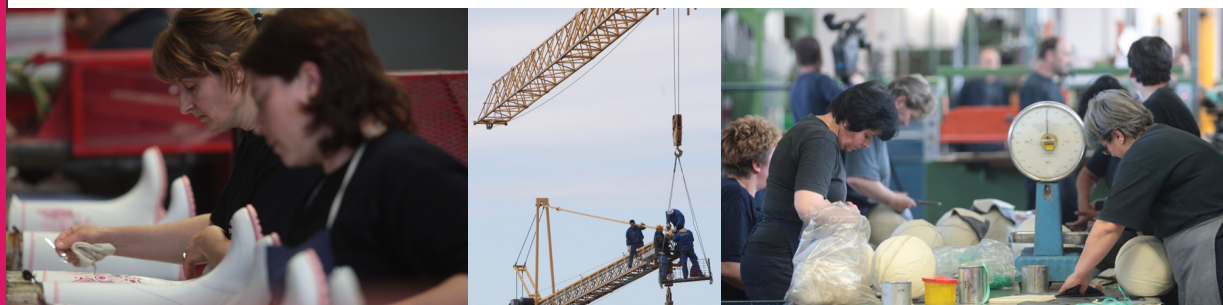


# Decent Work in the Republic of Serbia – Putting equality and solidarity at the heart of EU integration



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Author: Radovan Ristanović

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In February 2011, a two year programme called **"Decent Work Balkan Network - Putting Equality and Solidarity at the heart of EU integration"** was launched by Olof Palme International Center (Sweden), SOLIDAR (Belgium), AGENDA Institute (Albania), Center for Democracy Foundation (Serbia), CLARD (Kosovo), STBIH (Commerce Trade Union in Bosnia Herzegovina), Progress Institute for Social-Democracy (Macedonia) and Progetto Sviluppo CGIL (Italy). The project is additionally supported by national associates and by the International Trade Union Confederation/Pan-European Regional Council (PERC). The key aim is to strengthen the capacity of trade unions, think tanks and NGOs to promote Decent Work and Quality Jobs in the Balkans together by developing national and regional networks, joint advocacy actions and public campaigns, formulating policy proposals and monitoring the implementation of the European socio-economic acquis. To read more see <http://www.solidar.org>



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## Introduction

Decent work, as an organised gathering of individuals' aspirations to fulfill their civic rights in the labour arena, requires the existence of the possibility of productive work, an employer's fair and consistent relationship with his/her employees, a safe and healthy working environment, the protection of workers' and their families' social rights, the best possible conditions for an employee's personal prosperity and social integration, workers' freedom to express their needs, organise themselves and actively take part in decision-making processes (when decisions directly influence their work, life and gender equality, i.e. equality between men and women). In 1999, the International Labour Organization (ILO) defined decent work as a productive working place where workers' rights are protected, where work results in a decent salary and where workers are granted social protection. This case study aims to assess the level of decent work in Serbia through analyses of the presence of decent work categories in Serbian practice and in Serbia's legal framework.

# 1. Overview of the situation and the legal framework in the Serbian labour market and the sphere of Decent Work

The overall situation in the labour market shows that only 1.795,775 out of 4.953,512 working inhabitants are employed. The unemployment rate is at 22.2% (according to the labour force survey carried out by the Republic Institute for Statistics), which is significantly higher than in EU countries, without signs of improving. The Serbian labour market is still characterised by drawbacks from the past:

- Lack of balance between supply and demand
- High percentage of long-term unemployed
- Huge surplus of employed
- Unfavourable age structure of the employed
- Unfavourable qualifications of the unemployed
- High youth unemployment rate
- High number of unemployed women
- Significant differences between regional labour markets
- Significant number of people engaged in the grey economy
- Low mobility of labour force
- High number of unemployed belonging to less employable groups (disabled people, Roma, refugees and internally displaced persons etc.)<sup>1</sup>

## Legislation

There is a plethora of international regulations and instruments regulating the area of economic, labour and social rights. There are also a significant number of conventions regulating international labour law. Some basic international instruments regulating economic, labour and social rights include the International Covenant on Economic, Social and Cultural Rights, 69 conventions signed under the auspices of the ILO, and eight fundamental ILO conventions. The European Social Charter needs to be incorporated and implemented as it

regulates these areas in the most thorough manner.

The provisions of the Constitution of the Republic of Serbia and other numerous laws regulate the sphere of decent work and working conditions. Article 60 of the Constitution guarantees the right to work and stipulates that everyone has the right to be respected as an individual at work, to have safe and healthy working conditions, any necessary protection at work, limited working hours, daily and weekly recess, paid vacation leave, just remuneration and legal protection when working relations are terminated. The Constitution provides special protection at work and special working conditions for women, youth and disabled people, in line with a specific law. The Constitution of the Republic of Serbia stipulates that everyone has the right to equal legal protection and prohibits all types of discrimination, both direct and indirect, on all grounds, especially on the grounds of race, gender, nationality, social background, birth, religion, political and other affiliation, property, culture, language, age and physical or mental disability.

All of these issues are further regulated by numerous laws and bylaws, in particular the Labour Law and Law on Occupational Health and Safety. Decent work is additionally secured by the enforcement of numerous provisions of new laws dealing with abuse at work, employment, insurance in the case of unemployment, gender equality, social protection etc.

## Institutions

The key state institutions mandated to implement and monitor the enforcement of the abovementioned legal regulations are the Labour Inspectorate (monitoring inspections)

<sup>1</sup> Source: National Employment Service Report for 2010

and the Courts (enforcement of regulations). Important competencies are delegated by specific laws to independent regulatory bodies, such as the Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection and Commissioner for Equality Protection.

The Labour Inspectorate is the administrative body within the Ministry of Labour and Social Policy, with the mandate to monitor labour relations and health and safety issues at work. This body enforces the Labour Law, Law on Occupational Health and Safety, Law on Prevention of Abuse at Work, Law on Gender Equality, Law on Strike, General Collective Agreement, General Acts and Labour Agreements etc.

The Law on Court Organisation gives basic and higher courts the mandate to protect numerous rights, thus securing decent work. Basic Courts adjudicate in disputes related to different phases of the employment process, rights, obligations and responsibilities of employers and employees, remuneration awarded to the employee in the case of injury at work or in relation to work, fulfilling housing needs etc. The First Instance Higher Court adjudicates in the following cases: strike disputes, collective agreement disputes, cases that have not been settled through arbitration, mandatory social insurance disputes (where it is not the mandate of some other court) or disputes on appointment or dismissal of legal persons (where it is not the mandate of some other court). Some competences in this sphere belong to commercial and administrative courts.

The Ombudsman has been delegated some new and very important competencies related to securing decent work. He/she protects and enhances the respect for human rights and freedoms of citizens by following the work of public bodies and organisations, monitoring if they perform their duties in a legal and correct manner, acting ethically, professionally, efficiently, conscientiously, without bias, and respecting the dignity of every claimant. The

Commissioner for Equality Protection represents the national body for protection from discrimination, which has a two-tier function: on the one hand, he/she reacts in the case of discrimination, and on the other, he/she has an important preventative function.

## 2. Situation analysis and enforcement challenges

### Problems with enforcement-monitoring mechanisms

One might conclude from the above that there are sufficient legal and other norms to regulate the fulfillment of labour rights. When it comes to basic legal institutions, it can be said that the level of decent work protection in Serbia is relatively high. Still, there are problems regarding the enforcement of these regulations, namely, the enforcement and monitoring mechanisms that do not allow for guaranteed rights to be fully respected, such as the right to regular pay, right to pension, social and health insurance, and the right to sign an employment contract. The grey economy, plus numerous problems related to commencement and termination of employment and the protection of workers' health, further contribute to the poor enforcement of these regulations. The Ombudsman's Report for 2010, pointed to the worrying number of problems related to the fulfillment of social and economic rights, which, if overlooked could jeopardise the acquired level of political and civil rights. The Report states that one in every six workers in Serbia is denied the mandatory monthly pension fund payment.

### Politicised institutions

One of the key reasons for non-consistent, non-efficient and slow enforcement of regulations in this area is the considerable influence of political parties and political interests on the functioning of different institutions, e.g. state bodies, public institutions and public companies. Research highlights political parties as dominant players in Serbian public companies, while the institutions, laws and regulations that should protect public interest remain weak and organised in a way that allows political parties to take decisions at a whim. These vulnerable institutions are unable to stop politicisation and establish a system

where the institutions are responsible for their results and accountable to the public.<sup>2</sup>

It is necessary to amend numerous laws and reduce and eliminate the interests of political parties and their ability to appoint leading management of public companies and institutions, as well as state bodies. Legal mechanisms should prevent the employment of non-professional personnel affiliated to a party, with a public job announcement being a mere decoy - analysis shows that this is customary behaviour. People appointed to state administration positions very often have no experience whatsoever, while other, non-partisan applicants remain jobless. Legally speaking, these public job announcements are mere empty words.

### Weak functioning of inspection system

Numerous problems with the enforcement of regulations directly or indirectly influencing the respect for decent work stem from many open questions in relation to the functioning of the inspection system as a whole. The inspection system in Serbia is not legally regulated in a thorough manner; it is regulated by a handful of legal substantive provisions of the annulled Law on State Administration, passed in 1992. The existing problems are also related to the unsatisfactory qualifications for the assigned duties, overlaps and lack of coordination between different inspection services in interrelated areas of work.

Calls for organisational unification of certain inspection branches into one body should be discussed as part of the inspection system reform.<sup>3</sup> It is also necessary to continue the reforms that have started in certain inspection services – first and foremost being the reform of the Labour Inspectorate for integrated inspection

<sup>2</sup> Research, Center for Applied European Studies: How to Stop Politicization of Public Companies in Serbia, Belgrade 2011.

<sup>3</sup> Dr Dobrosav Milovanovic: Inspection system reform, Legal Life no.22,2009

surveillance that has shown good initial results. Inspection bodies need to be strengthened when it comes to human, financial and technical resources, securing better salaries for inspectors whose work is undervalued and whose engagement often falls victim to negative employment selection and corruption.

### **Role of Unions**

Unions should have a more prominent role in the implementation of different regulations in this area. In Serbia, union activities have been marginalised as has happened in many transitional countries. It has been rightly pointed out that the basic shortcoming of union pluralism existing in Serbia is the reduction of its overall power – unions are weaker in relation to employers and the state due to marginalised social dialogue and collective negotiations, and in relation to their own dwindling membership.<sup>4</sup> So called union bureaucratisation and the loss of the leadership being in touch with the interests of its membership is a significant problem. Although they should strive to protect members' rights and interests, unions tend to become political organisations with a political agenda, thus failing to find a way to fulfill their true function.

Below we give a detailed overview of the situation regarding decent work in six areas which should be of highest priority in Serbia.

### **1. IMPACT OF THE INFORMAL ECONOMY ON DECENT WORK**

Failure to pay wages and non-payment of contributions for pension and disability insurance mostly occurs in privatised companies, which often have a large number of employees. Employers fail to pay accrued wages on the day of termination of employment and even within the prescribed 30 days following the termination of employment, which is a particularly prevailing trend in companies that have experienced long-

term financial crisis. These issues jeopardise the important elements of any form of decent work to a great extent. Another problem is that the competent state authorities (primarily the inspectorates) often do not have their competences more specifically defined and lack capacities to enforce regulations in an efficient manner. The system that existed in the socialist period, when the payment of contributions was carried out automatically by means of a centralised state institution, was abandoned and a new efficient system has not yet been established.

All attempts to resolve this very important element of realising the rights pertaining to one's legal employment status, such as court disputes, payment of contributions by the state for a certain period of time and for certain categories of workers, often without any clear criteria, and proposing penal sanctions for such behaviour of employers, have failed to produce any results so far. Therefore, this is one of the key issues which has a crucial impact, not only on decent work, but also on the basic realisation of workers' rights.

The main problem in the sphere of realisation of legal employment relations is the informal economy, i.e. informal work. A legal employment relation is established by signing a written employment contract but the rights and obligations of employees are established once they start working. In contrast, having factual work means that an employee only has the rights pertaining to employment, but not a legal employment status. Estimates of the number of people in Serbia who work in the informal economy vary, some figures suggest that there are between 300,000 and 1,000,000 people who work informally on various grounds. The majority work in retail, hotels and restaurants, crafts, industry and production plants and construction.

The following groups are most often recruited to work in the informal economy: young, unqualified workers with a secondary education degree at the most; employees without regular wages; unemployed persons older than the age

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<sup>4</sup> Prof.dr Predrag Jovanović: Right to social association of employees and employers in Serbia, Labor and Social Law, no.1/2009

of 40; recipients of monetary benefits and social aid, etc. Many employers abuse various legal labour instruments, such as probation work, professional training, etc. The most vulnerable group is youth without previous work experience, i.e. trainees.

A particular problem in this sphere is that the Labour Inspectorate is unable to efficiently control informal work. According to the positive legal norms stipulated by the existing Law, an employer is able to present employment contracts at a later date, within 8 days upon the inspection, even though at the time of the inspection these contracts did not exist. In such situations, employees are forced to collaborate with the employer, by signing the employment contracts retroactively.

Therefore, it is necessary to undertake a set of measures in order to reduce the informal economy in Serbia. In 2008 and 2009, the Labour Inspectorate proposed to undertake such measures in the oversight mechanism sphere, but the competent Ministry of Labour and the Government rejected its proposal. The proposed measures included the following: ensure that concluded employment contracts are registered before a competent public institution; reduce, i.e. eliminate any period of time for concluding an employment contract; give wider competences to the Labour Inspectorate; speed up the misdemeanor proceeding, etc. Similar proposals were also rejected, as well as amendments to the appropriate Laws (Labour Law, Law on Employment Records, Law on Inspectorates) suggested by the Center for Democracy Foundation after a campaign and public debate that took place in 2009 and 2010.

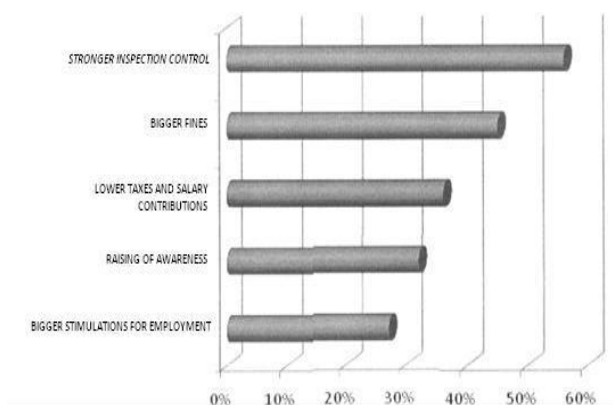
There are many irregularities in the sphere of enforcement of the Labour Law provisions pertaining to establishment and duration of fixed term employment, as well as to other flexible forms of employment, i.e. work outside of employment relations, which consists of work on the basis of service agreements, work through the Youth Cooperative, professional training and probation work. Even though the Labour Law

foresees that employment for some specifically defined types of jobs, such as so-called seasonal jobs and work on projects, cannot exceed 12 months, there are abuses of the Law resulting in such employment being prolonged for as much as several years. This puts workers in a more inferior and difficult position to realise many of their rights pertaining to employment, not to mention that they are completely unprotected upon the termination of employment.

At the same time, employers often breach the provisions of the Labour Law pertaining to the duration of overtime work, vacations and leave. Even though the Labour Law stipulates that overtime work may not last more than 8 hours per week and 4 hours per day, and is limited only to specifically defined tasks and situations, overtime work is often prolonged outside of these legal norms. Another particular problem is that employers do not have a legal obligation to keep records on their employees' presence at the workplace, so in practice, inspection or any other sort of control comes across as inefficient. Often, in the case of highly hazardous occupations, such work may result in accidents at the workplace with devastating consequences.

#### **What can alleviate the extent of informal economy?**

(according to the 2010 poll of the Socioeconomic Council of the Republic of Serbia, United Branch Trade Unions Nezavisnost and Alliance of Independent Trade Unions of Serbia)





## 2. PROTECTION OF WORKERS – HEALTH AND DECENT WORK

An extremely important element of decent work is the system of occupational health and safety protection. In Serbia, this system is guaranteed by the Constitution of the Republic of Serbia, and is regulated by the Law on Occupational Health and Safety, bylaws and other regulations pertaining to the sphere of occupational health and safety. However, in spite of numerous laws and bylaws that regulate this sphere, one cannot say that the state of protection of workers' rights and securing the basic requirements for their decent work are at a satisfactory level. The number of injuries at work is still very high (a comparative overview of the number of injuries at work, according to data from the Labour Inspectorate, is given in Table 1), and the system for reporting injuries and professional diseases is not regulated either. However, another particular problem is the lack of a unique methodology to establish the number of injuries at work, which means that data on injuries at work obtained from the Health Insurance Institute, the Labour Inspectorate and the Directorate for Occupational Health and Safety vary to a significant degree.

Year	Number of injuries at work				
	Total	Fatal	Collective	Grave	Light
2006.	1.102	54	27	966	82
2007.	1.330	28	28	1.140	162
2008.	1.285	42	32	1.034	177
2009.	1.286	37	22	1.004	223
2010.	1.322	35	29	1.026	232

Table 1

The incidence of injuries at work in the Republic of Serbia is much lower than in EU countries, which unfortunately does not indicate a good situation in this sphere, but rather the contrary – it is the consequence of the fact that employers in the Republic of Serbia fail to meet their obligations stipulated by the Law, which is to report an injury at work to the Labour

Inspectorate within 24 hours of its occurrence at the latest. Also, practice has shown that employers fail to respect their legal obligation to individually report and register professional diseases, and many professional diseases are not even treated as such as the connection between the disease and working conditions is not made. Another particular problem is the fact that even after the adoption of the Law on Occupational Health and Safety, a law on insurance against injuries at work has not been passed.

The majority of injuries at work take place in the spheres of industry and construction, which are highly hazardous. As for the legal employment status of workers who have had fatal injuries at work, the percentage of workers with fixed term employment is rather high – 37%, as well as workers who work in the informal economy – 22%.

The following reasons usually cause injuries at work:

- Lack of adequate training: employers fail to train employees to work in a safe and healthy manner when employing them, or when introducing new tools or technologies, or when changing the work process in such a way that it changes the measures for safe and healthy work;
- Lack of Personal Protective Equipment: employers fail to provide employees with tools, gear and equipment for personal protection at work, or the employer provides employees with tools of trade, gear, equipment for personal protection and hazardous materials without terms of use and technical documentation in the Serbian language.

The basic assessment is that the four key pillars, on which the occupational health and safety system should be based, do not function. This is relevant when it comes to widespread formalism concerning the employer's obligation to draft a risk assessment act for the workplace and the working environment. The Law stipulates that all

employers are obliged to use this act with the aim to assess the risk of injuries at work, and on the basis of the act, foresee measures for removal of these risks. However, in practice, the adoption of such an act is seen as nothing more than a formal obligation that serves to avoid sanctions, and not to actually assess the risks. At the same time, people designated to the task of caring for occupational health and safety at the workplace are not well trained and sufficiently proficient. Another problem is the large number of legal entities and entrepreneurs licensed to perform the tasks of occupational health and safety at the workplace. These entities are very often oriented only toward making profit and not toward actually changing the situation in this field. At the same time, the provisions of the Law on Occupational Health and Safety pertaining to occupational medicine are not implemented in practice, which means that occupational medicine, which should be the foundation of prevention and health protection of employees, remains on the margins of the occupational health and safety system.

In line with the Law, employers are obliged to provide compensation to a worker injured at work or in relation to work, if the employer has failed to implement the necessary measures of occupational health and safety of workers. In practice, enforcement of this stipulation is related to an often long and uncertain court proceeding which occurs after the worker sues the employer for compensation for injury at work. In this situation, the worker is put in a very difficult position to prove the connection between the injury he or she suffered and the employer's non-compliance with the provisions of the Law on Occupational Health and Safety. The employer may be acquitted if he or she implemented all the measures for the protection of workers' health foreseen by the Law.

In this sphere, it is necessary to secure better resources for inspection authorities at the national level, as well as improved and more efficient coordination in practical action, and raise their capacities in terms of personnel and technical issues. There are also many problems

in the sphere of overly long misdemeanor proceedings, passing sentences which are way below the legally stipulated minimum, frequent dismissing of proceedings and statute of limitation.

### **3. GENDER EQUALITY AND DECENT WORK**

The issue of gender equality in the labour market sphere entails equal opportunities for women and men concerning the realisation of human rights as the key condition for achieving social justice. Even though the Constitution of Serbia, the Labour Law and some other regulations guarantee gender equality and prohibit any form of gender-based discrimination, in practice the situation is different. When it comes to the treatment of women in the workplace, many studies and analyses (conducted by the European Movement in Serbia, the Victimology Society of Serbia (VSS) and others) indicate that there is a set of problems that puts women in an unequal position in comparison to men. This mostly refers to the violation of basic labour rights, especially in small and medium enterprises (non-payment of health, pension and disability insurance, violation of the right to annual vacation and sick leave, non-payment of contributions during pregnancy), as well as to difficulties in career advancement to managerial positions, lack of respect, disdain and open harassment, including sexual harassment.

The Serbian labour market is characterised by the following elements: decreasing activity rate of women; a high unemployment rate; an extremely low share of women in managerial positions, well-paid jobs and elite jobs; inherited stereotypes in choice of occupation; a high share of women without regular personal income; lower wages for working women in comparison to wages for men; women who wait for a job longer; and women from marginalised groups who are in a particularly disadvantaged position, e.g. Roma women, women with disabilities, single mothers, elderly women, refugees, women from rural areas, etc.

Women face discrimination as soon as they begin the recruitment phase. This particularly refers to giving direct or indirect advantage to male candidates when advertising vacancies and establishing employment relations, or asking questions about marital and family status and the candidate's plans about this, etc. In comparison to men, there is still a lower percentage of women in managerial positions, and there is also a noticeable lack of vertical mobility of women. The violation of the right to protection of motherhood is one particularly widespread form of discrimination, which takes the form of dismissal or non-prolongation of employment contracts, particularly where pregnant women with fixed term employment are concerned, as well as non-payment of benefits and discriminatory behaviour when the woman returns from her maternity and parenthood leave.

The Law on Gender Equality, passed in 2009, in the sphere of labour foresees that the employer has the obligation to keep records of the gender structure of employees, in line with the Law that regulates employment records, and that the employer must show data from these records to the Labour Inspectorate and the competent body for gender equality, in line with the Law that regulates personal data protection. An employer who employs more than 50 people with fixed term employment is obliged to adopt a plan of measures for removal or alleviation of unequal gender representation for each calendar year, and submit it to the competent Ministry. With continuous monitoring and implementation of measures, this should provide an important step forward.

#### **4. PROHIBITION OF DISCRIMINATION AND PREVENTION OF MOBBING**

The Law on Prohibition of Discrimination, adopted in 2009, prohibits discrimination in the sphere of labour, i.e. violation of the equal opportunities principle concerning employment and enjoyment of all labour-related rights under equal circumstances. Discrimination in the field of labour is also prohibited by the Labour Law,

but according to this Law, it refers only to employed persons and job seekers. The new Law on Prohibition of Discrimination expanded the scope of persons covered by this Law, including those who are not employed by an employer but who are hired on the basis of a contract on temporary and occasional work, a contract on additional work, a service agreement, professional training and development, volunteerism, or work on any other grounds.

However, the key problem, which also existed in the earlier period of enforcement of the antidiscrimination provisions from the Labour Law, is the fact that it is extremely difficult to prove discrimination. This is indicated by numerous reports of inspection services, but also by court practice. In other words, even though discrimination exists in practice, in particular in relation to the employment of women, it comes up only in a few reports by the Inspectorate and other competent bodies, given that it is very difficult to prove. Another reason is the fact that court proceedings related to proving discrimination are extremely long and uncertain in terms of outcome, which is why victims of discrimination seldom opt for this form of protection.

A particular form of discrimination widespread in Serbia is discrimination on the grounds of membership of a political party. This form of discrimination seldom appears in research studies and its elimination is not often requested from inspection authorities and courts. A large number of public companies and institutions recruit workers on the basis of membership of political parties. The systemic nature of this problem lies in the fact that these institutions do not even have the legal obligation to open a public recruitment process for vacancies, so employment on the basis of this discriminatory criterion is very widespread and, due to the lack of transparency, very difficult to prove. It also concerns all other rights pertaining to employment – career advancement, education and training, and even termination of the employment contract.

The Law on Prevention of Mobbing, which came into force in 2010, sets forth the employers' obligations to prevent mobbing, as well as the procedure of protection from mobbing as a whole that concerns both the employers and the competent inspection authorities and courts. Mobbing is highly widespread in Serbia, mostly as a consequence of the negative effects of transition and failed privatisations. In order to get rid of the surplus of employees without having to give them their adequate severance pays, many employers harass their workers in various ways (by assigning them inadequate tasks, by frequently changing their job positions, by jeopardising their personal and professional reputation, etc.) thus forcing an employee into the situation of terminating the employment contract on his or her own initiative. The Law on Prevention of Mobbing was adopted with the purpose to secure an integral system of protection from mobbing, to allow efficient protection by means of short deadlines for action and to foresee a larger number of protection measures.

It is still too soon to analyse the enforcement of this Law, but one can say that its adoption signalled an important step forward in this sphere. A certain number of court proceedings were initiated, and an analysis of the outcomes of these proceedings will show to what extent this Law has managed to guarantee protection from mobbing. For example, in 2010 the First Basic Court in Belgrade received 32 lawsuits for mobbing, while since the beginning of 2011, 23 lawsuits were initiated, out of which 13 are still ongoing, 9 were dismissed and one case was merged with another lawsuit. By August 2011, no case was yet resolved. According to data from the Victimology Society of Serbia (VSS), mobbing is the most frequent form of violence which causes victims to reach out to VSS's information service for assistance and support. In the context of the total number of persons that addressed this VSS service, almost two thirds of them were persons who were exposed to various forms of mobbing at the workplace.

## **5. TERMINATION OF THE EMPLOYMENT CONTRACT AND PAYMENT OF MONETARY COMPENSATION**

The Labour Law lists the reasons for dismissal and stipulates the ways in which an employer may terminate the employment contract with an employee if there is a justified reason for such action, such as the employee's working capacities, his or her behaviour, or the employer's needs.

The key reason for dismissal, which causes most misunderstandings in practice, and which is the reason for dismissal of the majority of laid off workers in Serbia, is the fact that an employer may terminate the employment contract with an employee if, due to technological, economical or organisational changes, there is no more need to perform a certain job, or the sheer scope of work is reduced. The Law stipulates the dismissal procedure, but it also foresees that, if an employer lays off a worker for the abovementioned reason, the employer may not hire another person for the same job within 6 months from the day when the employment contract was terminated. In practice, however, this reason for dismissal is often the source of various abuses.

In the past few years, many workers have lost their jobs in Serbia. According to some assessments, since 2008 between 300,000 and 400,000 workers have lost their jobs. The fear of losing one's job is one of the most stressful factors that a human body can put up with and in Serbia, according to some public survey agencies, as much as 60% of people fear dismissal, and this fear is even stronger than that of war, or the fear of crime.

A particular problem concerning the use of the abovementioned reason for dismissal is found in public companies and institutions, when it is used to conceal some other reasons, such as the need to employ a member of a political party. There are examples where the court, after a lengthy proceeding, returned the workers to their jobs, or imposed the obligation on the employer

who had illegitimately dismissed a worker to pay a very high monetary compensation for damage suffered, but with no responsibility for the party that committed the abuse.

In cases of termination of the employment contract, there is inspection and court protection. The Labour Law foresees that, if the Labour Inspectorate establishes that an employer's decision to terminate an employment contract obviously violates the employee's rights, and, very importantly, the employee initiates a labour dispute, upon the employee's request the Inspectorate will issue a decision to postpone the enforcement of the employer's decision until a legally binding court decision is issued. This inspection measure is extremely important where the protection of workers' rights is concerned, even though the number of workers who address the Labour Inspectorate for this reason is decreasing, despite the fact that the number of dismissed workers continues to grow. The reason for this is the fact that the court proceeding is very slow and long, so therefore a small number of workers decide to undertake this proceeding, which is a condition to address the Labour Inspectorate.

The Law on Employment and Insurance against Unemployment, adopted in 2009, foresees, as one of the very important socioeconomic rights, the right to receive monetary compensation in case of unemployment, which may be obtained through the National Employment Service. The Law foresees that a person with mandatory insurance has the right to monetary compensation if the person was insured over the period of the past 12 months in continuity, or past 18 months with interruptions. What should be noted, however, is that the new legal solutions, while made in a time of crisis, decrease both the amount of monetary compensation paid to unemployed persons and the duration of the right to monetary compensation. According to the new legal solutions, the monetary compensation is limited to a period of 12 months (Article 72 of the Law), while the previous Law allowed the monetary compensation to be paid for a period of up to 24

months, if the unemployed persons lacked no more than 2 years until retirement.

## **6. PROTECTION OF THE RIGHT TO PRIVACY AT THE WORKPLACE**

In comparison to the previously described areas of protecting the current problems of workers in Serbia, the issue of protection of privacy is often neglected. The situation has changed to a certain extent since 2009 when the Law on Protection of Personal Data was adopted, which generally regulated the sphere of personal data protection, especially by stipulating that the Commissioner for Information of Public Importance and Protection of Personal Data, as an autonomous and independent state authority, will be competent for overseeing the implementation and enforcement of this Law.

The Law on Protection of Personal Data regulates the conditions for collection and processing of personal data, rights and protection of persons whose data are being collected and processed, limitations of protection of personal data, procedure before the Commissioner, securing of data records, and oversight over implementation of the Law.

Slovenia has a very rich practice concerning this field. The Slovenian Commissioner created the 5 golden rules laid out below, which should be respected by both employers and employees; 1) An employer may collect and process only the amount of personal data which is necessary to enforce the rights and obligations pertaining to employment, and which is stipulated by the Law, 2) An employee at the workplace has the right to privacy which is proportional to the legal goal that the employer aims to achieve, 3) Data processing in employment should be carried out in as a restrictive manner as possible, and it is not allowed to process data under coercion, 4) As for the employee's personal data which are not necessary to enforce rights and obligations pertaining to employment, it is required to secure the employee's approval without coercion and 5) Breach of an employee's privacy at the workplace is possible only in the case of collision

with another constitutional right which would have advantage in that concrete case.

In the practical implementation of this Law in the labour sphere, special attention should be paid to the following issues: allowing an employee to get acquainted with his or her own data, preventing excessive collection of data on employees, checking the employees' e-mail and use of internet, unjustified video surveillance of employees, employers' obligation to inform the employees about video surveillance in writing, unjustified monitoring of employees with GPS devices, unjustified interception of employees' telephone calls.

It is still too early in the implementation of this Law to be able to draw any precise indicators, but experience in other countries has shown that the implementation of this Law, as well as many pertaining bylaws and regulations that are yet to be adopted, contributes to better protection of privacy at the workplace. However, the Law, aside from the fact that it contains certain provisions that are problematic from the constitutional point of view and that were disputed by the Commissioner before the Constitutional Court, also contains a set of legally unclear norms, as well as a set of so-called amalgam notions, which will raise confusion in implementing the Law, especially notions such as "obviously conflicting interests of persons", "interests important for a person's life", "mostly important interests of persons", etc. Therefore, it is necessary to amend this Law or, due to the sheer amount of necessary amendments, adopt a new one which would clearly formulate the goal of the Law, contain an explicit provision on prohibition of discrimination, and redefine the basic notions of the Law, as well as the basics of personal data processing.

In addition to this, the Law on Protection of Personal Data must be an umbrella law which defines key notions in other sectors, such as biometrics, telecommunications and internet, video surveillance, employment and human resources, etc.



### 3. Conclusions and recommendations

On the basis of the above analysis, it can be concluded that laws and bylaws regulating the respect for the decent work agenda in Serbia are at a satisfactory level, bearing in mind a plethora of new legal regulations that were passed during the last couple of years (on occupational safety and health at work, on prohibition of abuse at work, on gender equality, anti-discrimination etc.), but that the level of enforcement of these rights in everyday practice is exceptionally low. It is necessary for the responsible institutions in the Republic of Serbia to take a wide spectrum of measures, both law-wise and implementation-wise. Therefore, we suggest the following recommendations:

#### **Recommendations for representatives of the European Union**

- Request the authorities of the Republic of Serbia pass new laws or amend the old ones in order to secure the automatic payment of contributions for pension and social security for workers, with clearly defined sanctions for those who breach legal stipulations.
- Request the authorities of the Republic of Serbia introduce amendments to the laws regulating the work sphere (especially in the Labour Law and Law on Employment Records), in order to secure the signing of an employment agreement between an employer and an employee as soon as the employee starts working; to have labour agreements registered in a timely manner at the corresponding public institution; to establish the obligation where every employer must keep all legal documents concerning his/her employees on their official premises. These amendments should include the employer's obligation to keep a log book on the presence of workers at the workplace, which would lead to more efficient control of over-time.
- Request the authorities of the Republic of Serbia amend the Law on Occupational Safety and Health at work, especially the sections regarding risk assessment at the workplace, the role of labour medicine, the role of security and health personnel and unified methodological listings of work-related injuries; the role and competencies of state institutions dealing with security and health at work should be clarified.
- Request the authorities of the Republic of Serbia draft a separate Law on Inspection. This area needs to be thoroughly regulated, i.e. organisational issues, inspectors' mandate and status, mandatory exam on professional expertise, training etc.
- Request the authorities of the Republic of Serbia secure shorter and timelier court proceedings related to labour disputes, by training professional legal teams and providing them with the necessary technical equipment. Courts should also be held responsible for long-running court proceedings.
- Request the authorities of the Republic of Serbia secure all necessary conditions for efficient enforcement of court decisions and unencumbered functioning of independent regulatory bodies – most importantly, the Ombudsman and Commissioner for Information of Public Importance and Personal Data Protection – and to secure the necessary organisational, human, and technical resources and facilities.
- Request the authorities of the Republic of Serbia draft amendments or pass a new Law on Information of Public Importance and Personal Data Protection that would define the basic terms in an unambiguous manner, thus becoming an umbrella law for other adjacent sectors and issues.

- Request the authorities of the Republic of Serbia amend laws and regulations in order to secure professional leadership in specific sectors of ministries, state bodies, public institutions, agencies and public companies, with provisions stipulating mandatory public competitions for leading and other positions and eliminate political leadership or that based on party affiliation from these entities.
- Request the authorities of the Republic of Serbia secure full and real inclusion of unions in all key training activities, and have the Socioeconomic Council become the main source of a true three-way negotiation process between authorities, unions and employers.
- European Union institutions should support unions' and nongovernmental organisations' activities, especially when, through their analyses and recommendations, they constructively criticise work and activities of state bodies.
- Pass separate laws regulating the inspection sphere and defining the modules of inspection work that have not been regulated in the existing legislature.
- Secure conditions for the efficient enforcement of decisions made by independent regulatory bodies, most importantly, the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection, but also other regulatory bodies.
- Amend the existing or pass a new Law on Information of Public Importance and Personal Data Protection that would serve as an umbrella law, redefine the law's targets, establish key elements of personal data processing, and define key terms in different sectors, such as biometrics, video surveillance, employment, human resources etc.
- Amend laws and regulations in order to secure professional leadership in specific sectors of ministries, state bodies, public institutions, agencies and public companies, with provisions stipulating mandatory public competitions for all positions in the institutions mentioned above and eliminate political leadership or that based on party affiliation from these entities.

### **Recommendations for the authorities of the Republic of Serbia**

- Amend laws and bylaws in order to secure automatic payment of salary contributions for pension and social security
- Amend and supplement laws regulating the labour sphere, especially the Labour Law and Law on Employment Records, in order to have employees sign an employment agreement as soon as they start work.
- Amend and supplement the Law on Occupational Safety and Health at Work, especially the sections regarding risk assessment at the workplace, the role of labour medicine, the role of security and health personnel and unified methodological listings of work-related injuries; the role and competencies of state institutions dealing with security and health at work should be clarified.
- Take all labour-related decisions with the full participation of unions' and employers' associations and have the Socioeconomic Council become a true and key factor in the negotiation process concerning labour issues.
- Accept unions as true partners when creating, implementing and monitoring public labour policies; develop programmes that would promote and encourage union activism.
- Provide constant, systematic and transparent monitoring of the enforcement of all labour regulations, especially the newly



passed laws against abuse at work, on safety and health at work and on gender equality.

- Amend and supplement legal regulations and define the legal responsibility for employers who make illegal decisions after the final disposition of labour cases.

nongovernmental organisations dealing with labour, social and employment issues, thus overcoming antagonisms and exclusivity that very often exist in practice.

### **Recommendations for representatives of nongovernmental organisations and unions**

- Advocate amendments and supplements to the Labour Law related to signing employment agreements, automatic payment of salary contributions for pension and social security, clearer definition of temporary employment conditions and criteria for defining the unions' mandate.
- Advocate amendments and supplements to the Law on Occupational Safety and Health at Work, especially the sections regarding risk assessment at the workplace, the role of labour medicine, the role of security and health personnel and the role and competencies of state institutions dealing with security and health at work.
- Advocate passing of an overarching Law on Inspection, (especially labour inspection), and further labour inspection reforms, in order to establish an integrated monitoring inspection system that has already shown good results.
- Work towards unification of unions dealing with key labour issues.
- Organise permanent and systematic education of workers on their rights and ways to protect them, initiate labour cases in courts and protect workers' rights through the work of the Agency for Peaceful Dispute Resolution and Monitoring Inspection.
- Continue strengthening cooperation and solidarity between unions and

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