

The Right to Strike: International and Regional Legal Instruments with Accent of Legislation in Republic of Macedonia

Andon MAJHOSEV

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

Jadranka DENKOVA

e-mail: jadranka.denkova@ugd.edu.mk

Abstract

The right to strike is a universal democratic right of all employees, regardless of where they are employed: Real or public sector. Depending on the degree of realization of this right in a state, it is accordingly evaluated on the scale of democracy. Therefore, we can say that the right to strike is a fundamental measure of democratic values of a society. There is no real democracy without the right to strike. The right to strike is governed by international legal instruments (acts) of the UN, the ILO and the European Union. In the Republic of Macedonia the right to strike is regulated by the Labour Code and other more specific laws which implement the international standards relating to this right.

Key words: *right to strike, conventions, laws.*

1. Right to strike in international law

1.1. International legal instruments of the UN

The right to strike is one of the most important international labor standards. Internationally this right is regulated and governed by several international legal instruments of the UN, the ILO and the EU, which provide that the right to strike gets universal character. The most important international legal instruments of the UN which regulate the right to strike are: *the Universal Declaration of Human*

Rights (1948), *International Covenant on Economic, Social and Cultural Rights* (1966).

The Universal Declaration of Human Rights¹ does not mention the right to strike directly, but this right derives indirectly from the right of "everyone to peaceful assembly and association".² Another important international legal instrument of the United Nations that explicitly regulates the right to strike, **the International Covenant on Economic, Social and Cultural Rights** adopted by the UN General Assembly on 16. December 1966 and entered into force on January 3, 1976 after the provision of 33 ratifications. Article 8 of the Covenant states that States Parties to the present Covenant are obliged to provide "the right to strike if exercised according to the laws of each particular state"³ giving the opportunity of States Parties to the Covenant by law to limit the right to strike of the employees in the armed forces, police and bodies of state administration.⁴

1.2. Legal instruments of the ILO

International Labour Organization (ILO), represents a specialized organization of the United Nations, that has a special place in shaping the labor internationally. ILO has adopted several international legal instruments relating to the right to strike. The most important of these are the Convention no. 87 "Freedom of Association and Protection of the Right to Organise" of 1948, Convention no. 98 on the "Right to Organize and Bargain Collectively" and the 1949 Recommendation no. 92 on "Voluntary conciliation and Arbitration"

Convention no. 87 on freedom of association and protection of the right of association is very important to exercise the right to strike. The Convention states "organizations of workers and employers have the right to adopt their own statutes and rules, complete freedom to choose their representatives, to organize their administration and **activities** and to shape their programs".⁵ In the article quoting the organizations of workers (union) they are given the right, among other

¹Universal Declaration of Human Rights was adopted and proclaimed by the UN General Assembly in Resolution No. 217A (XXX) on Dec 10, 1948.

²See Article 20, paragraph 1 of the Universal Declaration of Human Rights

³Article 8, paragraph D of the International Covenant on Economic, Social and Cultural Rights Council

⁴See Article 3 point 1 of Convention No. 87 of the ILO 1948

⁵See Article 3 point 1 of Convention No. 87 of the ILO 1948

things, to organize activities (meaning to strike and other forms of pressure: demonstrations, blockages).

The Convention no. 98 ILO indirectly discusses the right to strike. It states that "workers should use **adequate protection** (strike as a method of protection) against all acts of discrimination in employment, which could be detrimental to union freedom"⁶ especially if a worker is "fired because he or she is member of a union or participate in union activities outside working hours ..."⁷

In the **Recommendation no. 92 of ILO on voluntary conciliation and arbitration**, the strike is directly mentioned and said that "if the voluntary agreement of all interested parties includes a procedure of conciliation, the parties should be encouraged during this procedure to refrain from strikes and Lockout".⁸ The term lockout (lockout) denotes the right of the employers to lock their own firms, as a counter strike to the workers in order to force them to accept his or her conditions.

1.3. Right to strike in Europe

The **European Council** has adopted several legal instruments that directly or indirectly regulate the right to strike. In an indirect way, this right is regulated in the **European Convention on Human Rights**⁹ in Part I concerning the rights and freedoms of the individual. The right to strike stems from the right to freedom of assembly and association. In fact, the Convention states that "Everyone has the right to freedom of peaceful assembly and association with others, including the right to form trade unions and joins unions to protect their interests".¹⁰

The most important legal instrument adopted by the Council of Europe is the **European Social Charter**. This Charter was adopted in 1961 and entered into force in 1965. The Charter section that regulates the right of collective bargaining explicitly states that "workers and employers have the right to collective action in cases of conflicts of interest, including the right to strike in accordance with the

⁶See Article 1, paragraph 1 of the Convention no. 98 of the ILO 1949

⁷Furthermore, Article 1, paragraph 2

⁸See Article 1, paragraph 4 of the ILO Recommendation no. 92

⁹Convention for the Protection of Human Rights was adopted in Rome on 4 November 1950 and entered into force on September 3, 1953

¹⁰See Article 11 of the European Convention on Human Rights and Protocols Nos. 1, 4, 6 and 7.

obligations that may arise from the collective agreement the parties have previously entered into".¹¹

Also, the European Social Charter regulates right to the state party by law to regulate the right to strike whereby the right to strike can not be restricted i.e. It is restricted to prescribe standards lower than those defined in the Charter except in the following cases: "protect the public interest, the protection of the rights and freedoms of others, protection of national security, protection of public morale and health."¹²

European Charter of Fundamental Social Rights of workers of the Council of Europe from 1989, in its chapter titled "Freedom of association and collective bargaining" regulates the right to strike in Articles 13 and 14. Article 13 regulates the right to organize collective action in cases of conflicts of interests, including the right to strike, subject to national law and collective agreements. In order to facilitate resolution of disputes in production the adoption and observance should be adopted of proper procedures for settlement, mediation and arbitration in accordance with national practice. The legal system, the state party determines under what conditions and to what extent it will apply the right to strike in the armed forces, police and civil service (Article 14).

The role of the Committee of Independent Experts: The national legislation and practice of striker's fight in EU countries, are affected to a great extent by the views of the Committee of Independent Experts of the European Parliament. This Committee is an independent expert body whose task is to supervise the application of the provisions of the European Social Charter regarding the right to strike. In this regard, the following paragraphs of this Committee are of importance :

1. The right to strike is not only right to union, but it is the right of every worker, regardless of his legal status;
2. The right to strike is recognized only on legal disputes on interest;
3. The purpose of the strike may be to achieve any common ground of the staff;
4. The right to strike may be restricted only by collective agreement;

¹¹See Article 6, paragraph 1, item 4 of Evroskata Social Charter

¹²Potochnjak, Right to strike, SSS, Law Faculty, Zagreb 1992., p. 203rd

5. The public service employees may have their right to strike limited to the extent that the work of such services would not affect the functioning of the vital functions of society;
6. Limits to the right to strike can be determined by court practice;

2. The right to strike in the Republic of Macedonia

It has been mentioned that the right to strike is regulated by several international legal acts of the UN, ILO, EU. All provisions of these international instruments concerning the right to strike are implemented in the legislation of the Republic, and therefore it belongs to the group of countries where this right of employment is determined according to international standards.

Constitution of the Republic of Macedonia: The right to strike is a constitutional category (Article 38) and belongs to the newer generation of constitutional rights in the Republic of Macedonia. The Constitution guarantees the right to strike, though the conditions may be restricted for exercising the right to strike in the armed forces, police and administrative bodies.

Labor Law: The right to strike is specified and developed with the provisions of the Labor Law (Official Gazette 62/05) in Chapter XX (art. 236-245). The right to call and lead the strike is vested in the union and its associations of higher level in order to protect economic social and employment rights of its members (Article 236, paragraph 1). A Strike, in order to be legal, should be announced in writing to the employer or association of employers against whom it is directed, and if you organize a solidarity strike, then it is announced in writing to the employer where it is organized. The written notice needs to specify the following elements: 1. reasons for the strike 2. venue of the strike 3. date and 4. time of the beginning of the strike (h) (Article 236, paragraph 5). If one of these elements is omitted, then the employer against whom the strike is directed may apply to the competent authorities and institutions to challenge the legitimacy of the strike.

Before the strike, there is a mandatory procedure for conciliation in accordance with the Labor Law. If this fails, then the strike may be organized. Responsibility for reconciliation does not apply for the strike of solidarity. Responsibility for reconciliation must not restrict the right to strike (Article 236, paragraph 3).

The provisions of the Labor Code provide the workers with the ability to freely decide whether to participate in the strike or not. The strike must be organized in a way that will not prevent or hinder the work process of the

employees who do not participate in the strike as well as prohibit the entry of workers and responsible persons in the business premises of the employer (Article 236 paragraph 6). If an employee hinders free entry (or exit) of workers and officials who want to work, then that person violates the provisions of the Labor Code and against him appropriate sanctions will be taken.

Also, in response to an already started strike, the employer has a right to remove workers from the work process, the number of which is not greater than 2% of the number of workers participating in the strike and that only those workers who with their behavior encourage violent and undemocratic behavior, because they prevent normal conduct of negotiations between workers and the employer (Article 237, paragraph 1, 2, 3). The employer is obliged to pay contributions to workers removed from work stipulated by special regulations for minimum base payment of contributions (Article 237, paragraph 4, Labor Code).

Depending on the production and technological process and the type of industry, specific employers need to organize the production and maintenance work during a strike necessary to minimize potential damage. To avoid possible damage to the employer, he has the right to propose to the union to adopt rules for production, maintenance and necessary things that must not be interrupted during the strike. (Article 238, paragraph 1). The rules shall include provisions for work and the number of workers who have to work during the strike, in order to facilitate production work and maintenance work, recovery work after the strike and necessary work, doing those things that are necessary to avoid endangering life, personal safety and health of citizens (Article 238, paragraph 2). The determination of the matters contained in the Rules shall not limit the right to strike. Where the union and the employer does not agree within 15 days for production and maintenance work necessary, then in the next 15 days the union and the employer may request for the work to be decided by arbitration (Article 238, paragraph 4).

Consequences of organizing and participating in the strike: strike as a collective labor dispute carries risks and consequences, both for workers participating in the strike and for employers. If the strike is organized in accordance with the Labor Code and the collective agreement, then it does not represent a breach of the employment contract. In that case the worker must not be put at disadvantage to other workers (discriminated against) for organizing or participating in strike if the strike is organized in accordance with the law and the collective agreement. A third consequence is the employee's termination of employment only if organized or participated in illegal strike or during the strike he or she injured the employment contract (Article 239, paragraph 3). The participation in the strike is the worker's own personal decision and right and nobody has the right to enforce or discourage the participation in it, even when the organizer of the strike is union which the employee belongs to.

During the workers participating in the strike, the employer is obliged to pay contributions according to the specific regulations regulated by the minimum base payment of contributions. The organizer of the strike may provide of its assets compensation to net salary during the strike of workers participating in the strike of its own assets. Pursuant to the provisions of the Labor Code (Article 236), the trade union appears as to be the organizer of strike, so if the strike is to last, persist, and succeed, then it is necessary to form a union strike fund that will finance the salaries of employees who participate in the strike. In Republic of Macedonia unions have learned from previous experiences with several strikes and have established such funds: SONK, SIER, UPOZ, Trade Union of The workers in the Agroindustrial Complex of Macedonia etc..

Consequences of organizing an illegal strike: If the employer or association of employers determine that the strike has been organized contrary to the provisions of the Labor Code, may initiate an application before the court to ban the organization and conduct of the strike. If the court determines that the strike was not organized and implemented in accordance with the Labor Code, the employer is entitled to claim damages suffered because of the strike (Article 242 paragraph 1 and 2). Decision to ban strike is passed by the competent court for labor disputes at first instance (Article 244, paragraph 1). The procedure for requesting a ban on strike, or removal from the work is urgent (Article 244, paragraph 2).

Court ban on illegal dismissal from work and compensation: Just as the employer may request judicial protection from organized illegal strike and compensation, so may the union seek an injunction on illegally laid-off workers during the strike. Also, the union may require compensation because workers suffered by the exclusion from work.

Strike in the armed forces, police, state administration, public enterprises and public institutions is regulated by special laws. Since 2005 the legislation regulating the right to strike is the Labor Code, and this substance in the country is regulated by additional 11 Acts: Defence Act, Act on Service in the Macedonian Army, Police Act, the Act on Internal Affairs, the Act on Civil servants, the Act on Civil Organizations, Act on Public servants, Act on Peaceful resolution of Labour disputes, the Act on records relating to the labor market.

The right to strike of employees in the defense is regulated by the Law on Defense from 2001 and the Law on Military Service from 2010. In The Law on Defence the strike is regulated by Art. 48, completely bans strikes in the case of military and emergency state, as well as in the case of enforcement of international agreements relating to exercising, training, peacekeeping or humanitarian operations in the country or abroad involving units of the Army of Republic of Macedonia.

In the absence of these constraints, the defense can organize a strike, which must be announced at least 10 days prior to its commencement, in which also may not participate more than 10% of the employees in the Army and can not last longer than three days, and that during the strike the employees participating in it are obliged to remain on their jobs and perform their duties for the purpose of achieving the vital functions of the Army. During the strike in the Army, Defence Minister and Chief of Staff are responsible to ensure that all vital functions of the Army are conducted.

The Law on Army Service of the Republic establishes that during the strike, active military personnel are entitled to a salary in the amount of 60% of salary received the previous month (Article 167, Law on Military Service).

The right to strike of employees in the police and Ministry of Interior is regulated by the Law on Internal Affairs, which is made up of four articles (Article 118-121) and the police in 2006 that is made up three articles (106-108).

The right to strike, shall be exercised by the employees of the Ministry of Interior in the way that and only if the regular activities are not disrupted deriving from the obligations of the authority of the Ministry of Interior (Article 118, Law on Internal Affairs). To prevent possible harmful consequences of failure of internal affairs during the strike, the Minister or an authorized person shall provide necessary functioning of the organizational units in the operation. The employee shall act in accordance with orders, and if they do not act in such a manner, the Minister of Interior or his authorized person shall ensure the completion of the work process by replacing the appropriate officials (Article 118, Law on Internal work).

When a strike permitted, the strike organizer shall, not later than seven days before the strike, inform the Minister of Interior thereof. The organizer shall submit the decision to strike and program scope and manner of performing the tasks and duties necessary to carry out during the strike are: organizing and servicing of personal documents of citizens for urgent needs, the scope of the work of the Security and Intelligence and other tasks (Article 120, Law on Internal Affairs).

The Law on Internal Affairs provides for a ban to strike when a military, emergency or crisis situation exists. In the case of a complex security situation, disturbing public order and peace to a greater extent, natural disasters and epidemics or endangering the life and health of people and property in a larger scale, it is not permitted to have more than 10% of the police on strike, and the strike can not last longer than three days. In case when the strike started before the occurrence of any of the foregoing conditions, employees of the Ministry shall immediately stop the strike (art. 121 LIA).

The Law on Police determines the same conditions and the same procedure for notice of strike on police officers (chl.106, Police Act), and the completely same

way regulates the issue of prohibition and restriction of the right to strike, except that there is no ban for strike in crisis (chl.108, Police Act).

The right to strike in public companies is regulated by the Law on Public Enterprises in Articles 32 to 36. The analysis of these articles indicates the intention of the legislator, among other things, to stretch the right to strike. In proceedings governed by this Law, after reaching the decision by the authority of the union or the workers themselves, 29 days are to pass before the employees can strike.

The prescribed legal procedure for launching the strike in the public enterprise is complex and complicated and includes three stages:

First stage, at the latest 7 days before the date when they intend to announce strike, union or workers must submit a written warning to the director of the public company giving reasons for organizing a strike.

Second stage, within 15 days, the Strike Committee, Board of Directors and Director of public company are obliged to offer a proposal to resolve the dispute and introduce the proposal to the employees and the public.

Third stage, if after that period there is no agreement, the union or the strike committee may decide to strike. The union or strike committee shall submit the decision to strike to the Director of Public Enterprises at least 7 days before the commencement of the strike. The decision to strike should include the location of the strike and hours and duration of the strike. Furthermore, the organizer of the strike must attach a statement stating how security measures will be done to ensure the physical safety of employees and protection of the equipment and installation, and performance of obligations to citizens, legal persons and public authorities as well as how the necessary level of performance of the work process is carried out without endangering the life, health and economic and social security of citizens and the necessary development of economic and other activities in the country, to the extent and in the manner prescribed by law in the relevant area of public interest, and the execution of international agreements.

During the strike, the strike committee and workers participating in the strike shall organize and lead the strike in a way that will ensure the fulfillment of the obligations set out in the statement, and shall cooperate with the Director of Public Enterprise. Also, they must not impede the work of those employees who can not or do not wish to participate in the strike. Individuals who can not participate in the strike are people who hold leadership positions and people who the technical and technological process depend on for indispensable development of the activity of the enterprise. The company founder prescribes their duties and how they will act in the event of a strike. Also, the founder may determine the jobs and way of performing tasks and duties of jobs on which the performance of activities of public interest depend and that can be dangerous to people, installations and equipment

and when employees cannot stop work without delivering warning given within the period stipulated in this Law (Article 35, Law on Public Enterprises).

Peaceful resolution of labor disputes in Macedonia is regulated by the Law on Peaceful Resolution of Labour Disputes (Official Gazette of RM 87/07). The law contains provisions regarding the workers right to strike in sectors of common interest (Article 18, Law on peaceful settlement of labor disputes). The said Article is regulated that in case of dispute or strike in sectors of general interest or where work stoppage could jeopardize the life or health of people or cause damage of larger scale, the parties are obliged to join and peacefully resolve collective dispute within 10 days of the request. Activities that are covered by this requirement are: electricity, water, transport, radio and television, whose founder is the Republic of Macedonia or local governments, postal services, utilities, manufacturing of basic foodstuff, health and veterinary care, education, child protection, social care, police and defense (Article 18).

Health care law health care of citizens should always be exercised continuously i.e. Without interruption. Extraordinary circumstances (flood, fire, natural disasters) and the strike may affect the normal process of care for the citizens and for this reason the state through its competent authorities and institutions shall provide minimum conditions for its functioning, according to law, and general acts of ministry and health organizations.

Earlier we mentioned that in order to realize their economic rights social workers have the right to organize strikes. The exercise of this right applies to employees of healthcare organizations (hospitals, clinics, medical centers, healthcare facilities, institutes, offices, etc..).

Given the fact that health care is a special public interest, and also to provide that the strike does not pose an obstacle to achieving the constitutionally guaranteed right to health of citizens, the Ministry of Health and health care organizations have a duty to adjust its operations to the new conditions. In this context, the Ministry of Health and health care organizations are required to provide funds for supplies of medicines and sanitary materials, personnel and other requirements to work in conditions of emergency or to adapt its organization to work and to take measures for smooth work and the removal of the consequences of this situation.

Health care employees may exercise their the right provided that strike does not jeopardize the life and health of citizens seeking health care. In order to remove the possible harmful consequences that could arise from the failure of health care to citizens during the strike, the management body of the healthcare organization is obligated to provide emergency medical assistance and minimum functioning of all organizational units in the operation. To achieve minimal operation in all organizational units of the healthcare organization employees are required to

comply with the orders of the board and the directors of the health organization. If people do not obey the orders of the management, the director is obliged to ensure the normal working process by substituting the appropriate professionals. Employees who have received orders from the principal, but does not comply with them, make serious violation of labor discipline, which by law is the basis for termination of employment. If the governing body in health organization does not ensure the implementation of measures to comply with the orders, the Government may set a temporary measure as follows:

- Acting - Director during strike;
- workers needed to perform the activity and;
- other conditions required to implement the health care of citizens.

The above measures continue until the the conditions that led to their introduction are terminated (during the strike).

The law for records relating to the labor market: Since 2004 enacting the records in the labor (Official Gazette of RM br.16/04 and 102/08) introduced a legal requirement for keeping records of strikes. Evidence for the strikes is taken by the employer where the strike occurs and the association of the majority of the (representative) union, which leads to unique records of all strikes in the country.

Also, the employer is required to submit annually the records on strikes to the association of the majority union and the State Institute of Statistics. Besides data for the employer and the number of participants the records should include the following information: time of start and end of strike, which union called the strike, if the strike is organized at the level of the individual employer or the employer's establishment, whether the strike was announced previously and how many days earlier the strike was announced, whether the strike was preceded by negotiations for settlement of the dispute; how many workers participated in the strike and which requirements are pointed out in the strike (Article 26).

In violation of the provisions relating to records of strikes, the law provides fines for the employer as well in the amount of 2.000-4.000 euros in denars, and the director or other responsible person of the employer a fine of 1.000-5.000 euros in denars (chl.56).

Conclusion

The right to strike is an important international standard that is regulated by legal acts of the UN, the ILO and the EU which raises this right to the pedestal of universal human rights. Republic of Macedonia as a state member of the UN, ILO and a candidate for EU implemented all standards for the exercise of this right. From the analysis of the legislation on the right to strike, we can conclude that the right to strike is largely in line with international and European standards.

The right to strike is explicitly guaranteed by the Constitution of 1991. Provisions of the Law on strike 1 from 1991 in relation to the provisions of the Labor Code (2005) contain better solutions in terms of authorized organizers of the strike. Namely, under the Law on strike authorized organizers of the strike could be the union, but the majority of workers (Article 2, Law on strike). In The Labor Code (Art. 236, Labor Code 62/05) the right to call a strike is allowed only to the union and its higher level associations (federations and confederations), which is a serious limitation of workers' rights in two ways. First, the right to strike can be exercised only by those employees who work in companies and organizations which are union members. Given the fact that in a large number of companies and organizations workers are unionized, it means that those businesses and organizations cannot organize a strike. Secondly, the said provision means that those businesses and organizations which have a union, and who does not support the view of the majority of workers to organize strikes, the majority of workers will not have the right to organize strikes.

In the Labor Code there are other forms of restrictions on the right to strike as: strike must not start before the completion of the conciliation procedure, introducing the institute removal of workers from the work process in a strike; introducing special rules during strike etc. "Product maintenance work" etc. "necessary work" (Art. 238, ZRO/05) injunction to strike, hiring strikebreakers etc.

However, we believe that the right to strike in the country should be regulated by a special law on strike (*lex specialis*), rather than more specific legislation containing 4 to 5 articles, i.e. one chapter (XX), as it is the case with the Law on Labour relations (Official Gazette 62/05), which contains 10 articles (236-245). Hence, we believe that the right to strike is a very serious matter that can not sustain improvisation or partial solutions, but requires a serious and responsible approach to the regulation of this matter. For these reasons, we believe that more than ever it is necessary to do the Codification of the right to strike (in a legal act), or overall legal matter to be regulated by a legal act (e.g.g Law on strike).

Bibliography

- Andon Majhosev, The Strikes as Social Phenomen, NU "Goce Delchev", Shtip, 2006;
- Convention no. 87 Right to Organise and association, ILO (1948);
- Convention no. 98 on the right to organize and collective bargaining, the ILO (1949);
- Constitution of the Republic of Macedonia (1991);
- European Convention on Human Rights, Council of Europe (1950);
- European Social Charter, Council of Europe (1961);
- European Charter of Fundamental Social Rights of Workers, the Council of Europe (1989);
- International Covenant on Economic, Social and Cultural Rights, UN (1966);
- Law on strike, Fig. List br. 23/91 Yugoslavia;
- Labor law, Fig. Gazette 62/05, 106/08, 161/08, 114/09, 130/09, 50/10 and 52/10, 124/10, and all other novels;
- Law on Public Enterprises, Fig. Gazette, 38/96, 6/02, 40/03, 49/06 and 83/09;
- Law on Civil Servants, Fig. Gazette of RM no. 59/2000, 112/2000, 34/01, 103/01, 43/02, 98/02, 17/03, 40/03, 85/03, 17/04, 69/04, 81/05, 61/06, 36/07, 161/08, 06/09, 114/09, 35/10, 197/10 и 36/11;
- Law on Judicial Service, Off. Gazette no. .98/2008 Gazette, 161/2008, 6/2009, 150/10;
- Law on Internal Affairs, Off. Gazette of RM no. 92/09 and 35/2010;
- Law of Defence, Off. Gazette of RM no. 42/01, 5/03, 58/06, 110/08;
- Law on Service in the Army of the Republic of Macedonia, Off. Gazette 36/10 and 23/11;
- Law on peaceful settlement of labor disputes, Off. Gazette, 87/07;
- Law on record in the area of labor, Off. Gazette of RM no. 16/04, 102/08;
- Police Act, Off. Gazette of RM no. 114/06 and 6/09;
- Recommendation no. 92 ILO voluntary conciliation and arbitration, ILO;

Strike: experiences and situations, Zdravko Saveski (editor), Movement for Social Justice - Lenka, Skopje, 2011;

Universal Declaration of Human Rights, United Nations (1948);