

REGULATION OF A RIGHT TO A SALARY IN THE INTERNATIONAL LEGAL INSTRUMENTS OF ILO AND UN AND THEIR IMPLEMENTATION IN THE INTERNATIONAL LABOUR LEGISLATION IN THE REPUBLIC OF MACEDONIA

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Abstract: This paper deals with the salary as the most important legal institute, element and principle of the labour relations. Before we approach the analysis of the legal regime of the salary, we will define the term labour relations. This paper puts special emphasis on the terminology of the notion salary, as well as the legal nature of the legal regime of the salary.

Additionally, in this paper the most important international legal instruments of ILO, UN and The European Council are analyzed for salary regulation and ban on compensation discrimination. In this context, the most important legal acts in the Republic of Macedonia are analyzed which regulate the legal institute salary, i.e. the minimum wage (The Constitution, Labour Law, and Law on Minimum Wage).

Key words: *labour relations, employment agreement, salary, conventions, law*

1. Work payment

1.1. The notion of labour relations and work payment

Before we approach the more detailed analysis of the subject of this part 'work payment', it is necessary to explain the term 'labour relations'.

Defining of the term-labor relations is a very difficult task and it is simultaneously a big challenge for the labour – legal theory and for the labour legislation.

Labour relations are social-legal relations, based on various factors of the social labour that aim at functioning of that labour. Its social content and its forms depend on specific social realtions. In a situation of a capitalistic system as a form of government, the wage labour relations are typical where the employee sells his labour as goods to the employer, hereupon making profit. Thereto, the term- labour relations, is always conditioned on the socio economic conditions and the legal determination of a specific society. Considering this fact the term - labour relations is not always the same. Besides, the questions that relate to the content of the labour relations and very often have a decisive role in determination of the term – labour relations, refer to the level of the technical technological progress, working conditions, cooperation and the conflicts between people in the process of the work, the customs, the tradition, the cultural and the national differences, the collective and the individual motivations at work, the economic interests, the social needs, then, the influence of the external i.e. the international factors expressed through the international politics and the economic situation.

Starting with the complexity of the terminological determination of the labour relations, the need for one unique and precise definition of the term labour relations is becoming more obvious that will refer to all socio- economic and political establishments, i.e. formations. The Labour Law of 2005, determines the labour relations as follows: labour relations are contractual relations between the employee and the employer and with it, the employee voluntarily involves in the organized process of work with the employer, in order to receive salary and other compensations, personally and continually to perform his work in accordance with the directions and supervised by the employer (article 5 paragraph 1 subparagraph 1 from the Labour Law).

The Labour Law shall lay down the contractual principle of the labour relations; hence it shall define the employment contract as a separate contract of labour right. As before, the employment agreement remains the basis of establishing the labour relations, because with the employment agreement, labour relations are concluded, and that will be a subject in another paper.

The elements of the labour relations are categories – elements that provide the most precise determination of the notion labour relations, and of its conceptual setup. Those are legal assumptions where the existence or nonexistence of the labour relation depends on their fulfillment or non-fulfillment. In the legal definition in article 5 paragraph 1 subparagraph 1 and in the legal theory, as important elements of the labour relations are mentioned the following: legality; contractual relations;

voluntariness; personal relationship; professionalism; salary and other compensations; (onerousness); durability; subordination and continuity- ceaseless work performing.¹

All the above-mentioned elements of the labour relations have very important significance to determine it as a notion, therefore in the legal theory they are defined as general elements of the labour relations. They are general, because they are present at all labour relations, but they are important because if any one of them do not exist, it makes it impossible to determine the notion labour relations.²

¹ Salary and other compensations (onerousness). The employee establishes labour relations for performing certain work and with it he is entitled to earnings, i.e. a salary and other income (compensations, allowance). The employee is entitled to a salary that belongs to him for the invested labour and the evident results from the labour, i.e. accomplished work, in accordance with the time spent at work and the achieved results during the work (efficiency). In that sense, the employee cannot fully take the whole risk in any sense.

Employees remuneration for the invested, i.e. for the performed work (salary and other compensations), is one of the basic principles, not only of the labour relations but also of the total economic and social life in every society-country. The proper earnings, is also a constitutional category, because pursuant to the Constitution (article 2 paragraph 3) 'every employee shall have the right to proper earnings' Labour Law, collective agreements, and employment agreement regulate that the employee has the right to earnings – salary as a compensation for the performed work proportionally to the performed work, i.e. to the requirements of the job position.

² Belichanec, T., Starova G., (1996), Labor Law, Faculty of Law, Univerisuty Iustinianus Primus Skopje, 112-116.

1.2. The notion of salary

In everyday life different terms for salary are used. The most common terms that have general meaning are used in labour law and they are: income of the employees (English Remuneration, Compensation, French La remuneration, German Arbeitsengelt), earning or salary (English Wage/salary, French Le salaire), earning compensation (English Indemnity, French Indemnité, German Der Erwerb, der Verdienst), personal income and such like. The terms earnings (English wage) or salary (English salary) are terms which, as a rule, are used as synonyms that express two forms of direct incomes of the employees that have the same legal nature. The term earnings (wage) in the comparative law is used when it is about the employees that are employed in the industry, (blue collars) that, as a rule, are paid by the hour and the professional training, whereas the term salary (salary) is used for the employees (white collars) that are monthly or annually paid and refer to the salaries of the managers, state and public officials, the elected and appointed officials. In the Republic of Macedonia in the time of a contract economy (socialism) for the terms salary the term personal income was used. The term salary replaced the term personal income in the LL of 1993.

The definition of salary is provided in the Convention no. 25 of ILO. According to the definition, the term salary is determined 'as a compensation of the earnings regardless the way how it is earned or calculated, that can be expressed in terms of money and can be stipulated with mutual agreement, between the

employer and the employee.³ There are a few elements that can be found in the definition. First, the salary is an equivalent of the invested work; second, the salary is expressed in money as a legal means of payment, which means that there is a ban on barter, coupons and such like; third it has a legal dimension because it derives from a mutual agreement between the employee and the employer with a specifically defined rights and obligations of the subjects of the contract and so on.

2. Legal nature of the salary

The salary is one of the elements of the labour relations. It implies that the employed person (employee) receives suitable money compensation in accordance with the law, the collective agreement and the employment agreement, for the invested work and performing the work obligations at his job. The earnings i.e. the salary is not an abstract category, but a right that derives from legal relations of the labour relations. By its very nature the salary/earnings is a right for the employee and an obligation for the employer. If the employer does not pay the salary in the accordance with the legal regulations and the collective agreement, in this case the employee is entitled to legal protection.

The legal nature of the earnings also derives from other aspects such as: a) for the salary a certain amount of social payments (PDI, health insurance, employment etc) is paid; b) in a case of insolvency of the employer (bankruptcy) the employee is entitled to a settlement demand on the basis of salary from the bankruptcy estate up to a certain amount;

³ Art. 1 from the Convention no.95 for the protections of salaries

c) legal suspending of payment in the case of legally binding court verdict (e.g. child alimony or compensation for damage to the employer done by the employee; d) legal regulation of the minimum (guaranteed) wage; e) ban on discrimination etc.

3. Legal regime of the payment

In the modern legal practice, the legal regime of the system of payments is regulated in three ways as follows: by heteronomous (law), autonomous (collective negotiations) and international sources of labour law (Conventions of ILO no.95, 100 and 131). There are three legal regimes in the system of salaries: legal regime of minimum /guaranteed wage, general legal regime (private sector) and special legal regime that refers to the salaries of the state officials. The principle, the salaries to be determined by the principle of social dialog, i.e. the principle of tariff sovereignty of the social partners, in the case of the minimum wages, taking into consideration the principle of tripartism, regarding the payment distribution to the public officials by taking into consideration the consulting of the union of the public officials or collective negotiation.

The salary, i.e. the minimum wage is one of the most important international standards of the labour stipulated with the acts of ILO, in particular with the Convention no.131 for minimum wage. The legal regime of the guaranteed-minimum wage is an expression of the state interventionism in the system of payments, in order to provide the principle of social justice through the legal determination of the lowest/minimum /wage that will provide basic income to the

family. The legal regime of the minimum guaranteed wage is based on law (or provision), but lately its confirmation has been a result of the principle of tripartism, i.e. tripartite social dialog between social partners.

In the comparative law, there are more ways – mechanisms that regulate the institute minimum wage. They are: tripartite deal, governmental provision, tripartite body (economic-social council), consulting of the social partners, law etc.

The general law regime is valid for the employees in the private sector, and it is applied to a great portion of the employees in the public sector (public service, public enterprise). The general regime is based on free negotiations for the salaries-tariff sovereignty of the social partners.

Special legal regime of the salaries is applied to the employees in the state organs (public officials). The basic characteristic of this regime is that the state is the one that determines the salary through so called salary bands determined by law (less frequent by a provision).

Within the three systems of salaries there are different variants that, foremost, depend on the model of payment of the employees.⁴

⁴ Today in the world generally there are two models of payment of the employees. The first one is rigid and the second one is flexible. The flexible system of payment is typical for the non-liberal economies, where payments are mostly regulated in a decentralizing manner i.e. in a negotiating way. The rigid way of regulation means that the freedom of negotiation of payments is limited with the institute minimum wage- earnings.

4. International instruments for determination of salaries

UN as a universal and planetary organization, and in that context also ILO as its specialized organization, have adopted several internationally legal instruments that determine the matter of salary whose value must secure dignified income to every employee and his family. Besides UN, other regional organizations such as EU, the European Council etc. have actively involved in determination of this matter.

The most important internationally-legal and regional instruments that determine the matter of the salary are: the Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), Protection of Wages Convention no.95 of ILO, Minimum Wage Fixing Convention no.131 of ILO, Minimum Wage Fixing Recommendation of ILO no.136, European Social Charter etc. In all indicated instruments, it is unequivocally regulated that national states that have ratified them, are obliged to establish a system of minimum wage in their own legal system.

The Universal Declaration of Human Rights does not explicitly say about the lowest (minimum) wage, nevertheless, this act has a huge moral and political significance for the determination of the matter on the lowest wage that provides dignity of the human income. Namely, the Declaration in a unequivocal way, points out that ‘everyone who works has the right to a fair and satisfying compensation(salary) that to him and his family provides income that matches human dignity and which, if necessary,

will be complemented with other means of social protection.⁵

The first international instrument that regulates the matter of salary is The Convention no.96 of ILO for protection of wages. Besides this, with this Convention the term salary is defined, this convention is important because with it, the rest of the matters relating to the salary are regulated, for instance: the time of payment, the place of payment, the ways of payment, the forms of payment etc.

The Convention no.131 of ILO for regulation of minimum wage obliges the state members of IOL that ratified it, to establish a system of minimum wages,..... that will have legal force and will not be able to decrease and make under payment, because otherwise, certain penal and other measures will be applied to the responsible person.⁶

Additionally, in the Convention, the elements are determined that need to be taken into consideration for determination of the lowest wage(the needs of the employees and their families, the level of salaries in the country, life expenses, the demand from the economic growth, the level of productivity, the need of achieving and maintaining high rate of employment).⁷

The Minimum Wage Fixing Recommendation no.136 of 1970 the fixation of minimum wages- salaries must be one of the elements of the policy whose target is a battle against poverty and meeting the basic needs of all employees and their families, i.e. to provide the employees the necessary protection regarding minimum allowed level of wages- salaries.

⁵ art. 23 paragraph 3 from the United Nations Universal declaration of the human rights of 10.12.1948

⁶ For more in art.1 and 2 from the Convention no.131 of ILO

⁷ See art.3

In the European Social Convention of the European Council of 1961 in article 4 it is determined that the contracting parties are obliged to acknowledge the employees' right to an earning that is sufficient to provide them and their families a decent life standard and that the application of these rights must be secured whether by free concluded collective agreements or by lawful methods for fixation of the wages, or other way that is in accordance with the domestic conditions.

5. Ban on discrimination according to international documents and acts of ILO

Basic principle of ILO is the premise: definite and sustainable peace can be accomplished if it is based on the principles of equality, nondiscrimination, and reducing poverty.

This ban is determined in many international documents.⁸

⁸ The European Convention for human rights adopted within the European Council that is ratified by Republic of Macedonia, then, European social convention adopted within European Council, The Conventions of the European Union for basic social rights of the workers; the Directives of the European Council for equal pay of men and women; the Directives of the European Councils for accomplishing the principle of equal treatment of men and women regarding the employment opportunities, professional adjustment and improving working conditions; to the Conventions of ILO, whereupon special emphasis should be put on the Convention no.100 for equal employment for men and women for equal work, 1951 and Convention no.111 for employment and profession discrimination,1958.

With the Treaty of Amsterdam, taking measures against sex discrimination is in the authority of setting law regulations of the Union, as well as durability of the policies of equal pay, opportunities and treatment between men and women.

The Equal Remuneration Convention, No. 100 (1951) pays a separate attention to the problem of different system of payment of the employees of male and female gender. Women were paid less for a long time compared to their male colleagues. The ILO Convention no. 100 offers a way of dealing this issue and it is complemented with the Recommendation no. 90.

The goals of this Convention no.100 are: application of the rule 'equal payment system for equal work', abolishing the compensation differences that are received by male and female employees.

The means of accomplishing this convention are: collective agreements at national level, at whole industry level, at employer level; state laws and regulative (e.g. fixation of the lowest wage); mechanisms of determination of salaries, e.g. table of determination of public sector salaries and combination of all the above-mentioned means.

Although the Convention no.100 does not exclusively refer to racial and ethnic discrimination, it is important because the minority and the indigenous peoples are very often discriminated at their work place, because of the differences in gender, ethnicity, which affects the way they are paid.⁹

⁹ The Convention of ILO no.100 for equal rewarding of male and female labour force for equal work of 1951, obliges country-members on a way that is adjusted to the effective methods of determining the amount of remuneration and to encourage them and if it is in accordance with the indicated methods to guarantee the principles of equal remuneration of male and female work force for equal work for all workers.

The Convention of Abolishing employment Discrimination no.111 of 1958 is the main instrument of ILO that is used for dealing the minority and the indigenous people discrimination at their work place. This convention promotes a policy of equal opportunities for everyone.

The principle of equal salary for man and women is present in many acts of the European Community, now European Union, starting with the agreement for EC (article 141), Directive for equal salary for men and women, Resolution of elimination of all kind of discrimination, direct or indirect, regarding salary of 1961, i.e. 1975, Directive of Shifting Burden of Proof of 1980. The directive of equal pay is revoked in 2009 and replaced with the Directive of implementation of the principle of equal opportunities and equal treatment for men and women when it comes to employment and occupation.

6. The salary in the Macedonian legislation

The Constitution of RM, as the highest legal act in the state, in article 8 paragraph 7, as one of the fundamental values in the constitutional regime of RM is humanism, social justice and solidarity. In part II where the fundamental freedoms and rights of the man citizen are regulated i.e. in the section 2 where economic, social and cultural rights are regulated, the right to a appropriate earnings is regulated¹⁰ i.e. fulfillment of the rights of the employees and their position is regulated by law and collective agreement.¹¹ This states that the right to salary is a constitutional category, and the principle of remuneration is a constitutional principle.

¹⁰ art.32 paragraph 3 of the Constitution of RM of 1991

¹¹ See art.32 paragraph 4

Labour Law (official gazette of RM 62/05) dedicated a whole chapter on work payment (Chapter VIII) that consists of eleven articles (105-115).

According to LL, the employee has the right to earnings – salary, in accordance with law, collective agreement, and the payment may always be in cash. At payment, the employer may respect the lowest amount regulated with the collective agreement, in accordance with the law, that directly obliges the employer.¹²

The salary is paid for periods that may not be longer than one month, thus the salary is paid 15 days after the payment period at the latest. If the payment day is free- non-working day, the payment is paid the next working day at the latest. The employer is obliged to notify the employees in writing, of the payment day and of every change of the payment day.

The salary is comprised of basic salary, part of the salary is for work performance and wage supplement.

The employer can pay a 13th salary to the employee, if the employer is able to pay.¹³

6.1. Basic salary

‘The basic salary is defined on the base of the job requirements (profession, gained skills, complexity, job responsibility), and it is determined in a way that the job complexity coefficient of the working position of the employee, in accordance with the employment agreement, is multiplied by the unit value of the coefficient(last lowest salary).

¹² art.105 paragraph 2 of LLR

¹³ See art.105 of the LLR

The basic salary cannot be lower than the minimum wage regulated by law.¹⁴

The lowest salary, because of certain extent of complexity of jobs and job assignments, is basic salary.

With the collective agreement at branch/work level the lowest salary for the appropriate branch, i.e. work is determined.

6.2. Work performance

The work performance of the employee is measured, i.e. it is estimated according to predetermined criteria and measures that the employee meets before starting to work.

The criteria and the measurements that determine the work performance are: economical approach, the quality and the scope of the work performed (creativity and inventiveness, accomplished productivity, thriftiness, savings in the process of work) for which the employee has concluded the employment contract.¹⁵

6.3. Supplements

The supplements are determined for the special working conditions that derive from: the schedule of the working hours – shift work, part-time work, night work, work on duty, work on a day of weekly rest, work on holiday determined by law and supplement of working experience. Depending on the working conditions where the employee works, he receives a suitable supplement – compensation on that basis. For harder work conditions, usually a job with:

working in noisy environment, in shaft mining, in water, dust, in the presence of chemicals etc is taken into account.

With the General collective agreement in the private sector, nine coefficient groups are determined and they increase the lowest salary in a proportion of 1:3, starting with complexity coefficient 1 for simple, repeatable and various jobs, and ending with complexity coefficient 3 for the most complex, specialized, creative and independent jobs.

‘With the collective agreement at a level of branch/department i.e. at the level of an employer, other groups of complexity degrees can be determined within the previous article as well as higher degrees of complexity for typical job positions’.

With the collective agreement or with an act of the employer, there is a job distribution into separate degrees of complexity.

The criteria and the measurements that determine the work performance are: economical approach, the quality and the scope of the work performed, quality, creativity and inventiveness, accomplished productivity, thriftiness, savings in the process of work, efficiency, and using the means of work, the working hours and others determined with the collective agreement at the level of branch i.e. department, i.e. at the level of an employer.

7. Difference between the lowest and the minimum (guaranteed) wage

In the public, the terms- the lowest and minimum /guaranteed wage is mostly equated, although there is a crucial difference between these two terms. What is the difference?

¹⁴ See art.16 of the OKSPS

¹⁵ See art.21 of the General collective agreement in the private sector in the area of economy ‘Part of the salary for work performance’.

The lowest wage is economic and planned category which is one of the elements for defining the basic salary in accordance with the complexity coefficients of the job positions determined by the collective agreement. Compared to the lowest wage, the minimum wage is a social category and a basic instrument for solving, i.e. reducing poverty. It should provide to the employee a suitable social and material security and a life standard based on his work. It is confirmed on the basis on more criteria, as 'the employees' needs and their families taking into consideration the general level of the salaries in the state ¹⁶ and so on'. Hence, the minimum wage is a social category that provides minimum subsistence of the employee and its amount must be obligatory for all employers in the state. The Minimum wage basically is always higher than the lowest salary.

7.1. Decreasing of the lowest salary

The employer that has dealt with certain difficulties in his work, on the basis of a setup program that provides overcoming of the occurred problems on the basis of a consent by the union, a deviation from the lowest salary could be determined, and the decreasing of the lowest wage cannot be more than 20% and cannot last more than 6 months. The employer is obliged to pay the difference for certain levels of complexity and the less paid wage, within 6 months after the overcoming of the difficulties.

¹⁶ See article 3, paragraph 1, paragraph a and b of the convention no.131 of ILO for regulating of minimum wage of 1970.

8. Equal payment for men and women

The equal payment for men and women is a matter that is related to the non-discrimination right on the base of gender. The principal of equal payment for men and women for equal labour or work with equal value is proclaimed in the Convention of ILO no. 100 of 1951 that refers to equal payment for men and women for work of equal value. The same principle is found in the article 141 (previously article 119) from the Agreement for EU.

Republic of Macedonia has harmonized its nation legislative regarding this matter. Thus, in the article 108 paragraph 1 of LLR the matter of equal payment for men and women is regulated, and in paragraph 2 of the same article it is regulated that the provisions of the employment agreement, the collective agreement, i.e. the General act of the employer, must not be contrary to the paragraph 1 and if they are contrary to this paragraph they are void and null.

From the very foundation of ILO, two goals have been set in the area of women's labour: they are seen in the Constitution of the Organization. The need of equality in remuneration of the female and male work force, for work with the same value is emphasized. Suppressing discrimination regarding payment of the male and female work force is a long lasting process: the problem has been stated for a very long time but it is concerning that it is present even today. Recently, as possible causes of discrimination are the job positions that hire mostly women that are not valued and paid and the authorized courts on the work lawsuit, must have the opportunities to check the differences in the wages of men and women.

For example, we should indicate the work of the house keepers, lifting and caring load when looking after old and disabled people and such like.¹⁷

The convention no.100 for equal remuneration of 1951 is considered to be one of the basic instruments of ILO and is one of the most accepted conventions that has been ratified by 161 countries. We should remind that the ratified conventions are part of the internal legal regime of the Republic of Macedonia and therefore knowing their content is of great importance.¹⁸ The discrimination regarding salary is a form of discrimination on the bases of gender in the sphere of labour relations. It exists when women and men are hired at the same employer or at connected employers and they do not receive equal payment for equal work or work with equal values or when they do not have equal approach to the elements of the system of remuneration the labour. The legislator emphasizes the principle of equal payment, i.e. for equal work with equal demands of the job position, to pay equal salary to the employees, regardless the gender, thus, to monitor the numerous initiatives of the international organizations (United

Nations, especially ILO, the European Council and the European community).¹⁹

The term same work with the same requirements, is a job with the same expertise, complexity and responsibility. And regarding the term work with the same values, it means that same results at the job positions are accomplished.

On the other hand, with the provisions of the same article appropriate sanction of civil-legal nature is allocated. The provisions of the employment agreement, the collective agreement or the general act of the employer that will not be in accordance with the provision of the legislator, that equal payment for men and women is guaranteed, those provisions are void and null. The matter of void and null as illegal consequence is always valued according to the general rules of the property law, i.e. the provisions of the Law on obligations for null legal matters. In this comment it is emphasized that the contractual relation between the employer and employee is based on the employment agreement. The employment agreement is a legal matter.²⁰

9. Other legal solutions regarding work payment

9.1. Payment day

According to article 109 of the LL, titled as “The day of payment”: The salary is paid for the periods that may not be longer than a month. It is paid 15 days after the passing of the payment period at latest.

¹⁷ Within the EU the application of the principle of equal payment is guaranteed by: articles 141 of the agreement for European community Directive for equal payment of 1975 and Directive of equal treatment of 1976 and other Directives.

¹⁸ According to article 1 ‘In this Convention: a) the term “remuneration” comprises usual, basic or minimum earnings or wage, and any supplementary incomes that are paid to the employee directly or indirectly, in cash or in kind by the employer, as a result of the employee’s employment; b) The term ‘equal remuneration for men and women employees for equal qualification work’ refers to amounts of payment confirmed without discrimination regarding gender.

¹⁹ EC had an important part in that sphere, firstly because it adopted the article 119 in the Agreement for EC, where there is an equal payment for equal work, and later, with the adopting different directions.

²⁰ For the void and null agreements more details in the provisions of the articles 95-102 of the Law on Obligation.

If the day of the payment is a free day, the salary is paid the next first working day at the latest. The employer is obliged previously in writing to notify the employers on the day of payment and on every change of the day of payment.

If the employer does not pay the salary for a longer period, and this happens in practice, the employee is entitled to notify the employer in writing on the fulfillment of this obligation. Additionally, the employee is entitled after the written warning, to cancel the employment agreement to the employer. Here, we have the case of cancelling because of reasons that exist with the employer. We must put emphasis that in this case the employee always has the right on a lawsuit before the authorized court for accomplishing monetary claim.

9.2. Place and manners of salary payment

According to article 110 of the LL, the employer is obliged to pay the salary to the employee in a way confirmed by law. Additionally, at every payment of salary as well as, to the 31st January of the new calendar year, the employer is obliged to issue a receipt, contributions on salary and compensation on salary for the payment period, i.e. for the previous year, and these show the receipt and the payment of the tax and the contributions. The expenses relating the payment of salary are covered by the employer.

9.3. Retention and Settlement of Salary Payment

According to article 111 of the LL:

(1) The employer may retain the salary payment only in legally determined cases. All provisions of the employment agreement, which specify

other ways of retaining the payment, are null and void.

(2) The employer may not settle his claims with the employee (without his written consent) with his obligation to pay the salary.

(3) The employee may not give a consent referred to in paragraph (2) of this Article before the claim of the employer arises.

The Decisions referred to in article 111 of the Labour Law, are decisions that consist other advanced labour - law legislations. These decisions are also supported in the theory of labour law. Our legislator is agreeable on decisions as follows: first, the employer may retain payment on a certain employee only in legally determined cases. Outside legally determined cases, these provisions of the employment contract that determine other ways of payment retention are null and void. When it comes to legally determined cases, there is a difference that appears in practice very often. Retention of payment may be demands of the employer on the basis of effective court decision as well as demands of third persons from the employer, but also on the basis of effective court decision. In these cases, the employer has a legal right to retain the payment of the salary, but up to a certain amount. Labour Law with this legal decisions referred to in this article 111, does not say the exact amount of the employee's payment retention. The law theory and the secondary legislation indicates the conclusion that this amount may not be higher than a third of the employee's salary, and certain amount for payment of certain demands may be retained from that salary.

9.4. Payment of the trainee

According to article 114 of the LL 'The employee- trainee has a right to a salary determined by law and the collective agreement, but not less than 40% of the basic salary of the job position for which he is trained'.

According to the Labour Law of 2005, the trainee was guaranteed a salary no less than 50% of the lowest wage of the job position for which he is trained. With law amendments, the guaranteed salary is decreased up to 40% (See article 114 of LL).

The Labour Law on labour regulates a salary for a trainee not less than 40% of the base of the job position for which he is trained. But with the collective agreement more than 40% of the base of the job position may be determined. Thus, according to the General collective agreement in the private sector in the field of economy (GCAPS) 'during the training period, the employee belongs at least 70 per cent of the lowest salary, for a certain degree of complexity, envisaged for the workplace that is being trained.(article30).That is because in accordance with Article 12, paragraph 3 of the Labour Law, an employment agreement, or a collective agreement, the rights can be determined which are more favorable for the workers than they are determined by this law. Or according to the general collective agreement for the public sector, during the internship, the employee is entitled to 80% of the basic salary for the post for which he is trained (article 25 paragraph 2).

There is not a provision of paragraph 2 in the GCAPS .This means

that the trainee is completely equal in terms of salary, fees and salary supplements as well as the other employees, with a certain percentage of reduction.²¹

10. Legal regime of minimum wage in the Republic of Macedonia

After years of debate and social dialogue between the social partners in the RM, the Parliament of RM adopted the Law on Minimum Wage in RM in 2012 (Official Gazette of the Republic of Macedonia No. 11/12 of 24.01.2012) This is a consolidated law, which contains only 12 articles. This law determines the amount of the minimum wage, as well as other issues related to the minimum wage.²² Article 2 of the Law defines the minimum wage according to which it is the lowest monthly amount of the basic salary that the employer is obliged to pay to the employee for full-time work and has fulfilled normalized performance.²³ According to the provisions of this law, all employees in the amount of 39.6% of the average gross salary in RM for the previous year, have the right to a minimum wage, according to the data published by the State Statistical Office.²⁴

²¹ According to the collective agreement for the textile industry of the Republic of Macedonia, during the internship, the employee is entitled to an allowance in the amount of 70% of the basic salary determined for the workplace for which he is trained. The separate collective agreements at the branch level and the individual at the level of the employer belongs to that branch, minor rights cannot be prescribed.

²² Article 1 of the Law on Minimum Wage (Official Gazette of the Republic of Macedonia No. 11/12)

²³ See Article 2

²⁴ See Article 4 of the Law on Minimum Wage in the Republic of Macedonia

Two basic criteria for determining the amount of the minimum guaranteed salary are taken into account: the needs of the employees and family members and the possibility of paying the employer (national economy). Therefore, consideration is also taken of other additional criteria: the achieved standard of pay in other Economic branches, as well as the need for economic development, (especially in the developing countries). For 2012 the amount of the minimum wage was determined at the level of 8050 MKD in the net amount, and with the amendments to the Law on the lowest wage, the amount of the minimum wage in 2016 was determined in the amount of 10048 denars. The new government of the Republic of Macedonia proposed the minimum wage to increase to 12,000 denars which has been paid since October 2017.

The part-time employee has the right to a proportion of the minimum wage for the time spent at work (Article 3 paragraph 2). This right does not apply to self-employed persons. The minimum wage is published by the Ministry of Labor and Social Policy in the official Gazette of the Republic of Macedonia, upon a previous opinion of the Economic and Social Council. With the labor inspectors the state labor inspectorate conducts supervision on the application of the provisions of this Law regarding the calculation and payment of the minimum wage.

If the labor inspector during the inspection established that the employer has incorrectly applied the law on the amount of the minimum wage for the first time, he is obliged to compile a record in which he shall determine the committed

irregularity, which shall indicate the removal of the established irregularities within eight days and simultaneously he shall give him an education invitation to the employer for the determined irregularity (Article 6 paragraph 1). The Law provides a possibility in the departments of (textile, leather and construction) which have problems and difficulties in their operations and securing the salaries of the employees in the next three years to make alignment with the amount of the minimum wage multiplied by the amount of 15600 denars with the following coefficients:

-0.778 for 2012

-0.852 for 2013

-0.926 for 2014

How the law on minimum wage works in practice? The labour inspection in the period of 2012-2016 conducted several controls from which irregularities were detected in the implementation of the legal regulations. The inspectors concluded that employers in two labor-intensive branches in three regions in the country, did not respect the law on minimum wage, paying the employees for a part-time job, even though they worked full-time, forcing them to withdraw their salary and then pay them lower than the legally stipulated.²⁵

Conclusion

The international legal instruments adopted by the UN, the ILO and the European Council pay great attention to the organization of the institute salary and minimum wages.

²⁵

<http://www.mtsp.gov.mk/?ItemID=A238508B6BD9384FA760823CF76BD142> (open 13.01.2013)

They have adopted numerous declarations of Conventions and Recommendations regulating the issue of salary: Convention no.95, Convention No. 100, Convention No. 111, Convention No. 131, Recommendation 136, the Universal Declaration of Human Rights, the European Convention on Human Rights, the European Social Charter and others.

The Republic of Macedonia in its national labor legislation has implemented all the legal instruments of the UN, ILO, European Council and EU regarding salary. However, the only problem is their implementation in practice, especially in the private sector, (textile, leather, shoe industry and construction). In practice, there is an abuse of the category minimum wage in certain low accumulation industries, (textile, leather, and shoe industry).

In the past period, the Labor Inspection in the Republic of Macedonia has undertaken a number of activities for protection of the right to salary and minimum wages that have been fruitful, but some irresponsible employers have abused this very important right.

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