

# Constitutional Court of the Republic of North Macedonia Regarding the Treatment of Worker's Rights

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## Abstract

*The Constitutional Court of Macedonia is a body that protects the constitutionality and legality in Macedonia.*

*The Constitutional Court protects the freedoms and rights of man and citizen, the Constitutional Court also protects the rights of employees.*

*Our labor legislation guarantees a high degree of protection of workers' rights. In the laws in our country, changes are constantly introduced to improve the position of the employee, but sometimes it is necessary to take concrete measures that would implement those laws.*

**Keywords:** Constitutional Court, Legislation, Employees, Workers

## Introduction

The Constitutional Court of the Republic of North Macedonia is an institution that protects the constitutionality and legality in Macedonia. The Constitutional Court ensures compliance with the Constitution, collective agreements, other regulations in line with the Constitution and laws, as well as the constitutionality of programs and statutes of political parties and citizen associations.

The Constitutional Court has various competences, including control of constitutionality and legality, protection of human rights and freedoms, resolution of jurisdictional conflicts, determination of the responsibility of the President of the Republic, and other competences.

The Constitutional Court safeguards the freedoms and rights of individuals and citizens, including freedom of belief, conscience, thought, and expression, political association and action, and prohibits discrimination based on gender, race, religion, nationality, social and political affiliation. Additionally, it protects the rights of employees regarding employment, working hours, access to health insurance, annual leave, and the obligations of employers. In terms of labor relations, employees are protected in

every aspect according to the Law on Labor Relations. Although our labor legislation guarantees a high level of protection for the rights of workers, the problem lies in the lack of practical implementation [1].

## The Constitutional Court of the Republic of North Macedonia

The Constitutional Court of the Republic of North Macedonia is an institution that protects the constitutionality and legality in Macedonia. It consists of nine judges elected by the Assembly of North Macedonia with a majority vote of the total number of deputies. The mandate of the judges lasts for nine years without the right to reelection. The judges of the Constitutional Court are selected from prominent legal professionals.

The Constitutional Court of the Republic of North Macedonia has the following competencies:

- Deciding on the conformity of laws with the Constitution.
- Deciding on the conformity of other regulations and collective agreements with the Constitution and laws.
- Protecting the freedoms and rights of individuals and citizens related to freedom of belief, conscience, thought, and expression, political association and action, and prohibition of discrimination based on gender, race, religion, nationality, social and political affiliation.

- Resolving conflicts of jurisdiction between the legislative, executive, and judicial authorities.
- Resolving conflicts of jurisdiction between the organs of the Republic and the units of local self-government.
- Deciding on the responsibility of the President of the Republic.
- Deciding on the constitutionality of programs and statutes of political parties and citizen associations.
- Deciding on other matters determined by the Constitution.
- The President of the Constitutional Court serves for a term of three years without the right to reelection. The jurisdiction of the Constitutional Court of the Republic of North Macedonia is determined by the Constitution of North Macedonia. Various laws contain provisions related to the Constitutional Court, specifying certain obligations and responsibilities [2].

### **Control of Constitutionality and Legality**

Within this competence, the Constitutional Court decides on the conformity of laws with the Constitution, the conformity of collective agreements and other regulations with the Constitution and laws, as well as the constitutionality of programs and statutes of political parties and citizen associations. The control of constitutionality and legality of normative acts is exercised as abstract and posterior, meaning it can only be applied to valid acts. Preventive control is not provided as a possibility in the Constitution, nor in international treaties. The status of international treaties in the legal system, in terms of the jurisdiction of the Constitutional Court, is unclear, and in practice, the prevailing understanding is that they cannot be subject to constitutional review. As an exception to the rule that the Court evaluates only valid acts, the Rules of Procedure allow the Court to decide on the constitutionality and legality of a normative act that has ceased to be in force after the initiation of the procedure for its evaluation, but before the Constitutional Court's ruling. In addition to laws, collective agreements, and programs and statutes of political parties, whose identification is straightforward, the Court may also examine various other normative acts that generally regulate specific issues (regulations, decrees, decisions, etc.) by state bodies, bodies of local self-government, or organizations exercising public powers [3].

"In this regard, the Court accepts jurisdiction even when dealing with an act that does not meet the form requirements but obviously regulates certain issues in a general manner. Within this competence, the Court may decide on the constitutionality or legality of the act as a whole or its parts and provisions, depending on the statements in the initiative and the Court's own assessment," as stated by the Constitutional Court.

### **Protection of Human Rights and Freedoms**

According to the Constitution, the Constitutional Court protects the human rights and freedoms relating to freedom of belief, conscience, thought, and expression, political association and activity, as well as the prohibition of discrimination against citizens based on gender, race, religion, national, social, and political affiliation. Unlike abstract normative control, the subject of assessment within this competence is individual acts and actions of public authorities that a citizen considers to violate one of the mentioned constitutional rights. In addition to the direct application (constitutional complaint) for the protection of rights violated by an individual act or action, another characteristic of

this competence is that the subject of challenge can be not only an administrative act but also a judicial decision at any instance [4]. Despite the significant innovation introduced with the Constitution in 1991, establishing this competence, its limitation to the three mentioned groups of freedoms and rights serves as a serious obstacle for the Constitutional Court's extensive involvement in the direct protection of other constitutional freedoms and rights of individuals and citizens.

### **Resolution of Competence Conflicts**

In the exercise of this classical competence of the constitutional judiciary, as stated by the Constitutional Court, the Constitutional Court resolves conflicts of jurisdiction between the holders of legislative, executive, and judicial power, as well as conflicts of jurisdiction between the organs of the Republic and the units of local self-government. "Based on the specific provisions for the protection of the principle of the separation of powers and the protection of local self-government as fundamental values of the constitutional order of the Republic of North Macedonia, this competence can be applied equally in cases of both positive and negative conflicts of jurisdiction between the organs. However, in practice, such disputes are rarely initiated, but the Court frequently resolves such conflicts substantively through the constitutional review of normative acts that prescribe powers to certain organs that do not belong to them according to the Constitution," the Constitutional Court emphasizes [5].

### **Decision on the President's Responsibility**

The Constitutional Court decides on the responsibility of the President of the Republic for violations of the Constitution and laws in the exercise of their rights and duties, upon a proposal from the Assembly of the Republic of North Macedonia.

"The Assembly determines the proposal for initiating proceedings with a two-thirds majority of votes from the total number of representatives. If the Constitutional Court, with a two-thirds majority of judges, establishes responsibility, the President's function ceases to exist in accordance with the Constitution," the Court explains [6].

### **Other Competences**

"The Constitutional Court, in its official capacity, determines the occurrence of conditions for the termination of the President's function. These conditions include death, resignation, permanent impediment to perform the function, and the expiration of the President's mandate in accordance with the Constitution (e.g., due to the expiration of the elected term). This competence is significant not only for creating conditions for the election of a new President but also because the termination of the President's function activates the provision according to which, until the election of a new President, the function of the President of the Republic is performed by the President of the Assembly. The Constitutional Court also decides on the immunity of the President of the Republic, as well as the immunity of the judges of the Court," clarifies the Constitutional Court.

### **Legal Framework of Rights and Obligations of Workers and Employers**

Based on the employment relationship, workers have rights and obligations that arise from laws and collective agreements. Every worker is obliged to be aware of their rights and seek appropriate protection if they are not fulfilled by the employer, who,

on the other hand, should indicate the limits within which the worker's rights extend. The employer sets the obligations that the worker must fulfill, and there are appropriate penalties for non-compliance with these obligations. However, the determination of obligations and the imposition of penalties in case of non-compliance must always be in accordance with the Constitution, the Law, and the Collective Agreement [7]. The question of the fundamental principles of labor relations indicates the nature and essence of the system of labor relations in a country, which in almost all countries have their place in the Constitution and the Law on Labor Relations, as is the case in the Republic of North Macedonia.

The fundamental principles of the new system of labor relations and labor law in the Republic of North Macedonia are as follows:

- Principle of contractual basis of the employment relationship
- Principle of unity of the employment relationship
- Principle of voluntariness
- Principle of equality and non-discrimination
- Principle of reward according to the invested effort
- Principle of personal responsibility
- Principle of workplace protection and workers' rights
- Principle of the right to work
- Principle of organization of workers and employers

### **Basis of the Employment Relationship Employment Contract**

Since 1991, a process of establishing new labor legislation in the Republic of North Macedonia has begun in both normative and institutional terms. Prior to the declaration of independence in 1991, the labor legislation of the former joint states was applied. With the establishment of North Macedonia, a process of creating its own labor legislation began. In 1989, the Law on Labor Relations of the Republic of North Macedonia adopted a solution that was in line with contemporary labor laws worldwide, based on which the employment relationship is established through an employment contract. In 1993, the first Law on Labor Relations of the independent Republic of North Macedonia was adopted ("Official Gazette" No. 80/93 of December 30, 1993).

The employment contract is always concluded in written form and is signed by the employee and the employer, who are also parties to the employment contract [8]. On the day of signing the employment contract, one copy is handed over to the employee, while the other is kept in the employer's premises where the employee works.

Before entering into an employment contract and before the employer registers the employee for mandatory social security, the employee cannot start working. The employer is required to submit an application/notice (form M1/M2) for the employee's registration/deregistration in mandatory social security (pension and disability, health, and unemployment insurance) to the Employment Agency of the Republic of North Macedonia, either electronically or directly at the Agency. On the day of starting work, the rights, obligations, and responsibilities based on the employment relationship and inclusion in mandatory social security start being realized, except in the case when the employee has justified reasons not to start working on that day.

For each individual job position, the employer must determine the specific conditions for performing the work through an act. The employee who enters into an employment contract must fulfill the conditions for performing the work prescribed by the employer. The employment contract can be concluded for an indefinite period (open-ended employment) or for a specified period (fixed-term employment).

The employer ensures the need for workers in the following ways:

- Public announcement in the daily newspaper of the employer.
- Announcement in the employment mediation service, free of charge, in accordance with the law.
- Mediation by the employment mediation service through directing job seekers from the registry of unemployed persons.

### **Mediation by an Employment Agency with a Fee Paid by the Employer, in Accordance with the Law**

When the employer announces vacant job positions, they must not discriminate, meaning that the job position should not be announced only for males or only for females. However, there are exceptions to this rule if the specific gender is necessary for performing the specific work.

The conclusion of the employment contract entails rights and obligations for both the employee and the employer. The employer can only request the candidate to provide evidence of meeting the required conditions for the job but cannot request information about their marital status, family planning, or other documents and evidence that are not directly related to the work.

Before concluding the employment contract, the employer must familiarize the candidate with the work, working conditions, and the rights of employees related to the specific job for which the employment contract is concluded. The employer must inform the employee in writing, before signing the employment contract, about the characteristics of the work, working conditions, and rights and obligations arising from the employment relationship, as well as any changes that may occur during the employment relationship.

### **Termination of Employment Contract**

Establishing the methods, grounds, and conditions for the termination of the employment relationship aims to protect the employee from premature termination of the employment relationship, which often borders on the employer's arbitrariness, excluding the employee's desire and need to continue working, especially in cases where the conditions for the termination of their employment are not met. These methods and conditions are prescribed in the Law on Labor Relations of the Republic of North Macedonia, according to which the employment contract can be terminated for several reasons, including:

- Upon expiration of the agreed term if the employment contract is concluded for a specified period or when the agreed work is completed, or with the termination of the reasons for which it was concluded.
- In the event of the employee's death, as well as the death of the employer (natural person).
- In cases of initiating a procedure for the termination of the employer, the right to payment of:

- Net salaries, contributions from the pension and disability insurance, and compensations for the period of the last three months before initiating the procedure for the termination of the employer.
- Compensation for work-related injuries suffered by the employee at the employer's premises, as well as for occupational diseases.
- Unpaid compensation for the duration of unused annual leave for the current calendar year.

In the case of a change of employer, all rights, obligations, and responsibilities from the employment contract and employment relationship are transferred to the new employer [9].

In case of changes by the employer due to objective reasons that worsen the employee's rights under the employment contract, the employee can terminate the employment contract and has equal rights as in the case of termination due to business reasons.

Furthermore, the employment contract can be terminated by either the employee or the employer, with or without notice, as prescribed by law. If there is fault on the part of the employee, the employer must provide written notice to the employee regarding the failure to fulfill obligations and the possibility of termination in case of repeated serious breaches, which must be communicated in written form and justified by the employer.

The employer can terminate the employment contract with the employee if:

- The employee is prohibited by a valid decision from performing certain duties for a period longer than six months, or the employee is absent from work for more than six months due to imprisonment.
- The employee fails to successfully complete the probationary period.
- On the other hand, the employee can terminate the employment contract after giving prior written notice of three days to the employer if:
- The employer fails to provide work and pay the agreed salary for more than three months.
- The employee is prevented from performing work due to a decision by the competent inspection authority banning work processes or the use of work equipment for more than 30 days, and the employer fails to pay the legally stipulated salary.
- The employer pays reduced wages for work for at least three months.
- The employer fails to pay the salary for work three times consecutively or within a period of six months, within the legally or contractually determined deadline.
- The employer fails to ensure the employee's safety at work, despite the employee's prior request for the elimination of immediate and unavoidable hazards to life and health.
- The employer mistreats or behaves violently towards the employee or disregards the employee's warnings about such behavior from other employees.
- The employer treats the employee unequally based on gender.
- The employer fails to take any measures to prevent the employee from becoming a victim of sexual harassment.

The reasons for which an employer can terminate an employment contract with an employee can be based on the following:

- The employee is unable to perform contractual or other obligations of the employment relationship due to their behavior, lack of knowledge or abilities, or failure to meet specific conditions determined by law (personal reasons).
- The employee breaches contractual obligations or other obligations of the employment relationship (reason for fault).
- The need for performing a specific job ceases under the conditions specified in the employment contract due to economic, organizational, technological, structural, or similar reasons on the employer's side (business reasons).

However, there are unjustified reasons for which the employer is not allowed to terminate the employment contract with the employee:

- Membership of the employee in a trade union or participation in trade union activities in accordance with the Law and the Collective Agreement.
- Filing a lawsuit or participating in proceedings against the employer to confirm violations of contractual and other obligations of the employment relationship before arbitration, judicial, and administrative authorities.
- Approved absence due to illness or injury, pregnancy, childbirth, and childcare for a member of the employee's family.
- Utilization of approved leave from work and annual leave.
- Completion or continuation of military service or military exercises.
- Other cases of contractual suspension determined by law.

Termination of the employment contract due to violation of work discipline or work obligations can be with or without notice period:

With a notice period, especially if:

- The employee fails to respect work discipline according to the rules prescribed by the employer.
- The employee fails to perform or performs work obligations inadequately and untimely.
- The employee does not comply with the regulations applicable to the performance of work at the workplace.
- The employee does not adhere to working hours, schedule, and utilization of working time.
- The employee does not request absence or fails to timely inform the employer in writing about the absence from work.

If the employer decides to terminate the employee, the employee has the right to file an objection within a period of eight days. Within the same timeframe, the employer is also required to decide. In the case of termination without a notice period, the employee's objection does not suspend the execution of the termination decision. However, if the employee receives a termination with a notice period, the objection postpones the execution of the termination decision until a final decision on the objection is made. If the employee is dissatisfied with this decision by the employer, they have the right to file a dispute before the competent court [10].

If the court issues a valid decision stating that the termination of the employment relationship was unlawful and that the employee's work relationship has been unlawfully terminated, the employee has the right to return to work if they so request. In



addition to reinstatement, the employer is obliged to compensate the employee for any damages incurred, in accordance with the law, collective agreement, and the employment contract, as well as to pay mandatory social security contributions on their behalf.

Termination of the employment contract may also occur due to the established permanent incapacity for work, provided that the loss of work capacity is determined by a valid decision within the period from the date of delivery of the correct decision on the determination of the lost work capacity.

The employment contract can be terminated due to the employee reaching retirement age. The employer terminates the employment contract when the employee reaches the age of 64 and has 15 years of pensionable service. However, upon the employee's request, the employer may extend the employment contract until the age of 65, unless otherwise stipulated by law.

Upon termination of the employment relationship, the employer is obligated to return all the employee's documents within three days and issue a certificate stating the type of work performed. The certificate must not contain any information that would hinder the employee's ability to enter into a new employment contract.

However, there are cases where the employer cannot terminate the employment contract, such as during pregnancy, childbirth, parental leave, and absence due to illness and childcare.

## **Rights of Employees**

### **Prohibition of Discrimination Against Workers**

"Citizens of the Republic of North Macedonia are equal in their freedoms and rights, regardless of their sex, race, color, national or social origin, political or religious beliefs, property and social status. Citizens are equal before the Constitution and the laws," as stated in the Constitution of the Republic of Macedonia, which should be respected by all. However, despite these provisions, there are often violations that not only violate the Constitution but also jeopardize the rights of individuals [11].

One of the ways in which this provision is violated is through discrimination, where a person is unjustifiably placed in an unfavorable position compared to another person based on a characteristic that has no relevance to the given situation. The most common reasons for discrimination are prejudices that exist in society towards certain social groups, and these prejudices are applied to individuals belonging to those specific groups.

Discrimination is most prevalent in the context of employment relationships, which necessitates the need for legislation prohibiting discrimination in our laws. In the labor relations legislation of the Republic of North Macedonia, discrimination is regulated in the Law on Labor Relations, specifically in articles 6-12, where it is explicitly prohibited. Accordingly, in the Law on Labor Relations:

An employer may not require or cause an employee to be in an unequal position due to their race, ethnic origin, color, sex, age, health condition or disability, religious, political, or other beliefs, membership in trade unions, national or social origin, family status, property status, sexual orientation, or due to oth-

er personal circumstances. In the exercise of labor relations, an employee can be directly discriminated against, which refers to any treatment based on any of the aforementioned grounds in Article 6, paragraph 1 of the Law on Labor Relations, where a person is placed in a less favorable position compared to others in similar cases. Additionally, indirect discrimination exists when a certain seemingly neutral provision, criterion, or practice places a person in a less favorable position compared to others, a job applicant, or an employee due to a particular characteristic, status, determination, or belief.

Prohibition of discrimination against workers, as well as potential workers, applies to: access to employment, including promotion and vocational training in employment, working conditions, equal pay for equal work, professional social security schemes, absence from work, working time, and termination of employment contracts.

It is understood that in some job positions, certain personal characteristics play an important role. For example, an advertising agency has the right to advertise a job opening exclusively for individuals aged 35-42 who cannot pronounce the letter "r" correctly - the client may even appear in the advertisement with such a character. Similarly, a company promoting a healthy lifestyle has the right to reject passionate smokers who have applied for the position of public relations manager.

In all these cases, the nature of the work is such that one of the aforementioned personal characteristics represents a "real and decisive condition for performing that work." Such cases are not considered discriminatory, i.e., they are not considered discriminatory for making distinctions.

Article 6, paragraph 1 of the Law on Labor Relations, "Official Gazette of the Republic of North Macedonia" No. 158/1 excludes or gives preference in relation to a particular job when the nature of the work is such that the characteristics related to some of the cases for the prohibition of discrimination represent genuine and decisive conditions for performing the work, provided that the purpose to be achieved is justified and the condition is proportionate.

### **Working Time**

Working time refers to the period during the day or week in which an employee is obligated to remain at work at their designated position and fulfill specific duties.

According to the provisions of the Law on Labor Relations, the standard working week usually consists of five working days, meaning that full-time working hours should not exceed 40 hours per week but should not be less than 36 hours per week. However, there are exceptions prescribed by law. In the case of a shorter working time of 36 hours per week, it can be determined for positions where there are higher risks of injury or health damage [12].

Overtime work should be performed by the employee upon the employer's request in the following cases:

- In cases of exceptional increase in workload.
- If it is necessary for the continuation of the business or production process.

- If it is necessary to prevent damage to work equipment that would result in work interruption.
- If it is necessary to ensure the safety of people, property, and traffic.
- In other cases, defined by law or a collective agreement.

In any case, there are restrictions on overtime work, which can last a maximum of eight hours per week and a maximum of 190 hours per year, except for jobs that, due to their specific process, cannot be interrupted or where conditions and possibilities for organizing work in shifts are not available. When introducing overtime work, the employer is required to inform the local labor inspectorate in writing. To protect workers in certain cases from abuse by employers, and certain groups of workers, the employer is not allowed to impose work longer than full-time working hours, especially in the following cases:

- If the work can be performed through appropriate organization or distribution of work, scheduling of working hours, or introducing new shifts.
- For female employees, in accordance with the provisions of this law, for the protection of pregnancy, childbirth, and parenthood.
- For a mother with a child up to three years of age and a single parent with a child up to six years of age, except if the employee gives a written statement consenting to overtime work voluntarily.
- For elderly workers.
- For workers who have not reached the age of 18.
- For employees whose health condition will deteriorate based on the opinion of the medical commission due to such work.
- For employees who have a full working week shorter than 36 hours due to work at a specific workplace with higher risks of injury or health damage.

Also, for employees who work less than full-time hours (part-time work), in accordance with the regulations on pension and disability insurance (disability), regulations on health insurance (medical rehabilitation), or other provisions (parental obligations), and insurance (medical rehabilitation), or other provisions (parental obligations).

Those workers who perform particularly difficult, strenuous, and health-damaging work that cannot be fully eliminated through protective measures, working time arrangements, insurance (medical rehabilitation), or other provisions (parental obligations). Workers who work during the night, specifically between 22:00 and 6:00, are entitled to special protection for night work on the following day. The employer who regularly employs workers in the night shift is obliged to inform the labor inspectorate. If the employer engages workers for night work, they are required to provide:

- Sufficient rest periods.
- Adequate food.
- Proper guidance regarding the work process, production processes, and medical examinations before their engagement in night work and at regular intervals established by law.

For every worker, the employer must keep records of the full working hours as well as overtime work. If the employer has more than 25 employees and the work process takes place at a

single location, electronic records must be maintained. Similarly, the scheduling of working hours, which is determined based on the nature or organization of work or the needs of customers, is the responsibility of the employer. However, the employer must notify the employee in writing about any changes in the scheduling of working hours at least one day in advance.

In the performance of their work, those workers who have worked overtime and have not been absent from work while consistently fulfilling their duties, as well as those who have performed specific and challenging tasks, would certainly be satisfied if, in addition to salary supplements, they also receive deserved bonuses.

### Breaks and Rest Periods

Rest periods are one of the fundamental rights of the employee and involve interruptions in the physical and intellectual activities and functions of the employees during working hours. The primary motivation for establishing the right to rest during work is to enable the employee's recovery and restoration of their physical and intellectual capabilities. According to the Constitution of the Republic of North Macedonia, the right to paid leave is guaranteed, including daily, weekly, and annual leave.

Every employee during the daily working hours has the right to a break if they work more than six hours, with a break of 30 minutes. For work under six hours, a break of 15 minutes is granted, which is considered as part of the working hours and is paid accordingly. Within a 24-hour period, there is a right to a daily rest period of at least 12 consecutive hours, and a weekly rest period of at least 24 hours, which is usually a Sunday but may also be another day of the week. According to the Law on Labor Relations from December 9, 2010, after six months of continuous work, the employee is entitled to a full, paid annual leave, which must not be less than 20 working days but can be extended up to 26 working days through a Collective Agreement or Employment Contract, for which the employer issues a decision to the employee [13].

In proportion to the portion of the annual leave of two working days, the employee has the right if:

- In the calendar year in which the employment relationship was established, the employee has not acquired the right to a full annual leave, and
- The employment relationship ceased before the expiration of the deadline for acquiring the full annual leave.

The annual leave is granted considering the needs of the work process, as well as the employee's opportunities for rest and recreation, considering their family obligations. Similarly, the employee has the right to paid leave for personal and family reasons (such as marriage, birth of a child (only for the father), and/or death of a close relative), up to seven working days. However, the employee may be absent from work without salary compensation for a maximum of three months during the calendar year under conditions determined by a collective agreement.

For the public holidays in North Macedonia, the employee has the right to be absent from work with salary compensation. However, this right may be limited if the work process, or the nature of the work, requires work on public holidays. The em-

ployee also accrues this right in cases of incapacity for work due to illness or injury and other cases, in accordance with the provisions of the health insurance.

There are other cases in which the employee has the right to paid absence, including: performing non-professional duties for which they were elected in direct state elections, duties assigned by a court, being called to military service, performing defense duties and rescue duties, except for military service, or being summoned by administrative or judicial authorities (state councilors, members of municipal councils, councilors in municipalities, jury members, court experts, evaluators, translators, conscripts, etc.), as well as the employee who voluntarily donates blood has the right to be absent from work for two consecutive working days for each blood donation.

Every employee has the right and obligation to receive ongoing education, training, and improvement in accordance with the needs of the work process, with the aim of maintaining or advancing their abilities for work at the workplace and preserving the workplace. The employer is obliged to provide education, training, and improvement for employees if it is required by the needs of the work process or if it can prevent the termination of the employment contract for personal or business reasons. An employee who pursues education, training, or improvement for work-related needs or personal interest has the right to paid leave from work for taking exams, especially when taking exams for the first time.

### Payment at Work

Payment for labor has exclusive importance for the results of each organization. It motivates employees and significantly influences their behavior and alignment of interests between employees and the organization. Salaries serve as a means through which employers strive to attract the best workers, retain those employees who meet the requirements of job positions with their knowledge, abilities, and skills, as well as motivate employees in the organization to achieve planned results. At least that's how it is in the world. Unfortunately, in our case, the level of wages mostly serves to attract and retain the best workers, probably because we live in a time of "unemployment," and every worker knows that they are "replaceable goods," and if the salary doesn't suit them, there will be another "unemployed person" who will be willing to work for a lower salary [14].

Theoretically, factors determining the level of wages are:

- The cost of living, which represents the amount of monetary means necessary for an individual or a typical family to provide a decent standard of living. In our case, the cost of living often exceeds the salary of a worker, for example, in a garment factory.
- The legal regulations related to wages determine the role of government institutions in the field of company performance and fiscal policy. According to the Law on Payment of Wages in the Republic of North Macedonia, which applies to all employers, the Ministry of Labor and Social Policy determines and publishes the average monthly net wage per worker each month, which cannot be lower than 65% of the average monthly net wage per worker in the respective industry, registered according to the National Classification of Activities.

- The productivity of labor should also have a certain influence on the dynamics and payment of the workforce. As each enterprise strives to increase its competitiveness, higher wages should be linked to increased labor productivity.
- The wages of employees also depend on the financial situation of the enterprise. Some companies may have a favorable financial position but do not propose highly competitive levels of wages.
- The level and structure of wages significantly depend on the organization of workers in trade unions and other associations.
- The characteristics of work affect the payment of employees through the following dimensions of each job: job requirements in terms of education and qualifications of the performer, responsibility for performing assigned work, the complexity of the job, and working conditions.

Indeed, these factors do not operate independently but rather their influence is conditional and interconnected. Practical experiences often demonstrate that a significant deviation from the average wage can provoke similar behavior from other competing enterprises. Such competition can sometimes lead to a difficult economic situation for the participating companies in terms of wage negotiations [15]. Therefore, competition among companies in the field of wages should be reduced by aligning the interests of employers in the economic sector, industry, region, and the overall economy. It can be expected that such an approach will create stability in wages and establish equal conditions for both employers and employees.

Every worker has the right to a salary, which consists of the basic wage, a portion of the wage for work performance and bonuses, with the payment to the employee under the employment contract always being in monetary form. Regarding the basic wage, it is determined based on the job requirements for which the employee has entered into an employment contract. The work performance of the employee is determined by considering factors such as the household situation, quality, and volume of work performed. On the other hand, bonuses are determined for specific work conditions resulting from the arrangement of working hours, such as working in shifts, divided working time, night work, on-call duty, as well as extended work, work on rest days, work on holidays as determined by law, and an additional allowance for work experience.

During payment, the employer must respect the minimum amount set by the collective agreement, in accordance with the law, which indirectly obligates the employer. In other words, the employee's wage for full-time work cannot be lower than the minimum wage established by law and the collective agreement.

The prohibition of discrimination certainly applies to the payment of employees, so the employer is obliged to pay equal wages to employees for equal work with equal job requirements, regardless of gender.

According to the Law on Labor Relations, in addition to other rights of employees, the payment of wages is regulated, which legally prevents arbitrary payment by employers according to their own preferences. Therefore:

- Wages are paid for periods not exceeding one month.
- Wages are paid no later than 15 days after the end of the payment period.
- If the payment day falls on a non-working day, wages are paid on the next first working day.
- The employer is required to inform the employees in writing about the payment day and any changes to the payment day.

Payment of wages is made through the employee's bank account or other non-cash methods, and the wages must be at the disposal of the employee on the specified payment day until the end of the usual place for payment. Furthermore, the employer must provide the employee with a written statement of wages, contributions from the wage, and wage compensations for the payment period, including the previous calendar year, by January 31st of the new calendar year. Similarly, the statement and payment of taxes and contributions are also considered for the past year.

If the employer has claims against the employee, they cannot offset these claims against the employee without the employee's written consent, except in legally defined cases where wage deduction is allowed.

In case the employee is not working due to reasons on the employer's side, they are entitled to compensation for the entire period of absence. This also applies to situations such as absence from work due to the use of annual leave, paid leave, education, legally defined holidays, and non-working days. The employer is required to pay compensation for wages in cases of the employee's inability to work due to illness or injury for up to 30 days, while for periods exceeding 30 days, it is covered by health insurance. If a new illness occurs within three days after the previous illness has ended, the employer has the right to request confirmation from the primary medical commission for the new illness or to extend the previous illness.

An intern or trainee also has the right to a wage, which should not be less than 40% of the basic wage for the position for which the intern is being trained, as determined by law and collective agreements.

In the event of termination of the employment relationship for work-related reasons, the employer is obligated to issue a decision to the employee and pay them 70% of the wage for a period of up to three months in the current year.

During the employee's employment, there are necessary costs incurred for the performance of their work, which need to be compensated to maintain work continuity. The right to compensation for work-related expenses includes:

- Official travel expenses.
- Field allowance
- Use of a private vehicle for business travel
- Separate living expenses from the family
- Death of the employee or a family member.

In compensation for costs that enhance motivation for work, employees are entitled to a retirement bonus upon retirement, jubilee rewards, and the employer may provide transportation to and from the workplace, as well as meals during work, at their own expense.

If the employer fails to fulfill their legal obligations for settling these work-related expenses as prescribed by law, the employee can claim these monetary entitlements within three years from the date of the obligation's occurrence.

In any case, motivation and desire to work would be greater for each employee if their efforts are regularly compensated, appropriately recognized, and occasionally rewarded by the employer [16].

### **Internship, Volunteer Work, and Trial Employment**

An employee can enter into an employment contract as an intern when they start working for the first time in a position corresponding to their type and level of professional education, aiming to acquire practical experience for independent performance in the workplace. Upon completion of the vocational training program, the intern is qualified for independent work according to their professional qualifications [17]. The duration of an internship can last up to one year, unless otherwise specified by law, and it can be extended if the intern works part-time for a period of up to six months.

During the internship, the employer is obligated to provide the intern with conditions for independent work according to the program. The program, monitoring and evaluation methods, as well as the duration and progress of the internship, are determined by law and cannot be terminated by the employer during the specified period. At the end of the internship, the intern must pass an exam, which is an integral part of the internship and must be completed before its expiration.

In addition to an internship contract, the employee and employer can agree on a trial employment period, which cannot exceed six months. During this period, the salary amount is determined. The trial employment contract can be terminated by either the employee or the employer if the employee fails to perform their duties successfully.

If volunteer work is a requirement for taking a professional exam or for independent practice in a specific field, according to a special law, it should be performed under a volunteer work agreement between the employer and the volunteer. The agreement for conducting volunteer work must be in written form, and a copy of it must be submitted to the labor inspectorate within three days of signing.

### **Employee Obligations**

In addition to the rights guaranteed to employees by law, there are also obligations that they must fulfill during employment, as well as rules to adhere to.

An employee is obligated to conscientiously perform their work at the workplace for which they have entered into an employment contract, at the specified time and place, respecting the organization of work and the business activities of the employer. In certain cases, however, the employee may be required to perform other work that is not specified in the employment contract if it falls within the scope of their professional training. Nevertheless, the employee has the right to refuse the performance of work if it poses an immediate risk to their health or life and if the necessary safety measures are not implemented. In such cases, the employee is entitled to request the elimination of the risks [18].



The employee is required to respect and implement the regulations for occupational health and safety, to protect their own life and health, as well as the health and life of other individuals. It is both the right and obligation of every employee to take care of their own safety and the safety of others who work with them, in accordance with the training and instructions provided by the employer, to be familiar with the measures for health and safety at work, and to be trained for their application, as prescribed by the regulations for occupational health and safety. Additionally, they must refrain from any actions related to the nature of the work they perform for the employer that may be detrimental or harmful to the interests of the employer.

Every employee who comes into contact with materials, information, and data that are classified must keep the confidentiality of the same, without using them for their own purposes or disclosing them to third parties as business secrets of the employer, which are defined as such by a special act specified by the employer and to which the employee has been entrusted or familiarized with in another way.

During the duration of the employment relationship, the employee may not, without the consent of the employer, engage in or conclude transactions that fall within their activity and represent or may represent competition, either for themselves or on behalf of others. In the event that an employee acts contrary to this provision, the employer may claim compensation for damages. There are also companies that, even when concluding an employment contract, agree to a prohibition of competitive activities after the termination of the employment relationship, known as a non-compete clause. Such a clause can be agreed upon for a maximum period of two years after the termination of the employment contract, but it cannot exclude the possibility of employing the employee. The non-compete clause is expressed in writing; otherwise, it is considered not agreed upon. If compliance with the non-compete clause prevents the employee from earning an appropriate income, the employer is obliged to compensate the employee for that period, which must be determined in the employment contract [19].

The employer and the employee can mutually agree on the termination of the validity of the non-compete clause.

### **Rights and Obligations of the Employer**

The employer is obligated to protect and respect the personal dignity and integrity of the employee, ensuring their privacy and preventing any form of harassment or sexual harassment. The personal data of the employees can be collected, processed, used, and disclosed to third parties only if it is required by law or necessary for the exercise of rights and obligations arising from the employment relationship or related to the employment relationship by authorized individuals [20].

The employer must provide the employee with the agreed-upon job as stipulated in the employment contract, as well as provide all necessary resources and materials for the employee to fulfill their duties without hindrance and grant them free access to the workplace. The employee should be provided with appropriate remuneration for the work performed.

The employer must ensure conditions for the safety and health of the employees in accordance with specific health and safety regulations in the workplace. Necessary measures should be taken to guarantee that each employee receives sufficient training tailored to the specific characteristics of their work, considering their professional qualifications and experience. Systematic review of all aspects of work should be conducted to assess the risks and identify possible causes of injuries or damage to the employees' health or unsafe working conditions.

After receiving notification that a female employee is pregnant, during different stages of pregnancy, the employer is obliged to conduct multiple risk assessments that may affect the pregnant woman, her unborn or newborn child. Additional risk assessments should be applied when there are changes in work conditions, equipment, or machinery. After appropriate consultations and with the consent of the woman, considering the nature, intensity, and duration of the risk, measures should be implemented to improve the health and safety of pregnant employees, recently delivered employees, or employees who are breastfeeding, and to eliminate or reduce the risk of:

- Irreversible effects
- Inducing cancer
- Causing genetic damage
- Causing harm to the unborn child
- Causing harm to the child's nutrition

If no risk is identified during the risk assessment, the employer should inform all employees about potential risks and explain what will be done to ensure that new pregnant employees are not exposed to risks that could harm their health and safety.

An employee may enter into an employment contract with reduced working hours with multiple employers in order to achieve full-time employment as defined by law. Consequently, employers who have employees with reduced working hours are obligated to provide them with concurrent use of annual leave and other absences from work, unless it would cause detrimental consequences.

### **Protection of workers**

Every year, more than 2 million people die from workplace accidents or work-related illnesses. According to conservative estimates, there are around 270 million workplace accidents and 160 million cases of occupational diseases. Safety at work varies between countries, economic sectors, and social groups. There are a large number of deaths and injuries in developing countries where many people are involved in hazardous activities such as agriculture, construction, logging, fishing, and mining. The most vulnerable groups worldwide are often the poorest and least protected, including women, children, and migrants.

Considering the progress that many industrialized countries have achieved in reducing the number of serious accidents, it is clear that improving workplace safety leads to success. However, there is still a lack of awareness, knowledge, and information about this issue. The International Labour Organization (ILO), which is a United Nations agency working to overcome this challenge through research, advocacy, and technical assistance, assists countries in developing management tools for monitoring and reporting, with a focus on high-risk occupations. The ILO

places special emphasis on the development and implementation of a preventive safety and health culture in workplaces worldwide [21].

However, each country independently takes concerted measures to protect workers, aiming to achieve safety and health standards for workers in the performance of their work duties. In North Macedonia, this issue is regulated by the "Law on Safety and Health at Work," which employers must respect, providing workers with appropriate conditions to ensure their protection. Failure to comply with the law results in appropriate penalties for employers.

### **Acquisition, Use, and Loss of Rights**

In order for an individual to acquire the right to pension and disability insurance, they must have the status of an insured person, which is established by submitting an insurance application. Upon the request of the insured person, submitted to the Fund, the procedure for acquiring rights from pension and disability insurance is initiated, considering the pensionable service, salary, and other factors that affect the acquisition and determination of rights, based on the data determined in the central register for insured persons and beneficiaries of rights from pension and disability insurance. The Fund regulates the manner of acquiring rights, and the provisions of the general administrative procedure apply for its resolution. The decision on rights from pension and disability insurance, which is made within 30 days from the date of submitting the application, is issued by the Fund according to its Statute.

When it comes to the acquisition of rights based on incapacity for work, bodily injury, and incapacity for work upon which the right to disability, i.e., family pension, is acquired, the Commission determines the actual situation for assessing work capacity based on findings, assessments, and opinions. The insured person is also obliged to undergo mandatory medical examinations, which are carried out by specialist doctors, and during this period, from the completion of the examinations until the decision of the insured person, temporary disability, i.e., family pension, is paid. Due to the need to establish the actual situation before making the decision, the Fund is required to issue the decision within 50 days from the submission of the application.

If the application is submitted within six months from the day of meeting the conditions, the rights from pension and disability insurance are acquired and exercised from the day of meeting the conditions. However, if the application is submitted after the deadline, the rights are acquired and exercised retroactively for the previous six months.

The right to old-age pension is exercised upon the termination of insurance, and the right to disability pension is based on a decision establishing disability, no later than three months from the validity of the decision. The pensions and other monetary compensations are determined on a monthly basis and are paid retroactively.

Every beneficiary of rights under the Law on Pension and Disability Insurance is obliged to report any change that affects the right or the scope of its use within 30 days from its occurrence.

### **Health Protection of Workers**

The rights to health protection and health insurance in the Republic of North Macedonia, according to the Constitution and laws, fall under the category of social rights of citizens, which means that the coverage of the healthcare system should be universal. However, certain estimates indicate that around 150,000 citizens of the Republic of North Macedonia, for various reasons, do not have health insurance.

Certain ethnic communities, particularly the Roma community, as well as other vulnerable groups, due to various reasons, especially their low level of education, are unable to access this right in an adequate manner. Their socio-economic and socio-demographic characteristics indicate that those excluded from health insurance in the Republic of North Macedonia are primarily individuals with basic education, unemployed individuals, as well as those employed on a temporary basis. They often reside in rural areas, predominantly in the Pelagonian region, and have monthly incomes of up to 10,000 denars. Additionally, among those who have health insurance, many experience irregular payment of their health insurance contributions, which limits their regular access to healthcare services and the healthcare system.

### **Cases in Which Court Proceedings Took Place**

- The first-instance court, with decision No. 16/13 dated February 20, 2013, ruled that the plaintiff's claim, alleging illegal termination of employment by the defendant based on a fixed-term employment contract from May 31, 2012, was unfounded. However, the appellate courts determined that the plaintiff had indeed been employed on a fixed-term basis with the defendant since May 31, 2012. On September 12, 2012, the defendant issued a termination decision based on the expiration of the employment contract from May 31, 2012, which was rejected. Following an inspection supervision decision on September 25, 2012, the defendant invalidated the termination decision from September 12, 2012. The plaintiff was subsequently re-registered with the Employment Agency and social security as of September 13, 2012. Since there was no illegal decision on September 12, 2012, the courts concluded that the plaintiff had no legal interest in pursuing a claim to establish the fact that the employment termination was unlawful. According to the provisions of the Law on Labor Relations, the subject of a judicial dispute can be a specific right of the employee violated by a specific act or action of the employer. In such a case, the court examines the legality of that decision, and if it determines that it is illegal, it will annul it. In the specific case, the courts have concluded that it concerns a declaratory-establishing claim in which the plaintiff seeks to establish that the employment termination was unlawful, which is not recognized by the Law on Labor Relations.
- The first-instance court, with its judgment confirmed by the Appellate court, upheld the plaintiff's lawsuit in such a way that the decision of June 22, 2012, imposing a disciplinary penalty on the plaintiff, as well as the decision of the Board of Directors of July 3, 2012, in point 1 of the operative part, were rejected as unfounded. The plaintiff's request to annul the decision of the Board of Directors of July 3, 2012, in point 2 of the operative part, which accepted the appeal filed by the General Director, in point 3, which repealed the decision of June 22, 2012, and in point 4, which imposed

the disciplinary measure of termination of employment contract on the plaintiff, was upheld, and the court annulled the decision of the Board of Directors as unlawful in points 2, 3, and 4 of the operative part. The defendant was ordered to reinstate the plaintiff in their previous position. The first-instance court determined, and the second-instance court accepted, that during the presumed period, the plaintiff had submitted a statement to the technical director of the defendant, stating that the plaintiff had made mistakes in their work, resulting in the destruction of 22 shirts, causing damage to the defendant. Based on the written statement, the technical director of the defendant issued a decision on June 22, 2012, imposing a disciplinary penalty on the plaintiff in the amount of 5% of their salary for the month of June 2012. This decision was made based on the written warning issued to the plaintiff by their superiors and the program controller. The plaintiff filed an appeal with the board of directors, stating that the essence of the decision was unlawful, as it was made contrary to the provisions of Article 34, Article 85, and Article 86 of the Law on Labor Relations. The general director of the defendant formed a commission to determine the amount of damage caused by the plaintiff's negligent work, through a decision dated June 29, 2012. The commission, with minutes dated July 2, 2012, determined that the amount of the damage was 1,099 euros in the local currency. Based on this information, on July 2, 2012, the general director of the defendant submitted an appeal to the board of directors, requesting a modification of the decision to impose the disciplinary penalty to the strictest measure of termination of the employment contract. The board of directors of the defendant, considering the appeals of the plaintiff and the general director, annulled the decision of July 3, 2012.

## Conclusion

We live in a developing country that strives to align its progress with the rules and principles of developed countries. Protecting workers and ensuring the fulfillment of their rights by employers is crucial for maintaining a healthy labor relationship. Although our labor legislation guarantees a high level of protection for workers' rights, the problem lies in the lack of implementation in practice. Many employers disregard workers' rights and neglect their protection, leading to resentment and dissatisfaction among employees. To ensure that employees perform their duties effectively, conducive working conditions need to be established. If workers are constantly subjected to terror and pressure from employers, it diminishes their desire to work and reduces their productivity.

In our country, changes are constantly introduced through laws to improve the situation of workers. However, concrete measures need to be taken to enforce those laws. Imposing high monetary penalties on employers, in addition to disciplinary measures, clearly does not deter them from committing offenses. Therefore, there is a need to strengthen the control conducted by labor inspection. If employers face repeated penalties, they

would be more inclined to respect and care for their employees. In any case, the need for change exists. Laws should be revised to eliminate any potential loopholes, control measures should be intensified, and penalties should be increased. In that case, employers would be more fearful, leading to greater respect for employees and the fulfillment of their rights and protection.

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