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# LEGAL SYSTEM IN THE PERIOD OF THE NEW REALITY



2021.



University of Priština in Kosovska Mitrovica  
**FACULTY OF LAW**  
International Scientific Conference  
“LEGAL SYSTEM IN THE PERIOD OF THE NEW REALITY”  
Thematic Conference Proceedings

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UNIVERSITY OF PRIŠTINA IN KOSOVSKA MITROVICA  
FACULTY OF LAW



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International Scientific Conference

**LEGAL SYSTEM IN THE PERIOD OF THE  
NEW REALITY**

Thematic Conference Proceedings

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## Editor's note

The Thematic Conference Proceedings from the International scientific Conference "Legal system in the period of the new reality" was published in the year of the jubilee - 60 years since the founding of the Faculty of Law, University of Priština. At the same time, for the eleventh time in a row, in completely changed social circumstances, an International scientific conference is being held at the Faculty of Law.

Undoubtedly the year in which we mark the jubilee, as well as the previous one, was marked by the pandemic of the COVID-19 virus, the global threat to the population caused by the speed of the virus spread and the consequences it causes for human health. The pandemic potential of the virus has caused unimaginable changes in the functioning of states and affected all aspects of social life. The time in which we live is increasingly called the period of the "new reality". Having in mind the tectonic social changes of which we are contemporaries, as well as the challenges of states in establishing the "normal" functioning of legal systems, this year's International scientific conference was held under the name "Legal system in the time of the new reality". This gave the authors the opportunity to explore a wide range of topics, in the field of legal and other social sciences, which relate to the functioning of legal systems in this period and to present their views, proposals and conclusions to the professional and general public.

The International Scientific Conference "Legal System in the period of the new reality" gathered sixty-two authors, from the country and abroad, who presented forty-five scientific papers independently or as co-authors. Bearing in mind that almost half of the papers were written in English, the papers were published in two volumes of the thematic conference proceedings - one in Serbian and one in English language.

I would like to thank all the members of the Editorial Council, members of the Editorial Board from abroad and the country, as well as reviewers, for suggestions, comments and proposals that were crucial for the final shaping of Thematic Conference Proceedings.

Editor-In-Chief

Prof. dr Zdravko Grujić



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## THE RIGHT OF PAID SICK LEAVE AS SOCIAL INSURANCE RIGHT AND THE CORONAVIRUS PANDEMIC

### Abstract

As an integral part of a comprehensive social security system, the COVID-19 crisis drew major attention to the relevance of sickness benefits. Paid sick leave – the right to paid time off when a worker is too ill to work or to enable a worker to care for an ill family member – is enshrined under human rights law. Sick leave (or paid sick days or sick pay) is paid time off from work that workers can use to stay home to address their health needs without losing pay. Sick leave can include a mental health day and taking time away from work to go to a scheduled doctor's appointment. It has played a key role in protecting incomes, health and jobs during a health-driven labour market crisis. As social insurance right, paid sick leave can play a role well beyond its core function to protect sick workers during a health pandemic and subsequent economic crisis. The aim of the paper is to analyze the challenges of paid sick leave throughout the coronavirus pandemic in the Republic of North Macedonia. The paper concludes that paid sick leave as social insurance right can be a particularly effective tool during the pandemic.

**Key words:** employer, social security, social rights.

### 1. INTRODUCTION

The COVID-19 pandemic represents the most serious public health crisis in the Republic of North Macedonia since the founding of the country as an

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independent state, with the fastest spread and the widest infection range challenging the country's socio-economic development and people's daily life. In such circumstances, the right of paid sick leave gains importance not just for workers in a formal economy but for workers in an informal economy too.

The right of paid sick leave, as a basic labor standard/worker's right is paid time off from work that workers can use to stay home to address their health needs without losing pay.<sup>1</sup> It differs from paid vacation time or time off work to deal with personal matters because sick leave is intended for health-related purposes. Sick leave can include a mental health day and taking time away from work to go to a scheduled doctor's appointment. Some policies also allow paid sick time to be used to care for sick family members or to address health and safety needs related to domestic violence or sexual assault.<sup>2</sup> Paid sick leave can reduce employee turnover, increase productivity, and reduce the spread of disease in the workplace and the community.<sup>3</sup>

The COVID 19 pandemic has turned from a public health crisis into an unprecedented labour market crisis in the course of only a few months.

Income security during sickness is provided through a variety of means and approaches. As social human and social security right, paid sick leave is an important policy for protecting workers and their communities during a pandemic, serving not only to preserve jobs and incomes but also to contain the spread of the virus. Paid sick leave has been the prime instrument to support eligible employees in quarantine – an unprecedented policy.

The role of social health protection has been particularly highlighted as a human right that safeguards the economic productivity of a healthy workforce and serves as a social and economic stabilizer in times of crises.<sup>4</sup> Without social health protection that includes paid sick leave many people working in the formal or informal economy and living in developed or developing countries cannot afford to choose.<sup>5</sup>

The right to take sick leave is recognized as an entitlement separated from other types of leave such as holidays in both International Labour

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<sup>1</sup> T. W. Smith, *Paid Sick Days: A Basic Labor Standard for the 21st Century*, National Opinion Research Center at the University of Chicago, 2008, 2.

<sup>2</sup> V. Lovell, *Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act*, Institute for Human Policy Research, Washington, 2005, 15.

<sup>3</sup> Employment Policy Foundation, *Employee Turnover – A Critical Human Resource Benchmark*, 2002, 5.

<sup>4</sup> X. Scheil-Adlung & L. Sandner, *The case for paid sick leave*, World Health Report, Background Paper, 9, 2010, 4.

<sup>5</sup> Ibid.



Organization (ILO) Holidays with Pay Recommendation No. 98 from 1954 and Convention No. 132 (Revised) from 1970. Sick leave periods should be defined in a way that ensures they are not counted as holidays and workers accumulate holiday entitlements during a sick leave that is reflected within contracts, for everyone and for specific occupations.<sup>6</sup>

The core function of paid sick leave is to support workers during a temporary sickness spell in three ways:

First, paid sick leave protects workers' incomes, in the form of sick pay (continued wage payments by the employer) or sickness benefits (through social insurance).

Second, paid sick leave protects workers' jobs, by keeping employment relationships intact during a period of illness.

Third, paid sick leave protects workers' health, by allowing sick workers to recover at home rather than to continue going to work. Going to work while sick may prolong illness and further reduce productivity.<sup>7</sup>

If there is no policy for taking paid time off for illnesses, many workers continue to go to work when they are sick, jeopardizing their recovery and health. Research has shown that taking adequate time to rest and recuperate when sick encourages faster recovery and helps prevent minor health conditions from progressing into more serious illnesses.<sup>8</sup> Paid sick leave allows workers who are (potentially) infected to stay at home rather than infect others at or on their way to work. It allows infected and potentially infected workers to quarantine quickly, without job loss and with limited income loss.

## 2. INTERNATIONAL REGULATION OF PAID SICK LEAVE

Various ILO Conventions, regulations, concepts and approaches define a broad concept of social health protection that includes paid sick leave by focusing on providing universal access to health care and financial protection in

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<sup>6</sup> Part-Time Work Convention No. 175 form 1994, article 7. Labour Clauses Recommendation No. 84 form 1949, paragraph 2. Nursing Personnel Recommendation No. 157 form 1977, paragraph 41. Home Work Recommendation No. 184 from 1996, paragraphs 23 and 24. Domestic Workers Recommendation No. 201 form 2011, paragraph 6.

<sup>7</sup> A. S. Martin, H. Inanc & C. Prinz, Job Quality, Health and Productivity: An evidence-based framework for analysis", *OECD Social, Employment and Migration Working Papers*, no. 221, OECD Publishing, Paris, 2018.

<sup>8</sup> V. Lovell, *No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave*, IWPR Publication No. B242. Washington, DC: Institute for Women's Policy Research, 2004, <http://www.iwpr.org/pdf/B242.pdf>, 15.02.2021.

case of sickness. In this context, financial protection includes compensation for the economic loss caused by the reduction of productivity and the stoppage or reduction of earnings resulting from ill health. Sick leave and related income replacement constitute a key component of ILO Convention 102 on (Minimum Standards) Social Security that sets minimum standards for social security and is deemed to embody an internationally accepted definition of the very principle of social security. It states that sickness benefits shall cover incapacity to work resulting from a morbid condition and involving a suspension of earnings. The later ILO Convention 130 suggests a slightly higher standard of benefits. The ILO Decent Work Agenda defines work of acceptable quality that ensures, among others, basic security. The Social Protection Floor initiative led by the ILO and World Health Organization established in the context of the One United Nations response to the economic and financial crisis, requests countries to build adequate social protection for all through basic social guarantees for every citizen.<sup>9</sup> This includes a set of essential social transfers, in cash and in kind, to provide minimum income security. Key components comprise universal access to essential health care and income support for those with insufficient income and income security. The concept was endorsed by the Global Jobs Pact that the International Labour Conference adopted in June 2009. These concepts are embedded in the Declaration of Philadelphia adopted in 1944 where social security has explicitly been recognized as a Human Right. It is expressly formulated as such in the Universal Declaration of Human Rights<sup>10</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>11</sup> The General Comment No. 19 of the Committee on Economic, Social and Cultural Rights on Article 9 of the International Covenant on Economic, Social and Cultural Rights defines the right to social security as encompassing the right to access and maintain benefits without discrimination to ensure protection from for example lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member. These objectives demand the establishment of measures to provide support to those who are unable to make sufficient contributions for their protection. In other words, it calls for the continuation of salary payments or income replacement in case of sickness.<sup>12</sup> While social security rights are not explicitly mentioned in the European Convention on Human Rights, they nonetheless fall within its scope.

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<sup>9</sup> *Strategies for the Extension of Social Security Coverage*, ILO, TMESSC, 2009.

<sup>10</sup> Articles 22 and 25.

<sup>11</sup> Article 9.

<sup>12</sup> X. Scheil-Adlung & L. Sandner, *op. cit.*, 5.

### 3. NATIONAL REGULATION OF PAID SICK LEAVE

In the Republic of North Macedonia, all employers are required to pay their employees for some time away from work when they are ill. According to North Macedonia law, the right to paid sick leave is part of compulsory social insurance contributions for all workers who have an employment contract or are self-employed. The social insurance for employers is mainly governed by the Constitution of the Republic of North Macedonia, labour law and social security law.

The Constitution of the country stipulates that all citizens have a right to social security and social insurance, determined by the law and collective agreement.<sup>13</sup>

Currently, the social security system in North Macedonia consists mainly of three types of social programs: contributory social insurance, non-contributory social assistance, and tax-financed social welfare. Based on the Law on Mandatory Social Insurance Contributions, compulsory social insurance includes contributions for health insurance. Mandatory contributions are deducted from the employee's gross salary and paid to the Health Insurance Fund by the employer, concurrently with the payment of net salaries and other taxes.<sup>14</sup>

The health insurance is established as mandatory and voluntary. Mandatory health insurance is established for all the citizens of the Republic of North Macedonia for providing health services and monetary compensations based on the principles of thoroughness, solidarity, equality and efficient usage of funds under conditions determined by Law.<sup>15</sup> The mandatory health insurance is implemented by the Health Insurance Fund of the Republic of North Macedonia. Voluntary health insurance is established for providing health services that are not included in the mandatory health insurance. Voluntary health insurance can be implemented by insurance companies founded according to the insurance regulations. Insured persons, in terms of the Law on Health Insurance, shall be the insured and the members of his/her family.<sup>16</sup>

Law on labour relations provides sick pay for workers who have compulsory social insurance. Accordingly, sick pay depends on the duration of the sick leave: up to 7 days – 70% of the salary; up to 15 days – 80% of the salary; above

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<sup>13</sup> *Constitution of the Republic of North Macedonia*, Official Gazette of the Republic of Macedonia No. 52/1991, article 34.

<sup>14</sup> Official Gazette of the Republic of Macedonia No. 142/08 ...247/18.

<sup>15</sup> *Law on health insurance*, Official Gazette of the Republic of Macedonia (consolidated text), article 2.

<sup>16</sup> *Ibid*, article 4.

15 days – 90% of the salary. The employer bears the burden of sick pay if the employee's inability to work lasts up to 30 days. Above 30 days, health insurance should calculate the sick leave.<sup>17</sup> The underlying idea is that employers would become more aware of the use being made of sick leave and would exercise better supervision than the social security system. In the event of taking a new sick leave within three days upon the end of the preceding sick leave, the employer shall be entitled to request from the first instance medical panel to verify the new sick leave or extend the expired preceding sick leave.

The insured persons can exercise the right to salary compensation until the recovery of capacity for work or the establishing of invalidity. The benefit is paid, if they meet the following conditions:

- if the health insurance lasted for at least six months continuously before the occurrence of the case;
- the contribution to the compulsory health insurance is regularly paid or with a delay of up to 60 days;
- the assessment of temporary incapacity for work was given by the selected doctor, that is, the medical commission.<sup>18</sup>

Employees may be granted exceptional unpaid sick leave. This can be the case when the employee has not reached 6 months of sickness insurance. As a policy response to coronavirus, the country should exclude the minimum of six months insurance period to allow workers to access sickness benefits from the moment they conclude an employment contract or from the moment they become self-employed.

The assessment of temporary working disability is ascertained based on medical examination and medical documentation. The assessment for sick leave of up to 30 days is supplied by a doctor. For a longer period, a medical commission should be formed.

The country also provides supplements for dependents, i.e. dependent family members such as children and unemployed spouses. Parental leave and sickness benefits are often used in support of childcare duties. Keeping children at home when they have contagious diseases like viruses prevent illness and work absence among their schoolmates' parents. Because children are more susceptible to disease, carry and spread viruses over a longer period of time than adults, and

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<sup>17</sup> *Law on Labour relation*, Official Gazette of the Republic of Macedonia No. 62/2005, (as amended to June 2019), article 112.

<sup>18</sup> *Law on health insurance*, article 15.

are often the first to get the infection in the community<sup>19</sup>, preventing children from being disease vectors in school and child-care settings can significantly reduce workplace absence and productivity effects among adults. Children have better short- and long-term health outcomes when they are cared for by their parents<sup>20</sup>; hospital stays are shorter when parents are involved in care.<sup>21</sup> With increased flexibility in attending to sick children, the Law on health insurance is likely to reduce treatment costs and overall length of illness.

Sick leave to take care of children is normally paid at the rate of 100% if the child is under three years old and for children older than that 70% of the salary of the employee. For the duration of quarantine, these should be increased to 100% of the salary for everyone and should cover all parents whose child is in quarantine.

Claimants continue to pay social security contributions while on sick pay or sickness benefits. The country does not have a determined sickness benefits period, therefore sickness benefits can be provided for an unlimited duration.

#### 4. SICKNESS BENEFITS AS NATIONAL POLICY RESPONSE IN THE CONTEXT OF CORONAVIRUS PANDEMIC

Facing the challenges of coronavirus, the North Macedonian government has established strong command-and-control mechanisms, reminiscent of war times, to respond to this crisis and control the virus. However, interventions through social security policy and questions that must be reconsidered concerning pandemic-related crises have been largely neglected in academic research.

Paid sick leave is intended to protect the worker's status and income during the period of illness or injury through health and financial protection.<sup>22</sup> As the COVID-19 pandemic unfolds, sickness benefits have been suddenly put

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<sup>19</sup> C. J. King, *Quoted in Study Shows School-Based Nasal Influenza Vaccinations Significantly Reduce Flu-Related Costs in Families*, University of Maryland Medical Center, 2004, 5.

<sup>20</sup> S. J. Palmer, *Care of Sick Children by Parents: A Meaningful Role*, Journal of Advanced Nursing, 1993, 189.

<sup>21</sup> H. I. Kristensson, E. Gunnel & M. Gerhard, *Increased Parental Participation in a Pediatric Surgical Day-Care Unit*, Journal of Clinical Nursing, 1997, 299.

<sup>22</sup> B. Šunderić, *Socijalno pravo*, Pravni fakultet Univerziteta u Beogradu, Belgrade, 2009, 13.

under the spotlight as a major measure to mitigate the spread of the disease and ensure income protection of those who fell sick.<sup>23</sup>

Reviews of current practice show that sickness cash benefits have been among the measures most widely used by Governments to address the impact of COVID-19 on workers and their families.<sup>24</sup>

Although in the country, according to different criteria and conditions, all workers who have an employment contract or are self-employed have access to paid sick leave in case of COVID-19 or quarantine, important coverage gaps remain:

- Workers in non-standard dependent employment, such as casual and zero hour contract workers, remain mostly excluded from sick pay. For instance, casual workers are not entitled to paid leave while workers on zero-hour contracts only receive sick pay for those hours called upon.

- Gig workers, freelancers, and workers in dependent self-employment are in most cases not entitled to a paid sick leave. Some platforms voluntarily provide sick pay to their gig workers, although compensation levels tend to be very low.

- Sickness affects all people irrespective of the type of employment contract, whether dependently or self-employed, and irrespective of whether they are employed, unemployed or inactive. Still, the access to and the quality of sick pay/benefits often differ for people in these categories. Anecdotal evidence shows the limitation and inequities of a system that does not provide publicly organized sickness benefits in the context of a crisis such as COVID-19.<sup>25</sup>

- Without access to sickness benefits, workers may be forced to return to work to keep their jobs or maintain their salary, thereby potentially passing on the virus to other workers and clients.

Paid sick leave as social insurance right ensuring social security encompasses more than one single area of social policy and requires much more coordinated policy intervention from different arenas, including economic policy, employment policy, fiscal policy, and social policy.

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<sup>23</sup> ILO, *Review of international experience in social insurance sickness benefits for gig workers*, 2020, 1.

<sup>24</sup> OECD, *Insurance and COVID-19*, 2020.

<sup>25</sup> Bureau of Labour Statistics, *Employee Benefits Survey*, 2020.

## 5. CONCLUSION

Social policy intervention is deeply connected with the social fact that modern society is a risk society, and some social risks, such as environmental pollution and global warming, have evolved into global risks that challenge all nation states. Today, the need for a human rights-based approach to social insurance is greater than ever.

The Republic of North Macedonia has social insurance sickness benefits that cover workers in standard and non-standard forms of employment and include the self-employed on a mandatory or voluntary basis.

In North Macedonian law the concept of paid sick leave consists of two components: leave from work due to sickness and cash benefits that replace the wage during the time of leave due to sickness. This concept is reflected in the definition of paid sick leave as compensated working days lost due to sickness of workers.

It can be concluded that paid sick leave can perform a wider role throughout a contagious pandemic and subsequent economic crisis.

Paid sick leave, however, can only facilitate an orderly de-confinement and be an effective device during the pandemic under two conditions. First, if the country keeps in place its temporary extensions, and second, if it further extends paid sick leave entitlements to groups of workers that are still not covered. Otherwise, like many other policy tools, paid sick leave remains a partial response with significant inequalities across different groups of employed and self-employed workers.

Structural paid sick leave reforms will have to reappear on the agenda when the pandemic passes, consisting of permanently improving access to paid sick leave for the entire workforce, promoting prevention of sickness and the return to work of recovered workers and preparing for future pandemics by improving the adaptability of paid sick leave as a human and social right.

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## ПРАВО НА ПЛАЌЕНО БОЛОВАЊЕ КАО ПРАВО СОЦИЈАЛНОГ ОСИГУРАЊА И ПАНДЕМИЈА КОРОНАВИРУСА

### Резиме

Као саставни део свеобухватног система социјалног осигурања, пандемија COVID-19 скренула је велику пажњу на значај накнада за болест. Плаћено боловање - право на плаћено одсуство када је радник превише болестан за рад или омогућавање раднику да брине о болесном члану породице – представља гарантовано људско право. Боловања (или плаћена боловања) плаћају се као одсуство са посла које радници могу искористити да остану код куће како би решили своје здравствене потребе без губитка зараде. Боловање може укључивати дан менталног здравља и одласка са посла на заказани преглед код лекара. Плаћено боловање је одиграло кључну улогу у заштити прихода, здравља и радних места током кризе на тржишту рада узроковане болешћу COVID-19. Право на плаћено боловање као право из социјалног осигурања може играти улогу која превазилази своју основну функцију у заштити болесних радника током здравствене пандемије и накнадне економске кризе. Циљ рада је да анализира изазове плаћеног боловања током читаве пандемије коронавируса у Републици Северној Македонији. Чланак закључује да плаћено боловање као право социјалног осигурања може бити посебно ефикасно средство током пандемије.

**Кључне речи:** запослење, послодавац, социјално осигурање, социјална права.