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COLLECTIVE BARGAINING IN THE PUBLIC SECTOR OF REPUBLIC OF MACEDONIA WITH PARTICULAR REFERENCE TO COLLECTIVE BARGAINING IN THE JUDICIARY

Abstract

This paper analyses the terms, conditions and dilemmas arising from the collective bargaining in the public sector.

Collective bargaining in the public sector aims to cover the employees in the bodies of state administration, bodies of the local-self government units, institutions, public enterprises, departments, agencies and other legal entities that perform activities of public interest.

Collective bargaining in the judiciary can be incorporated in the general frames of the collective bargaining in the public sector. The aim of this paper is to illustrate the collective bargaining process in the judicial service, public prosecution service and the bodies authorized for the execution of sanctions.

The authors propose different modes of special (branch) collective bargaining in the judiciary. They illustrate several types of special collective bargaining that regulate the rights and obligations of the employees in the sphere of public sector in the Republic of Macedonia.

Key words: collective bargaining, public sector, judicial service, public prosecutor's office, judicial police etc.

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Introduction

Collective bargaining is an autonomous process of regulation of employment relations between the social partners. The collective bargaining has become "sine qua non" in the regulation of the employment relations in both the private and public sector. The collective agreements are one of the main sources of labor law. On the other hand, the extension of labor legislation to all employed persons opens further dilemmas related to the regulation of employment relations in the private and public sector.

There are several different viewpoints on the employment relations of the public service employees. According to one theory, the employment relations of the public service employees are not administrative relations, but they are "classical employment relations, in which the parties have the same employment rights as the other employees".[4]

Contrary to the aforementioned theory, there is another theory, accepted by the Swiss legal doctrine. Swiss positive law considers that the work of public servants derives from the contours of the labor law.[5] The employment relations of the public servants are different from the employment relations of the employees in the private sector.

Further, we present the compromise theory.[6] The latest literature on this issue determines that the part of labor law consisting of the general principles applied to the employment relations also refers to the "employees" in public service. At the same time, the legal provisions regulating the special legal position of public servants are a matter of regulation under the administrative law. In other words, labor law is "lex generalis", while the law on public servants (as an integral part of the administrative law) is "lex specialis", considering the fact that the employment relations of public servants are special subspecies of general employment relations and the law on public servants is a special subspecies of the administrative law.

In accordance to the most recent, so-called "compromise" theory, we conclude that the general employment relations cover the incumbents' relations. At the same time, the collective bargaining as one of the central categories of labor law is also applicable for the employees in the public services.

The freedom of association and the right to bargain collectively are fundamental principles within the universal, regional and national legislations regulating the human rights as part of the economic and social rights.

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[4]A. Ravnić, *Osnove radnog prava, domaćeg, usporednog i medjunarodnog*, Zagreb 2004, p. 192.

[5]*Ibid.*

[6]Todor Kalamatiev, Delovno pravo, *Kontraverziite vo primenata na Zakonot za državni službenici, Zakonot za javni službenici i Zakonot za rabotni odnosi*, p.149.

The International labor organization (ILO) has adopted several international conventions and recommendations that draw the contours of the freedom of association and the right to collective bargaining.[7]Among them, fundamental acts are the Convention concerning freedom of association and protection of the right to organize no. 87 from 1948 and the Convention concerning the right to organize and collective bargaining no. 98 from 1949. Still, in terms of collective bargaining in the public service, a special emphasis is put on the Labor relations (public service) Convention, 1978 (no. 151). The basic goal of this Convention is to extend the domain of collective bargaining among all public service employees. Before the adoption of the Convention no. 151, ILO regulations had promoted and interpreted the scope of collective bargaining restrictively. The basic problems tackled by this Convention were the big differences in terms of defining the employment relations in the private and public sector in different countries as well as the difficulties in interpretation of the provisions of Convention no. 98 that referred to the exclusion of a wider group of public servants from its scope.[8] In fact, the Convention no. 98 states that it neither deals with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.[9] Such a provision shows that the right to collective bargaining, as a basic right arising from the Convention no. 98, does not apply to a part of the public service employees - the civil servants. Convention no. 151 attempts to surpass the partial regulation of the public servants' right to organize and bargain collectively. This Convention applies to all persons employed by public authorities, to the extent that more favorable provisions in other international labor conventions are not applicable to them.[10] That means that the rights arising from Convention no. 151 do not only apply to public servants perceived in the broadest sense, but also to the public servants perceived in a narrower sense, including the employees in the classical state administration, i.e. civil servants.

The trade unions represented in the Economic-social council of Republic of Macedonia initiated the procedure for ratification of the Convention number. 151. However, the Convention has not been ratified by the Parliament so far. The ratification of the Convention no. 151 will strengthen the general opinion that the collective bargaining does not

[7]See also: Convention concerning freedom of association and protection of the right to organize, 1948 (no. 87); Convention concerning the right to organize and collective bargaining, 1949 (no. 98); Labour relations (public service) Convention, 1978 (no. 151); Collective bargaining Convention, 1981 (no. 154); Collective agreements Recommendation, 1951 (no. 91); Voluntary conciliation and arbitration recommendation, 1951 (no. 92); Rural workers' organization Recommendation, 1975 (no. 149); Labour relations (Public service) Recommendation, 1978 (no. 159); Collective bargaining Recommendation, 1981 (no. 163).

[8]B. Šunderić, *Law of the International labour organization,* Beograd, 2001, p. 484.

[9]Convention concerning the right to organize and collective bargaining, 1949 (no. 98) Article 6.

[10]Labor relations (public service) Convention, 1978 (no. 151) Article 1, paragraph 1.

represent exclusively the rights of the employees in the private sector, but it equally concerns the employees in the public sector.

1. Basic features of collective bargaining in the public sector

The rights to freedom of association and collective bargaining are guaranteed by the Constitution and the labor legislation in the Republic of Macedonia. The right to collective bargaining in Macedonia derives from the freedom of association. In that direction, the Constitution envisages the citizens' right to establish trade unions in order to exercise their economic and social rights. The trade unions can constitute confederations and become members of international trade union organizations.[11]

The basic legal source regulating the collective bargaining in Republic of Macedonia is the Labor relations act.[12] The Law on civil servants does not explicitly regulate the right to collective bargaining. Yet, this right arises from the right to freedom of association. The Law on civil servants determines that for the purpose of exercising their economic and social rights, the civil servants have the right to establish trade unions and to take membership in them under terms and conditions laid down by law.[13] The same provision is incorporated in the Law on public servants.[14]

In Macedonia, the collective bargaining, or bipartite social dialogue takes place on three levels: national level, by signing the general collective agreement; branch level or department, by signing special collective agreement and employer's level, by signing individual collective agreement.

According to the data from 2010, the total number of employed in Republic of Macedonia is 637.855, while 119.724 of the employed are members of the two largest trade union confederations.[15] Hence, the conclusion is that trade union density in Republic of Macedonia is 1/5, i.e. approximately 20% of the total number of employees in the private and public sector. We assume that trade union density in the period 2010-2013 had some increase, given the increasing membership in the largest trade union confederations and it is between 20 - 25%.

Trade union membership in the Republic of Macedonia is dispersed in 43 trade union organizations, which are registered in the Register of trade unions within the Ministry of labor and social policy. Almost half of them or 20 trade union organizations have acquired a decision on representation and have acquired the status of representation. Most of the registered trade unions joined in federations of higher level. On the territory of Republic of Macedonia, there are three union

[11]Constitution of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia* no. 52/92, Article 37, paragraph 1.
[12]Labor relations act, *Official Gazette of the Republic of Macedonia,* no. 62/05.
[13]Law on public servants, *Official Gazette of the Republic of Macedonia,* no. 59/2000, Article 26;
Law on public servants, *Official Gazette of the Republic of Macedonia* no. 52/2010, Article 30.
[15]Source: Commission for determination of representativeness in the Republic of Macedonia.

federations (confederations, centers): Federation of trade unions of Macedonia (SSM), Confederation of free trade unions of Macedonia (KSS) and Union of independent and autonomous trade unions of Macedonia (UNASM). UNASM, SSM and KSS acquired the status of representation on the territory of the Republic of Macedonia and they are members of the Economic-social council of Republic of Macedonia - a legal tripartite body.[16]

In Republic of Macedonia, there are 2 general and 14 special collective agreements that are valid.

General collective agreements are concluded for the private sector in the economy and for the public sector. The main feature of the general collective agreements is that they are applied directly and they are mandatory for all employers and employees in the private and public sector.

The General collective agreement in the public sector has been concluded in 2008, between KSS and the Ministry authorized for labor issues, by previous authorization of the Government of the Republic of Macedonia. According to the LRA, the General collective agreement is applicable to the state agencies, agencies of the local self-government, institutions, public enterprises, departments, agencies, funds and other legal entities performing work of public interest.[17] The GCA for the public sector was signed in turbulent socio – economic conditions. The rejection of the state to sign the General collective agreement in 2008 brought the employees in the public sector to strike. Their demands were aimed at signing a collective agreement and transforming the fixed–term employment of 4 500 employees in education, science and culture in permanent employment.

The decision from July 15, 2010 for acquiring representativeness for the public sector identified SSM as a representative subject for signing the General collective agreement for the public sector. Therefore, the two representative union confederations for the public sector in the Republic of Macedonia (SSM and KSS) and the Ministry authorized for labor issues launched the ''draft" version of the new Collective agreement for the public sector. The ''draft version" attempts to include novelties in the contents of the existing General collective agreement for the public sector. The social partners have agreed on most of the issues concerning the contents of the new GCA. However, the issues related to the compensation of workers in the event of strike and the reimbursements for certain expenses related to work (field work allowance, allowance for separate life from the family, allowance for using a private car for duty purposes and etc.) are still opened questions and subject to negotiations.

Besides the GCA in the public sector, the social partners in Republic of Macedonia have signed several applicable special collective agreements. In the public sector, there are currently 5 valid collective agreements. Branch collective agreements concluded by branch trade unions within SSM are the Collective agreement of the Ministry of

[16]SSM and KSS have obtained the status of representativeness for the territory of Republic of Macedonia since 21.06.2010.
[17]LRA, Article 205, paragraph 2.

internal affairs, concluded between the Macedonian police trade union and the Ministry of interior and the Collective agreement for health care of the Republic of Macedonia, concluded between the Independent trade union of health, pharmacy and welfare and the Ministry of health. Branch collective agreements concluded by branch trade unions within KSS are: the Collective agreement for public institutions for childcare and education of children and children's activity, holidays and recreation (concluded between the Independent trade union for education, science and culture - SONK and the Ministry of labor and social welfare policy); Primary education collective agreement (concluded between SONK and the Ministry of education of the Republic of Macedonia) and Secondary education collective agreement (concluded between SONK and the Ministry of education of the Republic of Macedonia).

Concerning the persons obliged by the collective agreements, it is evidently that the general collective agreements are implemented directly and are compulsory for all employees, regardless of the sector of employment. Since these legal provisions have been accepted and do not address any additional dilemmas, more problematic are the provisions concerning persons obliged by the special or individual collective agreements.

Beside the fact that the aim of the legislation is to enlarge the implementation of the regulations for the special and individual collective agreements on as many workers as possible, the provisions incorporated in the LRA can still seem unclear. The LRA provides that the collective agreement obliges all persons who have concluded the collective agreement and all persons who have become members of the associations that have concluded the collective agreement at the time of the conclusion of the collective agreement or additionally.[18] Furthermore, the same article provides that the collective agreement also obliges all persons who joined the collective agreement and all persons who have additionally become members of the associations that joined the collective agreement.[19] The attempt to analyze the first two paragraphs of Article 208 leads to the conclusion that these provisions are primarily associated with the special collective agreements or collective agreements on branch level. Therefore, these collective agreements apply to all persons who have signed them (referring to the signatories of the collective agreements – natural persons). Further, it refers to all persons who at the time of signing were or additionally became members of associations that have signed the collective agreement (referring to the current union members or workers who subsequently became members of the union that concluded the collective agreement). Furthermore, the collective agreement obliges all persons who have accessed to the collective agreement and all persons who additionally became members of associations that have accessed to the collective agreement. The latter refers to the individual workers who individually joined the collective agreement, regardless of their membership in a union. It also refers to all persons who additionally joined or became members of the union that joined the concluded collective agreement. These provisions minimize the possibility of not

[18]LRA, Article 208, paragraph 1.
[19]LRA, Article 208, paragraph 2.

covering the workers by collective agreement. Nevertheless, a question arises whether the special collective agreement (collective agreement on branch level) will cover the workers who are neither members of the union that signed the collective agreement, nor additionally became its members or subsequently acceded to the collective agreement, or additionally become members of the unions that acceded to the collective agreement. We consider that, unlike the general and individual collective agreements that act "erga omnes" and are applied directly and compulsory to all subjects, the special collective agreements make clear distinctions between the workers who are members and workers who are not members of the unions that have signed the collective agreement.

The interpretation of the provision concerning the persons obliged by the individual collective agreements or agreements on employer's level is much simpler. LRA states that the individual collective agreement concluded on employer's level applies to all his employees, whether they are or they are not trade union members or members of the trade union that signed the collective agreement.[20]

2. Contracting parties of the collective agreements and conditions for acquiring representativeness in the public sector

The contracting parties that can conclude collective agreements are variable, depending on the type of collective agreement that should be concluded. The General collective agreement for the public sector is concluded between the representative trade union for the public sector and the Ministry responsible for labor issues, by previous authorization of the Government of Republic of Macedonia.[21] The special collective agreements for the public sector, or the special collective agreements for public enterprises and institutions are concluded between the representative trade union and the founder or the body authorised by the founder of the public enterprise or institution.[22] The individual collective agreement for the public enterprises or institutions is concluded between the representative trade union and the founder or the body authorised by the founder of the public enterprise or institution.[23]

As it can be noticed by the anticipation of the contracting parties that participate in collective bargaining, the instutute which is explicitely mentioned is "representive union or representative association of employers". In the determining the representativiness of trade unions, the basic aim is to guarantee objective and relevant criteria for the eligibility of certain union to take part in the collective bargaining process in order to conclude collective agreement. Hence, our legislation sets multiple conditions for aquiring union representativiness, depending on the level of collective bargaining.

[20]LRA, Article 208, paragraph 3.
[21]LRA, Article 216, paragraph 2.
[22]LRA, Article 218, paragraph 1.
[23]LRA, Article 219, paragraph 1.

The amendments to the Labor relations act from January 2012[24] changed the basic provisions for the representativeness of social partners. In practice, it is rather usual that the once representative parties of the collective agreement face a reduction of their membership. The number of trade union members that depends on the increase or, more frequently, the decrease of the number of workers can affect the trade union membership, including the status of representativeness of the trade unions. Practice shows that certain unions, which have already fulfilled the conditions for representativeness, face a reduction in the number of their members. The reasons beyond the decrease of the union members lie in the unpredictability of the production processes. Therefore, in times of decreased economical activities, large number of employees may face redundancies due to business reasons or termination of their employment due to liquidation or bankruptcy of their employers. With the termination of the employment relation, the workers loose the right to be members of a trade union. This condition can diminish the representativeness of the trade unions and it can cause unsuitable effects concerning the collective bargaining in general.

Due to these reasons, the amendments of the Labor relations act from January 2012 incorporated appropriate standards that aim to eliminate the obstacles for concluding collective agreements. The amendments regulate the possibility of concluding a collective agreement in case when the trade unions have submitted a request for acquiring representativeness, but they fail to meet the conditions for representativeness. In such case, until the conditions for representativeness are fully met, the collective agreement can be concluded between the employer or the association of employers and the trade union with the largest number of members, based on the list submitted along the request for obtaining representativeness.[25] In such conditions, the collective agreement can be concluded after receiving an announcement by the Ministry of labor and social policy that helps determining which union or employer's association has the largest number of members.[26] Hence, the unions and associations of employers that do not fulfill the conditions for representativeness can still have the opportunity to participate in the process of collective bargaining. In other words, this possibility leads to temporarily reintegration of the so-called "majority clause", which will apply until the terms and conditions for acquiring representativeness are fully met.

Labor relations act sets different criteria for representativeness of the social partners. The criteria for representativeness can be classified in terms of whether they refer to participation in tripartite bodies for social partnership and tripartite delegations of social partners or to conclusion of collective agreements (general, special and individual).

According to the LRA, the criteria of representativeness for participation in tripartite bodies for social partnership and tripartite delegation of social partners is called representativeness on the territory of Republic of Macedonia. Further, we will illustrate the conditions for

[24]Law on amending the Labor relations act, *Official Gazette of the Republic of Macedonia,* no. 11 from 24.01.2012.
[25]LRA, Article 210, paragraph 2.
[26]See also: LRA, Article 210, paragraph 3.

representativeness of the social partners on the territory of Republic of Macedonia.

Concerning the determination of the representativeness, below we provide a tabular presentation of the current arrangements for the requirements and criteria for representativeness of trade unions and employers' organizations, according to the different levels of collective agreements and the different spheres, i.e., the private sector in the field of economy and the public sector.

*** Representativeness of trade unions and employers' organizations in R.M.**

Determined for:	A representative trade union on the territory of the Republic:	Representative employers' organization on the territory of the Republic:
The representativeness of a trade union or an organization of employers is determined for the purposes of participation in tripartite social partnership bodies and tripartite delegations of the social partners (Article 211, paragraph 1).	Should meet the following requirements: - it should be noted in the register of trade unions, which is maintained by the Ministry with competencies in the field of labor - it represents at least 10% of the total labor force in the Republic of Macedonia who pay a membership fee to the trade union - it associates at least three trade unions from different branches at national level, which are noted in the register of trade unions maintained by the Ministry with competencies in the field of labor - it pursues activity at national level and has registered members in at least 1/5 of the municipalities in the Republic of Macedonia - it operates in accordance with its statute and the democratic principles - it has as members trade unions that have signed or acceded to at least three collective agreements at branch, i.e., activity level. Article 212 (paragraph 1)	Should meet the following requirements: - it should be noted in the register of employers' organizations, which is maintained by the Ministry with competencies in the field of labor - the organization's membership covers at least 5% of the total number of employers from the private sector in the field of economy in the Republic of Macedonia or the employers - members of the organization should employ at least 5% of the number of employees in the private sector in the Republic of Macedonia - the members of the organization should be employers from at least three branches, i.e. activities - the organization should have members in at least 1/5 of the municipalities in the Republic of Macedonia - it entered into or acceded to at least three collective agreements at branch, i.e. activity level - it should operate in accordance with its statute and the democratic principles. Article 213 (paragraph 1)

Representativeness of the social partners on the territory of Republic of Macedonia is indirectly connected with the identification of

social partners in the collective bargaining. Its basic aim is to identify the participation of social partners in the creation of macroeconomic and social policies through participation in the Economic-social council of the Republic of Macedonia.

Further, we will illustrate the conditions for acquiring representativeness for the participation in collective bargaining for the public sector.

The representativeness of the trade unions at the level of **public sector** is established for the purposes of participation in the collective bargaining at the public sector level.[27] A representative trade union at the level of public sector is the trade union that is noted in the register of trade unions, which is maintained by the Ministry with competencies in the field of labor and has as members at least 20% of the total number of employees in the public sector who pay a membership fee.

The representativeness of the trade unions, i.e. employers' organizations at branch level is established for the purposes of participation in the collective bargaining at branch level.[28] A representative trade union at branch level shall be the trade union that is noted in the register of trade unions, which is maintained by the Ministry with competencies in the field of labor and has as members at least 20% of the total number of employees in the branch who pay a membership fee.[29]

The representativeness of the trade unions at employers' level is established for the purposes of participation in the collective bargaining at employers' level.[30] A representative trade union at employers' level shall be the trade union that has as members at least 20% of the total number of employees by the employer who pays a membership fee.

3 Collective bargaining in the judiciary

The collective bargainig in the judiciary can be classified in several different fields. There is a wide range of services that can be embedded in the judiciary. Consequently, the collective bargaining in the judiciary can be viewed integratively or segmentarely. The integrative observation of the collective bargaining in the judiciary refers to the possibility of concluding special (branch) collective agreements, which cover the following public services: judicial service, public prosecutor's office and institutions responsible for execution of sanctions. The segmentarian observation of the collective bargaining can be based on the individual treatment of each of the aforementioned services. The analogy arising from this situation refers to the possibility of signing special collective agreements for each of the services in the judiciary.

The current practice of collective bargaining in the judiciary so far points to the existence of a special (branch) collective agreement for the state, judicial and local self-government bodies in the Republic of Macedonia from 1995. Besides the servants employed in the judiciary, this collective agreement includes the civil servants, employees in the local self-government units and other legal entities that perform non–

[27]Labour Relations Act, Article 211, paragraph 1.
[28]Labour Relations Act, Article 211, paragraph 4.
[29]Labour Relations Act, Article 212, paragraph 4.
[30]Labour Relations Act, Article 211, Paragraph 5.

economic activities. Contracting parties to the collective agreement are the Trade union of the administration, judiciary and citizens associations' employees in the Republic of Macedonia - AJCA[31] and the Ministry of justice of the Republic of Macedonia. The collective agreement for the state, judicial and local self-government bodies in the Republic of Macedonia from 1995 is concluded on indefinite time.[32] The validity of the collective agreements on indefinite time was in accordance with the Labor relations act from 1993, which ascertained that collective agreement can be concluded in a written form on indefinite or definite time.[33] According to the LRA from 2005, a collective agreement can be concluded on a definite period of two years with the possibility for extension, with a written consent of the contracting parties.[34] Meanwhile, AJCA has not concluded any new special collective agreement that would have complied with the new labor legislation. At the same time, much of the contents of the Special collective agreement consists of old and modified statutory provisions governing the labor rights of the employees in state, judicial and local self–government bodies. Hence, collision between the legal provisions and the contents of the collective agreement is more than evident. At this moment, the social partners search for new solution for the collective agreement for the state, judicial and local self-government bodies.

Further, the authors make a segmental analysis of the collective bargaining in the judiciary.

3.1 Collective bargaining in the judicial service

The new regulations that govern the clerical system in Macedonia along with the reforms in the judiciary, give a new approach to the analysis of the collective bargaining in the judicial service.

The status, rights and obligations of the judges and justice jurors are defined with the Law on courts[35] and the Law on judicial council of the Republic of Macedonia.[36] Labor law theory and practice points out to the possibility of establishing professional trade unions for protection of the rights and interests of employees employed in certain professions.[37]Additionally, the Law on courts provides that judges can establish associations in order to exercise their rights and interests; improve their professionalism and protect the independence of the judicial function.[38]

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[31]The Union of AJCA is a branch trade union, associated to SSM. It unites the workers from the administration, judiciary and the associations of citizens in Republic of Macedonia.

[32]Collective agreement for the bodies of the state, judiciary and local self-government units of the Republic of Macedonia *Official Gazette of the Republic of Macedonia* no. 39/94, paragraph 121.

[33]LRA from 1996, *Official Gazette of the Republic of Macedonia* no. 80/93, Article 85.

[34]LRA, Article 226.

[35]Law on courts, *Official Gazette of the Republic of Macedonia*, no. 58/06.

[36]Law on the Judicial council, *Official Gazette of the Republic of Macedonia,* no. 60/2006.

[37]Bagić D., *Industriski odnosi u Hrvatskoj – Druśtvena integracija ili trźišni sukob*, TIM press, Zagreb, 2010.

[38]Law on courts, Article 51.

Further on, we analyze the rights and obligations arising from the employment relations of the employees in the judicial services. The basic law that regulates the status, rights, duties, responsibilities and the system of payments is the Law on judicial service[39]. According to this law, the judicial service is conducted by judicial servants, persons employed in the courts that perform technical and assistance work and the judicial police.[40] Judicial servant is a person who performs professional, administrative, supervisory, technical, statistical, material and financial duties in accordance with this Law and other laws. The judicial servants exercise their employment rights in accordance with this Law, collective agreements and other regulations governing the employment rights. Persons employed in the courts performing technical and assistance work have no status of judicial servants and are subjected to the general labor legislation. The judicial police is a judicial service that secures the premises, property and persons and keeps the order in the court rooms. Servants in the judicial police exercise their employment rights in accordance with this Law, collective agreements and other regulations governing the employment rights.[41] The judicial administrator assists the president of the court while performing the work of the judicial administration and the implementation of the court rulebook.[42]

Further on, the Law on judicial service envisages the establishment of a special body - the Council of the judicial service. The Council of the judicial service is established in order to accomplish the employment rights of the judicial servants and its sit is in the Supreme court of the Republic of Macedonia. The Council is consisted of 11 members, among which are: the judicial administrator of the Supreme court of RM, the judicial administrator of the Administrative court, the judicial administrator of the Higher administrative court and the judicial administrators of the Court of appeal as permanent members and four judicial administrators of the Courts with extended jurisdiction that will rotate on each three years, according to the schedule of the courts laid down in the Law on courts.[43] The Council of the judicial service has multiple competences among which are: deciding in second instance upon appeals and complaints submitted against decisions of presidents of courts that refer to termination of employment of judicial servants. In addition, it has competences to decide in second instance upon appeals and complaints submitted against decisions of the judicial administrator in the scope of his duties; on disciplinary procedures; upon appeals and complaints on decisions for exercising the employment rights in the judicial service and. Further, it gives consent to the regulations for internal organization and systematization of the courts.[44]

The composition and the competencies of the Council of judicial service have opened several dilemmas concerning the realization of the rights and obligation of the judicial servants. They implicitly open

[39]Law on judicial service, *Official Gazette of the Republic of Macedonia,* no. 98/2008.
[40]Law on judicial service, Article 2.
[41]Law on judicial service, Article 3.
[42]Law on judicial service, Article 11.
[43]Law on judicial service, Article 8.
[44]Law on judicial service, Article 9.

dilemmas in terms of collective bargaining in the judicial services. Taking this into consideration, we pose the following theses:

The first thesis refers to the collision between the basic principles of labor law and the practical role of the Council of judicial service, regulated by the Law on judicial service.

In labor law, the realization, promotion and protection of the workers' rights is one of the unions' basic functions. In this regard, the legal provision stipulating that the Council of the judicial service is established for the exercise and protection of the employment rights of judicial servants is disputable. Most of the legal competencies of the Council are limited to deciding at second instance upon appeals and complaints of the judicial service. Labor law theory envisages internal and external procedure for the protection of workers' rights. The internal procedure concerns the protection of the workers' rights before the employer, while the external procedure verifies the ability to bring a labor dispute before a competent court. The internal procedure consists of two phases: to submit a complaint (request, appeal) against a decision of the employer and to receive a response from the employer after the submission of the complaint. The role of the Council of judicial service is to decide on the appeals submitted by the judicial service at second instance, but that does not mean that the Council of the judicial service will necessarily proceed in favor of the judicial service. Hence, we consider that the Council of judicial service is a second degree body of the employer (in this case the court) aimed to complete the internal procedure for protection of the employment rights of judicial servants. Therefore, it is not a body aimed to improve the employment rights of the judicial servants.

The only legal competence of the Council that implies "exercising and improving the employment rights of judicial servants" is the Council's competence "to give consent to the acts for internal organization and systematization of the courts". In labor law, the acts for internal organization and systematization are called general acts of the employer. Most frequently, these acts are rulebooks, guidelines, working rules etc. On the other hand, the labor legislation (but not in Macedonia) recognizes the existence of the so-called Works councils. The main role of the Works councils is the workers' participation in the management of companies. Hence, a part of the credentials of the Works councils is also the participation of the employees in the adoption of the general acts of employers (rulebooks, acts for systematization etc.). These acts can regulate directly or indirectly the rights and obligations of the workers arising from the employment relations.

Therefore, we consider that the only competence of the Council to give consent to the acts for internal organization and systematization in the courts is compatible with the function of "improving and exercising the employment rights of the judicial servants".

The second thesis refers to the status of the judicial administrators. The Law does not provide a clear answer to the question whether they are a part of the judicial service or they have a different status. If they form part of the judicial service, than they represent the interest of the judicial servants in the Council of judicial service.

We place the previously given thesis in correlation with the primarily goal of this paper, which is the examination of the process of

collective bargaining in the judicial service and the determination of signatories of the collective agreements in the judiciary.

The labor law studies the employment relations, whose essential elements are the subordination between employers and employees and the remuneration for the work performed by the employee. The Law on judicial service determines that the salaries and allowances paid to the judicial servants are provided by the judicial budget.[45] This provision refers to the analysis of the provisions in the Law on judicial budget. The Law on judicial budget determines the preparation, adoption and enforcement of the judicial budget and the establishment and competencies of the Judicial budget council. The judicial budget finances the judicial authorities in the Republic of Macedonia and the Academy for judges and public prosecutors.[46] The expenses of the judicial budget are divided on current and capital expenses. An integral part of the current expenses of the Judicial budget council are also the wages and allowances for the judicial servants, judicial police, other employees in the judiciary, the judicial servants in the Judicial council of the Republic of Macedonia and the Academy for judges and public prosecutors.

For performing the activities related to the judicial budget, the legislation envisages the establishment of Judicial budget council, composed of representatives of judicial and executive authorities. The President of the Judicial budget council is at the same time President of the Judicial council of the Republic of Macedonia. The Judicial budget council has multiple competencies, out of which we emphasize: the allocation of the finances from the judicial budget to the courts and the Academy for judges and public prosecutors and the approval for the funding of new employees in the courts and the Academy for judges and public prosecutors.[47]

Furthermore, the Law on judicial budget determines the procedure for developing, establishing, delivering and executing of the judicial budget.

The analysis of the legal provisions in this field points out to a shared competence between the judicial and executive authorities in the process of execution of the judicial budget, which includes the current costs for salaries and other financial allowances for judicial service.

Therefore, we can conclude that the process of the execution of the judicial budget intertwines the functions of the judicial and executive authorities.

3.1.1 Findings and proposals for collective bargaining in the judicial service

According to the Law on courts, the judicial authority in Macedonia is exercised by: the courts of first instance, the courts of appeals, the Administrative court and the Supreme Court of Republic of Macedonia. This judicial system underlines the existence of 33 subjects

[45]Law on the judicial service, Article 39, paragraph 2.
[46]Law on the judicial budget, *Official Gazette of the Republic of Macedonia* no. 60/2003, paragraph 1.
[47]See: Law on the judicial budget, Article 9.

that can be treated as 33 individual employers (27 courts of first instance, 4 courts of appeal, Administrative court and Supreme court).

The majority employees in the judicial system have the status of special public servants. Their status, rights and obligations are regulated with the Law on judicial service. Moreover, according to the Law on judicial service, the employment rights of the judicial servants are regulated with this Law, collective agreements and other regulations that regulate their rights from employment. A similar provision, which explicitly refers to collective agreements can be found in the provisions that regulate the employment rights and obligations of judicial police, which is an integral part of the judicial service.

The representative trade unions for collective bargaining in the judiciary have the possibility to participate in the collective bargaining on branch or department level or in the collective bargaining on employer's level. The collective bargaining in the function of concluding individual collective agreements in the judicial service is a long and complex process. Therefore, we consider that the Trade union of the administration, judiciary and citizen association's employees in the Republic of Macedonia – AJCA, as the only representative union in the judiciary should be focused on signing a special (branch) collective agreement.

According to the Labor relations act, the contractual parties for signing a special collective agreement for public enterprises and institutions are the representative trade union and the founder or the body authorized by the founder of the public enterprise or institution. In its broadest meaning, the term "founder" of the judicial authority including the judicial service, refers to the Republic of Macedonia as a state. Still, the division of the state powers into legislative, executive and judicial represents a fundamental value of the Constitution of the Republic of Macedonia.[48] In addition, the Law on courts determines that the courts are autonomous and independent state bodies.[49]

Hence, we will provide several different proposals for concluding special collective agreements in the judiciary.

- **Special collective agreement for the judicial service in Republic of Macedonia**

This collective agreement could be concluded between two parties, but its signers should be three subjects. Signers of this collective agreement should be the Trade union of the administration, judiciary and citizens associations' employees in the Republic of Macedonia – AJCA on the one side, the President of the Judicial council of Macedonia (as a chairman of the Judicial budget council) and the Minister of justice (as a representative of the executive authority) on the other side. This collective agreement could regulate the employment rights of the judicial servants, persons employed in the courts performing technical and assistance work and the judicial police.

However, there are other categories of judicial servants in the judicial service with status of civil servants. We consider that the title

[48]See: Constitution of the Republic of Macedonia, Article 8, paragraph 1.
[49]See: Law on the courts, Article 1, paragraph 2.

"Collective agreement for the judicial service" should not be an obstacle for the inclusion of the civil servants employed in the judiciary. On the contrary, they could be covered with other different special collective agreements (for example the Collective agreement for state bodies and local self-government units).

- **Special collective agreement for the judiciary and the judicial service**

The possible signers of this collective agreement could be the Trade union of the administration, judiciary and citizens association's employees in the Republic of Macedonia – AJCA and the Ministry of justice (as a representative of the executive authorities) on the other side. The Collective agreement for the judiciary and the judicial service could have a broader scope than the Collective agreement for the judicial service. The judiciary in Macedonia includes the judicial bodies, public prosecutor's office, state defender's office, persons employed in the Department for the execution of sanctions and persons employed in the correctional facilities. We consider that the most appropriate subject that can occur as a signer of the collective agreement on the side of the employer is the Ministry of justice (as a representative of the executive authority).

Having signed this collective agreement, its scope could be extended to the employees in the public prosecutor's office (who have the status of special public servants), employees in the state defendant's office (who have the status of civil servants), the employees in the Directorate for execution of sanctions and the employees in the correctional facilities (who have the status of civil servants).

3.2 Collective bargaining in the Public prosecutor's office (findings and proposals)

The Law on Public prosecutor's office regulates the establishment, organization and the competence of the Public prosecutor's office, defines the territorial jurisdiction and the seats of the Public prosecutors offices, determines the conditions and procedure for appointment and dismissal of public prosecutors and deputy public prosecutors, as well as other issues related to the work of the Public prosecutor's office.[50] We consider that the public prosecution service has status of specialized service, which is different from the status of the service performed by the civil servants. Public prosecution advisers and independent public prosecution advisors perform the expert assignments in the Public prosecutor's offices. In addition, expert collaborators and public prosecution trainees perform these. A certain number of professionals from other profiles (finances, construction, IT, electrical engineering, mechanical engineering etc) perform the expert assignments in the Public prosecutor's office, associated with the process of tracking and detection of crime. Further, the Public prosecutor's offices that have established specialized departments for tracking and detecting of crime and basic Public prosecutor's offices that have established specialized departments for organized crime and corruption can employ a particular

[50]Law on Public prosecutor's office, *Official Gazette of RM* no. 150/2007, Article 1.

number of professionals that can perform the work of public prosecution investigators. Finally, the Public prosecutor's office can employ a certain number of employees for performing the administrative and technical tasks.[51]

The Public prosecutor's office as a unique state institution of the Republic of Macedonia is organized on the levels of basic, higher, and Public prosecutor's office.[52]

We consider that identically to the collective bargaining in the judicial service, a Special collective agreement for the Public prosecutor's office could be concluded. This could be an appropriate approach to collective bargaining in the absence of a collective agreement that would include the employment rights and obligations of the professional servants in the Public prosecutor's office along with the other employees in the judiciary. Unlike the Law on judicial budget, which envisages the establishment of a Judicial budget council (headed by a President, who is a President of the Judicial council of Macedonia at the same time) the legislation that regulates the public prosecution has not envisaged the establishment of such body. This can limit the choice of a signer of the collective agreement on the employers' side. Hence, we will provide several different proposals for concluding a special collective agreement that will involve the employees in the Public prosecutor's office:

- **Special collective agreement for the Public prosecutor's office in Republic of Macedonia**

Signers of the Special collective agreement for the Public prosecutor's office could be the Trade union of the administration, judiciary and citizens association's employees in the Republic of Macedonia – AJCA and the Ministry of justice (as a representative of the executive authorities) on the side of the employer. By signing such collective agreement, the servants employed in the Public prosecutor's office could have a special regulation that can regulate their employment rights and obligations.

- **Special collective agreement for the Judiciary and the Public prosecutor's office in Republic of Macedonia**

Contracting parties of such collective agreement could be the servants of the Public prosecution service, the civil servants of the State's attorney office, the civil servants of the Directorate for the execution of sanctions and the persons employed in the penitentiary and correctional facilities. This collective agreement might be concluded between the Trade union of the administration, judiciary and citizens association's employees in the Republic of Macedonia – AJCA on one side, and the Ministry of justice on the other side. Judicial servants should not be covered by this collective agreement.

[51]Law on Public prosecutor's office, Article 76.
[52]Law on Public prosecutor's office, Article 11.

3.3 Collective bargaining in the bodies authorized for the execution of sanctions (findings and proposals)

The Law on execution of sanctions regulates the employment rights and obligations of the persons employed in the bodies authorized for execution of sanctions.[53]According to it, authorized bodies for the execution of sanctions are the Directorate for execution of sanctions, the penitentiary and the correctional institutions and the judges for the execution of sanctions.

The subject of analysis in terms of collective bargaining in this field is the determination of the parties that are supposed to conclude the collective agreement. This collective agreement should cover the employees in the Directorate for execution of sanctions and the employees in the correctional institutions.

According to the Law on execution of sanctions, the Directorate for execution of sanctions organizes, implements and supervises the execution of the sentence of imprisonment, juvenile prison, alternative measures for socially useful work and house detention, protective supervision imposed by a decision on a conditional sentence or conditional release. In addition, it organizes, implements and supervises the execution of a correctional sentence that stipulates the dispatch to an educational-correctional institution.[54] The Directorate has the status of a legal entity under the Ministry of justice and it is headed by a director. The employees in the Directorate have the status of civil servants.[55]

The Law on execution of sanctions determines that the sentence of imprisonment and the correctional sentence that stipulates the dispatch to a correctional facility are executed in the penitentiary and correctional institutions. These entities have the status of legal entities and their funding as individual budget-users are provided through the Directorate for execution of sanctions.[56]

The Law on execution of sanctions determines that the employees in penitentiary and educational-correctional institutions are civil servants, with the exception of the employees in the economic units of these institutions. The employees in the Directorate for execution of sanctions have the status of civil servants as well.[57]

The organizational network of the penitentiary and educational-correctional institutions consists of 11 penitentiary and 2 correctional institutions. From the perspective of labor law, each of these subjects can be treated as a special employer with the possibility to be a signatory party of an individual collective agreement. Hence, the option for concluding a special collective agreement covering all penitentiary and correctional institutions is far more appropriate in terms of collective bargaining. This can be implemented through the conclusion of a special collective agreement for the penitentiary and correctional institutions, whose signatories could be the Trade union of the administration, judiciary and citizens association's employees in the Republic of

[53]Law on execution of penal sanctions, *Official Gazette of the Republic of Macedonia* no. 2/2006.
[54]Law on execution of penal sanctions, Article 14, paragraph 1.
[55]Ibid.
[56]Law on execution of penal sanctions, Article 18.
[57]Law on execution of penal sanctions, Article 17, paragraph 2.

Macedonia – AJCA on one side, and the Ministry of justice on the other side. Yet, we consider that the employment rights and obligations of the civil servants, currently regulated by the Law on execution of sanctions, could be better regulated under a more comprehensive, special collective agreement. Such collective agreement could be the Collective agreement for the judiciary and the judicial service or the Collective agreement for the judiciary and the public prosecution service.

CONCLUSION

The collective bargaining in the public sector is regulated by the general labor legislation. Its specifics concern the contracting parties that participate in the collective bargaining process in order to conclude collective agreements.

Beside the General collective agreement for the public sector, there are five special collective agreements in Republic of Macedonia, at this moment. Signers of the special collective agreements are the representative branch unions, associated within the Federation of trade unions of Macedonia (SSM) and the Confederation of free trade unions of Macedonia (KSS).

This paper contains a special overview, related to the collective bargaining in the judiciary as an integral part of the public sector. The social partners in the judiciary face the challenge to regulate the type of collective bargaining and to detect the contracting parties of the possible collective agreements in the judiciary. Therefore, the authors propose several different modes to regulate the collective employment relations within the judicial service, public prosecution service and the bodies authorized for the execution of sanctions.

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