RESULTS FROM THE RESEARCH ON THE COLECTIVE NEGOTIATION IN REPUBLIC OF MACEDONIA DURING THE TRANSITION

Assistant ProfessorPh. D **Andon Majhoshev**, Faculty of Law at the University "Goce Delchev"-Stip, Macedonia, e-mail: andon.majhosev@ugd.edu.mk;
Verce Mitkova, master student at Faculty of Law at the University of "Goce Delchev"-Stip, Macedonia, e-mail:
AngelaMisheva, student at Facultyof Economyat the University "Goce Delchev" Stip
e-mail: angela_misanj@hotmail.com
Darko Majhoshev, student at Faculty of Law at the University "Goce Delchev" Shtip, Macedonia e-mail: darko-majhosev@hotmail.com

Abstract:

This paper represents longitudinal analysis of the process of collective negotiation during the transition in Republic of Macedonia, at a time of frequent change of labor legislature. This paper presents the most important results of the role of the labor union in collective negotiation, as well as the influence of the legal framework, the ideological background of the government, the international financial institutions, the application of the collective agreements, and the reaction of the labor union in case the stipulations of the agreements weren`t respected. The paper finishes with recommendations for improvement of the process of collective negotiation in the future.

***Key words*:** *transition, labor legislature, collective agreements*

Introduction

The transition in Republic of Macedonia had a negative impact on a number of social areas, especially on the labor legislature. Labor legislature has underwent radical changes. These included, lost or limitation of existing rights obtained in the previous system. In this context, collective negotiation, as a part of the labor legislature, has adapteditself to the new social conditions. The basic principle of collective negotiation, *in favorem laboratories*(favoring the workers), was unable to come to the fore. The frequent changes and additions to the labor legislature made the process of collective negotiation difficult, and mainly boiled down to harmonization with the legal changes. The legal framework for collective negotiation continuously changed. The model of representation of the participants in the collective negotiation created conflicts, especially among the labor unions.

Research Results

What is the outcome of our research on collective negotiation in Republic of Macedonia?

The development of the system of collective negotiation in RM includes two periods. The first period spans from 1990 till 2005, when collective negotiation operated on the basis of the model of majority representation, whichstipulated that the labor union, i.e. the association of employers that has the majority of members has the right on collective negotiation. The second period spans from 2005 till now, where the collective negotiation is based on the representative model of negotiation. Under this model, the labor union or the group of employers, should fulfil certain conditions and criteria stipulated by the law, in order to have the right on collective negotiation. The stipulations of the Law for Labor Relations from 2005 included only one criterion. In 2009, with the additional changes, other criteriawere introduced.

One labor union monopoly

In the period from 1990 till 2008, collective negotiation in Macedonia is associated only with one labor union (SSM). That was a period when the majoritarian model was in force. In this period SSM was by far the largest labor union, had over 400.000 members, which gave it the right of collective negotiation. With the registration of UNASAM -*Union of Independet and Autonomous Trade Unions of Macedonia* in 1991-1992, this labor union looked for ways to be included in the process of collective negotiation, but due to its small number of members was unable to participate in the representative social dialogue. UNASAM was also unable to become participant in the collective negotiation after the introduction of the new criteria for representation. The only labor union that broke the SSM monopoly is *Confederation of Free Trade Unions of Macedonia* (CFTUM). In January 2008 CFTUM, obtained equal rights with *The Federation of Trade Union of Macedonia*, with regard to collective negotiation for the public sector andwith the signing of GCA for the services sector. With thechanges and additions to the LLR in October 2009 (Official gazette of RM nr. 130/09), which introduced new criteria for representation, Confederation of Free Trade Unions of Macedonia (KSS) also took officialparticipation in the private sector. Besides GCA for the services sector, KSS signed seven collective agreements in different fields that definitely put an end to the long-lasting SSM domination in collective negotiation in Republic of Macedonia.

Employers

In the beginning of the development of the system of collective negotiation in Republic of Macedonia, the body that represented the employers was the Economic Chamber of Macedonia (ECM), which is contrary to the contemporary practice of collective negotiation. This was regarded as a transitional solution, due to the fact that, at the time, the employers were not united in a suitable association. Until the introduction of appropriate legal regulations, the vacuum was filled by the Economic Chamber of Macedonia, owing to the fact that in this period, this was the only organization of the business sector in Macedonia. The development of the industrial sector in RM, i.e. the introduction of the new LLR (Official gazette of RM Nr. 62/05) created the basic legal foundation for registration of associations of employers. In accordance with the regulations of the LLR, a procedure commenced for registration and acquiring representative status of the associations of employers.The first association of employers that established its representative status is the Organization of employers of Macedonia (OEM), which in turn ended the collective negotiation status of the Economic Chamber.

In the period 1990-2005, and especially in the period 1994-1997, collective negotiation was more dynamic, more enthusiastic and with greater will for success and understanding on the part of the employers and the government, compared to the second period (after 2005). The result are,two signed GCA (for economic sector and public sector that were binding for all employees) and 34 branch CA (collective agreements), that included around 70% from the total number of employees, whereas during the second period, additional two GCA were signed, and only 21 branch CA, that included 35 % of the employees, which is far below the European average, which in 2007 amounted to 62, 5 %. In that period, more than 400 CA were signed on employers` level, an in the second period less than 200 CA. These facts indicate that the intensity and inclusion of employees in the collective negotiations is reduced for more than 50 %, owing to subjective and subjective reasons, but mostly due to the reduced power of the

labor union, and in part to the lack of interest of employers in certain areas[1] to be organized in association of employers and to start the process of collective negotiation. This problem is especially present in the field of traffic, storage and communications, trade, timber industry, manufacturing of leather products, metal industry, production of electrical devices, financial services, mining, energetics etc. In these fields, according to the State Bureau for Statistics, the number of employees, from October 2008 is estimated at more than 131.000 persons[2] which are indirectly included in collective negotiations. This problem is partiallysolved by the signing of collective agreements on an employers` level, between the labor union of a given company and the employer in the corresponding field with the support of the corresponding branch labor union.

Negotiation power

The negotiation power of the subjects is a very important factor in the system of collective negotiation. Our research follows the power of the labor union during longer period, after which we arrived at a conclusion that its power has been continuously reduced. However, the power of the labor union indirectly depends on other factors, which can`t be measured with raw statistics (personnel management, solidarity, dissention, political influence etc.). In the beginning of the nineties, the financial power of the labor union was significantly stronger. Due to that fact, the labor union had greater financial independence andpolitical power in starting syndical actions, and accordingly greater political influence in the legislation process in the state, i.e. on the collective negotiation. The result of its greater negotiating power is the incorporation of the more favorable decisions within the GCA for economics and GCA for services with regard to the LLR. The start of the transitional period, played into the hands of the power of the labor union, because the structure of the capital was primarily, in state owned. In such conditions, collective negotiations were easier. At the start of the transition, the employers and the Government of RM, accepted the collective negotiation with enthusiasm and will it to succeed, and the result was maintaining of the most rights acquired in the previous socialistic system, as well as the relative good economic condition of the state and the positive attitude of the employers and the government in that period. Whenever the labor union raised an initiative for collective negotiation, the employers and the government accepted it without greater resistance. With the increase of the percentage of the private capital in state companies, collective negotiation went slowly, even when the question was continuation of the validity of collective agreements.

Legal framework

The legal framework for collective negotiation has been continuously improved and sophisticated. In one period it was a serious obstacle for the democratic participation of other labor unions and associations of employers in the collective negotiation, because it favored the majoritarian labor union. Since we acquired

[1]The areas are Traffic, Storage and Communication with 27.446 employees, trade with 75.855 employees, production of metal products 7.124, mining 1.326, financial services 8.413, timber industry 2913, production of electrical devices 2,819, production of leather products 4.645 etc. or a total of 131.000 employees. The most problematic area is trade, not only because this field doesn`t have council of employers, but mostly due to the small number of members. According to the data we have, this labor union consists of only around 5.000 members which is far from the necessary legal conditions for acquiring of representative status. In an almost identical situation is the fields of traffic, storage and communications.

[2]Statistical review of population, social statistics, employed and net salary of the State Bureau of Statistics from October 2008, Nr. 2.4.9.09, Skopje, 2009

the status of country-candidate for membership in the EU in 2005, the European commission analysis annually the progress of RM in all spheres of economic, political and social life. The commission in its annual reports from 2006 till 2010 constantly points out that the social dialogue, i.e. collective negotiation in RM is not on the necessary level, recommending the governments to make changes in the LLR, in the part for Criteria for Representation. This has triggered new legal solutions for the LLR. In accordance with the changes and additions to the Law for Labor Relations in 2009, in 2010 a Regulation Body – Commission for establishment of representativeness was formed, which in accordance with the new criteria started procedure for establishment of representativeness. With the changes, in addition to the necessary census on the number of members, other criteria for acquiring representative status of the labor unions and the employers` organizations, were also introduced. Legal procedure that is valid for prove of the representativeness, has been also introduced, creating equal competition rules. The census for representativeness was significantly reduced from 33 % to 5% to 10% for the employers, i.e. to 10% to 20% for the labor unions. Some labor unions that are marginal (UNASAM and KSOM) consider the census for representativeness on a state level relatively high, and think that it should be lowered to 5%. However, with latest changes to the LLR, the legal framework is generally regarded by experts for Labor Law as satisfying the general criteria for good functioning of social dialogue and collective negotiation and is within the framework of European standards. The experts, also estimate that in the future, with the current legislature, collective labor disputes regardingrepresentativeness will be reduced to minimum.

Ideology of ruling party

The ideological background of the government is one of several conditions that regard the outer surrounding and that have impact on the process of collective negotiation and the content of the collective agreements. It is widely known, that leftist governments promote the social dialogue, i.e. collective negotiation, whereas parties on the right spectrum in essence are conservative and promote the neo-liberal concept of economic and social policies, where collective negotiation is minimalized. Analyzing the relation of governments to the most important areas from the economic- social areas, that had certain influence on collective negotiation and the content of the collective agreements, we arrived at a conclusion that the left and the right led a restrictive policy to the workers' rights. This tendency of de-ideologizationof political parties, point to the conclusion that parties do not start from their ideological background, but instead follow the pragmatic reasons of their political elites and the policies of the international financial institutions.

IMF and the WORLD BANK

At the beginning of the transitional period, the international financial institutions, due to the financial arrangements of the government with IMF had greater influence on the legislation process, and by consequence to the collective negotiation, i.e. the content of the collective agreements. Instead with CA, the salaries were determined with law. This type of limitation of salaries is unacceptable for a state with developed market and industrial climate, because the question of salary is a central question in collective negotiations in states with developed democraticand industrial climate. This means that in collective negotiation you can negotiate everything, bar the salary, which is contrary to the contemporary tendencies

in collective negotiation. That way, collective agreements are reduced to a normative act. In most of CA, with the exception of 5-6 (CA for textile agreements, CA for leather industry, CA for health, CA for social protection, and CA for Public enterprise " Macedonian woods"), the minimum wage isn`t established , which forms the basis for application of the coefficient of difficulty, when calculating the salary. In the past period, when leftist party formed the government, the practice in the public sector was, disrespect for the collective agreements with regard to salaries and bonuses, with explanation that such restrictive policies are in accordance with the arrangement of RM with IMF. Accordingly, salaries remained constant, the bonus (K-15) wasn`t paid, the food allowances were reduced, as well as the duration of the money allowance for unemployment and other allowances. That way, the state interfered directly into the determination of the salaries and synchronized them according to the methodology and rules of IMF, which is a blunt violation of the rules and ordinances of Convention Nr. 98 of the free collective negotiation. These institutions, in essence served as an excuse, for governments` policies in economical-social field, and in this context the reduction of workers` rights.

The representatives of the labor union showed significantly greater initiative to the question of collective negotiation with regard to the representatives of the organization of the employers and government, which in certain way compensated its political and negotiating impotence. The initiative was mostly felt in the period 1990-1887, and as the time passed, the labor union became passive, because it couldn`t accept the practice of curbing the rights of the employees, once the more favorable solutions for the CA were agreed. Namely, in the period 1998-2005, the LLR frequently changed, and accordingly the transitive and final ordinances of the collective agreements had to be adapted within six months. Given that the ordinances of the branch CA were more favorable with regard to the new legal solutions, the labor union considered that there is no need of their harmonization, because it violates the principle of more favorableness of the workers. (In flavor laboratories).

The institutions that are most responsible for the development of the collective negotiation, like the Economical-Social Council of RM from 1997 till now, is almost without any contribution to the development and the intensification of the collective agreements. This institution in the period 2003-2008 has officially discussed the question of collective negotiation only twice, which is unacceptable and inadmissible. That`s why, this tri-party body should commence to deal immediately with the question of collective negotiation. The establishment of ESC, created room for open social dialogue and greater impulse for intensive collective negotiation, as well as establishment of the remaining tri-party bodies in the state. (National council for security and health, Commission for election of reconciliation and arbiters, Managing boards for social funds) in accordance with the new criteria.

Application of the collective agreements

In the past period the signed collective agreements, in the economy, as well as in the services were not fully respected by the employers. That had negative repercussions on the authority and the significance of the collective negotiations and on the collective agreements in general. Namely, the collective negotiation makes sense and reaches its goal only when all subjects respect the ordinances of the collective agreements (pacta cum servanda). When

one side disrespects the collective agreement, i.e. doesn`t respect the signed agreement, the authority and the significance of CA as an autonomic way of settling the labor relations is diminished.

From the data analysis obtained by The Federation of Trade Unions of Macedonia (FTUM) and the independent labor unions, we can conclude that the ordinances of the collective agreements were continuously violated by the employers, both in public and private sector. They were violated even by the state bodies and institutions, including the government of RM, although it is most responsible for the functioning of the legal system in RM. Above all, this refers to the breach of the right of bonus for annual vacation (K-15), allowance for transport, reduction of the food allowance, allowance for work experience, overtime work (in defense) etc. This is evident from the number of contacts made by the workers with the Labor union,(a total of 176.600 employees). Most frequently the contacts were made for 3-4 reasons (salary, assistances, allowances, work experience etc.), which multiplies this problem. Most disrespected was the right to salary, (50.000), followed by overtime work. This is most common in the textile industry (confections), where the employers unscrupulously abused this right. If we add the remaining causes (layoffs, K-15, breech of labor union rights, Compulsory paid leave of absenceetc.), than the number of abuses of workers' rights is multiplied. The biggest number of contacts were by the workers in the economic sectors, and a large number of contact were made also by the employees in the public sector (administration, state bodies), who requested their rights legally by way of collective appeals for fulfilment of the right of K-15, food allowance, transport etc.

Reaction of the labor union

The basic principle of law is that it should be respected, this presupposes that the collective agreements as a part of the legal system should be respected. Previously we have concluded that the rights of the workers to collective agreement were bluntly breached by the employers (lack of payment for PIIM, health, criteria for declaring technological surplus. That is why the Labor union applied modern methods (strikes, protests, blockages, addresses to courts) when dealing with the employers to protect the rights of labor relations. If we carefully look into the numbers from the tables for activities we will see that in the starting period the labor union used as a tool for syndical battle, the strike and the protests. The strike was more frequently used in period of elections, because that is a period when it is easiest to send messages and warnings to the government, but also, because it is the easiest to showcase workers` problems. As the time passed the labor union applied other methods, such as : press conferences, appeals to the Supreme Court, informing international institutions (ILO), labor inspection etc. No matter the used method, the results of the activities were partial, i.e. minimal.

The closeness of the biggest labor unions in Republic of Macedonia with certain political structures is significantly reflected on the dynamics and quality of collective negotiation on a state level and branch. Namely, from 1998 till 2002 and from 2006 till 2010, the government of the Republic of Macedonia, led by right party, has used sophisticated manners to ignore the social dialogue with The Federation of Trade Unions of Macedonia(FTUM), which is why FTUM gave public political support to the candidates and the election program of the left. In this situation, an effective bi-party and tri-party social dialogue by the right government with labor union that

gives support to the left cannot be expected. Besides the political aspect, an obstacle for the normal functioning of the social dialogue in Republic of Macedonia was the legal regulations in the part of criteria for acquiring representative status which favored FTUM.

In a situation when there is high unemployment, which in the republic of Macedonia lingersabove 20 % for more than a decade, the labor union has attempted to reach a balance through collective negotiation between the protection of the work places and the demand for increase of the salaries and improvement of the working conditions as a whole. In these conditions, the labor union took defensive negotiation strategy, i.e. it is mostly turned itself towards protection of the work places, than protecting the material rights of the workers. We can conclude that the high rate of unemployment has influenced to a large extent the content of the collective agreements.

With the aim of harmonization of the national labor legislature with the EU law *(acquis communitaire), from one side, the implementation of the IMF policies, on the other, LLR constantly changed, sometime twice a year, which made difficult the dynamics of the CA, and even more the process of harmonization of CA with the LLR.

Social dialogue

Despite the above-mentioned weaknesses in the functioning of the collective negotiation In RM, we can conclude that in the past two decades it has played as constructive role in the development of the social dialogue, social harmony, building of mutual credit between the social partners, as well as decrease of the social conflicts. By collective negotiation, social partners have established mutual communication, meetings, shared information, made consultations, negotiation and made mutual decisions for a number of questions related to the rights of the workers and employers in the economical-social field (salary, working conditions etc.). That way, the destructive social energy has transformed itself within the institutions into a dialogue creating social and industrial peace (compromise). In addition, it played an important role in improvement of the level of negotiating culture of the subjects in the process of collective negotiation.

Recommendations

The analysis of collective negotiation in the period from 1990 till 2010, has provided us with certain knowledge that can be beneficial to the improvement of this process. To improve this very important social process we recommend the following:

1 .Formation of separate commission , i.e. body if experts for collective negotiation within the Economical social Council, that will deal exclusively with questions related to the functioning of the tri-party and bi-party social dialogue, the application of the collective agreements, and will follow and analyze the conditions and the problems related to collective negotiation in the state on all levels.

2. It is desirable that, the work of the commission for establishment of representativeness is attended by representatives of the (un)representative labor unions and associations of employers without the right of decision, with the aim of greater surveillance and control over the procedure for establishment of representativeness of the subjects of collective negotiation.

3. Passing of special laws in Republic of Macedonia, that will regulate the whole legal matter related to collective negotiation: Law for collective negotiation,

Law for Economical Social Council and Labor union Law.

4. All labor unions, representative or not, before starting collective negotiation on national or branch level, should have strategy for mutual presentation and mutual coordination with regard to the employers, in order to achieve greater effectiveness.

5. The Economical Social Council (ESC) should adopt National strategy for development of collective negotiation (ex. 5-10 years), and in that context to adopt National action plan for development of the collective negotiation in Republic of Macedonia for a certain period (ex. For one or two years)

6. Strengthening of the capacity (expert and material) of MLSA by formation of Sector for collective negotiation within the Department for Labor of MLSA which will follow and analyze the condition and will give directions for questions related to the functioning of collective negotiation on all levels in the state.

7. If the collective negotiation in the state is to be intensified, the formation of Council of employers is urgently necessary in those branches and areas where they are inexistent, and if they exist, a process of establishment of representative status of the Councils of employers by branches should commence, in accordance with the National classification activities. (NCE).

8. Establishment of lowest minimum salary on all levels, that will represent price of labor for the least difficult degree, and will serve in the process of establishment of the basic salary of the worker.

9. Due to the fact that, a large number of labor unions in the private sector from the economic field do not fulfil the conditions for representativeness, it is necessary that they sign agreement for association for participation in the process of signing of collective agreements on a branch level, i.e. department, in accordance with the National classification of actions (NCE)

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