



## Implementation of Provisions on Paying for Overtime Work to Employees in the Ministry of Interior Affairs of Republic of North Macedonia

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### Abstract

*The phenomenon of ill implementation of legal provision pertaining the rights of civil servants is a frequent practice in North Macedonia. Our research is focusing on investigating the allegations for a large-scale breaching of the existing regulation on paying the employees of the Ministry of Interior Affairs i.e., the Police, for the overtime work. We have singled out a total number of 1257 lawsuits filed against the Ministry in the last seven years and performed an in-depth analysis of 41 cases filed against the Ministry by their employees from the Skopje Police Department. We've carried out interviews with representatives of the Police Syndicate, representatives from the Ministry and the judiciary. The results revealed that a systematic breaching and nonpaying for the overtime work were in place, exacerbated by retributive actions against those employees who would dare to seek justice in court. The Police Syndicate is encouraging and providing legal counsel to those who decide to take legal actions, and the justice system is showing consistency in ruling against the Ministry in cases where the Ministry failed to remunerate its employees for the overtime work, but the court trials are taking much longer than the legally envisaged framework of 6 months. The outcomes from the legal actions against the Ministry resulted in significant financial losses, and yet no one bore any political or legal responsibility thus far. Based on our findings we will urge the Oversight Committee in the Parliament of North Macedonia to take actions in direction of stopping the practice of not paying to the employees for the overtime work. We will bring to attention to the Ministry of Interior that we and other colleagues from the scientific community are willing to assist in designing instruments and conducting trainings for the commanding officers in order to help them manage the working time of the employees under their command efficiently and within the legally envisaged time frame for work. The research is confluent to the conference topic from the aspect of promoting the adherence to respecting the labor related rights of employees of the public administration as one of the preconditions toward stability and security of the state governing apparatus.*

**Keywords:** overtime work, lawsuits, labor rights, public administration

### 1. Introduction

The practice of neglecting workers' rights is unfortunately still a very actual topic throughout the world. There is a myriad of scientific articles from various countries pointing out to the ongoing malpractice of not paying workers for their overtime

work and other related benefits.

A group of authors from the Philippines is reporting on the negative effects on their efficiency at work of a group of workers who didn't get paid for working overtime (Shynne Serilla et al., 2022). A clinical psychology practitioner from the United Kingdom reports about different cases of workers who were not getting paid for their overtime work (Demetri et al., 2023). The unpaid overtime work seems to be a very actual issue within some of the modern industries, such as the video games production (Brogan, 2022). The situation gets even worse from a perspective of protection of workers' rights when we take into consideration the issue of public authorities' liability. Anne LM Keirse (2020) is pointing out to the special (privileged) position of the state in tort disputes. Dan Priel (2013) is also referring to the influence of the prevailing political doctrine upon the outcomes of court decisions in cases where citizens are claiming liability from public authorities.

Pertaining the situation in North Macedonia, the authors of the analysis of the level of satisfaction with mechanisms safeguarding workers' rights, find out that formal protective mechanisms are dysfunctional, especially pointing out to the dysfunctionality and the corrupt practices of the State Labor Inspectorate which seems to be rather protecting the interests of the employers than those of the workers (Vasilev et al., 2019, p.52). Somewhat similar findings were presented in the analysis of workers' rights standards and their application in the Republic of North Macedonia, where authors assess that the labor legislation follows all international valid standards but locating the key weakness of the current system of labor rights protection in the absence of appropriate information of workers about their rights and the available protection mechanisms (Najcevska et al., 2019, p.70).

In North Macedonia the Labor Law (2015) represents the focal point for regulation of various labor related issues, but we need to clarify that the Labor Law's applicability is mostly confined to management of labor issues in the private sector<sup>6</sup>. When it comes to the public sector<sup>7</sup> the rights and the responsibilities of the employees are primarily regulated with the Law on Civil Servants and the Law on Employees in the Public Sector, whereas both these laws contain provisions suggesting that general labor related legal provisions shall be applied in cases referring to issues outside of the scope of the aforementioned laws (Civil Servants Law, 2014, § 4, paragraph 5, and Law on Public Sector Employees, 2014, § 3, paragraph 2). In addition to this basic dichotomy of different labor related provisions applicable to the employees in the private and in the public sector, there is a further ramification of specific legal provisions (*lex specialis*) applicable to labor issues in certain public services such as: the police; the military; the higher education, etc. Taking into consideration that the rights of the employees of the Police of North Macedonia are in the focus of this study, we would like to point out that the Police Law, the Internal Affairs Law, and the Collective Agreement for the employees of the Police shall be the primary legal sources, followed by the Civil Servants and Public Sector Employees law as secondary sources, ending with the Labor Law and other labor related laws and bylaws, applicable only in situations where primary legal sources happen to be insufficient.

## 2. Aims and Methodology

Based on some previous findings which came up as results of authors' research work related to investigating various labor related issues and situations, we have noticed several cases of ill practice on behalf of the Ministry of Interior affairs (i.e., the Police) for not paying their employees for overtime work, working in night shifts, working during weekends and alike. These finding arouse our curiosity and we came up with designing a systematic approach on investigating the frequency and the reasons for not respecting the rights of the Police employees with regards to paying or compensating for the overtime work and other benefits based on working outside of standard working hours. Our approach consisted of gathering and analyzing all relevant legal provisions in order to be able to understand the legal framework relevant for specifying the rights and the responsibilities of the Police employees especially with regard to their working hours and benefits related to working beyond standard working hours. Next, we have analyzed the outcomes of 41 court cases initiated by members of the Police, employed in Skopje division. The analysis included final decisions passed by Skopje Elementary Civil Court in the period between March 2021 and February 2022. In addition, we did interviews with representatives of the Ministry of Interior Affairs (the Police) and representatives of the Independent Police Syndicate. We have tried to reach Skopje Elementary Civil Court for getting their perspective on the reasons for exceeding the legal timeframe for decision-making in labor disputes, but our request was ignored. Framework analysis

<sup>6</sup> Under the notion "private sector" we are referring to all legal persons competing on the free market based on their entrepreneurial skills and independent of state funding i.e. based on private capital.

<sup>7</sup> Under the notion "public sector" we are referring to all legal persons established and fully or partially financed by the state, i.e. based on public (state) capital.

(Lacey & Luff, 2001) was used for analyzing gathered data.

### 3. Legal Provisions on Overtime Work

Police employees in accordance with the Internal Affairs Law (2014, § 148) are entitled to salary supplement for night work, work on Sundays, work during holidays established by law, work in shifts, as well as due to special conditions for work and danger to life, that is the existence of a high risk in the performance of work and the tasks of workers. They are also entitled to overtime salary supplement, paid for working longer than the standard 40 hours per week working time. The details on the eligibility, value, and the manner of implementation of the right to salary supplement are detailed in the Collective Agreement of the Ministry of Internal Affairs<sup>8</sup> (2022). According to the Collective Agreement the employees of the Ministry of Internal Affairs are entitled to increase of 40% on the regular per hour rate for each hour of work during night shift; 50% increase for each hour of work on Sundays; 50% increase for work on holidays; 5% for work in shifts and 5% for home stand-by time<sup>9</sup> (Ibid, § 166). The overtime salary supplement amounts 40% increase on the regular per hour rate for each hour of overtime work, but the total sum of overtime hours should not exceed 32 hours per month. In case the employee has more than 32 overtime working hours he is entitled to compensating the overtime hours with equivalent free time (Ibid, § 171). In addition to the above-mentioned legal provisions specialized in defining the rights of the Police employees on using benefits when working in addition to the standard working hours, we also need to refer to one general provision from the Labor Law which is applicable to all employees regardless of whether being employed in the public or private sector. The overtime hours of a single employee cannot exceed 8 hours per week or 190 hours per year (Labor Law 2015, § 117). And in case an employee has registered more than 150 overtime hours within one calendar year and hasn't been absent from work for more than 21 days (excluding the paid annual holiday leave), within the same calendar year, than in addition to receiving payment for the overtime hours worked, the employee is entitled to receiving a bonus monthly salary (Ibid).

Here we need to annotate the existence of a particular provision from the Law on Civil Procedure (2005, § 405) pertaining the urgency of court proceedings when dealing with labor related cases. The proceedings at the first instance court must be completed within six months from the date of filing the complaint, while the second instance court is obliged to reach a decision within 30 days from the day of receiving the appeal.

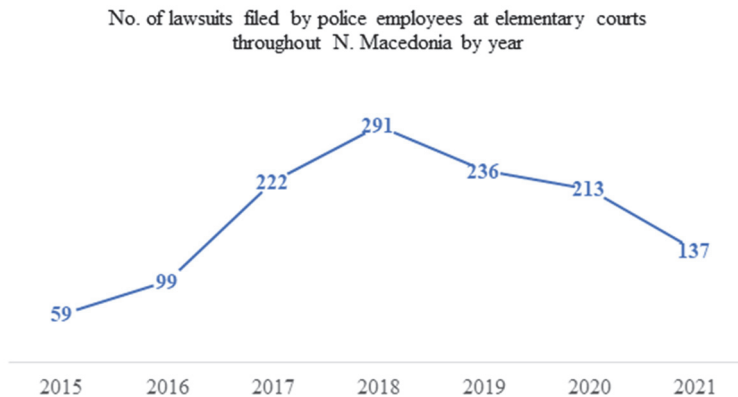
### 4. Findings

In the period between 2015 and 2021 there was a continuity of police employees filing lawsuits against the Ministry of Interior Affairs attempting to protect their claims based on their overtime working performances. Year 2018 is the year when the Ministry of Interior was faced with the highest number of lawsuits (291) and even though this trend was characterized with decrease in numbers in the years to follow, still the number of lawsuits remains significant and keeps alive the dilemma on whether the Ministry of Interior has capacity to establish and maintain a system in which the observation of the rights of their employees would eliminate the need of any outside party interference.

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<sup>8</sup> Further referred to as *Collective Agreement*.

<sup>9</sup> A home stand-by time is a period of time where the employee finds himself outside of the working premises, but is bearing the obligation to be available and to respond to the eventual calls from the employer.



**Figure 1:**

**Source:** <https://dejure.mk/sudski-odluki>

In the period between March 2021 and February 2022 a total of 107 lawsuits have been filed by Police employees claiming payment for overtime work in different elementary courts of N. Macedonia. The highest number of lawsuits have been filed by the Police employees from Skopje Police Department (41) but bearing in mind that Skopje Department is by far the largest Police department with regards to the number of employees, this number doesn't surprise us.

**Table 1:**

Number of lawsuits filed by Police employees claiming payment for overtime work in different elementary courts of N. Macedonia for the period between March 2021 and February 2022					
Skopje 41	Berovo 13	Kichevo 11	Gostivar 1	Delchevo 7	Kochani 6
Ohrid 2	Tetovo2	Shtip 9	Strumica 1	Sveti Nikole 8	Negotino 3
Bitola 3					
A total number of 107 lawsuits					

**Source:** <https://dejure.mk/sudski-odluki>

Analyzing the most frequent basis for submission of the 41 lawsuits against the Ministry of Interior Affairs of N. Macedonia we have managed to single out the following categories: overtime hours not paid in 36 cases; extra salary (when working more than 150 hours overtime during one calendar year) not paid in 29 cases; higher daily allowance for working in shifts not paid in 6 cases; not paying food allowance for work on the night shift in 1 case; and paying trainee salary rates ignoring the fact that the training period for a newly employed policeman had expired and his working status should be considered as a regular employee. In case one would be wondering why the number of cases classified under distinct categories exceeds the total number of 41 lawsuits, we would like to explain that some of the lawsuits contain claims in more than one category. For example, some of the plaintiffs laid claims for payment for overtime hours but at the same time for payment of an extra salary which they have earned based on the total of more that 150 hours of overtime work in one year.

Reasons for lawsuits against Skopje Police Department related to breaching legal provisions for paying salaries and overtime work



Figure 2:

Source: Analysis of 41 lawsuits against the Ministry of Interior, carried out for the purpose of writing this paper

The analysis of the financial outcomes from the 41 court cases reveal that Skopje division of the Police was compelled to pay the amount of 1762450 denars (equivalent to 28473 euros) as a compensation for failing to pay out the money that the Police was supposed to be paying out to their employees in accordance with the valid employment related legal provisions. In addition, the outcomes from the 39 lost cases have costed the Police 1116394 denars (equivalent to 18035 euros) in lawyers' fees and proceedings fees.

The success rate of plaintiffs is 95,12% i.e., out of 41 complaints filed, the Skopje Police department had lost 39 cases and for the remaining two cases the complaints were rejected.

We have found out that in neither of the 39 first instance court cases the proceedings ended within the envisaged timeframe of maximum 6 months. Only in one of the cases the first instance court managed to reach a decision with a slight delay of only one month behind the legally prescribed timeframe. For most of the cases it took between 11 to 20 months for the elementary court to reach a decision, and in several extremely long trials it took 27, 31, or even 34 months to complete the trial in first instance.

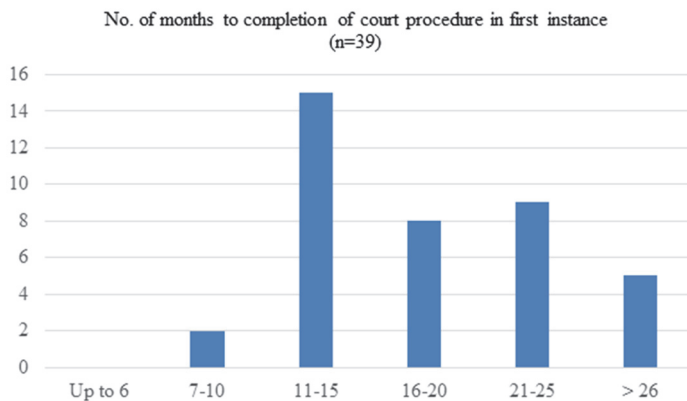


Figure 3:

Source: Analysis of 39 court decisions in first instance, filed against the Ministry of Interior, carried out for the purpose of writing this paper

In the interview we have conducted with the president of the Independent Police Syndicate, Mr. Goce Delchev Todev he said that the total cost of the court cases that the Ministry had lost due to lawsuits for unpaid overtime work since 2011 amounts to more than 18 million euros (Delchev Todev, 2023). Mr. Delchev Todev also said that many policemen who dared to sue the Ministry claiming their overtime work to be paid, were relocated to distant police stations. Thus, exercising pressure over other policeman not to dare to go against the Police (ibid.). Mr. Delchev Todev said that the Independent Police Syndicate raised incentive with several Ministers of Interior Affairs on finding viable solution for this problem, but there was no adequate response. Additional source from the Ministry of Interior Affairs (whom I cannot disclose due to fear from eventual retribution) claimed that the system for assigning overtime working hours was used by commanding officers as an instrument for rewarding the obedient employees<sup>10</sup>. The same source touched upon an additional issue that we as researchers should be looking into. Namely, the source pointed out that many police officers who have won their lawsuits against the Ministry of Interior Affairs face problems with getting the money that were assigned to them based on the decision of the court.

In a reply to our letter to the Ministry of Interior where we have presented the findings from our research and were inquiring whether the Ministry was taking any actions on addressing the disrespecting of their employees' rights with regards to paying for their overtime work, the Public Relations Office of the Ministry of Interior Affairs (2023) in a nutshell replied that they were aware of the situation but lately the Ministry undertook some serious steps for addressing this issue and the tendency of decrease of lawsuits against the Ministry is already visible. As tangible evidence to the aforementioned actions on addressing the shortcomings which lead to numerous lawsuits against the Ministry, the Public Relations Office offered the fact that the Ministry in partnership with the most numerous Police Syndicate have amended the existing Collective Agreement limiting the maximum amount of paid monthly overtime hours to 32. Whereas any number of monthly overtime hours beyond 32 would be compensated with giving free time (Collective Agreement of the Ministry of Internal Affairs, 2022, § 171). In addition, the Ministry informed us that they are working on an internal rulebook which will be distributed to all commanding officers giving them instructions on how to work in compliance with the applicable rules regulating the duration of the regular working time and the overtime work (Public Relations Office of the Ministry of Interior Affairs, 2023).

## 5. Discussion

The "rule of law" principle is one of the fundamental principles promoted in both the preamble and the basic provisions section of the Constitution of Republic of North Macedonia (1991). In the case of our inquiry on the respect of the rights of the Police employees with regards to paying or compensating for the overtime work and other benefits based on working outside of standard working hours, we have found out many inconsistencies and inadequate implementation of the legal provisions which will lead us to the conclusion that there has been a massive breach of the rights of the Police employees. The most salient argument in support of this conclusion is the fact that in 39 (out of 41) scrutinized court cases the Ministry was found guilty of breaching the rights of its employees. Another 66 court cases in other elementary courts throughout the country (See Table 1) were filed in the period between March 2021 and February 2022 on the same grounds as the 41 cases analyzed in this paper. Though we didn't include in our analysis the aforementioned 66 cases, we must admit that following the logic of the outcomes of the lawsuits initiated at the Skopje elementary court, we expect that the plaintiffs will win in predominant number of these cases and the Ministry of Interior will be designated responsible for breaching the rights of its employees. Our analysis revealed a consistent trend of employees in the Ministry of Interior filing lawsuits against the Ministry based on breach of their rights with regards to paying or compensating for the overtime work and other benefits based on working outside of standard working hours. For the period between 2015 and 2021 a total of 1257 lawsuits have been filed against the Ministry of Interior Affairs in elementary courts throughout the country (See Figure 1). The data shows that 2018 was the year with the highest number of lawsuits filed against the Ministry of Interior in a single year (291), while the trend shows a constant tendency of decrease ending up with 137 lawsuits filled in 2021. This tendency of decrease of the number of lawsuits against the Ministry of Interior may be interpreted in accord with the statement from the Public Relations Office of the Ministry of Interior Affairs (2023) and that is that the Ministry of Interior was aware of the problem and has been working on finding effective instruments for tackling this issue. Indeed, the Ministry in coordination with the Syndicate have limited the number of weekly paid overtime hours to a maximum of 32 and are working on the provision of internal regulations on

<sup>10</sup> We read an article entitled as: "Police Budgeting: Using Overtime as a Management Tool" (Lira, L., Edwards, F., 2022), where the authors are referring to a very similar situation concerning the San Jose California's police department.

improvement of the planning and management of employees' working hours against their tasks and duties. Here we have to make a reference to the claims of the president of the Independent Police Syndicate, Mr. Goce Delchev Todev especially with regards to the situation where the Ministry of Interior was taking measures of retribution against those employees who dared to take legal actions against the Ministry, where the most frequent measure was dislocation to a more distant working place, thus forcing these employees to travel longer distances than they used to before suing the Ministry (Delcev Todev, 2023). Also, we should seriously take into consideration the claims of our undisclosed source from the Ministry of Interior who stated that the system for assigning overtime working hours was used by commanding officers as an instrument for rewarding the obedient employees. And in addition, pointed out to the existing problem where the Ministry of Interior was postponing or ignoring the obligation of paying out the money to its employees in accordance with the court ruling.

Finally, not only the shortcomings of the Ministry of Interior talk in favor of the inconsistencies with regards to respecting the rights of the employees but also the obvious disrespect from the Skopje Elementary Court with regards to respecting the maximum allowed time of six months (from the day of submission) for reaching a decision in first instance (See Figure 3).

## 6. Conclusion

As a conclusion primarily based on our findings and exacerbated with the indications of further abuse of the rights of the employees of the Ministry of Interior, we may beyond any doubt state that the status of respecting the rights of the Police employees with regards to paying or compensating for the overtime work and other benefits based on working outside of standard working hours is far from satisfactory.

Even if we put aside the indication that the assigning of paid overtime working hours could be used as a means for rewarding the obedient employees, still there is no viable explanation why the Ministry of Interior is not able to put an end to the practice of not paying their employees for the overtime work? Especially if we take into consideration that this problem has been around for many years. Another problem is the general idleness of the State Labor Inspectorate (Vasilev et al., 2019, p.52) as well as the inefficiency in the work of the Skopje Elementary Court resulting in stretching the decision making beyond the legal timeframe of six months. The findings and the indications presented in this paper invite for carrying out a follow up investigation of the phenomena in question especially focusing on revealing the factual functioning of the power structure and the decision making of the commanding structures within the Ministry of Interior Affairs.

## 7. Recommendations

The overtime engagement of the employees is envisaged as an extraordinary instrument to be used in an extraordinary situation (not on a regular basis). The excessive use of this instrument should be mitigated by employing new Police officers who will alleviate the workload of the present Police employees and thus eliminate the need for assigning overtime work.

The Ministry of Interior must find a way to introduce a viable system of planning or work on increasing the capacities of the commanding officers on properly planning the tasking of the employees under their command within the regular working time. And should the Ministry of Interior lack a capacity to implement this recommendation, the Ministry should feel free to ask for an assistance from the academic community which has both time and knowledge to join forces with the Ministry on building a viable system for managing the time and the workload of the employees in the Ministry of Interior Affairs.

The courts must find a way to comply with the legal provisions on completing the procedure in courts of first instance within six months from the date of submission of the lawsuit.

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