Europe

The Republic of North Macedonia as a member of the Council of Europe has accepted and partially transposed in its legislation the revised European Social Charter of the Council of Europe No. 163 of 1988.[8] This Charter, which in its first version of 1950 was safeguarding fundamental human rights, in its later revisions it is more advanced and becomes one of the baseline international documents on safeguarding the rights of workers and the work conditions. Unfortunately, the Republic of North Macedonia has not ratified the Additional Protocol to this Charter of 1995, whose implementation is the task of the European Committee of Social Rights. This Protocol shall enable the European Committee of Social Rights decide upon appeal procedures against Council member states, submitted by national or international organisations.

Between 2007 and 2016, North Macedonia has submitted six reports, informing about the level of compliance to the 1961 Charter, as well as three reports on the compliance to the revised Charter.[9] These reports relate to articles 1, 3, 7, 8, 11, 12, 13, 15, 16, 17, 19, 20, 24, 27, 30 and 31 of the revised European Social Charter and the level of harmonisation of the Macedonian legislation with those. The standards of this Charter are applied in the Law on Labour Relations (LLR), the Law on Social Protection (LSP) and several other laws regulating the matter of social protection and occupational protection. Based on the reports, the Council of Europe has formulated conclusions in which it clearly states that it needs improvement of the enforcement of articles 1, 2, 6, 7, 8, 16 and 19, emphasising the inappropriateness of measures in combating unemployment. In addition,

[7] Protection against air pollution, noise and vibrations.
[8] Revised Charter of the Council of Europe, official website, available at: https://bit.ly/2mKtyno, last accessed on: 13.12.2018.
[9] Report on the Social Charter of the Council of Europe, available at: https://bit.ly/2RBGn5, last accessed on: 14.12.2018.

conclusions appeal to removal of obstacles to employment of foreigners, extending the duration of financial support to unemployed, reduction of the duration of medical examinations of workers younger than 18 years and clarification of the protection of workers below 18 years of age, who are still attending education.

Article 7 of the revised Social Charter of the Council of Europe, regulating the protection of youngsters and children in labour relations, states that youngsters who are still attending mandatory education, should not be subject to employments that would affect the continuity of their education. This Article is in collision with Article 172 of the LLR, stipulating that workers below the age of 18 are subject to special protection. In the Republic of North Macedonia, secondary education is mandatory, but it also envisages apprentice in the vocational secondary schools. Articles 173 to 175 regulate the employment conditions for workers below 18 years of age, especially Article 174, indicating that the worker below 18 years of age should not work longer than 8 hours daily and 40 hours weekly. This timeframe has been envisaged for workers above 18 years of age and has negative impact on the educational process of the worker who has not yet completed the mandatory secondary education. Further, Article 9 of the Charter recommends that workers below the age of 18 should be subject to regular medical examinations. Regular medical examinations for this category of workers have not been envisaged under any Article of LLR[10] or the Law on Occupational Protection and Safety (LOPS).[11] In addition to paragraph 2 of Article 173 of LLR unclearly stipulates that even though it is prohibited that workers below 18 years of age to be hired for difficult work position, this prohibition of paragraph 1 of Article 173 is regulated by decisions adopted by the ministers of health and of labour and social policy. This vagueness in the legislation leaves space for uncontrolled hiring of workers below 18 years of age, thus potentially endangering their health and working capacity.

Conclusions

The Republic of North Macedonia has partially implemented the revised European Social Charter in the areas of employment, social protection, equal opportunities, protection in unemployment, right to collective protection and collective negotiation, as well as in the area of safeguarding the rights of children, young people and female workers on maternity leave. The legislation covering the employment of workers younger than 18 has its disadvantages, which may be easily taken advantage of by employers and this problem was noted several times by the European Commission, as well. As a special disadvantage, the lack of the following may be singled out: clear mechanisms for protection of workers below the age of 18, protection of unemployed in the job seeking period, protection of female workers from unlawful dismissals in pregnancy and maternity leave and encouragement of collective negotiations.

[10] Law on Labour Relations, Official Gazette of the Republic of 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.

[11] Law on Occupational Safety and Health, Official Gazette of the Republic of Macedonia No. 92/2007, 136/2011, 23/2013, 25/2013, 137/2013, 164/2013, 158/2014, 15/2015, 129/2015, 192/2015 and 30/2016).

were to a great extent related to occupational discrimination. The consistent action as per European Commission's recommendations shall considerably reduce the occupational discrimination on every ground.

Harmonisation with the EU legislation should be considered in two levels. The first level is consisted of the legal decisions as such, and the second relates to the application of regulations and the existence of factual conditions for their application.

1.3.1 Inconsistencies in LLR

The protection of workers by the Law on Labour Relations is unclear in certain articles. For instance, Article 67 paragraph 1 specifies that: "Workers to whom the employer hasn't paid salary and hasn't paid contribution taxes for three months in a row, shall enjoy the right to initiate a procedure before a competent court for termination of the employer". By initiating this litigation, the payment is prolonged of salaries by the employers, as these processes shall end by closure of companies and primary payment of debts by the creditors, and the payment of pending salaries to the workers shall be left for the end, and most frequently, unpaid at all. In this manner, the workers are factually prevented from reacting in case of non-payment of salaries and/or are penalised for any possible reaction. It is necessary to initiate and make amendments to the legislation where the payment of pending salaries to workers shall be primary duty of the employer and the legally stipulated reaction of workers shall have no negative implications on them.

There is similar vagueness in regard to Article 237 paragraph 1 of LLR in the Chapter regulating the strike conditions. According to this Article "The employer may discharge workers from the work process only as a response to already started protest". The discharge of the worker by the employer, introduced as a self-defence mechanism of the employer prior to the announced strike shall represent violation of the right of the worker, which is otherwise guarantee by the Constitution and the international standards and conventions. Even though the following paragraphs of the same article stipulate that the employer is allowed to dismiss only those workers who trigger non-democratic and volatile behaviour by their actions, the dismissal as such of the worker represents violation of their rights and of the right to protest.[14] Article 243 of LLR shall enable the trade union to request from the court to dismiss the worker during the strike, which is one of the mechanisms of protection of workers. Also, the trade union is allowed to demand reimbursement of the damage for the job termination during strike. Hence, these are all slow mechanisms, which are more costly for the workers and the trade union, than the employer. The worker has the right to strike and until they do not endanger other workers who do not take part in the strike and do not cause violence, they cannot be dismissed from the job.

The Macedonian Government in 2017 adopted its 2020 Strategy on Occupational Safety and Health. In addition to assessing the condition of occupational safety and health for cases related to LLR, this Strategy provides concrete remarks on how to improve the condition of workers and the safety at the workplace in the context of other laws. For instance, one recommendation to take into

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

Recommendations

- The Republic of North Macedonia should ratify the 1995 Protocol and act upon the recommendations for full enforcement of the articles of the revised European Social Charter.
- Amendments to the legislation are necessary to ensure that the right to education is exercised for workers below 18. LLR should enforce Article 7 of the revised European Social Charter of the Council of Europe, and Article 9 of the same document should be implemented in LOPS.
- LLR should envisage protective mechanisms to disable unlawful dismissal of female workers in pregnancy.
- Collective negotiations should become mandatory, so as to envisage duty to conclude collective agreements in the same law, or it would be encouraged and supported as desired within LLR.

1.3 EU directives and level of compliance

The accession process where the Republic of North Macedonia is heading to implies adjustment of the Macedonian legislation with the EU standards and concrete transposition of EU directives in this area into the national legislation. It is a long-term and complex process that was already commenced, of comparing legal decisions and identification of differences. The Law on Labour Relations is greatly aligned with the thirteen EU directives in the area of labour market and protection of workers' rights. However, the last criticism made by the European Commission on Chapter 19,[12] point to the fact that the recommendations given by these matters in the 2018 Report are by large not implemented. They confronted low response in those parts requiring strengthening the Labour Inspectorate and collective negotiation between employees and employers and that the overall awareness of employees and employers on safety conditions at the workplace is at low level. Related to Chapter 19, the remarks relate to, before all, the need of strengthening the capacities of the State Labour Inspectorate, as well as towards improvement of the access of youngsters and citizens who have been unemployed for longer period of time and are in need of new work skills for the labour market. The Commission places special accent on the still existing inequality of salaries for men and women and the necessary amendments to the Law on Prevention and Protection against Discrimination based on sexual orientation.[13]

The Report on the North Macedonia retains the remark on the need of strengthening the capacities of the Labour Inspectorate and collective negotiations and it again points out the situation of inappropriate implementation of the protective legislation and the high number of job-related injuries and death cases. The Progress Report of the European Commission on North Macedonia in its Chapter 19 also states that amendments are needed in the Law on Prevention and Protection against Discrimination. Article 5 states the grounds for discrimination, but it does not state at all the sexual orientation as a ground for discrimination, it rather places it under a category of other grounds. This problem, which has been noted for several times by the European Commission, is also reflected in the workplace as the cases of discrimination; reported to the Ombudsman in 2017,

[12] Social Policy and Employment included in the National Programme for Alignment with the European legislation.
[13] European Commission's Progress Report on Macedonia in aligning with the European legislation, available at: https://bit.ly/2W9sM3l, last accessed on: 16.12.2018.

consideration is to request amending and supplementing the Law on Pension and Disability Insurance, so as to safeguard the workers from discharge while on sick leave.

1.3.2 Implementing EU directives on occupational safety and health

To further harmonise with the EU standards, it is necessary to take into account the directives of the European Occupational Safety and Health Agency (EU-OSHA).[15] Special attention should be paid to higher prevention and safety of workers from occupational diseases, their exposition to electro-magnetic radiations, chemical agents and generally, the negative impact of the technology on their health, as well as the strengthening of micro and small-size enterprises for more qualitative assessment of occupational hazard. The Directive on Establishment of European Works Councils,[16] which was transposed in the Law on European Labour Councils,[17] shall regulate the establishment of works councils exclusively of companies established in the Republic of North Macedonia, but whose main seat is in an EU member state. This Directive should be used in its wider meaning and be used within the LLR and factually return works councils that were crucial in the time of the previous system. Such step would result in long-term consequences for strengthening workers' rights and occupational safety.

The Directive 2001/86/EC complementing the statute of the European firms relating to the participation of workers shall envisage the participation of workers in adopting decisions in business associations. This right does not exist in LLR, and not in the Law on Business Associations of 2004 and all its amendments,[18] and it is necessary to be set forth through the legislation, so that it offers higher protection of workers' rights and basic work conditions.

Article 22 of the Law on Occupational Safety and Protection (LOSP) stipulates that the employer should ensure medical examinations for its staff members at least once on each 24 months. This period is inappropriate where the occupational health hazards occur daily, like for instance, in construction and industry activities. Changes of periods of mandatory medical examinations are needed, as different jobs bring about different diseases. The workers in industry and construction activities should attend more frequent medical examinations than those regulated by the LOSP.

Conclusions

The transposition of EU directives in the North Macedonian labour legislation is at its outset. Seemingly, already great part of areas has been covered, but the practice shows great extent of legal omissions and inconsistencies. The Law on Labour Relations contains gaps and vagueness in regard to the protective mechanisms in the cases of violations relating to the payment of salaries and the right to strike. On the other hand, the necessary supplementary alignments have not been done with the European directives as recommended by EU-OSHA, such as, for instance, the guidelines on higher prevention and protection of workers from occupational diseases, protection while being

[15] Official website of the European Occupational Safety and Health Agency, available at: https://bit.ly/2GS9Hf3, last accessed on: 28.11.2018.
[16] Directive on Establishment of European Works Council 2009/38/EC.
[17] Law on European Works Council, Official Gazette of the Republic of Macedonia No. 06/12.
[18] Law on Business Associations, Official Gazette of the Republic of Macedonia No. 28/04.

exposed on electro-magnetic radiations and chemical agents, as well as the general negative impact of technology on their health.

The LLR and LOSP do not take into account the capacities of the small-size and micro enterprises for occupational hazard assessment and improvement of the protection of workers in their workplaces, and who are at high risk of occupational diseases. In the laws as such, no manners and entities have been identified that may provide support to these enterprises.

Amendments are needed also to the Law on Business Associations so as to ensure: representation of workers in the decisions adopted by enterprises, reduction of the period of systematic medical checks, with special accent on the work positions where the percentage is higher of injuries and adoption of legislation for establishment of workers' councils.

Recommendations on Section 1

- The ILO Safety and Health in Construction Convention No. 167 of 1988, which relates to the safety and health in the construction activity.
- In LOSP and in the secondary legislation, the Prevention of Industrial Accidents Recommendation No. 31 of 1929 and the Working Environment (Air Pollution, Noise and Vibrations) Protection Convention No. 156 of 1977. These recommendations contain guidelines for prevention of industrial accidents, awareness raising of workers, advises on introduction of courses in schools on prevention and protection against industrial accidents, information dissemination, as well as training courses and studies to prevent and protect against diseases caused by air pollution, noise and vibrations.
- In LLR the protection of pregnant female workers and of the female workers on maternity leave should be reinforced against unlawful dismissal from work by amending the legislation with a provision of their bringing back to work in the shortest deadline possible.
- LLR should precise and appropriately regulate employment of workers below 18 years of age, so as to facilitate completion of mandatory secondary education. Prohibition may be recommended on employment of workers below 18 years of age during the school year period.
- The 1995 Protocol of the Council of Europe should be ratified, envisaging that the European Committee on Social Rights to make decisions on appeal procedures against Council member states, which were previously submitted by national or international organisations.
- Amendments to the Law on Bankruptcy are necessary, where in case of bankruptcy procedure, thus stipulating that primary for payment shall be the unpaid salaries to the workers, instead of the creditors' interests.
- LLR should stipulate abolishment of the right of employers to dismiss employees in the event of strike, except for situations when the employee endangers other employees or their rights.
- Debate should be initiated on adoption of a special law, or amending and supplementing the LLR, which shall envisage mandatory creation of works councils.
- Amendments to the Law on Business Associations and of LLR are needed, which would enable workers or workers' representatives take part in the decision making within the business associations.
- LLR and LOSP should stipulate reduction of mandatory period for systematic medical

examination of workers from 24 months to 12 months, with special regulation of sectors with higher number of hazardous occupations.

- LOSP and the Law on Health Protection should initiate re-introduction of labour medicine specialists and possible establishment of outpatient clinics in larger enterprises.
- Amending and supplementing the Law on Pension and Disability Insurance, so as to offer protection of the worker against dismissal during a sick leave, due to injury at the workplace or professional disease caused at the workplace.

SECTION 2

Protection mechanisms

Section 2 – Protection mechanisms

The protection of workers' rights shall be implemented by means of existence of efficient and effective protection mechanisms, such as available institutions, procedures and tools.[19] The basic idea for the protection of workers' rights is that the implementation system should enable workers immediate access to their rights and benefits, without being exposed to unnecessary costs or procedural obstacles related to various forms of bargaining or litigation.

2.1 ILO and implementation of introduced standards

ILO has developed various tools and manners of monitoring the implementation of conventions and recommendations in laws, by supervising their recognition and ratification by the states.[20] The two main manners of monitoring and control are the following: the regular supervisory system[21] and the special procedures related to complaints.[22]

The ILO itself does not offer protection mechanisms of the workers' rights that may be applied at national level, but it rather encourages definition of such mechanisms and enlargement of their availability. Moreover, the monitoring of the implementation of international standards, among other things, shall be done via the monitoring of the functioning of the protection mechanisms.[23] This shall not imply promotion of the protection mechanisms at national level, or their implementation automatically, but it simply acknowledges that in case of problems when applying standards, ILO may offer assistance to the states by means of a social and technical assistance. ILO pays special attention to the introduction of standards for collective action as protection mechanism, which is further undertaken by EU, whereby based on Article 28 of the EU Charter,[24] the trade unions may challenge restrictive national laws and legal decisions.

When it comes to the protection mechanisms promoted by ILO, one has to take into consideration the ILO Convention on the Freedom of Association No. 87 of 1948, as well as the Convention No. 98 of 1949.[25] One of the basic guidelines of the development of protection mechanisms promoted by ILO, rests exactly in the protection of the occupational identity, as well as based on the rights coming out from this identity, before all, they should be based on the trade unions. Formulation, implementation and practical exercise of workers' rights shall also imply collective organising at various levels.

Conclusions

Pursuant to ILO standards and recommendations, basic protection mechanism that needs to be introduced at a level of national country, is a functional and relevant trade union, which shall

[19] Canetta, Dr. E., Kaltsouni, Ms. S., Busby, Prof. N., (2012), Implementation of fundamental workers' rights, EU, Brussels, available at: https://bit.ly/2HELpt8, last accessed on: 11.12.2018.
[20] Official ILO website, "Supervisory system/mechanism", available at: https://bit.ly/2sOhFzG, last accessed on: 11.12.2018.
[21] Through periodic reports submitted by member states.
[22] Along with the special procedures on freedom of association.
[23] ILO official website, "Application and promotion of International Labour Standards", available at: https://bit.ly/2RfusVq, last accessed on: 11.12.2018.
[24] Right to collective action.
[25] Application of principles on the right to organisation and collective bargaining.

promote and safeguard the rights of the workers. According to ILO, this shall imply legal opportunities and protective clauses for the operability of trade unions in one hand, but also their appropriateness related to the workers' needs, that is, applicability in the effective exercise of their rights, on the other hand.

Recommendations

- The trade unions should be regulated under a specific law, which shall give higher importance to the essence of advocating for the workers' rights, rather than the form of association.
- It is particularly the role that should be determined and strengthened at all levels of the trade unions, in the protection of workers and the support they should provide in the preventive action and in the concrete cases of protection in the violation of the workers' rights.
- Training and monitoring system should be provided to the trade unions, so as to enable the necessary level of knowledge, which shall be placed at the service of the workers.
- Special manuals shall be produced for the trade unions, relating to the legislation, which shall facilitate their work.

2.2 EU and implementation of introduced standards

2.2.1 General approach

Similar is the situation when it comes to the implementation of EU's labour legislation, given through the general acts relating to human rights and especially the directives that are further transposed within the national legislation. Firstly, it is very important to bear in mind that the protection of workers' rights and the overall working EU legislation was placed within the human rights and the EU Charter of Fundamental Rights. When speaking of the labour legislation, the legal grounds within EU may be searched for under the title of social policy[26] of the Treaty on the Functioning of the EU. Hereby Article 6 of the EU Charter on Fundamental Rights is important, which stipulates that everyone has the right to freedom and safety. The safety is elevated at the level of fundamental human right in the EU, and it has its implications on all directives and provides the framework of the system of values. "The European Charter contains provisions that are instrumental for the labour legislation and the labour relations in Europe: freedom of association (Article 12), right to collective agreement (Article 28), the right of the workers to be informed and consulted (Article 27), freedom of choosing job and the right to work (Article 15), prohibition of child labour and protection of young people at work (Article 32), fair and just work conditions (Article 31), protection of personal data (Article 8), non-discrimination (Article 21), equality between men and women (Article 23) [and] protection in the case of unjustified dismissal (Article 30)."[27]

The general framework on the protection of workers' rights in the EU system relates to the existence of effective protection. "The implementation of the labour legislation is important. To

[26] Articles 151 to 161 of the Treaty on the Functioning of the European Union.
[27] Bercusson, V., (2002), European Labour Law and the EU Charter of Fundamental Rights, European Trade Union Institute (ETUI), pp. 8.

make it effective, the labour legislation, including EPL/safeguard employment legislation, should be implemented by relevant authorities. In that sense, well organised civil-law, administrative and labour dispute courts shall be key to resolving disputes related to the employment and work. The efficiency of the administration of justice system, to what extent are the workers protected into practice, how is it implemented and what is the cost of resolving disputes between the employers and employees.[28]

According to certain studies on the implementation of labour legislation in the EU "when means for efficient implementation of the labour legislation of the EU at national level, difference should be made between the two different views of the "effectiveness". One view shall emphasise the possibility that the individuals – either alone or under somebody's assistance, for instance, of the trade unions or of the Equality Committee – exercise their rights. This view may be described as a pledge for implementing micro-perspective."[29] According to the same author, there is another view which, before all, is focusing on how the rules are implemented at national level, instead of the possibilities for individuals to exercise their demands/complaints. This may be called macro-perspective of the exercising of the labour legislation. Which of these approaches shall be accepted is depending on the manner of measuring the safeguarding of the workers' rights, that is, the effectiveness of the protection mechanisms.

In any case, within the EU practice, the protection and the protection mechanisms are considered integral part of the implementation of the workers' rights and the fact that they are related with the national legislation and practice at national level, and this shall not change their importance and shall not put them out of the general monitoring of the implementation of the EU directives related to the protection of workers. On the contrary, introducing a complex system of protection mechanisms that cover macro and micro protection, that is, inclusion also of trade unions and other relevant institutions, as well as the administrative and judicial protection, in fact, represents the first evidence of the established process of effective implementation of standards set forth. The fact itself that within EU this matter is identified at national level, that is, it represents a duty for all state to define appropriate procedures and form appropriate bodies that shall ensure safeguarding of workers' rights, shall imply that the separate EU states must ensure that their national laws safeguard the rights introduced by the EU labour legislation.

For a long time the practice of the EU member states was related, before all, with the enforcement of the labour right via administrative measures and introduction of non-judicial protection through administrative organs, such as labour inspectorates. In any case, rules should be identified in all member states for informing the workers and consulting the workers or their representatives in the

[28] Malmberg, J., (2003), Effective Enforcement of EC Labour Law, A comparative analysis of Community law requirements for national laws on procedures and sanctions, Sweden, available at: https://bit.ly/2Tgeyfe, last accessed on: 19.11.2018.

[29] Malmberg, J., (2003), Effective Enforcement of EC Labour Law, A Comparative Analysis of Community Law requirements for national laws on procedures and sanctions, Sweden, available at: https://bit.ly/2MxSgTP, last accessed on: 19.11.2018.

negotiations.[30] One may say in regard to the adoption of directives related to equality, the first one to list here is the Framework Equality Directive,[31] opens the door to the need of considering also of the macro and micro perspectives in the implementation of the labour legislation. The right of the victims to effective remedy against the persons or institutions that performed discrimination and at the same time, existence of appropriate mechanisms of promotion of equality and prevention of discrimination shall enable appropriate level of implementation. Namely, this Directive does not regulate only individual litigations, but it also deals with wider relations, such as, for instance, the implementation means.

The basic guideline of developing protection mechanisms is their placement as complementary, instead of alternative. Only in that manner shall genuine and comprehensive protection of workers be enabled. In the case of the Republic of North Macedonia, formally it has already been done, only, more precise horizontal and vertical connection of various mechanisms is missing. For instance, the worker may raise different procedures which deny each other, but they also are not interconnected.

Conclusions

The EU system treats the workers' rights, before all, as human rights and it provides an overall framework developing protection mechanisms at national level. The latest development of understanding the protection of workers' rights is moving in the direction of complementary use of macro and micro funds enabling prevention, as well as individual and collective protection. Therefore, the administrative and judicial protection is not alternatively, but are rather complementary positioned.

Recommendations

- ❖ LLR should treat the protection of workers' rights procedurally in the same manner as all human rights, and especially in the aspect of urgency of procedures and possibility of direct use of international ratified instruments.
- ❖ In the laws, especially in LLR and LOSP changes should be made to establish obligation of immediate participation of workers in formulating protection mechanisms and obligation that the workers' opinions are taken into account in every amendment to the laws.
- ❖ Special chapters should be envisaged in LLR and LOSP with procedures of action in case of violation of the workers' rights with clearly defined horizontal and vertical authority.

2.2.2 Specific measures to ensure implementation of directives

It was already said that the working EU legislation is consisted of directives, which in principle do not offer any particular solutions, neither precise guidelines, regarding the manner of ensuring the practicing of provisions of the directives in the national context of the respective countries. This means that the EU directives set certain rules of behaviour, but they do not define specific

[30] Malmberg, J., (2003), Effective Enforcement of EC Labour Law, A Comparative Analysis of Community Law requirements for national laws on procedures and sanctions, Sweden. Available at: https://bit.ly/2Tgeyfe, last accessed on: 12.12.2018.

[31] Framework Equality Directive, available at: https://bit.ly/2RcmFHT, last accessed on: 12.12.2018.

procedures and rules for legal remedies – this they leave to the national authorities. The level of EU legislation and practice, the mechanisms for protection of labour rights are assessed at least developed and insufficient relating to the remaining matter which has to do with defining the rights and with the possible violation of these rights. This means that there are shortcomings in the procedures and in the clear identification of the best protection that is at the disposal of the worker.

In absence of defined rules on the procedures, it remains up to the national legal system of each member state to design the protection at judicial, administrative or any other level. Hence, this shall not imply full and absolute autonomy of member states. The framework of the protection machinery should be introduced based on two baseline principles:[32]

- Equal treatment and non-discrimination in the process of law enforcement
- Effectiveness of implementation methods.[33]

Most often, the problem is not in the legislation, but it is rather in the implementation arrangements.[34] In that sense, basic question that needs to be answered is how efficient the enforcement of legal determinants is and if there are any appropriate procedures safeguarding workers' rights. In the EU member states, there are three usual types of processes that are used to enforce the rules coming out from the directives relating to labour rights.

In the first type of processes, the supervision and implementation is a task of the public authorities, that is, of labour inspectorates and equality bodies.[35] In the second type of processes, the supervision and implementation of rules are responsibility of the trade unions, workers' councils, or any other industrial process, or different operation process. The third type of processes is the judicial processes, whereby bearer of the implementation of rules is the court, within a type of litigation. The judicial processes may be initiated by an individual worker, or by workers' representatives. Subsequently, there is a strong link between the source of the norm regulating the essential affairs and the type of process to be implemented and used. It is a usual matter that where legislation holds a dominant role, higher importance should be given to the administrative protection and that the implementation is controlled by labour inspectors. On the other hand, where the collective agreement represents a dominant source of regulating relations that have to do with employment, the process of industrial protection, placed as a relation between the employer and employees, has higher importance.

More explicit in this matter is the Framework Directive on Equality in Employment,[36] in which, the member states are required to ensure judicial and/or administrative procedures, accompanied by consultation processes for implementation of duties given in the Directive. All these should be done in a manner so as to make the rights and the protection available to all those who see themselves as

[32] Malmberg, J., (2003), Effective Enforcement of EC Labour Law, A comparative analysis of Community law requirements for national laws on procedures and sanctions, Sweden.
[33] That is, the so-called "sufficient„ effectiveness.
[34] Canetta, E., Kaltsouni S., Busby, N., (2012), Enforcement of Fundamental Workers' Rights, EU Directorate general for internal policies.
[35] Most often it relates to administrative procedure.
[36] European Directive on Equality in Employment, Implementation Assessment, available at: https://bit.ly/2MxL61N, last accessed on: 12.12.2018.

violated due to inappropriate implementation of principles for equal treatment. As per the Framework Directive on Equality, the member states promote the dialogue between the social partners, aiming at promoting equal treatment, which also implies pursuing the practice of the work position.[37] Further on, it defines that the member states ensure such entities to be able to hire on behalf or as a support to the complainer in litigation and administrative procedures.[38] The absence of defined procedures and mechanisms for protection of the workers' rights in the international documents and in the EU directives does not imply absence of monitoring of such procedures and mechanisms at national level.

The instruments measuring the legal protection of the exercise of workers' rights, usually formulate indicators to measure such protection via the procedures and the costs of the procedures, where individual or group of workers were fired, or a certain labour-related right was violated.[39] One of the manners to measure the efficiency of implementation and the protection is based on the consequences, that is, "the cost" of not respecting workers' rights. Namely, it defines whether it is more costly for the employers protecting and respecting workers' rights, for their disrespect, or violation of laws.

Conclusions

No specific solutions are offered within EU related to protection mechanisms and tools, but it is insisted on existence of effective and efficient protection means, which implies available and appropriate procedures, quick resolution of disputes and information dissemination of workers related to the possibilities of protection they have at disposal. At national level, there are various types of procedures,[40] which in the legislation are used either separately, or complementarily. Important aspect in determining effectiveness of protection rests in measuring derives from protection mechanisms for workers.

Recommendations

❖ MLSP should produce a system to evaluate procedures and mechanisms for safeguarding workers' rights and the quality of law enforcement.

2.3 Structure of mechanisms and procedures implementing recognised standards in the Republic of North Macedonia

Procedures for implementing and safeguarding workers' rights in the Republic of North Macedonia are by large regulated within the: Law on Labour Relations,[41] Law on Labour Inspection,[42] Law on

[37] Article 13, European Directive on Equality in Employment.
[38] Article 9.2, European Directive on Equality in Employment.
[39] OECD indicators for occupational safety, available at: https://bit.ly/1ppOmuC, last accessed on: 12.12.2018.
[40] This part refers to administrative, industrial and litigation types of procedures.
[41] Official Gazette of the Republic of Macedonia, No. 62/2005, consolidated text, https://bit.ly/2sLzJdz, last accessed on: 12.12.2018.
[42] Official Gazette of the Republic of Macedonia, No. 35/1997, consolidated text, https://bit.ly/2smoKqY, last accessed on: 12.12.2018.

Safety and Health at Work[43], Law on Prevention and Protection against Discrimination[44], Law on Litigation Proceeding[45], collective agreements and bylaws at the level of legal entities, as for instance, books of regulations, and alike. In applying the safeguarding of workers' rights, the Republic of North Macedonia applies a complementary system of administrative measures, industrial protection and judicial proceedings. As per the manners of resolving labour disputes for both, individual and collective, the LLR recognises the following: a) peaceful settlement (Article 182); b) settlement through arbitration (Articles 183, 238) and c) court settlement (Articles 91, 93, 181 and other).

Part of the mechanisms for enforcing legal provisions and protecting workers are specified and completed within special laws (such as: Law on Labour Inspectorate[46] and Law on Safety and Health at Work),[47] as well as in the general and individual collective agreements. All special laws addressing specific areas should be added, which treat specific areas and which identify special manners of protection of rights, and which, for all not specifically regulated, refer to LLR and LSHW. The amendments that these documents have undergone in the past years draw the line of development, i.e., recourse in the protection of workers' rights. From the aspect of the mechanisms for law enforcement and workers' rights, in the past period several legal amendments were introduced, which have positive impact and those may be used to enhance the protection of workers.

For instance, Article 11 of LLR entails the institute "altering the burden of proof" in the cases of discrimination and mobbing. Further, Article 67 of the same law promotes a specific legal remedy for safeguarding workers' rights and within, under specific circumstances, workers shall enjoy the right to raise initiative before the competent court for cessation of employer.[48] Article 85 envisages that the decision for cancellation employment contract, as well as the decision for penalty imposition, shall be mandatory to be issued in writing, thus explaining the ground and reason for cancellation of employment contract, i.e. the reason for imposition of penalty, with appeal guidance. Specific legal protection remedies, also introduced for the first time under LLR, are those of articles 196 and 197, relating to court protection of membership rights of a Trade Union Member, as well as of a Employers' Association member, that is, for court protection of the right to association.[49]

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[43] Official Gazette of the Republic of Macedonia No. 92/2007, consolidated text, https://bit.ly/2Uhi21g, last accessed on: 12.12.2018.

[44] Official Gazette of the Republic of Macedonia, No. 50/2010, consolidated text, https://bit.ly/2CJxyhD, last accessed on: 12.12.2018.

[45] Official Gazette of the Republic of Macedonia, No. 79/2005, last amendend: 2015, last accessed on: 12.12.2018.

[46] Official Gazette of the Republic of Macedonia, No. 35/1997, consolidated text, https://bit.ly/2smoKqY, last accessed on: 12.12.2018.

[47] Official Gazette of the Republic of Macedonia, No. 92/2007, consolidated text, https://bit.ly/2Uhi21g, last accessed on: 12.12.2018.

[48] Law on Labour Relations, Article 67: (1) Workers who have not been paid their salaries by the employer and has not paid contribution taxes for three consequent months, enjoy the right to raise an initiative before a competent court for termination of the employer.

[49] Law on Labour Relations, Article 196 – Member of the Trade Union, that is, of the Employers' Association may demand court protection in case of violation of their rights, which are laid down in the Statute or other regulations of the Trade Union, i.e. the Association.

The Law on Litigation Proceeding elaborates the matter of labour relations under the title: "Procedure in labour relation disputes". According to Article 405 of this Law "in procedures of labour relation disputes, in particular when determining deadlines and hearings, special attention shall always be given to the need of urgent settlement of labour disputes". Such decision should imply safeguards of a kind for efficiency of protection mechanisms. The protection is reinforced by Article 407, which stipulates that "during the procedure, the court may, as per proposal of a party, impose temporary measures to prevent coercive action or to remove non-reimbursable injure".[50] In the area of exercising and safeguarding of rights, obligations and responsibilities arising from labour relations, LLR determines the system of two-instance decision-making at the employer,[51] the administrative procedure,[52] as well as the possibility of settling labour disputes in a court proceeding and ensuring court protection.[53]

Under LLR,[54] individual and collective labour disputes may arise. The individual disputes may be triggered under the initiative of the worker or of the employer, and the collective disputes shall occur among signatories of the collective agreement.[55] The Law provides many provisions to ensure law enforcement by involving Labour Inspectorate's control, interference of the Trade Union and immediate court protection at the disposal of the worker. Relating to the number and diversity of means at the disposal of the workers, there are not many changes to be proposed, with an aim of better implementation of standards that are presently given in the Law, but also those that would be added by transposition of EU Directives. Nevertheless, essential element of safeguarding workers' rights shall be the existence of institutions protecting workers' rights and guaranteeing minimum work conditions. The Republic of Macedonia has well-functioning trade unions, inspectorates, commissions, courts and other structures for peaceful settlement of disputes. The Economic Social Council established four special standing commissions, which are supposed to have their role in the implementation of the legal provisions: Commission on Labour Relations and Salaries, Commission on Safety and Health at Work, Commission on Social Safety and Commission on Employments and Labour Market Policies.

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[50] Pursuant to Article 405 of the Law on Litigation Proceeding, in labour relations disputes, especially when determining deadlines and hearings, the court should always pay special attention to the need of urgent settlement of labour disputes. Consequently, for such type of disputes, the deadline for statement of defence is 8 days (over against the general deadline of 15 days), whilst the trial hearing has to take place within 30 days from the day of receipt of the claim. The procedure before the first instance court has to be completed within six months from the day of mail submission, whilst the second instance court shall be liable to adopt the decision on the claim submitted within 30 days from the day of receipt of the claim, i.e. within two months in case a trial is held. In line with the efficiency is the deadline envisaged for 8 days for voluntary enforcement of a certain cost defined by the judgement, as well as the deadline for submission of claim, which is also 8 days. Especially important for the worker is the possibility to be represented by a graduated lawyer employed by the Trade Union, the member of which the worker is, which is extenuating circumstance for such workers, given the amount of lawyer fees in court proceedings.

[51] With a possibility of participation of workers' associations.

[52] Whereby labour inspectorates are involved.

[53] Whereby possible options would be: misdemeanour proceedings, administrative proceedings, civil disputes and criminal proceedings.

[54] Official Gazette of the Republic of Macedonia, No. 62/2005, consolidated text, available at: https://bit.ly/2DznDKT last accessed on: 12.12.2018.

[55] Cavdar, K., (2010), Types of claims for protection in labour relations, available at: https://bit.ly/2sWqdnU, last accessed on: 12.12.2018.

Conclusions

The complex and few-layered system of legal safeguards, procedures and institutions deployed in the Republic of North Macedonia,[56] would seemingly represent a guarantee and efficient protection of workers' rights and create conditions for better protection of rights when not respected.

However, the complexity of the system not only fails to ensure efficient and effective protection, but it is exactly the complexity, in one hand, making bewildering and as a matter of fact, elusive for those that need to make use of it, and on the other hand, it leaves space for different interpretations, transfer of competences and/or manipulation, by applying provisions from different laws for identical or similar situations.[57] It is exactly the possibility of using different protection tools for the same thing, creates a situation whereby workers are not aware of how to protect their rights, and the system be easily abused by introducing ping pong effect.[58]

All these make extremely difficult the use of such mechanisms in practice, that is, in spite of their high number they make them inefficient and ineffective in terms of guidance provided by EU Directives, of ILO and of the Council of Europe.

Recommendations

- Simplify procedures in LLR and LSHW which may be used to safeguard workers' rights.
- Introduce the possibility of free legal aid for labour disputes in the Law on Free Legal Aid, in LLR and LSHW.
- Create labour dispute courts in the Law on Courts.
- Envisage mandatory training with the new law on trade union organisation of trade unions for representation at different levels of safeguarding their rights.

2.3.1 Legislation challenges

The efficiency and effectiveness of enforcement of legal provisions and the realistic protection of workers' rights in the sense derogating from EU standards, ILO standards and revised Social Treaty of the Council of Europe may be treated on many grounds.

2.3.1.1 Legal tools

The matter relating to tools at the disposal of workers for implementation, that is, protection of their guaranteed rights was split in the text of the entire law, that is, it was not focused in one single place. For instance, Article 10 of LLR gives possibility for action under the Law on Contractual Relations, Article 101 envisages interference of the Trade Union in case of dismissal, Article 182 of LLR envisages existence of "a special body prescribed by the law to entrust dispute settlement", and Article 257 of LLR gives the possibility to the worker to request from the Labour Inspectorate performance of inspection oversight, as well as similar examples pointing to matter dispersion.

[56] Where possibility is provided for administrative, industrial and court protection.
[57] See Section 3 of this analysis.
[58] Transfer of jurisdiction to another organ, protraction of procedures and absence of appropriate result.

Conclusions

In absence of simplified explanations, guidelines and manuals to guide workers towards opportunities at their disposal, such dispersion of the matter makes protection means factually inaccessible to workers.

Recommendations

❖ For each adopted law, covering provisions that relate to procedures of protecting workers, manuals should be developed to assist workers in understanding and use of such procedures. Manuals should provide correct answers, whom should the worker approach, what type of assistance/support may they receive and what are the possible positive and/or negative effects.

2.3.1.2 Non-accuracy of provisions

There are situations where non-accuracy of provisions defining the protection results in poor effect of mechanisms and incomplete law enforcement. For instance, Article 10 of the actual Law on Labour Relations provides that "in cases of discrimination set out in Article 6 of this Law, the employment candidate or the worker shall enjoy the right to demand compensation of damage under the Law on Contractual Relations". Such provision is at glance better than the provision of the Law of 2005, where "... [the worker] shall enjoy the right to demand compensation of damage in the amount of five average salaries in the Republic of North Macedonia", as it implies possibility for higher reimbursement. Nevertheless, in reality this means more costly cases and possibility of extremely low compensation, making the entire procedure non-remunerative. Each extension of the procedure shall raise its cost, and the absence of envisaged amount shall mean that it was left on free conviction of the judge.

One of the elements that may treat effectiveness of protection mechanisms is unclearness on whom should the worker approach. For instance, on many occasions, LLR contains the formulation "... the employer and the worker may agree to entrust the dispute settlement to a special organ prescribed by law". The absence of precise designation of the organ competent for the concrete action may have impact on the effectiveness of the envisaged mechanism. In this sense, the solution given in LLR of 2005 is clearer and more precise, such solution imposed action before a special peace council consisted of three members, of whom one shall be assigned by the employer and the worker respectively, and one member shall be jointly assigned by both. Neither LLR, nor LSHW contain, among the obligations of the employer, obligation to ensure appropriate procedures, making the worker easily identify problems and seek protection. Closest to it is Article 9 of LSHW, which provides for principles based on which the employer acts and they mention the obligation to ensure appropriate guidelines, instructions and notices to employees, which would imply, in its broadest term, to file procedures for protection of rights.

Conclusions

The matter relating to implementation of protection clauses and exercising of workers' rights was not précised at the level of a law, and not at the level of obligation provided by the law, in a manner ensuring simple identification of problems and demand of protection by the workers.

Recommendations

❖ Concentrate protection mechanisms in one single place within laws and their clear horizontal and vertical presentation and precise determination of which procedure when shall be used and what are the possible results. This applies to both, LLR and LSHW, the Law on Pension and Disability Insurance, the Law on Employment and Insurance at a time of Unemployment and the Law on Employment of Foreigners.

2.3.1.3 Multi-levelled procedure

Due to the more levels, the procedure may bring the worker in unfavourable condition and have negative implications before reaching possibility of usage of tools ensuring court protection.[59] For instance, pursuant to Article 91 of LLR "to oppose a decision on termination of employment contract out of notice period or a decision on removal from the employer, the worker shall have the right to appeal before the management organ or before the employer... When decision is not adopted on the appeal referred to in paragraph (3) of this Article, or when the worker is not satisfied with the decision adopted on the appeal, they have the right to raise a dispute before the competent court, within 15 days". Put like this, the provision may easily interpret the right as an obligation, whereby the worker may not raise a court procedure if they not initiated a procedure before the employer. Similar is the solution in articles 93[60] and 181[61] of LLR, in the cases when the worker "...considers that the employer is not providing them the rights arising from the labour relation or if they violate any of their rights arising from the labour relation..." According to Article 181 of LLR "Regardless of deadlines set forth in paragraphs (2) and (3) of this Article, the worker may enforce the cash claims from the labour relations immediately before the competent court."

Conclusions

Introduction of obligation for the worker to demand correction of violation of the law by the employer alone, that is, the absence of possibility for the worker to chose whether to file an appeal to the employer or go directly before the court, may be part of the inefficiency of the protection and potential possibility to discourage the worker demand protection of rights.

Recommendations

❖ Clarify the possibility within LLR to initiate a court proceeding by the worker, without primary procedure before the employer.

❖ Special protection guaranteed under LLR, similar to the protection when raising a procedure for

[59] Due to extended period of uncertainty for the workers, in the course of the procedure, when they may be exposed to pressure by the employer, that is, the entire procedure may be reflected on the position of the worker at the workplace.
[60] Dismissal with notice period.
[61] Exercising rights before the employer and court protection.

protection against discrimination, of the worker that started a procedure for protection of own rights.

❖ Ensure mechanisms within LLR to protect the worker from negative effects for starting the procedure for protection of own rights.

2.3.1.4 Position and role of the Trade Union

The role of the Trade Union and its position in the Macedonian legislation is not always clear and the Trade Union not always has the opportunity and adequate funds and tools to accomplish envisaged competences in regard to the performance of rights and their protection. The implementation of ILO standards[62] should take care of the importance of representation organisations of employees and employers. As per ILO standards, "not only the largest organisations should be consulted, but rather all those representing an important part of opinions that relate to a specific subject of discussion. The decision of authorities on which organisation should be consulted should be adopted in good faith." Given this, the strict provisions on representation provided in the Law on Labour Relations,[63] shall lead to reduction, instead of increase of the role of Trade Unions.

"Under ILO standards, organisations representing groups of employees and employers should be represented on equal ground."[64] This is contradictory to the different percentage of coverage required in determining the representation of employees and employers.[65] According to ILO, consultations should be regular and obligation should be envisaged for such consultations of at least once per year.[66]

It seems that the Trade Union plays a very important and vital role in the implementation of the protection of workers' rights, hence, part of the legal provisions place it in uneven and subordinate role in relation to the employer. For instance, none of the laws clearly defines the workers' rights that are under the competence of the Trade Union, which may be used in the protection procedures, where the Trade Union is involved, may be used to deny the necessity of its presence. In contrast to this, laws give broad space to the protection of Trade Union leaders, thereof.

LLR and LSHW do not define the Trade Union as a factual partner of the employer in agreeing matters in advance, seeking to better implement laws, but its role is, before all,[67] reduced down to auxiliary action, once a violation has been performed, once a given workers' right has been breached. In this context, one may see the provisions related to the strike. Namely, a visible gap may be seen in the process of finding a common solution, which sheds a black-white light onto the relations

[62] Tripartite consultations related to international labour standards, Convention, 1976 (No. 144), available at: https://bit.ly/2MI0x7T, last accessed on: 14.12.2018.
[63] See articles 212-215.
[64] Tripartite consultations related to international labour standards, Convention, 1976 (No. 144), available at: https://bit.ly/2MI0x7T, last accessed on: 14.12.2018.
[65] LLR, articles 212-215.
[66] Tripartite consultations related to international labour standards, Convention, 1976 (No. 144), available at: https://bit.ly/2MI0x7T, last accessed on: 14.12.2018.
[67] Except in several abstracted cases.

between the employer and the workers, thereby not recognising escalation of relations, in which the strike appears as last instrument, rather than a usual manner of action.

One of the problems workers face in using the Trade Union as a rights' protection agent is its representation. Even though the law requires the representation "for the purpose of collective bargaining", in practice the Trade Union is most frequently deprived from the possibility to safeguard workers' rights particularly on this ground. For instance, pursuant to Article 14 of the Law on Labour Inspection, following the completion of the inspectoral oversight, even when initiated by the worker or the Trade Union, "a copy of the Minutes from the completed inspectoral oversight is handed, i.e. submitted to the employer", but not to the worker and/or the Trade Union. This is contradictory to the content of Article 16, under which "... the inspector shall be liable to submit a written notice to the requester regarding the identified condition."

In separate articles of LLR, the Trade Union and workers' representatives are clearly positioned as bargaining entities. For instance, Article 95 of LLR states that, when the employer has intention to adopt a decision on termination of the labour relation with higher number of workers due to business-related reasons, that is, at least 20 workers for a period of 90 days. The Article reads that in such a situation, each termination of a labour relation, regardless from the total number of workers employed by the employer, shall be considered as collective dismissal due to business-related reasons. On the other hand, the positioning of the Trade Unions and workers' representatives is similarly stated in Article 101 of LLR, which indicates that "... (5) The employer may cancel the Employment Contract due to the grounds stipulated under paragraph (4) of this Article, only following a prior consent of the Trade Union whose member is the worker being protected from dismissal.". Special problem of the trade union protection is the poor representation of women in trade unions,[68] hence reducing the availability of trade unions and it has impact on their affectivity as a protection mechanism.

Conclusions

The formalisation of trade unions,[69] the uneven positioning of the trade union in the workers' representation processes,[70] as well as the unbalanced gender representation in the trade union management have impact in the utilisation of the trade union association, as effective mean in the law enforcement and as efficient protection mechanism. The legislation does not elaborate the competences of the Trade Union and thus reduces it down to rather reactive, instead of proactive structure in law enforcement. This means that the Trade Union is rather more present as a structure interfering only when the law has already been violated, instead at a level of prevention when policies and procedures are drafted, which would restrict the violation of laws.

[68] Bashevska, M., Stavrevska E., (2016), Women and trade unions: Representation and workers' rights in the Republic of Macedonia, Left-wing Movement Solidarnost.

[69] From the aspect of representation.

[70] Active legitimating and inequality against the Inspectorate.

Recommendations

- Adopt a special law on trade union association, which would impose application of specific norms of nongovernmental association and the importance of representation of rights would not relate only to the number, but rather to the specificity of rights and interests being advocated for.
- Enhance the freedom of choice for workers when it comes to forming trade unions and advocate for their rights and interest by trade unions.
- Balancing the percentages necessary for the recognition of representation in tripartite bargaining between trade unions and employers' associations.
- Legal provision of gender balance in trade union management structures.
- Enlargement of areas envisaged for mandatory consultation of trade unions in LLR, LSHW and the Law on Employment and Insurance in case of Unemployment.

2.3.1.5 Legal solutions

The laws provide solutions that may be interpreted differently and which facilitate easy elusion of the legislator's intention, that is, only apparent protection of workers. For instance, according to Article 102 of LLR "in case the court adopts a decision establishing that the labour relation of the worker has been terminated unlawfully, the worker shall have the right to get back to work following the effectiveness of the decision, if he/she demands it. Following the returning to work, the employer shall be liable to pay to the worker the gross salary which he/she would receive if at work, under a law, collective agreement and employment contract, reduced by the amount of incomes that the worker has already gained based on employment, following the termination of the labour relation."

From the aspect of protection of workers' rights, this Article is problematic on two grounds. The Article leaves space for different interpretations on which work position should the worker return to. Namely, the formulation "get back to work" does not provide guidance on whether the worker should get back to the old work position, to any work position within their qualifications, or to any work position regardless of qualifications. Such legal norm makes the protection inefficient, as the worker may keep on being exposed to violation of rights and with this, exactly to taking advantage of the court verdict and yet, not violating the law.

The second part of Article 102, envisaging bond for the employer who unjustly dismissed the worker, to pay a gross salary "reduced by the amount of the income that the worker has gained based on work relation, following the termination of the labour relation", in its kind, amnesties the employer from suffering consequences due to unlawful action and violation of the worker's rights, in a situation when the worker was forced to seek another job.[71] Hence, the worker is rewarded by making the worker try to find a way to survive.

Conclusions

Certain provisions in the laws give the opportunity of different interpretation of possible procedures of their implementation and may influence the efficiency of utilisation of protection mechanisms.

[71] Not at one's fault and most frequently in many unfavourable conditions.

Recommendations

❖ Precise all legal provisions where different interpretations are possible and adopt of various decisions in identical or similar situations.

2.3.1.6 Labour Inspectorate

One powerful tool for the enforcement of the legal provisions, under LLR, is the Labour Inspectorate. According to Article 256 of the LLR "oversight of the application of this Law, the employment regulations and other labour-related regulations, collective agreements and employment contracts regulating the rights and obligations of the worker and the employer arising from the labour relations and other agreements defining reimbursement for the job done in an amount higher than the amount of minimum salary established by law, shall be carried out by the state administration body authorised for matters in the area of labour inspection.". The labour inspector not only performs oversight, but he/she may perform direct activities referring to law enforcement, raise procedures before competent court and impose specific types of bans and other sanctions. The inspectoral oversight is regulated under the particular Law on Labour Inspection.

This is a rather complex law, which largely corresponds to the requirements for effective and efficient protection of workers' rights and it contains provisions offering a very simple procedure of denouncement of violations and initiation of procedures before the Inspectorate. Article 16 explicitly obliges the inspector "...to consider each demand of the worker for the purpose of exercising, that is, protection of rights arising from the labour relation, and safety at work."

The inspector has the right to point to, give orders and make prohibitions,[72] and in case of misdemeanour or criminal act, he/she has the right to report so as to raise appropriate procedure,[73] whereby the organ receiving the reporting is obliged to inform the inspector of the decision adopted. However, in spite of the effectiveness indicating the legal text, in one part of studies conducted, which treat the work of the labour inspectorate and before all, its positioning within the wider context of enforcement of workers' rights, significant problems and disadvantages come into light.

For instance, the study developed by ESE, "institutional cooperation of MLSP with trade unions, employers and Labour Inspectorate, as well as with other institutions is identified, for the purpose of monitoring and analysing the conditions and coordinated confrontation with the problem at the workplace is missing. The State Labour Inspectorate, as organ of MLSP does not recognise, neither does it fully affirm its primary role of safeguarding the rights in the area of labour relations nor safety and protection at work. It only refers to using court proceeding for the purpose of safeguarding, instead of exhausting already existing national protection mechanisms among which, inspectorial supervision within its mandate. The introduced mechanism for reporting violations of workers' rights within the State Labour Inspectorate is non-functional.[74] So far they have not

[72] Article 17 of the Law on Labour Inspection.
[73] Article 18 of the Law on Labour Inspection.
[74] The so-called "Call-Centre".

registered a single denunciation of psychological or sexual abuse. All these refer to non-existence of a system for reporting and monitoring of such events even by the State Labour Inspectorate."[75]

Particular disadvantage of the Law on Labour Inspection is the fact that its greatest part does not deal with the procedures and the inspection oversight, but rather with the structure of the institution itself and administrative-technical parameters of its functioning.

Conclusions

The inspectorial service was designed and legally defined as effective tool in the enforcement of legal provisions and the protection of workers' rights also from the aspect of legal solutions, and yet, this tool fully corresponds to the requirements for effective protection, as envisaged by EU directives and international documents that the Republic of North Macedonia has ratified. In practice, the inspectors do not fully utilise the legally provided opportunities, and the system for reporting violations to the workers' rights is not tailored as per workers' needs.

Recommendations

- The Law on Labour Inspection should get rid of provisions relating to the selection of inspectors and functioning of the Inspectorate, and should be consolidated with provisions relating to their jurisdiction.
- The Law on Labour Inspection should specify procedures on the work of inspectors and on reporting violation of workers' rights, which should ensure maximum protection of workers.
- The Law on Labour Inspection should envisage equal inclusion of trade unions, other workers' representatives and employers' associations so that inspectors act and inform both parties equally.

General recommendations related to legislation

- The actual legislation covers all mechanisms for enforcement and protection of workers' rights, which are part of the understanding of effective and efficient protection. This means that no major changes are necessary in the legislation as such.
- The legislation must be made available to workers, which means that workers should be offered simplified and understandable versions of their rights and protection procedures.
- Concentration and codification is necessary of the labour legislation, which would enable simplification of the system of vertical processing of protection. A code of legislation should be drafted, tackling laws regulating labour relations. A concentration of various funds at the disposal of workers themselves should be integrated in the laws, and the multi-layer protection should be a matter of choice, instead of obligation.
- A detailed description is needed of such offered procedures and solutions, which would disable different interpretation of identical or similar cases.
- Legal texts should be freed from administrative-technical ballast that has to be appropriately elaborated in bylaws, as well as in manuals, rules and guidelines. Provisions relating to selection of

[75] Gekevska, M., (2010), Institutional response and organisational policies on abuse at the workplace, ESE, available at: https://bit.ly/2avxVMn, last accessed on: 30.12.2018.

inspectors, for instance, should not be part of the Law on Labour Inspection, but rather of special manuals and other secondary legislation.

- ❖ Further detailed description and explanation of the meaning of separate procedures should be part of the collective agreements.
- ❖ The matter on trade unions should be elaborated in terms of explaining their competences and their functional approximation to workers, instead of bare protection of the trade union association alone.[76]
- ❖ The legislation adopted regarding the labour inspectorate is sufficient and pertinent. The genuine role of this institution does not demand legal, but rather practical amendments, which would save it from external influence and strengthen it so as to become independent, even untouchable for the government organs.

2.3.2 Problems contained in the collective agreements and strategic documents

At collective bargaining, safeguarding remedy according to Article 215 of LLR is the address before the court for dispute settlement, on which Trade Union is representative, as well as the one in Article 234 of LLR, according to which a party to Collective Agreement may, under appeal filed before the competent court, demand protection of its rights arising from the Collective Agreement.

The General Collective Agreement in the field of economy contains only two articles addressing mechanisms of workers' protection.[77] Two are related solely to the inclusion of the Trade Union, but no other protection mechanisms, worker supporting tools, neither procedure to ensure effective and efficient protection are indicated.

In certain collective agreements there is a separate chapter titled as "Protection at Work, and another separate chapter titled as "Procedure protecting workers' rights".[78]

Nevertheless, even where special parts exist of the agreement relating to protection at work, the provisions in the collective agreements, get satisfied before all, with reiterating same provisions in the laws, without précising those or concretising procedures that may be used by workers after the finalisation of the procedure within the organisation they are employed by, aiming at making such protection effective.[79] Similarly, strategic and programme documents to be adopted at the level of Government and/or MLSP do not contain development of protection mechanisms or introduction of measurement of efficiency and effectiveness of protection mechanisms. As an example, in the Safety and Health at Work Programme,[80] no effective protection of workers' rights is mentioned; neither any protection mechanisms at disposal of workers are mentioned.[81]

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[76] Which is rather important, but not sole and self-sufficient component of the existence of effective protection.
[77] General collective agreement for the private sector in the area of economy (consolidated), XIV. Safeguarding workers' rights (Article 62 and Article 63), available at: https://bit.ly/2Be53GL, last accessed on: 30.12.2018.
[78] For instance, Collective Agreement of Public Enterprises in the branch of energy.
[79] Collective Agreement for public enterprises in the branch of energy, available at: https://bit.ly/2sLRppq last accessed on: 12.12.2018.
[80] Safety and Health at Work Programme, adopted during a session of the Government of the Republic of Macedonia, held on 15.8.2017.
[81] Or introducing procedures for such purpose.

In the implementation plan of the Programme – Labour Market and Decision-Making on Misdemeanours in the area of labour relations and safety and health at work, under the 2018-2020 Safety and Health at Work Strategy, objective set is the peaceful dispute settlement and insurance of safer and more humane system for safety and health at work, as well as protection of workers' rights. The following are envisaged as Programme success indicators: a) Functional system for peaceful settlement of labour disputes, and b) Advanced safety and health at work system and workers' rights protection. Relating to decision-making on misdemeanours in matters of labour relations and safety and health at work, in the same programme, the following objectives are set: a) Reduction of violations of labour rights and safety and health at work, and b) Influencing staff in charge within legal entities to raise the responsibility of consistent observation and enforcement of laws and secondary legislation in the field of labour legislation. The following are listed as success indicators: a) Reduced number of violations of laws and secondary legislation in the field of labour legislation, of the labour force rights, and b) Enhanced protection of labour force rights in the labour market in the domain of laws and bylaws of labour legislation. Nevertheless, not a single part of the Programme mentions procedures and mechanisms of protection, efficiency and effectiveness of existing and possible new remedies, nor their availability to workers.

Conclusions

Collective agreements do not precise the matter related to protection mechanisms, neither do they offer the workers understandable and clear procedures of action in situations when they are supposed to demand protection. The absence of clear and available procedures is not observed at the level of the problem, neither is it addressed in the strategic and programme documents.

Recommendations

- Collective agreements need to be specific and precise. The collective agreements should not copy and paste legal provisions, but they should be specified in accordance with the concrete field relating to the collective agreement.
- The collective agreements should offer clear protection mechanisms of the workers' rights. Every collective agreement should contain a specific chapter, thoroughly providing manners and procedures of protection of workers' rights.
- Collective agreements should contain a special chapter elaborating the procedure of protection of workers' rights.

2.3.3 Peaceful settlement of labour disputes

Articles 182 and 183 of LLR refer to peaceful settlement of disputes as one of the tools enforcing the Law on Workers' Rights Protection. This tool is further elaborated in the Law on Peaceful Settlement of Labour Disputes.

Peaceful settlement of disputes in a manner provided for in this Law is oriented towards establishment of effective protection of workers, especially given the fact that the workers are

exempted from paying the arbitrator's costs.[82] The Law provides for the procedures of action and expected results for both, collective and individual disputes.

The insularity of this Law is in the fact that an individual dispute may be lodged only in case of dismissal and non-payment of salary, but not related to non-enforcement of other legal provisions and to violating other rights relating to the labour relation in question.

Conclusions

The peaceful dispute settlement is a tool that is well elaborated and may be used accordingly, in spite of its specific content-wise insularity.

Recommendations

- Obligation should be provided in LLR for peaceful dispute settlement for every request made by the Trade Union or by the workers.
- The peaceful labour disputes settlement should be envisaged by the Law on Mediation accordingly.
- The peaceful settlement of disputes should be extended to all workers' rights, both in collective and individual cases.

2.3.4 Judicial protection

Judicial protection is a significant factor in enforcing labour rights in the Republic of North Macedonia. The judicial protection derives from the provisions contained in LLR, the Law on Contractual Relations, the Law on Prevention and Protection against Discrimination and the Law on Safety and Health at Work, whilst it is implemented within the litigation proceeding. Non-existence of special labour court and absence of a special procedure related to labour relations makes the entire process of judicial protection as complex and practically not available to the workers.

Interesting is the information, which was identified in several studies, that the discrimination is more easily accepted for court proceedings when it comes to labour relations. The report of the Macedonian Young Lawyers' Association, for instance states that, "... civil-law judges stated that the only cases that may indirectly relate to any of the discrimination grounds, are cases in the field of labour relations and social relations, that is, utilisation of contractual law mechanisms." and "judges mentioned that the background of a large number of judicial disputes developed before courts is actually, the discrimination against workers and unequal treatment by employers."[83]

Some studies, regarding labour relations and efficiency of courts as a tool in protection of labour rights, indicate that the procedure duration remains to be a problem. "In practice, labour relations take inadmissibly long, even too long. The maximum prescribed semi-annual duration of such procedures is often harshly violated. In fact, there are cases when this six-month period has been exceeded on several occasions, when the judge cannot pronounce the verdict, without having such developments inflict any negative repercussions for the professional career of the judge in

[82] Article 14 of the Law on Peaceful Settlement of Labour Relations.
[83] Janiceski, F., (2009), Report on the legal protection against discrimination in the Republic of Macedonia, Macedonian Young Lawyers' Association, Skopje.

question."[84] There is no real limitation of the duration of procedures. "The trial of the worker L.LJ. against NIP Nova Makedonija, for receipt of dismissal notice. Eventually, three year ago, the Supreme Court pronounced a verdict on two grounds: one for trial within unreasonable time, whereby judgement was passed to him of EUR 500 compensation. The dismissal that the court found unlawful and contrary to the Law is the reason for the second ground, for which EUR 5,000 compensation were additionally adjudicated. Yet, the worker did not manage to charge the judgement, as meanwhile the legal entity entered into bankruptcy. "[85]

The same study states that "the Republic of North Macedonia has already lost few labour disputes before the European Court of Human Rights in Strasbourg and it is exactly because of violation of the crucial principle of trial in reasonable time, as guaranteed by Article 6 of ECHR"[86] The study refers to the following cases: *Neshevski vs. the Republic of Macedonia*;[87] *Gjozev vs. Republic of Macedonia*;[88] *Dimitrieva vs. Republic of Macedonia*[89] and *Dimitrievski vs. Republic of Macedonia*.[90] Next element enlarging unavailability of courts as effective agent for protection of labour rights is the cost of court proceedings. "The expense of running court process in the Republic of North Macedonia, to a great extent is dissuasive and discouraging when citizens or workers think of institutionally demanding problem solving, even to the extent that demanding justice through the court is seen as lavishness of its kind."[91]

Conclusions

The procedure before a court, as part of enforcing and protection of workers' rights, represents irreplaceable and essential tool, but in the actual environment of procedural and material provisions entailed in the laws, it may not be used as effective and efficient mechanism. The procedural relation to the litigation proceeding, the lack of high specialisation of the court in labour matters, the duration and costs of the procedures, represent factors having impact on non-utilisation of such mechanism by the workers.

Recommendations

- The position of the judicial protection should depend on the general concept of protection, which shall be accepted in the Republic of North Macedonia. If dominantly administrative and/or industrial protection is accepted, courts become necessary exclusion. If a system is selected where main accent is put on courts, it is desirable to form labour courts, specialised not only in material, but also in procedural law. Existence of special courts implies specific terms and exemption of part of costs related to the litigation.
- Labour disputes should be listed below the provisions on free legal aid, in the Law on Free

[84] Apasiev, D and Mihajlovska, I., (2011), Labour disputes – positive examples in judicial practice, Social Justice Movement – Lenka, Skopje.
[85] Dragi Jovanovski, Is there a need of labour courts? available at: https://bit.ly/2t2a0xQ, last accessed on: 12.12.2018.
[86] Dragi Jovanovski, Is there a need of labour courts? available at: https://bit.ly/2t2a0xQ, last accessed on: 12.12.2018.
[87] European Court for Human Rights, Application No. 14438/03, Judgement of 24.IV.2008.
[88] European Court for Human Rights, Application No. 14260/03, Judgement of 19.VI.2008.
[89] European Court for Human Rights, Application No. 16328/03, Judgement of 6.XI.2008.
[90] European Court for Human Rights, Application No. 26602/02, Judgement of 18.XII.2008.
[91] Dragi Jovanovski, Is there a need of labour courts?, available at: https://bit.ly/2t2a0xQ, last accessed on: 12.12.2018.

Legal Aid.

- Special court taxes should be envisaged relating to processes in the area of labour relations.

SECTION 3

Data from the empirical research

Section 3 – Data from the empirical research

As mentioned in the beginning of this document, the research is focusing on the minimum work conditions for employees in the following sectors: industry, mining, construction and energy. 3 branch trade unions – members of the Alliance of Trade Unions of North Macedonia are active: Trade Union on Construction, Industry and Projecting of Macedonia (TUCIP), Trade Union on Industry, Energy and Mining of North Macedonia (TUIEM) and the Independent Trade Union of Workers in Energy and Economy of Macedonia (TUWEE).[92] Also, the construction sector includes the Independent Trade Union of construction workers, engineers and construction merchants (ITUCWECM), of the Confederation of Trade Union Organisations of North Macedonia (CTUOM). These sectors are our subject matter, as, in addition to the textile industry, these are sectors with indications spread in the public that the labour rights are often violated, especially in the area of safety and health at work.

For the needs of the analysis, 11 interviews were conducted. Four of them are with the mentioned trade unions – Alliance of Trade Unions of North Macedonia, two branch trade unions of ATUM - TUIEM and TUCIP and ITUCWECM of CTUOM. Besides with trade unions, interviews were also conducted with other organisations and institutions, such as: two interviews with employers' organisations – Organisation of Employers of North Macedonia (OEM), which is fulfilling the conditions of representation at national level and at a level of more branches where branch associations exist,[93] as well as with the Business Confederation of Macedonia (BCM), which is not representative; one interview with the Ministry of Labour and Social Policy; two interviews with the State Labour Inspectorate; one interview with the Institute for Labour Medicine and one interview with the Safety and Health at Work Association.

The interviews cover several topics of importance in determining the state of minimum work conditions – trade union organisation and collective negotiation, violation of workers' rights and experiences in utilising protection mechanisms, operability of the system of safety and health at work and assessments of the efficiency of institutions that are part of the system for workers' rights protection.

3.1 Efficiency of institutions

According to respondents, the efficiency of institutions is not at a satisfactory level. Usually respondents indicate other institutions as being inefficient. Rare is the self-criticism and sincerity in indicating disadvantages in own institutions. When there is self-criticism, again, the blame is put on the superior institutions, stating lack of resources or staff. Main remark is the absence of institutional cooperation and coordination among institutions. Namely, in personal address to higher institutions, contacts are established, resulting in incidental cooperation mainly reduced to "service level", but an essential continuous institutional cooperation is missing. The system institutions, according to

[92] Despite many attempts, we could not manage to conduct interview with the Independent Trade Union of Energy and Economy Workers of RM (ITUCWECM).

[93] Even though we requested to conduct interviews with the relevant branch associations, our request was responded by an interview with the Central Office of OEM.

respondents, are passive, even though they have been monitoring regulations mechanically, but do not monitor the spirit of the regulations. They act reactively, that is, they act only after breach of regulations. There is absence of proactive, dynamic action for protection of workers' rights as human rights, as well as absence of self-initiative instigated by institutions.

3.1.1 State Labour Inspectorate

Main remark of the trade unions against the State Labour Inspectorate (SLI) is that the Inspectorate is lacking staff. The disadvantage is identified both in the number of inspectors, and in their expertise. They consider that SLI "does not function in its full capacity, as they are lacking inspectors".[94] This conclusion was made by all trade union representatives that we interviewed. They say that the Inspectorate has made forms and applications available and that workers and trade unions report by obeying to the rules, but yet, further processing of cases is missing.[95] Even when cases are processed, illogical situations occur, namely, workers do not receive any feedback on the procedure outcome. This opens opportunities of appeal. In that light, trade union representatives consider this to be a result of weakness of procedures. Trade union representatives say that this is the exact reason of mistrust of workers against state institutions, including the State Labour Inspectorate. According to them, higher coordination and cooperation is lacking of SLI and trade unions.[96] The communication with the Inspectorate, according to the respondents, is reduced down to personal contacts. In those terms, higher Inspectorate instances are always open for communication, but it is field cooperation that is missing at institutional level:

> *"We have better communication at higher level. The main state inspectors have never rejected us, and we may say that the communication as such is good, but the further action is a problem. At lower level, the communication between the particular inspector and the worker reporting is usually contrasting. We have the impression that inspectors find their job as a burden, rather than a professional duty. They need to pay visits, admonish, punish... Rarely good inspectors may be found, I have the impression that they do not find challenging to do what they need to do, they, in fact, are only protecting the employer."* (Interview, TUIEM).

Trade union representatives consider that communication has to be developed on regular basis, and the institutional cooperation to be developed *ex officio*. To them, the Inspectorate has to work proactively and preventively – to inform, alert and educate employers, trade unions and institutions, so as to prevent undesired events:

> *"Well no, you see, when we approach, we have no problem. Yet, the obstacle is somewhere else – the problem with their institution is of general terms, they should chase exactly those irregularities in the field without us having to call them. God forbid that they should act only when a problem is reported!"* (Interview, TUCIP).

[94] Interview, TUCIP.
[95] Interview, ITUCWECM.
[96] Interview, ITUCWECM.

According to trade union representatives, the Inspectorate should be more present in the field, act proactively instead of reactively and act as per own estimate and as per proactiveness, not only pursuant to reports. According to the trade union representatives, the Inspectorate is very passive in its action, the communication flows smoothly at higher instances, but when a situation occurs for field action, according to the trade union representatives, it is very hard for them to conduct inspection:

> *"Often they do not take inspection. When we ask them to do so, they would not go out. We need to renew the request, or go through higher instances. Sometimes, they proceed with great delays, when the momentum has passed" (Interview TUIEM).*

The trade union representatives also consider that staff equipment of the Inspectorate is missing, both in terms of number, and also in terms of inspectors that are specialised in particular fields. As another problem, the respondents find in the perceived connection of the inspectors with employers, therefore trade union representatives often request the assistance of inspectors from other towns:

> *"We haven't seen any problem in their performance, but rather in their non-performance and their calculations together with employers. In several towns they have been working as inspectors for 30 years, and never punished anyone, and alike. One cannot say that with such a great experience they do not know their job, but their connections with the employers are beneficial to them, and that is why we usually demand inspectors from other towns to pay field visits. For instance, from Kumanovo, for Kriva Palanka matters."* (Interview, TUIEM).

The representatives of the Business Confederation of North Macedonia also consider that there is significant staff deficit within the Inspectorate. They have doubts that there is different and unequal interpretation of the inspection oversight in different parts of the country – for instance, in Skopje, Berovo or Tetovo. This has deteriorated trust in institutions, more concretely, in the State Labour Inspectorate. The Organisation of Employers also pointed to staff and material disadvantages of the State Labour Inspectorate.

Same problems – i.e. lack of staff and technical equipment – are also reported by respondents from the Ministry of Labour and Social Policy. They add that inspectors are not pertinently educated, they have different views on same matters and in some cases, they act differently under same conditions. The Ministry stated that they do not have the power of oversight of the State Labour Inspectorate, as the Inspectorate is an independent institution. We should emphasise here that even when the Inspectorate considers a worker's claim, the Inspectorate does not inform the worker concerned on the course and the outcome of the procedure. The excuse of the State Labour Inspectorate is that there is no legal provision for doing so. The Ministry of Labour and Social Policy stated that they are not approached by citizens, even though they have no such legal powers, therefore the Ministry refers special cases to the Inspectorate. They add that the fact itself that certain matters are not prescribed by the law, hence it generally means that the institution avoids processing such matters. On the other hand, the State Labour Inspectorate representatives agree that there is staff equipment

missing in their institution, as well as absence of material resources, for instance, transportation means. They add that the Inspectorate is particularly missing inspectors in safety and health at work:

> *"In general, we have low number of inspectors – we have not even 30 inspectors in SHW matters. When such news reach media, the blame is automatically put on the Inspectorate but it is not so, the employer is obliged, and we are supposed to identify the condition and act upon it. They also complain for insufficient number of field vehicles; I consider that there is no need for each inspector to travel alone in the field; rather several inspectors may use one vehicle"* (Interview, SLI).

They speak out the great need of "continuous training of inspectors", as well as increase of salary and "reimbursement of field work risk". Further, they consider that:

> *"There is a possibility of intervention in specific laws due to precise determination of the authority of the inspectors, as there is interference noted of authority of several inspectorates, thus resulting in work efficiency reduction"* (Interview, SLI).

The representatives of the State Labour Inspectorate especially underline the lack of computer and technical training, lack of technical support and lack of informatics & software system for the work of the Inspectorate. Namely, the inspectors still manage all cases by hand. Information are also collected and distributed by hand. According to them, the State Labour Inspectorate is missing case management contemporary software system, communication among inspectors and case processing. This, according to them, would significantly improve the efficiency and effectiveness of the State Labour Inspectorate.

3.1.2 Trustworthiness of institutions' information

The trade union respondents, in principle, have no doubts in the trustworthiness of the information provided by the state institutions relating to workers' rights, injuries at work, and alike. Nonetheless, main problem, according to trade union representatives, is that workers often do not report the cases. This is thanks to many reasons, such as, for instance, that some workers work illegally and fear to lose their job if they report an injury, but in the majority of the cases, according to the trade union representatives – is that the employers convince their workers not to report the injuries at work:

> *"No, no, they do not report. And most frequently, there are such cases when the employer says to the worker – even when injured at work – he/she should report to have been injured out of the working hours. There are cases of that kind."* (Interview, ITUCWECM).

Further:

> *"We have situations when the employer has an obligation to do so, but do not do it. The employer politely pays reimbursement and hence they do not report. Greatest problem is that the institutions that need to persecute them, especially for death cases and grave injuries, and they nearly do not process anything. Almost always such cases end up saying that it is about a conjuncture of unfortunate circumstances that everything has happened due to the fault of the worker" (Interview TUIEM).*

According to the trade union representatives, often the employer reimburses the injured worker so that they do not report. In case of death, trade union representatives, the fault is usually put on the worker. They say to have a high number of cases of unlawful action of employer or management, but there are judgements on managers or directors that are missing.

The Macedonian Association for Safety at Work also agree on these conclusions:

> *"Here, reports are published on professional diseases, and you will see that it does not function. Starting with the general practitioner, and up to the injuries. My system does not work"* (Interview, MASHW).

Completely different is the view of the representatives of MLSP and of employers. The Ministry considers that data should be used by the competent institutions. Hence, instead of that, nongovernmental associations shared information with the public: "nevertheless, a system should exist for such data. It should be made known, which institution is responsible of what. A civic association cannot be a reliable source",[97] they say. The Organisation of Employers representatives, o the other hand, say that they consider as reliable the information, as "each accident has to be reported within 24 hours. The Inspectorate is producing reports related to this".[98] Therefore, according to them, the problem is in the system, the state needs to undertake measures and introduce a credible data collection system.

3.1.3 Work of the Public Health Institute and of the Labour Medicine Institute related to the improvement of the health condition of workers

Part of the trade union representatives consider that these institutions work in satisfactory manner, and part say not to have information on the work of such institutions. Generally, the representatives consider that the legally envisaged number of regular examinations is at a satisfactory level. The trade union representative from the field of construction told us about the need of compulsory vaccination against Tetanus in all workers exposed to risk of frequent injuries. The representatives of the employers find these institutions useful, as they enable second opinion if they doubt the validity of the workers' sick leave. MTSP considers that the time is too short for the process of safety and health at work related to this matter.

3.1.4 Work of the Ministry of Labour and Social Policy

The trade unions interviewed for the purpose of this study differently asses the work of the Ministry. Principally, they say that contacts do not lack, but they consider that the meetings with the Ministry representatives do not provide essential and long-term fruits. TUIEM say to have regular communication and meetings and emphasise that the Minister herself personally pledged and intervened when inspection would not be conducted by the Inspectorate. This fact is confirmed by our intuition that in general, institutions lack institutional cooperation and that it is mainly relying on

[97] Interview, MLSP.
[98] Interview, OEM.

personal contacts and services and that it depends on the good will of the management staff, instead of the administrative system mechanisms.

Greatest remark of TUIEM, and this remark does not relate personally to the Minister herself, or to the Ministry. They say to have regular contacts, but they do not result with concrete changes of the policies. As an example they mention the negotiations on accelerated retirement with the Ministry. This initiative was commenced by the Trade Union already in 2013 and the aim is to purify the list of jobs with accelerated retirement, due to the riskiness of such posts. During the negotiations, 26 more posts remained in the field of construction industry, for which no consent was granted on accelerated retirement. The Trade Union says that a detailed risk analysis was developed for these posts and that the analysis was participated by representatives from the Ministry, Trade Unions and of the Organisation of Employers. According to the representatives, following the exhaustive work, few more details remained to be agreed and sign the agreement, but all of a sudden, the Ministry lost its willingness to finalise the process.

Trade unions point out the absence of tripartite social dialogue. According to the trade union representatives, the main reason for this is initially in the lack of appropriate representation organisation of employers, and once formed, the lack of willingness by the employers for social dialogue. The trade union representatives consider that Ministry should have the key role in enhancing and proactive running of the social dialogue, so as to achieve branch collective agreements. Part of the trade union respondents underlines the Ministry as passive and not interested in tripartite social dialogue.

MSHW are not happy with the work of the Ministry of Labour and Social Policy, especially after repealing, 4-5 years ago, the Sector of Normative Arrangement. Ever since, the Ministry of Labour and Social Policy does not have its SHW representative. On the other hand, the employers' representatives are happy with the work of the Ministry of Health and Social Policy.[99]

3.1.5 Work of the judiciary

In general terms, the work of the judiciary is assessed positively by the majority of respondents. The Organisation of Employers considers that there are various interpretations by various judges due to the ambiguity in legislation, but have no specific details. The Macedonian Association for Safety at Work considers that the greatest obstacle is the prosecutor's office and the fact that cases never reach the judiciary:

> *"The greatest pitfall was the Public Prosecutor's Office. I do not know how many criminal charges were brought to the PP, but nothing happened. This has to be investigated for the last years, until I hear one day that a representative of employers goes to prison for a death case with 100% of shortcomings. Not a single employer must conclude a contract with the employee so that he/she is eventually sent to his family in a coffin, and in our country, it seems that such an issue is already agreed upon. I know that this happens everywhere, but not everyone knows, and there is not a single social-wise TV show that would be curious about what is happening to such families."* (Interview, MASW)

[99] Interview, OE.

3.1.6 What needs to change in the authorisations and work of the institutions

The trade union representatives give few proposals on changes in the work and authorisations of the institutions. ITUCWECM consider that establishment of institution is necessary – a coordination body – which would supervise and coordinate the work of the institutions relating to workers' rights. The majority of the respondents say that the authorisations of the institutions and the legal frame, even when everything is alright, have to be implemented. They say that it is so, because even in the best laws they will not have any impact if not implemented consistently. At the moment, they say, the accent should be put on making the system functional. Main remark of the trade union representatives is the non-existence of representation associations of employers for all sectors, more concretely, the construction sector. They continue:

> *"The state is the one to encourage partners to collective bargaining. Having in mind that there is inactivity also from that point, none of us should expect that we sit and agree with anyone, if there is nobody to sit with. If there is nobody in the country to deal with the matters they work and understand, then we will never find a common ground, as there is nobody to find common ground with. MLSP should seriously take the fact that all three partners should sit on the same table, elaborate their advantages and disadvantages and problems, whatever it is, and find a joint solution. That is not hard at all, if we sit together."* (Interview, TUCEP).

They add that at the moment, every institution should work for itself that a coordinated and joint action of institutions is missing, especially among the three partners of the social dialogue. The representative of the Independent Trade Union of Construction Workers, Engineers and Construction Merchants (ITUCWECM) considers as necessary the introduction of a form of supervision. He considers that this has to be introduced in a new law on trade union organisation:

> *"There has to be a monitoring conducted over them as well. With the Law on Trade Union Organisations, the trade union representatives have to conduct monitoring over them, as well. This means – same as in the judiciary, there has to be monitoring arrangements, in the inspectorates – there has to be monitoring arrangements. As they do not want that kind of cooperation, they do not want to have monitoring over them either"* (Interview, ITUCWECM).

This remark of the respondent relates concretely to the State Labour Inspectorate, but it may relate also to all other system institutions. The frustration of all respondents is visible, especially among trade union representatives, with the non-functioning of institutions and not respecting laws:

> *"And they are not implemented, in any field. Around all North Macedonia, no matter how many are – and even the worse laws, they need to be implemented. Not even that scope is implemented. Gaps are sought for, not only in construction field, but rather in any other field. Both, in the state institutions and in inspectorates..."* (Interview, ITUCWECM).

The majority of trade unions share this view. They say that even the laws with limited capacities in protecting workers' rights are not implemented accordingly. The situation would considerably improve for the benefit of the workers, only if laws start getting implemented consistently.

MLSP add that they cooperate with all institutions, especially with ILO. They only consider that there is generally a problem in our system, that the conventions and recognised principles would not be implemented, if not prescribed by laws.

Conclusions

Conclusion 1.1: There is no established coordinative cooperation among institutions. The cooperation is reduced to personal connections and interventions from higher instances. The success of interventions depends on the good will of the individuals. There is cooperation lacking at lower level, as well as institutional mechanisms that would move forward the processes of ex officio protection of workers' rights.

Conclusion 1.2: The institutional capacities of the key institutions tasked with protection of workers' rights are at unsatisfactory level.

Conclusion 1.3: There is acute dependency among the institutions on the excessive legislation. The respondents say that "if something is not written in a law that would not be implemented". In this manner, the legislator enters a circle of continuous and excessive legal amendments. As a result to this: (1) the dependency is strengthened on the excessive legislation, by additionally enhancing the legislator continue with excessive legal amendments, (2) legal insecurity occurs, (3) the efficiency and effectiveness of the system is lacking, as insufficient time is left to introduce existing mechanisms.

Conclusion 2.1: The State Labour Inspectorate has lack of staff – both in terms of number, and in terms of expertise. This was confirmed by all interlocutors.

Conclusion 2.2: The State Labour Inspectorate, according to the respondents, acts reactively, after accidents happen. There is lack of proactive action, especially in educating and improving the capacities of the companies.

Conclusion 2.3: A system for supervision, assessment and control of the quality of the Inspectorate's work is missing.

Conclusion 2.4: Following the denouncements made by workers, the State Labour Inspectorate does not inform workers on the course and on the outcome of the intervention. No legal bond exists for that.

Conclusion 2.5: The work of the State Labour Inspectorate runs analogously through inefficient bureaucracy. The communication between inspectors is developed by personal contact. All this is a reason that the efficiency and effectiveness of the work of the State Labour Inspectorate is at unsatisfactory level.

Conclusion 3.1: In a workplace injury, employers often discourage workers from reporting injuries either through pressures or through extraordinary payments. This avoids improving security and worsening the situation of workers.

Conclusion 3.2: Institutions complain about taking over the work of collecting information by non-governmental organisations. On the one hand, the institutions do not trust the work of non-governmental organizations, on the other, the public and the workers do not trust the work of the institutions.

Conclusion 4.1: There are no standards for the prevention of injuries at workplaces with increased risk, and for example, standards for providing hot meal are missing.

Conclusion 5.1: There is a lack of willingness to implement the tripartite social dialogue and the adoption of branch collective agreements, especially on the side of employers. In some cases, there is no representative representation of employers, and after employers' representative organisations have been established, they lack the will to lead social dialogue and achieve branch collective agreements.

Conclusion 5.2: There is a lack of willingness for proactive action by the Ministry of Labour and Social Policy in encouraging and conducting the tripartite dialogue.

Recommendations

Recommendation 1.1: For all institutions (Ministry of Labour and Social Policy, State Labour Inspectorate, Organisation of Employers and trade unions): to establish institutionalised cooperation and the fulfilment of obligations to be carried out ex officio on the basis of a clearly defined methodology of work. Develop rulebooks and standards for institutional cooperation and clearly define the competencies of each institution. Establish a coordinative body that will work to continuously improve communication between key institutions for workers' rights.

Recommendation 1.2: To improve the capacities of the institutions. The Ministry of Labour and Social Policy, together with the government, should develop methodology and standards and allocate additional budget funds for institutional support to trade unions, the State Labour Inspectorate and employers' organisations. Ministry of Labour and Social Policy should develop methodology and standards for improving the institutional capacities of institutions and organise regular trainings of the concerned personnel. Keeping archives for the activities and cases of the said institutions should be compulsory, and the information should be made publicly available with compulsory privacy protection.

Recommendation 2.1: Increase the number of inspectors in the State Labour Inspectorate. The expertise of the personnel should be taken into account, as well as the appropriate representation of the qualifications in order to cover all spheres of economy.

Recommendation 2.2: In the Law on Labour Inspection, provisions should be introduced for proactive action of the Inspectorate - by informing and educating companies to prevent irregularities. In the Law on Labour Inspection, an obligation to act on the Inspectorate should be established after reporting irregularities. In addition to routine regular inspections, the Inspectorate

should conduct additional unannounced random inspections.

Recommendation 1.3: The legislator should refrain from constant changes to laws. Legal materials should regulate general provisions and not go into detail. The details should be regulated by by-laws. Systems should be established for monitoring and implementing the by-laws that will arise from the spirit of the laws.

Recommendation 2.3: Establish an independent body for supervision, assessment and quality control of the Inspectorate's work.

Recommendation 2.4: Bylaws should introduce obligation of informing reporters of irregularities about the course and the outcome of the cases.

Recommendation 2.5: The administrative work of the State Labour Inspectorate should be digitalised. Specialised software system for case management, classification and availability of information should be introduced. The system should provide adequate access to information depending on the workplace of inspectors. This would enable greater transparency of the work and information coming from the Inspectorate. Appropriate service from the IT sector for the design, implementation and maintenance of the system should be hired.

Recommendation 3.1: Increase the competencies of trade unions for workplace injury surveillance. Increase and enforce penalties for employers and workers who will not report violations at work.

Recommendation 3.2: LLR and LSHW should envisage cooperation between competent institutions and NGOs dealing with the protection of workers' rights. Regular item should be envisaged within the budget for institutional support to these NGOs. Their independence from the public administration and politics makes the non-governmental organisations excellently placed in the processes as neutral and independent party.

Recommendation 4.1: By amending rulebooks, mandatory preventive measures for jobs with increased degree of risk should be introduced: (1) compulsory vaccination against Tetanus, (2) compulsory provision of hot meals, (3) compulsory regular alcohol control and high penalties for workers; and companies if there are cases of alcoholised operation.

Recommendation 5.1: The Ministry of Labour and Social Policy should be proactive in initiating and conducting social dialogue.

3.2 Safety and health at work

3.2.1 Safety and health at work system and safety standards

The occupational safety and health system consists of the actors involved in the working process, such as: employers and employees; state labour and social policy institutions; health institutions in the field of occupational medicine; the State Labour Inspectorate; educational institutions that

implement programs in the field of OSH; professionals and legal entities acting in the field of occupational safety and health; social partners - trade unions; employers' associations and civil society. Policies in the field of occupational safety and health are created by the Ministry of Labour and Social Policy and the national body - the Security Council of the Government of the Republic of North Macedonia, which creates the national programmes, the national strategy and the action plans.

The analysis is based on the legal regulations, the National Programme for Safety at Work and the data available through the media and institutions,[100] as well as on the basis of interviews conducted with various actors participating in the occupational safety and health. Also, the analysis refers to the application of the law and occupational safety and health standards, by establishing the role of the various actors in the occupational safety and health system and their participation in implementing legal regulations.

The data from the survey show that there is a good legal framework and set standards, but they also point out that it is necessary to strengthen the law enforcement mechanisms, especially in the area of prevention. Informing the employees, strengthening the supervision at all levels - employees, employers, persons, health institutions and the Inspectorate, as well as strengthening the system for recording and monitoring the implementation of the law,[101] are only part of the necessary changes that are imposed.

3.2.2 Amendments to the laws

LSHW was adopted in 2007 and it went through 10 amendments up to until 2018. Of those, in 2013 four amendments were made and three in 2015. Amendments bring changes additionally regulating the safety and health at work system into details and in that way, the trend is followed on exceeding regulation in laws, which was typical in the policies developed in the period 2011-2015. LSHW contains provisions that may be additionally regulated with bylaws and acts. Hence, for instance, Article 17 relating to the professional exam has 27 additional paragraphs and extends over 10 pages.

The changes include matter that thoroughly describes and stipulates procedures for the professional examination. In the following excerpt one may see the detailed description of the legal matter.

> *"Article 17-l (1) The first part of the professional exam is taken for each specific field and contains at least 50 questions with five selection options, of which one is correct, two are similar and one is slightly incorrect (it reduces a low number of points) and one is greatly incorrect (it reduces a higher number of points)."*[102]

The interview data also point out the amendments to the law as a source of impairment of the OSH system, instead of its strengthening.

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[100] Such as, for instance, their information shared with the public, reports, analyses, documents and regulations.
[101] Such as, for instance, monitoring occupational diseases and accidents.
[102] Article 17(l)(1) of LSHW.

> *"The problem stands as of 2013, when amendments to the law were continuously pasting things. The law became a source of counters; matters were regulated through a norm of business interests. That is how the law started to get ruined."* (Interview, MSHW).

In addition to the indicated weaknesses, the representatives of all the stakeholders involved in the research agree that in essence the law and the standards set by the additional rulebooks of the MLSP,[103] are good and provide a solid framework for establishing a system for safety and health at work and are largely in line with the spirit of European legislation and directives.

In a conversation with a representative of the MLSP, their continued commitment to incorporating European standards was confirmed, whereby the cooperation and recommendations they receive from ILO are most important to them.

> *"We always share the laws covering this matter with ILO to collect their opinion. That is why the analysis that was made on the existing Law on OSH has been made by ILO. There are some recommendations that need to be incorporated. They will need to be further analysed. The working version of the LLR was also submitted to ILO. Last week they came and presented their suggestions regarding the legal solutions that we had proposed. We have constant communication. International conventions may also be used, even if not implemented in national legislation. However, in our country, everything that was not written in the law is not implemented, therefore, it is better that it is incorporated in the law....." (Interview, MLSP)*

What is missing in the entire OSH system are the collective agreements. Namely, at the moment, the collective bargaining is inactive – there is a low number of collective agreements at the level of sectors and branches. On the other hand, the existing collective agreements have no more precise definition and deepening of the specific measures for safety and health at work relating to the sector or the branch.

> *"... in the ILO analysis, of 14 branch collective agreements and 2 state analysis, OSH is mentioned in the one relating to the economy and energy with one or two articles on how the workers' representative is elected and also, relating to the specific harm of certain substances, and it is missing in all other articles. We had 34 collective agreements, and now we have only 14. Instead of extending the matter, now we see that the social dialogue is dropping. These regulations should be a result to a tripartite agreement, we say that they are regulated by law, with collective agreements they are additionally regulated, and OSH does not change in any agreement. If there is no legal obligation, legal act, this means that in that pyramid, OSH is missing. "(*Interview, MASHW).

These data indicate the absence of the OSH aspect in social dialogue or, at the very least, its neglect. However, it is precisely with the social dialogue and through the collective agreements that a more functional OSH system may be built and made. The collective agreements can regulate and

[103] The rulebooks establishing standards on safety and health at work are available on the Ministry's website: https://bit.ly/2BshXkz, last accessed on: 31.12.2018.

strengthen all the specificities deriving from the sectors, branches and areas, and specify procedures for prevention proceedings.[104]

In the 2020 Strategy on Safety and Health at Work, one sentence makes a general conclusion from the implementation of the previous strategic plan: "a large number of projected and planned activities have been successfully implemented with concrete results." However, there are no data on the activities implemented and results achieved. Also, this strategic document sets out general principles relating to the field as well as goals that are very unspecific and are not related to the indicators that can provide specific results. For instance, one of the expected results would be:

> *Strengthening the innovation, quality and efficiency of work processes by continuous improvement of the health and safety at work.*

In the elaboration of the Strategy that follows, there are no indicators referring to "innovation, quality and efficiency in work processes", nor in what way is this connected with the roles of stakeholders in the OSH system. Also, this result cannot be linked to any of the actions envisaged with the Action Plan for the implementation of the 2020 Occupational Safety and Health Strategy, for 2017-2020. On the other hand, although the Strategy points to the absence of evidence of occupational diseases, there is no specific measure in the Action Plan for this conclusion.

All this suggests that apart from the set system, through the legal solution and compliance of the standards with the European regulations, it is not translated into well-planned policies that will enable their implementation through focused and measurable indicators.

3.2.3 Records and recording system of occupational diseases and accidents at work

3.2.3.1 Data on accidents and diseases gathered from competent institutions

The functioning of the established system and the application of the law may be observed through available data pointing to the conditions of the occupational safety and health. This analysis includes data relating to occupational diseases and accidents, as well as death cases.

Data on occupational diseases are close to none. There is no register of occupational diseases. According to the Macedonian Association for Safety at Work, this is the sorest matter in the system.

> *"Sorest matter in the system. According to the Law on Health Insurance, the Public Health Institute should keep record of occupational diseases. In the past records we have one or two occupational diseases, hence if we publish them as they are, we will be ranked first in Europe with least number of such diseases. Unfortunately, in North Macedonia such records are missing. We have no official records on occupational injuries, not only for occupational diseases. "(*Interview, MASW).

The Report of the Public Health Institute, the institution responsible for record keeping and statistics on occupational injuries and occupational diseases, concludes another striking fact, which confirms that occupational diseases are the "black hole" in the OSH system in terms of awareness and record keeping.

[104] Such as information dissemination and education during the application of measures of protection and oversight.

> *"Unfortunately, in the past period, despite the legal obligation, no individual complaint on occupational injury and/or occupational disease was submitted to the Public Health Institute by doctors of occupational medicine and/or other doctors that participated in their diagnosis and therapy. That is the reason why registers on occupational injuries and occupational diseases haven't been established so far, and no publication on occupational diseases in the Republic of North Macedonia has been published* (Report on Occupational Injuries 2016-2017 of the Public Health Institute).

Data from the Institute of Occupational Medicine also confirm that occupational diseases keep the registers alive. In North Macedonia, there is a "Rulebook on the List of Occupational Diseases" which outlines the criteria for assessing occupational diseases. Additionally, there is a harmonised International Classification of Occupational Diseases and Injuries. A system is lacking of recording and reporting occupational diseases or an encoding/encryption manual for occupational diseases and injuries that shall be used by all healthcare institutions working in the field of occupational medicine. The question of why such a system has not been established so far can find the answer in the absence of functional institutions that fail to perform its role. If this disadvantage is located in policies in the field of occupational safety and health, it may be said that in the implementation of policies, accountability and responsibility for the (none) achieved results is lacking. However, it also lacks monitoring of the effects of policies and their use in the policy making process.

Therefore, the absence of indicators of the existing situation with occupational diseases, the absence of indicators of the current effects of existing policies and (none) accountability, impede a serious approach to creating policies in the field of occupational health. In its report, the Institute recommends that it is necessary to create a "national strategy for establishing an integrated system for collecting accurate, relevant and comprehensive indicators in the field of safety and occupational health as a basis for planning preventive policies in this area and monitoring the progress in their implementation."[105]

On the other hand, the data from the Public Health Institute's Report provide information on workers who are at increased risk at work because of two or more occupational hazards. These data provide a picture of a large percentage of workers at increased risk of damage to health and working ability. The report relates to 2017 and contains data from 45,689 periodical reviews and tests conducted due to the existence of specific requirements and workloads. It was found that 40% of the examined workers were exposed to noise, which is an increased risk of damage to their health and working ability. In 42% (15,444) of exposed workers, exposure to unfavourable microclimatic conditions was established. Every third of the examined workers[106] performs the work in conditions of an increased risk of chemical substances, the most common of which are fibrogenic and non-fibrogenic dust, gases, and metals and non-metals.

Biological agents, which pose an increased risk to the health and working ability of professionally exposed workers, were exposed to 12,217 workers or about 27% of the workers. Special hazards and dangers, as a cause of increased risk at the workplace, were registered in 36,929 workers or 81%.

[105] Stikova E., 2015.
[106] Some 40% of the total number.

Most of them, that is, 46%, are working at night, while 30% are workers who work under special hazards and dangers - working at a height of three and over three meters. Each worker working at a workplace where there is an increased risk is simultaneously exposed to 2.5 variances and hazards or there are increased specific requirements for carrying out the work.

Trade unions point to the health problems that workers face in different sectors, which relate to the specificities of the workplace and the risks of illness, but are also related to the conditions in which they perform the work. One of the unfavourable conditions affecting health concerns the quality of the diet of workers.

> *"... Armours suffer from armour diseases. You wind up all day; your hands are falling apart. But now everything is mechanised, the hood and there is something hand-made. Other, I can say, irregular diet, here I am, you have no conditions, no food. Here, too, as a manager, I got high blood pressure; I got diabetes from irregular nutrition. You get up, you cannot eat, you go to a construction site, pause at 12. What will you eat? Salami, sausages, from the store? That's what workers eat! Lately some kitchens were made operational, they bring food, and it is a story of its own! All day long, in order to save as much as possible, they eat cheapest salami, cheapest pack of mayonnaise, cheapest ketchup, a ketchup bag, half a kilogram of bread and that is how they feed themselves. But then it is the health! Well, that is the cause of further cardiovascular diseases, blood sugar. Here we had a situation, some months ago, they informed me – these persons died. How come? Heart disease! Cardio-vascular diseases are, I do not claim, but my opinion is, as an analysis I have done in my long-term experience is the cause of some, well, death cases. Brain strokes, heart attacks, and so on. "*(Interview, ITUCWECM).

However, they also indicate insufficient awareness of occupational diseases. They are seen as "unavoidable evil" rather than as a field that needs to be subject to a serious approach and provide protection.

> *"Occupational diseases? To speak frankly... we haven't heard of such complaints. Maybe it should happen for a longer period of time before being reported and monitor that such disease has occurred in the certain workplace, therefore it is a little... Right, this question is only for this... labour institution...*
>
> *M: maybe they are not recorded as occupational diseases, but most often it is because of the work outdoors and people get the problems with the bad back, with …*
>
> *I: people are decrepit in their age, they are exhausted… the labour medicine institution might have concrete data, lists of such…"* (Interview, TUCEP).

The Report of the Macedonian Occupational Safety and Health Association reports that in 2017 there were 158 accidents at work, of which 24 were deaths. The injury rate at work is 17.98, indicating that every 100,000 employees are injured by 18 employees. Compared to last year, when the rate of injuries at work was 13, the injury rate for 2017 increased significantly. The death rate is 3.22, or every 100,000 employees, 3 to 4 employees perish. It increased compared to 2016, when it was 2.62. This situation is catastrophic, if compared with the UK, where the rate is 0.5. The report concludes that North Macedonia has a fairly high rate of fatal accidents at work. These data indicate that the occupational health and safety system does not function well in reality.

Additionally, employees are discouraged to report accidents at work. For employers, this is a legal obligation, but also a threat to the punishment if all the safety measures at work have not been complied with. Thus, employers are willing to cover the cost of sick leave to avoid punishment, and employees to avoid additional pressures, harassment or loss of a job.

> *"No, no, they do not report. And most often, there cases of that kind, even if injured at the workplace, the employer makes him say that he got the injury outside the working hours. There are such cases."*
>
> *Interviewer: Does the Trade Union act upon such cases?*
>
> *"If we have a complaint – then yes. Nevertheless, we as a trade union have no right to act in every case, but we lodge complaints instead.*
>
> *For instance, one worker complained that they made him say that he got his injury outside. Then he changed his mind. But the doctor concluded that it happened out of the working hours and all went in vain. What? Prove it!"* (Interview, ITUCWECM)

3.2.3.2 Occupational safety and health protection measures

LOSH envisages a wide range of obligations for the employer relating to undertaking measures for safety and health at work. Such are, for instance, the protection from occupational hazards, information dissemination and delivering trainings to employees, as well as the record keeping and reporting. These obligations, in addition to bringing higher responsibility for employers, they also imply significant financial burden.

Employers' representatives also refer to the financial burden as an unpractical solution for certified legal entities or natural persons that the employer may hire, in the cases when the employer is not able, or has no employed specialists and technical equipment to conduct the OSH liabilities, but this does not exempt the employer from their obligations in this area.

> *"... What was most hard for me and what is still reflected and what is key to the poor implementation of the OSH Law is the power and lobby at that moment when one Association that imposed licensed companies for law enforcement. There might be even 50 companies with minimum three employees, implying 150 persons that need to enforce the OSH Law, against 70,000 companies and against all public institutions. On the other hand, that is an expense and that implies additional communication."* (Interview, BCM).

Regarding the financial burden, employers also complain about the obligation for regular health systematic examinations. Employers' organisations believe that regular healthcare systematic examinations should be covered by health insurance that employees have.

> *"These systematic examinations should be free of charge, as all workers pay for their health insurance. On the other hand, they do not contribute to the detection of occupational diseases."* (Interview, OE).

Regarding the practice of the law and the obligations of employers, the biggest criticism is from the unions. Namely, according to trade union representatives, employers comply with legal obligations to meet legal requirements, but say they perceive them as a burden, while the essential process, such

as the involvement of all stakeholders, information and care, the protection of safety and health at work rarely where it really is. The data from the survey also indicate that there is a difference in the different sectors. In industry, in contrast to construction, there is a much better application of occupational safety and health standards.

> *"Although in our sphere the examinations are more frequent and those are quite respected, due to the nature of the work. But, there are companies in which assessments are not well conducted, they are not made available to the workers... somewhere it is done in a good manner, with dedication, and somewhere else only as a formality."* (Interview, TUEEW).
>
> *"Are there regular visits by inspectors and penalisation of employers whose employees may be seen from their looks on how do they work – they come from home wearing sportswear, they never put a helmet on their head, and so on. Hence, that is something basic, where one does not even need to be an OSH expert to see that it doesn't work in the field. That is why I say, we are trying where we have least members, and those companies should obey to such measures. Thanks God, so far we do not come across more serious violations to the law, that is, to see that someone is not wearing protective clothes. Why go on and see the scaffolds or other protection measures, if they have no protection at all in the workplace as such".* (Interview, TUCEP).

All trade union representatives confirm that in enterprises where there is trade union and branches with branch union, the health and safety situation at work is much better.

> *"There was a research conducted by the Association on OSH. According to the results, where there is a trade union, the workers are more informed on OSH."* (Interview, ATUM).
>
> *"Regarding OSH for us as companies, regardless of the tendencies of the employees, we still deliver trainings, protection equipment and we take account on those matters. I know the situation in Sasa and other companies. Where there are trade unions, it is respected, where there are no trade unions it is terrible. There are many companies where everything is with all it takes. Our trade unions organise seminars on safety and health at work, seminars for our representatives."* (Interview, TUCEP).

The data from the survey show that the regular systematic reviews are largely implemented. However, the manner of their implementation is questioned by civil society associations, trade unions, or workers.

> *"The expert or the health institution should also look at the work conditions, what you do. There are several packages for access to health services, to the regulation on medical examinations and in 80% of the cases, they establish a need of examination in every 12 months, and that is true. But, to my opinion, it is very rare. The employer see what is cheaper and has an obligation for 24 months. Also, the question here is how much can a doctor work for eight hours daily to do examinations. In the amendments of 2011, a system was introduced on non-respecting the rules if the inspector identifies that the risk assessment is not in accordance with the regulations, and hence, the licence may be confiscated from such certified OSH entities. For the health institutions it is the responsibility of the Ministry of Health, and not MLSP."* (Interview, MAOSH).

Data of the Public Health Institute also indicate that this mechanism of health protection at work confirms the previous conclusion. Namely, according to the IPH Report in 2017, a total of 111,464 systematic examinations of workers who work at workplaces where there is no increased risk and which are checked the general health condition and the general working ability are realized. 99.1% of the inspected workers have been found to have preserved working ability and have no contraindications for further work. There are no data related to occupational diseases or any other statistics related to occupational health.

The Institute of Occupational Medicine considers that it is necessary to establish standards and norms for carrying out systematic examinations, especially with regard to the number of workers that a specialist in occupational medicine can perform during one working day.

3.2.3.3 Information dissemination and inclusion of employees

Informing employees is one of the problems that are detected by almost all stakeholders in the process. In that direction, although the research does not have specific data on the implementation of the legal obligation for training of employees, the interviews can be drawn from the indirect conclusion that this part of the law is not satisfactory. Also, data indicate that there is a lack of communication between the employer and employees in terms of occupational health and safety.

Representatives of trade unions say that employee education, even though it is an obligation of the employer, is carried out by the representatives of the employees who are members of the trade union. Employing employees with regard to occupational safety and health is also considered best when it is done through union representatives.

> *"More with the people from the trade unions. Our experience tells that trade union people are insufficiently trained to perform that function of representatives. The Law has not envisaged that somebody should train them. So, we never did this at our expense."* (Interview, TUEEW).

However, the training of the union representative does not guarantee the information of the employees. It provides information to their representative. It remains unclear how the education is conducted and how information is taking place in enterprises where there is no union. The survey shows that the position of workers in enterprises is a position of subjugation characterized by fear that inhibits employees to use the legal mechanisms that they have at their disposal. On the other hand, if OSH awareness and education is a problem, then this condition also contributes to the workers not having an active role in the process of protecting the safety and health of the work.

3.2.3.4 Supervisory role in the law enforcement

Supervisory role for law enforcement have all stakeholders in the work process and in the OSH system. The data from the survey show that the supervisory role is one of the weakest links in the OSH system at all levels. There is a tendency for all actors to focus on the supervisory role of the labour inspectorate or to shift responsibility for the supervisory role of the other. The greatest

obstacle in recognising their own responsibility in relation to the oversight role is the strong division of power of all stakeholders involved and the existence of corrupt elements in the institutions.[107]

Employees as the last in this hierarchical pyramid of power are the weakest link in the oversight process. Their poor information, then powerless position, fear and obedience before the employer do not allow them to report inconsistencies in terms of occupational safety and health.

> *"(The action procedures) are clear and available, but the employers leave the obligations to their employees. In this system of ours, those employees depend on the manager and they experience the rest as unimportant, and that is very important, especially if we speak of safety and health."* (Interview, SLI).

In one hand, the Labour Inspectorate, which has a workplace safety and health department, has a shortage of human and technical resources.

> *"There is lack of inspectors, especially in safety, as it is stated in the Law on Labour Inspection that they should come from technical sciences... we have not even 30 inspectors in OSH.... Well now, the computer equipment is a problem, we need to have software and be connected in order to have insight in the conditions... We have not a single IT person, or computer and system maintenance service. "(*Interview, SLI).

On the other hand, the survey data show that the implementation of the law through oversight mechanisms is poor because the sanction is low. In this part, omissions are also located in the performance of the duties of the inspectorate and the public prosecutor's office, which does not raise and dismiss cases related to the protection of safety and health at work.

> "*...Even if you see the Inspectorate's analyses, you will see that there is a certain number of decisions delivered in the specific year of removal of shortages with a specific number of shortages detected and in the end, you see how many have been removed and you see that it is only a half, and eventually, not a single denouncement. What does that mean? Not a single report from the Inspector – this means that there is no penalty. Do we have any inspection in the country?"* (Interview, MAOSH).

The supervisory role should be complemented by good communication and equal positions in the dialogue in the work process, as well as in the system and the process of ensuring safety and health at work.

Conclusions

All stakeholders in the OSH system believe that the WFSD provides a solid framework that complies with European standards, but the application of standards in practice is lacking. In reality, the worst thing is functioning: informing and educating OSH workers, procedures for implementing OSH measures in enterprises, records of occupational diseases and injuries, as well as the oversight role of all stakeholders.

[107] Employer versus employee, inspector versus employee and employer, trade unions versus organisations and chambers of employers versus Ministry and Inspectorate, courts and Public Prosecutor's Office.

The main reason for the poor functioning of the system and the legislation is the poor creation of policies based on desired conditions, rather than realistic planning based on indicators for the needs and capacities of the stakeholders in implementing the OSH policies, as well as the indicators of accountability and responsibility for (not) achieved policy outcomes.

There is a lack of social dialogue regarding OSH and collective agreements for specific regulation of the safety and health at work, in which the framework of the procedures for informing workers and for reporting by the employee and its protection will be agreed.[108]

Recommendations

- Amendment to the Law on Safety and Health at Work - article 12 to be subject to the by-law regulation of criteria for professionals and the process of conducting the professional exam.
- To include indicators on the capacities and needs of stakeholders involved in the implementation of OSH policies and accountability as part of the MLSP as one of the key principles in analysing the effects of the policies implemented. These indicators will be further used in the policy making process.
- The MLSP will develop rulebooks that will specifically govern the protection of OSH for each area, activity, sector and branch. The rulebooks should establish or prescribe the framework for the procedures for informing workers and for reporting by the employee and his protection.
- The Public Health Institute, in cooperation with MLSP and NSSD, to create a system for recording and analysing data related to occupational diseases and injuries at work.
- MLSP, in cooperation with the institutions working in the field of occupational medicine, should establish standards for carrying out systematic examinations that will limit the number of workers that a specialist in occupational medicine can review during one working day.
- Strengthen prevention through a system of informing workers and increased stakeholder communication in the OSH system - in the WIPO to anticipate trade unions, associations and other entities to implement compulsory OSH training for workers.
- The MLSP, chambers and employers' associations should provide support to small and medium-sized enterprises in the provision of training and the provision of experts for the implementation of the obligations under the OSH law.

3.3 - Organisation in trade unions and the role of the trade union in worker rights protection

3.3.1 Organisation in trade unions and collective bargaining in the Republic of North Macedonia

Organisation in trade unions is a very important element of the context in which worker rights are exercised. ILO has established very early and on purpose the right to organisation in trade unions as one of the pillars of the system for worker rights protection. Numerous research studies and analyses posit that the existence of a trade union is one of the most significant preconditions for efficient protection of labour rights because it provides continuous information and worker support,

[108] Something that should be part of the system of the enterprises in regard to application of SHW.

particularly in cases of rights violation. This analysis considers organisation in trade unions and collective bargaining important preconditions for exercising worker rights.

The declining trends of trade union membership in Europe are reflected in North Macedonia too, although for different reasons. After the change of the political system and the dissolution of the socialist economy, some enterprises have ceased to exist, some have restructured. Trade unions have persisted in the enterprises that were privatised, and are still the strongholds of trade unionism. In the newly established small and medium-sized companies, and especially in foreign companies, organisation in trade unions faces major barriers. Generally, trade unions are stronger in the public sector and in large companies, whereas the situation in the private sector, particularly, in small and medium-sized companies, is grave.

According to 2013 data, trade union density in North Macedonia is around 30%, that is, the number of employees who are union members is around 30% of the total number of employees in the country.[109] There are great differences between sectors, where union density is 80% in some sectors,[110] while the situation is much more unpleasant in the private sector with some branch trade unions failing to meet the legally determined minimum of 20% representativeness. The density of the organisations of employers, that is, the number of member companies in the organisations of employers is estimated at 20% of the total number of registered companies in the Republic of North Macedonia.[111] The density of both types of organisations, the social dialogue partners, is small compared to the European countries and is subject to minor fluctuations in comparison with the previous years. For instance, trade union density was 27.95% in 2010, and that of the Organisation of Employers was 23.57%.[112]

Previous research has evaluated the role of social partners in the tripartite social dialogue – the Economic and Social Council of the Republic of North Macedonia - as insufficient. This body has not managed to develop into a forum where economic and social policy issues are discussed and solved,[113] as is the case in developed democracies where three-party arrangements play a significant role in economy management. The European Commission Progress Reports on the Republic of North Macedonia evaluate the capacities of social partners and the quality of social dialogue as weak.[114] Still, since 2010 efforts have been made to make this body work more efficiently.[115] This progress is related to the conditioning policy of the European Union and the prerequisites for relevant chapters in the pre-accession process.

There is pluralism of trade unions in North Macedonia, but it was partly caused by personal rivalry and has contributed to the fragmentation of the trade union movement. The two largest national trade union organisations which meet the condition of representativeness, the Federation of Trade

[109] See more in Eurofound, 2015.
[110] Such as, for example, education and healthcare.
[111] See more in Eurofound, 2015.
[112] See more in Eurofound, 2012.
[113] Majhoshev, 2011.
[114] European Commission Progress Reports on Macedonia, 2018.
[115] Interview, FTUM.

Unions of North Macedonia (FTUM) and the Confederation of Free Trade Unions (CFTU) have been developing rivalry for years. Besides, misunderstandings between branch trade unions within a federation or between branch trade unions and the national trade union headquarters have been visible to the public on numerous occasions. The representatives of the competent ministry point this out as an obstacle for their involvement in the Economic and Social Council and in worker rights protection in general. The institutions also have the impression that the information available to trade union management - participants in the work of the Economic and Social Council is not disseminated further, is not communicated properly to all branch trade unions or trade union members.[116] All this contributes to trade unions' losing their power. There is a general perception of trade unions as weak institutions, susceptible to authorities' influences.[117] According to public opinion polls, citizens do not place great trust in trade unions.[118]

Apart from a few other national federations of trade unions which are not representative, such as the Union of Independent and Autonomous Trade Unions of North Macedonia (UIATUM) and the Confederation of Trade Union Organisations of North Macedonia (CTUOM), there is a tendency in the trade union movement where independent branch trade unions are formed outside trade union federations which have strong critical positions and greater public presence, such as the Journalists and Media Workers Trade Union and the Culture Trade Union. Currently, the MLSP register of trade union organisations has records of 57 branch and national trade union organisations.

On the other hand, the MLSP register of organisations of employers has records of 10 organisations of employers in the Republic of North Macedonia, among which the Organisation of Employers of the Republic of North Macedonia is the only one that meets the condition of representativeness as laid down by the Law on Labour Relations.[119] OEM is more coherent as compared to the trade unions. The institutions evaluate their positions in the Economic and Social Council as more homogeneous, whereas its information flow and speed of action as better, although they perceive weaknesses as well.[120] The Organisation of Employers of North Macedonia may take pride in its density, that is, the number of members, which is higher than the legal minimum. According to the last decision on representativeness, the Organisation of Employers has a membership of 20.5% of the total number of companies in the sectors it covers,[121] which is higher than the legal minimum of 10%. Currently, 15 out of 17 branch associations in the Organisation of Employers are representative.[122] Nevertheless, when we invited the representatives of the branch associations and stressed how important it was that we discussed with representatives of the branch associations

116 Interview, MLSP.
117 Hristova, 2008.
118 According to a general population survey, 36% of the citizens placed their trust in trade unions in 2013, which was a rise compared to 2007, when trust was the lowest, i.e. only 17%. (Krzalovski, 2013: 4). The youth population (14-29 years of age) currently places the lowest trust in trade unions, which is 2.1 on a 1 to 5 scale (Topuzovska-Latkovic and others, 2019).
119 These organisations are a relatively new type of organisations in N. R. Macedonia formed for the first time after the LLR was adopted in 2004. Up until the Law on Labour Relations was adopted in 2004, chambers of commerce had played this role. However, organisations of this type are different from chambers of commerce as they focus on collective bargaining and labour law.
120 Interview, MLSP.
121 Interview, OEM.
122 Interview, OEM.

which are subject of our analysis, the organisation's head office responded instead and wanted to speak on behalf of its branch associations.

3.3.2 The situation of organisation in trade union as an object of analysis

The responses to the interviews suggest that the number of workers organised in trade unions in the trade unions we analyse is either stagnant or declining. In the trade unions' view, the workers' and trade unions' weakness and their lack of power are the result of the unfavourable economic environment - high unemployment rate and relatively easy worker replacement dictate salary levels and general working conditions, as well as the owners' attitude towards workers. Our trade union respondents assess that organisation in trade unions in some companies is marred on purpose, that is, there are frequent examples when company managers sabotage trade union creation as well as examples of various types of pressure exerted on trade union representatives. For instance, a trade union representative described a case of trade union creation sabotage in a private company as follows:

> *"In only two days we managed to gather the signatures of 400 out of 800 employees in the factory. We formed the trade union and notified the employer that a trade union had been formed in the company. Right after the trade union was formed, the trade union's president was summoned and asked to use his/her remaining days of holiday. Afterwards s/he was dismissed, that is, his/her fixed-term contract was terminated."* (Interview, TUIEM).

They stressed that almost all foreign companies and domestic ones now, use fixed-term contracts as a kind of protection against trade union formation in the companies. Nevertheless, they point to weaknesses in their ranks as well:

> *"Workers do not join as members because they have fixed-term contracts and the employer may not extend their contracts, while due to high unemployment and available work forces that can replace them, workers are afraid to join. Another reason is trade unions' weaknesses as workers do not trust them like other institutions. Membership numbers are stagnant."* (Interview, TUIEM).

Current economic trends are also illustrative of the adverse influence on the economic situation. In some sectors which are under our investigation, such as construction, employers are currently facing a shortage of workforce as many workers find jobs abroad. In such a situation, according to some allegations, salaries in this sector have been increased by 20% to 30%.[123] Although this is not the result of a successful trade union's struggle or a consequence of awareness raising among employers, but rather of the real situation of lack of workforce, it may lead to changes in the situation and increase in the relative power of trade unions and workers vis-a-vis employers.

Two of the representative FTUM trade unions we interviewed, TUCIP and TUIEM, have a membership in the branches they represent near the legally determined representativeness threshold, which is a very unfavourable situation. In their opinion, "it is good in some companies, more specifically, in the medium-sized and large ones. They have a membership of up to 80% of the staff.

[123] Interview, ITUCWEB.

Between 30% and 40% of the medium-sized and large companies in our sector have a trade union. Particularly so in the factories that was restarted."[124] TUCIP has a similar situation. Trade union membership in the companies which have a trade union is often more than 80% of the staff.[125]Still, there are trade unions in a total of 21 companies in the business activities they cover, which is a really small number.

This shows that workers feel the need to organise themselves in trade unions and usually join a trade union if there is one. It seems the greatest challenge is to establish a trade union. The state should pay due attention to this, that is, it should take measures to encourage workers' organisation in trade unions and to provide conditions in which the right to organisation in trade unions, which is the cornerstone of labour rights as defined by ILO, is enforced smoothly.

Conclusions

Trade unions in the Republic of North Macedonia have a downward trend in membership numbers, low esteem and trust among citizens. The situation of organisation in trade unions in the private sector and many other industry activities is aggravating. Interview data show that workers feel the need to organise themselves in trade unions and usually join a trade union if there is one.

It may be assumed that workers who do not belong to a trade union feel uncertain and are somewhat afraid to form one. It seems that forming a trade union is a challenge, with cases of obstruction on the part of some employers when it so happens that a trade union is formed.

3.3.3 Collective bargaining

Existing analyses indicate that rather than improving and strengthening, collective bargaining in the Republic of North Macedonia is stagnant.[126] At the moment the General Collective Agreement in the private sector is signed and this covers 100% of workers in the private sector. There is no such agreement in the public sector and the negotiations are at a standstill.[127] Collective bargaining at company level and, particularly, at branch level, is also unsatisfactory. This was the opinion of all interview participants. The Organisation of Employers believes that this is due to the trade unions position - in their opinion, the number of trade union members decreases in some trade unions' and their issues of proving their representativeness reduce their ability for collective bargaining. They believe "the level is as high as the partner (the trade union, our remark) is developed!".[128] According to this organisation, the fact that there are no trade unions in some companies is one of the

[124] Interview, TUIEM.
[125] Interview, TUCIP.
[126] According to data from previous analysis, "collective bargaining took place with better dynamics, enthusiasm, desire for success and understanding by the employers and the government in the period 1990 - 2005, especially in the period 1994 - 1997, than in the later period (after 2005). As a result, 2 GCA (for the business and the public sector covering all employees) and 34 BCA, covering around 70% of the total number of employees, were signed, whereas in the later period 2 GCA and only 21 BCA, covering 35% of the employees, were concluded, which is far below the European average, which was 62.5% in 2007. More than 400 CA at employer level were concluded in the said period, whereas in the later period less than 200 CA" (Majhoshev, 2011).
[127] Interview, FTUM.
[128] Interview, OEM.

problems why there are no collective agreements at branch level.[129] They also think they have good communication with some trade unions, while they have failed to initiate a meeting with others.[130]

Trade unions are of a different opinion. In their opinion, although the General Collective Agreement covers 100% of the employees in the private sector in the Republic of North Macedonia, collective bargaining at branch level for the business activities they cover, for which they show particular interest, is marred on purpose by the EO and its associations.

> *"It's done intentionally to avoid the obligation to enter into collective bargaining. At company level it is easier to put pressure on employees and if it wasn't for ourselves (trade union headquarters), they wouldn't sign anything." (Interview, TUIEM).*
>
> *"Employers have a rigid attitude towards trade unions. On the contrary, we would like to work hand in hand to have a better social dialogue, where they would have their own representatives and we, being the workers representatives, would sit down and work together - the collective agreement is our primary goal. We would like to ensure they have more rights based on what the Law on Labour Relations and other legislation provide. However, we face employers' resistance. They are not as willing as we are to sit and negotiate. I do not know why they see the trade union as an obstacle rather than as a helping hand.* (Interview, TUCIP).

Although TUIEM and TUCIP are very much interested in reaching a collective agreement at branch level, it seems hard to achieve for the time being. On the other hand, there is a collective agreement in the energy sector reached between the Independent Trade Union of Energy and Economy Workers of the Republic of North Macedonia (ITUEEWM) and the Energy Association of the Private Sector in the Organisation of Employers of North Macedonia.

According to the International Labour Organisation, branch collective agreements are especially important because, inter alia, they have consequences on salary distribution - that is, on minimum salary rise and salary standardisation at branch level. They help reduce differences in salary levels between companies in the branch, which encourages companies to facilitate innovation; if there is an instrument of expanding branch agreements in companies where there is no trade union, they protect these workers and other categories of vulnerable workers such as migrants or workers in non-standardised forms of employment.[131] There is no legal option for the latter in North Macedonia.

As far as collective agreements at company level are concerned, TUCIP shared an interesting opinion:

> *"It is much easier now in the construction materials industry - perhaps because most of them are multinational companies. I would take the following as an example: [provides examples]... Where the owner may be a foreign investor, the conditions are not better, but the salaries are, better are other things, where it is not a problem for them to have collective agreements at company level. However, in the civil*

[129] A question arises here: "Why a company should be covered by a branch agreement if there is no trade union in it?".
[130] Interview, OEM.
[131] International Labour Organisation, 2016: 35-36.

> *engineering sector, the major construction companies which work day and night on infrastructure projects find it problematic to have collective agreements." (Interview, TUCIP)*

The competent ministry indicates that there is low quality collective bargaining. This refers both to the process dissemination, that is, the small number of collective agreements at company and branch level, and to the low quality of some agreements which remain to be general and repeat the provisions of the General Collective Agreement (exceptions are, for example, the Energy Collective Agreement and the MoI Collective Agreement). The minimum salary has only recently and by exception become part of collective bargaining (for example, in the agricultural sector). However, this is the most important aspect of collective bargaining in developed capitalist societies (Majhoshev, 2011).

One of the steps MLSP takes to promote the situation is to separate the organisation in trade unions and collective bargaining in separate laws, instead of the current regulation under the LLR. They hope this step will help promote the topic among the public, that is, that it will not be only an aspect of the Law on Labour Relations, and it will be easier to make changes if needed because every change to the LLR is perceived as undermining the stability of business environment (Interview, MLSP).

> The FTUM do not agree with this. According to them, "*not all workers in the country are organised in trade unions. For them to be protected, there should be a single law which regulates all employment rights in one and the same place. We think that if it is separated in a separate law, it will be easier to amend it and to do so more frequently, which will contribute to more interference in the trade unions work"* (Interview, FTUM).

According to TUIEM's information, collective agreements have been signed at company level in 60% of the companies in which they have a trade union. According to their estimates, nearly 10 000 workers are covered by a collective agreement at company level in the business activities they represent.

Conclusions

Collective bargaining is not developed sufficiently. The situation of branch collective agreements is a cause of concern in particular. Social partners provide various reasons for this situation. According to trade unions, organisations of employers do not show great willingness. The organisations of employers, on the other hand, think the problem lies in the trade unions capacities and the issue of their representativeness.

According to the International Labour Organisation, branch collective agreements are especially important because they have consequences for salary distribution - that is, for minimum salary rise and salary standardisation at branch level. In addition, the collective agreements help reduce differences in salary levels between companies in the branch, which encourages companies to facilitate innovation; if there is an instrument of expanding branch agreements in companies where there is no trade union, they protect these workers and other categories of vulnerable workers such as migrants or workers in non-standardised forms of employment.

3.3.4 Respect for worker rights

Based on interview responses, trade unions identify worker rights violations on various grounds, but the ones that are mentioned the most frequently are overtime work, violation of the provisions for timely pay, dismissals and holidays. The FTUM statistics confirms this. According to the Information on legal assistance provided by the Federation of Trade Unions of North Macedonia for the period January - December 2017, 1788 claims for employment rights protection were recorded that year. The majority of these 1788, 504, were filed with the TUIEM.[132] The sector we are analysing is a good representative of a sector where worker rights are violated to a great extent. Claims by TUCIP are fewer, that are, 27, whereas those of CCECM are even fewer and amount to 6.

As regards the grounds for claims, the most frequent ones are failure to pay salary and other allowances and contributions, violation of trade union rights, failure to pay holiday allowance and violations with respect to overtime work.

Table 1. Grounds for claims filed to FTUM

Grounds for claims	Total number of claims per ground for 2017
Trade union rights	267
Enter into labour relations	4
Change of employment contract	56
Failure to pay salary	412
Food allowance	34
Transport allowance	15
Sick leave	11
Holiday	26
Holiday allowance	242
Overtime work	135
Dismissal (guilt and personal reasons)	5
Fine	7
Dismissal for business reasons	3
Imposed unpaid leave	/
Social security contributions	220
Health insurance	192
Bankruptcy	159

Source: *Information of legal assistance provided by the Federation of Trade Unions of North Macedonia for the period January - December 2017*

[132] According to the Information, the largest number of claims in 2017 come from: the Trade Union of Industry, Energy and Mining of the RM - 504, the Trade Union of Traffic and Communications Workers of the RM -324, the Trade Union of Textile, Leather and Shoe Industry Workers of the RM -207, the Trade Union of Forestry, Wood and Energy Workers of the RM -182 and the Trade Union of AGRO Industry Workers of the RM -155.

TUIEM notes that there are many examples of rights violation on all grounds. Mobbing is recognised as a problem, but it is less frequently reported. TUCIP, on the other hand, think that companies with a trade union respect worker rights:

> *"There are no violations of rights in companies where there are trade unions organised. I can freely say, thanks to the trade union because they consult the trade union board or the trade union representative. That is why they [employers] do not want to collide with the trade union or the law - they do not want to pay a penalty. Therefore, it is necessary to have a trade union in a company so that we can jointly solve problems through dialogue."* (Interview, TUCIP)

They still identify some misapplication of the LLR provisions, such as the possibility to dismiss 20 workers at the most when they are made redundant. According to TUCIP, employers use this and dismiss 19 workers on several occasions in a row. The Labour Inspectorate has no power to do anything in such cases. They also identify problems in the allocation of working hours and overtime work.

As opposed to them, the Organisation of Employers does not identify major problems. In their opinion, the latest legislative amendments have contributed to reducing, even completely eliminating, problems that had been there before. They also think that inspection controls have helped change the situation and they estimate that employers' awareness of labour rights has been raised too. They had the most problems with dismissals and relocations. They say "*the LLR further regulates dismissals and it is now difficult for the employer to dismiss staff, except perhaps when the worker has not come to work for 3 days in a row. This is used by workers themselves when they want to quit... There are no problems with salaries and allowances! It is regulated by the GCA. Mobbing is difficult to prove, but there is reverse mobbing too."*[133]

According to the State Labour Inspectorate, workers react on all grounds, but the most frequent ones are related to: salary and allowances, dismissals on employment contracts, working hours and overtime work, holidays and leaves, as well as mobbing.

On the other hand, we have identified differences between trade union organisations and their work on worker rights protection. TUIEM keeps more detailed records as they have a lawyer employed in their branch trade union office. The lawyer is not currently working, which is perceived as a problem.

> *"We used to keep records, but now it is at a standstill because the lawyer has recently left. All records were kept there, he used to represent all cases."* (Interview, TUIEM).

TUCIP advises that this information should be sought in the headquarters of the trade union where they are members, that is, the Federation of Trade Unions of North Macedonia.

Conclusions

Workers rights are violated on almost all grounds, but most frequently it is related to the payment of salaries, allowances and contributions, trade union organisation and overtime work. It is likely that regarding some more complex aspects, such as mobbing, rights violation is rarely reported.

[133] Interview, OEM.

3.3.5 Protection mechanisms

In order to provide support to workers, trade unions actively use the protection mechanisms envisaged in the Law on Labour Relations and other laws. They have experience with all mechanisms envisaged, but there are great differences in the frequency with which they are used. TUIEM describes it in the following way:

> *"Workers usually complain in the company's trade union to the trade union representative. They try to solve the problem internally, irrespective of whether it is a case of an individual or group complaint. If they are not successful, they address us looking for legal assistance. We provide all services from submissions within the organisation itself, to competent inspection bodies and follow-on court protection. Some time ago, on behalf of several 57+-year-old women, a woman addressed us in the headquarters because they were asked to work night shifts without their consent as is envisaged by the law. We contacted the trade union in their company and solved the problem with them."* (Interview, TUIEM).

On the other hand, TUCIP say they refer workers for legal assistance to their trade union headquarters - FTUM. In view of the fact that every business activity has its own specificities, it is useful for branch trade unions to employ lawyers who will be able to provide support to the trade unions at company level or to take the cases of the branch trade union.

According to the respondents, when court protection is activated, workers usually are the ones who win. Nevertheless, considering that taking court action is a major step which also incurs costs, workers rarely decides to use it. On the other hand, it is an indicator that worker rights are violated indeed, contrary to the statements of the organisations that represent employers' interests.

Besides cooperation with employers and dispute resolution within companies, peaceful dispute resolution is the preferred protection mechanism. Trade unions and employers, as well as the relevant ministry, note that these possibilities are not used sufficiently:

> *"We are in favour of such peaceful procedures. We have to rebuild trust in the institutions and the arbitration. There is a legal possibility, but it is still on a voluntary basis. Trust must first be built because even if reconciliation is compulsory, institutions do not work unless there is trust. Court procedures are expensive, the worker often does not want to take risks even if he/she is 100% right, even when an attorney says so, his/her rights remain unprotected."* (Interview, TUIEM).
>
> *"Unfortunately, peaceful resolution is used the least, although there are 100 people who can run such procedures. This figure has now dropped to 50. So far only 5 procedures have been conducted."* (Interview, OEM)

Trade unions use attorney's assistance and see great potential in their cooperation with attorneys who would represent workers in labour disputes:

> *"We use such assistance, especially now, under the condition that the attorney, and the lawyer while he was here, would not charge workers for his services. If they win the case, they would get their costs compensated by the other party. Currently there is a procedure ongoing in the Kumanovo factory of pipes. Attorneys undertook to represent them. They are convinced they would win the case, and we are too. While he was working here, our lawyer represented the workers, without compensation. The worker*

> *would only pay the labour dispute charge of MKD 1500. Afterwards, the Agro Trade Union and the TUWAJCSOM employed lawyers for the same purpose. There was a time when they advocated that only attorneys could represent such cases, not the lawyers in the trade union, which was not a good suggestion so we opposed it."* (Interview, TUIEM).

To most respondents, protection mechanisms envisaged by the law are sufficient. The problem lies in their enforcement. Trade unions also point out the weaknesses in procedures, particularly in the State Labour Inspectorate. The organisations of employers do not have such remarks.

> *"It is very often that the procedures end in our favour, but they last very long, which is detrimental to both the worker and the employer. In some companies where the owners are reasonable, it is very often that we resolve disputes on our own. We resolve most of them at company level."* (Interview, TUIEM)

According to FTUM, protection mechanisms are sufficient, but they are not used frequently. They say that peaceful dispute resolution is used very little. With regard to using different mechanism, they also state that efforts are first put to solve the problems in cooperation with the employer:

> *"We advise them that they should first address the employer. We teach them that they should file a complaint and get a stamp proof that it has been received in the archive. Because an ordinary worker may not know that there are deadlines. We teach people that when they file a complaint in the archive, they would be viewed differently, the request would get more attention. They are not indifferent when you address them following a legal course..."* (Interview, FTUM).

They also stress their educational role, legal support and preventive work:

> *"Sometimes workers come here to us and we see what documents they have. If we see they have not acted as is prescribed by law, we tell them they cannot win that dispute..." "We also provide advice on prevention. This year there are around 660 where the issue is resolved with the employer and there is no dispute."* (Interview, FTUM).

They think there should be financial incentives for workers in case they use court protection:

> "We are fighting for this. *For example, we demand that the court charge for labour disputes should be abolished. It is around MKD 1000. According to the LLP, expert opinion is sought at the beginning of the dispute. It costs MKD 5000-8000. It is dischouraging for the worker, who is supposed to give MKD 8000 from the very beginning, although he/she gets it back after winning the case. Still, it is a large amount here."* (Interview, FTUM).

Conclusions

Protection mechanisms envisaged in the law are sufficient, but there are problems of procedure and substance when they are applied. Together with problem resolution in cooperation with the employer, peaceful dispute resolution is the preferred, but the least used protection mechanism. The financial burden is a significant barrier to workers' using court protection in cases of labour rights violation.

Recommendations

- In order to reduce barriers to trade union creation and involvement in collective bargaining, the legal threshold for representativeness for trade unions at branch and company level in the LLR should be reduced from the current 20% to 10%.
- The MLSP should ensure greater participation of the non-representative trade unions in labor and social policy development by more frequent consultation on the part of institutions and involvement in various working bodies in the area of labour law and social policies.
- The MLSP should take measures to encourage workers' organisation in trade unions through public information campaigns.
- SLI should ensure rigorous law enforcement in cases when the right to organisation in trade unions is denied.
- Trade unions should be more actively informing workers about the rights they have and the support they can provide in cases of rights violation.
- In view of the specificities of the business activities, it is recommendable that branch trade unions employ lawyers to provide support to cases that workers raise with them or trade unions raise with them at company level.
- The Organisation of Employers should ensure more independent operation of its branch associations and their effective involvement in collective bargaining at branch and business activity level in order to strengthen collective bargaining.
- The MLSP and social partners should work on popularisation, education and promotion of peaceful dispute resolution as one of the mechanisms for worker rights protection.
- The Law on Litigation Procedure should reduce the financial burden on workers that is the obligation to hire experts at the beginning of the dispute for disputes regarding employment relations.

SECTION 4

Case Studies

Section 4 - Case Studies

Case study 1

O.B. is a former miner in "Feni Industry", a drill operator. He is active in his community - engaged in the trade union, "Levica" political activist and a former MP candidate, while also a member of the fan group Lozari as one of the main promoters of anti-fascism. He is also the administrator of the Facebook page "Real Kavadarci", which is devoted to social, environmental and other problems of Kavadarci and the Tikves region. The page is very popular - there are 15,000 followers, which is half of Kavadarci's population. He thinks that his community activities as a prominent social justice activist are the main reason for his troubles. Notably, he was dismissed from work instantly in 2017 because of a Facebook status he shared from his personal profile. O.B. then took his employer to court and won the case. At the moment of the interview (06/12/2018) O.B. was still waiting for the outcome of the employer's appeals procedure before the Court of Appeal. A week after the interview, on his Facebook profile O.B. announced that the Court of Appeal rejected Feni Industry's appeal as unfounded, which makes this case a success story.

Between 1998 and 2008, O.B. worked as a miner in Rudkop, and then in Feni Industry. In the meantime he became an active member of the trade union and openly organised workers to oppose their worker rights violation. At the trade union's assembly in 2016, O.B. was elected a staff representative on occupational health and safety. Right after he started his campaign among the staff to encourage them to be more active in the trade union so that they would address problems - worker dismissal and regular salary cuts. This activity born fruit - he managed to survey a sufficient number of workers ready to go on strike, which they planned to start gradually, and unless they obtain a response, expand it:

> *"People were dissatisfied, and I surveyed them anonymously and marked if they were in favour of starting a half-an-hour strike, say, every day or every week and increasing the time until we have found a way for them to hear us so that they stop sending us to unpaid holiday every weekend for three months in a row. They were cutting EUR 50 of our monthly salary."*

As a result of this activity, in O.B.'s opinion, the management soon began to exert pressure on him. O.B. was soon afterwards suspended from his job due to material damage caused to the working equipment, but the suspension itself was problematic:

> *"They got it wrong. I was working Monday to Friday there, such as in a movie, I worked for 8 hours only. I was free on Saturdays and Sundays. Now, there was a defect in my plant, a part remained without oil - such things do happen. I checked it on Friday on the spot, together with a colleague. He and I service it. And they got it wrong, they said it happened on Sunday. So, I was saved at the disciplinary committee. They were unable to prove me wrong."*

After they were unable to dismiss him due to alleged damage caused, the management eventually gave him the sack because he allegedly threatened in a Facebook status from his personal profile to settle things down with them on his own. In O.B.'s words, one morning the security told him there was a decision to prohibit his entering the place of work. After he asked for an explanation, he waited until noon before the explanation was provided.

As can be seen in the court case presented, right after this case, the trade union of Femi Industry staged a protest:

> *"The trade union does not agree with the dismissal of our member O.B. and believes this is a way of exerting pressure on our members. We think this is related to our demands addressed to the management team at our joint meeting of 16/02/2017. Making these demands, the workers hoped to improve their social and economic status, which is barely bearable. We think dismissing our member makes the situation which is already complex even more complicated."*

The note of protest was signed by the president of the trade union of Feni Industry. What is noticeable in the court case submitted by O.B. is that the same representative signed in support of O.B. testified against the worker in the court proceedings explaining that O.B. organised the workers to protest on his own and created problems. It should be added that during 2018 the same trade union leader was dismissed for fraud for using EUR 100,000 of the trade union's money as well as for lobbying in favour of the owners.[134]

Soon afterwards the worker decided to take Feni Industry to court:

> *"They were determined to give me the sack. And then, when the disciplinary action ended, it turned out that I was only warned, and my colleague was also asked to return to work, so that they can ask him to return to work. So that he does not come out as collateral damage. I was dismissed due to my Facebook status. And I took them to court. The case was handled in Kavadarci within term. And so I won. Then they wondered - why I announced it. - It is encouragement for workers, you give them courage, someone will read that you took a company such as Feni to court and you won. It means there will be many..."*

In other words, after he won the case, the employer's representatives continued to put pressure on him so that he would not share it with the public lest he might "encourage" other workers to take similar activities against the employer.

Regarding his court experience, he says the process proceeded timely and easily. He expected there would be obstacles because, as he says the judge's husband was employed in a company owned by the same owners as Feni Industry, but there was no pressure and the case proceeded fast in the Kavadarci court. Immediately afterwards the employer's attorney lodged an appeal before the Court of Appeal. According to O.B. this process was postponed. The employer paid him most of the sum determined by the court and committed to pay him the remaining funds in the course of the following year. In the meantime O.B. was invited by the management to return to work but to a worse position and for a lower salary. The worker decided to wait for the court judgement hoping that he would be returned to the same position for the same salary. At last, one week after the interview, the worker boasted that the appeal had been rejected by the Court of Appeal as unfounded. According to the court case, worker O.B. should be returned to his position.

Based on this case we can conclude that although trade unions should be the key player in the workers' fight for their rights, it is often the case that they fail in certain trade unions or certain

[134] Ilievska-Pacemska, Maja. "(Audio) The Trade Union Leader of "Feni" was discharged, a defraud is investigated of 100,000 EUR trade union's money." MAKFAX (blog), May 5, 2018. Available at: https://bit.ly/2DW7M9q, last accessed on: 31.12.2018.

branch organisations of trade unions. It is very often that trade union leaders represent their own or the employers' interests rather than the workers' interests. This is a problem for the so called yellow trade unions. Hence, greater trade union democratisation, greater institutional support and better internal control are needed.

Case study 2

Worker S.K. works in a company in the industrial sector. He has more than 30 years experience in this sector. He is a trade union member all his working life. At the moment his case of labour relations violation started, he acted as president of the trade union in the company he was working for.

We initiated this discussion upon the recommendation of the branch trade union in the industry sector TUIEM so that we can closely examine and get an understanding of the complex relations created in the area of labour relations, the tension between employers and trade unions, the role of the inspectorate and the judiciary in dispute resolution when worker rights are called into question.

As a long-standing member and representative of the trade union, worker S.K. is well familiar with the issues and rights arising of the Law on Labour Relations, the competences of the institutions and the protection mechanisms permitted by the law. This is an important starting position that allows S.K. good support in the long-lasting processes of worker rights protection that will be shown below.

Notably, worker S.K. was dismissed in 2012, after he had been suspended for failure to perform his duties at work. He considers these reasons to be untrue and he relies on, as he says, "27 years of service with no flaws whatsoever". In addition, S.K. believes his dismissal is a violation of the law because of his position as a trade union leader. The worker retells his story relating the line of events and the context preceding his dismissal.

> SK: *My problem dates back to the time before 2010. It started due to the trade union's demands that the employers' obligations should be met in accordance with the LLR and LLSP... After we decided to go on strike in 2010 for failure to meet the obligations of the collective agreement regarding the payment of our holiday allowance, we agreed to get paid an average salary. I come from a company in good standing, one which has the money for everything we have agreed...This right was not respected, we put pressure and in the end he met it. However, after that event he took steps during my absence on a seminar in May 2010. The other employees who were members of the trade union were forced to step out, so half of the members left the trade union collectively rather than with opting out notices as is regulated in the Statute, and they did so under pressure. I got to know that they had been summoned individually to the director's office where he had threatened them. He succeeded with half of them, but not with the other half. That was the first step and the first attack against the trade union. Later in 2010 I got injured at work and the employer failed to report the injury within 48 hours in accordance with the LLSP.*
>
> *In June 2011 we organised a five-day strike in order to sign a new collective agreement. After the strike ended, 5 colleagues, trade union members, were made redundant and were laid off. That was an attack on all in order to put pressure and indirectly scare people.*

> *He did not sack me right away, he did it in 2012 when he terminated my contract. First, he suspended me on no grounds, using reasons he made up, allegedly I failed to perform my duties, when until then I had had 27-8 years of service without a flaw. Besides, I was the trade union leader.*
>
> *He did not ask for the trade union's permission in the first place thus failing to follow the procedure. He lost the case on those grounds. The case was resolved 44 months later. I got back to work in April 2016. The procedure lasted for 44 months.*

These extracts point to several aspects of labour relations, that is, health and safety procedures and organisation in trade unions were called into question. It shows that the rights which are guaranteed by law or are agreed in collective agreements are not respected as was the case with the request to pay a holiday allowance. The possibility for the employer to avoid signing a collective agreement also shows their lack of readiness for dialogue and leaves room for not acknowledging the rights which are not defined in collective agreements in a specific sector.

On the other hand, organisation in trade union as an opportunity for joint action with a view to exercising these rights was subject to pressure or has led to employment termination. When we hear that workers in North Macedonia are afraid and not ready to fight for their rights, it refers precisely to the fear of consequences like this one.

Lastly, there are the other institutions, or in this case the judiciary, where the process of exercising rights lasts very long and for the worker to be able to sustain, he/she needs readiness and great support. For example, of all the other workers that were dismissed, only one initiated a court action. Trade union's support is crucial in this process. Worker S.K. used the trade union's support in his court proceedings by using the trade union's attorney, although in other procedures he also used an attorney of his own. Still, he identifies trade union's weaknesses with regard to other types of support.

> *S.K. Going on strike, the trade union should put pressure on the employer so that the workers who were dismissed are returned to work.*

The trade union's role may be to represent and make more visible the pressure and the violations of rights as well as to be the main support for the workers in the process of representing their rights balancing the employers' pressure and threats. This aspect of trade union activities which refers to worker solidarity and their direct and active protection and representation may reduce the downward trend of membership numbers which calls into question their representativeness and the trade unions' position in collective bargaining. After the worker returned to work in 2016, he continued facing the challenge of exercising worker rights. An excerpt follows regarding the events after his return to work.

> *S.K.: I returned to work in May 2016, I was suspended in June that year for allegedly exerting pressure on employees, whereas I was on a sick leave and I used my annual days of holiday in that period. Besides, he would not give me work to do, so I would stand in the hall and in the canteen. I took him to court again and I won again, so I returned to work in April 2018. And so the story goes again. I have been standing in the hall and in the canteen for eight months now. The inspector testifies to this and does*

> *nothing. I tell her I am forbidden to enter the offices, the plant, I am forbidden to be active in the trade union, that it has only 2-3 members at the moment, all the others were put aside...Since my dismissal I have been standing in the hall. Currently I am on holiday using my days of holiday for 2018. I have been paid for the months I stayed at home, but there is still mobbing.*
>
> *I: Have you used any mechanisms to fight mobbing?*
>
> *S.K.: I am working with the attorney on it. First, we would offer the employer something to ease the situation so that I get my old position back because they cannot reallocate me to another position without my consent, but that is what they want.*

Upon returning to work, disallowing the worker to do one's work is also a labour right violation and maltreatment which may have a negative effect on all levels and affect the person, the work and the work dynamics. The role of the Inspectorate is also very important in this case. In this situation it is important to mention that the Inspectorate does not act. It shows that this institution which has an oversight role in the area of labour relations does not work to protect worker rights.

> *S.K.: And so the story goes again. I have been standing in the hall and in the canteen for eight months now. The inspector testifies to this and does nothing. I tell her I am forbidden to enter the offices, the plant, I am forbidden to be active in the trade union, that it has only 2-3 members at the moment, all the others were put aside.*

This case's development shows that besides institutional exercise of rights, there is room for other rights and opportunities for the employment relation to be called into question after these processes are conducted and after the relations have been seriously damaged. In this sense, apart from rights protection mechanisms, working conditions should also be seriously considered in the sense of providing enabling environment not only from a safety point of view, but also from a relations point of view. Certain conflict resolution mechanisms and/or organisational counselling may be useful to improve damaged relations in companies because interpersonal relations significantly affect people's health and are part of working conditions.

This case also shows how pressure was put for years on the trade union, which is almost gone in the company. It stresses the role of the branch union, which is supposed to be actively involved in these processes and provide strong support and assistance to members in companies where interpersonal relations are damaged and where systematic pressure is exerted on trade unions.

SECTION 5

General concluding remarks

Section 5 - General concluding remarks

Legislation is not the primary problem in effective and efficient worker rights protection. From a formal and legal perspective, the legislation in the Republic of North Macedonia is fully in line with the ILO and very small changes are needed to fully transpose the EU directives and implement the revised European Social Charter. Protection mechanisms envisaged in the law are sufficient, but there are problems of procedure and substance when they are applied.

A key weakness of the current system of labour rights protection is the absence of appropriate information of workers about their rights and the protection mechanisms they have available to apply health and safety protection measures. Collective agreements do not specify the matter related to protection mechanisms and do not provide workers with understandable and clear procedures on how to act in situations when they need to ask for protection.

International regulations emphasise the role that trade unions should play in protecting worker rights. Contrary to this, organisation in trade union in the Republic of North Macedonia is chaotic, drawn down to ad-hoc actions, with trade union representatives having no training, no appropriate legal support and very narrow scope, especially in preventing worker right violations.

The complex and multifaceted nature of the worker rights protection system makes it exceptionally difficult to use these mechanisms in practice. The Republic of North Macedonia enters a stage of over-regulation where everything that is not regulated by law is considered to be forbidden, where rather than looking for the best solutions under the current regulations, excuses are found for why a specific problem cannot be resolved. Inspectors do not fully use the possibilities provided by the laws, whereas the system of reporting worker rights violations is not completely adjusted to the workers' needs. They act reactively rather than proactively.

There is a lack of a suitable institutional support for the worker rights protection mechanisms which would be reflected in institutional links and cooperation with a view to making use of all capacities in the community.

Cumulative recommendations

Non-ratified international documents should be ratified and more careful consideration should be given to the conventions and the recommendations of the International Labour Organisation and the guidelines provided based on the reports submitted.

It is necessary to detail certain legislative provisions so that they are easier to implement and/or translate them in separate manuals that would ensure an individual approach to legislation provisions application, such as, for example, specified periods for medical check-up for certain professions. The collective agreement should have a separate section detailing the procedure for worker rights protection.

It is necessary to have better worker protection in cases of occupational injury or disease not only in the form of penalties for employers but also protection from victimisation for workers who report occupational injury and take court action for such injuries. It is necessary to define separate protection clauses on worker protection with regard to right protection cases they initiate.

Procedures should be detailed in the Law on Labour Inspection regarding inspector actions and procedures of reporting worker rights violations that should ensure maximum worker protection.

Adopting a separate law on trade unions and association in trade unions may contribute to strengthening their role in worker rights protection, trade union capacity building,[135] workers' active involvement in formulating protection mechanisms and trade unions' proactive rather than reactive action. Greater non-representative trade unions participation should be ensured in labour and social policy development by institutions more frequently consulting and involving them in various working bodies.

It is necessary to simplify the procedures for worker rights protection, to introduce compulsory worker information, training and to set up courts of labour disputes. If protection mechanisms are specified in one and only place in the law and if they are clearly horizontally and vertically presented, that is, if it is clearly specified which procedure is used and what the expected outcome is, that may help use them more effectively. The LLR should lay down an obligation for peaceful dispute resolution every time that is demanded by the trade union or the workers and such peaceful resolution should be extended to all worker rights both in collective and individual cases. Court protection should be within the competence of special courts, which would reduce court charges and generally reduce the financial burden on workers related to hiring experts at the beginning of the dispute and the like.

Manuals should be prepared for each new law and amendment to an old law to serve as guides through the laws so that these are understandable to the workers and that recognition of rights violations is made easier. Rulebooks and standards of institutional cooperation should be developed and a coordination body should be established to work on continuous improvement of the communication between the key worker rights institutions.

The Labour Inspectorate's role, capacities and powers should be strengthened. The State Labour Inspectorate should act proactively and prevent irregularities by informing and educating companies. Obligations should be introduced for the State Labour Inspectorate to act on irregularities on hearsay. Apart from routine regular inspections, the Inspectorate should conduct additional unannounced random inspections not in order to punish but rather to alert. This should be one of the activities that the state, trade unions and employers organisations should take to popularise and promote peaceful dispute resolution as one of the mechanisms for worker rights protection.

[135] By defining forms of previous and continuing training, legal support and a mentoring system.

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