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LABOUR DISPUTES

"… *suum cuique tribuere*".
…to give to every one his due.
Ulpianus

Abstract

This research examines the labour dispute in its polyvalence, and therefore the subject of this paper is the causes, the actors and the methods of resolution of labour disputes. The paper discusses types of labour disputes and methods of their resolution. The analysis also offers some comparative solutions with emphasis on some Macedonian normative solutions. The main hypothesis that arises is: Can a labour dispute be avoided and how can it be solved? In their conclusion, the authors point to immanent necessity for the establishment of special courts that would specialise in resolving labour disputes based on specifics that the labour relations possess as a form of legal relations.
The paper uses the legal, historical, comparative and inductive methods.

Key words: labour dispute, conflict, individual labour dispute, collective labour dispute, interest collective labour dispute, resolution methods, labour court.

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Instead of Introduction

A labour dispute is a special kind of a legal dispute, which stands out from the general body of civil disputes. However, it is commonly regarded as a civil dispute[3]. At the core of the labour dispute, one can find the capital and labour as opposed aspects via the holders of the rights, i.e. the subjects of labour relation. These holders include the employee/employees, or their organisations, for instance, trade union and the enterprise (company), i.e. an employer.[4] Therefore, we should not be surprised by the fact that in essence, a labour dispute is reflection of conflict and antagonisms that arise within economic fluctuations expressed by their appearance in the labour. The paper, which contains an economic basis, gets social expression through its legal regulation. The legal regulation itself governs the contents of labour relations expressed above all through the labour relation, as well as the conflicts that arise inside the very existence and "living" of labour relations. It is these conflicts that comprise the contents of labour disputes.

One could say that a labour dispute is a conflict that is expressed as conflict of interests, values, acts, actions and procedures[5] in the field of labour and social issues. It is a disagreement where one idea opposes the other[6]. However, disagreements may occur without conflict.

A labour dispute primarily takes place at work, or at the workplace, and can occur on different levels such as interpersonal conflict, social conflict, conflict of various interests and interest groups[7] (trade unions and associations of employers are interest groups) and so on. Thus, a labour dispute is a part of the labour relation and its contents. Differences in perception also often play a major role in motivating misunderstandings or

[3] Such is the case in all jurisdictions in the region of Southeast Europe, where general and specific provisions of the Laws on Civil Procedure apply for the labour dispute. In the Republic of Macedonia, the Civil Procedure Law (*Official Gazette of the Republic of Macedonia,* no.79/05 and beyond), Article 1 and Article 404 defines the labour dispute as a special kind of a civil dispute.

[4] П. Јовановиќ, „Радно право, треће измењено и допуњено издање“, Службени гласник, Београд, 2000, 368.

[5] G. Celine, “Definition et typologies des conflits au travail”, Boulo-recherche et publication de documents, 2009, 1.

[6] Ibidem.

[7] Ibid.

misconceptions, which result in conflict at the workplace. Furthermore, a specific habit of things and the feeling of security that can be caused by the introduction of certain changes may cause a sense of danger, disorientation, denial of a new condition, which most frequently, or almost inevitably, leads to resistance and conflict. The social dialogue between social partners can be a source of conflict conditions if the parties involved in the bargaining fail to find a common solution. In that case, the actors in the conflict use the instruments of collective labour law for resolving labour disputes, which leads down to strike, reconciliation, arbitration, mediation, lockout etc.

The legal regulation of labour cannot be imagined without regulating the conflict situations. Labour disputes are legally regulated in terms of the procedure of their resolving, rather than of the content of the solution. We should look for the solution to a dispute, or the contents, in the section of the rights and obligations of the working relation that is mostly regulated by special labour codes[8].

A legal (formal) procedure is that part which has a visible appearance and, as already mentioned, which is a part of the civil court proceedings[9]. Therefore, the labour dispute is visible through the means of its realisation, or through its formal legal expression. What is not visible is the content of the dispute that is actually the core of the labour dispute. This is why some authors speak of protection of the rights arising from labour relation rather than of a labour dispute[10]. This manner of understanding the labour dispute via the protection of the rights arising from the labour relation is one-sided because, first and foremost, it refers to the protection of the employees' rights and does not give a true picture of the multifaceted essence of this dispute. But when we also consider them as process relations, they still stem from the material labour-legal relations[11].

[8] As previously mentioned, the special laws regulating the procedure of employment dispute are the Laws on Civil Procedure.

[9] The legal process expression of labour disputes is regulated in Chapter 26 of the Law on Civil Procedure, Articles 404-409.

[10] Cf. П. Јовановиќ, 367 and beyond; Г. Старова, „Трудово право“, Просветно дело А.Д. Скопје, 2009, 344 and beyond; Т. Беличанец, Г. Старова, „Трудово право“, Правен факултет Скопје, Скопје, 2006, 331 and beyond.

[11] В. Мрјачков, „Трудово право, 6 издание“, Сиби, Софија, 2008, 677.

In legal terms, a labour dispute is a common dispute that may arise in the exercise of rights and obligations. However, in social terms, it has a greater and, we would say, different meaning. It arises from the labour relation, from the exercising/non-exercising of rights and obligations. The labour relation is legal manifestation of the regulation of economic relations in society. The labour relation makes the essence of the socio-economic relations, through which the system exists, functions and acts upon other social segments. Through the labour relation, man is realised in a socially-economic formation, especially in capitalism, both as a creative and economically dependent being. Hence, the labour relation also means economic survival of modern man in the capitalist economic system. Through it, he secures his existence, and much more. Nowadays, through labour expressed in the labour relation, man is realised as an economic being and as a member of society. Should a labour dispute arise, it is not only a legal issue of both sides any more but takes on a wider social significance. This is primarily because of the outcome of the dispute. That is why it is important to have deeper understanding of the essence of this dispute and possibly prevent it, i.e. or to seek, if it is possible, to avoid labour disputes altogether.

A labour dispute, in its essence, is thought to be based on diversity and historical antagonism between labour on the one hand and capital on the other. This is manifested between their representatives, i.e. the subjects of a dispute. We believe that this postulation and explanation of the labour dispute is actually an illusion. The labour dispute is not an expression of the historical opposition of classes or subjects. It is primarily a reflection of the consciousness of the subjects, or rather the undeveloped or underdeveloped awareness among the subjects, i.e. the psycho-physical attitude towards work[12]. It is well displayed within the theoretical postulates of the Nobel Prize winner Keynes, who believes that on the long run, neither labour nor capital can do one without the other[13]. Put otherwise, they are directed onto cooperation and mutual complementarity because the capitalistic-economic relations are an integral part of the

[12] According to Professor P. Jovanovic, the psychophysical relationship to labour is one of the many factors that affect the positive relationship of the employee towards labour and the rights; See П. Јовановиќ, 367. We believe that this factor of the relation to labour should be examined through a broader frame that should enable true understanding of the role of labour upon modern man and *vice versa*.

[13] More on this in: J. M. Keynes, „The General Theory of Employment, Interest and Money“, Macmillan Cambridge University Press, for Royal Economic Society,1936.

whole. They make the wholeness of the functioning and appearance of the economic system.

In fact, the entire economic history of mankind relies on the basic paradigm, which is how you organise and regulate labour. The capitalist manner of production is actually a way of organising labour, or work. If we think over this issue in more detail and uncover the essence of the totality of economic relations in whose essence we find labour, we come to a point where we discover man as a being, man as a labour being that expresses himself as *homo faber* and *homo ludens*[14]. Therefore, the labour dispute should be related only to man as his manifestation of dissent and problem/s within the frame of labour relation, i.e. labour.

A labour dispute locates its appearance deep in the inner spiritual complex of the subjects of dispute. It is externally regulated by legal norms. But due to violation of these norms, we most often come to contentious situations. So, an issue would have not risen if one of the parties had not breached the legal or contractual obligations. But, a dispute may arise even when no commitment has been violated. In this case, this involves either the feeling of irregularity of regulations or ignorance of the initiator of the dispute. In any case, these disputes lack the ability to be addressed within regular judicial procedures. Dissatisfaction with the regulations can be solved either through constitutional courts or through other authorities such as the parliament etc. On the other hand, according to the Roman principle, *ignorantia iuris nocet* (lack of knowledge of law can cause damage), which applies still today, a dispute brought before the court because of ignorance shall be dismissed or terminated at the request of the party concerned. In any case, this is a matter of the existence of internal spiritually-philosophical complexity of the labour dispute and its external legal, or social manifestation.

Hence, we shall consider the labour dispute both in its inner complexity and its outer appearance. Lawyers are usually more interested in the outer appearance of a dispute and it is probably the legacy from the positivist theories and understanding of law in general. But we believe that without understanding the internal connections and

[14] Cf. A. Ravnic, "Osnove radnog prava - domaceg, uporednog i medjunarodnog", Pravni fakultet u Zagrebu, Zagreb, 2004, 39.

interactions of the labour dispute, which first and foremost refer to its subjects, i.e. the labour holders and conditionally, the holders of capital, one cannot understand the essence of the labour dispute.

1. Definition of Labour Dispute

A labour dispute can be defined in many ways. Accordingly, there are a number of definitions for labour dispute. The labour dispute can be viewed from multiple sides and so, its defining can be divided in several definitions such as legal, social, and economic definitions.

The legal approach treats the labour dispute as a conflict between the employee and the employer for certain employment rights or in connection with the labour relations. The labour dispute is initiated for legal protection of certain rights or performance of some obligations from the labour relation. It is always legally regulated and institutionalised. What does this mean?

First of all, there can be no legal dispute if there is no labour relation, and there can be no labour relation unless signed in compliance with the law. A labour dispute must be institutionally determined, i.e. expressed in a precisely defined and formal legal proceeding in court or off-court.

In theory, we find a number of definitions of labour dispute, or as one can say, "industrial dispute" or “worker dispute"[15]. The Anglo-Saxon law determines the labour dispute as a dispute between the employer(s) and the employee(s) or between workers, which is connected with employment or unemployment, working conditions, recruitment of staff, the issue of discipline, allocation of work and responsibilities, membership and activity in trade unions and participation in bargaining, i.e. social dialogue[16]. Law and

[15] J. de Givry, “Prevention and Settlement of Labour Disputes, Other Than Conflicts of Rights”, International Encyclopedia of Comparative Law, Labour Law-Chapter 14, J.C.B. Mohr, Tubingen, and sijthoff & Noordhoff, Alphen a/d Rijn, 1978, 3.

[16] We encounter this definition in the 1919 British Industrial Courts Act and the 1974 British Trade Union and Labour Relations Act.

economic dictionaries define a labour dispute as a dispute between the employer and employees concerning the working conditions in relation to the conditions of employment and work, all labour relation rights, as well as in connection with collective bargaining and the concluded collective agreements[17].

On the other hand, the recent French doctrine for the understanding of the labour dispute starts from the presumption that the present dynamic enterprise generates conflict and that it is normal[18]. Thus, we find a definition of a labour dispute as a dispute where various interests of employers and employees, which usually end up in strikes, come to the fore. The accent here is on collective interests, and this determines the collective labour dispute[19]. Actually, the French labour law science reviews the concept of conflict and dispute in employment through the prism and content of the collective labour dispute and strike[20]. But that does not mean that the importance of the individual conflict i.e. individual labour dispute is undermined. On the contrary, in France, it is quite common and important, which is proved by the existence of special labour courts for individual disputes.

The said may lead to conclusion that labour disputes are primarily related to labour law relations, i.e. their conclusion, existence and termination[21]. They appear between the subjects in the labour relation, who are basically the employee and the employer, or their collective representative forms such as trade unions and employers' associations.

Is it possible to have a labour relation without a dispute between its subjects? In today's system of economic relations such a thing is impossible. Tension between the subjects is constant and unconditional, but it can be visible or invisible. During the conclusion of employment as a legal relationship, a relation between two conflicting values or requirements is created, and that is the amount of the employee's salary on the

[17] Види: http://www.businessdictionary.com/definition/labor-dispute.html

[18] See: http://carriere.comprendrechoisir.com/comprendre/conflit-au-travail

[19] See: http://dictionnaire.reverso.net/francais-definition/conflit%20collectif%20de%20travail

[20] Cf. Jean-Emmanuel Ray, "Droit du travail-droit vivant", 8 edition, Editions Liaisons, Paris, 1999, стр. 385 and beyond. The author, who is a prominent professor of labour law at University of Paris 1 (Pantheon-Sorbonne), in his textbook on labour law, does not speak of individual labour disputes whatsoever but focuses on collective labour disputes and ways for their resolution, where the first is strike, then collective bargaining.

[21] В. Мрјачков, 677.

one hand and the ability or willingness of the employer on the other. This tension can be expressed in a balance, which is an ideal and means that both sides are satisfied, but that does not mean that the relationship is not based on conflicting wills. It is a characteristic of the entire labour relation, although the tension is not always expressed externally as a labour dispute.

Given the above stated, can we say that labour relation is essentially contentious relation? According to the materialist paradigm it certainly is, but in its value appearance, it has a contentious nature only provided the economic relations dictate it. In capitalism, a labour dispute largely reflects the inner value of the labour relation itself and determines it. So it should not surprise that employment relation itself, or the conflict that arises within it, is the drive or the cause of so many changes in the world, of so many revolutions and struggles. But this should not induce us to believe that the conflict itself, which makes the morphology of the labour relations, always causes changes that are good, i.e. that the conflict itself is a positive value in its own right. Rather, it reflects the imperfection of the human will to submit itself to the human need.

From the above definitions of the labour dispute, we can extract its elements without which a labour dispute could not possibly exist. Those elements are:

- Every conflict has two sides, two people, two groups, one person and a group, etc;
- Threat or conflict that may be real or assumed;
- A relationship in which there is an obstacle, and
- Relationship (interaction) with emotion as a basis.

2. Types of Labour Disputes

A labour dispute can be considered as an individual and collective dispute[22]. The individual labour dispute refers to rights and obligations from labour relation or immediate personal interests recognised by the positive labour law legislation[23], i.e. it is

[22] B.A. Lubarda, "Resavanje kolektivnih radnih sporova", Pravni fakultet u Beogradu, Beograd, 1999, 22-23; R. Pesic, "Radno pravo", Nasa knjiga, Beograd, 1966, 234; J. de Givry, 3; В. Мрјачков, 677, 816; В.И. Миронов, „Трудовое право", Питер, Санкт-Петербург, 2009, 733, 789; П. Јовановић, 373,378.

[23] B.A. Lubarda, 23; R. Pesic, 234.

carried out because of the protection of individual rights arising from a labour relation. A specific employee and the employer always appear as the parties in a dispute, and an individual right or obligation from the labour relation appears as the subject of the dispute. Collective labour disputes are those that occur among collectivities of employees expressed through unions and the employer(s) due to violation of general collective rights and interests from labour relation[24]. Those are a part of the collective labour law and differ in many things from the individual labour dispute, above all, by the manner in which it is resolved. The following section will examine these two types of labour disputes.

2. 1. Individual Labour Dispute

This type of a labour dispute is typical for a labour legal dispute and was recorded in the initial days of the introduction of the labour law as a special legal discipline, even though it was not always legally regulated. According to parties, individual labour disputes are disputes between an individual employee and the employer as parties in material, individual legal labour relations[25]. This occurs among both the subjects in economy and within the clerical labour relations, i.e. between clerical officials and employers - state-run, public and local governance.

Given the subject of a dispute, one may say that those are disputes related to the occurrence, existence, meeting, and termination of the legal labour relations[26]. These are primarily disputes concerning subjective rights and obligations. Actually, they occur as legal disputes but may also appear as non-legal ones. The legal disputes for subjective rights and obligations are governed with the existing labour legislation, whereas non-legal individual disputes are those related to the establishment or assessment of some rights, such as some target rewards granted by the employer[27]. Distinction between the individual legal labour disputes and individual non-legal labour disputes consists, above

[24] П. Петровиќ, 378; Р. Пешиќ, В. Брајиќ, „Радно право“, Сента, Београд, 1979, 435.
[25] В. Мрјачков, 679; J. Rivero, J. Savatier, “Droit du travail”, Presses Universitaires de France, Paris, 1987, 410.
[26] Ibidem
[27] Some national labour legislations such as the Bulgarian one regulate this issue explicitly; See Article 357 of Кодекса на труда (Labour Code) (*Official Gazette* No. 26 and 27 of 1986 - amendment).

all, in that the former are disputes on a specific right that already exists and on the way a specific legal norm is applied, whereas the non-legal disputes involve conflict concerning a right that does not exist but is rather a future right. The dispute is not about what right it is but what right should it be, because that right does not exist in the legal transactions yet and can be established in the future. These disputes are most often regulated through bargaining between parties and end with mutual agreement[28]. If agreement is not made, the right will not be established either[29]. These disputes are typical in the part related to definition of some bonuses and the amount of monetary disbursement on various grounds, or on the establishment of new and amended essential conditions of labour without any change in specific labour law norms, such as a situation of inflation or when living costs are on increase, and the employees require higher salaries on that ground (in the absence of a specific legal norm)[30]. In rare cases, disputes occur concerning the amount of salary itself because of the subordinate nature of the labour relation and the adhesion nature of the employment contract.

Therefore, legal labour disputes arise above all because of discrepancy in interpretation and application of specific legal labour relations, which are regulated with a specific legal act (most commonly, the employment contract)[31]. The basic features are those that this is not a dispute between an employee and their employer; the subject of the dispute always arises from the labour relation; it is always resolved for individual rights of an employee; it can be resolved in an amicable manner or in court in a specific legal action[32].

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[28] В. Мрјачков, 682.

[29] Ibidem

[30] В.И. Миронов, 733.

[31] J. Rivero, J. Savatier, ibidem.

[32] Cf. П.Јовановић, 373; Resolution of individual disputes varies from one to another country, but a double track of legal regulation of the system of dispute resolution most often occurs, i.e. from peaceful methods of resolution such as courts of peace and the Labour Dispute Commission in the Russian Federation, and arbitration and reconciliation in almost all countries in the region to exceptional court jurisdiction in resolution in the Bulgarian legal labour system. Concerning the court procedure, some countries in Europe have provided for a special procedure where they distinguish a labour dispute as a special kind of dispute, and address the labour relation to a special kind of judicial authority. Such is in Sweden, Spain, Belgium, Denmark, Great Britain, Germany, and many other countries in the world, see М. Ѓуришић, Ж. Кулић, „Радно право“, Државни Универзитет у Новом Пазару, Нови Пазар, 2009, 330; In Macedonia, as well as in other countries in the region of Southeast Europe, labour disputes are resolved within civil courts, most often in specific labour-related departments.

2.2. Collective Labour Dispute

Collective labour disputes make a separate entity and system of labour disputes. According to this classification, labour disputes are based on two basic postulates[33]. Primarily, it is the existence (intervention) of a group that can be legally recognised as a group such as trade unions, or simply as a group of employees who make the majority with the employer. However, this presumption is not a goal in its own right, because the difference between individual and collective labour dispute in this terms will depend on the initiative of the group[34]. The second presumption relates to the existence of collective interest. A dispute will be collective if interests relating different members in the group are involved. It will have this character if its resolution impacts the legal status of various members of the group, even if the resolution of a dispute would have an effect only on one member of the group. If only one employee is fired because of his/her membership in the trade union, a collective dispute may be opened because the right to association in trade unions, which concerns all employees, is "attacked"[35]. Therefore, it can be undoubtedly said, and in particular from the theoretical point of view, that these are individual rights that are exercised collectively because they belong to every employee[36].

A collective labour dispute can be defined as a special type of a labour dispute that arises because of violation of collective rights, or because of protection of collective interests in relation to the collective labour relation between associated employees and one or more employers[37]. This dispute arises as an element of collective labour law[38]. A few essential characteristics, which concurrently define the collective labour dispute, are derived from the definition.

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[33] J. De Givry,op.cit., p. 5. The French scientific thought, starting from Prof. Paul Durand until present days has has left a noticeable mark in the discovery of the essence and practical aspects of labour disputes. Definitions given by Durand and classification of labour disputes can be noticed in numerous scientific papers by prominent professors and erudites in Europe, in particular authors in the SEE region such as Tantic, Despotovic, Lubarda, Brajic, Pesic and Baltic, etc.

[34] Ibidem.

[35] Ibid.

[36] B.A. Lubarda, 38; J. Rivero, J. Savatier, 305.

[37] Cf. B.A. Lubarda, ibidem, 23; R. Pesic, ibidem, 235; В.И. Миронов, ibidem, 789.

[38] N. Tintic, "Radno i socijalno pravo", Knjiga Prva – Radni odnos (I), Narodne Novine, Zagreb, 1969, 17.

The subject of this type of a labour dispute is protection of collective rights or protection of collective interests. This means that by its volume, this dispute has a wider reach and relates to creation of legal relations. Concerning the above said, we can state that collective labour disputes are divided in legal and interest labour disputes.

A collective legal labour dispute (*conflit juridiques*, legal dispute) is a dispute arising in relation to interpretation and application of law, other bylaws and collective agreement[39], in relation to the collective rights of employees, or employers. Therefore, a collective labour dispute only relates to collective rights. They include trade union association, right to collective bargaining, right to participation and right to collective action (strike or lockout). To protect collective interests, collective action of a number of employees is necessary. Concerning the employer, it sometimes acts in union with other employers, and it may sometimes happen that it safeguards the collective rights as an individual (company-level dispute). The collective legal disputes often occur in two types, as a dispute related to interpretation and application of the contractual (obligation) and the normative parts of the collective agreement. If a legal dispute has the obligation nature, then the dispute arises only between the contracting parties (trade unions and employers, or their associations). If a legal collective labour dispute concerns interpretation and application of the normative part of the collective agreement, each employee has the right to initiate in person an action for protection of rights, and has a right to a lawsuit for indemnity[40].

The above implies that a legal dispute can be defined as a dispute where one party seeks exercising of a right (most often based on a collective agreement), and the other party challenges that request, or that right[41].

Legal collective labour disputes may occur in both the private and the public sectors[42], whereby it can be emphasised that disputes in the public sector have some specifics because of the very nature of the legal labour relation in the public and the state-run sectors.

[39] R. Pesic, 235; B.A. Lubarda, 33; J.Rivero, J. Savatier, 413; В. Мрјачков, 823.
[40] B.A. Lubarda, 44.
[41] Ibidem.
[42] Ibid.

Collective interest labour disputes (*conflits de revision du druit*, interest disputes, economic disputes) are those disputes that occur in relation to establishment, or regulation of the working conditions, rights and obligations, or review of already established rights and obligations[43]. This involves rights (material provisions) such as salaries and working conditions. These disputes most commonly appear in collective bargaining and relate to incorporation of some rights into the collective agreement, i.e. creation of a new right that the collective agreement should contain, or relate to changes concerning some already applicable provisions in the collective agreement[44]. These disputes also appear concerning the conclusion of the collective agreements and their extension[45].

The collective bargaining practice has seen a dispute arising in relation to which trade union can be a subject, or can join the collective bargaining. That is a dispute concerning recognition of the bargaining right to a trade union. These disputes were frequent in the Republic of Macedonia, in particular after 2005 with the adoption of the new Labour Relation Law, which was supposed to resolve those dilemmas. But practice has shown a different picture of conflict between the trade unions themselves, i.e. a dispute about which trade union has the bargaining right. This means that there is also conflict between trade unions and employers concerning contesting of the bargaining ability among trade unions themselves. The latter dispute (dispute between trade unions, related to recognition of the bargaining rights) actually, is not a labour dispute and is an inter-trade union dispute as a collective (but not labour) dispute. On the other hand, disputes among trade unions and employers (associations of employers) for recognition of the right to bargaining and conclusion of the collective agreement, according to the International Labour Organisation, make a special type (category) of collective interest labour disputes[46].

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[43] R. Pesic, 235; B.A.Lubarda, 45; J. De Givry, 7-8; P. Durand, "Traite de droit du travail" Paris, III, Dalloz, 1956, 547; В.И. Миронов, 790, the Russian scholar thought does not make any marked difference between legal and interest collective disputes, but within the contents of the collective dispute and in the Labour Code (Art. 398 paragraph 1) these two types of collective disputes are recognised and exist in the labour-legal system; В. Мрјачков, 824.

[44] J. Rivero, J. Savatier, 413.

[45] B.A. Lubarda, 45.

[46] Ibidem.

This classification of collective labour disputes to legal and interest disputes, which derives from the very definition of a collective labour dispute, does not only have a theoretical and scientific importance but also has a greater importance in relation to resolution of the collective labour disputes, or methods of resolution[47], which we will briefly address below.

Besides the typical legal and interest labour dispute, several other collective labour disputes occur. Thus, there is a collective labour dispute in the private and the public sectors, which we have already mentioned. Furthermore, a collective labour dispute can differ in relation to the level of collective bargaining where it occurs, that is as a collective labour dispute with the employer, and as a branch or a national labour dispute.

A transnational and a European collective labour disputes are also distinguished as special types of disputes. The former relates to multinational corporations, or to bargaining and conclusion of transnational collective agreements. These disputes occur very rarely given the number of the transnational collective agreement. Still, in practice, transnational companies allow their member companies (in different countries) to conclude collective agreement within the countries in which business activity is performed[48]. The European labour dispute occurs on the European level within the application of the European Convention on Human Rights and the European Social Charter (adopted by the Council of Europe). These acts contain provisions for resolution of collective labour disputes, and since all member countries have ratified them, they open a possibility for the existence of the so called European collective labour dispute, which is a result of collective agreements on the European level. The European *acquis communautaire* has allowed the possibility of concluding European collective agreements in Article 118 B of the Single European Act, which provides for the development of the European social dialogue[49].

[47] B.A. Lubarda, 46.

[48] Ibidem, 54.

[49] For more, see: R.D. Vukadinovic, "Pravo evropske unije", Institut za medjunarodnu politiku i privredu, Beograd, 1996; B.A. Lubarda, "Radnopravni polozaj u pravu Evropske Unije", Udruzenje za pravo Evropske unije i Centar za medjunarodne studije, Beograd, 1998, 111-112.

We would especially like to single out the generis collective labour dispute as a special type of collective labour dispute, which occurs in relation to the question of participation of employees in the management, or co-deciding in the company, as well as in relation to issues related to election of employees' representatives in the management and supervisory boards of the company[50].

The Macedonian jurisprudence distinguishes a special type of a dispute in the labour dispute area, i.e. a practical situation that opens many dilemmas and, we would say, problems. This concerns the already mentioned labour dispute when individual rights of employees are affected, but due to their dispersion to a number of employees or to all employees in a company, they get a collective labour dimension. Such is the case when an employer does not meet the legal obligation for ensuring an accurate, specific right from the Law, collective agreement or another act of the employer, in relation to all employees, or to most of them. Most often, it is about a specific legally identified right from the labour relation such as, for example, right based on work in night shift, right related to overtime work payments etc. According to our jurisprudence, such disputes are regarded as individual and each employee has to seek protection of their right by an individual lawsuit. Opposite to comparative experience, and to the labour legal logics as well as the definition of interest collective labour dispute, no collective lawsuit for protection of individual rights is allowed. Employees may not initiate a labour dispute as a group of employees with a common, collective lawsuit. The current condition is not acceptable for many reasons. Such court practice is not economic, it is not efficient and is contrary to the collective labour dispute concept. Furthermore, it affects negatively the determination of employees to seek court protection for their labour rights because of fear of negative consequences of such individual action. Very often, in practice, the employer performs illegitimate actions as punishment of workers who have initiated a lawsuit individually against the employer. In the event of a collective labour lawsuit, this would be mostly avoided.

[50] M. Weiss, "Labour Law and Industrial Relations in Federal Republic of Germany", Kluwer Law and taxation Publichers, Deventer, 1987, 184.

3. Labour Dispute Resolution Procedure

The employee exercises protection of rights from labour relation on the basis of labour, not on the basis of a procedure[51]. This means that it is not necessary to undertake any (special) actions in terms of running a special procedure in order that one exercises their right[52]. Exercising of the rights by employees is the employer's obligation. Above all, these are rights provided for in the labour legislation, collective agreements, labour contracts and other heteronomous and autonomous regulations. Therefore, as long as they have a job, citizens have certain rights. But on the other hand, if those rights are violated, or they are not exercised, then the employee protects them in a procedure.

The procedure for the protection of rights from the labour relation can be a special court procedure or a regular civil procedure. The court at which an individual or collective labour dispute is initiated, may be a specialised court or a regular, civil court[53]. Actually, one can say that a special procedure for labour disputes is also most often related to establishment of specialised labour courts, as special and independent courts for the resolution of individual and collective labour disputes, or separate specialised authorities and bodies for their resolution. We have already mentioned the countries in which these courts are found in Europe. On a wider scale, such courts or bodies exist also in Japan, Philippines, Canada, India, Australia, New Zealand,[54] and other countries. On the other hand, in France and Luxembourg, there are non-professional labour tribunals that operate as a "good people's councils"[55].

In the Macedonian judicial system, there are no special labour courts or a special procedure. Still, the procedure as part of the general civil procedure is distinguished in a special chapter, XXVI of the Law on Civil Procedure, which has special provisions concerning the labour dispute, which *ex lege* makes this procedure differentiated from others. This separation is not substantial and is not a real response to the challenges of modern labour relations.

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[51] В. Брајић, „Радно право", Савремена администрација, Београд, 2001, 419.
[52] Ibidem
[53] For more, see: М.Ѓуришић, Ж. Кулић, 330.
[54] J. De Givry, 23-25.
[55] J. Rivero, J. Savatier, 410; J.Piron, "Introduction au droit du travail dans les pays de la Communaute economique europeenne", Maison F. Larcier, S.A., Bruxelles, 1973, 112.

The characteristics of special courts for resolution of individual and collective labour disputes, which derive from experience in countries that have accepted such a judicial and legal system, are reduced to the presumption that the procedure is more efficient[56]. This is primarily owed to specialisation of the subject of operation of those courts. Furthermore, the court acts in a more responsible way and with higher level of professionalism when deciding on disputes[57] just because of the close specialisation of judges who work only on the labour law matters and decide on labour disputes. Eventually, this results in creation of a feeling of greater confidence in such courts by the parties.

On the other hand, the dynamics of the labour relations, their specifics that are reflection of the relation between the economic flows and distribution of goods set through the prism of social balance and peace, make labour relations much more different than any other social-legal relations. Hence, the disputes that appear within the labour relations require understanding of a dispute through the prism of law, above all, as well as through the glasses of the overall economic and market flows. Therefore, acquiring deeper knowledge of the matter of labour and specialisation, which sometimes takes more than 10 years, is necessary. Actually, the problem with the placing of the labour dispute under the jurisdiction of general civil courts as is the case in a number of countries (Macedonia, Serbia, Bulgaria, Croatia, the Russian Federation - mixed system, Bosnia and Herzegovina, Montenegro, Italy, the Netherlands, United States, etc.) is in that the labour relation is thus openly or covertly considered as a wage labour relation, and the disputes themselves are a part of the concept of classical labour disputes. In this way, deliberately or not, the essence is "vulgarised" and simplified processually, as is the content of the labour dispute, which, as already said, is different in its internal ontological appearance in many things. Such an approach eventually results in pure positivism of Kelsenian format[58], who looks for his ideological matrix in Kant[59] and Hegel's ideas of

[56] М.Ѓуришиќ, Ж. Кулиќ, ибидем.
[57] Ибид.
[58] More on this can be seen in: Ханс Келзен, „Чиста теорија права", Правни факултет Универзитета у Београду, Београд, 2007.
[59] More on this in: Имануел Кант, „Критика на практичкиот ум", Метафорум, Скопје, 1993; Imanuel Kant, "Metafizika Cudoreda", Sarajevo, 1967.

supremacy of the form as the basis for justice, through the principle of mutual recognition of parties and biversity of wills[60].

The very essence of the labour dispute is in that the existential rights that stem from the labour relations and are a part of the man's basic economic rights (and social), should be protected in a corresponding special procedure before specialised labour courts, where the right will be protected on the basis of a special lawsuit[61]. The axiological basis of the individual and collective labour dispute understood in this manner raises it over each ideological value system, placing the man in the centre of the dispute, while seeking the objective truth and resolving the discord between the parties in an unbiased manner, on the basis of the fairness principle.

3.1. Resolution of Individual Labour Dispute

As a rule, individual labour disputes are resolved through the system of judiciary in countries, and rarely through other authorities and direct peaceful ways of resolution of labour disputes such as arbitration, reconciliation, mediation, etc. Legal individual labour disputes for which judicial jurisdiction is anticipated are involved here[62]. Peaceful methods of resolution of labour disputes are above all the features of collective labour disputes[63]. Certainly, there are certain countries where a special commission, such as in the Russian Federation, appears in the resolution of individual labour disputes[64], or to

[60] G.W.F. Hegel, "Osnovne crte filozofije prava", Sarajevo 1964, 81.

[61] According to the Roman rationale: „*Ubi remedium, ibi jus*" - Where there is a right there is a remedy, when a complaint and a special procedure are primary means and the exercising of the right is a goal.

[62] B.A. Lubarda, Resavanje kolektivnih radnih sporova , 24.

[63] Ibidem; A. de Roo, R. Jagtenberg, "Settling Labour Disputes in Europe", Kluwer Law and Taxation Publishers, Deventer-Boston, 1984, 24

[64] In the Russian Federation, there is a special labour dispute commission (Article 385 paragraph 1 of the Labour Code of the Russian Federation) that includes employers' representatives and some persons from the workers' trade union central offices. This Commission is an alternative body for reviewing of individual labour disputes, in which parties resolve issues through bargaining. However, at the same time, an employee can initiate a court procedure, and so the labour dispute can be resolved at two authorities concurrently. The Labour Dispute Commission decides on issues related to non-regulated labour relations between the employee and the employer, discord concerning issues and application of law, and establishment or change of individual labour conditions. The Commission decides with a decision that can be appealed within 10 days. Upon the issuance of a decision, the party may refer to courts. More on this in: В.И. Миронов, 741-762.

councils, as in France. In the Macedonian frameworks, a special Law on Peaceful Resolution of Labour Disputes was adopted in 2007[65] (LPRLD), which provides for resolution of certain individual labour disputes through an arbiter, or arbitration.

We would like to note an issue that is included in theoretical discussion. This is about determination of judicial jurisdiction for resolution of individual labour disputes, which are conducted among public/civil servants and the state as the employer. In some European countries such as Italy[66] and Germany[67] this type of labour dispute, as a rule, is not resolved at labour courts or courts of general jurisdiction other than in specialised administrative courts[68]. We believe that such differentiation of labour disputes based on the work sector (public or private) is unnecessary, inefficient and non-feasible. Individual labour disputes are a whole compared to the subject. They emerge from labour and relate to labour relations. If a dispute does not concern labour, or labour relations, it is not a labour dispute and is resolved before other competent courts. Therefore, classification according to economic sectors in the country does not have any importance for the subject and the content of a labour dispute, and finally, in relation to the very resolution of the labour dispute.

3.1.1. Individual Labour Dispute according to the Macedonian Legislation

An individual labour dispute in the Macedonian legislation has two phases in its process manifestation. Firstly, it is before the employer's bodies, provided for in Article 181 Paragraphs 1, 2, 3, and 4 of the Labour Law (LL)[69] (LL). The second phase of protection of the rights deriving from the labour relation is before competent courts, provided for in paragraphs 3, 4, 5, 6, and 7 of Article 181 of LL. Pursuant to paragraph 4 of Article 181, the so called pre-phase of an individual labour dispute that is conducted

[65] *Official Gazette of RM*, No. 87/07.

[66] T. Treu, "Conflict Resolution in Industrial Relations", Industrial Conflict Resolution in Market Economies, eds. T.Hanami and R. Blanpain, Kluwer Law and Taxation Publishers, Deventer, 1984, 158.

[67] M. Weiss, S. Simits, W. Ryzdy, "The Settlement of Labour Disputes in the F.R. of Germany", Kluwer Law and Taxation Publishers, Deventer, 1984, 100.

[68] This issue is raised by Prof. B.A. Lubarda, who accepts differentiation of separate specialised administrative courts, which would be competent for this kind of individual labour disputes. Cf. B. A. Lubarda, 23.

[69] *Official Gazette of the Republic of Macedonia*, No. 65/05; revised text 52/12; amendment No. 25/13.

before the employer's bodies is compulsory. In other words, if an employee believes that they do not exercise a certain right, or they exercise the right yet to a lower extent, they have to address to the employer first with a request or complaint within 8 days. If the employer does not respond within 8 days or the employee is not satisfied with the reply, they may initiate a labour dispute at the competent court, which is a special department within the Civil Court in Macedonia as already said. Adequately, a conclusion is drawn that a compulsory off-court procedure is carried out before the employer. Within the Macedonian legal labour framework, the employer is the one who has an obligation to respect the rights of the employee, to "give" them and protect them.

As we said above, Article 29 of the Law on Peaceful Resolution of Labour Disputes provides for a possibility for an individual dispute to be resolved before an arbiter, only if it is a dispute related to cancellation of the employment contract (dismissal) and the employer's failure to pay the lowest agreed salary. Provisions of LPRLD in relation to individual labour disputes are not sufficiently clear and their additional elaboration and amendment is necessary, in particular in terms of clarifying what happens to a court procedure if we have a non-final ruling and arbitration is initiated; if an appeal to a decision of the arbiter is possible; or is it possible to additionally initiate a labour dispute at a court upon a final decision of the arbiter. On the other hand, LPRLD has not been applied in Macedonia yet although it was adopted six years ago[70]. This additionally burdens resolution of labour disputes and instills confusion and inconsistency in the application of legal provisions for resolution of labour disputes as a whole.

3.2. Resolution of Collective Labour Disputes

[70] We are locating the reasons for the failure to implement the Law on Peaceful Resolution of Labour Disputes in Macedonia despite 6 years have elapsed since it was adopted in the lack of information of the Republic Council for Peaceful Resolution of Labour Disputes, without which the law cannot come into the effect in the labour dispute peaceful resolution system. Pressures put by some branch organisations that labour disputes should be resolved within the general mediation concept, and that costs for establishment of the Council and making the system alive, are too high, they are not sustainable and go towards promoting partial interests in contravention of the idea for efficient and just legal labour system in the country.

The collective rights arising from a labour relation are most frequently protected in a corresponding legal procedure that is not judicial procedure, or it is partially judicial. This means that the collective legal dispute has a different internal structure and is manifested differently from an individual labour dispute, and accordingly, it is resolved differently. The procedure is conducted at the employer or before independent *ad hock* or standing authorities, which aim at resolving collective labour disputes. Some aspects or types of collective labour disputes are resolved in front of the general or special civil courts. Furthermore, this dispute may be resolved through the methods of collective action (e.g. strike) which does not mean that the resolution is uncontrolled and lacks a legal frame. On the contrary, there are specifically defined rules that determine the manners of resolution of collective labour disputes.

Existence of special labour courts could help resolve certain types of collective labour disputes, in particular concerning legal collective labour disputes that occur at collective bargaining.

There are several ways of resolution of collective labour disputes, not one (although not always) as it often occurs with the individual labour dispute. Classification in different types of labour disputes is relevant, among other, from the aspect of their resolution.

Reconciliation, mediation, arbitration, and peaceful ways of dispute resolution as well as strike, picketing, boycott, lockout as the methods of collective action appear as methods of resolution of collective labour disputes in general[71]. Still, all methods, the manners of resolution of collective labour disputes, are not provided for all types of disputes; rather, solutions prevailing throughout the world show distinct differentiation of which disputes should be resolved by which methods.

Interest and legal labour disputes may be resolved in a peaceful manner, or with mediation, reconciliation and arbitration. On the other hand, collective action most often resolves interest collective labour disputes. Exemption is the French law where there is a possibility for resolution of a legal dispute not only through peaceful methods but through strike[72].

[71] J. De Givry, 11; R. Pesic, 237; В.И. Миронов, 795; В. Мрајачков, 826.
[72] J. Rivero, J. Savatier, 413-414.

Within resolution of collective labour disputes according to the method of resolution, distinction into general and special collective labour disputes is visible[73]. The general legal regime of resolution of collective disputes occurs in the private sector, whereas the special legal regime applies for activities of vital importance for the functioning of the social life, such as health, water supply, electricity, traffic etc. regardless of the ownership of these sectors (private, which is less frequent, or public)[74]. With special legal regime for resolution of collective labour disputes, most often there is an active role of the state in the resolution of a dispute, which should not surprise given the importance of activities that are in case. The role of the state is, above all, in the manner of resolution of labour disputes, with the establishment of public services for reconciliation and mediation, to which the subject in a dispute should refer (obligation principle) before taking methods of direct industrial action (strike, picketing, boycott)[75].

In relation to sui generis collective labour dispute which occurs between the council of employees and the employers in the private sector, concerning the issues of participation and co-decision making, as well as disputes related to the procedure of election of representatives of employees in the management and supervisory boards, a special judicial procedure before labour and civil courts is most often provided for. The truthfulness of the facts about a dispute is considered and verified before labour courts, whereas all other issues concerning the worker participation and co-decision making, except the procedure for election, are in the jurisdiction of civil courts[76]. With these disputes, a strike or lockout as methods of collective action for the resolution of dispute is not allowed other than only arbitration (as a peaceful method), except where there is a dispute about the procedure of election, which, we said is the competence of the labour court.

An inter-trade-union collective dispute (which is not a labour dispute) occurs in countries that have both the majority model of representation of trade unions and representative model. In a number of countries such as Ireland, Germany, Macedonia, Serbia and others, this dispute is resolved before the competent labour courts, or in

[73] B.A. Lubarda, 57.
[74] Ibidem.
[75] Ibid.
[76] M. Weiss, 184-186.

special departments for labour disputes in civil courts. In some countries such as the United States, Japan, Canada, Argentina, Philippines and others, there is participation, or interference of the administrative authority in resolution of these disputes[77].

3.2.1. Collective Labour Dispute according to the Macedonian Legislation

Macedonia has a wide scope of the strike issue and therefore, there is no specific distinction of what is a legal and what is an interest collective labour dispute in terms of legal norms[78]. However, before the provisions regulating strike, Article 235 paragraph 1 of the Labour Law provides that in an event of a dispute concerning conclusion, amendment of the collective agreement, the dispute shall be resolved amicably. In this case, this is about interest collective rights, and a question immediately arises whether this means that, according to this Article, strike as a method of resolution of this dispute is ruled out. Certainly, we should not interpret the Labour Law in this way because it stipulates that resolution of an interest dispute should be compulsorily be by peaceful means. However, if a solution is not achieved, the dispute may be resolved with methods of collective action, i.e. strike. In this regards, there is no contradiction either with the provision 236 of the Labour Law, which defines strike, or with the provisions of the Law on Peaceful Resolution of Labour Disputes (Articles 16 and 18).

Concerning peaceful resolution of collective labour disputes, the Labour Law provides for a possibility to define, with the collective agreement itself, arbitration as a peaceful method for resolution of dispute, while not referring to what kind of a dispute will be resolved (Article 183), whether it is a legal or interest dispute, or of both types. Paragraph 3 is additionally confusing stipulating that an employee and the employer agree on the arbitration-led resolution of a labour dispute..., which means that here, the legislator thinks that this is an individual dispute, contrary to paragraph 1 that provides for a dialogue between social partners. So, a provision is confusing about what is a

[77] For more, see: B.A. Lubarda, 60.

[78] According to Article 236 of the Labour Law that regulates strike, strike is organised for protection of economic and social rights of trade union members (employees). This provision does not provide actually what employees strike for but gives a general scope of all social and economic rights.

collective and what is an individual dispute, and thus, the provision is unusable, confusing and contradictory, which has been confirmed in practice.

4. Conclusion and Guidance

Analysis of the concept, etymology and content of the labour dispute that has been made points to its close relation to the relations between labour and capital in capitalism. A labour dispute is not only inherent to capitalism, although it is in its frameworks that it is quite visible and recognisable. The substantive elements of the dispute are timeless and are related to man and his relation to labour in general and labour as part of the man's personality.

Nowadays, a labour dispute is closely connected to the relations within labour relation and disagreement, or discord within labour. Therefore, its appearance form has two sides, the process and the material ones. These two sides of a dispute make the whole of the dispute, which is specific in many things due to the contents of formal actions and material relations. The specifics reflect in the need to differentiate special rules in formal terms when resolving a labour dispute, irrespective of the type of the dispute, or whether it is individual or collective. This also means existence of special specialised labour courts, which will resolve labour disputes on all levels, sectors and different subjects.

In material labour terms, specifics and special character of labour disputes in relation to other civil disputes is seen according to the content of a dispute and the methods of its resolution. In content terms, labour disputes relate the labour issues, which are existential issues in their nature, and on the other hand, they relate to protection of dignity of the man's personality in both labour and society. In relation to methods of resolution, they are polyvalent and go beyond the strict formal process framework, manifested through the court procedure. On the contrary, methods occur as peaceful (mediation, reconciliation, arbitration, bargaining, court) and methods of collective action (boycott, picketing, strike, lockout).

Taking all this into account, we point out that the labour disputes are a specially distinguished and in many things specific labour-legal institute that has its internal

essence and external multi-facet manifestation. Therefore, it is necessary to pay special attention during its normative definition, in terms of the existence of special labour legal regulations, which seems to be the best and most adequate solution for this area. The necessity of successful resolution of labour disputes among all kinds of disputes and differentiation of special labour courts, specialised in labour disputes within the judicial system, especially based on Euro-continental legal systems and legal systems of Southeast Europe is also evident. Specialised labour courts resolve labour disputes much faster. Thus, they are efficient. This is especially important for the countries in the region of Southeast Europe where the judicial practice shows relatively long procedures that sometimes last for ten odd years. Judges that judge in such courts are specialised for these disputes and their professionalism is deepened, which allows better quality in resolving disputes and lower basis for the use of remedies. This makes the whole procedure more economic. These arguments undoubtedly confirm the necessity of differentiation of special labour disputes, which will proceed on individual and collective labour disputes.

We believe that labour disputes will occur in the future in higher intensity, in particular as reflection of the relations of non-perfectness of economic-proprietary relations in capitalism and crises that accompany it and will accompany it in the future. This does not mean however that labour and labour relations are in crisis. On the contrary, this way, actually, strengthens the awareness, responsibility and justice in relation to understanding and the relation to labour, and translated through the basic value of the labour justice as transcendental and expressed through the Roman principle *iustitia est constans et perpetua voluntas ius sum cuique tribuendi* (Justice is the constant and perpetual desire to give to each one that to which he is entitled, Ulpianus).

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