349.2.077.2:341.24

Legal and Institutional Framework for Resolution of Collective Labour Disputes

Andon MAJHOSHEV

e-mail: andon.majhosev@ugd.edu.mk

Abstract

The paper deals with the issue of the legal and institutional framework for the resolution of collective labour disputes. The most important international legal acts of the International Labour Organisation (ILO), the acts of the Council of Europe and the acts in the Republic of Macedonia are analysed. In addition, the paper analyses the role and responsibilities of institutions in Macedonia that are important in resolving this type of disputes. We consider such legal solution legally invalid because the state is given the chance to interfere in the process of peaceful of resolution of labour disputes, which violates the basic principles of neutrality and impartiality. Therefore, we consider it necessary to established an independent institution for resolving collective labour disputes.

***Keywords**: collective labour dispute, conventions, recommendations, laws, Economic and Social Council, Commission for determining representativeness.*

1. Legal framework

1.1 ILO Acts

Apart from defining collective bargaining, its application and promotion, the **Collective Bargaining Convention, 1981 (No. 154)** in Article 6 explicitly regulates the issue of peaceful settlement of disputes that arise in the process of collective bargaining through conciliation and arbitration, i.e. in institutions in which the parties voluntarily participate.

In the **Voluntary Conciliation and Arbitration Recommendation, No. 92,** strike is directly mentioned and it is said that "*If a dispute has been submitted to conciliation procedure with the consent of all the parties*

concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress."[1]The term *lockout* denotes the right of employers to lock up their companies, as a counter measure to workers in order to force them to accept their conditions for work.

The **Collective Bargaining Recommendation, 1981 (No. 163)** recommends that parties to the collective bargaining that appropriate measures adapted to national conditions should be taken, with which the procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves, whether the dispute is one which arose during the negotiation of agreements, or one which arose in connection with the interpretation and application of the collective agreement. The Recommendation does not emphasize which peaceful methods, but it indirectly means conciliation, mediation and arbitration.

1.2 Acts of the Council of Europe

European Social Charter of the Council of Europe (1961) presents the idea of the peaceful resolution of collective labour disputes in the Chapter concerning the *right to bargain collectively*. Article 6 section 3 of the Charter states that, with a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake: “*to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes*."

The **Community Charter of the Fundamental Social Rights of Workers (1989)** of the Council of Europe also dedicates a significant place to the resolution of collective labour disputes. In the Chapter titled "*Freedom of association and collective bargaining*" Article 13 regulates the right to resort to collective action (strike) in case of conflict of interests. In order to facilitate the settlement of industrial disputes, the Charter states that "the establishment and utilisation at the appropriate levels of conciliation, mediation and arbitration procedures should be encouraged in accordance with national practice."

Restricting and regulation of the right to strike and by extension the use of of peaceful means of reconciliation are presented by the Committee of Independent Experts on the application of the European Social Charter concerning the right to strike in the member states of the European Union. These views of the Committee are as follows:

[1]Article 1 paragraph 4 of Recommendation No. 92 - ILO

1.The law may restrict the right to strike in the public service, with an obligation in national legislation to provide for mandatory peaceful settlement of interest disputes that can cause enormous material damages to the economy.[2]

2. The law may prohibit strikes for a certain period (*cooling off period*) during which industrial action cannot be implemented in order to conduct negotiations, conciliation and arbitration. The view of the Committee is that such a provision does not represent a real restriction on the right to strike, but it regulates its execution.[3]

2. Legal framework for settlement of individual and collective labour disputes in the Republic of Macedonia

Peaceful settlement of labour disputes in the Republic of Macedonia has its own historical development, both from normative and an institutional aspect. Their development is closely linked to the normative and institutional development of industrial relations in the country. One of the basic elements of industrial relations in a country are peaceful (alternative) ways of resolving labour disputes. The most important legal acts regulating peaceful methods of resolving labour disputes (individual and collective) are in chronological date of adoption:

- Rules on strike of FTUM;[4]
- Law on Strike;[5]
- Agreement for the establishment of the Economic and Social Council of RM;
- Labour Law (Official Gazette of RM 62/05)
- Law on Mediation (Official Gazette of RMno. 60/06);
- Law on peaceful resolution of labour disputes (Official Gazette of RMno. 87/07).
- General collective agreement for public sector employees (2008)

[2] Conclusions I, 1969. O. c., str.38
[3]Conclusions I, 1969. O. c., str. 38
[4]Rules on strike of FTUM, Council of FTUM, adopted on 24.04.1989;
[5] Law on Strike (Official Gazette of the SFR Yugoslavia no. 23/91);

- General collective agreement in the private sector in the economy of the Republic of Macedonia signed in 2010;[6]

Rules on Strike of FTUM

Rules on Strike of FTUM is the first serious attempt of autonomous regulation or self-regulation of relations in the sphere of resolving collective labour disputes in Macedonia. These rules, although not adopted by a state authority and not having the standard form of a legal act, however, in the initial period of transition played a very important role in encouraging the development of peaceful means of resolving collective labour disputes in the Republic of Macedonia.

Rules on Strike of FTUM[7], in the absence of a favourable legal framework for peaceful settlement of collective labour disputes, primarily for strike, were the first stub in creating a legal framework for resolving collective labour disputes in Macedonia. This act is an autonomous act of the then only union, which was adopted by the Council of FTUM. At the beginning of social transition (reforms)the Rules had great moral and legal value because they, in the early period of transition, played a major role in the resolution of collective labour disputes, above all strikes, in creating a democratic environment, as well as precise definition of rights, obligations and responsibilities of all stakeholders in resolving disputes in enterprises, from trade union bodies and enterprises to authorities of the social political community (municipality, state). We must emphasize that the Rules related exclusively to the bodies of FTUM at all levels of its organization (level of enterprise, municipality, business, branch, country). The Rules did not apply

---

[6]General Collective Agreement for the economy of the Republic of Macedonia was signed on 13.06.2006 between the Federation of Trade Unions of Macedonia and the Board of Employers of Macedonia within the Economic Chamber of Macedonia.

[7] Rules on strike of Federation of Trade Union of Macedonia (FTUM) were adopted in a very important and sensitive period for the trade union and the state, because that was the time when the strikes were more evident and accepted as the main method-way of solving collective labour disputes. They were adopted on 24.04.1989 by the Council of FTUM. Amendment XXVIII of the Constitution of SFR Yugoslavia and Article 48 of the Constitution of SRM were taken as the legal basis for the adoption of these rules, which indicates that they were adopted after the institutionalization of the constitutional right to strike. We also note that in that period of time political and trade union pluralism in the country was not yet established.

to other social partners. These Rules were adopted by other social partners as an appropriate procedure for settlement of collective labour disputes and direct trade union actions (strikes, protests).

The Rules developed a specific procedure for resolving collective labour disputes that arose. According to them, in case of dispute in the enterprise, the organ of the Federation of Trade Unions shall on its own initiative or at the request of workers initiate a procedure for their (peaceful) resolution. Thereby, the body of FTUM is obliged to create conditions for a democratic resolution of the dispute, and the workers are free to express their demands and suggestions on contentious issues, and the relevant authorities in the organization (company), or the socio-political community (the municipality[8]and the republic) shall responsibly examine and quickly resolve the dispute (article 2, Rule of Strike, 1989). If the respective dispute is not resolved through proper channels within the specified period, then the bodies of FTUM, on its own initiative or at the request of the workers, with prior warning about organizing a strike, announce the organization of strike (article 3, Rule of Strike). According to Rules the Decision to strike must be announced seven days in advance, while in enterprises of special social interest strike is announced 15 days in advance (Rule of Strike, article 8, FTUC).

Law on Strike[9] (Official Gazette of the SFRY no. 23/91) under Article 5, paragraph 1 of the Constitutional Law on Implementation of the Constitution of the Republic of Macedonia as a federal regulation was taken to be the regulation of the republic. This law, although it does not explicitly lists the methods of peaceful settlement of collective labour disputes, in Article 4, paragraph 1 states that *"the parties to the dispute shall, from the date of the announcement of the strike and during the strike, try to amicably resolve the dispute, with the possibility to include in this representatives from the trade union if the union is not the organizer, representatives of the Chamber of Commerce or of the professional association, and representatives of the social political community (municipality, Republic).We think that is a matter of obligation, but without legal sanction"* (Potocnak, 1992, p. 125).

[8]In the Constitution of the Republic of Macedonia from 1974municipality was defined as a basic social political community which had elements of power.

[9]Law on Strike ofSFR Yugoslavia was taken as the law of the republic in accordance with the Constitutional Law of 1991. The provisions of the Law on Strike ceased to apply with the adoption of the Labour Law of the Republic of Macedonia (Official Gazette no. 62/05 of 05.08.2005).

The activities of special social interest, i.e. of special concern for national defence, the Law establishes that, *“in the period between the announcement of the strike until the date set for the start of the strike, all parties to the dispute must take specific, statutory measures for peaceful settlement of the dispute”.(Article 9, Law on Strike).* Also, according to the Law, the parties in the dispute are obliged to resolve the dispute arisen by peaceful methods, so that within a specific period of time they have to offer a "*proposal for the resolution of the dispute and to inform the workers and the public about that proposal.*" Such a legal provision seems to be unsuitable and vague for implementation, as there is no legal logic in the legal solution that the Strike Committee shall offer a proposal to resolve the dispute, when it is already bound by the decision to organize the strike and is not able to offer a resolution for the dispute without the decision of the organizer of the strike (Lubarda, p. 192).Namely, it was not clear what the consequences would be if the parties to the dispute did not define a draft agreement for resolving the dispute. Such a procedure opened space for abuse and restriction of the right to strike beyond the limits permitted by the constitution and international agreements (Potocnak, p. 129).

The Agreement on Establishment of the Economic and Social Council of the Republic of Macedonia dated 30.12.1996, i.e. the Agreement on Establishment of the Economic and Social Council of 25.08.2010, includes encouragement ofpeaceful resolution of collective labour disputes (disputes arising during signing collective agreements and strikes). The agreement does not suggestion any particular methods of peacefully resolving collective labour disputes, but it can be assumed that those are the traditional methods (conciliation, mediation and arbitration) established by law. With the entry into force of the Law on Peaceful Resolution of Labour Disputes in Macedonia, the significance and the role of the Economic and Social Council in the procedure of selecting conciliators and arbitrators for peaceful resolution of collective labour disputes has increased*(Article 38, paragraph 4, Law on peaceful settlement of Labour Disputes).*

The Labour Law of Republic of Macedonia (Gazette of Republic of Macedonia no. 62/05), in Chapter XVII entitled "*Peaceful settlement of individual and collective labour disputes*" states that "*in the case of individual or collective labour dispute, the employer and the employee may agree to entrust the resolution of the dispute to a special body established by law”(Labour Law, article 182)*

The Law also regulates the right to peaceful resolution of collective labour disputes by arbitration, provided that it is regulated by a collective

agreement*(Labour Law, article 183)*,where the collective agreement regulates the composition, procedure and other issues relevant to the work of the arbitration*(Labour Law, article 183, paragraph 3)*. If the employer and the employee agree to an arbitrary resolution of the labour dispute, the decision of the arbitration is final and binding on both parties,so that starting proceedings before the competent court against the decision of the arbitration is not admissible*(Labour Law, article 183, paragraph 4).*

Chapter XIX Article 235 stipulates the resolution of legal collective labour dispute by arbitration, relating to the dispute which arises in the process of concluding, and amending the collective agreement.

Chapter XX, which establishes rights and obligations of trade unions and employers during strike, states that, the obligation of reconciliation must not restrict the right to strike, so the strike must not start before the end of the conciliation procedure when such proceedings is regulated by law*(article, 236, paragraph 3)*.

Collective agreements. The first general legal act in the independent Republic of Macedonia which established the institute of peaceful resolution of legal issues arising from the application of collective agreements in the Republic is the General Collective Agreement of RM (Off. Gazette no. 29/92). Likewise, the General Collective Agreement for economy of the Republic of Macedonia (Official Gazette of RM no. 29/94), i.e. the General Collective Agreement for non-economic sector of the Republic of Macedonia (Official Gazette of RM No.39/94) identically regulate the procedure for establishing the Committee for harmonization and the procedure of arbitration as methods of peaceful resolution of legal disputes in collective bargaining.

Chapters "*Dispute resolution and arbitration*" regulate the procedure of coordination and arbitration in the General Collective Agreement for economy (Articles 76-78) and the General Collective Agreement for non-economy (Articles 84-87). Based on the provisions of the General Collective Agreement for economy and the General Collective Agreement for non-economy of PM professional collective agreements have been signed in nearly all economic and non-economic activities. In all of them the procedure of harmonization for amending of a concrete collective agreement is normatively regulated. In the case when the opposing party does not accept the proposal to change the text within the deadline specified in the collective agreement,[10]the

[10]In almost all Professionall collective agreements the deadline for the pronouncing of Parties on the proposed changes is 30 days, after which, upon the request of either party, arbitration proceedings may be initiated.

initiator may initiate a procedure before arbitration. Thereby, each party shall appoint an equal number of arbitrators. Arbitration decides by majority votes of the total number of members, and the decision of the arbitration is final.

In 2004, the Government of RM adopted the National Strategy for Integration of the Republic of Macedonia in the European Union according to which the medium-term objective is *"introducing a global system of alternative dispute resolution, particularly in the area of family law, labour law (individual and collective labour disputes) and consumer protection, as well as the code of ethics of mediators" (National Strategy for integration to the EU, 2004, p. 185).*

The Strategy establishes the goal that "*within three years the legislation on alternative dispute resolution, particularly in the area of family law, employment law and consumer protection will be prepared".*[11] Competent state bodies and institutions, in accordance with the strategy, took a series of measures and activities for the introduction of alternative methods of dispute resolution in all social spheres, and several laws for alternative resolution of labour disputes were enacted (Labour Law, Law on Mediation, Law on Peaceful Resolution of Labour Disputes and other) which were referred to earlier.

Law on Mediation (Off. Gazette of RM no. 60/06 of 16.05.2006) also represents a very important legal instrument that established methods of peaceful resolution of civil, commercial, **labour** (individual), consumer and other conflicting relationships between legal entities and individuals in accordance with the law. This law does not apply to resolving collective labour disputes and other issues, such as administrative and criminal disputes (Law on Mediation, article 1, paragraph 1 and 2).

The General Collective Agreement for the economy of the Republic of Macedonia of 13.06.2006 has been an important legal source for resolving collective labour disputes. It regulates that "*disputes that cannot be resolved by mutual agreement can be resolved by conciliation or arbitration"*(GCA, article 45 paragraf 1). Individual and collective labour disputes, in addition to a conciliator or arbitrator, can be resolved through conciliation and before a special Peace Council (article 47, paragraph 1), i.e. one or more arbitrators(article 50, paragraph 1).

The **Law on Peaceful Resolution of Labour Disputes** (Off. Gazette no. 87/07) is a special law that regulates the manner, principles, choice, rights and obligations of conciliator and arbitrator and other issues of importance to

[11] Ibid, p 185

the peaceful resolution of individual and collective labour disputes. It was never actually made into a law. With this in mind, the Law was amended in 2014. The Law Amending the Law on Peaceful Resolution of Labour Disputes (Off. Gazette of RM no. 27/14) does not provide for the existence of a specialized institution (Council) for peaceful resolution of labour disputes, but competences in this area are transferred into the hands of the Ministry of Labour and Social Policy. We hold that such legal solution is legally invalid because the state is given the chance to interfere in the process of peaceful resolution of labour disputes, which violates the basic principle of neutrality and impartiality.

3. Institutions that are important for preventive resolution of collective labour disputes in Macedonia

In Macedonia there are several institutions that have an important place in the resolution of collective labour disputes. These institutions are:

1. Ministry of Labour and Social Policy,
2. Economic and Social Council, and
3. Commission for determining representativeness (indirectly).

3.1 Ministry of Labour and Social Policy

According to the Law Amending the Law on Peaceful Resolution of Labour Disputes (Off. Gazette of RM no. 27/14), the Ministry has an important place in the resolution of labour disputes. Pursuant to the provisions of this Law, the Ministry responsible for the field of labour has the following responsibilities:

- keeping the Register of mediators and arbitrators (hereinafter: the Register)
- training and professional training of conciliators and arbitrators,
- exemption of conciliators and arbitrators from procedure,

- developing a procedure for issuing and revoking licenses of conciliators and arbitrators in accordance with this law,
- conducting the procedure of peaceful resolution of labour disputes, Keeping records of procedures for peaceful resolution of labour disputes and other matters provided by law.

Issuing and revoking of licenses is done by the Ministry responsible for the affairs of labour, upon the proposal of a tripartite committee appointed by the Economic and Social Council, with representatives from the Ministry of Labour and Social Policy, from representative associations of employers and from representative trade unions.

3.2 Economic and Social Council

Economic and Social Council is composed on a parity basis of an equal number of representatives of social partners on the principle of tripartism (government, trade unions, and employers). Representatives of trade unions and employers, under applicable provisions, are recruited from representative trade unions or employers' associations. *"This institution aims to protect and promote the economic and social rights and interests of workers and employers, to conduct harmonized economic, development and social policies, to foster social dialogue and conclusion and application of collective agreements and their coordination with the measures of economic, social and development policy"(Art. 246, paragraph 1, Labour Law).* The activity of the Council is based on the need for tripartite cooperation between the Government of the Republic of Macedonia, trade unions and employers' associations in resolving economic and social issues and problems*(article 246, paragraph 2, Labour Law)*. Through preventive tripartite consultation and tripartite social dialogue the Council contributes to the preservation and stabilization of industrial peace, to confidence building and establishing social harmony in society. The Economic and Social Council has an advisory-consultative function through which social dialogue and an important part of the negotiating function of the social partners takes place, and it *encourages peaceful resolution of collective labour disputes*(*Article 246, paragraph 3, Labour Law).*

3.3 Commission for determining representativeness

The Commission for determining representativeness indirectly affects preventive resolution of collective labour disputes. It is established by the amendments to the Labour Law (Off. Gazette no. 130/09), and was formed in early 2010. The role of this Commission is very important and responsible, since it conducts the entire procedure for determining representativeness, i.e. it checks evidence of meeting conditions (criteria) for representation. Once the Commission checks the evidence and finds that the applicant has met the requirements under the Labour Law, the Minister responsible for the affairs in the area of labour, on Commission's proposal, adopts a decision on representativeness. The decision is published in the Official Gazette of the Republic of Macedonia.

In the past, the absence of a precise legal framework in the country, i.e. of the criteria for representation, was one of the reasons for the weak functioning of bipartite and tripartite social dialogue in the country, which was the main reason for various conflicts, mainly between trade unions and employers' associations. The one who gets a representative status acquires the right to participate in the work and establishment of other tripartite bodies in the country, especially the Economic and Social Council, the Council for Occupational Safety and Health, Commission for Selecting Candidates for Conciliators and Arbitrators, Managing boards of social welfare funds etc. The longstanding problem of (un)defining of the legal criteria for determining the representative status of trade unions and employers has created a conflict between the major trade union confederations (Federation of Trade Unions of Macedonia and the Confederation of Free Trade Unions), i.e. employers' associations (Organization of Employers of Macedonia - OEM and the Confederation of Employers of Macedonia - CEM).

Conclusion

From the analysis of legislation in Macedonia for resolving collective labour disputes we can conclude that it is gradually introduced into the legal system of the country. Most of the international legal instruments are implemented in the national labour legislation through the provisions of the Labour Law, and the Law on Peaceful Resolution of Labour Disputes. Along with legislation, several institutions that support the function of resolving collective labour disputes are being systematically established. First the Economic and Social Council (1996) was introduced, and later the Commission for Determining Representativeness (2009).

The Labour Law does not regulate the issue of collective labour dispute in an adequate manner. This matter is regulated by two articles (182 and 183) that direct employees and the employer to entrust the resolution of their individual and collective labour dispute to the special body established by another law.

The National Council for peaceful resolution of labor disputes, which was established by the Law on Peaceful resolution of labor disputes in 2007 is not formed.

The Law Amending the Law on Peaceful Resolution of Labour Disputes (Off. Gazette 27/14) does not provide for the existence of a specialized institution (Council) for peaceful resolution of labour disputes, but the competences in this area are transferred into the hands of the Ministry of Labour and Social Policy. We consider such legal solution legally invalid because the state is given the chance to interfere in the process of peaceful resolution of labour disputes, which violates the basic principle of neutrality and impartiality. Therefore, we consider it necessary to establish an independent institution for resolving collective labour disputes.

Bibliography

Lubarda, Branko (1999) *Settlement of collective labour disputes-methods and institutions*, Belgrade: JURS.

Lubarda, Branko (1997) *Lexicon of industrial relations*, Belgrade: Radnichka shtampa.

Lubarda, Branko (2004) *European Labour Law*, Podgorica: CID.

European Social Charter of the Council of Europe (1961);

Potochnjak, Zeljko (1992) *Right to Strike*, Zagreb: Faculty of Law and Union of Autonomous Trade Unions of Croatia (UATUC).

Law on Mediation (Official Gazette of RMno. 60/06 of 16.05.2006);

Law on Strike (Official Gazette of SFRY no. 23/91);

Law on Peaceful Resolution of Labour Disputes (Off. Gazette of RM no. 87/07);

Law Amending the Law on Peaceful Resolution of Labour Disputes (Off. Gazette of RM 27/14);

ILO Convention no. 154 on collective bargaining (1981);

Jovevski Lazar (2006) *Collective bargaining - comparative observations*, Skopje: Iustinianus Primus.

Jovevski Lazar (2007) *Collective labour disputes*, Skopje: XVIII Trade Union School of UPOZ, 22-24.02.2007.

National Strategy for Integration to the EU, Chapter V, Subtitle Judiciary, Government of RM, General Secretariat, European Integration Department, Skopje, 2004;

General Collective Agreement of RM (Official Gazette of RM no. 29/92);

General Collective Agreement for economy of RM (Official Gazette of RMno. 29/94);

General Collective Agreement for non-economic sector of RM (Official Gazette of RMno. 39/94)

General Collective Agreement for economy of RM of 13.06.2006

General Collective Agreement for employees in the public sector (2008);

General Collective Agreement in the private sector in the area of economy (2010)

Rules on Strike of FTUM, Council of FTUM, 24.04.1989;

Recommendation no. 92 of ILO for Voluntary Conciliation and Arbitration (1951);

Community Charter of Fundamental Social Rights of Workers (1989);

Recommendation no. 163 of ILO for Collective Bargaining (1981);

Agreement on the Establishment of the Economic and Social Council of the Republic of Macedonia 30.12.1996;

Agreement on the Establishment of the Economic and Social Council of the Republic of Macedonia 25.08.2010;