Main Issues of Labor Legislation in Serbia

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Introduction

The Labor Law[1] is the primary legislation regulating labor relations. Whenever a law or another regulation refers to "in accordance with the law governing labor", there is no ambiguity—it refers to the general labor relationship regime regulated by the Labor Law. Given the existence of numerous specific industries and different labor relationship regimes (special, specific), it is entirely natural and expected that additional legal regulations exist to govern such sectors. However, when the state resorts to regulating certain elements of the general labor relationship regime through special regulations, we can speak of unnecessary regulatory fragmentation.

The Labor Law establishes the foundations of the labor system, attracting the attention of the public, trade unions, and workers in general. Modifications to the Labor Law draw media attention and must be well-argued and based on real needs for change. Public debates in such cases are not only expected by the experts but are explicitly prescribed by the Rules of Procedure of the Government of the Republic of Serbia. For this reason, it is far easier and simpler (but of course, improper) to modify the system by adopting an "auxiliary" law or even a bylaw that fundamentally changes, undermines, or significantly reduces or limits certain rights in the field of labor and social law. There are multiple examples of such practices, including the Law on Peaceful Resolution of Labor Disputes[2], the Law on Simplified Employment for Seasonal Jobs

1 Official Gazette of the Republic of Serbia, Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Constitutional Court decision, 113/2017 and 95/2018 – authentic interpretation.

2 Official Gazette of the Republic of Serbia, Nos. 105/2004, 104/2009 and 50/2018.

in Certain Industries[3], the Law on Agency Employment[4], the Law on Strikes[5], and the Law on the Socio-Economic Council[6], among others. All these laws could be part of the Labor Law, and some directly regulate the rights and obligations of employees under specific labor regimes.

The consequences of such actions go beyond the "practicality" sought by legislative and executive authorities. They undermine the system at its core, erode legal certainty, and place employers, courts, individuals, legal entities, bodies, and institutions that apply and interpret regulations in a difficult position[7].

Beyond the practical reduction of rights, this practice effectively diminishes the significance of the Labor Law itself. Fragmented legislation not only facilitates easier amendments and the creation of special labor regimes where unnecessary, but these special labor regimes also tend to take precedence over traditional forms of employment.

The ideology behind this legislative reasoning is fundamentally flawed. Nowhere has it been proven that a "race to the bottom" i.e., creating a competitive advantage by lowering labor costs, is the only path to the global market. Moreover, attracting foreign capital does not solely depend on cheap labor, despite this being part of Serbia's strategic documents[8].

According to the latest 2024 European Commission Report[9], Serbia is moderately prepared in social policy and employment. Limited progress has been made, particularly with the adoption of the Youth Guarantee

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3 Official Gazette of the Republic of Serbia, No. 50/2018.

4 Official Gazette of the Republic of Serbia, No. 86/2019.

5 Official Gazette of the FRY, No. 29/96 and Official Gazette of the Republic of Serbia, Nos. 101/2005 – state law and 103/2012 – Constitutional Court decision.

6 Official Gazette of the Republic of Serbia, No. 125/2004.

7 M. Reljanović, Alternative Labour Legislation, Belgrade, 2019, p. 255.

8 Strategy for the Promotion and Development of Foreign Investments, No. 22/2006-3 https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2006/22/1.

9 https://www.mei.gov.rs/upload/documents/eu_dokumenta/2024/serbia_report_2024.pdf

implementation plan for 2023-2026 and the launch of the Youth Guarantee pilot project in January 2024. The report highlights the need for Serbia to begin consultations on a new Labor Law and avoid further delays in implementing the action plan for Chapter 19. Additionally, the new Law on Strikes has not yet been adopted, and amendments to the legal framework are necessary to strengthen bipartite and tripartite social dialogue at all levels. This is particularly important given the assessment that social dialogue in Serbia is very weak, especially in terms of social partners' participation in developing policies relevant to them.

Challenges for Serbia's Labor Legislation – Need for Improvement

Modern labor legislation faces challenges such as technological advancements, emerging professional risks (e.g., psychosocial risks at work), and new forms of employer organization, including multinational corporations. The trend of labor law deregulation encourages employers to create unilateral sources of autonomous law and to assume that corporate responsibility can replace the role of labor inspection and other state supervisory bodies.

These challenges become more serious when considering the insufficient number of labor inspectors, their inadequate training, and frequent political influence, resulting in oversight being exercised over a negligibly small number of employers. This is further exacerbated by lenient penalties imposed by labor inspectors, which cannot be considered appropriate and proportionate sanctions. The effectiveness of labor inspections is often undermined by the inefficiency of misdemeanor courts, while another major issue is the lack of specialization among labor inspectors, particularly in protecting vulnerable worker categories such as migrants, women, and people with disabilities.

Currently, some of the most significant shortcomings of Serbia's labor legislation include:

- Certain provisions of the Labor Law are not harmonized with EU Directives and other relevant international labor standards.

- Employers and employees face numerous problems regarding the practical application of the Labor Law and other labor regulations.

- Inspection protection is insufficient.

- Judicial practice remains inconsistent in applying the Labor Law provisions, partly due to vague or ambiguous legal stipulations.

- There is no adequate legal framework enabling quick and reliable digital administration of labor rights and obligations.

- The deregulation trend in labor law has led to many labor law issues (e.g., agency workers, seasonal workers) being regulated by separate laws instead of being anchored within the Labor Law. These issues should first be reintegrated into the Labor Law and then, if necessary, linked to specific regulations.

If these challenges remain unaddressed, the Labor Law will become merely a "programmatic principle" rather than a fully applied legal framework, as labor relations will continue to be governed by fragmented legislation.

With the aim of contributing to the improvement of the labour legislation, we propose the following:

1. Guaranteeing certain labor rights to individuals outside traditional employment relationships

The first and fundamental contentious issue, which is conceptual in nature, relates to the complete lack of recognition of various forms of subordinated (dependent) work in the Labor Law and the failure to grant certain rights to those who perform work for others in such a manner. In this sense, domestic legislation recognizes and provides protection only for subordinated work performed for another party based on an employment contract. This has led to the creation of a concept of an "employee" that is overly narrow, as almost all rights regulated by the Labor Law apply exclusively to individuals who have signed an employment contract with an employer. According to Article 5, Paragraph 1 of the Labor Law, an employee is defined as a "natural person who is in an employment relationship with an employer". This means that only those who work within the framework of an employment relationship, based on an employment contract, are considered employees.

On the other hand, the term "worker" is a more generic concept that encompasses all individuals who earn income from their work, regardless of the basis of their engagement. Consequently, this category often includes individuals who work for and under the authority of others but, since they do not have an employment contract, they do not fall under the legal regime of an employee. As a result, they cannot exercise some of the most basic rights—such as the right to a minimum wage, regulated working hours, rest periods, and leave[10].

This legal framework contradicts international labor standards. For example, according to Article 7 of the International Covenant on Economic,

10 B. Urdarević, et al., Analysis of the State of Economic and Social Rights in the Republic of Serbia, Center for Dignified Work, Belgrade, 2019, p. 48.

Social, and Cultural Rights, "everyone has the right to just and favorable conditions of work". In General Comment No. 23, the Committee clarified that the term "everyone" includes all types of work engagement, including self-employed people, unpaid workers, individuals working in family households, and any other category of people who contribute labor[11].

Furthermore, the scope of the Labor Law completely ignores the existence of work performed outside an employment relationship. Article 2 states:

"The provisions of this law apply to employees working in the territory of the Republic of Serbia for domestic or foreign legal or natural persons (hereinafter: employer), as well as to employees assigned to work abroad by an employer, unless otherwise prescribed by law. The provisions of this law also apply to employees in state bodies, bodies of territorial autonomy and local self-government, and public services, unless otherwise prescribed by law. The provisions of this law also apply to employees working for employers in the field of transportation, unless otherwise prescribed by special regulations. The provisions of this law apply to employed foreign nationals and stateless persons working for an employer in the territory of the Republic of Serbia, unless otherwise prescribed by law."

Thus, the law regulates only the position of employees, while other work-engaged individuals are not mentioned. At the same time, none of the contracts governing work performed outside an employment relationship are fully and satisfactorily regulated. The existing regulations address only a limited number of ambiguities regarding the labor status of those engaged outside an employment relationship while leaving far more legal gaps that, in practice, are often resolved to the detriment of workers. The law does not even specify what to call this category of individuals, so terms such as "work-engaged persons" or "persons engaged outside an employment relationship" are commonly used in labor law; in contract law, the term "contractor" is often used.

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11 General Comment No. 23/2016 of the Committee on Economic, Social and Cultural Rights, p. 3.

Special laws grant minimal rights to these work-engaged individuals, bringing them slightly closer to the status of employees. For example, they are protected from workplace harassment and discrimination, have the right to health insurance, and in some cases, limited access to pension and disability insurance, as well as workplace safety and health protections. However, these rights are far from sufficient to ensure dignified working conditions.

Finally, recognizing different forms of subordinated work and providing protection to those performing such work is essential due to the new dynamics in labor relations. Modern labor law trends acknowledge workers with "different contours" compared to those of the late 20th century. There is an increasing need for flexible work arrangements, shorter working hours, remote work, and greater reliance on technology and artificial intelligence in work processes.

In this environment, a new type of worker has emerged—the "digital platform worker"—who remains largely invisible in many legal systems. One of the key steps toward addressing their status involves labor and tax system reform changes that we are still waiting for.

2. Redefining the Concept of Employer

In addition to the necessity of redefining the concept of an employee, there are also certain ambiguities regarding the definition of an employer. Namely, our labor law, like in most neighboring countries, is built on a bilateral legal relationship model established between the employee and the employer. This is based on a traditional method of organizing business activities, where the employer controls and coordinates the entire production or service chain—from acquiring raw materials to manufacturing finished products or providing comprehensive services.

As a result, defining the employer becomes a particularly delicate legal issue in cases involving subcontracting, franchising, digital/platform-based work, and other models that deviate to varying degrees from the traditional organization of business activities. The new trends driven by globalization and digitalization increasingly lead to the emergence of three-party or even four-party legal relationships in the context of employment.

In legal literature, the concept of a "functional employer" is gaining prominence as a response to these challenges. This concept defines an employer as a "subject or combination of subjects that play a decisive role in performing the relational functions of employment and are regulated or controlled as such in every aspect of labor law"[12]. In other words, an employer does not necessarily have to be a single entity standing opposite the worker (as stipulated by current legal provisions), but employer authority can be exercised by multiple companies. In each specific case, it would be necessary to assess whether a particular company's influence over the worker is significant enough to classify it as an employer.

Furthermore, in today's world of modern technology and platform-based work, determining an employment relationship requires that the worker operates directly or indirectly in the interest of a common employer. Some labor laws (e.g., in Belgium) have recently introduced the concept of a group of employers into their labor laws, allowing two or more companies to simultaneously fulfill the employer function. In some countries, case-by-case evaluations determine which entity issues work orders, supervises the workers, and performs other employer-related functions. If such a company meets these criteria, it is considered an employer, even if the worker originally signed an employment contract with a third party.

These are just some examples from comparative law that should be considered when drafting a new Labor Law.

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12 Lj. Kovačević, Establishment of Employment Relationship, Belgrade, 2021, p. 441.

3. More Detailed Regulation of Work from Home and Remote Work in the Labor Law

The future Labor Law must define work from home and remote work more precisely, as the current legal framework limits these forms of employment merely to work arrangements outside the employer's premises. In this regard, it is necessary to reconsider the concept of the "place of work" as a mandatory element of an employment contract and, at the same time, specify the obligation to reimburse "other work-related expenses and the method of determining them".

To enable modern business organizations to adapt to the need for rapid transitions, it is essential to amend provisions related to overtime work and its compensation (whether through financial remuneration or additional leave). Currently, work from home and remote work are regulated by both the Labor Law and Articles 44–46 of the Law on Occupational Safety and Health[13]. The latter stipulates that, in cases of work from home or remote work, the employer is responsible for ensuring occupational safety and health in cooperation with the employee, as well as providing safe working conditions, work equipment issued by the employer, defining work processes related to the employee's assigned tasks, and prescribing preventive measures for safe and healthy work.

Although work from home or remote work is not under the employer's direct supervision, this type of work can still be covered by a risk assessment act for the workplace and work environment. This would include a detailed description of work processes, and an assessment of potential risks related to injuries or health hazards. Many of these provisions should have been primarily incorporated into the Labor Law, making it necessary to transfer them there in future amendments.

13 Official Gazette of the Republic of Serbia, No. 35/2023.

The Labor Law must also regulate additional elements that employment contracts for work outside the employer's premises should include. Special attention should be given to the regulation of working hours, work schedule adjustments, night shifts, rest periods, leave entitlements, and the issue of wages—particularly ensuring equal pay regardless of whether an employee works at the employer's headquarters or remotely.

4. Redefining the Labor Law Provisions on Wage Calculation and Structure

It is necessary to consider simplifying the structure and calculation of wages, as well as other work-related costs, since the current system is highly complex. For example, work performance is defined as a rather "abstract concept", which creates difficulties for both employees and employers. While it should be redefined, it must remain one of the fundamental components of wages, in accordance with Article 106 of the Labor Law. At the same time, it should be emphasized that the elements for determining base salary and work performance must be established exclusively through collective agreements and the Workplace Regulations.

The law should also define the minimum amounts of wage compensation in cases of on-call duty, meal allowances during work, and vacation leave compensation. Additionally, the minimum wage, when multiplied by the average monthly working hours, must not fall below the value of the minimum consumer basket.

5. Reviewing and Redefining the Concept of Disciplinary Responsibility

One of the primary tasks of the legislator is to limit the employer's disciplinary powers; otherwise, employers may arbitrarily punish or dismiss employees. The modern trend in disciplinary procedures leans toward simplification, but employees' fundamental rights must be protected through a legally regulated process to ensure at least formal equality between parties in the employment relationship. Employers should be required to inform employees about the rules of the disciplinary procedure, the process of imposing disciplinary measures, and their right to appeal. However, none of these rights are currently regulated by the Labor Law. Instead, they are left to general acts (work regulations or collective agreements), which is a poor legislative solution. This is especially problematic because collective agreements are predominantly found in the public sector, while work regulations often do not include these provisions.

To address this issue, we propose reintegrating the disciplinary process into the legal framework by reinstating a two-tier system. This would allow employees to appeal internally (before the employer) against any employer's decision affecting their rights and obligations. Such a system could help reduce the burden on courts by resolving a significant number of disputes internally.

Furthermore, the 2014 amendment to the Labor Law removed the employer's obligation to submit a warning to the employee's trade union for review before terminating their contract. This provision was significantly weakened by Article 181 of the current Labor Law, which states that employees may submit a union opinion alongside their response, and the employer is only required to consider it. We believe the previous provision should be reinstated, as the current version diminishes the role of trade unions and undermines their influence on dismissal procedures. Additionally, adequate legal protection should be ensured for trade union and

worker representatives, who must not be targeted by employers or suffer any negative consequences while performing their duties.

6. Deleting the Provision Allowing Employee Suspension Until the Final Conclusion of Criminal Proceedings

Article 167, Paragraph 2 of the Labor Law should be deleted, as it states: *"If criminal prosecution is initiated against an employee for a criminal offense committed at work or in connection with work, the suspension may last until the final conclusion of the criminal proceedings."*

A similar provision is found in Article 116 of the Law on Civil Servants: *"A civil servant against whom criminal proceedings have been initiated for a criminal offense committed at work or in connection with work may be suspended until the conclusion of the criminal proceedings if their presence at work would harm the interest of the state body."*

Both provisions are harmful, unconstitutional, and frequently used as a means of harassment against employees or civil servants. The mere initiation of criminal proceedings does not imply guilt, and in many cases, charges are never even filed. Yet, employees or civil servants can be suspended from work, receiving only a fraction (one-third or one-fourth) of their salary, sometimes for an indefinite period while awaiting the resolution of proceedings that may never formally begin.

This legal loophole provides an excellent mechanism for retaliating against whistleblowers, dissenters, or employees perceived as obstacles. Therefore, the provision allowing suspension until the final resolution of criminal proceedings should be completely removed from the Labor Law.

7. Regulating the "Right to Disconnect"

Regulate the "right to disconnect" through the Labor Law, and not only through a special regulation. Namely, the Law on Public Information and Media for the first time establishes certain rights of journalists related to their work and in connection with their work, among which the right of journalists not to respond to employer communication during weekly and annual leave—in accordance with the work schedule and the schedule for taking annual leave set by the employer—is very significant, regardless of the method of communication (telephone call, electronic messages, etc.), unless extraordinary circumstances have occurred in the country during the employee's absence, related to the area the employee covers. In this way, for the first time, the right to disconnect has been introduced into our legislation, as one of the newest labor rights, already present in the legislation of certain European countries. We fully believe that this right belongs, first and foremost, to the Labor Law, but for now, we will have to be satisfied with such a partial solution, which is justified if we take into account the journalistic profession, where instructions from the employer are issued throughout the entire day.

The "right to disconnect" would ensure that employers are not allowed to require employee availability after the end of working hours, and employees would be able to more effectively harmonize their professional and family obligations. In the area of balancing professional and work obligations, the Labor Law should also provide a provision whereby fathers have the right to take leave from work to care for a child for a certain duration (minimum 10 days), all in accordance with the provisions of EU Directive 2019/1158 of June 20, 2019, on the balance between professional and private life for parents and caregivers. It is necessary to ensure mechanisms for resolving employee complaints regarding the right to disconnect, and any remote learning and training related to work should be considered a work activity that takes place during free time without salary compensation. The "right

to disconnect", as well as the rights related to it concerning the reconciliation of professional and family obligations, are especially important for digital workers and must be included in codes and collective agreements.

8. Normative Regulation of Agency Employment as a Model for Employing Platform Workers Working Locally (Gig Work)[14]

The National Assembly of the Republic of Serbia adopted the Law on Agency Employment in 2019[15], which came into force on March 1, 2020, except for the provisions regulating the conditions for agency operation, which have been in effect since January 1, 2020. Agency employment involves a tripartite legal relationship between the employee, the temporary employment agency (hereinafter: the agency), and the user employer. The employee establishes an employment relationship with the agency but does not perform work there. The agency assigns the employee to a user employer who needs their work, based on a special contract concluded between the agency and the user employer. The employee thus performs work and participates in the work process at the user employer, even though no employment contract or any other contract (legal transaction in the broadest sense) exists between them. The relationship between the assigned

14 Ex Ante Analysis of the Regulatory Framework of Platform Work in the Republic of Serbia, Association for Labour Law and Social Insurance of Serbia and Center for Public Policy Research, Belgrade, 2024.

15 Official Gazette of the Republic of Serbia, No. 86/2019.

employee and the user employer is therefore indirect and depends on the employment contract concluded between the agency and the employee, and the employee assignment contract concluded between the agency and the user employer.

Such a mechanism of contracting work creates very specific relationships between all three parties. It is necessary to protect the assigned employee from violations of labor rights realized at the user employer, even though the employer is technically the agency; on the other hand, it is necessary to regulate the mutual relations between the agency and the user employer, on which not only the quality of rights and the overall status of the assigned employee depend, but also the form and content of the cooperation between the two employers (direct and indirect).

The user employer resorts to hiring employees through an agency for various reasons, most often when many specialized workers is needed in a short time, or in cases of temporary increases in the workload requiring additional employees. However, employers also often use this method to avoid administrative obligations related to job advertising, candidate selection processes, and the subsequent conclusion and administration of employment contracts. Still, it should be noted that the implementation of the Law does not completely eliminate the administrative work related to the exercise of rights of the assigned employee—considering they exercise a range of rights at the workplace and in relation to work with the user employer, it is not possible to delegate all such tasks to the agency entirely.

Before the adoption of the Law on Agency Employment, this area was unregulated and a source of significant abuse—just as is currently the case with platform workers. However, unlike platform workers, well before the adoption of the Law on Agency Employment, Directive 2008/104/EC of the European Parliament and Council of November 19, 2008, on temporary work agencies was adopted. The official translation of the directive's title is somewhat "unfortunate", as it is not about temporary employment but rather the temporary assignment of employees who are in an employment relationship with the agency.

Based on the model of employee assignment, we aim to regulate the issue of assigning platform workers and thus systematize it within labor legislation. Aware that platform work is heterogeneous, the Labor Law would regulate only platforms operating locally (gig work). This makes sense given that the Labor Law applies within the territory of the Republic of Serbia. In other words, platform work, within the meaning of the Labor Law, would be defined as paid work performed based on an employment contract for a digital labor platform or a Platform Worker Employment Agency using digital technology. The idea is for this definition to include only so-called gig work, as a form of work where the service must be performed at a specific location and time.

Given the existing practice, and considering that platforms resist being treated as employers, we left room for the employment relationship to be established either directly with the platform or with a Platform Worker Employment Agency.

In either case, both the digital platform and the agency must be registered with the ministry responsible for labor. The provisions of the Labor Law will apply to all digital platforms and agencies operating within the territory of the Republic of Serbia.

Following the model of agency employment, it is necessary to define the conditions for the operation of these agencies, which, due to the specificity of their activity, should differ from traditional employment agencies. The Ministry responsible for labor affairs will issue operating licenses to these agencies under legally defined conditions, and their operations will be supervised by the labor inspectorate. The procedure, method of issuing and revoking licenses, as well as their period of validity, will be regulated by law.

Through this definition, we aimed to avoid uncertainty in answering the question of who the employer of these workers is. Thus, the legal relationship may be tripartite if the digital platform accepts to be the employer or quadripartite if the Platform Employment Agency is the employer. The latter model seems appropriate particularly for platforms

operating locally (passenger transport, food and goods delivery, cleaning services, etc.).

In addition to the above, it is necessary to regulate in detail the employment contract concluded between the platform worker and the agency, as well as the elements of the contract concluded between the agency and the digital platform. It should be noted that when defining the content of these contracts, one must consider that the agency often cannot know the platform's work organization and evaluation methods. It is essential to insist that the agency working with a digital platform has the right to information regarding transparency in the use of automated monitoring and decision-making systems (algorithmic management). In other words, the platform is obliged to provide the agency and worker representatives with information about the algorithms used, including the parameters explaining how the artificial intelligence system algorithm's function and the assessment of the impact of algorithmic decisions on personal data protection and human rights.

Such normative regulation avoids the need to assess the existence of an employment relationship, as suggested by the text of the EU Directive concerning the improvement of working conditions for platform workers, i.e., the presumption of the existence of an employment relationship. Instead, it allows these workers to exercise all rights arising from an employment relationship with the agency and to have labor protection while working within the territory of the Republic of Serbia.

9. The Right to Leave from Work with Salary Compensation Due to Temporary Incapacity for Work

Labor legislation does not contain specific provisions on the procedure for determining or proving the circumstances under which an employee is entitled to leave due to temporary incapacity for work. An employee can exercise the right to leave due to temporary incapacity for work only when they are genuinely ill and when their incapacity for work is confirmed by a doctor's finding, and provided that the leave is used for treatment and recovery for work. Unlike comparative legal solutions where the Labor Law exhaustively or indicatively lists behaviors by which the employee abuses the right to leave, under the currently applicable solution the reason for dismissal is designated by the term "abuse of the right to leave due to temporary incapacity for work".

In other words, it is necessary to amend this provision and specify what the abuse of this right means. This is especially important for harmonizing the Labor Law with the Health Insurance Law, which exhaustively lists the cases in which, due to abuse of this right, the employee is not entitled to monetary compensation for temporary incapacity for work. The current legal solution does not define the content of the right to leave due to temporary incapacity for work, nor is it defined anywhere whether the existence of abuse of this right requires that the employer has suffered certain damage or other adverse consequences. It is necessary to precisely determine in which cases the abuse of this right to leave exists, given that employers, as well as social partners, do not determine in collective agreements the behaviors by which an employee deviates from the purpose of exercising this right. If such behaviors were included in the Labor Law, both employees and employers would have a clearer understanding of the interests to be realized by qualifying the abuse of leave as a justified reason for dismissal.

10. Regulating the Collective Bargaining and Social Dialogue in the Labor Law

First and foremost, it is necessary to initiate the process of ratifying Convention No. 154 of the International Labor Organization on the promotion of collective bargaining. The necessity of ratifying this instrument was emphasized in the Decent Work Program for Serbia 2013–2017, but for some reason, this initiative was abandoned, and in the latest Decent Work Program for Serbia for 2019–2022, the ratification of this document is not even mentioned.

In addition to the ratification of the convention, it is necessary to regulate the process of collective bargaining in more detail within the Labor Law, but without excessive formalization. In this way, all stages of collective bargaining would be known in advance to all participants, and clear legal deadlines relevant to the collective bargaining process could be determined accordingly.

Regarding the representativeness of social partners, it is primarily necessary to harmonize the Labor Law with the Regulation on the Classification of Activities from 2010. Namely, the current Labor Law uses the terms "branch, group, subgroup, and activity", while the Regulation on the Classification of Activities uses the terms "sector, area, branch, and group". The Statistical Office of the Republic of Serbia uses the classification from the Regulation, which often makes it difficult to extract relevant data when determining representativeness in accordance with the classification from the Labor Law.

In relation to the above, it is necessary to allow trade unions to admit all people engaged in subordinate work, not just employees. The definition of a trade union in Article 6 of the Labor Law, where it is defined as an "independent, democratic, and autonomous organization of employees..." is not in the spirit of international labor standards, nor even the Constitution of the Republic of Serbia. By way of reminder, Article 55,

paragraph 1 of the Constitution of Serbia, among other things, "guarantees the freedom of trade union association", and yet this very freedom is restricted by the Labor Law and reduced exclusively to the right of employees. The International Labor Organization's Convention No. 87 on Freedom of Association, in Article 2, stipulates that "workers and employers, without any distinction, shall have the right to establish and join organizations of their own choosing without previous authorization, subject only to the rules of the organization concerned". Therefore, the provision in Article 206 of the Labor Law, which states that "employees are guaranteed the freedom of trade union organization and activity, upon registration", cannot be accepted, as it directly denies the right to trade union organization to all workers engaged under legal arrangements other than employment contracts. Thus, even at the very beginning – in the terminological definition of the term "employee" – there is a conflict with international labor standards.

Regarding the Committee that determines representativeness, we believe that to increase the transparency and objectivity of the process of acquiring representativeness, social partners should appoint representatives from among prominent experts in labor and social law. This Committee should be placed under the Social and Economic Council, and not under the Ministry of Labor, Employment, Veterans and Social Affairs.

It is necessary to redefine the concept of extended effect of a collective agreement, especially bearing in mind that, according to international labor standards, "any extension of collective agreements should be carried out with a tripartite analysis of the consequences such extension would have on the sector to which it applies". High coverage of collective bargaining is a key precondition for a more equitable distribution of wages, as well as for promoting more inclusive growth strategies. We propose deleting the threshold from Article 257, paragraph 2 of the Labor Law, which stipulates that a collective agreement whose effect is to be extended must cover employers who employ more than 50% of employees in each branch, group, subgroup, or activity. Instead, it is entirely sufficient to leave the requirement that the decision on extension must be made in the public interest.

Finally, employee participation in management is not adequately regulated by law, but only in principle, through provisions on the right of employees to be informed, consulted, and to express views on important labor-related issues. Additionally, there is a legal provision on establishing employee councils under Article 205 of the Labor Law, but in practice, this has not been sufficiently implemented. It should be noted that in comparative law, the matter of regulating employee councils is governed by a separate law, not merely a single article. It is of particular importance to regulate the initiation of the information and consultation process in the case of collective redundancies, as well as appropriate penalties for employers who violate the obligation of informing and consulting. In connection with the above, the future Labor Law may also regulate the issue of electing employee representatives in companies where no trade union exists. Likewise, it is necessary to define what constitutes "information necessary for the performance of trade union activities" from Article 210, paragraph 1 of the Labor Law, because employers often do not provide trade unions with access to data relevant for collective bargaining.

Conclusion

These were only some of the shortcomings or ambiguities of the existing Labor Law. Certainly, changes to the labor law framework should go hand in hand with changes to the tax law framework, that is, tax regulations, to ensure adequate tax treatment for workers engaged in some of the new forms of work. However, for the adoption of new, modern labor legislation to occur, it is necessary to fulfill three prior (non-legal) conditions.

The first is that labor and social rights finally become part of the political environment, where they are not only mentioned during election campaigns, but political parties finally take seriously the necessity and importance of emphasizing improved working conditions and workers' dignity. To that end, we propose that in some future Law on Ministries, the Ministry of Labor, Employment, Veteran and Social Affairs be merged with the Ministry of Economy to create a new Ministry of Labor and Economy. In this way, politics would finally recognize the importance of labor as an economic factor and demonstrate through example that employment matters are closely linked with the economic environment of a state. There is no economy without labor, and vice versa.

The second condition relates to the fact that the Republic of Serbia has been in a dual violation of the right to work for over a decade, and it is necessary to break out of this "vicious circle" as soon as possible. First, by regulating work outside of formal employment in a way that denies a large number of people rights derived from employment, the state prevents them from exercising basic human rights at work (the right to limited working hours, the right to rest and leave, the right to wages, the right to termination of employment for just cause, the right to union association and collective bargaining, etc.). Second, the most recent

amendments to the Law on the Budgetary System[16], specifically Article 27k, have extended controlled employment measures in the public sector until 2026. This ban, which represents a type of restriction on the right to work, was first introduced in December 2013 with the aim of achieving rapid budget savings and reducing the number of employees in the public sector, which at the time was estimated to comprise about 800,000 employees. The original plans envisioned the ban lasting for two years, and we are now in the eleventh year. The consequences include, among other things, under capacitated institutions such as the tax administration, inspectorates, and all public services (healthcare, education, culture, social protection, etc.), but especially a disproportionately negative impact on women and young workers. In any case, the implementation of the proposed measure was very arbitrary, without systematic, well-argued, and reliable reports and objective analyses of the positive or negative consequences of this decision. The state has failed in the previous period to create operational preconditions to transition to a decentralized human resources management system, and will therefore continue to rely on this measure, which has already left lasting negative effects on the quality of work in key segments of the public sector.

Finally, the third condition is that there must be genuine interest and sincere willingness among the representative social partners to recognize that the adoption of new labor and social legislation is a necessity that serves not only their own interests, but also the general societal interest.

Awareness of the social community we live in and the problems within it, which are very often related to labor and social rights and the position of workers, should always take precedence over other global issues we usually cannot influence. To make such a shift (from global to local), it is necessary for a change in civic consciousness to occur, and that requires time—which, unfortunately, we are running out of.

16 Official Gazette of the Republic of Serbia, Nos. 54/2009... 92/2023.

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