A comparatist's view of the legislation governing collective agreements

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Introduction

As a young researcher in the 1970s, I first came across Yota Kravaritou when, for the sake of writing my PhD, I was engaged in comparing the law on collective agreements of the various EU Member States. In those years comparative studies were not as common as they are today and internet did not exist to facilitate the work of the comparatist. For instance, the law of the miniscule EEC Member State Luxembourg was not easy to trace[1] – until I discovered a contribution by Panayota Kravaritou-Manitakis to the book *Kollektivverträge in Europa*, edited by Theo Mayer-Maly[2] in which she had written a chapter entitled 'Le Droit des Conventions Collectives au Grand Duché de Luxembourg'.[3]

I would like to pay tribute to Yota's contributions to European Labour Law by walking in her footsteps and researching the law on collective agreements in another small and rarely studied European country, the former Yugoslav Republic of Macedonia, a country that happens to verge on the Greek region of Macedonia, where Yota spent her academic career. I realize that Greece and the former Yugoslav Republic of Macedo-

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1. The situation is hardly different in 2010. In the Encyclopedia of Labour Law the extremely summary monograph on Luxembourg dates back to 1991. Luxembourg was not included in the research conducted by T. Schulten, *Changes in national collective bargaining systems since 1990*, European Industrial Relations Observatory, 2005, and the same goes for the book *Collective Bargaining in Europe*, published by the Spanish Ministry of Labour, Madrid, 2004. Fortunately the Luxembourg Code du Travail is now available on the Internet.
2. Mayer-Maly, T. (1972) *Kollektivverträge in Europa/Conventions collectives de travail*, München/Salzburg : W. Fonk.
3. Kravaritou-Manitakis, P. (1972) 'Le Droit des Conventions Collectives au Grand-Duché de Luxembourg', in T. Mayer-Maly (ed.), op. cit., p. 135-151.

nia are not always on speaking terms about their common Macedonian ancestry. Yet the beautiful art of comparative law may help to enable such antagonisms to be overcome.

After comparing Luxembourg law with the law of the other EU Member States (in those years the Member States numbered only six!), Yota reached the conclusion that, while there are a number of general principles which the Member States pretty much hold in common in this area of the law and which are also found in Luxembourg, this country's law nevertheless also contained some specific features.[4] In this article, I would like to investigate whether comparable observations can be made concerning the law of Macedonia.

The law on collective agreements currently in force in Macedonia is the fruit of relatively recent legislative activity as Macedonia was, until 1990, part of Yugoslavia and part of the Communist world. In Communist countries collective agreements existed, but they fulfilled roles different from those found in social-liberal market economies.[5] After the fall of the Berlin Wall, the Eastern European countries made overtures to the EU and undertook a throughgoing reform of their labour laws. In Macedonia, the legislation dealing with collective agreements is now found in the comprehensive Labour Relations Act, passed on 22 July 2005. This Act covers not only collective agreements but also the law on trade unions and employer associations as well as the law on strikes.

This contribution is based on an English translation of the Labour Relations Act 2005, which I received from the Macedonian Ministry of Labour in January 2010.

In referring to Luxembourg law I shall not restrict myself to the observations made by Kravaritou, dating back to the early 1970s, but will also consider the current law on collective agreements, incorporated into the Luxembourg *Code du Travail*, including the most recent revisions contained in the Act of 13 May 2008.

4. Kravaritou-Manitakis, P., op. cit., p. 150.
5. Nagy, L. (1972) 'Conventions collectives sous le régime socialiste', in T. Mayer-Maly (ed.), op. cit. p. 185-230.

Scope 'ratione personae'

Kravaritou, already at the beginning of her study, discovered an eccentric aspect of Luxembourg law, requiring that a specific collective agreement be concluded for each of the three categories of worker: blue-collar, white-collar and managerial staff art. . 5). This provision – which has been changed in the meantime (now Article L 162-6) – was exceptional as under the law of most EU Member States it is left up to the parties to collective agreements to specify whom they cover. And Macedonian law follows this majority line, stipulating only that the persons and the field of application of the collective agreement must, obligatorily, be indicated in the text of the agreement itself (Article 224).

In most Member States collective bargaining is focused on workers with the legal status of employee (i.e. working subject to a contract of employment), but in a number of Member States collective bargaining may also encompass various categories of self-employed or independent workers. Macedonian Law is not very specific in this field. The definition found in art. 206, mentioning "legal regulations stipulating the conclusion, contents and termination of labour relations and other matters arising from or related to labour relations", seems to indicate that collective bargaining can also encompass labour relationships which are not qualified as contracts of employments. In relation to one point this becomes particularly clear: article 218 mentions a special collective agreement for persons who independently perform activities in the field of art and culture (freelance artists). However, why is this so specifically affirmed in relation to freelance artists? Does it mean that in the case of other freelance activities (in the media, taxi-driving, construction, information and computer technology, etc.) there is no room for a special collective agreement?

Whereas in Luxembourg the general law on collective agreements is not applicable to collective bargaining in the public sector (civil servants) (art. L 161(2), in Macedonia it is so applicable subject to the provision that, at national level, separate general collective agreements are to be concluded for the private and for the public sector (art. 204).

The levels of collective bargaining

In all EU Member States collective bargaining takes place at various levels: national inter-sectoral, national or regional sectoral and at enter-

prise/company level. Most jurisdictions recognize collective agreements at all these levels and leave the parties free to determine which level they wish to use. In most Member States there are several levels of collective bargaining in use,[6] a situation which sometimes gives rise to problems of coordination.

At the ILO the need for effective coordination between the various types of collective agreement concluded is emphasized, if only to prevent unfair competition between enterprises to the detriment of wages and working conditions.[7]

Luxembourg law recognizes, besides the normal sectoral/enterprise collective agreement, the existence of agreements at all-industry level (art. L 165-1), as well as at enterprise level on collective dismissals (Article L 166-1).

Macedonian law explicitly mentions three levels at which collective agreements can be concluded, viz, the level of the country, the branch and the employer (art. 203). It would appear that the choice of level is left to the parties. There are no provisions specifically governing the coordination of these levels of bargaining.

Trade unions and employer associations

Collective bargaining traditionally is the core business of trade unions and employer associations. In a few countries collective bargaining may also be conducted by entities other than trade unions, for instance works councils. The ILO is sceptical as regards this option[8] and Macedonian law seems to ignore any such possibility.

In some EU Member States either statute or case law provides a more precise definition of the notions of 'trade unions' and 'employer association' with a view to collective bargaining.

6. European Commission (2006) Industrial Relations in Europe, Luxembourg: Office for Official Publications of the EC, p. 47.
7. Gernigon, B. (2009) Collective bargaining, Sixty years after its international recognition, Geneva: ILO, p. 16.
8. Gernigon, B., op. cit. p. 5.

Under Luxembourg law trade unions are described as occupational associations of employees equipped with an organization with internal structures aimed at the defence of the occupational interests and the collective representation of their members as well as at the improvement of their living and working conditions (Article L 161-3 (1). "Independence" is an important aspect (Article L 161-3 (2).

Macedonian Law gives a more comprehensive description of trade unions and employer associations: these are independent and democratic organizations of employees /employers, which these categories join voluntarily for the purpose of representing, promoting, and protecting their economic, social and other interests (art. 184). By mentioning explicitly that such organizations must be "independent", "democratic" and "voluntary", yellow unions, undemocratic unions and organizations based on forced membership are apparently excluded.

Among the EU Member States there exist considerable differences as regards the organizational pattern of trade unions and employer associations. While some countries have a highly united trade union movement, others have a very fragmented one, and all intermediate gradations can be found.[9] One of the most tricky problems of the law on collective agreements is thus to establish which are the potential parties in the process of collective bargaining. One of the main techniques for doing this is – apart from the use of criteria such as legal personality, independence, etc. – the notion of representativeness.

Representativeness

If there exist several trade unions and employer associations in a country, the country must decide whether to allow all trade unions, or only some of them, to be party to the conclusion of collective agreements. The device most commonly used for this purpose is to limit the ability to conclude collective agreements to representative organizations. The ILO has accepted this device.[10] As Kravaritou showed, this is also the device used in Luxembourg where the law used to reserve the power to conclude collective agreements to the representative occupational organizations.

9. European Commission, op. cit., p. 19.
10. Gernigon, B., op. cit., p. 4.

In Macedonia too the law provides, already in its definition of collective agreement, that such an agreement should be concluded between...the representative employer association and the representative trade union (art. 210 (1). This emphasis on representativeness is repeated in the specific definitions for the general collective agreements (Article 216), the special collective agreements for sector and/or activity (art. 217), the special collective agreement for public enterprises and public institutions (art. 218(1), the special collective agreement for persons who independently perform activities in the field of art and culture (freelance artists) (art. 218(2), for the individual (=enterprise/company) collective agreement (Article 219), and for individual collective agreements for public enterprises and public institutions (art. 220).

Thus, in all the types of collective agreement recognized by Macedonian law, employer associations and trade unions must both be representative if they wish to conclude a collective agreement.

The criteria for assessing representativeness

The EU Commission, which in 1992/1993 conducted a study of the law and practices as regards representativeness in the various Member States, found that in this area there is an enormous diversity of practices among Member States[11] although they may have some elements in common. In Luxembourg law the operational criteria are membership, activities and independence. Kravaritou found – c.1970 – that these were quite poorly defined criteria. She also found that under Luxembourg law a union which is not representative at national level cannot conclude collective agreements even if it represents the majority in a specific enterprise, region or occupation. This system, which Kravaritou described as 'centralism', has been modified in Luxembourg (present system in Article L 161-5, L 162-1 and L 162-4), but continues to exists in Belgium.[12] It has been justified by the ECtHR,[13] but continues to be frequently criticised.

11. COM(1993)600.
12. See Engels, C. and L. Salas (2005) 'Collective bargaining in Belgium', in Spanish Ministry of Labour (ed.) Collective bargaining in Europe, Madrid, p. 56-57.
13. ECtHR, 27.10.1975, National Union of Belgian Police vs. Belgium, Series A, Vol. 19.

Macedonia has chosen a less centralist system. Its Labour Law Act provides that the representation aspect of a trade union is defined in accordance with

a) entry in the register required by law and other regulations and
b) the number of members based on application forms (art. 211).

To be representative for purposes of concluding a collective agreement at enterprise level, the union must have recruited into membership at least 33% of the employer's total workforce, or be a member of a representative trade union organized at a higher level. To be representative at sectoral level and at country level the trade union must have at least 33% of the total number of employees in the sector, or be a member of representative trade unions organised at a higher level (Article 212).

It is clear that Macedonian law has thus done away with the radical centralist model that once existed in Luxemburg and still exists is Belgium, but has opted for a more moderate centralist model, as exists for instance in France.[14] Trade unions qualify as bargaining partner either if they are a member of a representative trade union organized at a higher level (in which case no minimum membership criterion is applied) or, if they are not such a member, provided that they have recruited into membership at least 33% of the total number of employees working in the enterprise, sector or activity for which the collective agreement is concluded.

However, it is difficult to see what the option of 'member of a trade union organized at a higher level' means in cases where a collective agreement is concluded at national level (i.e. the level of the Macedonian state). In Article 216 it is clearly stated that the general collective agreement shall be concluded between the representative employer association and the representative trade unions for the territory of the Republic of Macedonia. Nowhere in the Labour Act, however, are the criteria for representativeness for the entire territory of Macedonia supplied. According to my understanding, this omission indeed poisoned Macedonian industrial relations for a number of years but a compromise solution on this point has now finally been reached.

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14. See Royot, J. (2005) 'Collective agreements in France' in Spanish Ministry of Labour (ed.), op. cit, p. 112.

On the employer side, Macedonian law requires the representative employer associations to encompass at least 33% of the total number of employers and total number of employees of the sector or activity for which the collective agreement is concluded (art. 213).

Thus, on the employer side there exists no possibility for an employer association to avoid the need for minimum membership simply by belonging to a representative association at a higher level. Every employer association needs to show that it organizes at least 33% of employers and employees in the sector or activity for which the collective agreement is concluded. Quite remarkably, a double check is applied: 33% of the employers and 33% of the employees in the branch or activity concerned.

The Macedonian legislators must have understood that this approach to the power to negotiate a collective agreement leaves open two thorny questions, viz.:

a. what if none of the trade unions or employer associations meets the criteria of representativeness? and
b. what if more than one trade union or employer association meets the criteria?

The first question is solved by a provision according to which, if none of the trade unions and/or employer associations fulfils the representational conditions stipulated by this law, the trade unions and/or employer associations may conclude an association agreement for the purpose of participation in concluding the collective agreement (Article 214).

The second question is resolved by provisions which stipulate that a negotiating board has to be established if several representative trade unions participate in concluding the collective agreement for an enterprise, or if several trade unions and/or employer associations participate in concluding the collective agreement for the territory of the Republic of Macedonia and/or sectoral level. The members of such boards shall be determined by the representative trade unions and/or representative employer associations (Art. 219 and 221).

Any dispute regarding the representation aspect of the trade union and/or employers' association has to be settled within eight days by the court of original jurisdiction (Article 215).

This solution resembles the Luxembourg law which also requires the setting up of a negotiation board in the case where several parties are interested in the conclusion of a collective agreement (Article L 162-1).

The single employer as a party

Whereas nowhere in the EU can individual workers be a party to the collective agreement, employers can be party either individually,[15] or as groups of employers. In Luxembourg the law states that a party to a collective agreement can be a particular enterprise, or a group of enterprises performing the same kind of activities or a set of enterprises involved in the same form of business (Article L 161-2).

In Macedonia the law simply mentions an employer, disregarding the other alternatives. However, Macedonian law pays special regard to the employers in certain categories. In relation to public enterprises and public institutions, the employer side is described as "the founder or the body authorized by it" (art. 218 and 220).

Joining existing collective agreements

In the practice of industrial relations it may happen that employers, employer associations and trade unions wish to join an existing collective agreement at a later moment. In most EU Member States this is a possible step, albeit one seldom specifically regulated by statute.

In Macedonia, however, the law has explicitly provided that entities, which according to the provisions of the law are entitled to be party to the collective agreement, may additionally enter into the collective agreement. The statement of entry into the collective agreement must be submitted to all parties, signatories of the same and the entities that additionally entered into the collective agreement. The entities that additionally entered into the collective agreement enjoy the same rights and obligations as the parties that concluded it (Article 233).

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15. Apart from Austria, see Rebhahn, R. (2003) 'Collective Labour Law in Europe in a Comparative Perspective. Collective Agreements, Settlement of Disputes and Workers' Participation (Part I)', *International Journal of Comparative Labour Law and Industrial Relations*, 19 (3), p. 274.

Legal personality

In many EU Member States the law requires the trade unions and employers' associations to have legal personality if they wish to conclude collective agreements. Notable exceptions are Belgium and Germany, where the trade unions are reluctant to be invested with legal personality. Kravaritou mentions that the same is true of Luxembourg[16] and explains how this preference is accommodated by the law in that Luxembourg law does not require that trade unions and employer associations have legal personality in order to be able to conclude collective agreements.

In Macedonian law it is provided that trade unions and employer associations at higher level (referring, presumably, to confederations) are entered into the register kept by the Ministry competent for labour affairs (art. 190). The trade union and/or the employer association and their associations at higher level are deemed to acquire the status of legal entity on the date of entry into the register of trade unions and/or employer associations (Article 189).

Terms of capacity to sign agreements

In many EU Member States statutory law sets some requirements in relation to the capacity to sign a collective agreement. Macedonian law requires the representatives of the trade unions and the employer associations which participate in the negotiations for conclusion of the collective agreement to obtain the authorization of their governing bodies (art. 222).

Persons representing the parties in the collective agreement must have obtained the requisite authorization to conduct collective bargaining and conclude a collective agreement (art. 219 (1) and 225 (1). If a legal entity is a party to the collective agreement, this authorization must be issued in accordance with the Statute of the entity in question (Article 225 (2).

16. Kravaritou, op. cit., p. 138.

The subject matter of collective agreements – normative and obligatory stipulations

In all EU Member States the habitual subject matter of collective agreements relates to the mutual relations between the parties and the conditions of employment in the sector or enterprise as well as the determination of the contents of individual labour relations covered by the agreement. Scholars have thus established the distinction between obligatory clauses and normative clauses.[17]

In Macedonia this duality is to be found in Article 206. According to its first section, the collective agreement stipulates the rights and obligations of the contracting parties which concluded the agreement in question and may also include regulations stipulating the conclusion, contents and termination of labour relations and other matters arising from or related to labour relations.

The formulation is close to 'social' items and does not seem to transgress the limitations established by the ECJ in the Albany case[18] to quality for immunity under EU competition law.

In all EU Member States the parties to the collective agreement are, in general terms, free to determine its contents. They are required, however, to respect mandatory legal provisions governing the public order. In Luxembourg the law includes a non-exhaustive list of numerous technical clauses and working conditions that may be regulated by collective agreement. It lists, in addition, a certain number of clauses that must be included in each agreement, such as extra wages for night work (Article L 162(12). No comparable provision can be found in Macedonian law.

The effect of normative clauses

In most EU Member States the normative clauses of a collective agreement have a strong binding character in relation to individual contracts

17. Bamber, G.J. and P. Sheldon (2007) 'Collective Bargaining: An International Analysis', in R. Blanpain (ed.) Comparative Labour Law and Industrial Relations in Industrialized Market Economies, The Hague: Kluwer Law international, p. 619.
18. Case C-67/96, *Albany* [1999] ECR I-5751.

of employment covered by the collective agreement. Kravaritou, in line with scholars in Germany, France, etc., specifies that they have an automatic and an imperative effect.[19]

In Macedonia this idea is presumably embodied in the norm that legal standards incorporated into the collective agreement shall apply directly and shall be mandatory upon all parties to which the collective agreement applies (art. 206(2).

The character of minimum protection

Another feature of the law on collective agreements in most EU Member States is that the collective agreement gives only a minimum level of protection. Derogations from its provisions are possible insofar as they are more favourable to workers.[20] However, as Kravaritou indicates, this principle is not always, in all EU Member States, absolute in nature. In Luxembourg it is, she states, absolute, although the statute remains silent on this point.[21] Nor does Macedonian law include specific indication concerning the character of the collective agreement as offering a minimum level of protection.

Bound employers

In all EU Member States an undisputed aspect of the law is that collective agreements are directly binding upon employers who are members of the employer association that is a signatory party to the collective agreement. Often the statutes have extended this binding force to employers who have joined or left the association after the signature of the collective agreement.

Macedonian law states that general and sectoral collective agreements shall be obligatory upon employers who are members of the employer association, whether original signatories of the collective agreement or those that joined the association subsequently (art. 205).

19. Kravaritou, op. cit., p. 145.
20. Even, J.H. (2008) *Transnational collective bargaining in Europe*, The Hague: Boom Juridische uitgevers, p. 609-610.
21. Kravaritou op. cit., p. 145/151

Article 208, section 1, provides that the collective agreement shall be binding upon all parties that at the time of its conclusion had been, or which subsequently became, members of the associations by which it was concluded.

Article 208, section 2, reiterates that the collective agreement shall be binding upon all parties that concluded it and upon all those that subsequently joined the associations which concluded it.

This is the classic idea that collective agreements are binding not only upon the parties, which are often associations, but also upon the members of the parties. Furthermore, the text ensures that fresh members automatically become bound by the collective agreement. Presumably we may also infer from the text of section 1 that members of associations cannot avoid the binding force of the collective agreement by discontinuing their membership.

Automatic extension

The question of which are the parties bound by the normative provisions of the collective agreement is answered quite differently in different EU Member States. In the majority of Member States the collective agreement is applicable to the entire workforce of the employer, who is, directly or indirectly (via the employer association), bound by the collective agreement. It is irrelevant whether or not the employees are members of a specific union. Kravaritou called this construction, which is also enshrined in Luxembourg law (art. L 182-8(2), the automatic extension.[22] Whereas Luxembourg law allows an exception for 'higher staff' (Article L 162-8(3), in Macedonia this point is not clearly regulated by the law. art. 206 (2) states that legal standards incorporated into the collective agreement shall apply directly and shall be binding upon all parties to which the collective agreement is applied, in accordance with the provisions contained in the law itself.

However, the law does not exhaustively define "all parties to which the collective agreement is applied". It specifies this application for em-

22. Kravaritou, op. cit., p. 144-145.

ployer signatories to the collective agreement and for employers who are members of the employer association that signed the collective agreement, but it says nothing about its application to the workers. art. 208 (3) says that the individual collective agreement (= company/enterprise agreement) shall also be binding upon/ applicable to the employees who are not members of a trade union or of the trade union that signed the collective agreement.

While this indicates that the Macedonian legislators may have intended automatic extension at the level of the company/enterprise, it leaves the question open in relation to other collective agreements (i.e. those concluded at sectoral or national level)?

Extension erga omnes by a public authority

In a majority of EU Member States there exists another means of extending the binding force of a collective agreement, namely, the extension erga omnes through intervention of a public authority.[23] This extension means that the collective agreement obtains binding force upon all employers and employees working in a specific sector of the economy. Such an extension mechanism exists also in Luxemburg, as described in detail by Kravaritou[24] and now laid down in Article L 164-8 of the Labour Code.

In Macedonia no such device is to be found.

Obligation to negotiate in good faith

In no EU Member State does there exist a duty to *conclude* a collective agreement and in only some Member States is there a duty to *negotiate*, such as exists in the US. Indeed, Luxembourg must have been the first European nation in this respect, for one of the most interesting aspects of Luxembourg law discovered by Kravaritou was a kind of a duty to negotiate. The employer who is asked by the workers' representatives to become engaged in collective bargaining is obliged to start such bargain-

23. Traxler, F. and M. Behrens (2002) 'Collective bargaining coverage and extension procedures', EIROnline, December, Dublin.
24. Kravaritou, op. cit., p. 148-150

ing immediately. This rule does not apply in the case where the employer prefers to negotiate within a group of employers involved in the same line of business, in which case the group in question must start the collective bargaining within 60 days (art. L 162-2).

Kravaritou compared this provision with the American 'duty to bargain', which, at that time, did not exist anywhere else in the EEC (as it was called in those days).[25] Nowadays such a duty to bargain is also found in Sweden, France and elsewhere and is in line with ILO standards.[26] In no EU Member State, however, are the sanctions relating to this obligation made as explicit as in US law.

It would seem that Macedonian Law, in this area, has followed the example of Luxembourg. Article 210(2) provides that the parties involved in concluding collective agreements shall be obliged to negotiate. Article 207 states that entities that, according to this law, may be parties to the collective agreement shall be obliged to negotiate in a spirit of good faith to conclude a collective agreement relating to those issues which may, according to the Law in question, be subject to collective agreement. In the event of termination of a collective agreement, the parties shall be obliged to start negotiations within no more than 15 days of submission of the notice of termination (art. 229 (4).

However, Macedonian law contains no mention of any sanction applicable in the event of violation of this obligation.

The binding force between the contracting parties and the peace obligation

Although it is assumed in all EU Member States that the parties to the collective agreement are bound to cooperate in a spirit of loyalty for the purpose of its execution,[27] the law varies considerably from one Member State to the next as regards the consequences of the binding force of the collective agreement between the contracting parties (trade unions, employers and employers' associations).

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25. Kravaritou, op. cit., p. 139-140.
26. Gernigon, B. , op. cit., p. 6/7.
27. Even, J.H., op. cit., p. 597.

Macedonian law states that the collective agreement shall be binding upon all the parties that concluded it (art. 208 (1). The parties to the collective agreement and persons to whom it applies shall be required to fulfil the provisions thereof. In the case of violation of the obligations arising from the collective agreement, the party or person covered by it and that has suffered damage may require indemnification (art. 223).

It is submitted that this obligation and its consequences in case of violation are not very clear. The fact that "persons to whom it is applied" are mentioned besides the parties to the collective agreement seems to indicate that this responsibility for fulfilling the collective agreement is laid also on the individual employers and employees bound by the collective agreement. This would mean that in all obligatory, normative and even diagonal[28] relationships indemnification may be required in case of damages caused by violation of the collective agreement.

However, in many Member States such an affirmation of *bona fide* execution is an empty shell as the law in those states very much restricts or even excludes any civil responsibility (damages) for non-execution by the contracting parties. Also in a number of Member States the obligation to loyally execute the collective agreement does not stretch so far as to imply a peace obligation upon the contracting parties.[29] Kravaritou has explained that while Belgium, France and Italy do not support the idea of a legally binding peace obligation, the law of Luxembourg does – quite remarkably against this 'Roman background' – imply such an obligation.[30] She criticised this provision as being 'un certain excès de la réglementation officielle qui pourrait compromettre l'action syndicale.'[31] Nevertheless, we may doubt whether her assessment is correct because she had to recognize that the trade unions and the employers' associations in Luxembourg cannot be a party to litigation on damages, given that such a possibility is explicitly ruled out by law (art. L 162-13(4).[32]

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28. For instance, the trade union against an individual employer, or the individual employee against the employer association.

29. Jacobs, A. (2007) 'The law of strikes and lockouts', in R. Blanpain (ed.) *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, The Hague: Kluwer Law International, p. 643; J.H. Even, op. cit., p. 597.

30. Kravaritou, op. cit., p. 144/146.

31. Kravaritou, op. cit., p. 151.

32. Kravaritou, op. cit., p. 147.

Whether there are limitations to the generous recognition of the responsibility for fulfilling the collective agreement under Macedonian law is unclear.

The beginning of the binding force

In most EU Member States the contracting parties are free to establish the date on which their collective agreement enters into force.[33] Kravaritou mentioned that in Luxembourg the law provides that, if not otherwise stipulated, the collective agreement shall obtain binding force at the start of the day on which it is officially registered.

In Macedonia the law seems to be silent on this point.

Timeframe

The law of many EU Member States contains provisions concerning the timeframe of a collective agreement.

In Luxembourg the law provides that the collective agreement must be concluded for a minimum of six months and a maximum of three years (art. L 162-9).

In Macedonia the collective agreement may be concluded for a fixed period of two years, with the possibility of its extension by written consent of the contracting parties (art. 226).

Termination of the collective agreement

In all EU Member States the collective agreement may be terminated by mutual consent. The rules vary as regards unilateral denunciations. In most EU Member States the law requires a minimum period of notice for the denunciation of a collective agreement.

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33. Even, J.H., op. cit., p. 618.

In Luxembourg this is a minimum of 15 days and a maximum of three months (art. L 162-10). Moreover, it is provided that when, at the end of the term set by the collective agreement, its termination has not been notified, it will be renewed as an agreement for an indefinite period and can be terminated by observing the notification period agreed between the parties (Article L 162-10(3) CdT).

In Macedonia it is provided that the collective agreement must contain provisions on the period of notice and the proceedings for termination and amendment of the collective agreement. The collective agreement concluded for a definite period may be terminated only if the agreement itself contains explicit provision for such an option. The notice of termination of the collective agreement must be submitted to the other contracting parties (art. 229, s. 1-3).

End of validity and after-effects

The general rule of contract is that the effects of an agreement cease upon termination of that agreement, unless otherwise provided by the parties. This is applicable also to the obligatory binding nature of the collective agreement.

In most EU Member States the law is vague about the after-effects of a terminated collective agreement upon the individual contracts of employment and the situation varies from one country to another.

In Luxembourg, however, the law provides that a collective agreement shall, unless stipulated otherwise, terminate on the date of the entry into force of a new collective agreement but not later than 11 months after denunciation (art. L 162-10).

In the case of an open-ended collective agreement, its binding effect ceases on the date of denunciation.

Macedonian law elaborates upon this point in considerable detail. The validity of the collective agreement concluded for a fixed period shall cease on expiry of the period in question. Alternatively, the validity of a collective agreement may be terminated by agreement among all contracting parties or by cancellation in the manner determined by the terms of the collective agreement itself (art. 227).

When the validity of the collective agreement is extended by agreement among the contracting parties, the extension agreement shall be concluded not later than 30 days prior to expiry of the validity of the collective agreement. Unless otherwise stipulated by the collective agreement, after expiry of the period for which the collective agreement is concluded, its provisions shall continue to apply until conclusion of a new collective agreement (art. 228).
In case of termination, the collective agreement shall apply for no longer than six months from the date of submission of the notice of termination, unless otherwise determined by law, and the participants shall be obliged to start negotiations within a maximum of 15 days from the date of submission the notice of termination. After expiry of this period the collective agreement shall cease to be valid, unless the contracting parties agree otherwise (Article 229).

In the event of a change in the employer's status, the collective agreement applicable at the time when the change occurred shall continue to be applied to the employees until conclusion of a new collective agreement, but for no longer then a year (art. 230). This seems to be in concordance with the EC Directive on transfer of the enterprise.[34]

Written form, publicity and registration

In most Member States a collective agreement must, in order to acquire binding force, exist in writing, complete with the requisite signatures. Nullity is the sanction on violation of this requirement, a condition reaffirmed by Kravaritou in relation to Luxembourg (art. L 162-3).

While the Macedonian law on collective agreements states, in common with all EU law, that it is compulsory for the collective agreement to exist in writing (art. 208), no sanction is mentioned in relation to failure to comply with this obligation.

In the majority of Member States collective agreements must be deposited for registration at a specified official location.[35] This is the case in

34. EC-Directive 2001/23 of 12 March 2001.
35. Even, J.H., op. cit., p. 596.

Luxembourg, the location in question being the Labour Inspectorate (art. L 162-5 CdT).

In Macedonia every general and sectoral collective agreement and every change (modification, amendment, termination or addition of party) to the collective agreement must, prior to publication, be submitted for registration to the Ministry of labour affairs. The collective agreement or its modifications are to be submitted to the competent body by the first stated party to the agreement or by the party that terminates the collective agreement.

The Minister of labour affairs prescribes the procedure for submission and registration of the collective agreements and their modifications to the competent government authority, as well as the manner of keeping records of the collective agreements submitted and of their modifications (Article 231).

In Luxemburg and some other EU Member States the law requires the parties to a collective agreement to display its contents in the relevant workplaces or to give a copy to the workers (art. L 162-5).

Under Macedonian Law collective agreements must be announced in public. The general and sectoral collective agreement and their modifications must be published in the "Official Gazette of the Republic of Macedonia". The individual (=enterprise) collective agreement is to be published in a manner determined by the agreement itself (art. 232).

Litigation

One of the main benefits of the law on collective agreements in most EU Member States is that it enables trade unions and employer associations to go to court to defend the normative stipulations of the collective agreement against violation.[36] Kravaritou described the several aspects of this right under Luxembourg law[37] (nowadays: art. L 162-13 CdT).

36. Even, J.H., op. cit., p. 616-617.
37. Kravaritou, op. cit., p. 147.

Under Macedonian law, a party to a collective agreement may lodge a complaint before the competent court requesting protection of the rights deriving from the collective agreement (Article 234).

Conciliation and arbitration

In most EU Member States the obligatory binding force of the collective agreement is associated with the possibility of litigation in civil/labour courts. In a number of countries, however, trade unions and employers prefer to refrain from such action, tending, instead, to prefer some form of alternative dispute resolution for cases of this type.[38]

In most EU Member States, in the event of a breakdown of collective bargaining, the parties are offered mediation, conciliation and arbitration, either by institutes and procedures provided by law or by the social partners themselves, on either a permanent or an ad hoc basis. However, in no Member State is the use of the strongest of these devises, namely, arbitration, obligatory, as used to be the case in, for instance, Australia. Many scholars, committees of experts and courts are of the view that obligatory arbitration is contrary to the fundamental right to free collective bargaining.[39] However, EU Member States vary as to the degree of intensity with which the parties to collective bargaining are encouraged by the law to resort to conciliation and arbitration. One of the main specific aspects of Luxembourg law discovered by Kravaritou is in the system of public conciliation. Before any collective action can be taken, the National Conciliation Office has to be seized by the parties concerned or it may intervene on its own account. This may lead to a conciliation procedure, failing which arbitration is possible. A positive outcome of both conciliation and arbitration is regarded as a collective agreement (conciliation) or as having force equivalent to that of a collective agreement (arbitration).[40]

A similar emphasis is also found in Macedonian Law, for here the law provides that any disputes arising as to the procedure for concluding

38. Valdés Dal-Ré, F. (2002) *Synthesis Report on conciliation, mediation and arbitration in the European Union Countries*, Brussels: European Commission.
39. Gernigon, B., op. cit., p. 14-15.
40. Kravaritou, op. cit., p. 136-137/140.

and modifying the collective agreement shall be settled amicably. The disputing parties may agree that the collective labour dispute should be settled by means of arbitration (art. 235). Article 210(3) states that, if, in the course of the negotiation on a collective agreement, consent for the conclusion of a collective agreement is not reached, the participants may establish arbitration to settle the matters under dispute. The crucial verb is 'may' and this indicates that there is no obligation. However, the very fact that the possibility is mentioned is some indication of a degree of pressure.

Conclusions

In this contribution I paused to consider to what extent the Macedonian law on collective agreements reflects general principles held in common by the EU Member States, and expressed in their national legislation governing collective agreements, and to what extent it contains specific or peculiar features. The conclusion must be that the current state of the law of Macedonia broadly conforms with the general principles. Even so, Macedonian law does display a few specific features, such as the collective agreement for self-employed workers, the pressure towards unitary bargaining, the duty to bargain, the full responsibility to fulfil the terms of the collective agreement, and the pressure towards arbitration. These are all features which, whenever they are encountered, merit the attention of legal experts and researchers.

And that is precisely one of the main merits of the comparative process, namely, to focus our attention on differences between legal systems and thereby make us aware of alternatives to the law currently in force. This may discourage us from being defensive, conservative lawyers, turning us into more militant and progressive ones.

Yota Kravaritou was one of those who taught me this lesson. It is a lesson for which I feel deep gratitude.