Todor Kalamatiev, *Ph.D*[1]
Aleksandar Ristovski, *LL.M*[2]

IMPLEMENTATION OF THE LABOUR RELATIONS (PUBLIC SERVICE) CONVENTION, 1978 (NUMBER. 151) OF THE INTERNATIONAL LABOUR ORGANIZATION IN THE MACEDONIAN LABOUR LEGISLATION

ABSTRACT

The article will focus on the content of the Labour Relations (Public Service) Convention no. 151 from 1978 that has not been ratified by our country, contrary to the labour and public service law. The analysis aims to determine to which extent the legislation of the Republic of Macedonia complies with the international standards in this field.

Furthermore, the Labour Relations (Public Service) Convention no. 151 provides an opportunity to extend the scope of the Convention concerning the Freedom of Association and Protection of the Right to Organise no. 87 from 1948 and the Right to Organise and Collective Bargaining Convention no. 98 from 1949, in particular concerning the provisions on the status of the public servants employed in the state administration. This Convention concerns the persons who are employed in the state administration and those whose rights to organize and bargain collectively have been denied previously.

Key words: Convention no. 151; Convention no. 98; civil servants; public servants; freedom of association; collective bargaining in the public sector.

Introduction

The freedom of assembly and the right to bargain collectively form a part of the key priorities of the International Labour Organization (ILO). The preamble of the Constitution of ILO determines the essential role of the freedom to association principle regarding the realization of the basic goals of this organization - improving the working conditions in the world. The adoption of the Philadelphia Declaration on the purposes and goals of the International Labour Organization from 1944, which became an integral part of the ILO Constitution reaffirms the basic principles of international labour standards. Among them, a proper position is given to the right to bargain collectively. ILO recognizes the right to bargain collectively, the cooperation between the management and labour in order to improve the productivity, as well as the collaboration between the employees and employers in the process of preparation and implementation of the social – economic measures and policies.[3]

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[1]Todor Kalamatievm Ph.D, Regular Professor, University "Ss Cyril and Methodius", Faculty of Law "Iustinianus Primus", Skopje.
[2]Aleksandar Ristovski, LL.M, Teaching Assistant, University "Ss Cyril and Methodius", Faculty of Law "Iustinianus Primus", Skopje.
[3]ILO Constitution, Annex II/e.

The meaning of the freedom to association and the right to bargain collectively is retrieved by the wide spectrum of regulations adopted by the ILO, in order to create international labour legislation. In this article, we consider several conventions and recommendations, including: Convention concerning Freedom of Association and Protection of the Right to Organize, 1948 (no. 87); Convention concerning the Right to Organize and Collective Bargaining, 1949 (no. 98); Labour Relations (Public Service) Convention, 1978 (no. 151); Collective Bargaining Convention, 1981 (no. 154); Collective Agreements Recommendation, 1951 (no. 91); Voluntary Conciliation and Arbitration Recommendation, 1951 (no. 92); Rural Workers' Organization Recommendation, 1975 (no. 149); Labour Relations (Public Service) Recommendation, 1978 (no. 159) and Collective Bargaining Recommendation, 1981 (no. 163).

Labour Relations (Public Service) Convention from 1978 (no. 151) represents one of the essential regulations of this organization, aiming to improve and develop the process of collective bargaining in the sphere of the labour relations in public service. The basic goal of this Convention is extending the domain of collective bargaining among all public service employees. Before the adoption of the Convention no. 151, ILO regulations had promoted and interpreted the scope of collective bargaining restrictively. One of the basic shortcomings of the Right to Organise and Collective Bargaining Convention no. 98 from 1949, which is a fundamental convention on the right to bargain collectively, is the exclusion of the state administration from the beneficiaries and rights arising from its contents.

The international labour legislation usually does not interfere with the regulation of contents on the essential spheres of labour relations, which are vital for the public order of the states. Within the body of public servants are the armed forces and police. In this direction, according to the Right to Organise and Collective Bargaining Convention no. 98, the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.[4]

The interest of the states in autonomous regulation of public servants' labour relations that are vital for the safety and security of citizens is notorious. Yet, the international labour law aims towards a more extensive scope of the labour relations for all employees in both private and public sector. That was the main objective when the Labour Relations (Public Service) Convention (no. 151) was adopted. The basic problems that this Convention aimed to solve were the big differences in terms of defining the labour relations in the private and public sector in different countries, as well as the difficulties in the interpretation of the provisions of Convention no. 98 that referred to the exclusion of a wide group of public servants from its scope.[5] In fact, Convention no. 98 states that it neither tackles the position of public servants engaged in the administration of the State, nor it has

[4]Article 5, paragraph 1 of the Convention concerning the Right to Organize and Collective Bargaining, 1949 (no. 98).

[5]B. Šunderić, *Law of the International Labour Organization,* Beograd, 2001, p. 484.

been construed as prejudicing for their rights or status in any way.[6] This provision shows that the right to collective bargaining, as basic right arising from the Convention no. 98, does not apply to a part of the public service employees - the civil servants. Convention no. 151 attempts to surpass the partial regulation of the public servants' right to organize and bargain collectively. This Convention applies to all persons employed by public authorities to such an extent that more favourable provisions in other international labour conventions are not applicable to them.[7] That means that the rights arising from the Convention no. 151 do not only apply to public servants perceived in the broadest sense, but also to the public servants perceived in a narrower sense, including the employees in the classical state administration, i.e civil servants.

Labour Relations Convention (Public Service) no. 151 is ratified by 48 member states.[8] Among the countries in this region that have ratified this Convention are only Albania, Greece and Slovenia. The Republic of Macedonia has not yet ratified the Convention no. 151.

1. The public service and the legal status of public service employees in the Republic of Macedonia

There are several viewpoints on the labour relations of the public service employees. According to one theory, labour relations of the public service employees are not administrative relations, but they are "classical labour relations, in which the parties have the same rights arising of the labour relations as other employees".[9]

Contrary to the aforementioned theory, there is the theory accepted by the Swiss legal doctrine. According to the Swiss positive law, the work of public servants derives from the framework of labour law.[10] The labour relations of the public servants are different to the labour relations of the employees within the private sector.

Finally, we will present the compromise theory.[11] The most recent literature on this issue argues that the part of labour law that is consisted of general principles applying to the employment also refers to the "employees" within the public service, while the legal norms that regulate the special legal position of the public servants are a matter of regulation of the administrative law. This legal structure is also applicable to the Macedonian legal system. In other words, labour law is "lex generalis", while the law on public servants (as an integral part of the administrative law) is "lex specialis", considering the fact that the labour relations of the public servants are special subspecies

[6]Article 6 of the Convention concerning the Right to Organize and Collective Bargaining, 1949 (no. 98).
[7]Article 1, paragraph 1 of the Labour Relations (Public Service) Convention, 1978 (no. 151).
[8]www.ilo.org / Normlex / ratification by conventions/ Ratifications of C151.
[9]A. Ravnić, *Osnove radnog prava, domaćeg, usporednog i međunarodnog*, Zagreb, 2004, p. 192.
[10]*Ibidem.*
[11]Todor Kalamatiev, 'The Controversies in the Application of the Law on State Servants, the Law on Public Servants and the Labour Law', *Business Law,* 2012 , no. 25, Skopje, p. 150.

of the labour relations and the law on public servants is special subspecies of the administrative law.

The legal verification of the theoretic paradigm "uniqueness of labour relation" is recognized by the Constitution of Republic of Macedonia,[12] as well as by the Labour Relations Act. [13]

Defining the basis of the social economic system, the Constitution determines the general legal standards: the right to work, the free choice of employment and the equal access to each job to anyone (Article 32 paragraph 1). It is a programmatic or declarative provision that refers to all employees. Further, Article 32 of the Constitution of Republic of Macedonia provides the right to appropriate remuneration and the right to paid daily rest, weekly rest and annual leave. Finally, in the last paragraph, Article 32 states that the exercise of the rights of employees and their position are regulated by law and collective agreements.

The **Labour Relations Act** (hereinafter LRA) is the general and primary law governing the relations in the labour processes. Another law, collective agreement and an employment contract (Article 1, paragraph 20), may also govern the labour relations. The LRA provides for a unique status of the employees in terms of their position in the society. The principles, obligations and rights arising from employment, as laid down by the law, refer to all employed, notwithstanding where they have commenced employment and notwithstanding the type of ownership over the manufacturing assets of the employer, in particular, in the bodies of state administration, the bodies of local self-government units, institutions, public enterprises, offices, agencies, funds and other employing legal and natural persons, unless provided otherwise by another law (Article 3, paragraph 1). We should note that the group of "other laws" includes the Law on Civil Servants[14] and the Law on Public Servants,[15] which are separate laws in terms of the LRA. The employment of the public sector employees is also governed by the Law on Public Enterprises,[16] the Law on Institutions[17] and many other substantive regulations.

In the most general sense, the public services are "services that are satisfying certain common needs of the society".[18] They are

[12]Constitution of the Republic of Macedonia (*Official Gazette of R. M*, no. 52, from 17.11.1991).

[13]Constitution of the Republic of Macedonia (*Official Gazette of R. M,* no. 52, from 17.11.1991).

[14]The Law on Civil Servants (*Official Gazette of the Republic of Macedonia*, no. 59/2000, from 22. 07. 2000). Since its enactment, this Law has been amended 22 times and it contains 6 Decisions of the Constitutional court.

[15]Law on Public Servants, *Official Gazette of the Republic of Macedonia,* no. 52/2010, from 24. 04. 2010. Since its enactment, this Law has been amended 3 times and it contains 3 Decisions of the Constitutional court.

[16]Law on Public Enterprises, *Official Gazette of the Republic of Macedonia,* no. 38/1996, from 31. 07. 1996. Since its enactment, this Law has been amended 7 times and it contains 1 Decision of the Constitutional court.

[17]Law on Institutions, *Official Gazette of the Republic of Macedonia,* no. 32/2005 from 11. 05. 2005. This Law has been amended twice since its enactment.

[18]S. Gelevski, N. Grizo, B. Davitkovski , *Administrative Law*, Studentski zbor, Skopje, 1997, p. 208.

the key building blocks of each modern society that looks after its own growth and development and they represent a compromise between the market rules in the contemporary market-driven society and the idea of social justice and welfare. In theory, the term public servants refers to persons who perform public service, which means that they can act authoritatively on behalf of the state, while others who perform professional and technical tasks in support to the public service do not have the status of civil servants.[19] Therefore, we come to the following differences: on one side, there are the labour relations of the public legal entity (the entity with delegated public competences) and the employees (so-called public servants or, simply, servants); on the other side, the labour relations between the employer that can be private or public entity and the employees having the status of workers (which is essentially very different than the status of servants).[20]

The incumbents system in the Republic of Macedonia was established with the adoption of the Law on Civil Servants in 2000, which has been amended and supplemented for 22 times since then.

The Law on Civil Servants served and serves as lex specialis regulation that regulates the status, rights and obligations of servants employed in state and local government bodies. For the first time, the status of public service employees has been regulated fully in a separate law – the Law on Public Servants from 2010, which determines the scope of the public service, the common principles and basis of employment, the rights, obligations, responsibilities, assessment and termination of employment, protection and the register of public servants. This Law represents a part of public law, unlike the law regulating the status of the remaining employees in the public administration – The Labour Relations Act.

The **Law on Civil Servants** provides the definitions for the term ***civil servant (functional and organizational).***

The functional definition determines that civil servant is a person employed in the state administration who performs professional, legal, executive, managerial, administrative-supervisory, planning, material-financial, accounting, information technology and other tasks within the scope of competence of the relevant body and in accordance with the Constitution and the law.[21] Furthermore, the civil servants perform tasks related to the functions of the state, in accordance with the Constitution and the law, in a professional, politically neutral and impartial manner.[22]

According to the organizational definition, civil servants are persons employed in the bodies of state administration and the local self-government and other state authorities established in accordance with the Constitution and the law.[23] On the other hand, the employees in the public service who perform technical tasks in support to the

[19]B. Davitkovski, A. Pavlovska – Daneva, 'Review of the Latest Legislation concerning the Incumbents in the Republic of Macedonia', *Publication Business Law,* Year XII, no. 25. Skopje, October 2011.
[20] Ibidem.
[21]Article 3, paragraph 1 of the Law on Civil Servants.
[22]Article 2 of the Law on Civil Servants.
[23]Article 3, paragraph 2 of the Law on Civil Servants.

public service do not have the status of civil servants.[24] Additionally, certain matters concerning the rights, obligations, responsibilities and the status of the employees with specific tasks and powers may be regulated by *lex specialis.*

The **public servants** are persons who perform tasks and duties of public interest in accordance with the Constitution, the law and the international agreements ratified in accordance with the Constitution. The Law on Public Servants defines, in particular, the functional and organizational concept of the public servant.[25]

The **public servants**, in functional terms, are the employees who perform tasks of public interest in the fields of culture, science, labour and social work, social protection and child protection, institutions, funds, agencies and public enterprises established by the Republic of Macedonia, the municipalities, municipalities within the City of Skopje, i.e., the City of Skopje. They do not fall within the scope of the Law on Civil Servants.

On the other hand, in organizational terms, the public service refers to all institutions in the fields of culture, science, labour and social work, social protection and child protection, institutions, funds, agencies and public enterprises established by the Republic of Macedonia, the municipalities, municipalities within the City of Skopje, i.e. the City of Skopje that do not fall within the scope of the Law on Civil Servants.[26] Furthermore, the term "institutions" covers all state authorities and bodies performing services of public interest or confidential public authorizations, institutions, funds, agencies, as well as public enterprises established by the Republic of Macedonia, the municipalities, municipalities within the City of Skopje, i.e. the City of Skopje, which do not fall within the scope of the Law on Civil Servants. [27]

In theory, the term **public servants** denotes persons who perform public service. That implies that they can discharge authorities on behalf of the state, while the other persons who perform expert-technical and supporting tasks in the administrative bodies, institutions, administrative organizations and all other organizations authorized by law to discharge public competences do not fall within the category of public servants.[28] Thus, we differentiate the relations between the entity of the public law (i.e. the entity with entrusted public competences) and its employees referred to as public servants (shortly: officers) on one hand and the labour relations between the employer (which can be either a private or a public law entity) and its employees who have the status of employees (which is, in essence, quite different to the servant status), on the other hand.[29]

The persons employed in healthcare and educational sector, whose employment status is regulated legally by the laws concerning

[24]Article 3, paragraph 3 of the Law on Civil Servants.
[25]Article 5 of the Law on Public Servants.
[26]Article 3, paragraph 1 of the Law on Public Servants.
[27]Article 3, paragraph 3 of the Law on Public Servants.
[28]B. Davitkovski, A. Pavlovska – Daneva, 'Review of the Latest Legislation concerning the Incumbents in the Republic of Macedonia', *Publication: Business Law,* Year XII, no. 25. Skopje, October 2011.
[29]Ibidem.

the healthcare protection and education were treated as public servants after the adoption of the general 2010 Law on Public Servants.

However, immediately after the adoption of the Law on Public Servants, a Ruling (U No. 77/2011 of September 21, 2011) of the Constitutional court cancelled Article 3, paragraphs 1 and 2 of LPS in the part "healthcare". The Court has established that the healthcare workers, in the capacity of carriers of the healthcare activity as an activity of special societal interest, cannot have status of public servant.

The Constitutional court also cancelled Article 3, paragraph 1 and 2 of LPS in the part "education". Namely, the Constitutional Court in its Ruling U No. 221/2011 of April 11, 2012 established incompatibility of the status of public servants, state bodies and institutions, in the light of the Law on Public Servants, with the employees in the higher education, higher institutional institutions and universities.

2. Convention no. 151 vis-à-vis the labour relations of public service employees in the Republic of Macedonia

Convention no. 151 consists of several parts. Like all conventions adopted by the General Conference of ILO, Convention no. 151 contains preamble, normative part, general implementing provisions and final provisions. The normative part, which represents the basic contents of this regulation, is systematized in several parts: Protection of the right to organize, Facilities to be afforded to public servants' organizations, Procedure for determining terms and conditions of employment, Settlement of disputes and Civil and political rights.

2.1 Protection of the right to organize

Articles 4 and 5 of the Convention no. 151 concern the protection of the right of the public servants to organise. Article 4 provides for the protection of public servants concerning several aspects of their (incumbent) employment. The public servants are, in accordance with paragraphs 1 and 2 of this article, protected against acts of anti-union discrimination or discrimination on the grounds of their activities within the frames of such organizations, during the recruitment stage, i.e. when they are starting their employment, in the course of the exercise of their rights arising from employment and in the stage of dismissal, i.e. termination of employment. Article 5, paragraphs 1, 2, and 3, safeguards the public servants organizations' complete independence in terms of the establishment, functioning or administration.

In the Republic of Macedonia, the Constitution and the Labour Relations Act regulate the protection of the right to organize, covered in Articles 4 and 5 of the Convention no. 151.

The Law on Civil Servants and the Law on Public Servants neither contain a single provision that directly protects the public sector employees against discrimination in all its modalities (harassment, sexual harassment, mobbing etc.), nor they contain a provision referring to the general regulation on labour relations, i.e. in

the Labour Relations Act regarding the protection against such occurrences.

Within the frames of the general provision for protection from discrimination, these laws do not provide a detailed coverage of the adequate protection against acts of anti-union discrimination in respect of the public employees' employment. Equally, they do not provide a provision guaranteeing the organizations of public servants complete independence from public authorities. In particular, the Law on Civil Servants provides a single provision on the association of civil servants, which ensures that, in order to exercise their economic and social rights, the civil servants have the right to establish trade unions and to become their members under the terms and conditions laid down by law (Article 26). An identical provision concerning the right to organize is also set out by the **Law on Public Servants** (Article 30). Both in the Law on Civil Servants and the Law on Public Servants one may recognize a provision on the regulation of the details concerning the right to establish and become member in trade unions for the civil, i.e. public servants, referring to the Labour Relations Act.

The General Collective Agreement for the public sector in the Republic of Macedonia covers all public service employees from the whole territory of the country. It does not provide precise anti–union discrimination contents that would be aligned with Article 4 of the Convention no. 151, but it refers to the provisions laid down in the Labour Relations Act.

Concerning the first part of Convention no. 151 (Protection of the right to organise) the practice permits different conclusions.

In terms of the first part of the Convention no. 151 (Protection of the right to organize), the practice does not recognize the existence of anti-union discrimination at the beginning of the employment, during the employment or at the termination of employment for the police employees. The trade union is active even in the stages prior to the employment of the police officer (during the induction training). Furthermore, the trade union organizations in this sphere of the public sector enjoy full autonomy from the public authorities.[30]

In terms of the first part of the Convention no. 151, the Trade Union of the Administration, Judiciary and Citizens' Associations employees in the Republic of Macedonia – AJCA finds that there are cases in the public sector where an employee's employment has been terminated due to his membership in a trade union or participation in the trade union activities. However, in none of those cases the membership in a trade union has been stated as the reason for termination. Instead, other reasons have been stated, such as: economic or technical reasons, as well as violations of the working order and discipline. In practice, there also cases that may imply to the diminished independence of the trade unions. In other words, there is some form of pressure exercised against the trade union representatives and activists, such as: reassignment to jobs inadequate to the qualifications or work experience of the trade union activist; systemic sanctioning of the trade union activist; threats to terminate

[30]Source: Interview with Tihomir Klimoski, President of the Macedonian Police Trade Union.

their employment. There are, also, withdrawals from the membership in AJCA under pressures by the managerial staff and open support to the establishment of a parallel trade union organization for the purposes of dividing and weakening the trade union movement.[31]

Concerning the first part of the Convention no. 151, the Confederation of Free Trade Unions of Macedonia – CFTU finds that in the Republic of Macedonia the regulations are compatible to the relevant provisions of the Conventions concerning the protection of the right to organize. Still, there are some obstructions to the exercise of this right, such as the case when the management of the Ministry of Defence blocked the membership applications for the Independent Defence Trade Union.[32]

2.2 Facilities to be afforded to public servants' organizations

Article 6 of the Convention no. 151 concerns the facilities that have to be afforded to the public servants' organizations in order to enable their efficient functioning. Granting such facilities is not supposed to imply interfering in the internal policies, approaches and mechanisms of operation of the public servants' organizations. On the contrary, the cogent norms set up in such a way additionally strengthen the autonomous status of the public servants' organizations and their functioning in line with their objective, which is to participate actively in the social dialogue and protect the public servants' interests.

The Law on Civil Servants and the Law on Public Servants do not provide detailed provisions concerning the exercise of the collective rights arising from employment for the public servants, including the organization and functioning of trade unions. That indicates the application of the general law, i.e. the Labour Relations Act. The provisions of LRA that concern affording the necessary facilities, primarily to the trade unions are distributed in several articles (Article 194 on the property of the trade union and employers' association; Article 189 on the prohibition of unequal treatment due to trade union membership and Article 199 on the trade union representative).

The General Collective Agreement lays down in detail the conditions for the functioning of the trade unions in the public sector in the Republic of Macedonia. The conditions for the operation of trade unions in the public sector, laid down by the provisions of the General Collective Agreement for the public sector, are further elaborated in the relevant chapters of the specific (branch) collective agreements.

The second part of the Convention no. 151 (Facilities to be afforded to public servants' organizations) is a subject of practical analysis.

Analysing the second part of the Convention No. 151 (Facilities to be afforded to the public servants' organisations), it may

[31]Source: Interview with Pece Grueski, President of the Trade Union of the Administration, Judiciary and Citizens' Associations' employees in the Republic of Macedonia – AJCA.

[32]Source: Interview with Rasko Mishkovski, President of the Confederation of Free Trade Unions of Macedonia – CFTU.

be concluded that the conditions of operation of the Police Trade Union, as regulated by collective agreement, present a solid base for successful functioning. The practice implies to the fact that the rights established by the collective agreement are duly respected. It is worth noting the possibility of the trade union representatives to utilize the business vehicles provided by the Ministry of Internal Affairs and the right to use special protocols, characteristic for higher state delegations.[33]

With regard to the second part of the Convention No. 151, the practice shows that the employers or the managers in the administrative bodies have different interpretations of the provisions on ensuring conditions for operation of the trade union representatives. Some of the trade union representatives have good conditions of operation, whilst other trade union representatives cannot establish decent communication with the members of the trade union organization.[34]

According to CFTU, the second part of the Convention No. 151 concerning the provision of facilities to the public servants' organisations, is regulated by the positive regulations and the collective agreements and it is generally respected.[35]

2.3 Procedure for determining terms and conditions of employment

The content of Article 7 of the Convention No. 151 necessitates determining the methods and utilisation of bargaining mechanisms and inclusion of the employees in public sector in the regulation of their conditions of operation, i.e. the content of their rights arising from employment.

The normative area in the Republic of Macedonia that enables the employees (including the employees in the public sector) to participate in the regulation of the content of labour relations derives from the answer to the question: what can be a subject to collective bargaining?

Article 206 of the Labour Relations Act, titled "Subject of Collective Bargaining", focuses on the scope of the issues and components of employment that can be of relevance to the collective bargaining, aimed at signing a collective agreement.

Thus, it is worth noting that the scope of issues that are relevant for collective bargaining relate equally to the social partners in the private sector, as to the social partners in the public sector.

In the broadest sense, the scope of collective bargaining includes the working conditions as well as the rights and obligations of the contractual parties. The labour law theory in the Republic of Macedonia differentiates between formal legal, normative or status

[33]Source: Interview with Tihomir Klimoski, President of the Macedonian Police Trade Union.

[34]Source: Interview with Pece Grueski, President of the Trade Union of the Administration, Judiciary and Citizens' Associations' employees in the Republic of Macedonia – AJCA.

[35]Source: Interview with Rasko Mishkovski, President of the Confederation of Free Trade Unions of Macedonia – CFTU.

and obligatory legal provisions.[36] The formal provisions of collective agreements incorporate formal legal matters, such as: the will of the subjects of collective agreements, the manner of entering into a collective agreement, the time and place of entering into agreement, the time of the entry into force, etc. The provisions with a normative, or status character, address all matters in relation to the employment – type of work, work conditions, amounts of salaries and wages, duration of working hours, occupational safety and health, termination of employment, etc. The obligatory provisions of the collective agreements regulate the mutual relations between the contractual parties, their rights and obligations, as well as any disputes concerning the interpretation and application of collective agreements, liability of the parties, etc.

Article 206 of the Labour Relations Act (Scope of Collective Bargaining) provides a symbiosis of the provisions of different legal character and ensures their legitimacy for the collective bargaining between the social partners negotiating collective agreements. In particular, the Law provides that **the collective agreements regulate the rights and obligations of the contractual parties that entered into the agreement, and they may include legal rules governing the entering into, contents and termination of employment, as well as other issues arising from or in relation to employment.**

This provision may lead primarily to the conclusion that the legislator ensured the general framework of the scope of collective bargaining, including the relevant aspects in relation to which the participants in the collective bargaining process may enter into collective agreement. Furthermore, LRA does not abstract the scope of the collective agreements in the private sector from the scope of those in the public sector. Thus, one may conclude that the collective bargaining in the public sector, as the sole legitimate form of a formal-legal dialogue between the social partners, may concern issues and elements with scope that is identical with those covered by the collective bargaining in the private sector. This conclusion is strengthened further by the provision in Article 207 (Obligations for Collective Bargaining), which highlights the obligation to establish an organized form of social dialogue, i.e. that the social partners should engage in collective bargaining and enter into collective agreements. In particular, Article 207 determines that the persons who, according to this Law, may be parties of the collective agreement will be obliged to bargain in good faith in order to enter into a collective agreement concerning the issues that, according to this Law, may fall within the scope of the collective agreement.

Article 206, paragraph 1 refers to the possibility that the employees in public services participate in the realization of three major groups of issues:

1. Article 206, paragraph 1: ‘’…**The collective agreements shall lay down the rights and obligations of the contractual parties who enter into the relevant agreement …’’**

This part of the provision refers to the so-called formal provisions, which form an integral part of the collective agreements.

[36]G. Starova, *Labour Law*, Skopje, 2008, p. 80.

Thus, the public service employees, when entering into collective agreements, also stipulate their formal provisions (entering into agreement, application, changes and supplements, monitoring of application and interpretation, as well as procedure for termination of the collective agreement).

2. Article 206, paragraph 1: ‘’… the collective agreements . . . may also contain **legal rules governing the entering into, contents and termination of employment, and other issues arising from or in relation to employment.’’**

This part of the provision provides an answer to the question whether Article 7 of the Convention no. 151 is complementary to the Macedonian legislation. The interpretation of this provisions leads to the conclusion that the public service employees face no legal obstacles or restrictions of their potential to take part in the regulation of the essential aspects of their employment, i.e. in the regulation of the status or normative elements of the collective agreement.

3. Article 206, paragraph 1: **‘’… The collective agreements shall lay down … other issues arising from or in relation to employment.’’**

This part of the provision refers to a general legal wording, which enables the employees to take part, in general, in the regulation of other issues arising from or pertaining to employment.

Nevertheless, despite the legal complementarity of Article 7 of the Convention No. 151 with the Macedonian labour legislation, the practice indicates that the employees in the public services effectively participate in the regulation of one out of the three crucial employment-related issues, namely the component “contents of the employment”. The issues related to the establishment of employment are thoroughly elaborated in the Law on Civil Servants and the Law on Public Servants. Yet, the trade unions do not have any significant role in the regulation of these issues. In terms of termination of employment, the special (branch) collective agreement contains specific provisions that govern this matter in detail.

As the previous sections of the Convention no. 151, section titled “Procedure for determining terms and conditions of employment” is also a subject to practical findings.

Macedonian Police Trade Union – MPTU has different views with regard to the issues that are subject of analysis in this section. Even though most of the contents of the collective agreement of the Ministry of Internal Affairs concerning the employment procedure and termination of employment is taken from the relevant laws, it is worth noting the participation of the PTU in the development of the Systematization Act of the relevant ministry. The trade union representatives participate in the regulation of the classified activities, as well as in the monitoring of the carrier development of the police officers. With regard to the salaries and payments, in practice there is inconsistency and conflict between the collective agreement and the Law on Budget Execution concerning the material compensations. A number of police officers have pressed charges to the competent court regarding the failure to pay part of the prearranged material

compensations. The practice shows that out of more than 5,000 charges, 3,000 were accepted by the court.[37]

Analysing the third part of the Convention No. 151, a conclusion may be drawn that the provisions related to the key employment right – right to payment – are partially regulated. The legislator has fulfilled merely one-half of the constitutional provision – the salaries and supplements to the salary in the public sector i.e. for the employees with status of civil servants are governed solely by law (Law on Civil Servants and the drafting of the single Law on Administration, a sublimate of the said law as well as the Law on Public Servants is in progress). The provisions of the Law on Civil Servants absolutely do not leave room that the collective agreements further regulate the salaries and supplements.[38]

The position of CFTU regarding the third part of the Convention No. 151, which pertains to the working conditions, is that there is room for improvement. The employment procedure i.e. entering into employment is not regulated in the General Collective Agreement, as the role of the trade union is to protect the rights of the employees once they are employed. The termination of employment, with exclusion to the voluntary or agreed termination of the employment contract is regulated by collective agreement. According to CFTU, the new general collective agreement for the public sector, which is in the phase of development, shall overcome the inconsistencies of the existing one, in terms of exercising the right to salary. This collective agreement shall establish a framework for the lowest salaries in the public sector.[39]

2.4 Settlement of disputes

Article 8 of the Convention No. 151 pertains to the settlement of disputes arising from employment. (*The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.*)

Compliant to the Macedonian labour legislation, there are several manners of settling the labour disputes. In other words, there are several manners of protecting the subjective rights arising from employment in the public sector, such as: protection of the employees' rights at employer's level and before the relevant court, the role of the trade union in the protection of the employees' rights, labour inspection and amicable settlement of individual and collective labour disputes.

[37]Source: Interview with Tihomir Klimoski, President of the Macedonian Police Trade Union.

[38]Source: Interview with Pece Grueski, President of the Trade Union of the Administration, Judiciary and Citizens' Associations employees in the Republic of Macedonia – AJCA.

[39]Source: Interview with Rasko Mishkovski, President of the Confederation of Free Trade Unions of Macedonia – CFTU.

The traditional protection of the rights arising from employment shall be carried out in a two-pillar procedure that comprises a so-called "internal part" (by filing a complaint against the first instance decision) and an "external part" (by filing an appeal to a relevant court). These two procedures are consequential and interrelated. Namely, to initiate a labour dispute based on violation of right arising from employment, the employee shall first initiate a procedure before the employer and subsequently, he shall be entitled to seek court protection. This type of protection of the employees' rights exists in all three laws: Labour Relations Act, Law on Civil Servants and the Law on Public Servants.

Finally, pursuant to Article 8 of the Convention No. 151, which principally concerns the settlement of disputes by means of negotiations, mediation, conciliation and arbitration, we may conclude that the Macedonian legislation meets the requirements for complementarity with this provision only formally.

Yet, the settlement of disputes, perceived in terms of Article 8 of the Convention no. 151 refers only to collective labour disputes.

The Labour Relations Act and the Law on Amicable Settlement of Labour Disputes shall regulate the possibility for a so-called "alternative" settlement of labour disputes.

The Law on Civil Servants and the Law on Public Servants do not encompass provisions that refer to the amicable settlement of labour disputes.

While the Labour Relations Act contains two articles (Article 182 on amicable settlement of individual and collective labour disputes and Article 183 on amicable settlement of collective disputes by means of arbitration) that imply harmonisation with Article 8 of the Convention No. 151, in practice, these provisions are underdeveloped and inapplicable.

The Law on Amicable Settlement of Labour Disputes is a legal act with a status of lex specialis in governing the matter of alternative settlement of labour disputes. It was adopted in 2007. It covers both methods of amicable settlement of labour disputes: amicable settlement of collective labour disputes through conciliation and amicable settlement of individual labour disputes through arbitration.

The operation of the National Council for Amicable Settlement of Labour Disputes is central to the implementation of this Law. This body has a status of a professional body, as stipulated by the Law on Amicable Settlement of Labour Disputes. However, it has not been established yet. Hence, the overall functionality of the Law is questionable.

Articles 31 and 32 of the General Collective Agreement for the Public Sector provide for settlement of the individual and collective disputes by means of conciliation, whereas the collective disputes that cannot be resolved through conciliation and arbitration shall be settled before the Arbitration Council.

The practical knowledge about the application of amicable settlement of labour disputes in different spheres of the public sector led to several different positions.

According to the Macedonian Police Trade Union (MPTU), the settlement of disputes by means of negotiations, mediation,

conciliation and arbitration is a segment that lacks in the practice of labour relations in public sector. The findings imply that, although in certain cases MPTU is directly involved in mediation and amicable settlement of labour disputes, there is no systematic mechanism for realisation of this complex segment. Most frequently, the mediation is deduced to a personal engagement of a trade union representative.[40]

Concerning the fourth part of the Convention No. 151, the trade union of AJCA implements a procedure that recognises a specific form of amicable settlement of labour disputes. The procedure encompasses several actions. In case of violation of the rights arising from employment, the member of the trade union of AJCA directly contacts the trade union of AJCA or its President. Afterwards, the latter contacts the trade union of AJCA. The trade union of AJCA gathers the information from the member concerning the violation of the rights arising from employment and it arranges meeting with the managing body or the employer of the institution that employs the member. The arranged meeting with the employer (or representatives of the employer) is aimed at gathering information from the other party to the dispute. Upon the analysis of the information gathered, an attempt is made for reaching a common solution for overcoming the labour dispute (mediation/arbitration). Unless a compromise is reached by means of mediation or arbitration, court proceedings should be initiated (if the member of the trade union of AJCA agrees on that).

The trade union of AJCA has noted a remarkable success in settlement of labour disputes through mediation or arbitration, which counts 65% to 70% of the total number of labour disputes. As described in the procedure, the trade union of AJCA does not engage special mediators or arbiters, but appoints the President or the Secretary General of the trade union of AJCA in that capacity.

Nevertheless, the general conclusion is that the amicable settlement of labour disputes is conducted as an informal form of mediation.[41]

Concerning the fourth part of the Convention No. 151, CFTU actualised the idea for increased use of the amicable settlement of labour disputes through the initiative for establishment of an agency for amicable settlement of labour disputes instead of the non-operational council, provided for in the Law on Amicable Settlement of Labour Disputes. CFTU organised a roundtable on amicable settlement of labour disputes, reaffirming the idea for the amending of the Law. During the roundtable, data on 150 labour disputes, registered by the Ministry of Justice, were presented. However, only 5 of them were officially registered as labour disputes settled by means of arbitration. The amicable settlement of labour disputes is a procedure conducted outside the courts, as a previous and compulsory procedure, chaired by arbiters and conciliators engaged by the Agency for Amicable Settlement of Labour Disputes. According to CFTU, the

[40]Source: Interview with Tihomir Klimoski, President of the Macedonian Police Trade Union.

[41]Source: Interview with Pece Grueski, President of the Trade Union of the Administration, Judiciary and Citizens' Associations employees in the Republic of Macedonia – AJCA.

advantages of the amicable, out of court settlement of labour disputes is multiple and it encompasses the following: free of charge initiation of the procedure; fast settlement of disputes due to the short deadlines set out in the law, the impartial dispute settlement and time and finance saving.[42]

2.5 Civil and political rights

Section "Civil and political rights" is the final part of the normative contents of the Convention no. 151. This section refers to Article 9 of the Convention, which states that public employees have, as other workers, civil and political rights that are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

The freedom of association, as a central category in the realisation of the corpus of civil and political rights, referred to in Article 9 of the Convention No. 151, is governed by the general regulations and the labour legislation of the Republic of Macedonia.

Several provisions of the Constitution of the Republic of Macedonia regulate the freedom of association. Chapter II of the Constitution of RM pertains to "Fundamental freedoms and rights of the citizen and individual". The first part of this chapter, titled "Civil and Political Freedoms and Rights", in its Article 20 explicitly guarantees the freedom of association, due to exercise and protection of political, economic, social, cultural and other rights and convictions of the citizens. Furthermore, the second part of Chapter II, "Economic, Social and Cultural Rights" in its Article 37, paragraph 1 sets forth the right of the citizens to establish trade unions. Paragraph 2 of the said article provides that the conditions for exercising the right to trade union organisation in armed forces, police and administrative bodies may be restricted by law.

The freedom of association is in detail developed in the laws governing the contents of employment.

The guarantee of the right to trade union organisation shall be laid down in the Labour Relations Act, Law on Civil Servants and the Law on Public Servants.

The freedom of association is regulated in some of the specialized laws, with relevant and reasonable restrictions conforming to their specific status of employment.

The Law on Defence contains a provision that governs the right to trade union organisation of the armed forces. Such provisions are not explicitly contained in the Law on Internal Affairs (police) and the Law on Healthcare Protection (healthcare workers), despite the fact that these laws, among the other components of employment, in detail cover the right to strike of this category of persons.

The right to strike is guaranteed by Article 38 of the Constitution of the Republic of Macedonia. Paragraph 2 of the said article restricts the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies.

Chapter XX (Strike) of the Labour Relations Law

[42]Source: Interview with Rasko Mishkovski, President of the Confederation of Free Trade Unions of Macedonia – CFTU.

comprehensively develops the possibility for the exercise of this right.

The Law on Civil Servants and the Law on Public Servants establish that the civil or public servants have the right to strike if organised in compliance with law. Further obligation in the exercise of the right to strike for this category of employees is ensuring minimum uninterrupted performance of the functions of the body and the necessary level of exercise of the rights and interests by the citizens and legal entities and implementation of the international agreements.

The General Collective Agreement for the Public Sector does not contain provisions governing the organisation of strike.

Civil and political rights guaranteed by the Convention no. 151 that are fully aligned with the Macedonian legislation were subject to practical observation by some of the trade unions from the public sector.

According to the Macedonian Police Trade Union (MPTU), the right to association and the right to strike implies to adjustment of the contents of the Convention with the regulations and practice. The Ministry of Internal Affairs stimulates the trade union association of the officials in the police. The employees in the police shall be entitled to strike that may be classified within one of the most liberal models of existing legislations.[43]

Concerning Article 9 of Convention no. 151, AJCA implies to problems that may be generated by Article 240 of the LRA. In accordance with this article, the employees participating in strike have the right solely to payment of the contributions to the salary during the strike. However, they are not entitled to net salary. This provision may influence the insignificant practicing of the right to strike.[44]

Concerning Article 9 of Convention no. 151, CFTU considers that the right to trade union association and strike is respected in the Republic of Macedonia. Nevertheless, there is insufficient initiative for the organisation of trade unions within the ministries.[45]

[43]Source: Interview with Tihomir Klimoski, President of the Macedonian Police Trade Union.

[44]Source: Interview with Pece Grueski, President of the Trade Union of the Administration, Judiciary and Citizens' Associations employees in the Republic of Macedonia – AJCA.

[45]Source: Interview with Rasko Mishkovski, President of the Confederation of Free Trade Unions of Macedonia – CFTU.

Conclusion

Labour Relations (Public Service) Convention, 1978 no. 151 is an essential element for the strengthening and intensifying the role of public servants' organizations and collective bargaining in order to regulate the labour relations of public servants. The Republic of Macedonia has ratified all fundamental conventions of the International Labour Organization, including the Convention concerning Freedom of Association and Protection of the Right to Organize, 1948 (no. 87) and the Convention concerning the Right to Organize and Collective Bargaining, 1949 (no. 98). The previous conventions guarantee the freedom of association and collective bargaining in order to conclude collective agreements. However, at the same time, they are excluded from the incorporation of these rights in the labour relations of the public servants in the state administration. Labour Relations (Public Service) Convention, 1978 no. 151 aims to broaden the scope of collective bargaining for all public service employees.

The Republic of Macedonia has not ratified the Convention no. 151, but the deep normative and analytical review of the complementarities between this ILO's regulation and the Macedonian labour and incumbents legislation leads to the conclusion that the biggest part of the Macedonian regulation are aligned with the contents of the convention. Yet, in addition, we indicate certain aspects arising from the contents of Convention no. 151 that are partly lacking in the positive regulation. These aspects could be subject of intervention within the novels of labour, i.e. incumbent legislation.

The provisions arising from the Convention number 151 are aligned with the Macedonian labour legislation, i.e. the Labour Relations Act. Hence, these provisions refer to all the employees, including the public service employees. Yet, to ensure a more comprehensive and more structured system of collective rights for the public service employees employment relations, it is essential to incorporate the provisions laid down in the Convention number 151 in the Law on Public Servants, Law on Civil Servants and the General Collective Agreement for the Public Sector. The other mechanism of incorporation may consist to refer in the LRA to all the provisions that have not been included in the LPS and LCS, and which arise from the Convention number 151.

In this context, we recommend:

1. Establishment of a legal framework for prohibition of discrimination, including anti–union discrimination, i.e. determining an adequate provision that shell refer to the protection of anti–union discrimination within the LPS, LCS and the GCA.
2. Provisions concerning the facilities to be afforded to public servants' organizations within the framework of the LPS and LCS or referral provisions towards LRA and GCA.
3. Encouraging the social partners to more extensive regulation of the terms and conditions of employment within the new GCA. This concerns particularly the following segments: determination of the salary value and the amount of the minimal wage for the public sector; the contents of the employment contract for the public sector; the duration of the fix termed employment and the terms and conditions to transform it into indefinite employment.

4. Establishing the National Council for Amicable Settlement of Labour Disputes and practical implementation of the system of amicable settlement of labour disputes, regulated by LASD, LRA and GCA.
5. Incorporating a provision concerning the right to trade unions' assembly in the Law on Interior Affairs and the Law on Health Protection. Further, we recommend deepening the contents of the provisions concerning the right to strike and its limitations within the LPS and LCS, as well as encouraging the social partners to mutual regulation of this right within the frames of the GCA.

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