The role of modern tools for electronic communication vis-à-vis violation of labor rights - international and Macedonian perspective

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Abstract

Rapid development of communication technologies results in burdening employees with business related tasks beyond working hours. Several countries including European Union are undertaking actions to tackle this issue. Laying out some excelling international practices the study focuses on exploring the actual situation regarding the violation of working hours in Republic of Macedonia via tools for electronic communication. Semi structured interviews with employees and relevant social partners, as well as review of existing legislative and otherdocuments were used for data gathering, and content analysis was deployed for analyzing the data. France and Germany are countries that champion the efforts for stopping the afore mentioned violation. Concerning Macedonia, results reveal there are many cases of violation of working hours through tools for electronic communication, both in public and private legal entities. There is not any specific regulation addressing this issue, the provisions of the labor legislation are lacking clarity, and the employees are reluctant to use the available legal instruments fearing subsequent retribution from the employers. The Employers Association does not consider the after work electronic communication as serious violation of employees' rights. The Parliament and Labor Inspection should act on upgrading the legislation in direction of stopping this illegal practice, and efficiently observe its implementation.

Keywords*: labor rights, work-life balance, right to disconnect*

1 Introduction

The rapid development of communication technologies and the exposure to various tools for communication in conjunction with the widely accepted modern trends on maintaining multiple open channels for continuous electronic communication, often results in burdening the employees with business related tasks beyond working hours. Thus, the managers invade the space and the time which is intended for employees' non-work-related activities. By doing so themanagers are disrupting the work-life balance of the employees which is protected under the provisions of the labor and human rights related legislation applicable in most of the present-day modern states. The right to disconnect allows workers to refrain from engaging in work-related tasks, activities, and electronic communication, such as phone calls, e-mails, and other messages, outside of their working time, including during rest periods, official and annual holidays, maternity, paternity and parental leave, and other types of leave, without facing any adverse consequences (Saliba, 2019). This research focuses on revealing if the employers in Republic of Macedonia exercise the practice of contacting and tasking their employees beyond working

hours and whether the existing legal and institutional framework is sufficient to protect the workers. We shall also review some relevant international practices, as well as the situation in the European Union (EU) with regards to addressing the status of the right to disconnect. The methodology for data gathering consisted of reviewing selected legislative acts and court rulings as well as carrying out semi-structured interviews. Applying the convenience sampling method for selection of the respondents (Robson & McCartan, 2016), we have carried out interviews with 26 employees and 4 representatives of relevant organizations and institutions. The interviewed employees insisted their identity should not be revealed, fearing eventual negative consequences. Framework analysis (Lacey & Luff, 2001) was used for analyzing gathered data.

2. Work-life disbalance health hazards

There are many studies that refer to the negative effects from constant occupation with work- and work-related issues. The authors of the study "Killing Me Softly: Organizational E-mail Monitoring Expectations' Impact on Employee and Significant Other Well-Being" report that in many workplaces there is an implicit or explicit expectation to check e-mails at home and at night, as well as during weekends and holidays, especially for managers and supervisors. This constant connection and ensuing lack of rest carries important psychosocial risks for employees, including anxiety, depression, and burnout (Becker et al., 2019). Authors of the "Study on Impact of Organizational Expectations for e-mail Monitoring After-Hours on Employee Resources, Well-Being, and Turnover Intentions" report that monitoring e-mails after working hours decreases employee work–life balance through both, low work detachment and emotional exhaustion (Belkin et al., 2020). The work-family strain, resentment and conflict due to the impact of mobile technology and changing work-family boundaries is subject of several other researches (Allen et al., 2014), (Barber & Santuzzi, 2015), (Chen & Karahanna, 2018), all reporting on the occurrence of negative effects as consequence of the disbalance in the work-life relations.

The problem of extension of work-related tasks beyond working hours is already recognized in many states worldwide such as: France, Italy, Spain, Argentine, Philippines, Germany, Singapore, and others (Uni Professionals and Managers, 2019). In many of the previously mentioned states the legislators and other relevant institutions for protection of workers' rights have already initiated the enactment of legislation that will provide workers with appropriate legal instruments for protection from the extension of the work-related tasks beyond working hours.

3. European Union's perspective on "the right to disconnect"

There is currently no European legal framework directly defining and regulating the right to disconnect (Eurofound, 2019). The Working Time Directive (Directive 2003/88/EC, 2003), however, refers to several rights that indirectly relate to similar issues, in particular, the minimum daily and weekly rest periods that are required in order to safeguard workers' health and safety. Furthermore, the right to disconnect should be considered in relation to attaining a better work–life balance, an objective that has been at the core of recent European initiatives. Forexample, principles 9 (work–life balance) and 10 (healthy, safe, and well-adapted work environment and data protection) of the European Pillar of Social Rights (Epr, 2017), as well as the directive on work–life balance for parents and carers (Directive 2010/18/EU, 2010) –

although they do not refer specifically to the right to disconnect. In addition, (although strictly speaking the case-law of the European Court of Justice is not a source of the EU law), through its case-law the Court of Justice has identified and established fundamental principles, such as the primacy of Community law over national law or the liability of Member States for breach of Community law (Borçard, 2010). In this respect the Court of Justice ruled out that the stand-by time of a worker at home who is obliged to respond to calls from the employer within a short period, must be regarded as working time (Ville de Nivelles v Rudy Matzak, 2018). Also, the Court of Justice stipulated that the member states of the EU must require employers to set up a system enabling the duration of daily working time to be measured (Federación de Servicios de Comisiones Obreras v Deutsche Bank, 2019). Recently, the European Parliament adopted a resolution containing recommendations to the European Commission, asking the Commission to propose legislation that would oblige employers to provide workers with sufficient information on: how to set out switching off of digital tools for work purposes including any work-related monitoring or surveillance tools; information on the manner in which working time is recorded; information on carrying out regular health and safety assessments; and information on the measures for protecting workers against adverse treatment and the manner of implementing workers right of redress (Resolution 2019/2181/INL, 2019).

4. International practices on "the right to disconnect"

Of all the countries in the world to attack the problem of employee inability to disconnect from the workplace, France has taken the lead. Effective as of January 1, 2017, most French employers are not permitted to contact their employees in most cases after work hours[1]. France is the first country to adopt legislation regarding after-hour electronic communication through its enactment of "Droit à la Déconnexion". This law mandates that employers either come to an agreement with their employees or introduce a charter to address the employees' ability to not respond to work related digital communications after hours (Secunda, 2019). German employers have also made significant step up in regulating afterhours work but have done so while avoiding the adoption of legislation like France. Instead, German employers have opted to participate in voluntary self-regulation to adopt policies that fit their individual or industrial needs.

Specifically, the Confederation of Germany Employers' Associations had the opportunity to partner with the German Trade Union Confederations and the Federal Ministry of Labor and Social Affairs to develop regulations that suit the needs of both employees and employers. These parties, jointly known as "social partners," work together to enact policies that are functional within the specific industry, while still relieving pressures on employees (Uni Professionals and Managers, 2019). Many German employers recognize the harmful effects of placing constant pressure on their employees to engage with their work. For example, companies such as Volkswagen, BMW, and Puma have all voluntarily imposed restrictions, specifying the conditions that need to be in place for a certain manager to be entitled to e-mail employees outside of working hours. Volkswagen chooses not to forward any e-mails to an employee sent more than thirty minutes after the end of their working day (Secunda, 2019). Following the French initiative, in Spain a right to disconnect was included in the 2018 Data Protection Act, and in Italy a right to disconnect was also addressed in connection with a 2017 law on "smart working". Other countries have also begun exploring the introduction of a right to

[1] See CODE DU TRAVAIL [C. TRAV.] [LABOR CODE] art. 55 (Fr.).

disconnect at either the national or state level, including Belgium, Canada, India, the Philippines, and Portugal (Uni Professionals and Managers, 2019).

5. Observations on the implementation of "the right to disconnect" in Macedonia

In accordance with article 68 of the Stabilization and Association Agreement, Republic of Macedonia agreed to ensure that its existing laws and future legislation will be made compatible with the EU legislation and that such laws will be properly implemented and enforced (Stabilisation and Association Agreement…, 2001). The right of employees to paid daily, weekly and annual leave is guaranteed under article 32 of Macedonia's Constitution (Constitution of Republic of Macedonia, 1991). According to article 116 of the Macedonian Labor Law, weekly working time must not exceed 40 hours, whereas the duration of the workingweek is extended to five working days. Paid overtime work is allowed[1], but confined to a maximum of 8 working hours per week (Закон за работните односи, 2015). According to the provisions of this law the employees are obliged to carry out their working duties at the location designated by the employer, and employers are obliged to keep a record of working hours for each employee[2]. Exceptions from these legal provisions exist in cases of conclusion of the "managerial contracts" where employers and employees enjoy the freedom of arranging workingtime and rest periods in manners different from the standard ones. Finally, under the provisionsof the Labor Law the working time is defined as the time when the employee works and carries out his works and tasks in accordance with the law, collective agreement, and employment contract (Закон за работните односи, 2015).

The Macedonian Labor Law does not impose any obligation upon employers with regards to registering and remunerating the employees for any extra work that they might perform, upon request from the employer, outside of their workplace and after working hours (Ibid.). The Law on Protection Against Harassment at the Workplace (Law Against Harassment) is another complementary document with intention for provision of additional legal instruments for protection of employees against mental and sexual harassment at the workplace (Закон за заштита од вознемирување на работно место, 2013) The Law Against Harassment in article 7 stipulates that in order to qualify for protection under the provisions of this law, the act of harassment has to take place only at the workplace where the employee who is subjected to harassment usually works and within the working hours or the time of travel to and from the workplace (Закон за заштита од вознемирување на работно место, 2013). The insight into 50 judicial cases initiated by employees (in the period between 2011 and 2021[3]) on the grounds of contesting the breach of legal provisions for paying overtime work, revealsthat there is not a single case where employees claim compensation for the overtime workcarried outside of the workplace (Судски Портал на Република Северна Македонија, 2021). All claims are based on allegations for not paying overtime work that was carried out at the premises of the employer. Speaking on behalf of the Labor Inspectorate, Ms. Olivera Lazarevska[4] asserted that labor inspectors do not have effective legal instruments to react againstthe violation of the working hours in cases where employees find themselves outside of the working premises of the employer. She also added that the existence of any eventual

[1] See article 117 of the Labor Law.
[2] See articles 30 and 116 of the Labor Law.
[3] On the territory of Republic of Macedonia.
[4] Head of Labor Relations Section at the Labor Inspectorate.

disturbances against the employees via tools for electronic communication would be extremely difficult to prove (Lazarevska, 2021).

The Secretary General[5] of the Employers' Association acknowledged that the contemporary tools for electronic communication widely open the possibility for contacting and tasking employees beyond working hours, but on the other hand she suggested that COVID 19 crises introduced many obstacles to managers and business owners, and therefore she appealed for flexibility on both sides (Antic, 2021). Finally, Ms. Lile Petrova[6] (on behalf of the biggest trade union in the country) claimed that a massive breach of worker's rights is taking place as wespeak, due to COVID 19 driven crises. Ms. Petrova said that at the trade union (she is part of) areaware that the employers use electronic devices to evade workers free time, and therefore the trade union is going to suggest legal provisions which should upgrade the existing labor law in direction of stopping this malevolent practice (Petrova, 2021).

a. Presentation of the results from the interviews

Out of the total number of 26 respondents, 19 responded that they have been contacted by their superiors or other colleagues after working hours or during weekends or other non-working days and tasked with work related duties which need to be carried out outside of working hours. 3 respondents declared that they were asked to perform some work-related duties after working hours in some urgent or exceptional situations. While 4 respondents declared that they have never been contacted and asked to perform work related tasks after working hours. In Figure 1 (below), we present the monthly frequency of work-related tasking after the working hours, categorizing the responses of the employees in three intensity categories and their affiliation toward the private or the public sector.

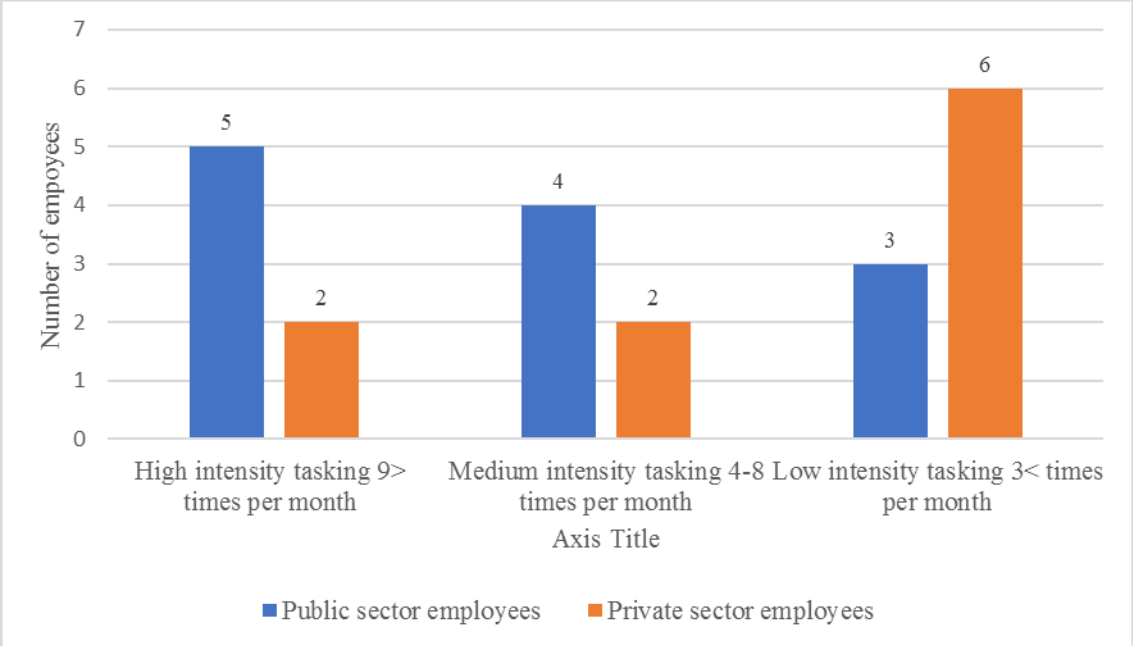

Figure 1 Intensity of work-related tasking after working hours

[5] Ms. Svetlana Ristovska Antic.
[6] Jurist at the Union of Trade unions of Macedonia

We have asked the respondents if their superiors expect them to remain available after working hours on their mobile phones, e-mails, instant messaging applications and other devices or applications for electronic communication. We have categorized the responses in two categories pertaining whether the respondents are employed in the public or the private sector.

And we have added additional categorization regarding the hierarchy, classifying the respondents in two groups or respondents who hold managerial positions and those who do not. Fifteen respondents declared that their superiors asked them to be available after work and on the weekends. Eleven respondents declared that they do not have obligation to be available after work. The results show that 8 out of 10 respondents holding a managerial position were asked bytheir superiors to be available after work. Regarding the ordinary employees, only in 7 out of 16 respondents the employees were asked by their superiors to be available after work.

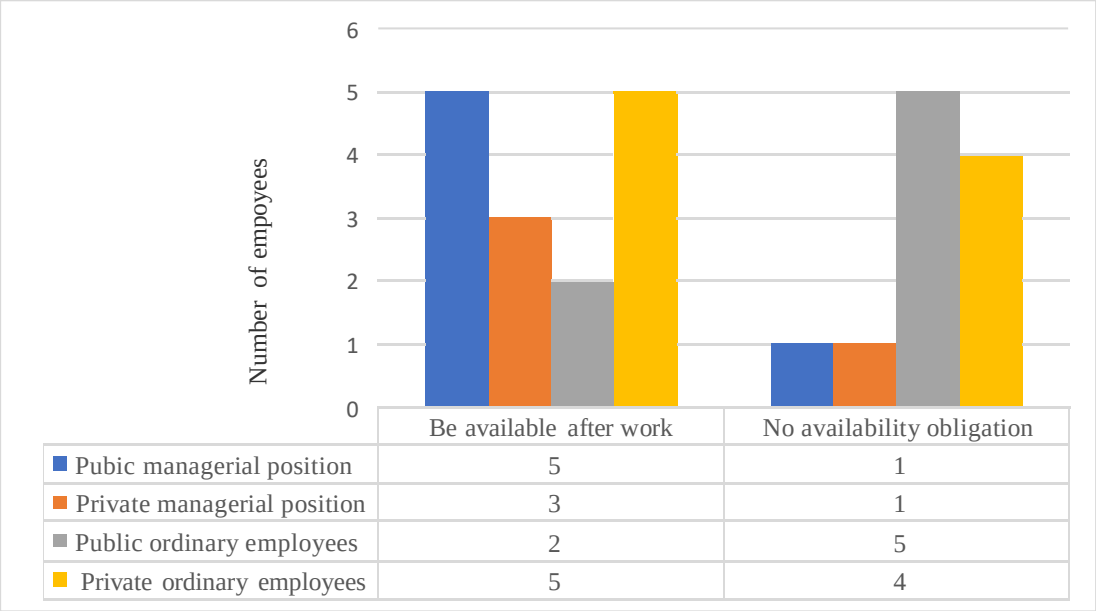

Figure 2 Availability of employees after working hours

One of the respondents employed in a public institution, declared that the head of the institution where he is working insisted that employees should be available on Skype at any time, threatening the employees that those failing to comply will be facing negative consequences.

Next, we have asked the respondents whether they are familiar with their legal rights concerning their employment. All respondents replied that they think they know their legal rights. The subsequent question was whether they have experienced a situation where their employment related rights have been breached by the employer and whether any of the respondents had undertaken legal action against the employer? Nine respondents replied that they have experienced situation where their employment related rights have been breached, but only one of them (employed in the private sector), said that he had sued his former employer for not paying for overtime work.

We have asked the respondents whether they would be willing to address the court if they cannot resolve the potential dispute with the employer? Twenty respondents replied that they are not ready to challenge the employer in court, mostly because they think that once one enters a court dispute with his employer the outcome will almost certainly result in termination of the employment contract. Only six respondents declared willingness to address the court whenseeking a solution to the dispute. Fifteen out of those twenty respondents who declared that they

are not ready to challenge the employer in court, believed that courts are biased and susceptible to bribing and that employers would win at court because they are financially more powerful than workers.

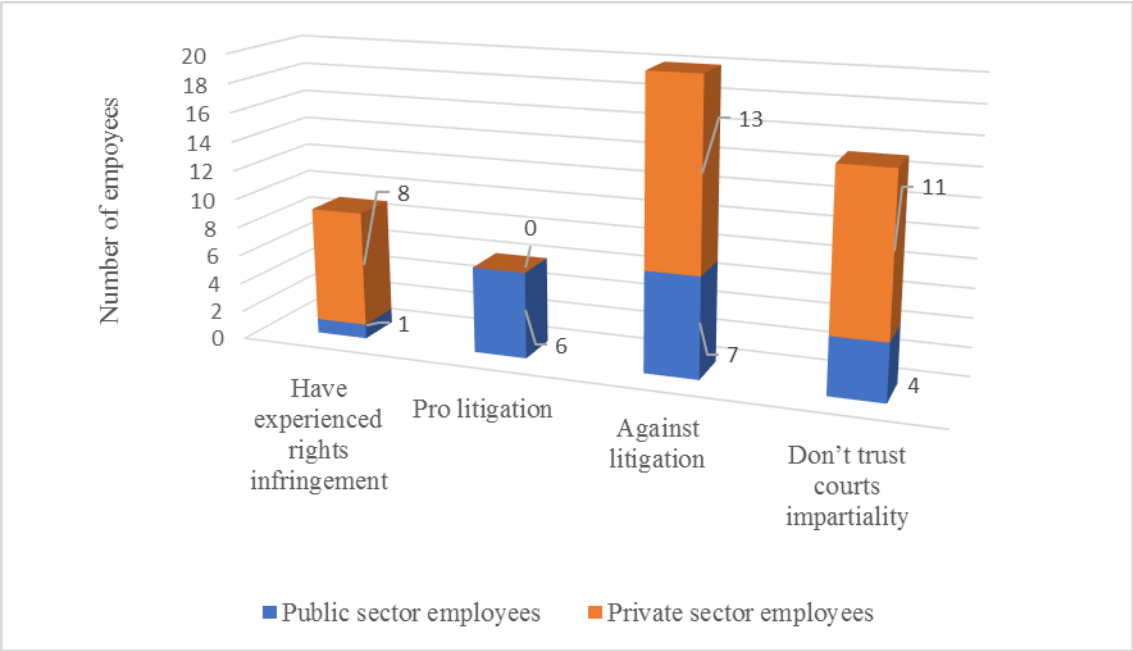

Figure 3 Readiness of employees to claim their rights in court

The final question was whether respondents believe that the eventual admission of Republic of Macedonia in the EU will result in decrease of cases of infringement of workers' rights and provision of more effective mechanisms for protection of workers. Nineteen respondents believe that after Macedonia becomes EU member the rights of the workers will be better observed. Four respondents (employed in private sector companies) believe that the eventual admission to the EU wouldn't bring any change. While three respondents (also employed in private sector companies) believe that the situation with regards to protection of worker's rights will get even worse after the admission of Macedonia in the EU.

6. CONCLUSIONS

Findings reveal that in the Republic of Macedonia we do not have legal instruments which will provide the employees with effective means for protecting themselves against being contacted and tasked by their superiors beyond working hours. 19 out of 26 respondents declared that they have been contacted after working hours and tasked with work related duties which need to be carried out outside of working hours, while 15 respondents declared that they are obliged to be available on e-mail and phone at any time. Majority of respondents (20 out of 26) declared that they are not willing to initiate any court procedure against the employer, expressing their firm distrust in the effectiveness of the legal mechanisms for protection of their rights. High number of respondents (19 out of 26) believe that admission of Macedonia in the EU will result

in better observance of workers' rights. Both the Resolution of the European Parliament (Resolution 2019/2181/INL, 2021) and the rulings of the Court of Justice of the EU (Ville de Nivelles v Rudy Matzak, 2018), (Federación de Servicios de Comisiones Obreras v Deutsche Bank, 2019) are raising the expectations that the European Commission will soon come forward with a concreate legislative proposal which will impose obligation to all EU and candidate countries to enact legislation that will put an end to the practice of disturbing the employees beyond working hours. The best approach toward mitigating this malicious practice in Republic of Macedonia would be through introduction of changes to the existing Labor Law where the employers would be compelled to refrain from contacting the employees after working hours or undergo fines should they fail to comply.

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