

THE COVID-19 PANDEMIC AND VIOLATIONS OF WORKERS RIGHTS

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Abstract

The COVID-19 pandemic creates new jeopardy to fundamental principles and rights at work. In the Republic of North Macedonia workers were the first to be hit after the state of emergency was declared because they had to deal with the consequences of the coronavirus. It seems that in the country workers often paid the price of lockdown measures with violations of their labour rights, whose number was increasing daily. The COVID-19 pandemic is restricting freedom of association, denying workers the right to unionize strike and engage in collective bargaining. Some laid-off workers have reported difficulties in accessing social protection schemes. Another issue is a lack of suitable protection to safeguard the rights of workers – cut down expenses, use of days off, occupational health and safety, access to benefits, and unfounded termination of the employment contract.

Since the pandemic began, North Macedonian labour law does not only rely on existing regulations.

The aim of this paper is to increase awareness and understanding of what lawmakers can do now to address, mitigate, and remediate labour rights concerns, with a clear focus on managing labour rights.

First, the paper will try to answer the question does North Macedonian labour law have good mechanisms, if any, that protect the rights of workers in the pandemic.

And second, we will analyze if the North Macedonian legislators reacted upright to the pandemic by amending several new labour laws over a short period.

Both, primary and secondary sources will be used for the explanation of fundamental principles and rights at work. Furthermore, analysis will be done on the introduction of new rules and working conditions.

Keywords: coronavirus, labour law legislation, pandemic, Republic of North Macedonia, workers' rights

1. Introduction

Since the beginning of the COVID-19 pandemic, we complied in North Macedonia, like in many other countries, with a sharp restriction of constitutional freedoms. This was an unprecedented limitation of civil rights, which nevertheless has been generally accepted by experts on law since it was aimed at preserving the most important right, deemed to prevail over any other: the right to life.

The North Macedonian response to the COVID-19 crisis involved a general lockdown of all nonessential activities, accompanied by significant labour law and social security measures. Due to the COVID-19 outbreak, a wide range of exceptional measures at the national level have been taken which touch upon workers' rights.

Given the Government's limited powers and the absence of a Parliament, the President overcame the deadlock by proclaiming a state of emergency on 18 March, when 41 people turned out to be infected with the disease. The declared state of emergency by the President of the Republic of North Macedonia was in force from 18 March until 22 June 2020 and gave the government the right to issue decrees with the force of the law. During the next week, the Government of North Macedonia adopted several measures listed below that affect the employment sector directly or indirectly.

The Government has formulated an occupational health and safety standards that companies in the pandemic should comply with, entailing the following aspects:

- Due to the suspension of the educational process, one of the parents of children aged less than 10 years (including single parents) is exempt from work and work duties.
- It is recommended for pregnant women and those who are chronically ill to be exempt from their work duties and stay at home.
- It is recommended that all employers in North Macedonia, i.e. any manager or executive person in the institutions, to organize the work and the modus of work of the employees through working from home, depending on the type of work and possibilities and without disturbing the regular and the normal functioning of the institution.
- Because it's dangerous for people to be in close proximity to each other, companies were forced to think about how to produce value and input without people getting together. It was recommended that work in factories and larger plants should be reorganized in shifts (even in four shifts if necessary).

Since the pandemic outbreak, 16,778 labour layoffs were registered at the Employment Service Agency of the Republic of North Macedonia (affected by COVID-19), resulting in a 16.1% increase of the total number of unemployed in only three months, and affecting more women. Export-oriented industries, including the textile sector, are already affected by the COVID-19 pandemic and it is expected to be the hardest hit after the tourism industry in the country. The textile sector faced a contraction of its production capacities during this period and according to the employer's textile association, it is estimated that around 30% of the workers in this sector were staying at home due to the previous government preventive measures. Employers' associations in the country already alerted that many factories will face bankruptcy and closures during the inactive period, affecting approximately 35,000 textile workers. Several factories have already dismissed workers without providing any notice or severance pay.

What are the government policies and regulations to protect employees – the workers? The 4th package of measures includes support for payment of the salaries of workers in the private sector at the level of 14,500 to 21,776 MKD per employee during the entire fourth quarter of 2020, which would protect a large number of jobs (€70 million allocated to support 250,000 jobs). Companies and employees in the textile, leather and shoe industries will be able to use funds from the key measures of the package, but also from some other measures. In addition, state aid for purchasing domestic products was provided for about 280,000 citizens through the payment card system. The previous governmental support packages have not been implemented consistently by the beneficiaries. To make matters worse, this started during the period of early parliamentary elections and affected the newly-formed technical government, and has raised the interest of the stakeholders and the public on the effect of those measures. The overall idea behind the Government's action has been that of safeguarding, as far as practicable, the employment level and workers/families income, notwithstanding the sharp slowdown of business and professional activities. For that purpose, a temporary block of dismissals for economic reasons has been issued, combined with an almost mandatory use of remote work, whenever feasible, and a massive recourse to short-time work compensation schemes. A natural question is how these various measures are affecting workers' rights.

In practice, in the labour market and especially the private sector, there have been some violations of workers' rights especially in the area of wage payment and release of workers, and the vulnerable categories of workers. Various reasons were used by the employers to terminate contracts, such as cases where employees on a part-time contract were terminated prematurely, i.e. before the expiration of the fixed-term employment contract.

2. The rights of employees in the pandemic

The first question here is whether the declared pandemic of COVID 19 is considered an event of "force majeure" under the North Macedonian law? Force majeure (or vis major) is a concept in law that still exists from ancient times. Regarding the legal definition of the term, the Law on Labour Relations does not give a specific definition of "force majeure", nor does it specifically refer to another law where such a term is precisely defined. However, although this connection is not explicit, we consider that in this case, the provisions of the Law on Obligations Relations are applicable regarding the issue of defining the term from a legal aspect. Thus, in accordance with Article 126 paragraph 1 of the Law, it is determined that a "force majeure" is an event independent from the will of the parties, which occurrence could not be prevented or foreseen, as a result of which a party to an agreement cannot fulfil its contractual obligations. All three conditions should be cumulatively fulfilled in order for an event to be qualified as a "force majeure". Of course, specific

“force majeure“ contractual clauses (if any) should be considered on a case by case basis. In the absence of such clauses, the rules provided in the laws would be directly enforceable.

Considering the above rules a party to a contract can claim a “force majeure“ event and thus shield itself from eventual nonperformance claims by the counterparty. Namely, under the Law on Obligations Relations a contractual party affected by an event of “force majeure“ is exempt from the fulfillment of its contractual obligations without any responsibility for penalties or damage compensations.

In case of a dispute in front of the North Macedonian courts, the above rules would be applicable. In the event of entering into new agreements, it would be recommendable to stipulate an extended and precise “force majeure“ clause in the contracts containing the pandemic, epidemic, etc as an event of “force majeure“.

Related to the COVID-19 pandemic, according to the Law on Labour Relations there are three permissible deductions an employer may take from an exempt employee’s wages without jeopardizing the employee’s exempt status: if the employee is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice or providing compensation for salary lost due to illness, and; if the employee is absent for two full workweeks. Therefore, if an employer sends employees home early or decides to close for an entire day, the employer is obligated to pay exempt employees for the full day in order to maintain the employees’ exempt status. Compensation for absence from work due to COVID-related reasons will be 100% compensated by The Health Insurance Fund and will apply to all employees in both the public and private sectors.

The only additional situations where an employer does not jeopardize losing an employee’s exempt status by not paying the exempt employee his/her full salary is if the employer shuts down operations and the employee does not perform any work or the employee chooses to take a day or more off from work for personal reasons other than sickness or disability.

Legal requirements aside, paying an employee his/her regular wages (at least until and unless the employee tests positive for the COVID-19 or during a quarantine) or foregoing disciplinary action based on absenteeism caused by the COVID-19 may incentivize employees who have been exposed or are symptomatic to stay home, thereby reducing the risk that the virus will spread in the workplace, which may improve morale and public relations. Employers should have to pay employees for a minimum number of hours if an employee is sent home early. The quarantine or self-isolation days can be deducted from the annual leave of the employee, but only if the employee requests the use of annual leave during the quarantine self-isolation.

According to the Law on Obligations Relations, both parties to a contract are obliged to respect the rights, legal interests and other interests of the other party . Concerning employment contracts, this obligation means that the employer must

protect the employee against danger to life and limb to the extent that the nature of the employment permits. This private law obligation entails the obligation of the employer to comply with the public law regulations on occupational health and safety. Employees can therefore require their employer to comply with public health and safety law. It follows from this general obligation that the employer must take the necessary occupational safety measures, avoid risks to life and health as far as possible and keep remaining risk as low as possible .

Under the Law in cases of „natural disasters“ or „other emergencies“, when such emergency is expected, or in other exceptional circumstances that endanger the life and health of people or the property of the employer, the type of work or the place where the work is performed, as laid down in the employment contract, may be temporarily modified without the consent of the employee, but solely for the duration of such circumstances. An emergency is a situation that poses an immediate risk to health, life, property, or the environment. It is not clear whether the „natural disaster“ or „other emergencies“ exceptions will apply to the COVID-19 pandemic. Even if it is determined these exceptions do apply, a notice of modifications must be communicated as soon as practicable. Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, mitigation may not be possible and agencies may only be able to offer palliative care for the aftermath.

Following the provisions of the Law on Labour Relations relating to compliance with the occupational safety and health regulations, the employee shall comply with and implement the regulations on occupational safety and health to protect his life and health, as well as the life and health of others. Each employee shall be entitled and obliged to provide for his safety and the safety of other persons working with him, following the training and instructions provided to him by the employer, to be informed about the occupation safety and health measures, and to receive training on the application thereof, following the occupational safety and health regulations. The employee shall be entitled to refuse to carry out the work if he is exposed to an imminent threat to his health or life when the occupational safety and health measures have not been taken and to request the removal of such deficiencies.

Because there are no explicit rules on this the employer can issue mandatory instructions to the employee to take the COVID-19 test, but it can be argued that tests would be mandatory if the expense for those is covered by the employer. The employer can't require their employees to wear protective masks, except in case protective masks are stated in the Safety Statement adopted following the applicable Law on Health and Safety at Work. Employees who are afraid to come to work out of concern that they will contract the COVID-19 are not entitled to leave under the Law on Health Insurance or any sort of accommodation (e.g., work from home) under the Law on Social Insurance. Because the exposure and risks associated with the COVID-19 pandemic are changing, in determining that an employee's fear is reasonable an employer should follow very carefully the existing guidance from the Government and Public health agency.

The employee affected by COVID-19 have access, for as long as required, to adequate health care and services of a preventive and curative nature, including general practitioner care, specialist care (at hospitals and outside); the necessary pharmaceutical supplies; hospitalisation where necessary; and medical rehabilitation. Hence, employers covered under the Law on Health Insurance must comply with the Law requirements to provide eligible employees with mandatory health insurance for all the citizens of the Republic of North Macedonia to provide health services and monetary compensations based on the principles of thoroughness, solidarity, equality and efficient usage of funds under conditions determined by this Law. Insured persons, in terms of this Law, shall be the insured and the members of their family. The right to basic healthcare services shall be provided by the mandatory health insurance to the insured persons, under conditions determined by this Law, in case of illness and injury off the job position and injury at work and occupational disease. The insured persons may exercise the right to salary compensation if they fulfill the following conditions: 1) if the health insurance has lasted at least six months without interruptions before the case occurred, except in cases of injury at work and occupational disease; 2) the contribution for mandatory health insurance is paid on regular basis or with delay of 60 days at most; and 3) the assessment for a temporary work disability is given by the selected doctor, i.e. the medical commission.

3. Analyses of work-related policy measures for prevention of spreading of COVID-19

The most iconic measures of the approach chosen by the North Macedonian Government, which keeps the whole labour law construct together, are:

3.1. Parents of children under 10 years of age

Due to the suspension of the educational process, one of the parents of children aged under 10 years (including single parents) is exempt from work and work duties, and their absence should be recorded as justified by their employer. These employees are obligated to provide proof that they meet this criterion (such as a certificate issued from kindergartens, a copy from a passport or a copy from a birth certificate to prove the child's age, etc.). Additionally, employees must submit a statement under full moral, material and criminal liability that they will use such absence, and that they will be available to work from home if the employer requires them to do so. In an urgent situation, these employees may be required to be physically present at their workplace, for a period of two to three hours.

In such circumstances working parents may have competing responsibilities between working from home for their employer and caring for children whose school or day care is closed. It is unlikely that workers would be able to adequately perform their jobs while simultaneously perform dependent care duties. Employers and

workers should agree on arrangements that would enable the worker to effectively perform the required work meeting the employers' expectations while still being able to undertake care activities at home. Employers should be sensitive to the worker's situation, especially when working from home is implemented on short notice and workers had little time to prepare or make the required child or dependent care arrangement. Even though with this measure one of the parents was released from work obligations, in practice it turned out that they are still required to perform work tasks from home. Accordingly, following the example of some countries, the Republic of North Macedonia should adopt legislation allowing workers to take special paid leave or unpaid leave without risking their jobs if they have to care for children or if they are unable to work due to COVID-19.

From a formal perspective, the recommendations as published on the Government Website on 13th of March 2020 are not mandatory for the private companies. However, the companies are strongly encouraged to try to reorganize the working process in shifts or similar alternatives (work from home, etc) to help not to spread the virus further.

As a general rule, the employer has to pay remuneration to employees who are using the measure for home care of a child. However, the question regarding the amount of the remuneration remains open for interpretations from 50% of the daily remuneration (due to inability to work caused by a "force majeure") as stated in the Law on Labour Relations, or full remuneration as announced by the Government officials (e.g. if treated as a paid leave).

3.2. Pregnant women and chronically ill people

Following the provisions of the Law on Labour Relations, the female employee has special protection during pregnancy. A female employee shall not perform work during pregnancy and one year following childbirth if such work entails a higher risk to her health or the health of her child. If the female employee performs work tasks that during her pregnancy may have harmful effects on her health or the health of her child the employer shall be obliged to provide her suitable equivalent work and salary, provided this is not less favorable for the female employee.

It is recommended for pregnant women and those who are chronically ill to be exempt from their work duties and stay at home. Those who are chronically ill should obtain a certificate from their general practitioner. There is a determined list of categories of people who must be exempt from work (e.g. people with chronic respiratory disease, severe cardiovascular disease, diabetes – TYP1, malignant diseases, and immune-compromising states, etc.), again based on a certificate from their general practitioner.

Employers should not unilaterally require pregnant workers or chronically ill people to use their annual holiday in case of a decision that leave is necessary as a precautionary measure to avoid potential exposure. This, especially because the

Holidays with Pay Convention (Revised), 1970 (No. 132), provides that the timing of holidays is to be determined by employers after consultation with the worker. In fixing the time at which the holiday is to be taken, work requirements and the opportunities for rest and relaxation shall be taken into account.

3.3. Working from home

As in most countries, one of the means to cope with the public health emergency has been the “facilitation” of remote work arrangements. Work from home has the ability both to ensure social distancing, by avoiding the need for workers’ commuting and personal contacts in the workplaces, and to keep at the same time workers active and companies alive.

It is recommended that all employers in North Macedonia, i.e. any manager or executive person in the institutions, to organize the work and the modus of work of the employees through working from home, depending on the type of work and possibilities and without disturbing the regular and the normal functioning of the institution.

Working from home is a working arrangement in which a worker fulfills the essential responsibilities of his/her job while remaining at home, using information and communications technology. In the context of the COVID-19 pandemic, the term „working from home“ is used to refer uniquely to home-based teleworking as a temporary, alternative working arrangement. It requires shared responsibility and commitment by both employers and workers to ensure business continuity and employment.

In the Republic of North Macedonia, work from home is regulated by the Law on Labour Relations. It is obvious that the regulation is too scarce and short and unfortunately not much attention is paid to this issue. In the Law on Labour Relations, one article regulates the employment contract by doing work at home, but this refers to a situation where such an employment contract has been concluded. According to the article, work from home is done on a voluntary basis, often accompanied by an agreement signed between employers and workers setting out the conditions. In the current situation work from home is mandatory in many parts of the world as a temporary public health measure. However, as the old Latin maxim *Ubi societas, ibi jus* says (where there is a society, there is a right), this new situation in terms of work from home must be more legally defined to avoid possible abuse or contentious situations. The lack of sufficiently clear and precise provisions in the Law on Labour Relations related to doing work from home creates legal uncertainty among employers, which leaves room for different interpretations by the entities involved in this process. It should also be taken into consideration that the solutions in the regulations should be flexible and easily applicable, which is why, in a new future legal frameworks, it would be best not to treat the work from home with a special contract but (with adequately mentioned features and details) to be treated as part of a permanently open opportunity from a regular employment contract.

The employee is generally not entitled to work from home. But, if agreed collectively or individually, the employer can instruct employees to work from home. In the case of a lack of a contractual agreement, the question arises as to whether such an instruction is in line with the law. If the employment contract does not conflict with it, an instruction must respect the limit of “reasonable discretion“ and thus adequately balance the interests of the parties. Before the pandemic the courts were rather skeptical as to whether the instruction to work from home could be issued within the confines of “reasonable discretion“. However, under the special conditions of the pandemic, this may change, as work from home is a particularly effective measure to protect the health and safety of employees.

If the employer does not take adequate protective measures to protect their safety and health, employees are entitled to refuse to perform the work. Both employers and workers should be practical, flexible and sensible to each other’s situation when implementing work from home arrangements. Employers generally are responsible for the safety and physical and mental health of workers at the workplace and during work hours. However, during work from home, employers are unable to ensure the safety and physical and mental health of workers because they are not physically present at their working places. Also, the organization of working time is essential but it could be challenging, especially for workers with specified work hours or hourly paid wages.

Before the pandemic, the actual use of work from home was negligible in the public sector. In the private sectors, there were some interesting experiments set up in big companies by company level collective bargaining, even though the total number of workers involved was not very significant. With the COVID-19 outbreak, suddenly this modality of work had an unexpected success.

3.4. Recommendations for factories and plants with a large number of employees

Because it’s dangerous for people to be in close proximity, companies were forced to think about how to produce value and input without people getting together. It was recommended that the entire state and public administration, municipalities and courts, in accordance with the principle and organization of work process of the institutions, to organize their working process in shifts, online from home, or reduced by a system of rotations.

After each shift, the premises should be appropriately disinfected. Additionally, in plants where the production process is directly carried out, the number of employees should be limited to the extent that workers are at a distance of at least 1.5 metres to 2 metres. All work premises should be disinfected once a week by an authorized service. Meetings should not be held in person, but communication should be conducted via phone or email.

North Macedonia has a large textile industry constituting a considerable economic sector for the country. The Ministry of Health recommended to the textile industry to organize the work process by applying preventive measures, such as an appropriate distance between employees. On 23 March 2020, the Government adopted a recommendation for the organization of work in factories in shifts for all companies in the country, issuing several directives:

- The number of employees in a certain facility should be limited so that there is a distance of at least 1.5 meters between each of them
- Employees should be provided with protective and disinfection equipment;
- Working premises should be disinfected at least once a week;
- Employees from different departments should avoid physical contact with each other as much as possible;
- All meetings should be conducted via telephone or video conferencing;
- If any employees have been in contact with a person who has tested positive for COVID-19, they must be put in 14-day isolation at once.

Research suggests that creating work structures on the fly is not unusual. Various unexpected events like new technologies, regulations, labour disputes and more everyday surprises and problems provide occasions for the restructuring of work. But those events don't come packaged with clear directives about how that work should be structured. COVID-19 is providing another requirement to restructure how we work. It remains to be seen when and how tasks will settle, and whether these changes will hurt or help workers.

4. Conclusion

Since the pandemic outbreak, the labour law in the Republic of North Macedonia from the possibility for timely and efficient action during the pandemic turned into rapid adoption of some of the decrees with legal force without proper and public debate, as well as an analysis of the manner and form and legal solutions to be achieved by adopting these decrees, measures and recommendations. If some of the decrees with legal force are carefully analyzed, i.e. if some of the institutes of labour law are analyzed, one can see their opposition to part of the labour law, but also the ILO conventions and recommendations. The private sector is only given the recommendation to adhere to the adopted measures, conclusions, recommendations, but the recommendations themselves are not mandatory and cannot be legally enforced. Simply, the employees from the public and private sector were not placed in the same position, but the public sector is now in a privileged position, which in itself contradicts the Constitution as the highest body in the Republic of North Macedonia and contrary to all conventions.

The less-than-ideal situation in the textile, leather and shoe industry before the pandemic was reflected after the declaration of the pandemic in the Republic

of North Macedonia and it further deteriorated. Government decrees, measures and recommendations were vague, confusing, and it can be said that some of them were contrary to the positive labour legislation. Only a small part of the decrees, measures and recommendations have substantially reached the labour market in labour-intensive and low-wage industries in a positive way for the workers. However, in practice, in the labour market, especially in the private sector, there have been several violations, especially in the release of these vulnerable categories of workers.

In the case of employment terminations, the Government should take measures to extend unemployment benefits to workers facing a loss of earnings due to partial unemployment, particularly in cases of a temporary reduction in normal or statutory hours of work, and the suspension or reduction of earnings due to a temporary suspension of work, particularly due to economic, technical, structural, or similar reasons.

It also happens that trade union representatives are dismissed when they try to protect their fellow workers' interests in conflict situations or in case of rights violations.

The state of emergency must in no way be an excuse for the employer to violate workers' rights. The taken measures must not deviate from the obligation to protect the most vulnerable categories of workers. The Government is responsible for providing and protecting workers' rights and must not arbitrarily impede the enjoyment of employee rights or arbitrarily restrict worker's freedoms during a state of emergency. Following domestic and international standards, the restriction of worker's rights and freedoms must in no case be discriminatory on grounds of sex, race, colour, language, religion, national or social origin, property or social status. Arbitrary interference would be contrary to the public interest and the common good and government-issued regulations would be contrary to international law. The health crisis is far from over, and the economic and social crisis will intensify with each passing day of uncertainty and imposed restrictions. Hence, future research will address how state-specific occupational distributions will affect the workers' rights in times of pandemic such as COVID-19.

North Macedonia doesn't have a fully developed regulation for work from home. Many countries around the world have begun enacting laws to regulate the work from home, working conditions and the rights and responsibilities of employers and workers. The Republic of North Macedonia should learn from the experience of other more developed countries. Also, more evidence is needed to evaluate the consequences of working conditions on safety and physical and mental health induced by allowing work from home.

Finally, the Government has tried a comprehensive, but quite fragmented and not always reasonable, distribution of monetary support for those affected by the crisis. Notably, those engaged on a temporary or casual basis, including dependent contractors, who have lost their employment have not been able to rely on the same

assistance as “standard” employees. The same has been true for informal workers, who are not considered at all by public welfare. The crisis has therefore reminded us that we are very far from a real and complete universalization of social protections. On the contrary, the current emergency approach has emphasized the differences in social protections between sectors and workers.

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