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Original Research Paper

THE LEGAL MECHANISMS FOR ACHIEVING THE PROTECTION OF THE EMPLOYEES AGAINST COLLECTIVE DISMISSALS INTRODUCTION

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Abstract

Efforts to create a sustained labor legal system are quite present in our country, considering the number of regulations that regulate the rights and obligations of employment, in the direction of the comprehensive incorporation of numerous European standards into a system that will enable normal functioning in in accordance with the constitutional norms. With the adoption of the Law on Labor Relations, the Republic of Macedonia has already created a legal basis for the construction of labor legislation such as is known in European countries. The numerous amendments and additions to this Law, which are a consequence of the obligations undertaken from the signing of the Stabilization and Association Agreement, as well as from the numerous international conventions and recommendations, mark a step closer to achieving the goal - creation of labor legislation according to European and international standards.
When it comes to labor rights, the role of the International Labor Organization (ILO) must not and cannot be overlooked, which, according to its Constitution and the Declaration on the Aims and Tasks of the ILO, has a single purpose and that is to improve living conditions and the foundations for lasting peace, which can be based solely on social justice. This goal can only be achieved through cooperation between government representatives, workers and employers. Regarding the rights of the employee and the obligations of the employer when it comes to the termination of the employment relationship by termination of the employment contract for business reasons, two documents of the ILO are considered very significant and which are simultaneously transferred or transposed into our labor legislation, namely: the Convention No. 158, on the termination of the employment relationship at the initiative of the employer, 1983, and Recommendation No. 166 regarding the termination of the employment relationship at the initiative of the employer.

Keywords*: employment contract; collective agreement; the obligation to inform; business reasons*

Introduction

One of the basic characteristics of labor legislation is finding solutions that relate to the legal balance between the protection of labor rights and the employer's obligations. Having the need to establish a balance, the need to ensure adequate protection of workers from arbitrary, not to say discretionary authority of the employer in case of cancellation of the employment contract for business reasons, and on the other hand enabling the employer to be able to to smoothly and quickly make business decisions related to human resource management. The issue of collective dismissals of employees is one of the most sensitive issues in

labor legislation, and hence it is not simple, neither for the legislator, nor for the courts to find the right measure of protection for one or the other party.

The legal mechanisms for realizing protection against collective dismissals are an integral part and are one of the basic characteristics of the totality of relations in labor legislation. The goal is to find solutions that establish a legal balance between the protection of workers' rights and the employer's obligations. Having the need to establish this balance, the need to ensure adequate protection of workers against arbitrary termination of the employment contract for business reasons, and on the other hand enabling the employer to be able to smoothly and quickly make business decisions that are refer to the management of human resources.

1. Realizing the protection of employees from collective dismissals in the ILO Conventions and the Directives of the European Union

The European Union as an organization "pledges that it will strive to preserve the principles of freedom, democracy and the rule of law, which determine all member states, as well as that it will protect fundamental and human rights." These values should also be the aspiration of all countries that wish to join the EU in the future" (Klaus-Dieter Borschart, ABV of European Union Law, 2010, p.20)

There is a large number of European documents that directly affect people and citizens, be it at the level of the union or at the level of its members. All the rights that regulate unity and equality, basic freedoms, solidarity, security, peace, are also the basic values and aspirations of the union.

Such documents, above all the basic agreements, constitute the legal order of the European Union, from which it was created in a way, and have a binding character for the members of the European Union, such as the Maastricht Treaty, the Lisbon Treaty, etc.

Accordingly, "The legal order of the European Union represents the true foundation of the Union, giving it a common legal system in accordance with which it will function. Thanks to this legal order, open borders, significant trade in goods and services, migration of workers and a large number of transnational connections between companies have already made the common market part of the daily life of 500 million people. "With its goal of maintaining peace and stability, it replaces force as a means of conflict resolution with the rule of law, which binds individuals and member states into a single community. As a result, the legal order of the Union is an important instrument for preserving and creating peace."

The International Labor Organization has adopted more than 180 ILO Conventions and 190 Recommendations covering all aspects in the field of work. This body of international labor law has been subject to review by the governing body, which has decided that more than 70 of the conventions adopted before 1985 are fully applicable, while the rest should be revised or withdrawn. Furthermore, dozens of work codes have been prepared. These standards play an important role in the drafting of national legislation in various areas, such as maternity leave and the protection of migrants.

The monitoring process helps to ensure that the standards ratified by individual member states are applied and the International Labor Organization provides advice in the drafting of national labor laws.

1.1 Convention No. 158 on termination of employment at the initiative of the employer

Convention No. 158 on the termination of the employment relationship at the initiative of the employer was adopted at the 68th session of the Conference in Geneva, on June 22, 1982, and according to the nomotechnical structure, it is composed of three parts, with seven departments and a total of 14 articles. In the provisions of the first part, the issues related to the regulation of application methods, better application and definitions are covered, and this part has 3 articles.

The second part contains provisions relating to norms of general application, emphasizing the justification for termination of the employment relationship, the procedure before or during the termination

of the employment relationship, the appeal procedure due to the termination of the employment relationship, notice period and severance pay and other types for income protection.

Already in the third part, additional provisions that directly refer to and are related to the termination of the employment relationship due to economic, technological, structural or similar changes have been processed. This part is also the most significant for the problem of this paper, that is, this part simultaneously represents the basis on which this problem is regulated in our Law on Labor Relations, which is why here we will analyze the provisions that refer to the termination of the employment relationship by the employer due to economic, technological, structural or similar changes.

The third part of this convention prescribes the obligations that the employer must fulfill when he intends to introduce economic, technological, structural or similar changes (in the content of the Convention there is no term - "business reasons") that will cause termination (or termination), as stated in the Convention) of the employment relationship, namely:

When the employer intends to terminate the employment relationship due to economic, technological, structural or similar changes:

- will promptly provide the interested labor representatives with appropriate information, including the reasons for the intention to terminate the employment relationship, with the number and category of workers who will probably be covered, as well as the deadline in which it intends to terminate the employment relationship;

- the interested workers' representatives will accordingly give, in accordance with national legislation and practice, as quickly as possible, the opportunity for consultation on the measures that should be taken to prevent or reduce to a minimum the termination of the employment relationship and the measures to mitigate the harmful consequences of the termination of the employment of the workers concerned, such as finding alternative employment (Convention No.158 article 13).

It can be seen from the content itself that the employer has the obligation to consult, that is to inform the workers, i.e. the workers' representatives about the reason, the number and the category of workers that will be covered by the dismissal, as well as the deadline in which the dismissal will be carried out.

If the content of this article is analyzed, it will be seen that the provision itself begins with the word "when the employer", which assumes that such information should be transmitted from the moment the employer already has knowledge that terminations of employment will occur, and this is certainly before the decision on such termination is announced. That is why this convention saw the need for workers to be informed at the very moment when the employer already knows in some way that there will be dismissals due to this basis, which cannot happen ad hoc.

Among them, not all data should be transmitted by informing the workers' representatives. According to this convention, the data that should be transferred refers to the reason for the termination of the employment relationship, whether it is an economic, technological, structural, or similar change, which is directly related to the work process itself, to the production process itself. the employer's business venture.

In addition to this obligation, the employer should inform the workers' representatives about the number and category of workers who will be covered by this termination of employment. It is assumed that the employer should know the number of workers who will be covered by this dismissal, but at the same time he should know which category of such number of workers will be covered. So, here it is necessary to state that the structure of the workers is also required, with what professional training, with what work experience, seniority, social status, etc.

A very significant obligation is covered by paragraph b. from paragraph 1 of art. 13, where it is stipulated that the employer should provide such information in the shortest possible time, which will allow the workers' representatives to consult together about the measures that would be taken in order to prevent the consequences or at least mitigate the harmful consequences, which will provide an opportunity for alternative employment. In addition to the obligation to inform the workers' representatives, the employer, upon termination of the employment relationship of workers due to economic, technological, structural or similar changes, has the obligation to inform the competent authority about the reasons, the number and the

category of workers who will be covered by the cancellation of the the employment relationship due to such changes in the employer's business venture. In addition to this, the employer should also inform the competent authority about the deadline in which he considers that the dismissal - the termination of the employment relationship - will take place (Convention No.158, paragraph 14 -3).

The Convention, in its provisions, provides space for regulating the issues related to the termination of the employment relationship on this basis with national laws or regulations, when it comes to the deadline for notification to the competent authority, by leaving the possibility of determining a minimum deadline for notification (Convention No.158, paragraph 14 -3).

1.2 Recommendation No. 166 for termination of employment at the initiative of the employer

As a need to supplement the above-mentioned convention, the General Conference of the International Labor Organization, convened in Geneva by the Administrative Council of the International Labor Office, at its 68th session in 1982, adopted a decision to adopt certain proposals to supplement the Convention on the Cessation of the working relationship, while the proposals were adopted in the form of recommendations.

Convention No. 158 on the termination of the employment relationship at the initiative of the employer and Recommendation No. 166 on the termination of the employment relationship at the initiative of the employer are the two legal instruments that replace the Recommendation on the termination of the employment relationship from 1963.

The scope of the provisions of Recommendation 166 refer to the methods of application, field of application and definitions, norms for general application emphasizing the justification of the termination of the employment relationship, the procedure before or during the termination of the employment relationship, the procedure for submitting complaints regarding with the termination of the employment relationship, absence from work during the notice period, confirmation of employment, severance pay and other types of income protection, and the third part containing provisions regarding the termination of the employment relationship due to economic, technological, structural or similar changes , which is the part that is the interest of this paper.

It can be said that with this recommendation, the attention of the adopter was focused on regulating a large number of issues related to this type of termination of the employment relationship, in that the possible situations, the rights of the workers covered by this type of employment are regulated in a clearer and more precise way. dismissal, as well as the prediction of a large number of obligations for the employer who intends to cancel the employment relationship due to the introduction of such changes.

In Paragraph 19 paragraph 1 it is prescribed that - all interested parties should try to prevent or as far as possible minimize the termination of the employment relationship due to economic, technological, structural or similar changes, without harming the efficiency of the enterprise , the institution or the service, as well as to mitigate the negative effects of any termination of the employment relationship due to these reasons for each interested worker or workers.

Also, in paragraph 2 it is provided - when it is necessary, the competent authority of the parties will help them in seeking a solution for the problems that arise in connection with the planned terminations of the employment relationship.

Paragraph 20 already prescribes the obligations to consult when major changes in the company are concerned, by providing in paragraph 1) - when the employer intends to introduce major changes in production, program, reorganization of the structure of technology which, probably, will cause dismissal, the employer should consult with the representatives of the interested workers as quickly as possible, among other things, about the introduction of such changes, about the possible consequences, as well as about the measures to prevent or mitigate the harmful consequences of such changes. The employer, in a situation prescribed in paragraph 1) of paragraph 20, should enable the representatives of the interested workers to participate effectively in the consultations that will take place, by informing them in time about the main

changes that he, as an employer, foresees to introduce them. Also, during such consultations, the employer should inform and consult the workers through their representatives about the possible consequences of such changes.

When the employment relationship is terminated due to economic, technological, structural or similar changes, the employer should have provided criteria on the basis of which he will select the employee whose employment relationship should be terminated due to this reason, which criteria should be provided in advance and which should take into account both the interests of the enterprise, the institution and the service, so the interest of the employee should be taken into account. (Convention, paragraph 23-1).

This means that the employer should, in some act, mostly a collective agreement as is the practice in our country, have provided the criteria on the basis of which he will select the employee whose employment relationship will be terminated.

The employer has the obligation to enable the employment of workers whose employment has ended due to economic, technological, structural or similar changes, if the employer re-employs workers with similar qualifications. However, this possibility is conditioned by the fact that the employee should, within a certain period from the moment of his departure, which period will be determined by the national law or regulation, express a desire for re-employment with the employer.(Convention No.158, paragraf 24 -1).

According to paragraph 2) of paragraph 24, - this priority in re-employment can be limited for a certain period of time. This means that the employer may be limited to re-employ workers, when he has already fired workers due to economic, technological, structural or similar reasons, and for a certain period that will certainly be subject to regulation by national law or regulation.

The criteria for prioritizing re-employment, the question of retaining the right – especially the right based on seniority, in case of re-employment, as well as the conditions relating to the wages of re-employed workers, should be determined in accordance with the application methods from paragraph 1 of this Recommendation.

1.3 Council Directive 98/59/EEC of 20 July 1998 on the harmonization of the legislation of the Member States regarding collective redundancies

Council Directive 98/59/EEC of 20 July 1998 on the harmonization of the legislation of member states regarding collective redundancies is a consolidated text of Directive 75/129/EEC on collective redundancies and the revised Directive 92/56/EEC. This Directive has been fully incorporated into the Legislation of the Republic of Macedonia with the adoption of the Law on Amendments and Supplements to the Law on Labor Relations ("Official Gazette of the Republic of Macedonia" No. 124/2010) dated September 20, 2010.

The directive has a dual purpose. Firstly, to enable greater protection of workers during collective dismissals and to take into account the need for a balanced economic and social development of the Community and secondly to promote greater compliance due to the existence of differences between the provisions in force in the member states regarding practical solutions and the procedure for collective dismissals, as well as measures to mitigate the consequences of such dismissals for workers.

The directive establishes the minimum standards that should be ensured by the member states regarding the regulation of issues related to its application, namely that employees in collective dismissal procedures should be provided with the right to information and consultation with the employees' representatives as and that employers have an obligation to submit a written notification to the competent authority of the public authority of the member state for any planned collective dismissal. Given the fact that it is a Directive, it was not adopted with the aim of fully harmonizing the national legislation and practice of the Member States with regard to the regulation of the issue of collective redundancies, nor was it created with the aim of affecting the right to employers to refrain from collective dismissals.

The purpose of the Directive is to enable partial harmonization of collective dismissal procedures in national legislations and practices, given the fact that the Directives as acts of the European Union are not directly applicable, and the competent authorities of the states can and must to a certain extent determine particularities. about the ways of applying the collective redundancies directive in the domestic legislation.

According to the Directive, collective dismissal is understood as "collective dismissal" carried out by the employer for one or more reasons that are unrelated and do not relate to the employee's personality. From the stated content, it can be concluded that the issue of "collective dismissal, specifically in relation to the employee's position with the employer, means the existence of the possibility of termination of the employee's employment contract without the existence of his request as well as without the need and obligation of giving his consent. The Directive provides the general framework for the issue of what is considered collective dismissal.

4. The legal mechanisms for the protection of employees from collective dismissals in accordance with the labor legislation of the Republic of Macedonia

The development of a country depends to a great extent on the economic situation of the society in global. Here, the business sphere occupies a significant place, which develops within the overall economic atmosphere of a country. It is not easy to establish a good basis for the successful development of such an economic system, considering that it is necessary to have a good legal basis that will enable the efficient functioning of business actors. But in addition to this, it is necessary to have a stable financial base that will enable a development policy on the economic plan, with which business entities will have the opportunity for well-developed business cooperation with national and international business partners.

The Law on Labor Relations contains solutions for the situations faced by employers in the event of crisis situations that have an impact on the employer's work process, and the consequences of this are primarily felt by the workers. In an attempt to define the concept of business changes or reasons, which cause the cancellation of the contract for the employment of workers, which the Law on Labor Relations recognizes as economic, technological, structural, organizational and similar changes (which it does not define in their meaning) , efforts will be made to take into account changes that disrupt, in some way, the regular flow of the work process and cause changes in the organization or structure of employees at the business entity.

Economic changes are always related to the economic situation in society in general. Every economy has its ups and downs with the impact felt by all involved business entities. Of course, if it is about economic growth, the impact is positive, so a positive benefit is assumed and expected for business entities. But, when it comes to economic decline, then the impact is negative for business entities and causes changes that must be felt in the work process itself, that is, the production process.

Economic crises have financial implications and can be at the national level and at the international or world level. Whenever there are such crises, the first to be hit are the entrepreneurs and business entities, regardless of whether they are small employers or large employers.

Technological changes are always related to the technical part of the production process. The means of work for carrying out the manufactured process itself are always from a technical and mechanical aspect, so when such changes occur at the employer, it is about introducing new things into that process. The technical means, in the production process, are directly connected to the worker, so any change that occurs in that segment, the first to feel that change will be the worker who works directly with the specific technical means that is changing.

Structural changes are related to the very structure of workers in terms of professional preparation and their qualification. Structural changes affect the number of employees at one employer. It is understood that this change may be related to changes from technological changes. Quite similar to this change is the organizational change, which primarily depends on the organizational setting of the employer in terms of work units, sectors, departments, subsidiaries, etc.

It should be emphasized that the business reasons always occur at the level of the employer, which means that they cover all organizational forms, if there are any, and not just one part, and always the business reasons, regardless of whether it will be by abolishing or reducing the number of executors, are refers to the total number of employees at the employer. The procedure for canceling the employment contract of the workers will not be legally carried out, if the business reasons were carried out only at one organizational unit, a regional department, and not at the level of the employer.

The employer has an obligation when introducing changes caused by business reasons to implement a type of procedure, which, although not strictly prescribed in the law, still derives from international acts and represents one phase of the entire procedure for business reasons.

According to the previous practice, when business reasons are in question, the employer determines the data regarding the reasons for the introduction of changes due to which there will be a need to reduce the number of workers in a program, which would mostly contain data on:

- the basic/general data about the employer;
- the changes that are introduced and a description of the reasons for their introduction: whether it will be done by abolishing the jobs or by reducing the number of executors in a certain job;
- the total number of employees, the qualification structure of the jobs for which the need has ceased or the number of executors per job is reduced;
- the method of resolving the rights of the workers who will be covered by the changes, that is, whose work has ceased to be necessary;
- the financial resources that the employer should provide in order to implement the program;
- the deadlines and holders of activities for the implementation of the program.

Consultations with workers' representatives aim to enable their constructive involvement in the process of mitigating the consequences, for which the employer needs to inform them of all relevant data-information, such as:

- the reasons for the planned layoffs, - the number and categories of workers being dismissed,
- the total number and categories of workers who are employed, and
- the period for which the planned layoffs are to take place. When this kind of information is transmitted, the workers' representatives will be able to make constructive proposals for possible solutions to avoid layoffs, to mitigate the consequences of worker layoffs, so they will be able to get qualitatively involved in the whole process of layoffs for business reasons. The legislator provided for the obligation to consult and inform to be applied regardless of whether the decision on collective layoffs was made by the employer or a person exercising control over the employer, so any justification by the employer that the required information was not provided by the trading company, public enterprise and other legal entity that made the decision on collective dismissals, will not be taken into account when considering the possible violation of the obligation to inform.

For the sake of a broader coverage of the specific problem, when analyzing such situations, situations that have been defined and accepted by the judicial practice as an illegally conducted procedure, i.e. an illegal termination of the employment relationship due to business reasons, for which the judicial practice abounds with decisions, are also appreciated. has clarified what the employer should do or not do when implementing the procedure for this type of dismissal. Namely, the competent court has determined in a decision that "the employee's employment was illegally terminated in the event that the employer's choice of which employee to terminate the employment due to business reasons was not carried out according to the criteria contained in the relevant Labor Code, which when possible are determined in advance and take into account the interests of the enterprise, the institution and the service as well as the interests of the workers" or, in another decision, "If several workers are assigned to work tasks for which, according to the act on the systematization of jobs, two levels of professional preparation in the procedure for declaring redundancy, priority for keeping the job is given to workers with a higher degree of professional training of a certain type of occupation, provided they have the same number of points

However, in the event that there is no collective agreement adopted in accordance with the Law on Labor Relations or it is not in compliance with this law, then the provisions of this law are immediately applied. There was an opinion about this in a court decision and that "from the evidence it was determined that the defendant made changes to the rules for systematization, which reduced the number of executors in the workplace where the plaintiff worked, adopted performance measures for work contribution according to the results of the company, made a decision to form a commission to determine which workers will have their employment terminated for business reasons, conducted a scoring process and compiled a ranking list of the workers' performance by jobs, and the plaintiff was in the group of workers who should have been terminated the working relationship.

The defendant determined their right to send off and notified the union and the Employment Agency. Given that the defendant did not adopt a Collective Agreement in accordance with Law on Labor Relations of 2005, whereby the provisions of this Law are immediately applied.

Conclusion

Legal mechanisms for realizing protection against collective dismissals are an integral part and are one of the basic characteristics of the totality of relations in labor legislation. The goal is to find solutions that establish a legal balance between the protection of workers' rights and the employer's obligations. Having the need to establish this balance, the need to provide adequate protection to workers against arbitrary termination of the employment contract for business reasons, and on the other hand enabling the employer to be able to smoothly and quickly make business decisions that are refer to the management of human resources. This issue is one of the most sensitive issues in labor legislation, and hence it is not simple for the legislator and the courts to find the right measure of protection for one or the other party.

In connection with finding possible solutions, the International Labor Organization as well as the Council of Europe have approached and adopted Conventions, Recommendations and Directives that contain solutions to the issue of collective dismissals of employees for business reasons, and which solutions are already are of universal value in regulating the relations between labor and capital.

It can be stated with pleasure that the Republic of Macedonia, in its Legislation, has fully incorporated and harmonized the legal solutions related to the issue of collective dismissals with the adoption of the Law on Labor Relations. In this direction, the decisions in the legislation contain the established minimum standards and with them, in the procedures for collective dismissals, the employees are guaranteed the right to information and consultation with their representatives, as well as the obligation of the employers, to the competent body of the public authority, to submit written notice of any planned collective dismissal.

On the other hand, from a procedural legal point of view, the Law on Labor Relations has not yet regulated the issue of the method of election and the number of employee representatives. And this paragraph is about the implementation of the rights of the employees in relation not only to the issues of collective dismissals, but also to the other rights that are regulated by the labor legislation.

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