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## **INDUSTRIAL RELATIONS IN NORTH MACEDONIA 30 YEAR AFTER THE FALL OF THE BERLIN WALL – KEY CHALLENGES FACED BY INDUSTRIAL ACTORS**

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### **I. INTRODUCTION**

The fall of the Berlin Wall on November 9, 1989, triggered tectonic changes and major transformations in the economic and political systems of the former communist countries from Central and Eastern Europe. Changes in the economic systems of these countries consisted of transformations in their ownership structures (from state-owned or socially-owned means of production to private ownership), their markets (from planned to market economy) and their macroeconomic environments and policies, while political changes introduced political pluralism and civil society. Such a situation didn't go past North Macedonia too.

The study and regulation of the “problems of labour” as a subject of interest to industrial relations have their chronology and evolution. Starting in the first industrial societies in the XIX century, the so-called “labour problems” are still present even in today’s technological societies and knowledge-based economies. Taking into consideration the multidimensionality of the “problems of labour”, scientific doctrine (primarily in countries of an Anglo-American origin) developed a special discipline called “industrial relations” which has an interdisciplinary character. There are several different definitions of the term “industrial relations”. They principally vary in their scope. Hence, “broader” definitions of industrial relations encompass relationships between workers and employers in their totality, i.e. they cover all aspects of labour-management relations. These aspects concern the areas of labour economics, human resource management, industrial psychology, industrial sociology, labour law, labour history and political sciences.<sup>1</sup> Broader definitions reflect the “original paradigm” of industrial relations and display its subject matter and content in the period up to World War II. Compared to broader definitions, the “narrower” definitions of industrial relations focus solely on the study of trade

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<sup>1</sup> See: Kaufman.E.Bruce, *The original industrial relations paradigm: foundation for revitalizing the field* in *New Directions in the Study of Work and Employment (Revitalizing Industrial Relations as an Academic Enterprise, 2008)*, 33.

unions and their relationships with the companies' management bodies (ie, employers).<sup>2</sup> Narrower definitions reflect the so-called "modern paradigm" of industrial relations that focuses solely on collective labour relations, encompassing all relationships between workers as a collective and employers, thereby separating this discipline from the discipline of human resource management. In countries belonging to the Anglo-American (ie, common law) legal systems, industrial relations encompass the interrelations of people at work, the problems that arise between them, the ways of regulating their wages, the working conditions and the like (in fact "industrial relations" in a broader sense, and industrial relations in a "narrower" sense, ie, collective labour relations). In European countries belonging to the civil law systems, industrial relations are usually equated with "collective labour relations", ie, collective labour law. Yet, it should be borne in mind that the discipline of industrial relations is not limited to the employment relations in industry. Besides the relations between "industrial actors" in the industry, it also covers relations (primarily collective labour relations) that occur in the service sector and in the public sector.<sup>3</sup> Industrial actors are considered the following subjects: workers (ie, their representatives), employers (ie, their representatives) and the state.<sup>4</sup>

In North Macedonia, we include the following aspects of collective labour relations in defining the scope (subject matter and content) of the industrial relations: workers' and employers' organizations (i.e trade unions and employers' associations) and their administration; tripartite social dialogue (i.e economic-social council); participation of workers at the workplace; collective bargaining and collective agreements and collective labour disputes and their resolution. These contents are primarily but not exclusively studied by labour law. Relations between the industrial actors can also be analyzed through the prism of broader social disciplines such as: labour economics, labour sociology, labour history and political sciences. Hence, the scientific discipline of "industrial relations" both in other European countries belonging to the civil law legal systems and in North Macedonia tends to address the issue of collective labour relations through a multidisciplinary approach. All this leads to the achievement of the key objectives of industrial relations, which are: establishing cooperative relationships between workers (ie their representatives) and employers (ie their management bodies), creating industrial (social) peace and developing and promoting industrial democracy.

## **II. OVERVIEW OF THE DEVELOPMENT OF INDUSTRIAL RELATIONS IN THE COUNTRIES OF CENTRAL AND EASTERN EUROPE AND IN NORTH MACEDONIA – 30 YEARS AFTER THE FALL OF THE BERLIN WALL**

The fall of the Berlin Wall, i.e the dismantling of the so-called "iron curtain" that created an imaginary demarcation line between countries of or influenced by Western Europe and countries belonging to the former communist bloc under the USSR influence, led to significant consequences for the shaping and regulation of industrial relations in the Central and Eastern European countries. In this context, huge impact upon these countries' industrial relations systems had the sharp decline in union membership and density rates of less than 20%, which

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<sup>2</sup> Whalen, Charles J, *Introduction: new directions in the study of work and employment* in *New Directions in the Study of Work and Employment (Revitalizing Industrial Relations as an Academic Enterprise, 2008)*, 3.

<sup>3</sup> Cutcher-Gershenfeld, Joel, *Reconceptualizing industrial relations in a global, knowledge-driven economy* in *New Directions in the Study of Work and Employment (Revitalizing Industrial Relations as an Academic Enterprise, 2008)*, 22.

<sup>4</sup> Pradip Kumar Das, (*Industrial Relations: and Indian Perspective, 2015*), 11.

during the former communist regime reached as high as 90% as trade unions played a significant social role in distributing certain social services and benefits for workers such as housing, vacations, purchasing various food products and the like.<sup>5</sup> The dramatic decline in the unionization rate of workers and the general decline in the social power of trade unions were the result of several different factors. Among them, the most significant were: privatization of state-owned or socially owned undertakings, restructuring of old enterprises, growth of the service sector and others. The relationship between privatization, regardless of how it was conducted in the various Central and Eastern European countries, and the fading of trade unions organized in companies, often depended on the outcome and consequences of the privatization itself. In many cases, the "survival" of companies was reflected in the survival of the trade unions themselves. However, it is worth noting that privatization itself had led to more challenges for trade unions, reflecting negative consequences for unionization and union density. Such challenges, for example were: the significant increase in the number of newly established undertakings in which trade unions failed to expand their networks of organization; the increase in the number of micro, small and medium-sized companies as well as large companies set up as a result of foreign direct investments - "by definition" hostile to trade unions and the like. An equally important factor in the decline of trade union membership was the restructuring of old large enterprises in the ex-communist countries of Central and Eastern Europe. Restructurings were caused by the low level of competitiveness and technological obsolescence of companies, and their most common consequences were bankruptcies, collective layoffs and "chronic" furloughs of workers. Expansion of the service sector and the increase of employment in services at the expense of industry also had an extremely large impact on trade union flows. Again, the main causes of such a situation were the growth of the newly established micro and small companies using non-standard forms of work to engage workers (for example: fixed term work, part-time work, casual work, various forms of externalization, etc.), further on, the increased functional and spatial flexibility in the organization of business and production processes resulting in individualization and atypization of work, the application of modern information communication technologies and the like. Finally, in addition to the set of "external" factors that influenced the gradual erosion of trade unions, the reasons for the decline in unionism and union density should also be located "internally" within the unions themselves. Their disunity (due to political-ideological, narrow-interest or similar differences), non-energetic protection and promotion of the rights and interests of their members and the workers in general, the absence of a membership renewal strategies and strategies for recruitment of new members, had an equally significant impact on the weakening of the trade union movement and thus the role of trade unions in society.

After the independence of Macedonia from the former SFRY, almost all the aforementioned trends concerning the industrial relations were subsequently present in the country. In any case, the specifics of the industrial relations in our country may be divided into two developmental stages: *first stage* (encompassing the period from the adoption of the first Law on Labour Relations of 1993<sup>6</sup> until the adoption of the second Law on Labour Relations of 2005<sup>7</sup>) and *second stage* (encompassing the period from the adoption of the second Law on Labour Relations of 2005 until today).<sup>8</sup>

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<sup>5</sup> Bagić, D., *Industrijski odnosi u Hrvatskoj – Društvena integracija ili tržišni sukob*, (TIM press, Zagreb 2010), 71.

<sup>6</sup> The Law on Labour Relations, *Official Gazette of the Republic of Macedonia*, no. 80/93.

<sup>7</sup> The Law on Labour Relations, *Official Gazette of the Republic of Macedonia*, no. 62/05.

<sup>8</sup> At the time of writing this paper, a third phase in the development of North Macedonia's labour legislation has already begun. This involves the adoption of new law/s in the field of labour relations. Unlike the previously used

*Industrial relations in the Law on Labour Relations of 1993* were regulated in a superficial way. Such a regulatory framework, on the one hand, left wide room for autonomous development of different segments of collective labour relations (e.g. establishment, organization, functioning and competencies of trade unions and employer's associations, collective bargaining, etc.), but on the other, it created certain legal gaps that generated problems in the practice of industrial relations and development of industrial democracy. Given the assumption that state interventionism in the regulation of industrial relations is a common denominator of almost all post-communist Central and Eastern European countries, the absence of an adequate regulatory framework for collective labour relations in Macedonia contributed to an inadequate level of development of tripartite social dialogue and to certain problems related to trade unions and employer's associations organizing at a higher level, representativeness criteria for the purpose of participation in collective bargaining and conclusion of collective bargaining agreements and the like.<sup>9</sup> In the first stage of development of the industrial relations in Macedonia, labour legislation did not regulate tripartite social dialogue at all (i.e. didn't envisage any provisions on the establishment, functioning and competencies of the Economic and Social Council).<sup>10</sup> It also did not adequately stipulate the structure of trade unions and employers' associations or more precisely their forms of organizing at a higher level. Instead of clear and objective criteria for determining the representativeness of the social partners, the 1993 Law on Labour Relations provided for a "majority" model of representation, based on which the "majority" union and employers' organizations had the right to enter into collective bargaining and to conclude collective agreements.<sup>11</sup> On the workers' side there were two trade union federations/confederations: the Federation of Trade Unions of Macedonia (SSM) and the Union of Independent and Autonomous Trade Unions of Macedonia (UNASM).<sup>12</sup> As for the

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nomotechnical approach, where the regulation of labour law was built upon one general and fundamental Law (the Law on Labour Relations) that became a codifying act of Macedonian labour law because it systematised both individual and collective labour law issues, the "new" approach of the initiator (a working group composed of representatives of the Ministry of Labour and Social Policy and the Social Partners) for the adoption of the new law/s radically abandons the previously established nomotechnical practice. In 2018, two new Laws were drafted, the first of which is titled "Draft-Law on Labour Relations" and aims at regulating individual labour relations; the second, titled "Draft-Law on Trade Unions, Employers' Associations and Collective Bargaining" aims at regulating collective labour relations. The authors of this paper advocate in favour of a holistic approach in the regulation of labour law, against the division of issues falling within the scope of individual and collective labour law in separate legislation.

<sup>9</sup> Within the European models of industrial relations systems, theory distinguishes a separate and distinct model that has been developed in the last twenty years encompassing former socialist countries of Central and Eastern Europe. This model is called *transitional model* of industrial relations and is characterized by the dominant role of the state in the field of collective labor relations and social dialogue. See: Каламатиев.Т и А.Ристовски, *Имплементација европског социјалног модела у радно законодавство Републике Македоније*, (Зборник радова Правног Факултета у Нишу, 2014), 115.

<sup>10</sup> Despite the lack of statutory provisions to institutionalize tripartite social dialogue, the then social partners (the Government of the Republic of Macedonia, the Economic Chamber of Macedonia and the Federation of Trade Unions of Macedonia) in 1996 concluded an Agreement establishing the Economic and Social Council (see: *Agreement on establishing the Economic and Social Council, Official Gazette of the Republic of Macedonia, no.7/97*), which, however for many years had failed to "revive" the practical exercise of its competencies and functions.

<sup>11</sup> See: Kalamatiev.T and A.Ristovski, *Trade union pluralism – progression or regression in the protection of workers' rights in the Republic of Macedonia?* (SEER Journal for Labour and Social Affairs in Eastern Europe, Volume 15, 2012), 396.

<sup>12</sup> See: Каламатиев.Т и А.Ристовски, *Законот за работните односи и плурализацијата на синдикализмот – предност или недостаток на современиот социјален дијалог, со посебен осврт кон измените и*

organization of the employers, they were represented by the Economic Chamber of Macedonia. This type of representation was rather a consequence of the lack of an adequate regulatory framework for constituting specialized employers' organizations designed to protect and represent their interests in social dialogue and collective bargaining vis-à-vis trade unions, than a real need for affiliated employers to be represented by the Economic Chamber of Macedonia which required a mandatory membership for employers and whose competencies were primarily focused on promotion of companies' business and commercial interests.<sup>13</sup> In fact, the absence of statutory provisions and procedures for establishing and registering employers' organizations was also noted by the ILO supervisory bodies, which in 2001 required from the Government of the Republic of Macedonia to act upon the complaint of the Organization of Employers of Macedonia (ORM) and to create the conditions necessary for the effective exercise of the freedom of association in accordance with Convention No. 87 on Freedom of Association and Protection of the Right to Organize.<sup>14</sup> Taking into consideration the regulatory framework in the first stage of the development of Macedonian industrial relations, it may be concluded that in the effectuation of collective labour relations "monism" prevailed over "pluralism".

*The second stage of development of the industrial relations in North Macedonia* began with the adoption of the *Law on Labour Relations of 2005* which is still in force. Considering the numerous amendments and modifications to the LLR of 2005 (more than 30 in total) that significantly altered the original legal framework of the industrial relations, the second stage can be divided into two sub-stages: *first sub-stage* (from the adoption of the basic text of the LLR of 2005 to the amendments and modifications to the LLR of 2009) and *second sub-stage* (from the adoption of the 2009 amendments and modifications to the LLR to date).

What is characteristic of the basic text of the LLR of 2005 (and thus the *first sub-stage*) is that it created a more comprehensive statutory framework of industrial relations and managed to improve some of the shortcomings of the previous Law of 1993. In this respect, the Law on Labour Relations of 2005 established a procedure for registering and obtaining legal personality status of trade unions and employers' associations as well as of their organizations at a higher level, improved the protection against anti-union discrimination of workers and union representatives, and inaugurated the Economic and Social Council as a body of tripartite social dialogue. Of particular importance is the introduction of new criteria and conditions for representativeness of the social partners for participation in collective bargaining and concluding collective agreements, ie the introduction of "representativeness" (minimum threshold of 33% of employees) at the expense of the "majority" clause (minimum half of the employees).<sup>15</sup> Thus, according to the labour legislation of that time, a prerequisite for acquiring representativeness of trade unions and employers' associations was to meet a minimum threshold of 33% of the members, depending on the level of organization and collective bargaining. However, given the

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дополнувањата на Законот за работни односи во врска со колективното договарање, (Деловно Право, 2012), 144-145.

<sup>13</sup> See: L.Hristova, A.Majhosev, *Former Yugoslav Republic of Macedonia (FYROM): Industrial Relations Profile*, (EUROFOND, 2012), 5.

<sup>14</sup> In the complain submitted to the ILO on June 11, 2001, the Organization of Employers of Macedonia (ORM) outlined the legal obstacles that hindered its registration and thus the recruitment of new members, opening a bank account, use of its proper stamp and collection of membership fees. ORM (formally established as a civil society association in 1998) noted that the industrial relations legislation in Macedonia only regulates the procedure for registration of trade unions, but not the employers' associations. See: *Case No 2133 (North Macedonia) - Complaint date: 01-JUN-01*.

<sup>15</sup> See: Kalamatiev.T and A.Ristovski, op.cit, 397.

fact that Macedonian industrial actors were still in a phase of "post-transition agony", even such a reduced representational threshold (from at least 50% to minimum 33%) has also appeared to be problematic in terms of establishing pluralism in industrial relations. Additionally, industrial relations legislation in the period from 2005 to 2009, had not yet developed a comprehensive and coherent system of legal conditions for acquiring representativeness of the social partners for the purpose of participating in tripartite social dialogue. While SSM and ORM emerged as the main representatives of workers and employers and signatory parties to the General Collective Agreement for the private sector of the economy in 2006<sup>16</sup>, "new" industrial actors on both the workers and employers' side positioned themselves in the Macedonian industrial relations system. In 2005, several trade unions (the Independent Trade Union of Education, Science and Culture of the Republic of Macedonia – SONK, the Independent Trade Union of Defence Workers, the Federation for Transport and Communications and the Trade Union of Financial Organizations of Macedonia) dissociated from SSM and formed a new trade union confederation (Confederation of Free Trade Unions of Macedonia – KSS).<sup>17</sup> Although the KSS was starting to become recognizable industrial actor in industrial relations, the Confederation waited until 2008 to sign the first General Collective Agreement for the public sector.<sup>18</sup> On the employers' side, it is important to mention the Business Confederation of Macedonia (BKM), which was first registered in the Employers' Register in the Ministry of Labor and Social Policy in 2006. Still, BKM has failed to obtain an order for representativeness both in the first sub-stage (2005-2009) and the second sub-stage of the development of the industrial relations in North Macedonia (from 2009 to date). Problems with the conditions and criteria for acquiring representativeness of the social partners were also highlighted in the Observation of the Committee of Experts on the Application of the ILO Conventions and Recommendations of 2006. In the Observation, the Committee requested the *Government to modify the requirement to collective bargaining that a trade union and the employers (or the organization of employers) must represent 33 per cent of employees (for all levels) and to introduce fair determination of the representativeness of the highest level based on objective and pre-established criteria and for the composition of the negotiation board when no trade union organization represents 33 per cent of employees or no employers' organization meets the same requirement.*<sup>19</sup> It was only in 2009 when the Macedonian Government complied with the requests of the ILO on the identified segments of the industrial relations legislation.

With the 2009 amendments to the Law on Labor Relations<sup>20</sup>, *the second sub-stage of the development of the industrial relations*, which lasts until today, has actually begun. The Law of 2009 on amending and supplementing the Law on Labour Relations is primarily characterized by the reorganization and revision of the criteria and conditions for representativeness, ie. introduces four types of representativeness of trade unions and employers' associations which are supposed to comply the four different levels of social dialogue and collective bargaining.<sup>21</sup> While the first type of representativeness (or representativeness at national level) presupposes

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<sup>16</sup> Општ колективен договор за приватниот сектор во областа на стопанството, *Сл.весник на РМ*, бр.76/2006.

<sup>17</sup> See: <https://kss.mk/%d0%b7%d0%b0-%d0%bd%d0%b0%d1%81/> (пристапено на 17.03.2020)

<sup>18</sup> Општ колективен договор за јавниот сектор, *Сл.весник на РМ*, бр.10/08.

<sup>19</sup> See: Observation (CEACR) – adopted 2006, published 96<sup>th</sup> ILC Session (2007)

<sup>20</sup> Законот за изменување и дополнување на Законот за работните односи, *Сл.весник на Р.Македонија*, бр.130/09.

<sup>21</sup> See: Каламатиев.Т и А.Ристовски, *Колективно договарање во јавниот сектор на Република Македонија со посебен осврт кон колективното договарање во здравствената дејност (терцијарно здравство)*, (Деловно Право, 2013), 266.

stipulating conditions for the institutionalization of tripartite social dialogue, the other three types of representativeness (at the level of private or public sector; at branch, that is department level and at the level of an employer) are directed solely towards bipartite social dialogue, ie collective bargaining at different levels. The minimum threshold for *representativeness of trade unions for the territory of North Macedonia (ie at national level)* shall be at least 10% of the total number of employees in North Macedonia paying union membership fee. In addition to this requirement, trade unions must meet other cumulative requirements as well, such as: to be registered in the register of trade unions kept by the ministry responsible for issues in the field of labor; to associate at least three unions at a national level from different branches, that is, departments, which are registered in the register of trade unions kept by the ministry responsible for issues in the field of labor; to act at a national level and to have members registered in at least 1/5 of the municipalities in the Republic of North Macedonia; to act in accordance with its statute and its democratic principles and to have membership of trade unions that have signed or acceded to at least three collective agreements at a branch, that is, department level.<sup>22</sup> Identical criteria for acquiring representativeness at a national level are stipulated for *employers' associations*, with the difference that the minimum representativeness threshold at a national level should be at least 5% of the total number of employers in the private sector or the employers members of the association should employ at least 5% of the total number of employees in the private sector of the country.<sup>23</sup> As regards the minimum threshold for representativeness of trade unions for the purpose of participating in collective bargaining at the level of private/public sector, branch, that is department level or at the level of an employer, the 2009 amendments to the LLR require at least 20% of the employees employed at any level respectively to be members and pay membership fees.<sup>24</sup> Employers' associations obtain representativeness status at a level of private sector in the economy or at a branch that is department level, if at least 10% of the total number of employers in the private sector are members or employ at least 10% of the total number of employees in the private sector.<sup>25</sup> The new, improved legal framework for the representativeness of social partners had a positive impact on the development of trade union pluralism, while the industrial relations system in the country begun to bear resemblance to the industrial relations systems of the countries belonging to the "corporatist model".<sup>26</sup> Trade union pluralism is reflected in the acquisition of a representativeness status at a national level of two trade union confederations (SSM and KSS), while "corporatist" features are found in the renewal of the tripartite social dialogue through the adoption of the new 2010 Agreement on the establishing of the Economic and Social Council<sup>27</sup> but also through the signing of the Memorandum of

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<sup>22</sup> See: Закон за изменување и дополнување на ЗРО од 28.10.2009, чл.34, став 1.

<sup>23</sup> See: Закон за изменување и дополнување на ЗРО од 28.10.2009, чл.35, став 1.

<sup>24</sup> See: Закон за изменување и дополнување на ЗРО од 28.10.2009, чл.34, став 2 - 5.

<sup>25</sup> See: Закон за изменување и дополнување на ЗРО од 28.10.2009, чл.35, став 2 и 3.

<sup>26</sup> The corporatist model of industrial relations is a unifying framework that subsumes the patterns of industrial relations of the Nordic countries and certain countries of Central and Western Europe (e.g. Germany). It is characterized by partnerships between trade unions, employers and the state, peaceful resolution of industrial conflicts and collective bargaining at national (interindustrial) or industrial, sectoral or branch level. See: Каламатиев.Т и А.Ристовски, (n 11), 114.

<sup>27</sup> With the (re) establishment of the Economic and Social Council in 2010, some of its activities have begun to be carried out. For example, one of the ESC's biggest successes is reaching out to social partners to set the minimum wage amount in Macedonia. In fact, for a long time (more than 20 years since independence), North Macedonia did not regulate the minimum wage. The amount of the national minimum wage was agreed for the first time at the session of the Economic and Social Council on 1.10.2011. This was followed by the adoption of the first Macedonian Law on Minimum Wage in 2012. Apart from the agreement on the national minimum wage, within the

Understanding between three trade union confederations (SSM, KSS and UNASM). What is also worth mentioning is that in the period from the adoption of the 2009 amendments to the LLR to date, a major statutory change concerning the conditions for registration and obtaining legal personality status of trade unions was undertaken.<sup>28</sup> Other aspects of the regulation of industrial relations, have generally remained "status quo", while new contents (e.g. provisions on *the broadening of the definition of "worker" and the personal scope of the right to association and collective bargaining*; *the defining of the terms "union representatives" and "workers' representatives"*; and *the resolving of the dilemmas associated with registering and acquiring legal personality status of trade unions*, etc.) are expected to be stipulated into the new labour legislation in the "third stage" of the development of industrial relations in North Macedonia.

### **III. KEY CHALLENGES FACED BY TRADE UNIONS IN NORTH MACEDONIA**

There are many different challenges faced by industrial actors and above all, trade unions in North Macedonia. Some of these challenges are entirely *endogenous* and depend on the industrial actors themselves (e.g. such are the challenges concerning the establishment of better cooperation between confederations and branch trade unions affiliated with them, the introduction of more adequate evidence of membership, the increased capacity for recruiting new members and expanding the network of organizing, the provision of better and more quality services and benefits to the members, etc.), while others are *exogenous* and depend on objective factors that are part of existing legislation. The legal framework governing industrial relations in North Macedonia is in a state of "transition" between the existing and the new labour legislation that is under preparation. Additionally, we itemize particular segments of the existing labour legislation that cause certain difficulties for trade unions in strengthening their own organizational capacities and industrial relations in general. Such segments are: the personal scope of application of the right to trade union association and collective bargaining; the adequate definition of the term "workers' representatives" and the registration and obtaining legal personality status of trade unions.

#### **1. Personal scope of application of the rights to trade union association and collective bargaining**

The *personal scope of application of the rights to trade union association and collective bargaining* depends on the restrictiveness or extensiveness in determining the scope of entities that may be subjected to these rights. This raises the dilemma of "whether the rights to associate in trade unions and bargain collectively are rights enjoyed only by workers, ie. employees or do they apply to a broader category of persons engaged in the process of labour"? While the Constitution of the Republic of North Macedonia defines "citizens" as beneficiaries of the rights to trade union organization<sup>29</sup>, the Law on Labour Relations provides for the term "workers". It is

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last 10 years the Economic and Social Council considered the contents of several Draft-Laws on amending and supplementing the Law on Labour Relations as well as other draft laws in the fields of social protection, social insurance, occupational health and safety, peaceful settlement of labour disputes, etc. See: CEE Labour Legislation database (CEElex), North Macedonia – 2019.

<sup>28</sup> See: Закон за изменување и дополнување на Законот за работните односи, *Сл.весник на Р.Македонија*, бр.11 од 24.01.2012 година.

<sup>29</sup> See: Устав на РСМ, *Сл.весник* бр. 52/1991 (пречистен текст), чл.37, став 1.



evident that the term "citizen" has a broader scope than the term "worker" which is defined in the labour legislation as "any natural person who has entered into an employment relationship under a contract of employment".<sup>30</sup> This conditional "contradiction" between the Constitution and the Law on Labour Relations also has practical implications as the type and number of natural persons who don't have an employment status of "workers" ie, "employees" is increasing, while they need the exercise of their rights to trade union association and collective bargaining. Such persons for example are: the workers in "factual employment relationship" (i.e. undeclared or informally employed persons) including workers in so-called "disguised employment relationship" (i.e. bogus self-employment); different kinds of "freelance workers" or other types of self-employed persons economically dependent on a single client (e.g. journalists, individual farmers, consultants, insurance agents, drivers, etc.).<sup>31</sup> *De lege ferenda*, labour legislation should redefine the term "worker", taking into account the ILO Employment Relationship Recommendation No. 98 and applicable norms and practices of comparative labour law. In this respect, we believe that the Law on Labour Relations should distinguish between the terms "employment relationship" as a broader and "employment contract" as a narrower term. Additionally, the status of "workers" which guarantees the exercise of the rights to freedom of association and collective bargaining should also be extended to the so-called "economically dependent workers" or "dependent self-employed persons."<sup>32</sup> It seems that such an "attempt" is also made in the draft versions of the new labour legislation, where the intention is to extend the rights of founding and joining a trade union also to rural workers, ie persons engaged in agriculture, crafts and the like.

## 2. Workers' representatives

The problem with the determination and proper definition of the term "*workers' representatives*" appears at the very moment the Macedonian labour legislation introduces the mechanism of informing and consulting workers, i.e. their representatives. Macedonian labour legislation has been waiting for nearly two decades (from the adoption of the first Law on Labour Relations of 1993 to the first significant attempt to introduce and systematically regulate the rights of information and consultation in 2010) whereas such an "attempt" being more a consequence of the obligation to harmonize with the EU labour law rather than a result of the self-initiative or pressure of the social partners in the country. In this regard, with the 2010 amendments to the Law on Labour Relations, subject to statutory regulation become both the *general legal regime (i.e. the general framework) for informing and consulting workers* (issue regulated by the EU Directive 2002/14/EC on establishing a general framework for informing and consulting employees) and the special legal regimes for informing and consulting workers concerning specific issues of interest to workers such as *collective redundancies* (issue regulated by the EU Collective Redundancies Directive 98/59/EC ) and transfer of undertakings (issue regulated by the EU Directive 2001/23/EC on safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses). The concept of informing and consulting workers, i.e. their representatives, is usually explicated and studied as

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<sup>30</sup> ЗРО, чл.5, став 1, точка 2.

<sup>31</sup> See: Каламатаиев.Т и А.Ристовски, *Фактички радни однос и хонорарни рад versus македонског правног система*, (Радно и Социјално Право – часопис за теорију и праксу радног и социјалног права, 2015), 2-4.

<sup>32</sup> See: Каламатаиев.Т и А.Ристовски, *Економски зависен труд и економски зависни работници – нова форма на работа и нов (tertium genus) работно-правен статус на работници помеѓу вработените и самовработените лица*, (Годишник на Правниот Факултет „Јустинијан Први“ во Скопје во чест на Јане Миљовски, 2016).

an integral part of the broader term “participation”, that is, workers’ participation in management or decision-making in companies. In theory, the concept of workers’ participation (or so-called participative management) is treated as an alternative to autocratic staff management in the undertakings.<sup>33</sup> In its broadest sense, workers’ participation covers all aspects of employee involvement, ranging from the rights to information, consultation and co-determination to representation and participation in companies management bodies and collective bargaining.<sup>34</sup> Still, it is noteworthy that collective bargaining is usually separated from other forms of workers’ participation in decision-making in companies. One of the major differences between collective bargaining and other forms of employee involvement in business processes in companies, concerns the subjects responsible for their implementation and realization. While collective bargaining is almost always and everywhere an exclusive right of trade unions and is mediated by trade union representatives, other forms of employee participation are usually left to the assemblies of workers personified in the so-called works’ councils (staff committees, consultative committees, etc.) or to the elected representatives of workers. In this respect, there are also various competences which can be ascribed to the different forms of representation of workers. Thus, trade unions are by definition “membership-based” organizations and trade union representatives primarily represent and act on behalf of their members. Unions are usually organized at a higher level (department, branch, industry, sector, state) and have the exclusive competence to participate in bipartite and tripartite social dialogue (i.e. collective bargaining and participation in economic and social councils) and collective labour disputes including initiating and organizing strikes as an industrial actions aimed at putting pressure on employers.<sup>35</sup> On the other hand, the assembly of employees is not a workers’ membership-based organization but only a body, i.e. plenary body with a competence to elect works’ councils or workers’ representatives, who further on, have the authority to represent the rights and interests of all employees in the undertaking and to act as a “bridge” of communication between the employer and employees.<sup>36</sup> It should be borne in mind, however, that the works’ councils or workers’ elected representatives should not derogate or substitute the right of workers to form and join trade unions. On the contrary, their existence and actions should serve to gauge the unionization rate in the undertaking and to encourage nonunionized workers to form and/or join trade unions.<sup>37</sup> Representation of workers in North Macedonia is generally left to trade unions, i.e. their representatives. Analyzing the contents of the Law on Labour Relations it can be concluded that the Law makes an implicit distinction between the terms “*trade union representatives*” (whose protection is regulated in Chapter XVIII “Trade Unions and Employers’ Associations”) and “*workers’ representatives*” (whose role and competencies are put in the context of the general and specific regimes of informing and consulting employees). *De iure*, the existing text of the Law on Labour Relations also provides for a definition of the term ‘workers’ representatives’.<sup>38</sup> However, if one takes an in-depth analysis of the definition and determination of the term “workers’ representatives” for informing and consulting prescribed by the Law, might come to the conclusion that the existing definitions represent a literal and vague reproduction of the

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<sup>33</sup> Servais. Jean-Michel, *International Labour Law*, (Wolters Kluwer, 2017), 116.

<sup>34</sup> See: Kalamatiev.T, A.Ristovski, *Participacija Radnika u Savremenim Industrijskim Odnosima*, (Pravni Život, 2012), 504.

<sup>35</sup> Frintič Domogoj et al, *Detaljni Komentar Zakona o Radu*, (Radno Pravo, 2017), 921.

<sup>36</sup> Kalamatiev.T, A.Ristovski (n 36), 509.

<sup>37</sup> See: Servais. Jean-Michel (n 35), 117.

<sup>38</sup> Under the term “workers’ representatives” the LLR defines “*any representatives of the employees anticipated by law and the laws of the member states of the European Union*” (See: LLR, Art.5, para 1 (16)).

appropriate provisions of the EU Directives concerning information and consultation of employees (e.g. Directive 2002/14/EC, Directive 98/59/EC and Directive 2001/23/EC) and as such have no substantial meaning in the Macedonian labour law system. Macedonian labour legislation neither provides for any procedure for the election of workers' representatives for information and consultation, nor does it distinguish their responsibilities from those of trade union representatives. This leads to the conclusion that workers in North Macedonia are *de facto* represented only by trade unions, i.e. trade union representatives. Such representation through trade union representatives encompasses both the traditional trade union competencies (collective bargaining, tripartite social dialogue, collective labor disputes, and strikes) and the competencies related to employee participation (information and consultation). Hence in practice, the following dilemmas are rightfully posed: *Which are the subjects and in which way will they represent workers in the exercise of their guaranteed rights to being informed and consulted by their employers, in terms when those workers are not associated or are not members of a trade union? Is it reasonable and justified to expect trade unions to be the main and only legal channel through which the exercise of the rights to information and consultation of employees shall be carried out, given that trade union density in North Macedonia is estimated at around 20% of the total number of employees in the country? Can it be expected from employer-level trade union organizations to legitimately and appropriately represent the rights and interests of all employees at the undertaking when it is known that they primarily represent and act on the behalf of their members, as well as in situations where Macedonian labour legislation questions the legal subjectivity status of trade union organizations at the employer level?* The Law on Labour Relations, *de lege ferenda*, will have to give answers to the previously asked questions. In this respect, it is desirable, first of all to adequately implement the ILO Convention on Workers' Representatives No.135 (which is already ratified by the Macedonian Parliament) and to correctly interpret and develop the definition of the term "workers' representatives" - set out in the said Convention.<sup>39</sup>

### **3. Legal personality of trade unions**

The question of the legal personality of trade unions is also one of the issues that cause the most dilemmas in practice. Legal personality (subjectivity) enables trade unions to participate independently in legal transactions and as such to be beneficiaries of property and other ownership rights. It also enables trade unions to appear as plaintiffs in collective labour disputes and to exercise their basic and principal rights, functions and activities such as representing and acting on the behalf of their members, participating in collective bargaining and signing collective bargaining agreements and organizing strikes. Generally, by acquiring legal personality status, trade unions obtain legal autonomy, transparency, individuality, stability and formality in their functioning in society.<sup>40</sup> The question of the legal personality of trade unions in North Macedonia is closely linked to questions about the conditions for establishing a trade union, the types, i.e. levels of trade union organizing and the legal procedure for registering trade unions. In the spirit of the ILO Convention on Freedom of Association and Protection of the

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<sup>39</sup> ILO Workers' Representatives Convention no.135, under the term "workers' representatives" defines two types of representatives: first, *trade union representatives*, namely, representatives designated or elected by trade unions or by members of such unions and secondly, *elected representatives*, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. See: ILO Convention no.135, art.3.

<sup>40</sup> See: Мрџчков,В. (Трудово Право, 2015), 766.

Right to Organize No. 87, the legal framework for regulating the conditions for establishing and joining trade unions in North Macedonia is limited to minimum provisions that primarily refer to the internal, autonomous rules of the trade unions. State interventionism is more prevalent when it comes to the procedural requirements (e.g. registration and acquiring legal personality status of trade unions) compared to the substantial (material) conditions for establishing a trade union. In this respect, it is worth noting that the Law on Labour Relations by none of its provisions stipulates substantial requirements for establishing a trade union (e.g. the minimum number of workers necessary to form a union), nor does it explicitly draw the outlines of the trade union organizing structure in the country (e.g. basic trade union organizations, i.e. subsidiaries at an employer level; branch, that is department level trade unions and national level trade unions, that is federations or confederations). These issues are usually regulated by internal acts, i.e. trade union statutes. The only implicit differentiation of trade unions in terms of their level of organization involves distinction between the terms "trade unions" and "higher-level trade unions". While the legislator failed to define the term "trade union" more meticulously leaving it up to practice to solve the dilemma whether as such shall be treated only trade unions organized at a branch, that is department level or trade unions organized at an employer level (e.g. basic trade union organizations, union subsidiaries, etc.) or both the first and second types of trade unions, it implicitly defined the term "higher-level trade union". Thus, the Law envisages that *trade unions and employers' associations may constitute their own unions or other forms of associations in which their interests shall be associated at a higher level (unions and employers' associations at a higher level)*.<sup>41</sup> This provision may lead to the conclusion that the only "higher-level trade unions" are the trade union confederations (e.g. SSM, KSS and others). However, the legislator uses the term "higher-level trade union" as well in the context of the provisions governing the procedural requirements for the establishment of a trade union as a legal entity. In that regard, the LLR prescribes that *the higher-level trade union or the higher-level employers' association shall acquire the status of a legal entity as of the day of its entry in the Central Register of the Republic of North Macedonia, after it has been previously entered into the register of unions or employers' associations*.<sup>42</sup> Hence, one can conclude that the tendency of the legislator is to give exclusive right to obtaining legal personality status only to trade unions organized at a branch, that is department level and to trade union confederations in which they are affiliated, but not to trade union organizations organized at an employer-level. The exclusive opportunity of higher-level trade unions to acquire legal personality status has not always been present in Macedonian labour legislation. Namely, until the January 2012 amendments to the Law on Labour Relations, the legislator envisaged the possibility for registration, and thus for acquiring legal personality status of trade union organizations constituted at a level of an employer. The amendments from January 2012 prevented the independent registration of trade union organizations established at an employer-level in the Register of trade unions kept by the Ministry of Labour and Social Policy (MLSP) and the Central Register of the Republic of Macedonia. The amendments to the LLR were initiated by the confederations. Formally, the main reason for the confederations initiating the amendments was the need to reduce the costs of trade unions established at an employer-level in their registration process. Yet, their real and prevailing motive was to strengthen the organizational and financial capacities of the trade unions at a higher level (primarily at the branch that is department level), while the only way in which trade union organizations established at an employer-level (as the most decentralized form

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<sup>41</sup> ЗРО, чл.187, став 1.

<sup>42</sup> ЗРО, чл.189

of trade union organizations) were allowed to function was through and within the higher-level trade unions. The new legal regime for the registration of trade unions still causes numerous criticisms. *First*, it is considered to limit the workers' freedom of trade union association which is a constitutionally guaranteed right by Article 37, paragraph 1 of the Constitution of the Republic of North Macedonia and a right guaranteed in international labor standards, i.e. ILO fundamental Conventions. *Second*, employer-level trade union organizations that are not affiliated to a higher-level trade union are unfit to independently obtain legal personality status, thus being unable to independently possess property and assets or to collect membership fees and they are also limited in exercising their core competencies and activities such as participating in collective bargaining and organizing strikes. *Third*, the registration and functioning of trade union organizations at the employer level depend on their affiliation in a newly established or accession to an already existing higher level trade union. Thus, in the event when initiators to establishing trade union organization are certain number of employees of a particular employer, they will be unable to register the union unless they "break the boundaries" of the undertaking, i.e. the employer where they associate. The "breaking of the boundaries" of their employer actually means either forming a new "higher-level trade union" (e.g. branch, that is department level trade union) that would associate workers employed by at least two employers belonging to the same branch or department according to the National Classification of Activities, or registering the trade union organization as a constituent of an existing higher-level trade union in compliance with its internal regulations, i.e. statute (e.g. as a basic trade union organization or trade union subsidiary). *De lege ferenda*, Macedonian labour legislation will have to undergo changes in this segment. In this regard, it is expected that the terms "trade union" and "trade union at a higher level" will be adequately defined, while the new legislation will also lay out minimum requirements for the establishment of a trade union organization (e.g. minimum number of employees) with the possibility of obtaining legal personality status.

#### **IV. SUMMARY**

The social, political and economic changes which emerged after the fall of the Berlin Wall didn't leave the industrial relations in the Central and Eastern European countries intact. Industrial actors in these countries were faced with serious challenges imposed by the "new era" of political pluralism and market economy. The unions lost a significant number of their members and gradually began to lose their social power. The restructured employers that managed to "survive" the transformation of the economy, as well as the newly established employers, were primarily focused on surviving in a market economy and a new business environment. The state as a regulator, focused its policies (in most cases very unsuccessfully) on balancing the interests of workers for mitigation of the negative consequences of the transformation on their working and living standards with the interests of employers for speed and economically as much painless as possible restructuring of the economy.

The development of industrial relations and the problems faced by industrial actors, i.e. the social partners in North Macedonia have not shown any particular differences compared to the "template" of industrial relations in the other post-communist and socialist countries of Central and Eastern Europe. However, in many segments, industrial relations in North Macedonia lagged behind the other countries mentioned. Compared to other CEE countries, North Macedonia established an appropriate legal framework for the functioning of the tripartite social dialogue much later (effectively in 2010). The regulatory framework of the bipartite social dialogue was

created earlier (the foundations of collective bargaining were laid down in the 1993 Law on Labour Relations and were subsequently broadened and reregulated with the 2005 Law on Labour Relations), but still, the most substantial reforms concerning the issues of representativeness of social partners and conditions of collective bargaining that have paved the way for trade union pluralism were only reached in 2009.

The regulation of industrial relations in North Macedonia is at a constant pace. In this regard, there are a number of issues and dilemmas faced by industrial actors, i.e. social partners such as: how large is the personal scope of application of the rights to trade union association and collective bargaining and which persons, i.e. workers may effectively enjoy these rights; how is the issue of representation of workers regulated and who are the subjects entitled to act in the capacity of workers' "representatives"; what is meant by "legal personality of trade unions" and which workers' and employers' associations may acquire the status of legal entities? The relevance of these dilemmas arise from the current labour legislation, which instead of addressing and resolving the issues, additionally complicates them. In any case, the "new" labour legislation (which is expected to be drafted and enacted in the forthcoming period) will have to address the aforementioned dilemmas, as well as many other dilemmas and challenges faced by the industrial actors in the country.