ASSESSMENT OF ECONOMIC AND SOCIAL RIGHTS IN THE REPUBLIC OF SERBIA

– REPORT ON THE IMPLEMENTATION OF THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS –

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SADRŽAJ

ABBREVIATIONS USED IN THE TEXT

GDP	Gross Domestic Product
CEEP	European Centre of Employers and Enterprises providing Public Services and Services of General Interest
CESCR	The UN Committee on Economic, Social and Cultural Rights
EPSU	European Federation of Public Service Unions
ETUC	European Trade Union Confederation
EEC	European Economic Community
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ERP	Economic Reform Programme
ECtHR	European Court of Human Rights
ESRP	Reform Programme in Employment and Social Policy
EU	European Union
EZ	European Community
HOSPEEM	European Hospital and Healthcare Employers' Association
ILO	International Labour Organisation
MLEVSA	Ministry of Labour, Employment, Veterans and Social Affairs
NEAP	The National Employment Action Plan
NPAA	The National Programme for the Adoption of the Acquis
NES	National Employment Service
OSCE	The Organization for Security and Co-operation in Europe
OECD	The Organisation for Economic Co-operation and Development
ICESCR	The International Covenant on Economic, Social and Cultural Rights
PPS	Purchasing Power Standards
NSO	National Statistical Office
SFRY	Socialist Federal Republic of Yugoslavia
SEC	Social and Economic Committee
SILC	Survey on Income and Living Conditions
FRY	Federal Republic of Yugoslavia
WHO	World Health Organisation
UEAPME	European Crafts and SMEs' Association
UN	United Nations
UNICE	Union of Industrial and Employers' Confederations of Europe
UPS	Universal Periodic Survey
LO	Law on Obligations
LA	Labour Law

INTRODUCTORY REMARKS

Serbia ratified the International Covenant on Economic, Social and Cultural Rights (hereafter: CESCR) in 1971 while it still formed part of the Socialist Federal Republic of Yugoslavia. After changes in 2000, the Federal Republic of Yugoslavia (FRY) deposited a succession statement on 12 March 2001 by which it again acceded to this international instrument. As a result, FRY has submitted Initial Report on the implementation of the Covenant covering 1992-2002, as well as submitted the Second Periodic Report in 2014.

The Republic of Serbia has ratified many other international instruments with regard to economic and social rights. Some of the most important are listed in Table 1.[1]

Table 1 – Selection of the most important international instruments with regard to economic and social rights ratified by the Republic of Serbia

Title of the international instrument	Date of Ratification
The International Covenant on Economic, Social and Cultural Rights	1971
ILO Convention concerning Forced or Compulsory Labour (No. 29)	1932
ILO Convention concerning Labour Inspection in Industry and Commerce (No. 81)	1956
ILO Convention concerning Freedom of Association and Protection of the Right to Organise (No. 81)	1958
ILO Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98)	1958
ILO Equal Remuneration Convention (No. 100)	1952
ILO Convention concerning the Abolition of Forced Labour (No. 105)	2002
ILO Convention concerning Discrimination in Respect of Employment and Occupation (No. 111)	1961
ILO Convention concerning Benefits in the Case of Employment Injury (No. 121)	1970
ILO Convention concerning Employment Policy (No. 122)	1971
ILO Convention concerning Labour Inspection in Agriculture (No. 129)	1975
ILO Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (No. 131)	1982
ILO Convention concerning Annual Holidays with Pay (Revised) (No. 132)	1973
ILO Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (No. 135)	1982
ILO Convention concerning Minimum Age for Admission to Employment (No. 138)	1982
ILO Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards (No. 144)	2005
ILO Convention concerning Occupational Safety and Health and the Working Environment (No. 155)	1987
ILO Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (No. 156)	1987

1 State of legislation of the Republic of Serbia on 15 April 2019

ILO Convention concerning Termination of Employment at the Initiative of the Employer (No. 158)	1984
ILO Convention concerning Occupational Health Services (No. 161)	1989
ILO Convention concerning Safety and Health in Construction (No. 167)	2009
ILO Convention concerning Private Employment Agencies (No. 181)	2013
ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)	2003
ILO Convention concerning the revision of the Maternity Protection Convention (No. 183)	2010
Convention on the Rights of the Child	1990
Convention on the Elimination of All Forms of Discrimination against Women	2001
UN Convention on the Rights of Persons with Disabilities (with the Optional Protocol)	2009
UNESCO's Convention against Discrimination in Education	1964
European Social Charter (revised)	2009
Convention for the Protection of Human Rights and Fundamental Freedoms (with Protocols 14 and 15)	2003 (2005, 2015)
Council of Europe Convention on preventing and combating violence against women and domestic violence	2013

With regard to EU law, in the National Programme for the Adoption of the Acquis[2] (NPAA) Serbia has committed to complete the harmonisation of national legislation with EU law by 2021.

In regard to prohibition of discrimination, the Screening Report on Chapter 23 (Judiciary and Fundamental Rights) states that, according to information provided by Serbia, the Law on Prohibition of Discrimination fully complies with the Council Directives 2000/43/EC implementing the principle of equal treatment irrespective of racial or ethnic origin and 2000/78/EC establishing a general framework for equal treatment in employment and occupation[3]. However, in regard to extent of harmonisation and capacity, the Progress Report states that "efforts are required to bring the anti-discrimination legislation fully in line with EU acquis as regards the scope of exceptions from the principle of equal treatment, the definition of indirect discrimination and the obligation to ensure reasonable accommodation for disabled employees".[4]

In 2018 Report for Serbia, it was stated that "non-discrimination legislation is broadly in line with the European standards, although further alignment with the *acquis* is still needed".[5] Finally, in the latest version of the 2018 NPAA it was stated that amendments to the text of the Law on the Prohibition of Discrimination were adopted which refer to the implementation of provisions prescribed by EU Directives, in particular Directives 2000/43/EC and 2000/78/EC.[6]

With regard to gender equality, according to information provided by Serbia, the Screening Report (Chapter 19 – Social Policy and Employment)[7] indicates an ongoing

2 National Programme for the Adoption of the Acquis, third revision, February 2018
3 Screening Report for Serbia, Chapter 23 – Judiciary and Fundamental Rights 16
4 Ibid., 47.
5 European Commission, Republic of Serbia – 2018 Report 29
6 NPAA, 791
7 Screening Report, Chapter 19 – Social Policy and Employment 13.

work on the alignment of the Gender Equality Law with the Directive 2004/113/EC on the application of the principle of equal treatment between men and women in the access to and supply of goods and services as well as with the Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding inter alia by extending parental leave and providing further safeguards from dismissal. The 2018 Progress Report for Serbia states that a new Gender Equality Law is still not adopted.[8] As stated in the NPAA, the requirement of harmonising domestic legislation with EU law was not taken into consideration in the process of adopting the Gender Equality Law. As a result, "significant amount of legislation needs to be aligned in the field of the equality between women and men, such as the Council Directive 2004/113/EC, Directive 2006/54/EC of the European Parliament and of the Council and the Directive 2010/41/EU of the European Parliament and of the Council.[9]

With regard to right to work, the Screening Report (Chapter 19 – Social Policy and Employment) stated that some of the basic principles set out by the EU labour acquis appear to be in place. Moreover, it was stated that "a significant number of important adjustments to the national legislation in this area will be necessary in order to prepare for complete legal alignment in this area.[10] As stated in the NPAA, within the chapter on Social Policy and Employment, the Labour Law is partially aligned with the following EU law:

1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions with 2002;
2) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;
3) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;
4) Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies;
5) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer;
6) Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;
7) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;
8) Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC;
9) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC);
10) Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work
11) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);
12) Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and

8 European Commission, Republic of Serbia – 2018 Report 30.
9 NPAA, 791
10 Screening Report, Serbia, Chapter 19 – Social Policy and Employment 14

ETUC and repealing Directive 96/34/EC;
13) Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation.[11]

With regard to health and safety at work and according to the NPAA, the Law on Safety and Health at Work ("Official Journal of the RS", No 101/05 and 91/15) contains basic standards of the Council Directive No 89/391/EEC of 21 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.[12] Moreover, the following standards prescribed by directives have been incorporated in the following national legislation:

1) Rulebook on preventive measures for safe and healthy conduct when using personal protective assets and equipment at the workplace is partly harmonised with the Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace;
2) Regulation on occupational safety and health at temporary or mobile construction sites is partly harmonised with the Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites;
3) Rulebook on preventive measures for safe and healthy conduct when using personal protective assets and equipment at the workplace is partly harmonised with the Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace;
4) Rulebook on preventive occupational safety and health measures for usage of work equipment is partly harmonised with the Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work;
5) Rulebook on preventive measures for safe and healthy conduct when manually handling loads is fully harmonised with the Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers;
6) Rulebook on preventive occupational safety and health measures for usage of screen display equipment at work is partly harmonised with the Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment;
7) Rulebook on preventive occupational safety and health measures when exposing to chemical substances is partly harmonised with: the Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work; Commission Directive 91/322/EEC of 29 May 1991 on establishing indicative limit values by implementing Council Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work; Commission Directive 2000/39/EC of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work; Commission Directive 2006/15/EC of 7 February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 2000/39/EC; Commission Directive 2009/161/EU of 17 December 2009 establishing a third list of indicative occupa-

11 NPAA, 761-762
12 *Ibid.* 763.

tional exposure limit values in implementation of Council Directive 98/24/EC and amending Commission Directive 2000/39/EC;
8) Regulation on preventive occupational safety and health measures in the exploitation of mineral resources in deep drill holes is partly harmonised with the Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral- extracting industries through drilling;
9) Regulation on preventive occupational safety and health measures in underground and surface exploitation of mineral resources is partly harmonised with the Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries;
10) Regulation on preventive occupational safety and health measures on fishing vessels is fully harmonised with the Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels;
11) Rulebook on the provision of safety and health signs at work is partly harmonised with the Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work;
12) Rulebook on preventive occupational safety and health measures during exposure to biological hazards is partly harmonised with the Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work;
13) Rulebook on preventive occupational safety and health measures during exposure to vibrations is partly harmonised with the Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration);
14) Rulebook on preventive occupational safety and health measures in noise exposures is partially harmonized with the Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise);
15) Rulebook on preventive occupational safety and health measures in carcinogens or mutagenic exposure is partly harmonized with the Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work;
16) Regulation on preventive occupational safety and health measures due to the risk of explosive atmospheres is fully harmonized with the Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres;
17) Rulebook on preventive occupational safety and health measures in artificial optical radiation exposure is partially harmonized with the Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation);
18) Regulation on Minimum Requirements and Conditions for the Provision of Medical Care on Board Maritime Vessels is fully harmonized with the Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels;
19) Regulation on preventive occupational safety and health measures in exposure to asbestos is fully harmonized with the Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work (codified version);

20) Rulebook on preventive occupational safety and health measures in exposure to electromagnetic Fields is partially harmonized with the Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields);
21) Guidelines on workplaces where work is conducted where exposure to dust from asbestos or asbestos-containing material is occasional and of low intensity in relation to Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work (codified version);
22) Regulation on preventive occupational safety and health measures in the use of sharp objects that are medical devices in the healthcare sector is fully harmonized with the Council Directive 2010/32/EU of 10 May 2010 implementing the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by HOSPEEM and EPSU;
23) Rulebook on preventive occupational safety and health measures of young people which is partly harmonized with the Council Directive 94/33/EC on the protection of young people at work and Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures;
24) Rulebook on preventive occupational safety and health measures of pregnant workers as well as workers who have recently given birth or are breastfeeding is partly harmonized with the Directive 92/85/EEC on the introduction of measures for the encouraging improvements in the safety and health at work of pregnant workers as well as workers who have recently given birth or are breastfeeding in the safety and health at work and Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directive 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, to comply with Regulation (EC) No 1272/2008 of the classification, labelling and packaging the substance or mixture[13].

With regard to domestic sources, a significant number of statutory provisions and by-laws prescribe the normative framework regarding social and economic rights. These provisions will be analysed below in relation to certain questions.

Normative provisions, as well as examples of how those provisions have been applied will be assessed through the lens of international standards, comparative practice and other appropriate parameters. The objective of this analysis is to assess the legal framework guaranteeing social and economic rights and the application of relevant provisions.

The analysis is aligned with the text of the International Covenant on Economic, Social and Cultural Rights, devoting special attention to particular problems identified by the authors. The basic international standards in this area will be presented through the assessment of normative provisions and their application. The application of those standards should lead to better results in guaranteeing genuine protection of individuals by the state which should allow more than just their basic survival in difficult times, but the ability of those citizens to become equal members of the community. Principles of solidarity, social justice and social protection by the state are basic principles which should be taken into account in formulating policies and law-making.

With regard to social indicators, the current situation in Serbia is far from satisfactory;

13 Ibid. 763-766.

it could be described as alarming in regard to certain issues. This is caused by difficulties in the labour market, declining role of the state in social provision as well as economic policy, employment policy and current approaches to privatisation of state companies. The situation in the labour market is grim and data on poverty indicate the urgency for state to act. Unfortunately, this is lacking.

According to data available for 2017, the rate of absolute poverty was 7,2% which is a slight drop in regard to 2016 when the rate was 7,3%.[14] In any case, around half a million of inhabitants of Republic of Serbia is not in a position to satisfy some basic needs. The highest poverty rate is identified with unemployed persons (23,8%), persons who did not complete primary school (18,5%) and in multi-person households (15,2%). The rise of poverty in multi-person households and among children is most alarming.

Table 2: Rate of absolute poverty from 2006-2017

2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
8,8	8,3	6,1	6,6	7,6	6,6	6,3	7,4	7,6	7,4	7,3	7,2

Source: Team for Social Inclusion and Reduction of Poverty, 2018

Regional differences in poverty rate are still significant and twice the rate in rural than in urban areas (4,9% as opposed to 10,5%). Besides, the expenditure structure in rural areas is less favourable than in urban areas. For example, spending on education in urban areas account for 1,6%, while in urban areas it amounts to 1,2%[15]. With regard to decile analysis, these differences are even more prominent, thus, in the household expenditure structure, in the tenth decile education accounts for 2.25, while in the first decile it accounts for 0.3%[16]. This difference is especially high in relation to recreation and culture as the part of corresponding expenditure accounts for 9,1% in the tenth decile, while in the first decile it accounts for 2%.

According to data for 2017, the rate of relative poverty was 25,7% which is a slight drop compared to 2016 with the rate of 25,9%. At-risk-of-poverty rate or rate of social exclusion was 36,7%.

Table 3: Rate of Relative Poverty in the Republic of Serbia 2014-2017

2014	2015	2016	2017
25,0	26,7	25,9	25,7

Source: Social Inclusion and Poverty Reduction Team, 2018

The highest at-risk-of-poverty rate was identified with households with two adults and three of more dependent children (55,8%) and persons younger than 65 who live single person households (39,6%).

With regard to inequality rates measured according to expenditure (according to the Survey on the household expenditure), the Gini coefficient was 25,9 in 2017, which is a slight drop compared to data for 2016. On the other hand, if measured according to income (Survey on Income and Living Conditions), the Gini coefficient was 37,8 in 2017, which is a drop compared to 2016 data.

14 The evalution of the absolute poverty in Serbia. Team for Social Inclusion and Reduction of Poverty 2018
15 Bulletin – Survey of Household Expenditures, Republic Statisitical Office 2017
16 The poorest households (with the lowest spending) are in the first decile, while the wealthiest households are in the tenth decile (with the highest levels of spending).

ARTICLE 2 PARAGRAPH 1 – USE OF MAXIMUM AVAILABLE RESOURCES WITH A VIEW OF ACHIEVING THE FULL REALIZATION OF THE RIGHTS

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the Concluding Comments on the Second Periodic Report of Serbia[17], the Committee regrets the absence of sufficient information on the use of maximum available resources by the State party in achieving progressively the full realization of the rights recognized in the Covenant (Art. 2, para 1) and recommends that the State party regularly evaluates the impact of measures taken in order to assess whether the maximum available resources have been used in achieving progressively the full realization of the rights recognized in the Covenant.

In General Comment No. 3 , the Committee emphasises that the principal obligation of result reflected in Article 2(1) is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant.[18] Any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

With the aim of addressing fiscal consolidation due to high budget deficit, Serbia passed two statutes in 2014: Law on the Temporary Regulation of the Basis for Calculation and Payment of Salaries, Wages and other Permanent Income with Public Funds Users and the Law on Temporary Regulation on the Manner in Which Pensions are Paid.[19] These statutes represented a framework for determining pensions and salaries of employees in public sector. They were in force until the end of 2018.

Cuts in public sector salaries mostly affected employees in education and health sectors where majority of employees are women (more on this issue in the section devoted to assessment of Article 3). Their average salaries were one of the lowest even before cuts.

It is not clear why the cuts in pensions were chosen as data indicate that pensioners are in a worse position than employed persons (Table 4). From 2008 to 2014, an average pension was 30-40% lower than an average salary. This gap was further deepened after the introduction of the austerity measures and in 2017, an average pension was 46,5% lower than an average salary. While average salaries (indicated in euros) rose in 2018 for 4%, pensions were reduced by 8.3%.

17 The Committee for Economic, Social and Cultural Rights, Concluding Comments on the Second Periodic Report 2014, Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/e_c-12_srb_co_2_17290_e_clean1.doc

18 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at https://www.refworld.org/docid/4538838e10.html

19 Official Journal RS, No. 116/2014

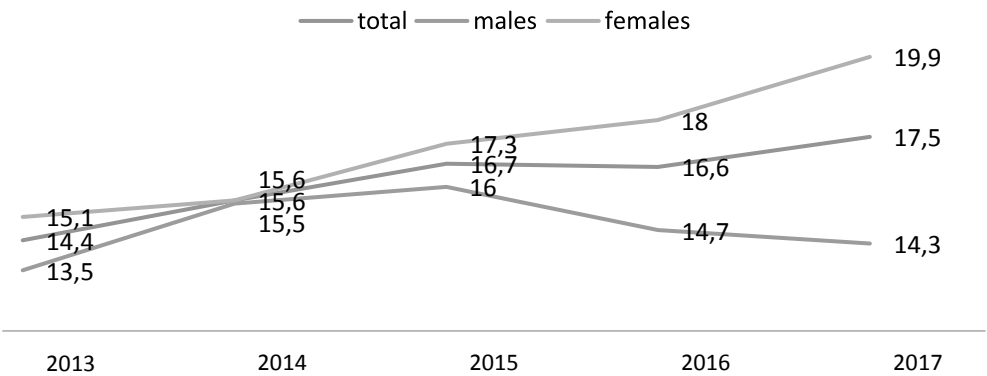
Table 4: Average salaries and pension from 2008-2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Average salary in RSD	32746	31733	34142	37976	41377	43932	44530	44432	46097	47893
Average salary in EUR	402	338	331	372	366	388	380	368	374	395
Average pension in RSD	19386	21714	21790	23200	25033	25976	26055	24969	25234	25632
Average pension in EUR	238	231	211	228	221	230	222	207	205	211
ratio pension/salary	59,2	68,4	63,8	61,1	60,5	59,1	58,5	56,2	54,7	53,5

Source: Annual Bulletin of the Republic Fund for Pension and Disability Insurance; presentation and calculation by the author

The increase of at-risk-of-poverty rate among pensioners (image 1) indicates the effects that cuts in pensions had on pensioners' standard of living. At-risk-of-poverty rate rose from 14,4% in 2013 to 17,5% in 2017 – significantly more with women pensioners than man which may be explained by the fact that women have lower average pensions than men.

Image 1: At-risk-of-poverty rate according to sex



In its General Comments, the Committee emphasises the obligation of the state to put a maximum effort in using all available sources at its disposal in order to fulfil, as a matter of priority, a minimum of its obligations. If state is encountering resource constraints, states still have an obligation to ensure a widest extent of enjoyment of relevant rights in given circumstances and what is more important, to monitor the extent to which social, economic and cultural rights are not enjoyed and develop programmes for their improvement.

In the year when the government introduced austerity measures, the primary budget deficit was 139 billion of euros. In the following year, the primary budget surplus was

10,6 billion RSD which increased in next few years and amounted to 152,0 billion RSD in 2017.[20] Despite the improvement in finances and growing at-risk-of-poverty rate, the austerity measures were in force until the end of 2018.

In the press release of the Ministry of Finance (November 2014), it was stated that the state made savings amounting to 75 billion RSD (around 616 million euros) by reducing pensions.[21] In the same time period when pensioners contributed to the state budget, Serbia granted subsidies amounting to 860 million EUR.[22] The state not only failed to use resources at its disposal to satisfy as a priority a minimum of its obligations but instead, it subsidised employers with the requirement to pay salaries to future employees which are 20% higher than a minimum wage. If this is expressed with regard to consumer goods basket, a salary paid to employees covers the cost of only a third of the consumer goods basket. Besides providing subsidies which led to new job openings, the Republic of Serbia offers many other privileges to foreign investors, such as relief on capital gain for employers who employ more than 100 workers or invest more than 8.5 million of euros. Many media statements as well as studies on working conditions with foreign employers[23] indicate violations of employment rights and very poor working conditions.

Besides making saving by cutting back pensions, Serbia also made savings at the detriment of most vulnerable population – unemployed persons and recipients of social benefits by cutting funds each year (see the analysis of Article 11). Unemployment benefits of 0,7% of GDP in 2010 were reduced to 0.2% in 2018, while funds for social benefits were reduced from 4,2% to 3,3% of GDP.[24]

The UN High Commissioner for Human Rights emphasises that a state needs to ensure compliance with their human rights obligations when adopting austerity measures.[25] States should demonstrate: (1) the existence of a compelling State interest; (2) the necessity, reasonableness, temporariness and proportionality of the austerity measures; (3) the exhaustion of alternative and less restrictive measures; (4) the non-discriminatory nature of the proposed measures; (5) protection of a minimum core content of the rights; and (6) genuine participation of affected groups and individuals in decision-making processes.

In adopting austerity measures Serbia did not demonstrate willingness to scrutinize potential consequences of those measures. Thus, those measures were adopted in breach of provisions of Article 2, paragraph 1 of the Covenant on Economic, Social and Cultural Rights as well as General Comment No. 3 of the Committee for Economic, Social and Cultural Rights.

20 According to information provided by the Ministry of Finance – Table 2. Budget of the Republic of Serbia - income and expenditures from 2008 to 2019; and according to the Budget Law of 7 March 2019 available at http://www.mfin.gov.rs/pages/article.php?id=14332

21 Cuts in pensions resulted 75 billion RSD, https://www.b92.net/biz/vesti/srbija.php?yyyy=2018&mm=07&dd=16&nav_id=1419723

22 TS: 860 million euros for foreign subsidies and the control is insufficient, http://rs.n1info.com/Biznis/a275506/Vlada-dala-860-miliona-evra-subvencija-stranim-investitorima.html

23 Study on working conditions in the textile industry – Serbia http://pe.org.rs/wp-content/uploads/2018/06/Istra%C5%BEivanje-o-uslovima-rada-u-tekstilnoj-industriji-Srbija.pdf

24 Ministry of Finance, Table 3. Consolidated Balance Sheets of the State from 2005 to 2019, available at http://www.mfin.gov.rs/pages/article.php?id=14332

25 UN Economic and Social Council: Report of the United Nations High Commissioner for Human Rights; E/2013/82

ARTICLE 2 PARAGRAPH 2 – RIGHT TO DIGNITY AT WORK (DISCRIMINATION IN THE AREA OF EMPLOYMENT AND SOCIAL PROTECTION AND HARASSEMENT AT WORK)

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

1. LEGISLATIVE FRAMEWORK AND PRACTICES IN APPLYING ANTIDISCRIMINATORY LEGISLATION

The Republic of Serbia has a comprehensive constitutional and statutory framework in regard to prohibition of discrimination. The Law on Prohibition of Discrimination[26] represents the main statutory act, while discrimination is prohibited by many other statutory provisions: the Law on Prevention of Discrimination Against Persons with Disabilities[27], Law on Gender Equality,[28] Law on Protection of Rights and Freedoms of National Minorities,[29] Labour Law,[30] the Law on Professional Rehabilitation and Employment of Persons with Disabilities,[31] Law on Constitutional Court[32], Law on Ombudsman,[33] and the Law on Amicable Settlement of Staff Disputes[34]. At the time of writing this study, amendments to the Law on Prohibition of Discrimination are in the parliamentary procedure in accordance with the Plan for Harmonisation of Legislation with EU law and within the accession negotiations regarding Chapter 23. The new Gender Equality Law was due to be adopted in 2018. However, this has not happened as the Ministry Labour, Employment, Veterans and Social Affairs raised certain objections.[35] At the time of writing, it is not clear if this draft act will be put for public consultation or proposed to the National Parliament.

There is also a negative trend of prescribing competing norms to those contained in the Law on Prohibition of Discrimination, such as those provisions prescribed by Labour Law. Although Article 16 of the Law on Prohibition of Discrimination prescribes discrimination in area of labour which includes protection of each employed person regardless of the legal basis (or lack thereof), the Labour Law contains provisions which prescribe prohibition of discrimination of employed persons (Articles 18 to 23). These provisions provide definitions of direct and indirect discrimination, harassment and sexual harassment and also prescribe some procedural rules which are superfluous, as they are already prescribed by the Law on Prohibition Discrimination (shifting the burden of proof; right to compensation; what is not considered as discriminatory behaviour at work).

Although there is a need to further clarify the definition of discrimination in Labour Law, the existence of a parallel regime led to poor judicial practice in the past and the

26 Official Journal RS, No. 22/2009
27 Official Journal RS, No. 33/2006 and 13/2016
28 Official Journal RS, No. 104/2009
29 Official Journal FRY, No. 11/2002, Official Journal SCG, No. 1/2003 – Constitutional Charter and Official Journal RS. No. 72/2009 – other statute and 97/2013 – CC Decision.
30 Official Journal RS, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – CC Decision and 113/2017
31 Official Journal RS, No. 36/2009 and 32/2013.
32 Official Journal RS, No. 109/2007, 99/2011, 18/2013 – Decision US, 40/2015 – other statute and 103/2015
33 Official Journal RS, No. 79/2005 and 54/2007.
34 Official Journal RS, No. 125/04, 104/09 and 50/2018
35 Austerity Measures and Business Community Interests blocked the Gender Equality Law, https://insajder.net/sr/sajt/tema/9309/

non-application of Law on Prohibition of Discrimination, as the Labour Law was regarded as *lex specialis*.[36] This is not the correct approach. The Labour Law must regulate conducts which do not constitute discrimination, as well as all other concepts related to discrimination in employment (such as specific profession requirements). Those concepts have to be defined in general provisions in order to be applied not only to full time employees but to all forms of employment. Instead of creating parallel regime, which leads to confusion in application of law and protection of discriminated persons, it would be more appropriate to make references to relevant provisions of the Law on Prohibition of Discrimination.

Discrimination in employment and in enjoyment of rights related to social protection represents the most common area of discrimination, as stated in the Reports of the Commissioner for Protection of Equality (hereafter: the Commissioner). In addition, there are cases of individuals being deprived of health protection and education, as well as discrimination in regard to accommodation. This all indicates an alarming impact of discrimination on achievement of full economic and social rights. The 2017 Annual Report of the Commissioner states that 31,2% of received complaints were submitted in regard to employment. Coupled with other categories which are relevant for achievement of economic and social rights (education and vocational training, social protection, pension and disability insurance and accommodation), the number of complaints amounts to 50%.[37] The number of complaints in 2016 was 33,9%. Coupled with other categories which are relevant for achievement of economic and social rights (education and vocational training, social protection, pension and disability insurance and accommodation) the number of complaints amounted to 50,5%.[38]

Despite relatively good quality protection and with regard to prohibition of discrimination in practice, the following difficulties may be identified in the application of the aforementioned legislation:

- Legal standards established by law have not been developed in practice. In particular this relates to shifting the burden of proof which is not applied by courts, as well as the standard of "protected personal characteristic".
- There is no special designation or the possibility to monitor the court cases on discrimination which render the assessment of legislation in this area more difficult.
- The law does not regulate measures of reasonable adjustment by the employer, while the protection of people with disability is not well regulated. If the employee is unable to work, he or she may be dismissed or render redundant even if his or her disability is due to an injury at work or professional illness (Labour Law Articles 101 and 102). At the same time, the obligation of public authorities to provide access to public spaces to people with disabilities was put in question by court decisions. A good illustration is the decision of the Supreme Court of Cassation Rev2 361/2014 of 23 October 2014 which emphasised that these measures are "long-term processes dependent on financial abilities of the community".
- There is a genuine misunderstanding by courts with regard to the notion of discrimination, in particular indirect discrimination and its differentiation from similar legal concepts such as harassment at work. This leads to disregard of the notion of indirect discrimination, unclear and contradictory practices in application and interpretation of laws and creation of unlawful and fictitious notions of harassment and discrimination.[39]

36 See Mario Reljanović, A Study on the Application of the Law on Prohibition of Discrimination in Serbia Belgrade 2017, http://www.yucom.org.rs/wp-content/uploads/2018/03/Studija-o-primeni-Zakona-o-zabrani-diskriminacije-u-Srbiji-Mario-Reljanovic.pdf

37 2017 Annual Report of the Commissioner http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2018/03/RGI-2017_PZR_FINAL_14.3.2018-1.pdf, 218

38 2016 Annual Report of the Commissioner http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2017/08/PDF-Redovan-godi%C5%A1nji-izve%C5%A1taj-Poverenika-za-za%C5%A1titu-ravnopravnosti-za-2016-godinu.pdf, 211

39 See Mario Reljanović (2017)

Beside these general deficiencies of the anti-discriminatory system, there are special circumstances which raise concerns about wide and systematic discrimination targeting certain groups which will be further examined in the text (see the analysis of Article 3 of the Covenant – unequal payment to women and man for equal work; analysis of Article 7 with regard to paid leave and right to remuneration during the maternity leave, leave for nursing the child, and leave for special care of the child; analysis of Article 9 – right to accommodation; analysis of Article 10 with regard to indirect discrimination in using the paternal and child benefits; analysis of Article 13 of the Covenant – segregation of Roma children in education).

2. HARASSMENT AT WORK

The protection from harassment at work is discussed together with issues of discrimination and within the wider context of protection of dignity at work. In that sense, the Law on Prohibition of Harassment at Work[40] regulates this area, however, with significant deficiencies[41]:

- Capacity to be sued is not well regulated – according to Article 29, para 2 (which courts apply only partially, though the practice is not consistent and leads to legal uncertainty) it is possible to sue only employers for harassment at work and not the direct perpetrator.
- Harassment at work is too narrowly defined and thus, does not include cases when an employee employed by one employer harasses the employee employed with another employer performing joint work or when an employee harasses workers employed on the basis of business cooperation contract.
- The legal standard of harassment at work as "repeated conduct" is not closely defined by law and it is not interpreted by case law. In the absence of any authority, judges often make reference to informal assessments made in the literature, which may lead to refusal to protect the employee who is harassed without having any proper legal basis.
- The preliminary proceeding of amicable settlement with employer as a requirement for initiating the court proceeding is not well regulated. The use of judicial mechanisms should not be conditioned by an unsuccessful amicable settlement dispute. Consequently, amicable settlement proceeding does not give many chances for success due to poor normative provisions. At the same time, it strengthens the position of the perpetrator and reduces level of protection offered to the victim.
- The judicial and any other form of protection of employees in regard to an individual act of the employer should be allowed. This is for the moment excluded by Article 29, para 3 of the Law on Prohibition of Harassment at Work. While the statute prescribes that the legality of individual act causing harassment cannot be challenged (with regard to other statutes), the Rulebook on rules of conduct of employer and employees in regard to prevention and harassment at work[42] unlawfully extends this to each individual act (Article 13, para 1, alinea 1). This led to poor judicial practice and refusal to consider individual acts of employers as unlawful as they served as instruments for committing harassment at work. The courts understood this to mean that these acts can be used as evidence in procedure for harassment at work, especially in situations when employer by an individual act, creates unfavourable working conditions which constitute harassment of employees.

40 Official Journal RS, No. 36/2010.
41 See more on defficiencies of this statute in Mario Reljanović, Gaps and Deficiencies of the Law on Prohibition of Harassment at Work, Legal Instructor 25-26/2012, 57-63.
42 Official Journal RS, No. 62/2010.

ARTICLE 3 – GENDER EQUALITY

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

1. STRATEGIC, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

In paragraphs 226-234 of the Second Periodic Report on the Implementation International Covenant on Economic, Social and Cultural Rights, Serbia describes its strategic, legislative and institutional framework regulating gender equality and institutional mechanisms for gender equality in Serbia.[43] In the meantime, there were no changes to the legislative framework and the National Strategy for Improvement of Gender Equality 2010-215 was replaced with the National Strategy for Improvement of Gender Equality 2016-2020.

The Evaluation of the Action Plan for Implementation of the National Strategy for Improvement of Position of Women and Gender Equality 2010-2014[44] (hereafter: NSIPWGE) emphasises the following main deficiencies in the implementation of NSIPWGE: the lack of coordinated management of the implementation process; lack of the system for regular and precise monitoring and the lack of comprehensive report on implemented activities. Intended results were not achieved in key areas. The implementation of NSIPWGE was fragmented with limited horizontal and vertical effects and allocated resources were insufficient for effective implementation. The evaluation also indicates insufficiently developed and stable mechanisms of gender equality in Serbia, as well as institutional interregnum.

According to the National Gender Equality Strategy, it was planned to conduct, from June to September 2018, an independent evaluation of the implementation of the Action Plan 2016-2018. Results of the evaluation should have represented a basis for drafting and adopting the Action Plan 2019-2020. The evaluation was presented in March 2019 and consultations for the Action Plan 2019-2020 are underway. The delay in the adoption of the mechanisms for the implementation of the Gender Equality Strategy is just one of the problems in improving gender equality. The most recent evaluation of NSIPWGE demonstrate that no significant progress was made – national mechanisms for gender equality are lacking capacities; implementation of NSIPWGE at the local level is not satisfactory above all due to limited coordination between national and local levels mechanisms for gender equality; uneven efficiency in implementation of NSIPWGE due to insufficient financial resources; fragmented measures and unclear responsibilities of mechanisms for coordination and the impact of planned processes is lacking in most areas.[45]

The process of institutional disintegration has commenced following the submission of Concluding Comments of the Committee for Economic, Social and Cultural Rights.[46] With regard to national mechanisms for gender equality, the Committee, in its Concluding

43 The Government of Republic of Serbia; the Second Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 2011.

44 Summary of the evalution is available at web page of the Coordination Body for Gender Equality https://www.rodnaravnopravnost.gov.rs/sr/dokumenti/strategije/evaluacija-nacionalnog-akcionog-plana-za-primenu-nacionalne-strategije-za

45 Evaluation of the National Action Plan for the Implementation of the Serbia National Strategy for Gender Equality – the Final Report available at http://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/2019/evaluation%20nap%20for%20ge/evaluation%20nap%20for%20ge%202016-2018_compressed.pdf?la=en&vs=2559

46 The Committee on Economic, Social and Cultural Rights, the Concluding Comments on the Second Periodic Report for Serbia, 2014 Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/e_c-12_srb_co_2_17290_e_clean1.doc

Comments, emphasises concerns about limited effectiveness and lack of sufficient human and financial resources in the existing mechanisms for implementation and monitoring of the Gender Equality Law, Strategy and the Action Plan for Improvement of Position of Women and Gender Equality. The Law on Ministries[47] was adopted at the first session of the Parliament after the elections in 2014 by which the Gender Equality Bureau was abolished. This was justified by stating that this was not a priority, bearing in mind the economic situation in the country. The Coordination Body for Gender Equality responsible for coordination of public administration tasks in the area of gender equality was established by the Decision of the Government of 30 October 2014. Two female ministers, one minister and the General Secretary of the Government are members of the Coordination Body. The expert group comprised of civil servants was established by the same decision and those civil servants will be responsible for issues of gender equality alongside their job responsibilities.

Although by amending this Decision, the number of member of the Coordination Body was increased, this body still remains a political body without appropriate operational support in regard to competencies for addressing gender equality. By amending its organisational chart in July 2017, the Ministry of Labour, Employment, Veterans and Social Affairs (hereafter: MLEVSA) formed the Sector for Antidiscrimination Policy and Improvement of Gender Equality. According to information available on internet web page of MLEVSA, this Sector is responsible for drafting laws and other legislation in the area of antidiscrimination policy and improvement of gender equality, as well as being responsible for the following tasks: issuing opinions and proposing measures in this area; preparation of analysis and information on the state of affairs and implementation of legislation in this area; monitoring the development of EU law in this area; monitoring and preparation of reports on the implementation of international conventions and monitoring the implementation of recommendations of the UN Committee on the Elimination of Discrimination against Women. Thus, on the basis of these responsibilities, it can be assumed that the newly formed Sector will take over responsibilities of the Coordination Body for Gender Equality and the Office for Human and Minority Rights, though mechanisms for coordinating work with these two bodies are not yet prescribed. The latest Progress Report for Serbia states the need to clarify division of responsibilities between the new Sector and the Coordination Body.[48] What amounts to appropriate human and financial resources for implementation of these important responsibilities is difficult to assess due to scarce information available in the Working Bulletin for January 2019. The organisational chart of the Ministry indicates that this Sector does not have any smaller organisational unit and six out of seven vacancies have been filled in: one appointed official (acting assistant minister) and five civil servants in executorial job positions. Taking into account that Coordination Body for Gender Equality has eight members, the expert group has six and that Office for Human and Minority Rights within the Sector for Improvement of Human Rights and the Sector for National Minorities has two sections and two groups with 21 job positions, it may be concluded that human resources for performing tasks within the Sector for Antidiscrimination Policy and Improvement of Gender Equality are insufficient.

According to the Draft Gender Equality Law, the main responsibilities would be entrusted to MLEVSA, thus reducing the role of the Coordination Body for Gender Equality to temporary working body of the Government. This is done despite the objections of the experts and comments submitted with regard to the Draft Gender Equality Law stating that it is necessary to define the status of the Coordination Body for Gender Equality in the

47 Article 36 Law on Ministries, Official Journal RS, No. 44/2014

48 Available at http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_o_srbiji(1).pdf

Gender Equality Law, as well as to render this body permanent due to multi sectoral nature of the gender equality which requires efficient and effective coordination.

Taking over responsibilities and/or overlapping responsibilities as well as insufficient resources may lead to problems in coordination and administration and create conflicts. This has already occurred during the drafting of the new Gender Equality Law.

The process of drafting the new Gender Equality Law and the outcomes of this process embodied in the latest version of the Gender Equality Law represent a good indication of how gender equality is a controversial issue within the governing coalition. In September 2017, the Draft law that was aligned by Coordination Body for Gender Equality with the objections of the civil society organisations was taken off from the Governmental agenda upon the request of the MLEVSA. In the late December 2017, the newly formed Sector for Antidiscrimination and Gender Equality launched the public consultations on revised Draft law. After series of changes by the MLEVSA, the draft law was released for public consultation in summer of 2018. At the time of writing this analysis, the Law on Gender Equality is still not in the parliamentary procedure, although its adoption was planned for 2016 as per National Strategy of Gender Equality and Action Plan on Chapter 23. The analysis of the Draft Law on Gender Equality conducted by the Autonomous Women's Centre[49] indicates that amendments to the Law on Gender Equality in force prescribed by the Draft Law on Gender Equality will not improve the position of women in Serbia. On the contrary: "The Ministry of Labour, Employment, Veterans and Social Affairs responsible for antidiscrimination policy (from July 2017) departs from policy and human rights standards, including women's rights. Not only that transparency in amending statutes depends on the wishes of the incumbent minister, but the adoption of proposals during the public debate reflects conservative views of the Ministry/minister and does not reflect human rights standards and international obligations adhered to by Republic of Serbia, as well as achieved levels of legal protection".

This information and the evaluation of NSIPWGE indicate that Serbia failed to undertake steps to implement the recommendations of the Committee for Economic, Social and Cultural Rights and ensure effective and regular functioning of the national mechanisms in the area of gender equality. The Committee's recommendation to actively monitor the Strategy and the Action Plan for Improvement of Position of Women and Gender Equality was not fulfilled, as the regular monitoring or reporting on previous and current strategies on gender equality was not carried out. Despite the obligation of the Coordination Body for Gender Equality to submit annual reports to the Government and thus inform the public, there is not a single report or information available on the implementation of the Strategy or the Action Plan. Similarly, the Sector for Antidiscrimination Policy and Improvement of Gender Equality responsible for preparing analyses, reports and providing information on the application of legislation on gender equality failed to do the same. The Report on public consultation on the Draft Gender Equality Law is the only available document on the website of the MLEVSA.

In response to the request of the Committee to further clarify Article 22 of the Labour Law as it allows discrimination "if justified", the Government provided the following answer: "If the work is so complex that it may be performed only by a person with special abilities, making distinction between those who have those abilities and those who do not have them is not regarded as discrimination; however, this is a justified need for a person who is able to fulfil appropriate and genuine job requirements, without which the job cannot be completed." Abilities (perceptive, psychomotor or intellectual) are not regarded as a

49 T. Ignjatović, the Draft Law on Gender Equality: Whether (Each) Statutory Amendment Leads to Improvement of the Situation? – practical policy proposal 08/12; Belgrade 2018.

dichotomous category (some individuals have those abilities, while some do not have them) and are developed with each individual to a different extent and are distributed according to Gaussian bell curve equally among women and men of different races, nationalities and religions. The interpretation of Article 22 provided by Serbia indicates the misunderstanding of the notion of abilities, features, and characteristics, as well as the existence of prejudices against abilities of certain groups.

Following the 2015 amendments, Article 22 of Labour Law still remains insufficiently precise and the following does not constitute discrimination: making distinction, exclusion or giving precedence in regard to certain work, when the nature of work is such or the work is undertaken in such conditions that characteristics represent genuine and decisive job performance requirement and that the purpose to be achieved in this manner is justified. This provision does not contain the principle of proportionality and is not aligned with EU antidiscrimination directives related to employment: "Member States may provide that a difference in treatment which is based on a characteristic related to (protected basis) shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate."[50] The draft Law on Gender Equality contains provisions which are in breach of provisions contained in anti-discriminatory directive in its Article 24, para 4: "Prescription of gender as a job requirement in employment, professional and vocational training is prohibited, except when it is required by specific features of the job, venue and working conditions, in accordance with legislation on prohibition of discrimination and protection at work". In this manner, the prescription of exceptions with regard to organisational chart and not for specific occupational activities concerned or the context in which those activities are carried out, employers are given the opportunity to require gender as a job requirement. This is justified by specificities related to the nature of a job, working conditions and location of work, regardless of whether this constitutes genuine and decisive occupational requirement and whether specificities are justified by legitimate aim proportionate to an end to be achieved. If this provision is adopted, this will legalise the gender discrimination in Serbia in employment.

In its responses to recommendations of UN members (cycle III of the Universal Periodic Survey) related to gender equality, the Republic of Serbia demonstrated a full misunderstanding of the gender equality concept.[51] The response to the recommendation to "ensure full implementation of the Gender Equality Law" states the following: "The 2009 Gender Equality Law is successfully applied in practice as evidenced by the Gender Equality Index whereby Republic of Serbia occupies 22nd place in Europe". If a success is measured by the fact that 21 states are ahead of Serbia on Gender Equality Index, while seven states are behind Serbia, it becomes a question whether it is necessary to amend the Gender Equality Law in order to improve the state of gender equality as successful implementation places Serbia as the country with prominent gender inequalities.[52] According to the latest 2018 Gender Equality Index, Serbia is at the 22nd place, while having the worst position in regard to monies (27th place); time (25th place) and work (22nd place).

50 Article 14(2) Gender Equality Directive (recast); Article 4 Racial Equality Directive; Article 4(1) Employment Equality Directive

51 Available at http://www.ljudskaprava.gov.rs/sh/node/19860

52 Available at http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2018/12/Indeks_rodne_ravnopravnosti_u_Republici_Srbiji_2018.pdf

2. GENDER (UN)EQUALITY IN PRACTICE

The General Comment No. 16 of the Committee for Economic, Social and Cultural Rights[53] emphasises importance of formal (*de iure*) equality as well as equality in practice (*de facto*). The equality between men and women in practice will not be achieved just by passing gender neutral laws and policies. These laws and policies cannot solve inequality of men and women and they can also deepen the gap if they do not take into account economic, social and cultural inequalities.

The National Strategy on Gender Equality 2016 to 2020 and the Action Plan 2016-2018 (hereafter: Gender Equality Strategy)[54] state that gender equality is not included in public policies: "the application of other techniques and tools for introducing gender equality in public policies is lacking, such as the assessment of statutes with regard to gender; consistent use of gender sensitive language and collection and recording of gender related data (...) Policies defined in strategic, planning and other documents are not by rule gender sensitive. If they formally target improvement of gender equality, it is done by incorporating a special "women" component through formulation of special parts, programmes and measures for women and girls or by adding "component of gender equality". Gender equality is not recognised as a question of development (p. 24)." In order to address this issue, the Gender Equality Strategy aims to "systematically introduce gender equality in passing, implementation and monitoring of public policies" (strategic objective 3). Although the Action Plan for implementation of the Strategy expired in 2018 and the Coordination Body for Gender Equality had an obligation to annually inform the Government and thus the public on the implementation of activities, there is neither an available report nor information on the implementation of the Action Plan. Thus, we do not have an answer on the extent to which gender perspective is included in passing, implementation and monitoring of public policies.

The assessment of employment policy in Serbia[55] (the Employment Strategy 2011-2020, the Programme of Employment and Social Policy and the 2017 National Employment Action Plan) indicates the lack of gender equality perspective both in the analysis of the situation in the labour market which is gender neutral and in measures which should improve the situation. All strategic and operational documents in employment policy invoke the Europe 2020 Strategy as a framework. Despite this, the main recommendation of the Europe Strategy related to an increase of participation of women in the labour market as a necessary requirement in achieving objectives related to full employment is completely ignored. Besides availability of jobs, reconciling work and family responsibilities is a key factor for the participation of women at the market and as such a priority in European employment policies. Reconciling work and family responsibilities is not included into any of the documents addressing the employment policies in Serbia. Although one of the main reasons for inactivity of women in the labour market is care for children, elderly and vulnerable, this is not recognised as a problem by policy makers. Thus, there are no objectives or measures which would solve the inactivity of women and contribute to eliminating inequality in employment. Employment policies in Serbia do not recognise gender inequality in the labour market – presentation of data per gender is only given for rate of (un)employment and activity; problems and challenges in the labour market are not defined from the equality perspective; there are no mechanisms guaranteeing that proposed measures will not cause inequalities; non-active women and women not registered with the

53 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, available at https://www.refworld.org/docid/43f3067ae.html

54 Official Journal RS, No. 4/2016

55 J. Pantović., S. Bradaš and K. Petovar, Status of Women in the labour market, Belgrade 2017

National Statistical Office are not recognised as a target groups and thus, do not have access to employment services. In the 2019 National Action Plan, as it is the case with all previous documents, there is no data analysis which would allow for the definition of problems from the perspective of gender equality for men and women and measures which would remove the gender gap in the labour market.

On 16 May 2012, the Committee for Economic, Social and Cultural Rights addressed the letter to states[56] inviting them to use all available means to ensure respect, protection and achievement of economic, social and cultural right at time of crisis. The Committee emphasises that austerity measures represent temporary measures limited to times of crisis and that they need to be necessary and proportionate and cannot be discriminatory. They also need to contain measures allowing for social transfer in order to reduce growing inequalities in times of crisis and thus must indicate the minimum content of rights and social protection.

Austerity measures which were put in place at the end of 2013 and are still in force today, had an impact on employees in public sector, most of who are employed in education and health sector, majority being women. Amendments to the Law on Budget System prohibited the employment in the public sector with regard to vacant job positions and this prohibition is extended to 2019.[57] This prevented the full time employment and opened the door for precarious work – fixed term employment and occasional and casual work. This is further reinforced with the passing of the Law on the Temporary Regulation of the Basis for Calculation and Payment of Salaries, Wages and other Permanent Income with Public Funds Users which reduced salaries for 10% for all those who earn more than 25000 RSD. "Reform processes" continued with the passing of the Public Administration Reform Strategy[58] and the Law on Employees in Public Services[59].

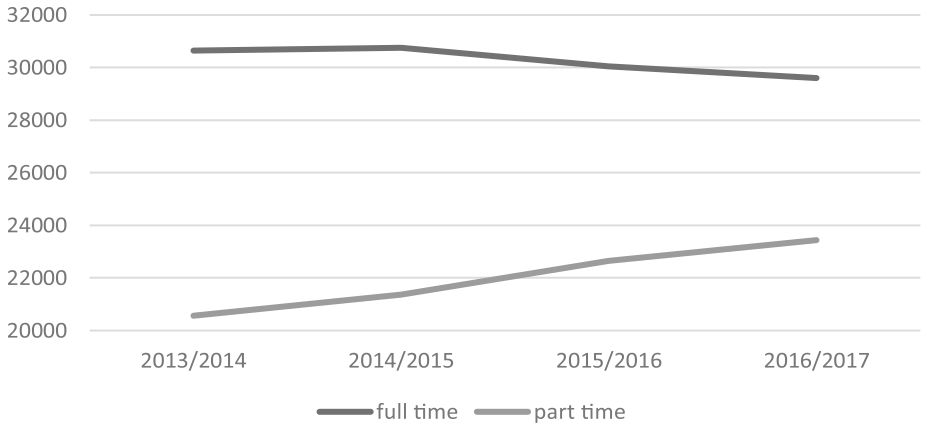
The position document of the Ministry of Public Administration and Local Self-Government[60] clarifies the reform objectives: the reform will be carried out through two phases: rationalisation (reducing the number of employees) and reorganisation (change of structure, administration and functions). Thus, this is the reduction of number of employees without any analysis followed by reorganisation. The same document clarifies what is considered to be the greatest problem of the public administration: EMPLOYEE IS AN EXPENSE. Thus, policy makers do not regard an employee as a resource of significance for the provision of quality services and whose knowledge and abilities contribute to organisational development; an employee is regarded as an expense: "due to historical inheritance and solidarity that decorates us, social transfers (above all pensions) are extremely high, and interest expenses are unsustainable. As these expenses cannot be reduced in the short term, it is necessary to rationalise expenditures related to employees."

In practice, the rationalisation led to the following outcomes in just two years: the number of employees is reduced for over 11.400 in three main sectors – health (7000), education (2150) and internal affairs (2300), while 21% of employees took redundancy packages and 40% retired and other employees left for different reasons.[61] This report does not say anything on the consequences of these measures on the quality of public services and the impact they had on employees.

56 Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012.
57 Official Journal RS, No. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 – corrigendum, 108/2013, 142/2014, 68/2015 – other statute, 103/2015, 99/2016, 113/2017 and 95/2018.
58 Official Journal RS, No. 9/2014, 42/2014 (corrigendum).
59 Official Journal RS, No. 113/2017.
60 Modern state – rational state, http://mduls.gov.rs/wp-content/uploads/Pozicioni-dokument_Moderna-drzava-racionalna-drzava4.pdf
61 Report on the Implementation of the Public Administration Reform Action Plan 2014-2016.

There is limited information which would allow for the assessment in this area – the NSO provides data on employees in public sector; however, those data are not classified according to gender nor are they classified according to the type of work. According to the information in the Statistical Annual Bulletin of Serbia on teachers in primary and secondary schools, the number of full time employees is decreasing, while there is an increase in fixed term employment (image 2). The number of fixed term employment amounted to 40,1% of staff employed in 2013/14, while in 2016/17 it amounted to 44,2%. Most teachers are women (72%).

Image 2 : Teachers in primary and secondary school according to working time



Sources: Statistical Yearbooks of the Republic of Serbia; presentation by the author

Due to the freeze on employment which is in force for six years now, the number of fixed-term employees is growing. According to data of the Ministry of Education, Science and Technological Development on vacant job positions in primary and secondary schools in the academic year 2017/2018, only 60% of employed persons were full time employed. In 2016, 66.5% of employed persons were full time employed.

However, this is not the end of demise of the public sector, above all education and health sectors. The new Law on Employees in Public Services opens up the space for exploitation of employees in public services under the pretext of specific regulation of gender in this area.

The objective for passing this statute, as stated in the explanation, is to create transparent and quality commencement of employment, as well as the need to select the best candidates in public service from the very beginning. This is not reflected in the statutory provisions.

Article 50 states that the competition is carried out only in cases where the vacant job positions are not filled by transfer or take over. This will lead to disciplining the employees through possibility of introducing further workload; permanent or temporary transfer and a secondment to other employer without the consent of the employee. At the same time, this provision will significantly reduce the possibility of full time employment in public services.

The 2014 Amendments to Law on Pension and Disability Insurance[62] rose the state

62 Official Journal RS, No 34/2003, 64/2004 - Decision USRS, 84/2004 – other statute, 85/2005, 101/2005 - other statute, 63/2006 – Decision USRS, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014 and 73/2018.

pension age. Up to 2032, men and women will retire at the age of 65. The motive for this amendment is to create equal opportunities for men and women as there was already possibility for women to retire at 65. The real reason for this change is to make savings, while gender was not taken into consideration. According to the 2017 Annual Bulletin of the Pension and Disability Insurance Fund[63] (table 5), an average life expectancy for insured women in cases of termination of right to receive pension due to death is lower for women across all categories than amongst men. The difference is most prominent with self-employed insured parties. The average age of deceased pensioner is higher than the average age of deceased men within general population, while results are reversed for women. By increasing the pension age, women will enjoy right to pension for a shorter time period and thus, the state achieved its goal to save.

Table 5: Age of old age pension recipients whose right was terminated due to death according to insurance and sex

	Employed		**Self employed**		**Farmers**	
	Men	Women	Men	Women	Men	Women
2008	75	75	75	72	77	74
2009	76	75	75	73	78	74
2010	76	75	76	71	78	75
2011	76	75	75	69	79	76
2012	77	75	75	71	80	77
2013	77	75	75	71	80	77
2014	77	76	76	71	81	78
2015	77	76	75	68	81	79
2016	77	76	75	68	81	79
2017	77	76	75	68	82	80

Source: the 2017 Annual Bulletin of the Pension and Disability Insurance Fund

Gender or social impact of these measures has not been considered in any of the statutory or strategic documents which introduced austerity measures. Besides not having a temporary character, as those measures are extended after achieving financial consolidation, those measures are by their nature discriminatory as they had the greatest impact on women who represent a majority of employed persons in public sector. Austerity measures are not followed by a provision of social transfers. Contrary to this, allocations for social transfer are reduced every year (see the analysis of Article 9) and the protection of unemployed persons is reduced (see the analysis of Article 6).

In the General Comment No. 19, the Committee for Social, Economic and Cultural Rights "underlines the need for a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value." In Concluding Comments, the Committee expresses concerns about the low employment rate of women, widespread gender discrimination in employment and disproportionally high unemployment rate of young, low educated persons and older women.

The main labour market indicators expressed through rates of employment, unem-

63 Available at http://www.pio.rs/images/dokumenta/statistike/2017/Godisnji%20bilten%20za%202017%20JUL2018.pdf

ployment and inactivity (table 6) indicate that men and women in Serbia do not have equal opportunities of employment. There is a gap across all indicators from 2014 to 2017. The high rate of inactivity with working age women is especially disconcerting. Women are more prone to become inactive when faced with inability to find job which is confirmed by data on underemployment – 56,6% of inactive population are women who would like to work but are not actively seeking work. The main reason for inactivity of working age population both with men and women is education (38,6% of inactive men and 27,9% of inactive men), while with women this is also due to caring of children and elderly (22,3% of inactive women compared to 8,4% of inactive men).

Table 6: Main labour market indicators according to sex from 2014-2017 (in %) for working age population (15-64)

	2014		2015		2016		2017	
	men	women	men	women	men	women	men	women
Employment rate	57.9	43.8	59.3	45	61.9	48.5	63.9	50.8
Unemployment rate	18.5	20.5	16.9	18.8	14.8	16.2	13	14.4
Inactivity rate	28.5	44.6	28.3	44.3	26.9	41.8	26.2	40.4

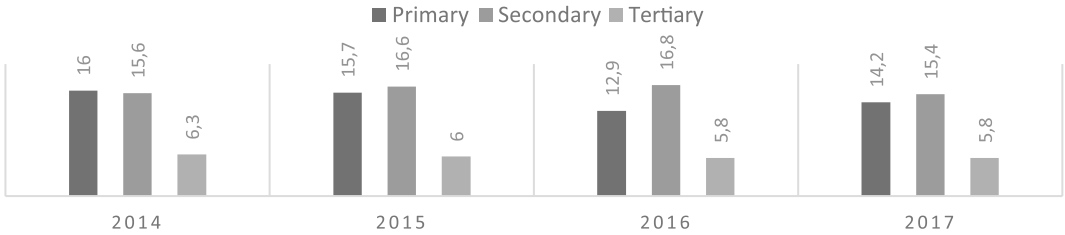
Source: Eurostat, Labour Force Survey, author's presentation

If we examine employment by looking at education, there is a correlation between higher levels of education and higher employment rates both with men and women. However, it should be borne in mind that underemployment is most frequent among highly educated men and women. Almost half of employees with high or higher education work in professions which require lower levels of education than what employees have (see the analysis of Article 6). Gender gap is present with regard to all three levels of education in the aforementioned period (image 3). The highest levels of gender gap are present with employees with high school education – in 2017, there were 65,8% of employed men and 50,4% of employed women. In the same year, with regard to employees with no qualification, there were 45,9% of employed men and 31,7% of women, while 79% of highly qualified men and 73,2% of highly qualified women.

Source: Eurostat, Labour Force Survey, calculations and presentations by the author

Younger and older women are in more precarious positions in the labour market than their age group (image 4), whereby the gender unemployment gap is the most apparent with young people (in 2017, the unemployment rate of young women was 36,3%, while 29,2% with young men), while the gender employment gap is the most prominent with older people (in 2017, the employment rate of older women was 44,1%, while 62% with older men). Although there is a higher employment rate among age group 25-49 compared to other age groups, even in this category there is a gender gap – in 2017, the employment rate of men was 77,1%, while with women it amounted to 66.3%.

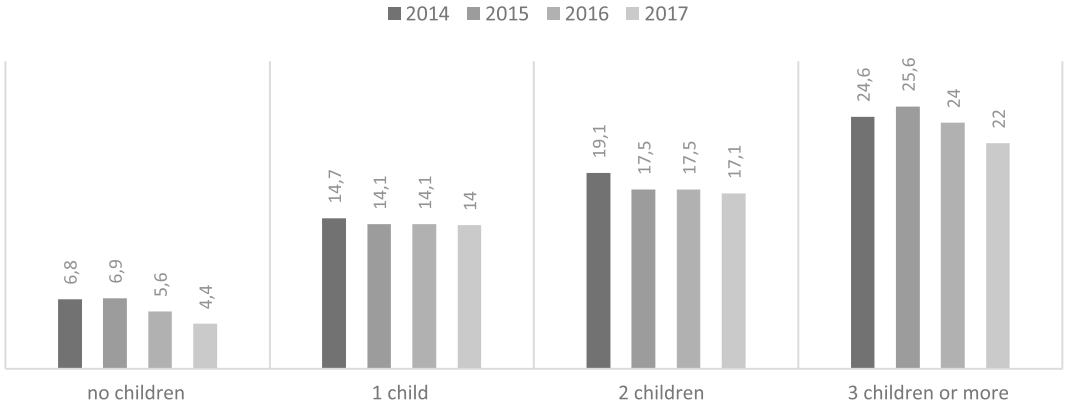
Image 3: Difference between the employment rate of men and women aged 15-64 according to education level, in perentage points



Source: Eurostat, Labour Force Survey database, calculations and presentations by the author

According to the report of the Commissioner for Protection of Equality, the most frequent reason for discrimination in employment is sex, followed by marital and family status. Data on gender gap generated on the basis of employment rates and number of children confirm this finding (image 5). The lowest gap is present with men and women who do not have children and the gap increases with number of children. In 2017, the gender gap between men and women who have three and more children was five times higher than gender gap with men and women without children.

Image 5: Difference between the employment rate of men and women aged 20-49 by number of children, in percentage points



Source: Eurostat, Labour Force Survey, calculations and presentations by the author

Besides discrimination of women who have children, there are other reasons why women with children are excluded from the labour market, such as the lack of childcare service and the inability to reconcile work and family responsibilities. In that respect, inactive women who would like to work are also affected alongside employed women. Rulebooks in force on the preschool enrolment give precedence to employed parents. If only one parent is employed most often the man, mother will be forced to stay with the child due to inadequate preschool capacities. According to information stated in the Third National Report on Social Inclusion and Reduction of Poverty in Serbia[64], 36% of children between 6 months and 5,5 years of age were included in preschool activities. The age group from 6 months to 3 years (20%) is the least included in preschool activities, while the highest num-

64 The Government of the Republic of Serbia, Third National Report on Social Inclusion and Reduction of Poverty in the Republic of Serbia 2018

ber of children attending preschool is the age group from 4 to 5,5 (39%). The inclusion of children above 4 years of age in the compulsory preschool programme is significantly lower that the objective set out in the Education Development Strategy until 2020. According to the Strategy, 80% of children are to be included in preschool activities, which is far from the EU objective of 90%. In 2017, 11067 children were admitted to preschool programme, while 7887 were not admitted due to lack of places.

Survey data on the status of women in the labour market[65] indicate the segregation according to professions and areas of activity. Men are dominant in four professions: managers, artisans, factory workers and military profession. Women are more dominant in administrative job positions, while participation of men and women is equal in other professions. Most women work in service sector and less in agriculture and industry. Most men work in service sector; however, with lower levels of participation than women, while men are more numerous in industry and agriculture. When we examine the relationship between men and women within each sector, it may be concluded that agriculture and industry are male sectors, while integration is present in service sector. Within the service sector, women are dominant in education and health sectors.

The labour market in Serbia is characterised by high levels of informal employment – every fourth employee works in the informal sector – in 2017, the rate of formal employment of men amounted to 52.5% and 40,9% for women,[66] while the rate of informal employment for the same age group amounted to 17,85 for men and 19,5% for women. More than half of informally employed persons work in services and agricultural sector. Among informally employed women, most of them are contributing family workers (42,3%), followed by self-employed without employed persons (38.5%) and employed workers (19,3%), while men are mostly self-employed without employees (56.9%), followed by employed workers (27.3%) and contributing family workers (15.2%). Among contributing family workers who are most disadvantaged at the labour marker, 71,2% are women. Self-employed women in most parts work in informal sector (57% compared to 42% of men). The employment action plans do not mention the problem of informal employment, while measures taken by the state are focused on the elimination of grey economy by conducting inspection and identifying unregistered workers, despite the fact that they account for only 7% among informally employed. Though the Strategy recognised the problem of informal employment, there is no measure which refers to contributing family workers in the household or formalisation of work for self-employed women.

The analysis of inequality in salaries is further impeded by the lack of sensitive gender data in the official statistics. In November 2017, the National Statistics Office changed the methodology for calculating average salaries, thus there is no data according to sex. Until December 2017, there was information on average salaries according to sex. Findings of the 2014 Employment Structure Pilot Survey[67] demonstrate that gender inequality exists in most sectors, both in public and private sectors at all levels of education. The highest salary gap is in the process industry (18.6%) and information and communication sector (14.9%). Even in sectors where women are more predominant, men are in job positions which are better paid: in the financial sector men earn 12,9% more than women, in the health sector men earn 12,6% more than women, and in the trade sector men earn 11,1% more than women. Women earn more in other service sectors (22,7%), transport (4.9%), administration (4,5%) and construction (3,5%); however, these are sectors where employees have lower salaries. The most prominent salary gap is with individuals with low levels of educa-

65 Status of Women in the labour market, op.cit.
66 Author's calculations on the basis of information contained in the Labout Force Bulletin, the National Statisitcal Office.
67 Status of Women in the labour market, op.cit.

tion (22,4%) and highly educated women (17.6%). If we examine the salary gap according to professions, men earn more than women in all professions, whereby the differences are most evident in agriculture (40,1%) and in the artisan sector (30,6%). In professions where employed women are experts or artists (service and trade professions), women earn 15% more, that is 13,4% less than men.

3. PROTECTION OF RIGHTS IN THE AREA OF GENDER EQUALITY

There are two main mechanisms for the protection of equality and rights of individuals – the Commissioner for Protection of Equality and the Ombudsperson for Serbia. There is also the Labour Inspectorate, which is responsible for inspection in employment, employment relations and protection and safety at work.

The findings of the assessment of discrimination in the labour market of Serbia[68] indicate that women are more exposed to discrimination in employment and at work. Out of total number of women seeking jobs and attending job interviews, 52% encountered some form of discrimination in employment. Data on employed women, suggest that 57,7% encountered some form of discrimination at work. Despite widespread discrimination in the labour market, only a small proportion of women exposed to discrimination reported those incidents: one in ten women exposed to discrimination at work submitted complaints to any of institutions in charge, while this amounted to 7,8% among those discriminated in employment. The most common reasons for not approaching relevant institutions, independent bodies, NGOs or individuals is the belief that those women can solve problems on their own (34,8% of interviewees), while 34,5% believed no one can help them.

According to the reports of the Commissioner for Protection of Equality[69], the highest number of complaints each year is in relation to discrimination in area of labour and employment. In the period from 2014 to 2018, most complaints in area of labour and employment were submitted by women (57,3%). Sex, marital and family status and age were most common bases of complaints. The reason why sex is stated as most common basis for discrimination in employment and at work, results from the fact that women are allocated to lower grade job positions or are dismissed from work after coming back from maternity leave or leave to nurse a child, with the exception in 2015, when the most common reason was forced retirement. The adoption of the 2015 Law on maximum number of employees in public sector caused many women and professional organisations to approach Ombudsperson for discrimination.

Table 7: Number of complaints to Commissioner for Protection of Equality in employment and at work according to sex

	2014		2015		2016		2017		2018	
	M	F	M	F	M	F	M	F	M	F
No.	90	78	92	160	85	95	84	60	70	112
%	53.6	46.4	36.5	63.5	47.2	52.8	58.3	41.7	38.5	61.5

Source: Reports of the Commissioner for Protection of Equality; calculations and presentations by the author

In the Commissioner's reports conclusive with 2016, the data on complaints in the area of gender equality are presented according to the type of rights (special rights in area

68 Vesna Nikolić-Ristanović et al., Discrmination of women at labour market in Serbia, Belgrade, 2012
69 Reports are available at http://ravnopravnost.gov.rs/izvestaji/

of gender equality; economic, social and cultural rights; civil and political rights; rights to good administration). In the 2016 Report, the number of complaints in the area of gender equality is presented only in relation to special rights in the area of gender equality which is something to bear in mind in interpreting data on complaints. The change in reporting coincides with the appointment of the new Commissioner. In 2015, the number of complaints in the area of gender equality rose for 76% compared to previous year, whereby 387 rights were breached in 232 complaints. The highest number of complaints referred to breach of special rights in the area of gender equality (50,7%) and breach of economic, social and cultural rights (38,2%). With regard to economic, social and cultural rights, the most common breaches include rights to social protection and protection of family, mothers and single parents, as well as the right to work. From 2016, the number of complaints decreased, though the highest number of complaints still relates to special rights (table 8). In all years, the highest number of special rights violations refers to deprivation of remuneration during a leave of absence due to pregnancy, maternity leave, leave of absence for nursing a child, domestic abuse and violations of rights or pregnant women and women who just gave birth.

Table 8: Complaints and violations of rights in the area of gender equality

	2014	2015	2016	2017	2018
Number of complaints	132	232	142	118	84
Number of violations	180	387	194	174	121
Special rights in the area of gender equality	61.7%	50.2%	49.0%	56.3%	45.5%

Source: Reports of the Commissioner; calculations and presentations by the author

The annual reports of the Commissioner indicate that the highest number of complaints for the violations of rights in the area of gender equality refers to public administration (in more than 90% of complaints). Thus, those who should be guaranteeing and protecting those rights, violate them the most.

The employment inspection supervises the implementation of the Gender Equality Law – whether the employer adopted a plan of measures to eliminate and smooth the effects of unequal gender representation; whether the employer made differences on the basis on sex in the process of job advertising and job selection; whether an employee, regardless of sex, is paid the same salary for same type of work or work of equal value. According to data available in the 2015 Labour Inspectorate Report, inspectors conducted 3157 supervisions and adopted two decisions requesting the removal of deficiencies. In the 2016 Report, there is no data available on conducting supervisions related to implementation of Gender Equality Law. In 2017, 2153 supervisions showed no deficiencies.

It is hard to explain how in 2015, when the highest number of women reported discrimination in employment and at work and when the number of complaints in the area of gender equality doubled, carried out inspections only reported an ideal state of affairs in the implementation of the Gender Equality Law. Only two decisions identifying deficiencies were issued to that effect. According to answers submitted by Serbia to additional questions posed by the Committee on Social, Economic and Cultural Right, the following data are available: in 2011, inspectors issued 51 decisions requesting elimination of deficiencies in 3050 inspections; in 2012, inspectors carried out 4264 inspections related to the implementation of the Gender Equality Law and issued 72 decisions requesting elimination of deficiencies; in 2013, inspectors carried out 456 inspections related to the implementation of the Gender Equality Law and issued 82 decisions requesting elimination of deficiencies.

These changes in inspectors' conduct cannot be justified by the improvement of the gender equality, especially bearing in mind other data available. This may be explained by poor quality inspection oversight with regard to supervision of employees who are present at the inspection, as well as due to inadequate approach to problem of gender equality in general, and especially in the labour market. Inadequate approach to gender equality in the labour market occurs at two interrelated levels: the MLEVSA's capacity for addressing gender equality problems and the capacities of the labour inspectors to recognize cases of breach of rights and discrimination in the area of labour and employment. The Labour Inspectorate, within the MLEVSA, is obstructing the adoption of the new act and does not regard gender equality as an agenda priority. In 2009 and 2010, more than 300 inspectors completed training for recognizing the cases of gender discrimination and appropriate ways to address them. As it was stated in the 2011 UN Women General Report: "we acquired knowledge on concepts of gender and sex, forms of direct and indirect gender based discrimination at work, as well as knowledge on national and international instruments regulating this area."[70] According to 2015, 2016 and 2017 Working Reports of the Inspectorate, there is a discontinuity in knowledge related to gender equality and there is a need to organise new trainings. Although gender equality training is on the list of trainings organised by the National Academy for Public Administration, according to the information available in 2018 Working Report of the Academy[71] only 26 participants completed this training.

70 According to Vesna Nikolić-Ristanović et al., Discmination of Women in the labour market in Serbia, op.cit.
71 Available at http://napa.gov.rs/wp-content/uploads/2019/01/Informator%20o%20radu%20NAJU_31_12_2018.pdf

ARTICLE 6 – RIGHT TO WORK (GENERAL) AND EMPLOYMENT

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

1. EMPLOYMENT OPPORTUNITIES AND DIGNIFIED WORK

The EU Screening Report for Serbia on Chapter 18 (Statistics)[72], requires that Serbia introduces statistics on vacant job positions. Despite the fact that the Programme for development of Official Statistics 2016-2020[73] sets out a plan to introduce new survey by selecting companies with the aim of securing data on the number of vacancies according to areas of work and groups of professions, no similar research was yet carried out. The only available data on vacant job positions can be found in the Statistical Annual Report of Republic of Serbia (table 9) and according to information of the NSO. The number of vacancies is negligible when compared with the number of unemployed persons registered with the NSO and with the number of employed persons. Information on vacant job positions is not available to majority of unemployed persons or to employment advisers who should assist unemployed in identifying job opportunities. The explanation for filling vacant job positions at the informal labour market can be found in an imbalance between job demand and supply – demand is significantly lower than supply which is evidenced by data confirming that only three out of 100 employees received employment in 2017.

Table 9: Vacant job positions and employment from 2013-2017

	2013	2014	2015	2016	2017
Vacant job positions	3690	3523	6033	5988	6704
Commencement of employment	97375	105374	110593	111559	113985
Termination of employment	95209	113170	105839	104784	98914
Registered employees	17876	19357	20566	22092	22375
Unemployed registered with the NSO	774890	767435	743158	713153	650573

Source: 2018 Statistical Annual Bulletin

According to the 2017 NSO Annual Report on Employment, the highest number of employees is employed for fixed term (55%) or for occasional and casual work (25%), while only 20% is full time employed. This means that many of them will soon become unemployed.

72 Available at http://www.mei.gov.rs/upload/documents/skrining/skrining_izvestaj_pg_18.pdf.
73 Available at http://www.stat.gov.rs/media/2289/program_2016-2020.pdf.

According to information from the 2017 NSO HR Plan[74] 582 persons were employed as employment advisors whereby one adviser is responsible for 1180 unemployed persons. Since unemployed persons are under obligation to report to the advisor every three months, the advisor can only devote 15 minutes to each unemployed person provided that he or she is only performing this task. This also means that on a daily basis, the advisor has to provide services to 21 unemployed persons. Bearing this in mind, unemployed persons cannot achieve right to receive services, though the NSO has an obligation to provide those services.

Measures of active employment policies (training, employment encouragement and direct creation of job positions) are not available for majority of unemployed persons registered with the NSO. According to the 2017 NSO Annual Report, the following information is available - only 838 unemployed persons were included in training organised in the labour market and upon the request of employers; 12 469 individuals were included in training for entrepreneurship development; 3124 individuals were included in vocational training; 400 individuals in programme for acquiring practical skills; 2700 were included in subsidized employment programmes; 4350 included in public works, while 2837 individuals were granted self-employment subsidies. Only 4.1% of unemployed persons registered with NSO were included in active employment policies measures. Majority of measures implemented by NSO do not lead to stable and paid employment; contrary to that, the employees are engaged on occasional and casual work which is not appropriately remunerated.

Bearing in mind a small number of vacant job positions, a small number of unemployed persons included in active employment policies measures and insufficient HR capacities of the NSO, one may question the obligation prescribed by Law on Employment and Unemployment Insurance,[75] whereby unemployed persons have to report to NSO at least once in three months, while persons receiving benefits have to report every month. In cases of failure to report to NSO, unemployed are erased from NSO records and the recipients of benefits loose right to benefits. Unemployed person may be erased from the record for other reasons. One of the controversial provisions that need to be analysed is the obligation of the unemployed person "not to refuse offered appropriate employment". Appropriate employment is defined in Article 13:

"During the first 12 months from the registration with the National Statistical Office, appropriate employment within the meaning of this statute, constitutes an employment for the acquired level of education and subject area.

Upon expiry of 12 months, an appropriate employment for unemployed person constitutes an employment for tasks requiring lower or same levels of acquired education for same or related subject area, in accordance with the individual employment plan and taking into account working experience and situation in the labour market."

Appropriate employment is defined only in relation to the level of education and not in relation to working conditions and competences of an employee for performing tasks. If a qualified food technology engineer who is registered for more than a year is offered a job at butcher's (lower levels of education and related subject area) and he/she refuses the job due to lack of competences for performing this job (he/she went to comprehensive high school) or he/she is not happy with working requirements (e.g. low salary) he/she will be punished by being erased from the records. In this manner, he or she will be de-

74 Available at http://www.nsz.gov.rs/live/digitalAssets/7/7911_kadrovski_plan_-_tabelarni_prikaz_-_trenutno_stanje_i_plan_za_2017__godinu.pdf

75 Article 32 of the Law on Employment and Unemployment Insurance, Official Journal RS, No 36/2009, 88/2010, 38/2015, 113/2017 and 113/2017 – other statute.

prived of right to freely choose and accept offered job. Upon request of the employer, the NSO does not verify the working conditions (offered salary, safety and protection, job requirements) which is confirmed by information contained in the 2017 NSO Annual Report stating the following reason why unemployed persons refused to accept offered jobs: "salary below standards for respective profession; unpaid overtime work; commuting distance from work;."[76] Erasing unemployed persons from records reduces the number of registered unemployed persons and at the same time reduces the number of newly registered. The percentage of unemployed persons who found work out of number of unemployed persons who are no longer registered amounted to 31% in 2015; 37 % in 2016 and 36% in 2017. This means that one third of unemployed is "erased" from the records.

In media appearances in recent years, state representatives emphasise the success in reducing the unemployment rate and in increasing the employment rate as evidenced by the Labour Force Survey (LFS). However, a comparison of the main indicators in the labour market in Serbia[77] with the European countries indicate that rate of employment for working age population is one of the lowest in Europe, while the unemployment rate is one of the highest. The sectoral employment structure indicates a high level of informal unemployment, vulnerable employment, employment in agriculture, medium technological complexity industry, and traditional service areas. Imbalance between the supply and demand of working force results in high underemployment and deteriorates the quality of work; more precarious forms of work are present and salaries for most employed persons do not provide them with decent life.

Due to a long-term lack of jobs in the formal sector, widespread poverty and low levels of unemployment, every fourth employed person in Serbia works in the informal sector. In comparison to 2014, a number of informally employed persons increased by 6,8%, while according to the professional status, this led to reduction of contributing family workers by 24%, increase of self-employed persons by 34% and increase in self-employed without employees by 24%. Compared to 2014, there is a change in the sectoral structure of informal employment: the highest number of informal employment in 2017 was in the service sector (47,3%) and agriculture (40%); in 2014 agriculture generated higher percentage of informal employment (53%) than it was the case in the service sector (43%).

Table 10: Employees in informal sector older than 15 according to professional status (in thousands)

	2014	2015	2016	2017
Total	542.5	523.9	599.2	579.2
Employers	3.1	3.4	2.5	1.6
Self-employed without employees	225.6	185.6	245.9	279.4
Employed workers	101.9	125.8	132.9	136.5
Contributing family workers	211.9	209.2	217.9	161.6

Source: NSO: the 2014 LFS, the 2015 LFS, the 2016 LFS and the 2017 LFS

It is clear that measures for elimination of informal economy focused on strengthening inspection as well as measures focused on raising awareness did not led to positive results. The number of informally employed persons rose out of the total number of employed and self-employed persons, thus groups which are within the remit of inspection. Measures

76 The 2017 Annual Report of the National Employment Service available at: http://www.nsz.gov.rs/live/digitalAssets/9/9467__izvestaj_o_radu_i_-_xii_2017.pdf

77 See: S. Bradaš, Statistika i dostojanstven rad (Statistics and Dignified Work), Belgrade 2017

encouraging transfer from informal to formal sector are still lacking. Focus on achieving full employment and creation of productive and quality work in the formal sector in the labour market in Serbia are still not seen as the most effective measures for elimination of grey economy at the state level.

A flexibilization of labour legislation in 2014 led to the following: an increase in precarious jobs in the labour market; an increased number of fixed-term employment and occasional and causal employment; increased number of other forms of underemployment and increased number of atypical employment. From 2014 to 2017 (table 10) a number of full time employed persons increased by 5%, while the number of fixed-term employed persons increased by 25%. According to Eurostat data, the number of employees with fixed-term contracts compared to the total number of employed persons is much higher than the average number in the EU, with a growing tendency in respective time frame: in 2014, there was 18,8% of fixed-term employees, while in 2017, this amounted to 22,7%. Thus, the number of employees, according to duration of employment, demonstrates that the number of short-term employment is increasing. The number of employees with three months employment in 2017 increased by 2.5 times compared to figures in 2014. Although, the Labour Law limits the fixed-term employment for 24 months, 11% of employees on fixed-term contracts worked for longer than two years. The main reason for fixed-term employment with 91% of employed persons is the inability to find a full time employment.

Table 11: Employed workers from 15-64 years of age (in thousands) according to the type of contract and duration of fixed-term contract

	2014	2015	2016	2017
Total	1741.2	1791.5	1849.4	1928.9
Full time	1414.4	1403	1412.5	1491.7
Fixed term/temporary	326.8	388.6	436.9	437.2
Less than 1 months	16.5	25.4	30.3	27.3
1-3 months	63	107.1	145.4	167.1
4-6 months	56.5	75	92.9	101.4
7-12 months	59	59.2	60.1	64
13-24 months	41.8	36	36.3	29.2
Over 24 months	90.1	85.8	72	48.3

Source: Eurostat - Labour Force Survey; author's presentation

Only 56% of individuals with full time employment out of total number of employed persons have relatively secured position in the labour market, while 23,7% of employees are in a vulnerable position (18.6% of self-employed without employees and 5,1% of contributing family workers).

Indicators of underemployment used by Eurostat are the following: number of part-time employees (persons wanting to work more); persons seeking jobs but are not able to commence work in the following two weeks and persons who want to work and are able to work but are not seeking job. Data generated according to three indicators are presented in Table 12. The percentage of underemployment is Serbia accounts for 14,4%. By adding the number of underemployed persons of 457,5 thousand to number of unemployed persons in 2017 amounting to 435,2 thousands, we are provided with a more accurate assessment of the scope of unemployment in the labour market in Serbia.

Table 12: Additional indicators of underemployment for persons from 15-74 (in thousands)

	2014	2015	2016	2017
Want to work longer hours	157.8	161.2	176.0	161.7
Want to more but are not seeking work	321.7	371.3	351	281.2
Seeking work but cannot start work in the following two weeks	23.7	18.5	14.9	14.6
Total	503.2	551.0	541.9	457.5

Source: Eurostat - Labour Force Survey; author's presentation

Beside evident underemployment in the labour market in Serbia, there is also invisible underemployment. Data on invisible underemployment which refer to adjustment of qualifications of employed persons with required knowledge and skills for performing their work are presented in Table 13. Although the rate of employment is the highest among most qualified individuals, this is the result of invisible underemployment. 44,7% of highly qualified individuals are employed in professions which require lower degree of qualification than what those individuals have. Among individuals with secondary level education, there is a greatest extent of correspondence between their own qualifications and the professional requirements (86,4%), while employees without any qualifications are mostly employed in job positions which require qualifications those individuals do not possess (81%). These data indicate the situation in the labour market: there is the greatest demand for jobs requiring middle level qualifications (professions in agriculture; trade and services). When the number of highly qualified individuals is greater than the number of jobs requiring this level of qualification, those individuals accept to work in job positions which are available and require lower levels of qualification. The other option for highly qualified is to leave the country. According to the latest Gallup's survey on potential migration index,[78] more than half of young people between 15-29 years of age (46%) and 27% of highly qualified wanted to leave Serbia at the time of conducting the survey.

Table 13: Employees from 15-64 in 2017 according to profession and education (in thousands)

	Low	Middle	High
Total	500.9	1584.9	708.8
Managers, officials and legislators	1.1	31.1	48.5
Experts and artists		32.1	343.4
Technicians and related professions		196.6	127.3
Administrative employees	5.2	132.9	61.1
Service and trade professions	30.1	341.5	55.8
Farmers, forest rangers, fishermen and related	290	229.5	22.1
Artisans and related	40.1	260.9	20.2
Machine operators, fitters and drivers	38.2	207.7	14.7
Simple professions	94.5	141.8	9.6

Source: Eurostat - Labour Force Survey; author's presentation

78 Potential Net Migration Index, available at http://news.gallup.com/migration/interactive.aspx?g_source=link_newsv9&g_campaign=item_245204&g_medium=copy

Atypical working hours (working in shifts; working on evening shifts; night workers; work on Saturdays/Sundays) are one of the indicators of quality of employment, as it has direct consequences on social and family life of an employed person. In 2017 in Serbia, 59,3% of employed persons had atypical working hours which is much higher than EU average of 38,1% of employed persons. Beside the increase of employees with atypical working hours, from 2014 the number of average working hours also increased. Full time employees worked on average 41,9 hours per week, while in 2017 this amounted to an average of 44,2 hours per week.

In its General Comments No 18, the Committee for Economic, Social and Cultural Rights emphasises that work specified in Article 6 of Covenant must be dignified in regard to respects of fundamental human rights as well as rights regarding safety and remuneration. A work needs to allow for income that enables an individual to support himself/herself and member of his/her family.

From November 2017, the National Statistical Office started to publish data on average salaries based on administrative information. Data on salaries are not classified according to sex, profession or education as it was the case with previous surveys. The salary median is provided for all of Serbia and all professions, while data according to pay scales are missing. Thus, it is difficult to gain an appropriate insight. More detailed data are provided in the NSO Statement[79] - it provides data on salaries of employed persons in November 2017 which are processed according to a new methodology. In 2017, most employed persons received a salary which was within the following range – from 20000 to 25000 RSD. Since the minimum salary in 2017 was 22880 RSD, this means that every fifth employed person received below minimum salary. 50% of employed persons received a salary which is equal or lower than 36788 RSD, while only third of employed persons received an average salary higher than minimum and amounting to 47247 RSD. A minimal consumer goods basket, which is calculated on the basis of spending by the 30% of most deprived households, amounted to 36220 RSD in 2017, which means that 40% of employed persons were not able to afford a minimal basket of goods. It should be borne in mind that 51% of employed persons in Serbia are the only bread winner in their household[80]. The average salary in November was sufficient to cover only 72% of expenses from a minimal basket of goods which is calculated according to household spending between third and eight deciles.

According to data collected within the Pilot Survey on Salary Structure for 2014, every fifth employed person is exposed to risk due to low salaries. The percentage of employed persons with low salaries (lower than 2.3 Median salary) is the highest among employed in retail (48%), hospitality (42%), and construction sector (33%), among employees without qualifications (47,1%), while it amounts to 40,9% among employees performing occasional and casual work.

Salaries of most employed persons do not enable them to satisfy their own needs and family needs which are confirmed by the European Working Conditions Survey[81]: more than 2/3 of employed persons reported that they struggle to make ends meet.

79 Available at http://pod2.stat.gov.rs/ObjavljenePublikacije/G2018/pdf/G20186001.pdf
80 European Study on Working Conditions available at: https://www.eurofound.europa.eu/data/
81 Ibid.

2. EMPLOYMENT POLICIES AND EMPLOYMENT PROTECTION OF THE RIGHT TO WORK

The right to work, as indicated in the General comment 18, requires the formulation and implementation of an employment policy that focuses on stimulating economic growth and development, raising the standard of living, meeting working force requirements and overcoming unemployment and underemployment. International Labour Organisation[82], considers that national employment policies, in addition to being a job creation programme, should also include the consideration of a number of social and economic issue and thus not only affect the field of work and employment, but the overall economy. Analysis of the National Employment Action Plan (hereinafter: NEAP) for 2018,[83] which is supposed to operationalize the National Employment Strategy on annual level, shows a complete absence of job creation direction, a lack of identification of the key issues/challenges on the Serbian labour market and consequently no correlation between the set priorities and the conditions on the labour market. The overview of labour market conditions, which should serve as the basis for identifying key issues on the Serbian labour market is reduced to an incomplete and unsystematic presentation of data, without the necessary analysis or interpretation. The NEAP does not have indicators that could be used to measure progress with regards to the right to work.

NEAP does not recognise any of the problems on the labour market that we have analysed. It does not include any measures aimed to reduce the informal employment rate although it refers to data testifying to how widespread this phenomenon is. The growing problems of precarious work are not recognised in the analysis of the labour market conditions; rather, the planned active employment policy measures are inducive of precarisation on the labour market: the majority of unemployed are engaged on public works, through temporary engagement arrangements including a compensation lower than the minimum price of work. The unemployed are additionally engaged in self-employment programmes, despite the fact that data shows that, following the unemployed and the inactive, the self-employed are also at a high risk of poverty and social exclusion.

NEAP does not cite data on the users of unemployment assistance benefit, even though support is one of the key interventions of labour market policies. The unemployed are a category which is under highest risk of poverty and social exclusion[84]. Despite that, the number of users of unemployment assistance benefit is reduced on annual basis (image 7), as is the scope of the rights. Whilst the number of unemployed persons was reduced by 13% in 2017, compared to 2013, the number of users of unemployment assistance benefit has been reduced by 45%. The right to financial assistance benefit is regulated by the Employment and Unemployment Insurance Law, and is granted only to those unemployed persons who have been insured against unemployment continually in the past year and to unemployed persons who were insured, with intermissions, over the past 18 months. In other words, if a person was employed and had paid unemployment insurance contributions for decades, but that person's employers have failed to pay the contributions over the past 18 months – which is a frequent scenario in companies undergoing insolvency – that person shall not be entitled to unemployment assistance benefit. The majority of those who worked under a fixed-term employment contract or worked under temporary or casual work contracts also do not have the right to unemployment assistance benefit. In 2017, unemployment records show

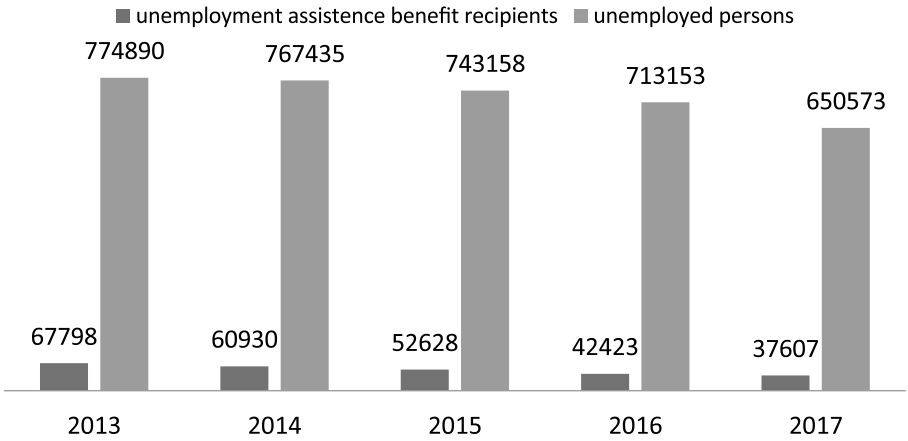
82 National Employment Policies - A guide for workers' organisations International Labour Office. – Geneva, 2015.

83 S. Bradaš, Politike zapošljavanja u Srbiji – podstrek (ne)dostojanstvenom radu (Employment Policies in Serbia – incentives for (un)dignified work), Beograd, 2018. available at: http://www.centaronline.org/userfiles/files/publikacije/fcd-politike-zaposljavanja-u-srbiji.pdf.

84 According to Eurostat data, the risk of poverty and social exclusion rate for the unemployed amounted to 68,9% in 2016.

that 434.698 were reported as unemployed due to termination of employment or work contract, whilst only 8.7% of them have effected the right to unemployment assistance benefit.

Image 7: Developments in the number of unemployed persons and persons using unemployment assistance benefits in the 2013-2017 period



Source: Republic of Serbia Statistical Annual Bulletin, author's presentation

Even though Employment and Unemployment Insurance Law prescribes that unemployment contributions are used to ensure rights in case of unemployment, there is no guarantee that the person who had paid such contributions will be entitled to unemployment assistance benefit in case of actual unemployment. Instead of being used for protecting the employed, the funds collected through unemployment contributions are used to finance the payment of temporary and special benefit, active employment measures and costs of the National Employment Service. In 2018[85] it is planned that, out of the total amount of funds collected through unemployment contributions, only 55% are to be paid out in the form of unemployment assistance benefit. The amendments of the Statutory Social Insurance Contributions Law relieve the employers from the obligation of paying the unemployment contributions; the ensuing reduced inflow of funds is likely to result in stricter criteria for realising the right to unemployment assistance benefit and/or reduced amount of the benefit.

Amendments of the Employment and Unemployment Insurance Law of December 2017 introduced a new method for computing the unemployment assistance benefit, whereby the minimal amount of the benefit is reduced by 24%, while the maximum amount is increased by 10%. According to the new computation, the minimum unemployment assistance benefit amounts to 14,262 RSD, which is below the poverty risk threshold, while the maximum amount of the benefit is 33,063 RSD. The majority of unemployed persons who exercise their right to the benefit receive the benefit for up to six months, where the minimum amount is received by 83% users, while maximum amount is received by only 2%.

NEAP does not delve into evaluation the measures of active employment policy, and disregards the results of evaluations, which show a lack of effect of certain active employment policy measures. For instance, the evaluation of the service package for youth86 shows that in only four years the participation of youth in active employment policies

85 Financial plan of the National Employment Service for 2018

86 D. Marjanović, A. Nojković, G. Ognjanov, L. Lebedinski and D. Aleksić, Evaluacije paketa usluga za mlade i relevantnih programa and mera finansiranih iz budžeta Vlade Republike Srbije koji su usmereni ka mladima, (Evaluation of the package of services for youth and relevant programmes and measures financed from the Republic of Sebia budget aimed toward the youth) Social Inclusion and Poverty Reduction Team of the Government of the Republic of Serbia, 2016

fell down from 51% before the package was introduced to 41% in 2015, while the youth participation in further education and training programmes fell down from 26,5% in 2011 to 9% in 2015. Evaluation has also shown that the participants of the „Apprenticeship" programme are not in a more favourable position on the labour market, neither in terms of labour market outcomes nor in terms of subjective well-being assessment. The NEAP still plans the same measures that have been shown to have no effect on employment.

Where the right to work is on the state agenda can be illustrated by data on appropriations for active employment measures. The National Employment Strategy for the 2011-2020 period plans an increase in appropriations for active employment measures to 0.5% of GDP by 2020. In 2010. appropriation for active employment measures amounted to 0,1%. According to the data of the Third national report on social inclusion and poverty reduction, the appropriations for active employment measures in 2014 amounted 0.03% of GDP, that is, to 0.08% of GDP in 2015, 2016 and 2017. It is evident that Serbia will not reach the goal set in the Strategy.

The Report on the realisation of the NEAP for 2017[87] provides inaccurate data on the effects of measures for employment, which are, most likely, a result of misunderstanding of the concept of „employment effects". Namely, the Report states, on page 8: „The programme and measures of active employment policy include 145,356 persons from unemployment records (which exceeds the planned number by 14,126 persons), with effect on employment of 32,4% (effects of the measures on employment are observed for six months after the unemployed person no longer participates in the measure, and consequently the effects of employment are not complete given that certain measures are ongoing or the persons have just stopped participating in the measure)". An evaluation aiming to ascertain the individual effects of a given measure: effect on employability, the individuals' employment/unemployment status observed after the expiry of a certain period since the measure has stopped is generally assessed either in the short term – a year after the measure has stopped, or in the long term – after two years; therefore not in the six-month period, as done by the authors of the Report. Consequently, the information that everyone participating in public works was employed after six months cannot be correct, given that public works are a measure of activating the unemployed and that persons engaged in public works have occasional or casual work contracts. If the data cited in the Report were correct, the NEAP should opt for public works as the only active employment measure policy due to it having a 100% effect on employment.

According to the data of the Labour Force Survey of the Statistical Office of the Republic of Serbia, in addition to 579.2 thousand of persons employed in the informal sector, social security rights are also not realised by 193.2 thousand of persons employed in the formal sector. Unpaid salaries or delays in payment of salaries, failure to pay social security contributions or denying the right to paid sick-leave or paid holiday, remains unsanctioned. On state level, the key shortcomings, as identified by the Ombudsperson in the annual report[88] include: state bodies failing to take regulatory or other measures to ensure efficient and accessible mechanisms for protection of the rights of employed persons and sanctioning in cases of violation of the law; lack of measures against employers who do not pay salaries to the employed and to those who do not pay social security contributions; lack of social dialogue to create conditions for dignified work; inefficiency of the existing control mechanisms; no cooperation of the Tax Administration, Republican Pension and Disability Insurance Fund and Labour Inspectorate in exchanging information regarding the rights related to labour; inefficiency of the labour inspectorate actions.

87 Available at: https://www.minrzs.gov.rs/sr/dokumenti/izvestaji/sektor-za-rad-and-zaposljavanje.

88 Regular annual report of the Ombudsperson for 2016, Belgrade, 237-242, available at: https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji.

ARTICLE 7 – INDIVIDUAL RIGHTS OF EMPLOYED PERSONS

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(I) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(II) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

1. SCOPE OF ARTICLE 7 OF THE CESCR

According to Article 7 of the PESCR, everyone is entitled to just and favourable conditions of work. In General Comment no. 23, the Committee explained that the term „everyone" applies to all workers in all settings, including self-employed workers, domestic workers, unpaid workers and any other of category of persons who invest work.[89]. Already at this point there is a collision between Serbian labour law and the standard set by the Covenant. Labour rights guaranteed by Serbian regulations apply only to employed persons. Workers engaged on other grounds have a narrow corpus of rights, which are not sufficient to meet the criteria of just and favourable working conditions, given that workers are not granted even some of the fundamental labour law institutes, such as limited working hours, right to salary and compensation (right to paid leave), right to paid holidays, right to paid overtime work, etc. At the same time, there is an exceptional disparity between their labour rights, on the one hand, and obligations, on the others. When it comes to employees, a considerable number of individual labour rights that are formally guaranteed is not regulated in an adequate manner, or the practice in implementation of regulations shows that they are not actually effected.

2. RIGHT TO SALARY OF EMPLOYED PERSONS

Based on the structure of salary, as regulated by the Labour Law (Articles 105 and 106), a number of problems arise when it comes to the criteria of its fairness and on whether it can secure a decent life to workers and their families. The salary is comprised of the salary for performed work and time spent at work, the salary based on employee's contribution to business success of the employer (awards, bonuses, and the like) and other earnings on the ground of employment. The salary for the performed work and time spent at work comprises of base salary, portion of the salary for working performance, and increased salary. Base salary is regulated as the part of the salary that depends on the type of work performed by the employee, and the time spent at work (full time or part time). Therefore,

89 Committee on Economic, Social and Cultural Rights General Comment No. 23/2016, E/C.12/GC/23, 3.

this element includes what the Committee recognises as responsibilities of the worker, the level of skill and education required to perform the work. The salary for work performed depends on the quality and quantity of the workers' work, and is expressed as a percentage of increase of the base salary for those workers who exceed the commonly determined working norm, or who otherwise contribute to the increase in value of the working process' product by the quality of their work. Finally, increased salary is an additional increase of the base salary for circumstances under which the employees are required to take part in the working process above average expectations, or under more difficult working conditions than usual – working on holidays, working overtime, working at night. This category also includes the time years of service spent working for this particular employer.

When it comes to the structure of the salary, legislative developments are negative. Amendments of the Labour Law of 2014 have abolished or modified grounds for increase in salary. Consequently, working in shifts no longer constitutes grounds for increase in salary (previously a working hour under the regime of working in shifts was increased by 26% compared to the base salary). On the other hand, the years of service for the employer were given a completely different context, because now the only years of service relevant are the ones spent with the current employer, instead of the solution where all years of service where calculation, which was in force until 2014. In this way, years of service become a stimulation for the so-called „loyalty to the employer", or, in other words, it is a reward for spending more years with the same employer rather than being a compensation stemming from the total years of service, regardless of who the employer was and for how long. Having in mind the official policy of labour flexibility and increased worker fluctuation, past years of service have thus been stultified, given that the majority of employees cannot effect a significant increase on this ground.

The next problem lies in the lack of definition of the „working norm" legal standard, that is, the lack of possibility of a general norm setting the framework as to the average expected worker's performance on the job he or she performs. The fact that the Labour Law does not consider this issue at all results in a number of abuses in practice with regards to employers who set the working norm far higher than the expected average and require that workers put in work that is disproportionate to the working conditions and technical and human capacities in the labour process. When the working norm is set in this way, the employer usually uses the failure to meet the norm to illegally extend working hours without paying for overtime work, or to introduce a six-day working week (where the sixth day is not paid).[90]

This problem often culminates because the employers, who are unsatisfied with the quality or quantity of employee's work, reduce his or her base salary, which is in contravention of the statutory solution. Namely, according to the Labour Law, the base salary does not depend of the work performance; the only element of the salary that does is the element so named – salary for working performance. However, a practice of so-called employee discouragement has been observed, where the labour contracts envisaged illegal solutions of reduction of base salary as per employer's decision. This is no longer a frequent occurrence, but does still exist in practice, mainly due to the fact that employees do not have sufficient information on their rights and hence do not complain of such decision of the employer.

Finally, the element of the fairness of salary should also be considered. This is the element the Committee also insists on in General Comment No. 23. There is not a single criterion that would point to the employer's obligation to adjust the salary to the real value

90 Experiences of providing free legal aid at the Labour Law Clinic of the Union University Law Faculty in the 2010-2018 period.

of employee's work. The legislator leaves the determination of the value of the work entirely to the market. At the same time, the conditions on the labour market are such that the offer is high while the demand is low for most professions, which results in high competition and enables employers to hire workers and pay them far below the true market value of their work. Consequently, the majority of employees are paid amounts that are close to the minimum salary for full time employment, while the median salary on the Republic of Serbia level is considerably below the statistically calculated average salary.[91] In this way, employees are denied the right to fair salary, and the right to salary that corresponds to the value of their invested work. Ultimately, such practice is conducive of creating growing social gaps, while workers cannot effect the right to adequate standard of living (a large number of employees live close to or below the poverty threshold).

There is a special problem related to minimum salary. In the Labour Law, this is institute is regulated so that the minimum salary is not the stipulated salary, but the salary the employee can receive if the employer has business and financial troubles and cannot pay the stipulated salary. International Labour Organisation defines minimum wage as „"the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract".[92] This is fully in line with the statutory solution found in the Labour Law, whereby the employer introduces minimum salary in cases when the payment of stipulated salary could endanger his operation, or even existence in the form of a business entity. In practice, however, employers often stipulate minimum salary in contracts with their employees, and hence employees receive the minimum salary all the time while working. It is important to note the Opinion of the Ministry of Labour, Employment and Social Policy No. 011-00-01331/2006-02 of April 12, 2007, which states that minimum salary can be stipulated when concluding the employment contract if there are justified reasons for doing so, which is in direct contravention of Article 111 of the Labour Law, which envisages that the employment contract can only stipulate the reasons for introducing minimum salary and its amount in case it is indeed introduced. The mentioned Opinion states that the employer can pay the minimum salary to the employee only if it is stipulated, which is incorrect, and also states that the employer must pay the minimum salary determined for the given calendar year in the Republic of Serbia, which is also not correct – the collective agreement or employment contract may stipulate that, in case minimum salary is introduced, the amount of minimum salary can exceed the amount determined in the decision of the Social and Economic Council or, alternatively, of the Government of the Republic of Serbia. Opinion of the Ministry of Labour, Employment, Veteran and Social Care No. 112-07-173/2015-02 of April 8, 2015, continues along the same lines of interpretation of this article. Even though this Opinion does not provide an answer to the question whether minimum salary can be the stipulated salary, the context of the Opinion implies that it can, even though the Labour Law still includes an express provision governing the introduction of the minimum salary only by means of employer's decision (Article 111 paragraph 3 of the Labour Law). Examples where employers have included other remunerations of the employees into such minimum salary were also noted, despite the fact that such remunerations are separate payments according to the statute and must be paid additionally, even under the minimum salary regime (judgment of the Basic Court in Novi Sad P1.1869/2017 of March 12, 2018, not finally binding).

An additional problem lies in the fact that the 2014 amendments of the Labour Law have enabled the employer to extend the period of payment of minimum salary indefinitely (even though by its very nature it is a temporary, limited arrangement) (Article 111, para-

91 See analysis of Article 11.
92 General comment No. 23, 6.

graph 4). Moreover, there is no mechanism to efficiently and objectively assess whether the given employer really needs to introduce the minimum salary (there were examples in practice where employers have introduced minimum salary, formally recalling statutory conditions, where such conditions did not exist in reality, since their operation went by regularly).

All the above renders minimum salary not a means of protection of workers but, quite to the contrary, a means for their additional exploitation. Social and Economic Council, which has the statutory power to decide on the minimum salary (Article 112 paragraph 1 of the Labour Law), so far has not been able to agree on it, and, as a rule, the decision was passed by the Government of the Republic of Serbia. As a rule, this decision was not transparent, and the parameters based on which the minimum price was formed cannot be deduced from it. Consequently, it violates one of the fundamental obligations of the state pursuant to Article 7. According to the Committee's General Comment No. 23, paragraph 65(c) envisages that one of the state's fundamental obligations is for the minimum wage to be fixed by taking into consideration relevant economic factors and indexed to the cost of living so as to ensure a decent living for workers and their families. However, as the analysis of Article 11 will show, the minimum salary in the Republic of Serbia is not nearly enough to ensure this right to the workers receiving it. Similarly, Article 3 of the ILO 131 Minimum Wage Fixing Convention: „The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment."

In addition, alignment of the amount of minimum salary takes place only once a year – in September of the current year for the entire next calendar year. As a result, established minimum salary is applied after 15 months after it was initially established, when its real value is considerably diminished. The tendency of deteriorating regulation is also noticeable with respect to this issue, given that, until 2014, Labour Law envisaged in Article 112, paragraph 6, that minimum salary is agreed on for a period of at least six months. In practice, this meant that the correction mechanisms could be initiated every six months. There are no provisions guaranteeing an increase in minimum salary (only a norm envisaging that minimum salary cannot be reduced). Consequently, it is possible for the minimum salary not to follow the trends related to inflation, increase in GDP or an increase of the value of the consumer basket, or other mechanisms that could be used as indicators of the need to amend the amount of the minimal cost of labour per working hour. These criteria are only formally envisaged in Article 112, paragraph 3 of the Labour Law, but are not applied in practice. So far, it has not been explained, in an exact manner, how come that the minimum salary was increased or remained on the same level as in the current year. The Labour Law envisages a mechanism for premature increase of minimum salary, in Article 112, paragraph 5: „ If there is a significant change in any of the elements referred to in paragraph 3 of this Article, the Social and Economic Council shall be obliged to consider the reasoned initiative of one of the participants in the Social and Economic Council to start negotiations for the establishment of the new minimum price of labour ." However, this option was never utilised in practice.

Analysis of Article 11 will elaborate in more detail on the issue of minimum salary in terms of an inefficient mechanism of social security and dignified life.

3. REFUND OF EXPENSES TO EMPLOYEES

Refund of expenses to employees is regulated in a manner that has considerable deficiencies, which, in practice, can render pointless the employee's rights to refund of certain expenses (Article 118 of the Labour Law).

When it comes to the refund for commuting, the legislator sets this refund in the amount of the price of public transportation ticket, if the employer did not provide own transportation. This provision is incomplete since it gives raise to the issue of how to refund the expenses to the employee who does not use public transportation and what happens in places where there is no public transportation (e.g. villages that are not connected to towns). Furthermore, allegedly in order to prevent abuse, the legislator prescribed that the fact the employee has changed the place of residence is not relevant in terms of increasing the refund for commuting, unless the employer decides otherwise. This practically means that the employee is put in front of a dilemma: to change residence or to change work, or to finance the difference between the price of transportation the employer in fact pays and the amount paid by the employer for commuting. This can easily stultify the right to the employee to a refund for commuting by public transportation, particularly in cases when, for instance, the employee decides to stop renting a property in town and moves back to a village or a suburban area where he or she came from. The differences in the prices of transportation in such cases can be considerable and can discourage the employee from staying with the same employer.

The situation is similar with other employees' refunds envisaged in the Labour Law – such as per diems for business trips in country and abroad, or refund for accommodation and food during field work. If the employer fails to provide the accommodation and food in the place of work, the employer must refund these expenses to the employee – however, there is no guidance or minimal amounts the employer must pay. The same applies to the subsidy for the use of annual leave. The purpose of these rights is stultified with their minimal norming, which allows the employer to completely legally pay the refund for food in the amount of 500 dinars a month (approximately 4 EUR a month), or a subsidy for the use of annual leave in the amount of 100 dinars a month (less than one euro a month).

4. PROTECTION OF SALARY AND PROTECTION OF CLAIMS IN CASE OF BANKTRUPTCY

Protection of salary from enforcement, so that the debtor would have sufficient funds to live, is not consistently implemented in Serbian legislation. Labour Law envisages that enforcement against salary is possible only on the ground of a final court decision, in the cases specified by law, or by if so agreed by the employer and the employee. The employer may, on the ground of a final court decision and in cases determined by law, withhold up to one third of the salary of the employee's salary, i.e. compensation of salary, unless otherwise specified by law (Article 123 of the Labour Law). The purpose of this provision is to protect the salary, or, more precisely, to leave sufficient funds for the employee to satisfy his or her fundamental living needs. On the other hand, the Law on Enforcement and Security[93] envisages that up to two thirds of salary can be withheld, or, if the employee is on minimum salary, up to one half of salary can be withheld (Articles 258 paragraphs 1 and 3). This is not a good solution, as it cannot effect the objective of protecting the employee. If the median salary in the Republic of Serbia is approximately 40,000 dinars[94], this means that the employee and his or her family are expected to live on approximately 13,000 di-

93 RS Official Journal No. 106/2015, 106/2016 – authentic interpretation and 113/2017 – authentic interpretation.
94 Source: Statistical Office of the Republic of Serbia, http://www.stat.gov.rs/sr-Latn/oblasti/trziste-rada/zarade.

nars (just over 100 EUR) of monthly income, which is below the poverty threshold, even if only one person lives on this income. The second tendency, which is also negative and stems from the deficiencies in regulating this issue, is that the employee and the employer are allowed to sign an agreement whereby the employer can withhold the entire salary. Such interpretation of the law can result in the employee practically working without compensation. Both cases constitute a violation of Article 10 of the ILO Protection of Wages Convention 95; it should be noted that Serbia has not ratified this convention.

Opening of insolvency or liquidation proceedings against the employer, as a rule, implies the impossibility to settle the employees' claims against the employer. Employees have the option of partially settling their claims from the Solidarity Fund – data on the work of the Fund is not available on its webpage, while partial data obtained directly from the employees whose employment contract was terminated due to employer's insolvency show that payments are made but are several months late. However, according to the Labour Law, the employees can use settle only a part of their claims in this way. Most importantly, the employees can claim their unpaid salaries only in the amount corresponding to minimum salary and only for a nine-month period, regardless of the length of the period during which salaries were not paid. In addition, the employees can claim unpaid contributions only in the amount corresponding to the contributions to be paid on the grounds of minimum salary, also for a nine-month period. Employees can try to settle the remainder of their claims only from the employer's bankruptcy estate.

When it comes to the solution embedded in the Insolvency Law,[95] it envisages that the employees can settle only a part of their claims, and when it comes to salaries and corresponding contributions, employees and former employees can claim unpaid net salaries in the amount of minimum salaries for the last year preceding the bankruptcy proceedings, with interest rate from the day the payments were due to the day insolvency proceedings were opened. Employees can also claim unpaid contributions for pension and disability insurance for the last two years before the opening of insolvency proceedings, where the minimum monthly contribution base is used as the base for calculating the amount of such claims. These are priority debts (Article 54, paragraph 1, item 1 of the Insolvency Law). However, the insolvency proceedings against the employer usually last for too long and cost too much, and it is very difficult to settle any claims from the debtors' assets. The state should explain what has been done to rectify this situation, so that the insolvency proceedings would become more efficient and so that further disposal of debtor's property and financial assets in the course of insolvency proceedings in prevented, particularly having in mind the clear position and jurisprudence of the European Court of Human Rights, according to which the current situation constitutes a violation of the international obligations Serbia has taken on, more specifically, of Article 1 Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The European Court of Human Rights (hereinafter: ECtHR) has, in several different cases, considered the violation of the right to peaceful enjoyment of property from Article 1 Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR). Two groups of cases the ECtHR has dealt with in this regard can be singled out. The first group of cases includes those where the state was not able to guarantee enforcement of final court decision related to damages due to unpaid salaries and unpaid statutory social security contributions; the second group includes both the first cases, and also the situations when the employer, as the debtor, underwent insolvency or liquidation proceedings.

95 RS Official Journal No. 104/2009, 99/2011 – other statute 71/2012 – CC decision, 83/2014, 113/2017, 44/2018 and 95/2018.

In the case of *Jovičić and others v. Serbia*[96] ECtHR found that the lack of capacity on the part of the state to protect the eight workers who had a final court decision rendered in their favour before insolvency proceedings against the employer were opened constituted a violation of the ECHR: The eight workers were unable to collect their claims before the bankruptcy was opened despite the fact that the dispute for the payment of unpaid salaries and corresponding social security contributions was concluded with a final decision before insolvency proceedings were opened; once the insolvency proceedings were opened, they could not collect that sum from the insolvency estate. The ECtHR found that the passive attitude of the state resulted in violation of their rights and therefore characterised the obligation of enforcement of the judgment as absolute – failing that, the ECtHR found that Serbia was to the applicants the sums awarded in the court decisions rendered in their favour, and also to compensate their damages. ECtHR passed the same decisions in the following cases: *Marinković v Serbia*[97], *Krndija i drugi v Serbia*[98], *Adamović v Serbia*[99], *Stošić v Serbia*[100]. In the case *Nikolić-Krstić v Serbia*[101] the court held the same position; however, this was not the case of insolvency but of liquidation of the employer – debtor. In *Vlahović v Serbia*[102], the ECtHR found that Article 1 Protocol 1 was violated by failure to enforce a final court decision for compensation of unpaid salaries due to debtor being privatized[103], and also due to debtor being restructured (*Sekulić and Kučević v Serbia*[104] case).

This clearly shows that, according to the ECtHR, the state is responsible for protecting the employees and ensuring the payment of their claims in cases when they sought such protection by all available legal means. The very fact that the cases of this type were brought before the ECrHR is a testament of the inefficiency of the state's mechanism for protecting the employees and the claims they have towards employers. It its therefore critically important for the state to forward to the Committee data related to the planned changes of procedure in labour cases, and on the enforcement of final court decisions, in order to eliminate this systemic mistake in the future.

5. FAILURE TO PAY SALARIES AND FAILURE TO PAY CONTRIBUTIONS

Non-payment of salaries and corresponding taxes and contributions is a systemic and widespread problem in the Republic of Serbia. Even though the regulatory framework is identical to the solutions contained Article 12 of the ILO Convention 95 of Wages, research shows that around two thirds of employees do not receive their salaries on time, while some 50,000 employees are not paid salaries at all, even though they effectively participate in the work process.[105] The employer who does not pay salaries formally faces misdemeanour and criminal charges (for the criminal offence of *Violation of Labour Rights and Social Security Rights* from Article 163 of the Criminal Code[106]). However, so far, not one employer was charged for the criminal offence of failure to pay salaries, despite the existence of systemic avoidance of payment, which sometimes lasted for years and which was not

96 Applications nos. 37270/11, 37278/11, 47705/11, 47712/11, 47725/11, 56203/11, 56238/11 and 75689/11, judgment of 13 January 2015
97 Application no.5353/11, judgment of 22 February 2013.
98 Applications nos.: 30723/09, 9370/13, 32658/12 and 2632/09, judgment of 27 June 2017.
99 Application no. 41703/06, judgment of 2 October 2012.
100 Application no 64931/10, judgment of 1 October 2013.
101 Application no: 54195/07, judgment of 14 October 2014.
102 Application no: 42619/04, judgment of 16 December 2008.
103 Similar: Crnišanin and others v Serbia, applications nos.: 35835/05, 43548/05, 43569/05 and 36986/06, judgment of 13 January 2009; Grišević and others v Serbia, applications nos. 16909/06, 38989/06 and39235/06, judgment of 21 July 2009.
104 Applications nos: 28686/06 and 50135/06, judgment of 15 October 2013.
105 U Srbiji 50.000 zaposlenih ne prima zaradu (In Serbia, 50,000 employees do not get their salary), http://www.centaronline.org/sr/dogadjaj/11857/u-srbiji-50000-zaposlenih-ne-prima-zaradu.
106 RS Official Journal No. 85/2005, 88/2005 - corrigendum., 107/2005 - corrigendum., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

caused by the employer's poor management of business operation, but where employers have deliberately caused insolvency in order to completely avoid the payment of salaries, taxes and contributions. Even in cases when the employer incurred damages to the state by unlawfully failing to pay salaries, the state was not interested to enforce the law and process the criminal charges filed against the employer by employees or trade unions. Certainly the most drastic example of such unjustifiably passive attitude of the state is the case of GOŠA factory.[107] To that effect, the state should answer why is employers' unlawful behaviour tolerated and why do official state bodies and institutions, in cases when they do not apply the law they are obliged to enforce, give official statements asserting that they cannot do anything regarding the situation at hand.

As probably underlined before, the ECrHR has qualified such situations a failure on the part of the state to ensure the enjoyment of the right to protection of property, but only in cases when the employees have utilised all legal mechanisms available to protect their claims.

6. WORKING HOURS

In 2014, an amended definition of working hours was introduced in the Labour Law. For the first time, this definition includes availability to work in the general employment relationship regime. The same amendments have also introduced on call as an obligation linked to the employee's working time. Availability to work is a part of working hours and as such falls under all limitations set by the law. Payments for the hours of availability to work is the same as the payment for participating in the working process. On call hours, however, are not considered a part of working hours – the working hours start only if the employee who is on call is active. This is a logical solution. However, the Labour Law does not provide any additional guidance when it comes to the compensation for the time during which the employee was on call, nor on the limitation of time the employee can spend being on call (Article 50 of the Labour Law). Being on call *de facto* diminishes the employee's mobility, since an employee who is on call must always be at the place of employer's work, or at a location that allows him or her to take part in the working process in the shortest possible time. Given that on call hours are not calculated in working hours, they can easily collide with the principles of the right to daily and weekly rest, since the employee can always be in the on call regime. Consequently, it affects the employee's quality of life and his or her free time. The employee's time on call cannot be categorised as his or her free time, since the employee is limited in the way he or she can use such time. This is why the fact that the legislator has left it up to the employer to regulate the use on call is concerning. There is a possibility of regulating on call in collective agreements; however, knowing that the coverage of collective contracts in Serbia is negligible, especially in the real sector, where on call was practically introduced for the first time by the cited provisions of the Labour Law (it did exist in special employment relationship regimes, mostly in the public sector and additionally regulated by special legislation), it seems that the reach of this solution is rather small and that in most cases the employers will be able to regulate this matter on their own. In practice, it is possible for someone to be on call for an unlimited number of hours a week and the compensation of salary for being on call to be minimal (e.g. 5% of the base salary per working hour). Regulated in this way, on call can even be-

107 On dramatic events in GOŠA factory see : http://rs.n1info.com/Vesti/a236730/Radnik-se-ubio-nije-primio-najmanje-15-plata.html; (Worker kills himself, did not receive 15 salaries) https://naslovi.net/2017-08-20/slobodna-evropa/brnabic-vlada-je-ucinila-sve-sto-je-mogla-za-gosu/20356067. (Brnabic asserts: Government has done everything it could for Gosa). Legal analysis of the situation is provided in: Mario Reljanović, Srbija je Goša (https://pescanik.net/srbija-je-gosa/) (Srbia is Gosa) and Goša je and dalje Srbija (Gosa is still Serbia) (https://pescanik.net/gosa-je-and-dalje-srbija/); Insajder: Država protiv radnika, (State v workers) https://www.youtube.com/watch?v=-BecWYZWMmBk.

come an instrument of workplace harassment, when the employee is unable to exercise his or her right to daily or weekly rest. Even when that is not the case, it certainly is not for the employer to freely decide on this important aspect of employee's working hours without any limitations being embedded in the regulatory framework.

Amendments of the Labour Law have abrogated the increase of salary for working hours spent working in shifts. When explaining this move, the state invoked an uncorroborated narrative of widely abused additional salaries related to working in shifts, particularly in the public sector. The line minister presented the case of abuse in the public sector, more specifically, the case of abuse in the publicly owned company Elektroprivreda Srbije (EPS), when the employees' salaries were doubled for working in shifts during the night. However, this line of reasoning should not be sustained; a far simpler solution could have been opted for in order to curb the abuse –introducing a provision envisaging that increase in salary on the grounds of working in shifts and night work cannot be cumulated. Instead, the state opted for abrogating the compensation for working in shifts altogether, which is in line with the state's wider policy of inducing cheap labour. As a result, those who indeed work in shifts have lost their additional income, even though, due to the unfavourable working conditions, they should be entitled to such compensation. The state needs to consider the demands for the work in shifts to again constitute grounds for an increase in salary.

One of the major issues in implementation of regulations concerns the records on and payment of overtime work. Amendments of the Labour Law of 2017 have introduced an obligation for the employer to keep up to date records of employees' overtime work (Article 55, paragraph 6 of the Labour Law). This provision, however, has several flaws, as it is not accompanied by mechanisms for monitoring its implementation, nor with additional mechanism that the employee can resort to in case the employer violates this obligation. The labour inspectorate has no means to ascertain whether the records kept by the employer are correct and up to date, particularly when it comes to the day preceding the day of inspection oversight. On the other hand, unpaid overtime work is one of the main problems the employee's face. It was the cause of employee's strikes on several occasions over the past years; a paradigmatic case is that of the Kaizen factory in Smederevo, where the employer partially met the striker's requests and paid a part of increased salaries on the grounds of overtime work, but at the same time illegally dismissed several employees, as a warning to others not to repeat the strike.[108] Employer's practices for abusing the inefficient system for monitoring overtime work mostly comes down for the following methods:

- Some employers keep no records of overtime work and do not pay their employees for overtime work.
- Some employers record overtime work, but, since this is work that last longer than the statutory maximum, they pay only the part of the overtime work that the employees are allowed to work for according to the law (i.e. eight working hours per week, regardless of how many hours the employees have spent working overtime).
- Some employers do not consider the work done after working hours as overtime work, even though this is the statutory definition of overtime work; they treat this as the time the employees „voluntarily" spend working in an attempt to meet the (unrealistically set) working norm, as was discussed above. Such overtime work, as a rule, is neither recorded nor paid.
- Some employers recognise overtime work only *de facto*, and they pay it only partially, or do not pay for it at all. In such cases, the employer does not pass a decision on the intro-

108 Those who were unlawfully dismissed sought legal assistance from the Union University Law Faculty Labour Law Clinic, but after being provided with initial legal advice, decided not to pursue the matter further.

duction of o, but rather, overtime work is pursued based on oral information and instructions given by the employer

The second problem identified in relation to the length and scheduling of working hours, which is closely linked to the failure to record and pay for overtime work, is the disregard to statutory provisions on working hours schedule and the rules on the introduction of overtime work. When it comes to the first problem, what happens in practice is that employers change the schedule of working hours in a way contrary to the Labour Law, which envisages that the working hours schedule must be made public in writing at least five days in advance and that it can be changed only exceptionally (Article 56, paragraphs 1 and 2). Many employers, particularly those working in the retail and the service sector, do not fully respect the request for written format, and timely informing of employees of working hours schedule. On the other hand, even though the Labour Law envisages precise rules for the introduction of overtime (Article 53, paragraph 1 states that an employee is obliged to work beyond the full time in the event of force majeure, a sudden increase of volume of work and in other cases when it becomes indispensable to complete an unplanned work within a specific deadline), employers often organise employees' working hours so that the working week regularly lasts for 48 working hours (six eight-hour workdays). Even though in such cases the employees usually do get increased salaries for the eight hours of overtime work a week, this practice is illegal since the employers thus introduce overtime in situations when it is not necessary, or rather, when the conditions prescribed in the Labour Law, which considerably limit employer's discretion to decide on extending the employees' working hours, are not met.

The state has remained inactive when it comes to developing and implementing mechanisms that could curb the described practices, such as expressly protecting the employee who refuses to work according to the schedule that has been unlawfully changed by the employer, or to work the overtime that is introduced contrary to the provisions of the law. The employees can only resort to the common general protection mechanisms, meaning: to address the labour inspectorate and seek judicial protection in a labour dispute. Both of these mechanisms are inefficient and cannot contribute to employees' protection in concrete situations.

7. REST PERIODS AND LEAVES

When it comes to the issue of rest periods and leaves, what is worrying are the discriminatory provisions concerning the possibility of using paid leave, and the lack of a comprehensive solution for the possibility to use leave in certain life situations.

Following the amendments of the Labour Law, the regulation of paid leave was changed, and the current regulatory solution raises concerns due to inadequate norms and to some provisions of the law being unconstitutional. The total number of potential days of paid leave during one calendar year has been reduced from seven to five working days (Article 77 of the Labour Law). This is not a logical solution. In cases of cumulation of several grounds for the use of paid leave in the course of one calendar year, it may well happen the employee may have already used the days of paid leave on grounds envisaged by the law, when the new grounds for paid leave occur. The Labour Law currently does not regulate said circumstances, but it can be assumed that in a case like this, the employee has no other option then to request unpaid leave, which the employer may or may not grant. Such a solution is not only impractical but can also be inhumane. The impracticality is reflected in the fact that, under such circumstances, the employee may not be able to participate in the working process (e.g. his spouse is giving labour); the inhumanity stems from the common

sense recognition of the fact that the employee cannot be expected to give priority to work over family (e.g. in case of death of a close family member). If the employer fails to grant unpaid leave, and the employee has used up the five days of paid leave allowed by the Law, the employee may not be able to be absent from work even though there are real grounds, in his or her private life, to do so. It is necessary to ensure that in such cases the employer is bound by law to grant such leave (we recommend for the leave to be paid, but even a mandatory unpaid leave would be a welcome step in the right direction).

The second significant shortcoming of the provisions governing leave is the one concerning the so-called „immediate family members" of the employee. Article 77, paragraph 4 holds an inadequate solution, whereby immediate family members include spouse, children, brothers, sisters, parents, adoptive parent, adoptee and a legal guardian. The norm does not refer to direct relatives in the second degree, such as grandchildren and grandparents. In addition – and this renders the entire norm unconstitutional – extramarital partners are not equalled with spouses. Therefore, if the employee's extramarital partner is giving birth, the employee will not be entitled to paid leave. The same goes for cases of serious illness or death of extramarital partners. It seems that paragraphs 5 and 6 of the same Article of the Labour Law constitute an attempt of the legislator to reduce the discriminatory character of this solution, but in fact, these norms implicitly acknowledge the different treatment. Namely, the provisions of these two paragraphs envisage that the employer may grant paid leave even with regards to relatives not referred to in the law and in relation to other persons who live in the same family household as the employee, for the duration established in the employer's decision, while a general act and labour contract can stipulate the right to paid leave for a duration exceeding the one set out in the law, and with regards to a wider circle of persons that constitute immediate family. This is a manifestly discriminatory solution, which cannot be withheld in the law and which must be aligned with the Constitution of the Republic of Serbia and with non-discrimination legislation.

Amendments of the Labour Law of 2014 have completely remodelled the way in which the right to annual leave and its use are obtained. According to Article 72 of the Law, the employee has the right to proportionate annual leave in the calendar year in which he or she had entered into the employment relationship, or in the year in which his or her employment relationship is terminated. This solution is not logical and does not correspond to the nature of the right to annual leave. Firstly, in the year in which the employment relationship is constituted, the employee may have already been working for a considerably long period. For instance, if a person starts working in January, almost a year shall pass until such person gets the right to full annual leave. On the other hand, the employee who starts working in December, in January shall have the right to use the annual leave (after a month) and the right to full annual leave. It is unclear how this solution, which can be detrimental both to the employee and to the employer, depending on the circumstances, had found its way to the Labour Law. In addition, in the year in which the employment relationship is terminated, the employee can use a number of annual leave days (before the employment relationship is terminated) then he or she would be entitled to at the time of termination of employment. Does this mean that the employee has incurred damages to the employer? What will be done in cases when the employer terminates the contract, or the contract is terminated without their influence (by the force of the law)? Labour Law does not provide answers to these questions, while in practice these situations are ignored – the assumption is that at the time of using the annual leave the employee was entitled to full annual leave (which is correct) and that no damages were incurred to the employer and hence there are no mutual claims in this respect. The interpretation is additionally complicated by the ministry in charge of labour, which has issued an opinion that if the employee first uses the full

annual leave and then terminates the labour contract unilaterally during the calendar year, the employer is entitled to seek damages from the employee.[109] Even though, formally, the norm can be interpreted this way, it would be very difficult for this interpretation to hold up in court, because the employer has to prove that the employee knew or could have known that he or she was going to terminate the labour contract at the time of using the annual leave. Given that the liability for damages incurred to the employer are conditional on intent or recklessness on the part of the employee, and the employer faces a difficult task of proving this. The fact is that, regardless of this possibility and the outcomes of potential future disputes on this matter, flawed statutory solutions give rise to legal uncertainty and potentially contentious situations, which can be avoided by changes to the regulatory framework governing the right to annual leave and its use.[110]

The 2014 amendments to the Labour Law have abrogated the right to transfer the unused annual leave to the new employer, in case of change of employer. Instead, the law stipulates (in Article 76) that „in the event of termination of employment relationship, the employer is obliged to pay the employee who did not use annual leave in whole or in part, a pecuniary compensation instead of usage annual leave, in the amount of average salary in the previous 12 months, in proportion to the number of days of unused annual leave." According to an express statutory provision, this compensation has the character of indemnity. Such a solution is contrary to the nature of the right to annual leave, which is for the employee to rest from the work process. An employee who often changes employers – and flexibilization of labour is one of the process most frequently invoked in official policy – may find himself or herself in a situation of not being able to use the right to annual leave – partially or in full. The solution is also bad in light of the provision stipulating that the employee who did not use the annual leave is entitled to indemnity, regardless of the manner in which the employment relationship was terminated. This practically means that the employer must pay the indemnity even when the employment relationship was terminated due to employee's actions or at employee's initiative. An additional blow to the rights of the employee was given in the opinion of the Ministry of Finance[111] which interprets the norm in a way that the indemnity paid to the employee on the grounds of not using the annual leave has the character of salary, even though the Labour Law states otherwise. The employers are therefore under an (unlawful) obligation to treat this compensation as salary (if they do not, they would be committing a tax offence) and thus directly reduce the net amount of the indemnity paid to employee.

The described amendments are challenging the fulfilment of international obligations Serbia has taken. „Alignment of the Labour Law with the ILO Convention 132 on Holidays with Pay was cited as one of the causes for such changes. However, not even after the amendments, the Labour Law is not aligned with this Convention. For instance, the proportionate annual leave in the calendar year in which the employee enters into or terminates employment relationship is motivated by Article 4 of the Convention, which reads: "A person whose length of service in any year is less than that required for the full entitlement prescribed in the preceding Article shall be entitled in respect of that year to a holiday with pay proportionate to his length of service during that year. The expression year in paragraph 1 of this Article shall mean the calendar year or any other period of the same length determined by the competent authority or through the appropriate machinery in the country concerned." This practically means that the state may set any period during the calendar

109 Opinion of the Ministry of Labour, Employment, Veteran and Social Care, Labour Sector, No. 011-00-669/2015- 02 of 08.08.2015.

110 See: Mario Reljanović, Alternativno radno zakonodavstvo (Alternative Labour Legislation) Beograd, 2019, p. 55-58 (in print).

111 Opinion of the Republic of Serbian Ministry of Finance No. 011-00-1142/2016-04 of 18.05.2017. Calculation and payment of citizen's income tax and contributions for statutory social insurance on the grounds of indemnity paid in case of termination of employment relationship to the employee who did not use the annual leave.

year, or in general. This was not done by the amendments of the Labour Law. Quite to the contrary, the current regulatory solution can be interpreted to be contrary to Article 5 of the Convention, which reads: „A minimum period of service may be required for entitlement to any annual holiday with pay. The length of any such qualifying period shall be determined by the competent authority or through the appropriate machinery in the country concerned but shall not exceed six months. The manner in which length of service is calculated for the purpose of holiday entitlement shall be determined by the competent authority or through the appropriate machinery in each country. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, absence from work for such reasons beyond the control of the employed person concerned as illness, injury or maternity shall be counted as part of the period of service.“ Therefore, it is now possible for a person to spend a full 12 months working before being entitled to full annual leave, which is completely contrary to the cited solution of the Convention. Further, the solution according to which indemnity must be paid for the time of unused annual leave in case of termination of employment relationship stems from Article 11, which reads: „An employed person who has completed a minimum period of service corresponding to that which may be required under Article 5, paragraph 1, of this Convention shall receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.“ Therefore, the solution that was in place so far, according to which the annual leave was „transferred“ to the new employer was not contrary to the Convention. Quite to the contrary, according to the Convention, this is the first, preferred choice, having in mind the nature and the objective of the right to paid annual leave“.[112]

8. SAFETY AND HEALTH AT WORK

Even though the Law on Safety and Health at Work[113] was assessed as being of insufficient quality and insufficiently comprehensive, it did not undergo any significant advancements over the past years.

Already the Screening report on Chapter 19 in the EU accession negotiations indicated that “a number of important adjustments to the national legislation will be necessary in the coming years in order to prepare for complete legal alignment in this area” and that “due implementation and enforcement of the legislation will need to be ensured”, as well as that “there is room for improvement, notably as regards increasing the number of inspectors, ensuring efficient inspections in the field, inter alia in relation to planning of the Inspectorate’s activities, visits by inspectors to actual workplaces (instead of verifying documentation only) and the availability of information technology”[114]. Chapter 19 Action Plan envisages the adoption of the new Safety and Health at Work Law by the end of 2019.

Data shows that in the 2013 – 2018 period a total of 187 persons have lost lives due to occupational injury. The main causes of occupational injuries include unsafe work at heights and on improperly assembled scaffolds, working at improperly secured excavation sites, and engagement of untrained workers who work illegally; a total of 155 criminal charges were filed against responsible persons and a total of 32 misdemeanour charges were filed [115]. According to the data presented by the line minister, 53 fatal occupational

112 Mario Reljanović, Alternativno radno zakonodavstvo (Alternative Labour Legislation) Beograd, 2019, p. 58 (in print).
113 RS Official Journal No. 101/2005, 91/2015 and113/2017 – different law.
114 Screening Report Serbia – Chapter 19 – Social policy and employment, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_19_serbia.pdf, 11.
115 Povrede na radnom mestu sve češće, ni situacija u regionu nije na zavidnom nivou (Occupational injuries more frequent, the situation in the region is not exemplary either) https://www.securitysee.com/2018/06/povrede-na-radnom-mestu-sve-cesce-ni-situacija-u-regionu-nije-na-zavidnom-nivou/.

injuries were recorded in 2008, which is a considerable rise compared to 2017.[116]. This data can be complemented by poor media coverage of outcome of cases launched against responsible persons at the employer, and of the criminal sanctions pronounced with regards to violations having a fatal outcome.

Risk assessment act is an act that contains a description of the working process with the assessment of the risk of injury and/or damage to health at the workplace in the working environment and the measures for eliminating or reducing the risk with the aim to improve health and safety at work (Article 4, paragraph 1, item 14) of the Law on Health and Safety at Work). This act is one of the weak links of the current law. Even though the adoption of this act is mandatory, conversations with employees and trade unions inform us that a high percentage of employers have not met this obligation, even though it is practically the first step in implementation of other measures for protecting the health of employees at work and in relation to work.

What is worrying is the practice of the employers of not reporting occupational injuries and accidents and worsening of health, that is, the practice of driving the employees whose health is endangered due to insufficient protection to their home, so that they can take care of themselves, instead of referring them to the relevant health care institution.[117] In certain cases, journalists have documented such unacceptable behaviour of the employers in detail[118], or the workers went into strike due to inadequate working conditions[119]; however, this has not prompted adequate reactions of the relevant state institutions, most notably, of the labour inspectorate.

Consistently implementing the policy of protecting foreign inspectors at any cost, state bodies decline to do their job in cases when the employer that has the status of a foreign investor violates the health and safety at work regulations. In the case of two workers who have lost their lives at the Belgrade Waterfront construction site – where Belgrade Waterfront is declared a project of national importance – the labour inspectorate did not issue a formal statement (which was common practice in similar cases), while the line minister explained this by saying that the investor had informed the public that the loss of lives was an accident and this information is sufficient.[120] Even though media have covered fatalities resulting from inadequate protection measures regarding construction workers, and it was emphasised that many construction workers are „black labour"[121], not one procedure was initiated against responsible persons at the employer, nor are there indications that the competent authorities have officially acted on these allegations at all.

The state needs to answer when will the capacities of the competent inspection authorities be increased, when will the relevant legislation be brought in line with international standards and European Union acquis, and when will measures be taken to establish employer's liability, without exceptions.

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116 Đorđević: U ovoj godini novi zakoni u oblasti bezbednosti and zdravlja na radu, (Djordjevic: New Safety and health at work laws in this year) https://www.danas.rs/drustvo/djordjevic-u-ovoj-godini-novi-zakoni-u-oblasti-bezbednosti-and-zdravlja-na-radu/.

117 Testimonies of factory workers, experiences from the Union Univeristy Law Faculty Labour Law Clinic in the 2011-2018 period.

118 Kolika je prava cena Geoxovih cipela? (What is the true price of Geox shoes), http://www.masina.rs/?p=3622. On working conditions in Serbian textile industry see: Clean Clothes Campaign Serbia, https://cleanclothes.org/livingsalary/europe/country-profiles/serbia/view.

119 Radnici Gorenja od petka u štrajku, ako im ne ispune uslove (Gorenje workers in strike as of Friday if their demands are not met) https://www.danas.rs/ekonomija/radnici-gorenja-od-petka-u-strajku-ako-im-ne-ispune-uslove/.

120 Đorđević o smrti radnika: Investitor dao potpunu informaciju (Djordjevic on workers' death: The investor has provided comprehensive information) http://rs.n1info.com/Vesti/a422084/Djordjevic-o-smrti-radnika-Investitor-dao-potpunu-informaciju.html.

121 Intervju s radnikom na „Beogradu na vodi" (Interview with a worker engaged on Belgrade Waterfront construction site) http://www.masina.rs/?p=7801&fbclid=IwAR3kE3NTqZWsVlNdOI9BimTnsV zbIMlxMeEZVo2KMtW0eVLRIY5e45Zatc.

9. SPECIAL PROTECTION OF EMPLOYEES

Special protection of pregnant women, motherhood and family is regulated by the Labour Law and the Law on Financial Assistance to Families with Children[122].

The central right related to pregnancy, childbirth, motherhood and parenthood, according to the Labour Law, is the right to maternity leave, to leave of absence for tending a child and to leave of absence for special care of a child. The employed pregnant woman and parents also have other rights prior to using maternity leave. Some of them, however, are jeopardized by employers' illegal practice on which there is no formal position from the competent bodies. Namely, some employers offer their employees to sign blank consents whereby they renounce certain limitations related to the duration of working hours and the scheduling of working hours, for an indefinite period and under unknown circumstances.[123]. Thus, pregnant women (i.e. employed women even before pregnancy), parents (or future parents) and single parents are requested to agree to a rescheduling of working hours, working overtime and working at night, which they are not obliged to, according to the law (unless they present the employer with a written statement whereby they assert their readiness to renounce such statutory limitations). Even though the law does envisage the possibility of an employee to do so, it is contrary to the law and the purpose of the protective norm for such a statement to be given without the employee knowing the circumstances or the duration of the new regime. Quite to the contrary, this possibility is envisaged for and is logical only in cases when the employer asks the employee to renounce this right for a limited period and for the purpose of finishing a particular job, in order to respond to the increased workload. It is necessary to caution that the practice of signing blank consents under circumstances not envisaged by law is unlawful, and that the state must inspect the employers who resort to it, and sanction such unlawful behaviour.

Analysis of the Law on Financial Assistance to Families with Children, in terms of the amounts of compensations and the conditions for exercising this right is provided further in the text, in the section dedicated to Article 10. Here we will analyse some formal legal issues raised in the implementation of this Law.

Firstly, there is a latent conflict between the norms of the Labour Law and the Law on Financial Assistance to Families with Children. The recently adopted Law on Financial Assistance to Families with Children has enabled for the compensation of salary during maternity leave, leave of absence for tending a child and leave of absence for special care of a child to be granted to the parents who were not in an employment relationship prior to exercising this right, provided they meet the requirements set by the law. Even though this is a positive step forward, which finally approximates the position of certain categories of workers to employed persons, these changes need to be accompanied with relevant changes to the Labour Law. Without them, the rights regulated by the Law on Financial Assistance to Families with Children – have no legal grounding. In other words, according to the solutions of this law, parents are not entitled to *leave of absence* but only to *compensation of wage for a certain period of time,* the computation of which is linked to the moment of childbirth. In this way, the situation becomes contradictory in legal terms – there is no right to use the leave of absence (since it is not envisaged by the Labour Law) but there is an implicitly recognised right to leave of absence, given that the Law on Financial Assistance to Families with Children recognises the right to compensation during such leave (hence it is logical for the right to such leave to exist). Overall, this situation cannot be legally with-

122 RS Official Journal Nos. 113/2017 and 50/2018.

123 Sporni zahtevi fabrike Leoni: Kršenje zakona ili pravo poslodavca?, (Contentious requests of the Leoni factory: Violation of the law or employers' right?) https://insajder.net/sr/sajt/tema/13190/Sporni-zahtevi-fabrike-Leoni-Kr%C5%A1enje-zakona-ili-pravo-poslodavca.htm.

held and the Labour Law must be amended urgently in order to align the two legal regimes.

The second downside of the Law on Financial Assistance to Families with Children with regards to the exercise of the right to maternity leave, leave of absence for tending a child and leave of absence for special care of the child, that is, the exercise of the right to compensation of wage or other incomes for the duration of the mentioned leaves concerns the discriminatory provisions of the law related to this issue. The first discriminatory provision concerns the status of female employees under agricultural social insurance scheme (female farmers) (Article 17, paragraph 2 and Article 18, paragraphs 2, 4 and 6 of the Law), whose average income is computed for a 24-month period, while in case of all other female workers the average income is computed for an 18-month period. Neither the state body that had the power of legislative initiative nor the legislator had presented arguments that could in any way justify such a differentiation. It can only be concluded that the solution is based on bias related to amounts withheld for the purpose of statutory social insurance by female farmers, which does not and cannot constitute adequate argumentation for prescribing such a difference in conditions for the exercise of this right.

The second discriminatory solution is the one according to which the pregnant women who have to spend a part of their pregnancy being temporarily prevented from working, that is, who are prevented from working in order to keep a risky pregnancy (Article 13, paragraph 1 and Article 18, paragraph 1), are put in an unfavourable position. The Law envisages that the income used for covering the compensation during the leave of absence includes the parent's incomes over the last 18 months preceding the first month in which the absence starts to due to complications related to pregnancy, or due to maternity leave, if no leave of absence due to complications in pregnancy was used. Due to prolongation of the period that is used for calculation, which is longer than in the case of other employees, this obviously puts the mothers who are not and who cannot be responsible for their health and working capacity during pregnancy in an unfavourable position. A risky pregnancy and/or complications during pregnancy are not and cannot be justified reasons for a different, less favourable treatment of this category of workers; therefore, the said provisions are unconstitutional and discriminatory. Finally, the Law on Financial Assistance to Families with Children also includes a provision whereby the right to compensation of salary during the leave of absence for special care of the child cannot be effected if the right to home help benefit. (Article 123, paragraph 7). Given that these two rights are not mutually connected, there can be no rational explanation as to one has to exclude the other, that is, the only conclusion is that this is an unjustifiably less favourable treatment of parents of children who have health issues, since the parents are required to choose between two benefits, even though, according to the core laws, they meet the conditions for exercising both. The reasons for excluding one or other right, in addition to being discriminatory, are also deeply immoral, as they put the endangered category of parents of children with serious health issues in even more difficult position.

Finally, it should be stressed out that the Law on Financial Assistance to Families with Children also violates ILO Maternity Protection Convention 183, which will be analysed in more detail under the analysis related to Article 10.

Disabled persons are not awarded adequate protection under the Labour Law. According to Articles 101 and 102 of the Labour Law, the employer is obliged to provide that an employee - a disabled person and employee with diminished working capacity (with health disturbances established by a competent medical agency) may perform work according to his or her work ability. If there is no suitable work, the employee shall be considered redundant and his or her employment shall be terminated by employer's decision; the employee

shall be entitled to severance pay the value of which depends on the years of service with the same employer. Such a treatment of disabled persons cannot be considered to constitute special protection, as the employees are not in a protected position. Quite to the contrary, as a result of such a solution the employees, fearing termination of employment, do not report their diminished working ability to the employer and continue to work on jobs they should not be working on due to their deteriorated health. If these persons do not meet the conditions for disability pension, they are essentially excluded from the entire labour and social insurance system, and can seek support only under the social security system, which is not sufficient even to provide them with the most basic financial support and enable them a normal life. For this reason, the given solution must be changed and social responsibility of both the employer and the state needs to be increased.

10. PROTECTION OF INDIVIDUAL RIGHTS FROM EMPLOYMENT RELATIONSHIP

Effective enjoyment of individual rights from employment relationship, which are set out in the law, is often problematic, as elaborated in the above analysis (e.g. the right to limited working hours, right to paid overtime work). There is a number of norms that are not properly implemented in practice or are not implemented at all. This raises the issue of possibility of action on the part of the employees and trade unions in cases when some labour rights are violated or when their enjoyment is prevented or complicated by employer's illegal actions.

In Serbian law, the modalities for protecting the rights from employment relationship are divided into judicial and non-judicial. Non-judicial methods for protecting labour rights include addressing the inspection authorities and peaceful resolution of labour disputes. Judicial protection implies the initiation of a labour dispute, which is classified as a special type of civil action, before specialised judges (judicial panels) of general competence courts.

Labour inspectorate is regulated by the Labour Law. Labour inspectorate is an organisational unit within the Ministry of Labour, Employment, Social and Veteran care. The problems in the work of labour inspectors can be divided into several categories.

Inefficient work. Due to a small number of inspectors, the employer can expect to undergo regular inspection by the labour inspectorate only once in several years.

The control is not of good quality. In some cases, labour inspectors preform the control only to satisfy from. For instance, in cases of potential harassment and illegal working conditions, the labour inspector has performed the control and found no violations. The report on the inspection control, however, stated that the control was performed by the inspector having visited the employer (without stating which specific offices and facilities) and talking to several employees (without stating more on who these employees were). Since the director's office is also the employer's facility, and since the director is also an employee, the report cannot lead to any meaningful conclusion, except that the inspector has perhaps talked to the director. There is no indication that the inspector has examined the working conditions at the production facility, or that the inspector has interviewed those employees who have filed the report and their colleagues or direct superiors. Hence, it can be concluded that the labour inspection was performed only to the satisfy the form set out be the Law – whereby the inspector is required to act on any report, including anonymous reports – and not to truly examine the issues raised in the report.[124] Inspectors do not use

124 Experiences of providing free legal aid at the Labour Law Legal Clinic of the Union University Law Faculty in the 2011 -2018 period.

their powers to interview the employees who fear for their jobs, that is, who are afraid of their contracts being terminated if they talk to the inspector somewhere else – for instance, on the premises of the labour inspectorate. Failing to address the key objections against the employer as provided in the report, the labour inspectors not only challenge their competence and credibility – they also create an atmosphere among the employees that the labour inspectorate cannot or will not help them in cases of employer's illegal actions.

Self-limitation of competences. Even though the Labour Law expressly refers to labour inspectors as the body that monitors the implementation of all labour law regulations, the inspectors themselves often limit their competences only to those working under an employment contract, due to an unfortunate formulation found in Article 268, where the term „employees" is used. In practice, this should not be the case, and, as a rule, labour inspectors are also in charge of monitoring in cases of contracts outside of an employment relationship – the inspectorate has intervened numerous times when it comes to seasonal workers, who are mostly under the regime of occasional and casual work. However, the self-limitation of competences to employees only is often resorted to by the labour inspector when they do not wish to intervene in cases that have certain political implications – for instance, when they should inspect the employers who are in a factual and politically privileged position of a foreign investor. What is worrying is the fact that the labour inspectorate also denies its competence in other situations. Practice has recorded instances of denying the competence when extraordinary oversight is requested over administrative bodies (as a rule, such requests are referred to the administrative inspectorate, which also declares itself as not competent) or in cases of factual labour (labour without legal grounds) when the engagement of such workers is terminated at employer's initiative. The inspectorate also shows an (inconsistent) practice of refusing to act on the report of a former employee, because he or she is not in an employment relationship at the time the report is filed, even though the report relates to the moment when the employer's unlawful behaviour was directed towards them as employees. In addition, the Law on Inspection Oversight[125] has rendered extraordinary inspection oversight administratively complicated, while the possibility of the inspection oversight to be performed at inspectors' own initiative is limited by the existence of a relevant order issued by the head of the local inspectorate; this renders labour inspection not only inefficient, but also frustratingly insensitive towards media reports and coverage of violations of employee's rights, when, as a rule, the inspectors do not react until at least one employee files a report. A more precise regulation of competences in the Labour Law, and the provision of more precise (yet sufficiently wide) guidelines on the limits of the labour inspections' competences, would remedy this inadmissible situation. It should be noted that the labour inspectorate has never had competences relating to the possibility to bring to notice of the competent authority the abuses not specifically covered by existing legal provisions that the inspectors have identified in practice. This competence is envisaged in Article 3 of the 81 ILO Labour Inspection Convention. Finally, the Republic of Serbia has not fully implemented the 129 ILO Labour Inspection (Agriculture) Convention, and family agricultural undertakings remain outside the scope of inspection oversight.

Insufficient and insufficiently competent human resources, deficient equipment and difficult working conditions. As already indicated, there are not enough labour inspectors, and their age structure is unfavourable. Exercising the policy of not employing a sufficient number of labour inspectors, the Republic of Serbia violates the obligation embedded in Article 10 of the 87 ILO Labour Inspection Convention. Every labour inspector covers several thousand business entities that he or she should exercise regular inspections over; this workload is complemented by reports that initiate extraordinary oversight. There are no mechanisms for continuous education of labour inspectors, nor for monitoring their

125 RS Official Journal Nos. 36/2015, 44/2018 – other statute and 95/2018, Article 16, paragraph 1.

work in order to harmonise practices and remedy the deficient actions that were elaborated on above. In addition, difficult working conditions may result in cases of corruption among labour inspectors, or even to systemic corruption, which has been noted over the past years, when the employer, who is subject to inspection oversight, has presented the labour inspectorate with cars as a gift.[126] As explained above, political influence and pressure exerted on the labour inspectors is sometimes very significant.

Lack of both internal and external control of labour inspectors' work. The observation on the lack of continuous monitoring of inspector's work is complemented by the lack of internal and external control of their work. It is impossible to exercise judicial control over the work of labour inspectors, since administrative dispute is not allowed against a final second-instance ruling of the labour inspector (or the minister in second degree who has, by exercising the power vested in him by the statute, has entrusted the second-instance consideration of labour inspectors' decisions to a special department within the Belgrade Labour inspectorate) (Article 272 paragraph 4 of the Labour Law). This solution is contrary to Article 40 of the Law on Inspection Oversight, which envisages the possibility of initiating an administrative dispute without any exceptions. The Law on Inspection Oversight (Article 54) has opened the possibility for the existence of internal control in inspectorates. Even though this option was utilised within the Labour Inspectorate in 2017, the Rulebook on the Form and Manner of Performing Internal Control of the Inspectorate in the Field of Labour Relations and Health and Safety and Work in the Field of Social Security[127] renders the internal control of the quality of inspector's work inefficient and unable to contribute to the improvement of their work. Some of the main objections against this secondary legal act are the following:

- One of the enumerated objectives of internal control is to encourage inspectors to achieve better results and to raise the quality of their work; this is indeed one of the potential results of internal control, but is by no means its primary objective. Conversely, the thing that the internal control should enable and that is the main purpose of its existence – legality of work of the labour inspectors – is not referred to at all.
- Those in charge of internal control are referred to as „controllers" – however, there are no further provisions on them and its hence unclear how they will be selected and whether they will be selected from among labour inspectors.
- The sanctions envisaged for labour inspectors who are found to have acted contrary to the law are more similar to corrective measures for minors then to serious sanctions for violating the law and incurring damage to employees or employer: additional training, continuous education, transfer to less complex job, joint work with a more experienced (and better assessed) inspector, other measures (which are not even clearly defined and most certainly will not be applied since the controller cannot make them up on his or her own). The alternative is to initiate disciplinary proceedings against labour inspectors by applying the Law on Civil Servants – this mechanism, however, was already available, regardless of the existence of internal control, but was never utilised in practice.
- Controllers' reports are not available to the public and are not disclosed.[128]

It can be concluded that the labour inspectorate, under the current regulatory and factual framework, is insufficient and insufficiently independent to protect employee's rights. What is needed is a comprehensive and substantive change of the normative framework of this inspectorate, coupled with improved working conditions, younger human resources

126 Jura: Ministarstvo tražilo da im poklonimo automobile, (Jura: Ministry requested that we give them cars) https://insajder.net/sr/sajt/tema/1005/%20i%20.

127 RS Official Journal No.118/2017.

128 For more on the problems of internal control in the labour inspectorate see: Mario Reljanović, Unutrašnja kontrola, ali kakva, (Internal control, but what kind of control) https://pescanik.net/unutrasnja-kontrola-ali-kakva/.

and periodic continuous education. A far more efficient and effective judicial and internal control are also needed if the inspectors' position towards problems they face in their work is to be changed.

Peaceful resolution of labour disputes is regulated by three different statutes, and therefore, in general terms, it is possible to differentiate between three different ways of extra-judicial resolution of labour disputes. None of them, however, has so far yielded satisfactory results.

The Labour Law regulates peaceful resolution of disputes through internal procedure with the employer in a very flawed manner. Only one article of the Law (194) is dedicated to this issue, envisaging that in case of a dispute between the employer and the employee, the dispute can be settled consensually if so envisaged by a general act (a rulebook on labour or collective agreement with the employer) or by the employment contract. The law does not regulated the rules of procedure, which can be regulated by the parties in accordance with the mentioned acts, but does include a provision stating that the dispute is resolved through arbitration – which is an illogical and unpopular solution, one that cannot result in a *consensual* resolution of the dispute but in the arbitrator's decision, which does not necessarily (as a rule does not at all) reflect the balance interests of both parties to the dispute. The other provisions are not sound either – it is envisaged that the arbitrator's decision is final and that it binds both the employer and the employee. There is no second instance in the decision-making process, and no provisions on how such a decision will be enforced since the law does not grant it the status of executive title. It seems that the entire solution was included in the law only to satisfy form and that this is a mechanism of low quality, which is not used in practice. This is why consideration should be given to the possibility of substantially changing this procedure, and ground it in the principles of mediation and compromise of the disputing parties, with the possibility of mediation or participation of third parties in the procedure: trade unions, professional mediators and the like.

The Law on Amicable Settlement of Staff Disputes[129] includes serious drawbacks when it comes to potential extra judicial resolution of disputes between employers and employees. „The principle of voluntarily is applied only in certain aspects of the procedure; but this is done inconsistently, which constitutes an impermissible violation of the rights of parties to the proceedings. Article 5, paragraph 2 prescribes that „parties to the proceedings are free to voluntarily decide on engaging into peaceful resolution of the dispute, unless otherwise provided in this law". In practice this means that the party who agrees to peaceful resolution of individual labour dispute (dispute between an employer and an employee) has no say in the selection of the arbitrator (if the parties do not agree, the arbitrator is selected by the Agency director – Article 12, paragraph 2) and also has no say with regards to the course of proceedings and termination of the proceedings once the main hearing is opened (according to Article 31, paragraph 6 of the Law, a party may withdraw the proposal for initiating the proceedings before and arbitrator by the day the main hearing is opened at the latest). The only exception from the rule that the arbitrator has the discretion to end the proceedings by a ruling are the proceedings initiated with regards to harassment or discrimination in the field of work – as a rule, they are resolved by consensus of the parties. In other cases, if there is no consensus, the arbitrator autonomously decides on the resolution of the issue at dispute. (Articles 35a and 35b). Arbitration is selected as a mechanism for resolving individual labour disputes, which is contrary to the nature of the attempts to settle the dispute between conflicting parties. The objective of extrajudicial dispute resolution is primarily to find a solution that is adequate for both parties and to resolve the conflict by long-term commitment of the parties to the dispute to perform their obligations in ac-

129 RS Official Journal Nos. 125/2004, 104/2009 and 50/2018.

cordance with the law, and to eliminate the consequences of the (unlawful) behaviour so far. Peaceful resolution of dispute through arbitration can only give rise to new conflicts, because, after the arbitrator's ruling, one party will not certainly not be satisfied with the outcome of the procedure. Given that the principle of voluntarity is not implemented at all once the main hearing ins opened, a party cannot withdraw from the proceedings nor can it affect the peaceful resolution of the dispute in any way – which renders the entire proceedings quasi-judicial and inappropriate. Prior to the 2018 amendments, it was unclear whether the arbitrator's ruling is an executive title. Even though the statutory construction was ambiguous and unclear to say the least, practice has answered that this was not the case, and that enforcement proceedings cannot be initiated on the basis of arbitrator's ruling. This drawback has been eliminated by the latest amendments (Article 35a, paragraph 2), which could be considered as a positive step, if it weren't for the other mentioned drawbacks in the proceedings and their implementation. Is there any judicial protection of the rights of dissatisfied party in the peaceful resolution process? Having in mind the absence of the second instance from the proceedings, this question should only be answered in one way – positively. However, this is not the case. Quite to the contrary, the Law expressly prescribes that the arbitrator's ruling is final, finally binding and executive (Article 36, paragraphs 3 and 4). According to Articles 30, paragraphs 1 and 2 and 37 of the Law, the court will stay the proceedings (if proceedings are in course regarding the same subject matter) for the duration of the dispute, and the parties are under the obligation to inform the court of the outcome of such proceedings. The relationship between the current (or future) labour dispute and the procedure before the Agency is not expressly resolved in the Law; however, the cited provisions render it clear that, once the proceedings are completed, the satisfied party may seek enforcement of the arbitrator's decision, whereby the disputed issue and potential judicial protection are eliminated. Of course, this is only partially true, since a court dispute can be re-initiated on certain grounds, where the contentious issue will be of the same kind but not the same issue (e.g. repeated harassment, repeated failure to pay the salary and the like). It is worrying that the party to the dispute should lose the right to court protection in this way and that such party can only initiate a dispute with regards to the proceedings for peaceful resolution of the dispute, but not with regards to the subject matter that was decided on in such proceedings."[130] The possible solution is either to substantially amend the Law on Amicable Settlement of Staff Disputes in the part relating to individual labour disputes, or the regulate this subject matter (based on different principles that would guarantee legal certainty and voluntarity to the participants while maintaining efficiency) in the Labour Law only.

The Law on Mediation in Dispute Resolution[131] does not relate to labour disputes only, but covers a wide spectrum of disputes in the field of civil law (including property related disputes and damages deriving from criminal and misdemeanour proceedings). When it comes to labour disputes, the Law includes a very imprecise formulation stating that it also applies to resolution of labour disputes, unless otherwise prescribed by another law. This would practically mean that all disputes that could potentially be resolved before the Agency for Peaceful Resolution of Labour Disputes, pursuant to the Law on Amicable Settlement of Staff Disputes, would be outside the scope of this law. Having in mind the drawbacks of the Law on Amicable Settlement of Staff Disputes, it seems that divesting the parties to the dispute of the possibility to resolve the dispute by resorting to the Law on Mediation in Dispute Resolution, if they do not want to present their dispute to the arbitrator of the Agency for Peaceful Resolution of Labour Disputes for any reason, is not a good solution. This is particularly important given that the mediation procedure is, by its nature,

130 Mario Reljanović, Alternativno radno zakonodavstvo (Alternative Labour Legislation) Beograd, 2019, p. 102-103 (in print).

131 RS Official Journal No. 55/2014.

closer to the manner in which these disputes are resolved, and that the relationship with judicial protection is regulated in a better way, and that it is clearly regulated that agreements reached through the implementation of the law on Mediation in Dispute Resolution are enforceable.

Judicial protection of the rights from employment relationship is one of the main problems in the functioning of the labour law system in Serbia, and in the attempt to defend economic and social rights from violations on the part of the employers or state bodies and institutions. A labour dispute, as a special type of civil action initiated by the employer against the employee has for years been a symbol of inefficient procedure, one that lasts for years and is often rendered pointless before its legal termination. Two-instance or three-instance adjudication, as well as the enforcement proceedings, may last for over five years, which is impermissibly long for proceedings that are prescribed by law as urgent.[132]

There are several reasons for concern when it comes to judicial protection of employees' rights.

Legislative amendments are directed towards discouraging workers to seek judicial protection, reducing their possibilities when it comes to their claims against the employer, and the shortening of time limits and overall, reducing the quality of such protection. When it comes to termination of employment contract at the initiative of the employer, the Republic of Serbia is in double violation of the 158 Termination of Employment Convention, with regards to obligations form Article 11 of this Convention. Primarily, there is no differentiation of grounds for termination that relate to the employee's behaviour (violation of work obligation or failure to respect work discipline) into grave and less grave; thus, the employee can be dismissed even in case of a banal violation of work obligation or of work discipline, which did not cause damage to the employer. Article 11 regulates the right of the employee to period of notice or adequate compensation – according to the Labour Law, the employees whose employment contracts are terminated are not entitled to a period of notice, except in cases when the employment contract is terminated due to the employee not achieving the needed work results, or not having the necessary knowledge and competence, when the period of notice is set to be between eight and 30 days (Article 189, paragraph 1 of the Labour Law) – it is questionable whether a period shorter than 30 days may be considered adequate. In all other cases referred to in Article 179 of the Labour Law, the employment contract is terminated on the day the ruling on termination of contract is handed to the employee.

When the employee finds that his or her employment relationship was not terminated lawfully, he or she can seek protection from the court. The 2014 amendments of Article 191 of the Labour Law, which regulates the consequences of unlawful termination are dissuading the employees from exercising their right to judicial protection in such cases. Article 191 of the Labour Law has been considerably amended, in a way that practically introduced an unconstitutional division into „grave" and „less grave" violations of the law on the part of the employers. Namely, if during the proceedings the court finds that there were reasons to terminate the employment relationship, but that the employer had acted contrary to the provisions of the law regulating the procedure for termination of employment relationship, the court shall deny the employee's request to be returned to work, and will award damages to the employee in the value of up to six salaries. This solution is highly problematic, for several reasons. Firstly, „it is unclear what exactly constitutes a violation of the employment termination procedure. For instance, if the employer terminates the

132 Even though there is no official data, an unofficial estimate based on available data is that labour disputes last for three or four years in two-instance, or four to five years in three-instance court proceedings. Of course, individual duration of labour dispute also depends on its complexity and the circumstances in which it is developed, and hence there are also drastic exceptions where the proceedings lasted for some ten years.

contract orally (which is often the case in practice), this is clearly an unlawful termination in procedural terms. However, the employee does not have to be informed of the reasons for termination, and hence cannot know whether the reason for termination really exists, that is, the employee cannot know whether the employer truly had reason to terminate his or her employment contract? This is possible in cases when the employee incurs some minor damage, when his or her work is not of required quality (of which the employee is not aware since the employer did not inform him or her), when the employee's contract is terminated due to a customer's complaint, and the like. This solution is also contrary to the labour inspectorate's power to reinstate the employ in cases of manifestly unlawful termination until the finalisation of the staff dispute – and every oral termination is manifestly unlawful, regardless of whether reasons for termination exist or not. In the mentioned case, when the staff dispute is finalised (after several years) on behalf of the employee, but on procedural grounds, will the employer be entitled to sue the state for damages due to keeping the employee longer then the envisaged maximum amount that can be awarded as damages? Or is it easiest for the employer in such a case not to observe the decision of the labour inspectorate and remove the employee and stop paying his or her salaries? The Law does not regulate the consequences of such a flawed solution. Finally, even in cases when it is clear that the employer has made a procedural mistake in the termination procedure (for instance, the employer has left less than eight days to the employee to respond to the warning with the threat of dismissal), there is no need to norm such an issue as an absolute rule. Procedural deficiencies (of the ruling on termination of employment contract, *author's comment*) cannot be marginalised through relativization of their importance, unless the employer's ruling is not annulled. However, if the procedural violations have not significantly affected the legality of the ruling, the court should not annul the ruling on termination of employment contract, in which case the issue of damages would not be raised at all."[133] This position is fully in line with the existing jurisprudence, as the established interpretation follow the line of reasoning whereby formal deficiencies in the termination procedure that had no effect on the final outcome of the procedure do not necessarily constitute grounds for annulment of the ruling on termination of employment contract. In the example where the employer mistakenly leaves a shorter time limit to the employee to declare on the warning with the threat of dismissal, such mistake shall not be relevant if the employee does indeed declare on the allegations from the warning. This practically eliminates the only argument to justify this provision – according to the existing jurisprudence, the employer did not suffer the consequences of violating procedural rules which did not substantially affect the outcome of the termination procedure. It would have been far better if the solution that exists in jurisprudence was transposed into a norm – namely, that a ruling on termination shall not be considered unlawful if, in the course of termination procedure there were some omissions that were not decisive in terms of the final outcome. It is true that such a norm would be imprecise and subject to different interpretations, but it would certainly be better than the norm that has been adopted, which sets a certain (dangerous) precedent in the legal system. It disregards the principles of restitutio in integrum, and of the full compensation of damages, and violates the provision of the Law on Obligation Relations."[134]

The second objection related to the mentioned Article 191 concerns the manner in which the damages are computed in cases when the court finds that the termination was unlawful. In this case, the employee is practically entitled to compensation of the basic salary, increased by the value corresponding to the years of service. „What is at hand here is the

133 Z.Ivošević, Otkaz ugovora o radu od strane poslodavca and pravne posledice nezakonitog prestanka radnog odnosa, (Termination of employment by the employer and legal consequences of unlawful termination) in: Z.Ivošević (ur.) Novine u Zakonu o radu (Novelties in Labour Law) Beograd, 2015, 152.

134 M. Reljanović, B. Ružić, A. Petrović, Analiza efekata primene izmena and dopuna Zakona o radu (Analysis of effects of implementation of amendments to the Labour Law), Beograd, 2016, 53-54.

transfer of jurisprudence into a norm; the court practice was formed so as not to recognise employees' rights to other benefits and compensations, even if they have the character of salary according to the Labour Law, because the employee has not used them in the course the labour dispute in lieu of the unlawful termination. The fact that the employer's unlawful behaviour resulted in the employee's inability to exercise certain rights and to related compensations had not been recognised by courts, and now this position is embedded in a mandatory norm."[135] On the other hand, the value so determined is unjustifiably reduced for the total amount the unlawfully dismissed employee has realised in the course of labour dispute „on the grounds of work", therefore, on the grounds of any form of work engagement, not only on the grounds of employment. Such a solution is unjust, of poor quality and also very illogical from the standpoint of general principles of damages – for instance, it is unclear how will one assess the fact that the employee, whose employment was unlawfully terminated, has been denied of the right to acknowledged years of service, which he or she could not effect (or has effected but against a lower basis) through other types of work engagement, after the employment contract was terminated? Given all issues raised above, the solution should definitely be amended so as the only amount deducted is the one acquired in the course of labour dispute on the grounds of employment contract."[136]

When it comes to other amendments, it is worth noting that the preclusive time limit for initiating labour disputes has been shortened in 2014, without any rational explanation, and is now 60 days as opposed to 90 days, which is how long it was before the amendments. Given the fact that workers are often not properly informed, and having in mind that the unfavourable provisions of the Law on Free Legal Aid exclude the majority of citizens from the possibility of exercising the right to free legal aid, this amendment seems to have additionally endangered worker's access to justice. The experience of those providing free legal aid, who have provided it before the Law on Free Legal Aid was adopted, show that often the workers whose contracts were terminated are not aware of the short time limit for initiating judicial protection procedures, and that they usually spend the initial period after being dismissed hoping that the employer will engage them again. This shortening of the time limit has considerably worsened their position.

Finally, it should be noted that the possibility of initiating the procedure for judicial protection of workers has been limited by the 2014 amendments, by removal of the institute of forced termination from the Labour Law (former Article 178 of the Labour Law), without any rational explanations. Forced termination existed as a form of protection of the employee who has terminated the employment contract if such termination was caused by employer's unlawful actions, which is why the employee found that he or she could no longer work for the employer. In such cases, according to the previous wording of the law, the employee had the option of initiating a labour dispute and being protected by Article 191 of the Labour Law – therefore, such employee was awarded the same protection as the employee claiming that his or her contract was terminated unlawfully by the employer. The deletion of the article regulating forced termination has eliminated this option, and one of the arguments used in favour of such deletion – that the issue is already regulated by the Law on Prevention of Harassment – does not stand, because this statute does not cover all possible situations (see the analysis related to Article 2), while, on the other hand, it is possible to imagine situations that will constitute forced termination but that cannot be characterised as harassment. Therefore, the deletion of this article from the Law has left a legal lacuna, which additionally aggravates the position of the employee with regards to employer's unlawful actions.

135 M. Reljanović, B. Ružić, A. Petrović, op.cit., 53.
136 Mario Reljanović, Alternativno radno zakonodavstvo (Alternative Labour Legislation) Beograd, 2019, p. 93 (in print).

Workers' access to justice is made more difficult, and hence it is possible to claim that citizens' access to justice has been jeopardized. The Law on Free Legal Aid [137] does not correspond to the real circumstances and citizens' needs, as it considerably reduces the circle of potential recipients. At the same time, the Law on Court Fees[138] does not recognise the exemption from payment of fee with regards to certain labour disputes. This gives rise to an absurd situation where the employee who is seeking judicial protection because the employer did not pay his or her salaries for a period of time (usually a few months but occasionally for several years) must first pay the court fees (under the threat of enforcement) if he or she wants the case to be processed at all. The employee can be relieved of other costs of proceedings by the court decision, but, in order to be able to exercise this right at all, the procedure must first be initiated and the fee for filing the action must be paid. The irony also lies in the fact that court fees are dependent on the value of the dispute – therefore, the higher the employee's claim, the higher the fee to be paid to the court to seek judicial protection. This solution has to be changed, as it is contrary to the nature of the right to judicial protection and because it prevents a considerable number of persons from seeking judicial protection.

The courts are not efficient, and their jurisprudence is not harmonised. The latter constitutes a particular problem, which has been most evident over the past decade, most prominently after the new court network was introduced. The transfer of second instance competence to the four appellate courts and the reduction of the role of the Supreme Court of Cassation in labour disputes – it is now more of an exception then a rule –have created conditions for different interpretation of regulations and establishment of differing court practice in lieu of the same or similar circumstances and implementation of the same labour law provisions. This tendency can also be seen in in other legal fields, but is particularly visible in labour law and labour disputes, where the legal norms are ambiguous, unclear and of poor quality, and where the interpretations provided in court decisions and a uniform court practice are of critical importance. This results in high level of legal uncertainty, while the state currently has no mechanisms for addressing this issue.

The issue of judicial protection was raised by the Committee in its concluding observations of 2014. Paragraph 9. of this document is dedicated to courts: „While noting the recent judicial reforms, the Committee is concerned that the administration of justice is still ineffective, in particular in the context of employment-related claims against companies that were privatized, as evidenced by the excessive length of judicial proceedings, lack of remedy and non-enforcement of judgements under the domestic law. The Committee recommends that the State party take the necessary legal, policy and other measures to ensure the effective and independent functioning of the judiciary as a means of safeguarding the enjoyment of human rights, including economic, social and cultural rights." It should be noted that the state has done nothing to remedy this situation. Enforcement agents have been introduced with the aim to facilitate enforcement of court decisions and have done so with regards to judgments passed in labour disputes in a small percentage of cases. However, enforcement agents have had a considerable adverse effect on social security and enjoyment of fundamental social protection rights, which will be elaborated in more detail in the analysis of Articles 9 and 11. It seems that their adverse effect, primarily reflected in the seizure of property and sale of residential immovable property, by far exceeds any positive effect they may have on enforcement of decisions passed in labour disputes. In addition, the amendments of the Labour Law have rendered the calculation of salary and compensation of salary the employer is bound to issue to the employee even if the employer fails to pay,

137 RS Official Journal No. 87/2018.
138 RS Official Journal Nos. 28/94, 53/95, 16/97, 34/2001 – other statute, 9/2002, 29/2004, 61/2005, 116/2008 – other statute 31/2009, 101/2011, 93/2012, 93/2014, 106/2015 and 95/2018.

an executive title. Even though this is essentially a good solution, it is not fully utilised in practice, because it exists in an imperfect normative environment – hence, employers decide not to issue the calculation list to the employees, because the misdemeanour fine they pay in such cases (if declared guilty and sanctioned at all, for, more than one half of misdemeanour proceedings are discontinued due to the expiry of statute of limitations) is far lower than the amount they would pay to the employee on the grounds of salaries and compensations. The state does not apply an adequate answer to this unlawfulness, and hence the reach of this essentially good idea is generally very limited. As mentioned before, the relationship between the employer's insolvency and enforcement of court decisions and the finalisation of labour disputes initiated before insolvency proceedings are opened still remains problematic, as there is not political will to resolve this issue on permanent and quality basis to the benefit of the workers.

Resolution of the issues related to judicial protection should encompass a number of simultaneous and synchronised efforts on the part of the state. Experts and trade unions have started to call for the establishment of so-called labour courts more often; the labour courts would be specialised courts that would resolve labour disputes more efficiently and in line with the principle of urgency. Judicial specialisation, which currently exists to a certain extent, would have to be done consistently and continually. Further, the basis of the new procedural regulations would have to be directed towards the participation of trade unions and employers' associations in resolving disputes and maximising efforts to resolve the disputes in a peaceful manner, preventing the disputes to come to court or exercising this option even during court proceedings. The second line of intervention must be directed towards resolving the issues that arose due to discouraging provisions of the Labour Law amendments of 2014 and restoring the judicial protection standards that were in place before the 2014 amendments.

Judicial protection of those working outside an employment relationship is not separately regulated, which means that such workers can only file general civil actions for damages. The applicable law in this case is the Law on Obligation Relations[139] which cannot protect individual rights related to participation in the work process. For instance, in the case of termination of a contract on occasional and casual work, the worker cannot ask the court to be reinstated to work, but can only ask the court to establish whether the termination has incurred damages and their compensation. This regulatory solution is not a good one, and it does not award any protection to workers. On the other hand, it provides ample opportunity for abuse of different regimes of work engagement. For instance, there are cases in which persons hired through youth and student cooperatives under occasional and casual work contracts have sustained occupational injuries. Even though health insurance contributions are paid in cases of this type of work engagement and therefore the employees are beneficiaries with regards to the Republic Health Insurance Fund, with corresponding rights, as a rule, in such cases the cooperatives have terminated contracts (which they are allowed to do according to the law – it is possible to terminate this type of contract without any reasons for termination and without termination procedure, at any point in time). The *ratio* behind such actions is the fact that due to injury the worker would not be able to work for a certain period of time while the burden of paying the compensation of salary during this period would fall on the employer, that is, to the cooperative, according to the law. Consequently, the injured worker would incur costs instead of being a source of income, and the cooperatives as a rule opt for this unlawful course of action, given the workers limited possibilities of seeking legal protection.[140]

139 SFRY Official Journal Nos 29/78, 39/85, 45/89 – CCY decision and 57/89, FRY Official Journal No. 31/93 and SM Official Journal No. 1/2003 – Constitutional Charter

140 Experiences of providing free legal aid at the Labour Law Clinic of the Union University Law Faculty in the 2011-2018 period.

It can be concluded that the protection of workers' rights is at a very low level, with a constant tendency of further deterioration and poor practice in implementation of the law both on the part of the employers and on the part of state bodies, institutions and courts. In order to ensure effective enjoyment of rights from employment relationships, the mechanism for extrajudicial dispute resolution need to be considerably improved and promoted, and the efficiency in resolving labour disputes must be increased. When it comes to those engaged on grounds other than an employment contract, their position must be equalised with that of the employees in terms of the protection of the rights stemming from different types of work engagement contracts. The Law on Obligation Relations cannot provide sufficient protection nor regulate the specificities of work engagements under these regimes.

11. FACTUAL LABOUR

The existence of an employment relationship, in accordance with the Serbian positive law, requires the existence of valid legal grounds for the performance of work. If the employee works without valid legal grounds, this a situation that is called „factual work" or „possession of work" in labour law theory. Factual labour is the labour that cannot be subsumed under the legal regime of an employment relationship and is contrary to the rule of law, legality and labour law certainty. Consequently, it is today one of the biggest challenges faced by the Serbian labour market.

Legal regimes of most states, Republic of Serbia included, grants certain rights to employees who are in the regime of factual work. According to Article 32, paragraph 2 of the Serbian Labour Law, if the employer fails to conclude the employment contract with an employee, it is deemed that the employee has established the employment relationship for an indefinite period of time, as of the day the employee started working. This is a so-called „fiction of the existence of an employment relationship" whereby the legislator sought to prevent the existence of factual labour, even though failure to conclude the employment contract or a different type of work engagement contract with a person who works for the employer is already punishable in terms of Article 273 of the Labour Law.[141]. The employee must prove that he or she went to work every day, and that he or she had performed work on the employers' assets and property.[142] Additionally, if the work engagement of the employee has all the characteristics of an employment relationship with regards to the mutual rights and obligations of the employer and the employee, and the employment contract was not concluded due to an omission of the employer, this gives rise to a fiction of establishment of an employment relationship on the day the employee had started to work[143].

The fiction of existence of an employment relationship is also mentioned in Article 37, paragraph 6 of the Labour Law, which prescribes that, if the employment contract for a definite time period is concluded contrary to the provisions of this law, or if the employee continues to work for the employer for at least five business days after the expiry of the time period for which the contract was concluded, it shall be considered that a full-time employment relationship has been established. In practice, this provision is referred to as the „transformation of employment relationship", having in mind that it presumes the existence of fixed-term employment relationship before the setting in of the fiction of existence of an employment relationship for an indefinite period.

Finally, there is one more fiction of the existence of employment relationship, this time a creation of jurisprudence, which relates to the consequence of establishment that an

141 A fine of 800,000 to 2,000,000 dinars shall be imposed on the employer who failed to conclude an employment contract or other contract in terms of this Act with a person that works for them.
142 Judgment of the Commercial Appellate Court Pž. 2363/2017 of 01.10.2017.
143 Judgment of the Supreme Court of Cassation Rev.2 827/15 of 27.10.2015

employment relationship was terminated unlawfully, where the Constitutional Court has repeatedly taken the position that in such cases there is a fiction of an uninterrupted employment relationship of the employee from the moment the unlawful ruling on termination of employment was passed until the day the employee was reinstated to work.[144]

Therefore, according to the positive regulations, a worker without an employment contract would have to prove, in court proceedings, the existence of conditions for the application of fiction on the existence of an employment contract, which means that the start of work has all the characteristics and elements of an employment relationship. In other words, even though there are no legal grounds for the establishment of an employment relationship, the established relationship between the employer and the worker, according to its content and its quality, has all the characteristics of an employment relationship.145

In addition to these legal fictions, there are also regulatory attempts to curb factual labour. Thus, Article 35 of the Labour Law envisages that the employer is obliged to keep the employment contract, i.e. other contract in accordance with the law, or a copy thereof, in the seat or other business premise of the employer or elsewhere, depending on where the employee, or worker, works. In addition, on the basis of the employment contract or other contract on conducting activities concluded in accordance with the present Law, the employer is obliged to file a joint application for mandatory social insurance in the time period specified in the law governing the Central Register of Mandatory Social Insurance, at the latest prior to the moment the employee, or other worker starts working. These are welcome statutory provisions, but they are not particularly effective in practice, because they rely on properly performed inspection oversight, which is missing in some cases.

A worker performing factual labour can address the labour inspectorate and initiate a labour dispute, demanding that the existence of an employment relationship in terms of the Labour Law is established. Once the claim is sustained, the fiction of the existence of an employment relationship becomes effective from the day this person had started to work.

What usually happens in practice is that the employer announces the need for employees through the National Employment Service or other service, but, given that the work is by its nature short-termed or that the turnover of workers is high, the employer does not conclude an employment contract or any other contract with the worker, and hence the workers have no rights on the basis of work. These cases come into focus of public interest only once adverse consequences arise, whether it is a occupational injury or some form of violation of labour rights. According to the Labour Inspectorate Work Report for 2018146, 17 fatal and grave occupational injuries were recorded where workers were used as „black labour“ and one where the worker was engaged under a special service contract. The majority of those injured worked in construction or other industry.

The state has taken certain steps in order to curb factual labour, primarily through intensifying controls by labour inspectors. According to the Labour Inspectorate Report for 2018, factual labour is most prominent in the construction sector, agriculture, trade, hospitality sector, and in textile and food industries. The labour most usually engaged are low-qualified workers, aged over 40, who are recipients of social benefit. For the sake of comparison, the number of inspections was in decline in the 2015 – 2017 period, and hence in 2015 a total number of inspections amounted to 61,776, covering 696,822 workers, out of which 16,408 were found in factual labour, and following the inspection, a total of

144 Constitutional Court decision No .Už-3644/2014.

145 According to the position taken by Supreme Court of Cassation in judgment Rev2 761/2012 of January 23, 2013, it is sufficient that the worker has started to work and this day is therefore considered the start of the employment relationship.

146 Labour Inspectorate Annual Report for 2018.

12,.250 have entered into an employment relationship. On the other hand, in 2017 the total number of inspections performed was 53,424, covering 510,725 workers, 22,411 of which were found in factual labour and, following the inspection, a total of 21,171. of them have established some form of employment relationship[147]. Data is somewhat different in 2018. Namely, according to the available data, in 2018 a total of 70,122 inspections were preformed, out of which 42,668 inspections were in the field of employment relationships and 26,515 in the field of health and safety at work. Out of that, 17,026 persons were found in factual labour, and, following relevant measures, a total of 13,869 of them have established an employment relationship. In statistical terms, compared to 2017, the number of inspections increased by 30% in 2018. The available data show that the number of persons found in factual labour was also reduced by 24% compared to 2017.[148] Such data can be encouraging, in terms of instances of factual labour being in decline, but also raise the issue of whether this means that the employers have become more „skilled" in concealing factual labour.

All this can lead to a conclusion that the state has taken certain measures with the aim to curb factual labour, but that the work of the Inspectorate alone is not enough. This is particularly true if we consider the fact that the current number of labour inspectors is 238 and that they are charged with controlling 404.864 registered business entities.

We propose the establishment of a special public register that would list the employers where, following inspection oversight, workers were found to perform factual labour. In addition, it is necessary for educational institutions, social partners and society as a whole to clearly support the fight against black labour, constantly underlining its negative sides. Finally, the labour inspectorate needs to be strengthened and an efficient system for the control of the work of the labour inspectors in performance of their duties should be put into place, alongside more stringent sanctions for irresponsible employers.

12. LABOUR OUTSIDE OF EMPLOYMENT RELATIONSHIP

According to the Labour Law, the following contracts constitute grounds for work engagement outside of an employment relationship: (1) contract on casual and occasional work ; (2) special service contract; (3) contract on vocational training and internship; (4) supplementary work contract.

These contracts are obligation relations by their nature, but the person performing them gains certain labour law rights. For instance, the worker is entitled to safe and healthy working conditions, has the right to social insurance and the like. However, such work is not considered an employment relationship and the worker is denied the application of labour protective legislation, and hence the work performed via such contracts is often perceived as atypical and insecure. For precisely this reason there are many systemic gaps that most often result in certain types of abuse of such contracts, primarily relating to the fact that such contracts are concluded in order to hire cheap workforce.

12.1. Occasional and casual work

Occasional work is work that is short-termed in nature, but is performed continually, over an uninterrupted period of time until the work is completed.

Occasional and casual work doe not have to necessarily be related to the employer's business activity, but in practice, they usually are. This includes work that is not envisaged by the rulebook on staffing.

147 Labour Inspectorate Annual Reports for the 2015-2017 period.
148 S. Đurović, Aktivnosti Inspektorata za rad (Activities of the Labour Inspectorate), Beograd, presentation on 21.03.2019.

A contract on occasional and casual work is concluded directly between the employer and the worker. If someone is looking for a job through a youth or student cooperative, he or she authorises the cooperative to look for work and to sign a contract with the employer on his or her behalf; however, the worker must consent to each individual job.

In Article 197 of the Labour Law, the legislator envisages mandatory written form of this contract. The contract is concluded between the employer, on the one side, and the unemployed person, a person who is the recipient of old-age pension or a person who is not working full time up to the full working hours. The conclusion of a contract on performance of occasional and casual work does not give rise to an employment relationship. Precisely for this reason the contract on occasional and casual work cannot become an employment relationship, not even in cases when it lasts for longer than envisaged by the law.[149]

Having in mind the character of the work, the law limits the duration of occasional and casual work to 120 days in one calendar year, without the possibility of extension. If there is a need for some occasional or casual work to be performed for longer than 120 working days, the employer is under the obligation to set out such work in its internal act and to employ a person for doing it. In case this does not happen, we can talk about simulated (covert) contracts in terms of Article 66 of the Law on Obligations.[150] The legislator does not limit the working hours, and hence such work can be performed full time or part time.

When the contract is concluded, the type of work needs to be set out precisely, as this allows it to be established whether the work has the character of an occasional and casual work or of a continuous work, the performance of which requires an employment contract.

The work performed under the contract on occasional and casual work is covered by health, pension and disability insurance, as well as by unemployment insurance. However, a worker so engaged is denied other rights pertaining to employees on the basis of an employment relationship, such as: the right to annual holiday leave, the right to paid leave, the right to maternity leave, the right to leave for tending for child etc.

For the performance of occasional and casual work, the employer can usually conclude a contract (1) with a person who is a member of a youth or student cooperative, or (2) using an employment agency as intermediary.

12.1.1. Student and youth cooperatives

In the Republic of Serbia, when it comes to cooperatives, the Law on Cooperatives[151] is the general statute governing the legal status of cooperatives, their establishment, management and management bodies, the acquisition and termination of the status of a member of cooperative, ledger of cooperative members, assets and business operations of the cooperative, funds, distribution of gain and covering of losses in cooperatives, termination of a cooperative, cooperative associations, registration of cooperatives, cooperative audit and other issues relevant for the status and work of cooperatives. In addition to the Law, until 2018, the General Rules of Youth and Student Cooperative Operation[152] were applied, but they were put out of force by a Constitutional Court decision[153].

A cooperative is founded at the founding assembly, where the articles of association

149 See the judgment of the Supreme Court of Cassation Rev2 347/15 of 10.06.2015.
150 For instance, if the plaintiff has performed occasional and casual work longer then the statutory maximum, and the position the plaintiff held was on the defendant's staffing table, then we can talk about a simulated employment relationship from which the defendant cannot yield any benefit. See the judgment of the Supreme Court of Cassation Rev2 1163/13 of12.02.2014.
151 RS Official Journal No. 112/2015.
152 FRY Official Journal, Nos. 20/98 and 7/2000 – FCC decision, SM Official Journal No. 1/2003 – Constitutional Charter and RS Official Journal No. 47/2010.
153 Constitutional Court decision No. IUo-1231/2010 of 20.02.2018.

are signed, the cooperative rules are adopted and management bodies are selected. It can be founded by at least five natural persons with business capacity.

There is a number of types of cooperatives, which can be established as: farming, agricultural, building, consumer, craft, social, health care and others. Student and youth cooperatives are a special type of cooperative which enable, in an organised manner, their members to perform occasional or casual work for business entities in accordance with the regulations governing the field of labour, for the purpose of members gaining additional funding for their education and satisfying their main social, cultural and other individual and joint needs. According to Article 23, paragraph 5 of the Law on Cooperatives, only a person not younger than 15 and not older than 30 can acquire the status of a member of a student and youth cooperative.

It is important to underline that the only lawful grounds for engaging a member of a cooperative is under a contract on occasional and casual work. However, the discord between the duration of regular education and the age limit of 30 set out in the Law on Cooperatives gives rise to frequent abuse. The situation is additionally complicated by Article 13, paragraph 2 of the Law on Citizens' Income[154], which considers that a salary is, among others, the stipulated compensation and other income effected through the performance of occasional and casual work on the basis of a contract concluded through a youth or student cooperative, except for persons of up to 26 years of age, if such person is attending an institution of secondary, higher or high education. This puts members of cooperatives in an unequal position, resulting in them not being paid equally for the work of same value.

The employer, that is, the cooperative that is considered as the employer, registers the workers with mandatory pension and disability insurance. The time the contribution payer spends performing occasional and casual work in accordance with labour legislation, and the time spent performing casual and occasional work through youth cooperatives against which contributions are paid, is calculated in years of insurance coverage.

12.1.2 Temporary employment agencies

The specificity of the labour law position of an employee on the basis of a contract on occasional work lies in the fact that the employee, in principle, effects the rights with his or her employer (a temporary employment agency), not with the company where the work is performed. However, the worker does effect some rights in the company using his or her labour, such as the right to health and safety at work and the rights related to working hours.

In the Republic of Serbia, the regulatory framework for consigning workers to employers through Agencies is rather diversified. First of all, Article 3 of the Law on Classification of Business Activities[155] of 2009 prescribers that classification, including titles, codes and descriptions of business activities is prescribed by the Government. Relatedly, Article 4 of the Law envisages that the classification into business activities is done according to the methodology prescribed by the Government. Finally, on the basis of this Law, and pursuant to Article 11, a secondary act has been adopted – more specifically, a Regulation on the classification of business activities[156] that prescribes the classification and the methodology.

154 RS Official Journal Nos. 24/2001, 80/2002, 80/2002 – other statute, 135/2004, 62/2006, 65/2006 - corrigendum., 31/2009, 44/2009, 18/2010, 50/2011, 91/2011 – CC decision, 7/2012 – aligned dinar amounts, 93/2012, 114/2012 - odluka US, 8/2013 - aligned dinar amounts., 47/2013, 48/2013 - corrigendum, 108/2013, 6/2014 - aligned dinar amounts., 57/2014, 68/2014 – other statute, 5/2015 - aligned dinar amounts., 112/2015, 5/2016 - aligned dinar amounts, 7/2017 - aligned dinar amounts, 113/2017, 7/2018 - aligned dinar amounts, 95/2018 i 4/2019 - aligned dinar amounts.

155 RS Official Journal No. 104/2009.

156 RS Official Journal No. 54/2010.

Based on the Regulation, in the part pertaining to sector N – Administrative and accessory services, the activities supporting the business operation of economic entities has been classified. Code 78 prescribes the activity of employment which „includes the computing of offers of available work positions and direction, that is, employment of candidates who have applied for employment. This includes the provision of offer of adequate workers to business clients for a limited time for the purpose of temporary replacement of client's workforce. Within the employment activity, under code 78.2 the business activity of temporary employment agencies is regulated as „including the provision of workers to clients for a limited period, as an addition or temporary replacement of client's workforce, where the employed individuals are permanently employed in temporary service provision units. The units classified in this group do not directly supervise their employees who work on positions to which they are assigned by the client – employer ". Further, under code 78.3, the Regulation recognizes „other consignment of human resources" which relates to „consignment of human resources according to client's needs". The units classified under this group are the employers of the workers and are linked to payment of salaries, taxation, other fiscal issues and human resource issues, but are not responsible for managing or supervision the workers. It is important to note that this legal institute was introduced to our legal system based on a secondary act, several years before the ratification of the 181 ILO Private Employment Agencies Convention.

The Company Law[157] prescribes in Article 4 that „ a company has a dominant business activity, which is registered in accordance with the law governing registration, and can perform all other business activities not prohibited by law, regardless of whether they are regulated by the articles of association or the statute. Further, a special law may condition the registration or performance of certain business activity by the issuing of an approval, consent or other act of a competent body in advance.

The law on employment and unemployment insurance prescribes in Article 20 that the employment agencies are founded by natural and legal persons for the purpose of performing employment activities: (1) providing information on possibilities and conditions for employment; (2) intermediation in employment in the country and abroad; (3) professional orientation and advising on career planning; (4) implementation of certain active employment policy measures based on a Contract with the National Service. The permission for the work of these Agencies is issued by the Ministry following a written request and providing the Agency meets the conditions with regards to: (1) having adequate premises and technical equipment and (2) employees with relevant competences. These conditions are elaborated in more detail in the Rulebook on spatial and technical conditions for the work of employment agencies, the conditions of employees' professional competences, the curriculum, content and manner for passing the exam for working in the employment sector.[158] Pursuant to Article 3 of the Rulebook, when it comes to premises and equipment, the Agency must meet the following conditions: (1) have at least two offices, of at least 12 m^2 of surface connected by doors, one of which is used as an office for working and receiving clients and the other one as a waiting room for the clients; (2) to have sanitary space and facilities; (3) the offices in which the employment business activity is performed are not at the same time living premises; (4) the offices in which the employment business activity is performed are not basement premises; (5) the offices are equipped with necessary office furniture and equipment needed for work and receiving the clients; (6) a direct phone/fax line; (7) at least one computer with internet connection. The ministry in charge of employment affairs establishes whether these conditions are met within 15 days from the day of receiving an orderly request for permission.

157 RS Official Journal Nos. 36/11, 99/11, 83/14, 5/15.
158 RS Official Journal Nos. 98/09, 100/12, 65/14 and 11/18.

Finally, the Law on Agency Employment is in the draft phase. The public debate on the draft was organised on November 13, 14, 16, 19 and 20, 2018, but after being considered by the Socio-economic Council on February 25, 2019, it was referred for additional work. In the continuation of the analysis we will reflect on some of the proposed regulatory solutions that are problematic. Article 2 of the Draft defines the notion of „comparative employee" in a different manner compared to the original concept. Thus, now the comparative employee is the employee who is in an employment relationship with the employer-user who performs or would perform the same work given the required level of education and competence, knowledge and ability, complexity, responsibility, working experiences and other necessary conditions for work. Therefore, the previous concept implied the same or similar type of work, whilst this last solution refers only to the same work. Given the criteria used to compare the jobs, and these are: level of education, knowledge and competence, complexity, responsibility, working experience and other special conditions for work, it can be concluded that the institute of „comparative employee" is rendered pointless, since it is impossible to find matching jobs. Further, Article 9 prescribes that the Agency concludes an employment contract for an indefinite period or a fixed-term employment contract with the assigned employee, where in the latter case, the contract shall be concluded for the period that equals that for which the employee is assigned to the user undertaking. We find that such practice is contrary to EU Directive 104/2008 which clearly states in recital 15 that employment contracts of an indefinite duration are the general form of employment relationship, and thus indirectly suggests that such a concept should be maintained in cases of agency workers. We do not see the point in the provision that the fixed-term employment contract concluded with the agency must be concluded for the time the employee is assigned to the user employer. If the employer is need of an employee for a definite period, the employer shall employ such a worker, and there is no need for the Agency to be a „mandatory" intermediary.

Article 14 of the Draft is particularly changed; according to it, the total number of assigned employees who are in an employment relationship for a definite period in one user undertaking cannot exceed 10% of the total number of employees with the user undertaking on the day the employment contract is concluded, but this limitation does not count in the assigned employees with the user undertaking who have an employment relationship for an indefinite period with the Agency. Further, a user undertaking that has up to 50 employees on the day the assignment contract tis concluded can engage more than 10% and up to a 100% of the assigned employees compared to the total number of employees of the user undertaking. This renders relative the limitations set forth before, and in practice will result in more assigned workers then direct employees working for a user undertaking; we consider this practice unacceptable even though it exists to date.

In order to somewhat „mitigate" the negative effects the legislative solutions have on assigned employees, Article 3 of the Draft prescribes a legal fiction: if the assigned employee working under a fixed-term employment contract continues to work for the user undertaking for at least five days after the expiry of the time for which he or she was assigned, it shall be considered that such employee has entered into an employment relationship for an indefinite period. This provision can be considered bizarre, since the assigned employee does not have an employment contract with the user undertaking, but with the Agency and hence the employment relationship can be transformed only at the place where it was established, which is not the user undertaking.

Article 26 regulates the termination of the employment contract for reasons that arose at the user undertaking, if there is a justified reason relating to the working ability of the employee and employee's behaviour, in accordance with the law governing labour and

general acts applied by the user undertaking and the agency. Disciplinary proceedings are conducted by the Agency based on evidence provided by the user undertaking without delay. In case of unlawful termination, the assigned employee can launch an action for damages before the competent court against the agency, seeking the remaining amount of salaries from the moment of termination of the employment relationship to the expiry of the stipulated duration of assignment, up to 18 salaries, and the right to payment of taxes and contributions for this period. We hereby underline that such provisions are not in line with the Labour Law, nor with the ILO 158 Termination of Employment Convention.

It is important to emphasise that Article 33 of the Draft refers to collective rights of the assigned employees, but in a very superficial and substantially incorrect way. Namely, according to paragraph 1 of this Article, the assigned employees are calculated in the total number of employees of the user undertaking when establishing the conditions for selecting a representative of the employees. In addition, the assigned employees can partake in a strike organised at the user undertaking under the conditions and in the manner prescribed by the law governing strike. So far such alignment of the regulatory framework has not been implemented, and hence the provisions on the collective rights of assigned employees „hang in the air" and are more principles then enforceable norms.

The deficiencies of this legislative text do not end there – this is clearly seen in Article 35 of the text, which concerns damages. This article includes a novel institute, uncharacteristic of employment relationships, which is the institute of Agency's subsidiary responsibility. The user undertaking is under the obligation to compensate to the assigned employee the damages sustained at work on the grounds of a occupational injury or professional illness, whilst the Agency has subsidiary responsibility only in cases when the assigned employee cannot obtain full or partial amount of damages established in court proceedings from the user undertaking. Instead of the previous concept of joint and several liability, which should exist in this case, this norm has taken the wrong course and hence the employee should first sue the user undertaking, and then wait for a judgment, which may take a while, and can only then sue the Agency, which is his or her employer and with which the employee has an employment contract.

It can be concluded that this Law shall not regulate the assignment of employees, since other regulations indirectly governing this issue are already in place. In that sense, it is not a systemic regulation since it does govern certain issues that are relevant in this field, such as the assignment of employees abroad via agency, underage work, collective rights of assigned employees, etc. When everything is taken into consideration, it is clear that its objective is only to „provide some kind of legal form" to the current negative practice regrading the assignment of employees.

12.2. Special service contract

Special service contract is originally an obligation law contract, as it is a type of a mandate contract. The establishment, effects and termination of this contract are originally regulated by the provisions of the Law on Obligations. According to this law, the special service contract is defined as a contract whereby the worker (contractor) takes on the obligation to perform a certain job, such as to make or mend a certain object to perform some physical or intellectual work and the like, and the principal commits to paying for such work.

This contract does not imply the establishment of an employment relationship. The Labour Law prescribes that the employer may conclude a special service contract with a person for the performance of jobs outside employer's line of business which include independent manufacture or repair of a particular item, independent carrying out of a particular

physical or intellectual work. The Law also prescribes that the employer may conclude a special service contract with a person who performs an artistic or other activity in the sphere of culture, in conformity with the law. These statutory provisions show that is possible to conclude a special service contract, but that the options with respect to the type of work for which such contracts are concluded is limited. Namely, the Law prescribes that a special service contract can be concluded for the performance of jobs outside of employer's business activity, that is, for jobs not included in the rulebook on organisation of work and staffing, or in other employer's act; in other words, for jobs that are not within the realm of employer's permanent business activity. These jobs are also considered to include consultancy services that are limited in duration and that can be linked to certain projects. In other words, if the mentioned contract would be signed for the performance of jobs that fall within the employer's business activity, such contract would not have the legal nature of a performance contract and would not have legal consequences, given that it is concluded contrary to provisions of Article 199 of the Labour Law. Finally, it should be underlined that independence in work is an important characteristic of a special service contract, since it excludes the element of legal subordination, which is characteristic of an employment contract.

In practice, special service contract is often used as a quasi-employment contract, which is concluded precisely contrary to its purpose. For instance, the services of a translator, language editor and the like who have special service contracts with publishing houses, because the employer does not wish to employ them, but engage them depending on the needs. Such workers are engaged precisely within the employer's business activity, while this practice has become a rule. When it comes to jurisprudence, it is safe to say that it is „wandering" in terms of solutions. For example, in 2015 the Supreme Court of Cassation has taken a position whereby „in order to establish the existence of an employment relationship for an indefinite time it is necessary, inter alia, for the jobs performed to be of the same type with the same employer and fall within the employer's business activity, and preformed full time"[159]. However, a different question relates to the transformation of factual labour on the basis of performance contract into an employment relationship for an indefinite period. The Supreme Court of Cassation finds that „work on the basis of a special service contract cannot have the character of an employment relationship for a definite period and hence there are no conditions for transformation of such factual labour into an employment relationship for an indefinite period, regardless of the fact that the plaintiff has worked continuously and that there was a need for someone to work on this job."[160] This position is wrong and detrimental at the same time, since it supports the conclusion of such contracts even in cases when they are not valid and can have no legal consequences, since they are aimed at the performance of work which falls under the employer's business activity.

The Labour Law also prescribes that the special service contract is to be concluded in writing. Therefore, the form is an important requirement of validity of this type of contract. The written form is envisaged for reasons of legal certainty and to facilitate the existence of the contractual relation, that is, of the rights and obligations from such a relationship.

12.3 Contract on vocational training and internship

The contract on vocational training and internship is often referred to as a „volunteering contract" in practice since here, as in classical volunteering, what is obtained for the work performed is not salary, but a compensation of salary. Such understanding was valid until the entry into force of the Law on Volunteering[161] because labour legislation has

159 Supreme Court of Cassation Judgment Rev2 551/2015 of 9.7.2015.
160 Supreme Court of Cassation Judgment Rev2 1217/2005 26.5.2005.
161 RS Official Journal No. 36/2010.

equalised volunteering and the contract on internship. However, after the mentioned law entered into force, volunteering and providing voluntary services is performed in public interest, that is, for the general good or for the good of another person, without financial compensation, whilst internship is performed for own good.[162] It is therefore very difficult, in individual cases, to differentiate between: volunteering, internship and traineeship.

For example, the Article 49 of the Labour Law regulates education, vocational training and specialization by requiring the employer to provide education, vocational training and specialization, when the needs of the work process and introduction of new manner and organization of work require so. Expenses of education, vocational training and specialization are provided from employer's funds and other sources, and if an employee discontinues the education, vocational training or specialization, he or she shall refund the expenses to the employer, unless his or her reasons have been justified.

On the other hand, the Law on Solicitor and Barrister Profession[163] differentiates between barrister's apprentices and barrister's apprentices-volunteers, where the first ones are recognised the right to adequate working conditions, salary and other rights from the employment relationship, whilst special regulations on volunteering apply to the second category. Even though the wording of the law does not make a difference between the rights and obligations of both categories, their labour law status is completely different. Vocational training is any type of education or training aiming to maintain existing or gain new knowledge and skills necessary for the performance of existing or future functions, duties and tasks related to a certain job or occupation. On the other hand, the purpose of volunteering is not to gain new knowledge and skills nor to complete internship, but to act in public interest and do work for the general good, which has nothing to do with working in a barrister's office or in judicial bodies.

The Labour Law regulates the contract on vocational training and internship as a form of work outside the employment relationship in Article 201, which prescribes that this contract can be concluded for completing traineeship, or taking a professional exam, when the law or a rulebook provide it as a separate requirement for independent work in the profession. The Labour Law further envisages that a contract on internship may also be concluded for professional development and acquisition of specific knowledge and skills to work in the profession, or to undergo specialization, during the time established for the program of internship, i.e. specialization, in accordance with a special regulation. This further means that the contract on vocational training and internship can only be concluded if a vocational training programme is envisaged in a separate regulation.

12.4 Supplementary work

A contract on supplementary work is concluded between the employer and the employee in written form. The legislator has set a limitation when it comes to the maximum extent of supplementary work – up to one third of full working hours.

The performance of supplementary work does not require the consent of the employer with whom the employee has an employment contract. This rule does not apply to civil servants, as the rules that apply to them are envisaged in the Law on Civil Servants *as lex specialias*; it also does not apply to the employees working under the High Education Law. According to the Law on Civil servants, a civil servant can, with written consent of the superior, work for another employer outside his or her workplace provided that: (1) supplementary work is not prohibited by special laws or other regulations (2) it does not

162 This worsened the position of volunteers who are judicial, prosecutorial and barrister's trainees.
163 RS Official Journal Nos. 31/11 and 24/12 – CC decision.

give create the possibility of conflict of interest or (3) does not affect the impartiality of work of the civil servant. A special case requiring employer's consent is the existence of a non-compete clause. Namely, the employment contract can set out some types of jobs that the employee cannot perform in own name and on own behalf, nor in the name of and on behalf of another natural or legal person without the employer's consent.

Contract on supplementary work establishes the right to financial compensation and other rights and obligations on the basis of work. The financial compensation does not have the character of salary, given that this contract does not give rise to an employment relationship. However, it should be borne in mind that, even though this contract does not create an employment relationship, due to its nature it has to have all the characteristics of an employment relationship, and the person performing such work must be recognised all the rights from an employment relationship, which was not the case so far.

13. SPECIAL EMPLOYMENT RELATIONSHIP REGIMES

Special employment relationship regimes include certain categories of employees, primarily (1) public servants; (2) civil servants and (3) local servants. The difference between them is made both in terms of the nature of the work they perform and in terms of the normative regulation of their rights and obligations from employment relationship.

13.1 Employees in public services

The positive regulatory framework governing public services in the Republic of Serbia is contained in the Law on Public Services[164], which prescribes in Article 1 that „public service in terms of this law are institutions, companies and other forms of organisation established by law, which perform activities, that is, jobs, whereby the exercise of citizens' rights is enabled, that is, whereby the needs of citizens and organisations are satisfied, and whereby other interest established by law in certain fields are fulfilled". This statutory definition means that public services encompass all organisations the business activity of which is linked to certain businesses of public importance, the undisturbed functioning of which is of special interest of the state. In addition, Article 3 of the Law recognised two organisational forms for the performance of public services, and these are: (1) institutions established for the realisation of the rights established by law, or realisation of other interest established by law in the field of: education, science, culture, physical education, pupil and student standards, social care, social care of children, social insurance and animal protection (2) companies established for performing business activities, that is, operations established by law in the field of: postal, telephone and telegraph traffic, energy, roads, communal services and in other fields set forth by the law.

On the other hand, the Law on Employees in Public Services[165] considers that a public service is only a service established in the form of an institution by the Republic of Serbia, autonomous province or local self-government unit, and Law shall not apply to such public services founded by those same founders in the form of a publicly owned company. In order words, the provisions of the Law on Employees in Public Services will not apply to those employed in publicly owned companies, regardless of the fact that these companies are founded in the fields in which public services are founded. Opting for such a regulatory solution is problematic, to say the least, as it results in stratification of the public sector. The purpose for the adoption of this law is, *inter alia*, to ensure a unification of sorts of all different areas covered by the term „public service". It should be underlined that, in terms

164 RS Official Journal Nos. 42/91, 71/94, 79/2005, 81/2005, 83/2005, 83/2014.
165 RS Official Journal No. 113/2017.

of legal theory, public institutions and publicly owned companies are organisational forms of public service, the difference being that the latter make profit, while the former do not, that is, that the former engage in non-profit activities, whilst the latter engage in commercial activities. Having that in mind, the title of the law is problematic, as it applies only to a certain part of public services. We find that any attempt at regulating, in a single regulatory text, such a large number of different systems, each with their own specificities, impossible and frivolous. We do agree with the statement that the employment relationships in the administration are regulated by numerous legislative and secondary acts, but it is impossible for all of them to be unified in a single regulation. For example, the Law on Publicly Owned Companies does not include any labour law provisions regulating the status of employees, except for the general provisions concerning the status and selection of the director. In this case, the director is a public official who is not in an employment relationship, since his office is not a professional, but a political one, given that the director is appointed by the Government for a four-year period. The status of employees in publicly owned companies is primarily regulated by collective agreements. In the education sector, and particularly within the Law on the Basis of the Education and Upbringing System and the High Education Law, as separate laws, there is a series of differences that cannot be reconciled by a single act, such as the Law on the Employees in Public Services, and hence the text of the law includes an abundance of norms that refer to special regulations.

Instead of the Law on Employees in Public Services, the application of which has been postponed to January 1, 2020, the law that should have been passed is the Law on Institutions, which would list the business activities in which institutions are established (for instance: education, science, culture, sport, social care and the like) and state that institutions are not founded in order to gain profit, so as to correspond to the existing Law on Public Companies. The Law on Institutions would then regulate the notion, establishment, name and seat, activity, bodies, assets of the institutions, but would not have to regulate the labour law status of the employees working in institutions, because their status is already regulated by a series of special regulations, which finally refer to the Labour Law.

The second dilemma related to the very title of the law concerns the term „employees“, because the contents of the law show that its provisions also apply to „workers“. The conditions for the establishment of an employment relationship according to Article 35, paragraph 2 of the Law are the same as the conditions for employment, even though it is not clear from the law on what grounds they are engaged (whether this is done through an agency or if these are persons engaged through a contract that does not give rise to employment relationship, such as contract on occasional and casual work). This regulatory solution is surprising, since the Labour Law, as the umbrella law in the field of labour legislation, makes a sharp distinction between employees and workers with respect to their rights and obligations in lieu of work.

It is necessary to equate the status of employees and workers when it comes to the content and scope of rights from the employment relationship, since currently only employees are entitled to rights from employment relationship, whilst workers are only recognised certain rights, which are by no means sufficient to ensure their adequate protection.

With regards to Article 37, which concerns the ways of filling the vacancy, the Law envisages the following: permanent transfer of employee, agreement on take over and recruitment competition. This provision is similar to the provision of Article 48 of the Law on Civil Servants, where it should be noted that the Law on Civil Servants envisages transfer as the priority method for filling executive vacancies, and only if the vacancy is not filled by transfer, takeover can be opted for, and finally, an internal or public recruitment

competition. Even though their titles are the same, conceptually, these methods of filling the vacancies are different. Namely, in civil servants law, transfer is aimed to enable better quality of work and to protect the civil servant, who maintains the current status whenever the needs within a given organisation or the field of work are changed, which thus enables the civil servant to become acquainted with the working methods of different bodies and to gain knowledge and develop competences in various fields. In case of the Law on Employees in Public Services all the methods for filling the vacancies are equal, which leaves the employer with almost unlimited possibilities to transfer the employee to an „adequate" position because of the needs of the work.

In order to prevent abuse, it is necessary to define the conditions and reasons for transfer of employees by a general act; otherwise, transfer can become a decision made at employer's discretion.

We particularly emphasise Article 43 of the Law, which enables for a person who is employed for an indefinite period be temporarily transferred to work for a different employer within the same public service activity in order to perform work corresponding to the work within his or her job description, if so needed to complete a given work or due to increased workload of other employer, that is, due to temporary termination of need for employee's work, if the work in public service from which the employee is transferred can be organised without disturbance and with no additional employment. Paragraph 6 of the same article of the Law prescribes that „employees effects all rights from the employment relationship (right to salary, compensation of salary, annual holiday leave and others) with the employer to whom the employee is transferred". This provision has opened certain legal issues not regulated by the legislator, which concern the disciplinary accountability of the employee, pronouncing of disciplinary measures, conducting of disciplinary proceedings in cases when the offence was committed with the employer to whom the employee was transferred.

It is important to emphasise that the Law on Employees in Public Services, as the umbrella law, envisages in Article 74 that the appointment of the director or other person who manages the operation of the public service is done following a recruitment competition, that is, of selection procedure for director, based on appraisal of the candidates in accordance with the law governing the work of the public service. If the law governing the work of the public service does not regulate recruitment competition or the procedure for the selection of candidates for the position of the director, the provisions of the Law on Employees in Public Services shall apply accordingly. The recruitment competition is conducted by the management body of the public service, and the director is appointed by the competent body, pursuant to the law governing the work of the public service, based on the selection decision of the management body. We underline that the director effects the rights from an employment relationship, that is, on the grounds of preforming the duty of a director of a public service from the day of taking the duty, unless the law governing the work of the public service prescribes otherwise. The management body of the public service concludes a fixed-term employment contract with the director or concludes a contract on performance of duty of the director outside of employment relationship, which sets out the director's rights and obligations, for the duration of the director's mandate. This further means that the director, regardless of the legal grounds for his or her work, effects all rights from an employment relationship. We believe that the legislator has left too much discretion when it comes to the manner in which the status of the director is regulated and assume that the amendments to special laws governing the work of public services will regulate in more detail the status of directors of such services. Until then, the status of directors of public services will have a different legal treatment, which we believe is a flawed solution.

For instance, the labour law position of directors of cultural institutions is regulated by the Law on Culture[166] as a special law. Article 24 of the Law on Culture prescribes that a cultural institution is managed by the director, who is appointed and resolved by the founder, while the director of an institution founded by the Republic of Serbia is appointed by the Government. However, the Law on Culture does not define the status of the director. This is why the provisions of the Labour Law apply to the status of such a director, until the start of application of the provisions of the Law on Employees in Public Services. The lack of clear criteria relating to the procedure of establishing an employment relationship in the public sector opens the possibility of jeopardizing the public interest and may adversely affect integrity, equality and transparency of the employment procedure. On the other hand, the status of directors of educational institutions is regulated by Article 124 of the Law on the Basis of Education and Upbringing System [167]. What is specific for direct of educational institutions is that paragraph 1 of the mentioned Article emphasises that the rights and obligations of the director are regulated by a contract on mutual rights and obligations, which does not constitute an employment relationship. Therefore, a director is a person who is not in an employment relationship and consequently one person could be a director of several educational institutions. Since the director is not in an employment relationship, he or she is not subject to regulations that apply to employees in educational institutions, including the rules governing salaries. Theoretically, the management body his free to negotiate with the person selected to perform the office of the director both in terms of salary and in terms of defining of other rights from the employment relationship. However, the opinion of the Ministry of Education, Science and Technological Development refers to the observance of all the provisions of regulations governing the labour law status of employees in educational institutions, which clearly indicates that the director has the status of an employee.[168]

Article 76 of the Law on Employees in Public Services should be amended and the part envisaging that the director can perform office outside of employment relationship should be deleted.

In addition, Article 132, paragraph 6 of the Law envisages that an employee who is employed for a definite period cannot effect severance pay if he or she becomes redundant. This is a problematic solution, given that the right to severance pay is not linked to the type of the employment relationship, but primarily for the manner of its termination. When it comes to the definition of severance pay and its purpose, the Supreme Court of Cassation asserts in its judgment No. Rev2 1188/2015 of April 13, 2016, that „severance pay is a financial compensation the employer pays to the employ on account of loss of salary, where the employee is not responsible when the need for the work performed by the employee ceases to exist and consequently the employment contract is terminated. Therefore, the purpose of severance pay is to provide financial support in the interim period between the termination of one and start of another employment relationship". Constitutional Court of the Republic of Serbia states in its decision No. Už.4272/2010 of 31 October 2012 that the payment of severance pay „is a form of legal protection of employees in case of termination of employment relationship due to the introduction of technological, economic and organisational changes, which the employee cannot waive in terms of Article 60 paragraph 4 of the Constitution". The Labour Law recognises the term severance pay in two contexts: first, as an obligation of the employer when the employee is retired and second, as an obligation of the employer in case of termination of employment relationship if, due to technological, economic or organizational changes the need for work ceases or if the workload is reduced

166 RS Official Journal Nos. 72/2009, 13/2016 and 30/2016 – corrigendum
167 Law on Basis of Education and Upbringing System, RS Official Journal No. 88/2017.
168 Opinion of the Ministry of Education, Science and Technological Development No. 610-00-01982/2017-04 of 19.12.2017.

that is, if the employee is declared redundant. It can be concluded that severance pay is one the mechanisms of legal protection of employees in cases of introduction of technological, economic and organisational changes set forth by the Law. When this is complemented by the fact that a considerable number of persons working in public services are engaged under an fixed-term employment contract for ten years or more, the issue of justness of this solution can reasonably be raised.

The right to severance pay should be also granted to employees working under a fixed-term employment contract.

Finally, the implementation of the Law on Employees Public Services envisages in Article 163 that this law enters into force on January 1, 2019, except for the provisions related to the Rulebook on staffing and other secondary acts relevant for the implementation of this law, which apply from the day of entry into force. In the meantime, a Law on Amendments to the Law on Employees in Public Services [169] postpones the implementation of the Law to January 1, 2020. To conclude, on the day this Report is being written, almost all public services have adopted special Rulebooks on organisation and staffing which are harmonised with the Job catalogue of public services and other organisations in the public sector, but the new regulatory framework governing the status of employees in public services is still not established.

13.2 Civil servants

According to the currently valid regulations, civil servants are a special category of public servants, since the employees in local self-government bodies and employees in publicly owned companies and institutions are not civil servants. According to available statistical data for December 2018, the total number of civil servants employed for an indefinite period was 22,156, out of which 2121 employee for a definite period, out of which 80 for the purpose of training of interns, 1824 due to temporary increase in workload, 2017 in order to replace and absent civil servant.[170] The rights and duties of civil servants, as well as individual rights, are regulated by the Law on Civil Servants[171], while salaries, compensations and other income is regulated by the Law on Salaries of Civil Servants and State Employees.[172]

According to Article 2 of the Law on Civil Servants, a civil servant is a person whose job includes work from the scope of work of state administration bodies, courts, public prosecutors' offices, the Republic public defender's office, services of the National Assembly, president of the Republic, Government, Constitutional Court and services of bodies the members of which are elected by the National Assembly (hereinafter: state body) or related general legal, informatic, material and finance and administrative jobs. Civil servants do not include members of parliament, president of the Republic, judges of the Constitutional Court, members of the Government, judges, public prosecutors, deputy public prosecutors and other persons selected to office by the National Assembly or appointed by the Government or persons who, pursuant to special regulations, have the status of officials. State employees are persons whose jobs include accessory supporting and technical jobs in the state body. This means that the work of the civil servant is linked to the exercise of powers, whilst state employees work on accessory tasks. We object, because such definition of civil servant is not grounded in all elements of the civil servant's function, since it is exclusively

169 Law on Amendments of the Law on Employees in Public Services, RS Official Journal No. 95/18.
170 Statistical data obtained from the Human Resource Service of the Republic of Serbia.
171 RS Official Journal Nos. 79/2005, 81/2005 - corrigendum 83/2005 - corrigendum, 64/2007, 67/2007 - corrigendum., 116/2008, 104/2009, 99/2014, 94/2017 and 95/2018.
172 RS Official Journal Nos. 62/2006, 63/2006 - corrigendum., 115/2006 - corrigendum, 101/2007, 99/2010, 108/2013, 99/2014 and 95/2018.

linked to its organisational aspect, that is, for the performance of jobs from the scope of work of different bodies. Such definition does not reflect the permanence of the civil servant's office.

Further, the Law on Civil Servants does not regulate separately the status of state secretaries and political advisors who are not civil servants. The status of state secretaries is regulated by Article 24 of the Law on State Administration, which prescribes that the Ministry can have one or more state secretaries, who answer for their work to the minister and to the Government. A state secretary is an official who is appointed and dismissed by the Government at the proposal of the minister and his or her duty ceases when the duty of the minister ceases. The Law on State Administration recognises in Article 27 the category of „special advisor to the minister", where the minister may appoint up to three special advisors. The rights and obligations of special advisors to the minister are regulated by a contract, pursuant to general rules of civil law, and the earning according to the criteria set forth by the Government. The number of special advisors to the minister is also set forth by the Government for each ministry, and what is problematic in practice is the situation when advisors start giving orders to civil servants. In this way civil servants are exposed to pressures that jeopardize their political neutrality, and on the other hand, an advisor takes on the role of a principal. Given that there are no criteria for the selection of special advisors, they are often selected on political grounds, which incurs considerable expenses to the budget. In order to regulate their status, the Government has passed a Decision on the number of special advisors to ministers and criteria for the remuneration for their work[173], which prescribes that the advisors are appointed by a ruling of the Minister and that they are not in an employment relationship in the ministry, but that their rights and obligations are regulated by a contract, according to the general rules of civil law. The compensation for the work of special advisors depends on the complexity, importance and scope of their work and the importance of the field they are in charge of, and cannot exceed the amount obtained by multiplying net base and coefficient for the calculation of salary of an advisor to the Government vice-president who has an employment relationship in the Government.

It is necessary to prescribe in more detail the conditions and criteria for the selection of special advisors, and determine the scope of their powers.

The second issue concerns the classification of jobs and the differentiation between positions and operational jobs of civil servants. Positions, or managerial jobs, are acquired by being appointed by the Government or another state authority or body, while operational jobs are all those that are not positions, including the jobs of managers of smaller internal units in a state authority. This differentiation is very important, particularly in the light of Article 83, paragraph 2 of the Law on Civil Servants, which reads „a civil servant who is the head of a state body shall not be appraised". Interestingly, a merit-based system, which is often talked about and which represents one of the best solutions in the newly-established civil service system of 2005, has clearly not been fully implemented, and hence civil servants holding managerial positions are exempt from performance appraisal. This enables full political influence when it comes to the highest-ranking civil service positions, such as assistant ministers, state secretaries and agency director. When read in conjunction with the provision of Article 73, paragraph 1 of the Law on Civil Servants, which states that „appeal shall not be permitted against a Government ruling on appointment, but an administrative dispute may be launched", it is clear that these civil servant remain outside the „merit-based" system. In addition, when an employment relationship is established with a civil servant, there is no system of competences needed to perform different jobs, which

173 Decision on the number of special advisors to ministers and criteria for the compensation for their work, RS Official Journal No. 107/2012, 93/2013, 71/14.

adversely affects the selection of the best candidate for a given job. The procedure is rendered so formalistic that it is essentially all about meeting the minimum requirements, such as education and years of service, given that these are the only criteria that can be verified. A system of an objective assessment of skills needed to perform certain jobs is not truly established, and presentation of different certificates without concretely checking whether someone truly has such knowledge and skills as listed in the certificate can lead to a person who does not speak English being employed to work on a job where this is a must.

According to OECD/SIGMA findings, as much as 60% of managerial posts have been filled by an arbitrary decision of the manager in 2014[174]. This means that these positions were filled by civil servants while disregarding the provisions of the Law on Civil Servants, which requires the organisation of a recruitment competition. The provision of Article 67 of the Law on Civil Servants has also been abused, which prescribes that „until a civil servant is appointed to the position, a civil servant can be appointed as an acting to the given office for a period of six months, without an internal or public competition" by candidates who are not employed in the given state body being appointed as acting civil servants at those positions, and they would then have an unfair advantage over other candidates in the concours, since they were already familiar with the work.

Interested public should be enabled to have insight into the process and criteria for employment of high ranking civil servants, thus eliminating the practice of employing politically suitable candidates. Additionally, a more active role of the Administrative Inspectorate needs to be ensured.

Furthermore, when a fixed-term employment relationship is established, the Law on Civil Servants envisages in Article 63, paragraph 2, that such employment relationship is established without an internal or public recruitment competition, except when trainees are employed. In addition, the law prescribes that the number of employees working under a fixed-term employment contract or other contracts cannot exceed 10% of the number of employees for an indefinite period. It is necessary to make sure that this limitation is not violated, because it would mean that one „class" of employees perform state administration work but is not in the regime of rights and obligations of civil servants and is not selected based on merit, but arbitrarily. Statistical data provided by the Human Resource Management Service show that the number of civil servants employed under a fixed-term contract is within the statutory limit.

The issue of performance appraisal and promotion of civil servants is a separate one. It is clear that the biggest challenge here is to combine objectivity and cost-effectiveness while resorting to reliable sources of information. In the period covered by this Report, the relevant source of law is the Regulation of performance appraisal of civil servants[175], which prescribes the criteria for performance appraisal and the procedure for performance appraisal of civil servants. Currently, the biggest obstacle for conducting efficient performance appraisal is the incompetence of the superiors to do so adequately and responsibly. Performance appraisal is thus often understood as an additional bureaucratic burden that can deteriorate the relationship between the one whose performance is appraised and the appraiser. It is particularly notable in practice that a considerable number of civil servants find that performance appraisal has been conducted on the basis of subjective elements, such as sympathy or animosity. In addition, the final assessment in the appraisal cycle, which, according to Article 3, paragraph 1 of the Regulation lasts from January 1 to December 31, should not be formed based on civil servant's exceptional performance only

174 Sigma Assessment Report Serbia, 2014, 17, https://www.oecd-ilibrary.org/governance/serbia-assessment-report-2014_5jm0xw1lpc40-en.
175 RS Official Journal Nos.11/06, 109/09.

during one period, or lack of success in performing a certain task in one period. The most frequent mistake made by appraisers is trying to cross-compare civil servants, instead of assessing their success in realisation of the set objectives and standards. Finally, what is particularly worrying is that young civil servants, into which a lot has been invested through numerous trainings and who participate in various negotiating groups and working bodies, are progressively deciding to leave state administration due to poor financial conditions and no possibility for promotion.

The appraisers need to be educated on how to conduct performance appraisal in an impartial and rational manner, where special role should be given to the Human Resource Management Service.

Therefore, the analysis of the reach of the Law on Civil Servants and other relevant regulations confirms that the civil service system in Serbia is insufficiently integrated and incoherent at the time. This is primarily due to the fact that the Law on Civil Servants is applied only accordingly to special categories of civil servants such as army, police and external affairs, given that this subject matter is regulated by special laws. Consequently, the Law on Civil Servants applies to some 40% of the state administration and less then 5% of the entire state sector. These facts additionally corroborate that the civil service system is fractioned and incomplete; even the local self-government civil servants have a special regime of employment relations. Namely, Article 189 of the Law on Civil Servants envisages that the provisions of the Law on Employment Relationship in State Bodies continue to apply accordingly to the employment relationship in autonomous province and local self-government bodies, until a separate law is adopted.

13.3 Employees in territorial autonomy bodies and local self-government bodies

A considerable misstep on the part of the legislator is the fact that employees in autonomous provinces and local self-governments remain outside the civil service system, given that the above-mentioned Law on Employment Relationship in State Bodies did not aim to recognise the specificities of the autonomous province and local self-government level, but was adopted for state bodies and applied to autonomous province and local self-government accordingly. It was therefore necessary to pass a separate regulation, which is the Law on Employees in Autonomous Provinces and Local Self-Government Units[176] (hereinafter: Law) that establishes the main principles of local civil service system. It should be emphasised at the very beginning, given that the Law started to be applied as of December 1, 2016, related jurisprudence is not fully established.

It is as early as in Article 3 that we can identify the first particularity of this Law, as it states that the employees include: (1) officials who, based on obligations or powers established by law or provincial regulations, establish an employment relationship in order to exercise their office, (2) civil servants and (3) state employees. Before this Law entered into force, officials did not have the status of employees. Article 2 paragraph 2 of the Law on Civil Servants is adamant in this respect, as it does not consider the persons who, according to special regulations, have the status of officials, to have the status of civil servants. This further means that such persons do not establish an employment relationship, but are entitled to rights on the basis of an employment relationship regarding working hours, safety and work, salary, etc. Therefore, officials have a special status, different from the status of those who establish an employment relationship, which is logical, as a public office is not negotiated, but acquired through election or appointment. We emphasise that such regulation of the status of officials is an exception to the rule, and the practice is yet to show to what extent is it justified.

176 RS Official Journal Nos. 21/16, 113/2017 – other statute

According to Article 6 of the Law, if the rights and duties of officials and civil servants not regulated by this law or other regulation, general labour regulations and special collective agreement for local self-government units shall apply. It is important to underline that the provisions of the Special collective agreement for employees in territorial autonomy and local self-government bodies are integrated in the Special collective agreement for state bodies an annex.[177] However, this collective agreement has expired in 2018 and the representatives of trade unions of employees in the administration and the Minister of state administration and local self-government have signed an agreement extending the validity of the Special collective agreement for state bodies for an additional year, therefore, until March 21, 2019. The reasons for such extension should be sought in the proposal of the Amendments to the Law on Civil Servants, and the Amendments to the Law on Salaries of Civil Servants and State Employees, which can affect the text of the collective agreement.

Officials and other employees are entitled to salary, compensation and other earnings pursuant to the Law on the System of Salaries of Employees in the Public Sector. This can be concluded from the provision of Article 40 of the Law, according to which the law applies, as of July 1, 2017, to employees in bodies and institutions of the autonomous province and local self-government unit. In addition, Article 39 of the Law envisages that, until July 1, 2017 a law shall be passed, pursuant to this Law, to regulate the salaries and other earnings of employees in bodies of autonomous province and local self-government unit and other bodies and organisations founded by the autonomous province or local self-government unit, to which the regulations on employment relations in autonomous provinces or local self-government units apply. This law has been adopted and is entitled the Law on the Salaries of Civil Servants and State Employees in Bodies of Autonomous Province and Local Self-Government[178]. However, the application of this law has been postponed to January 1, 2020[179]. We note that officials' salaries remain out of the scope of this Law, even though they are considered as employees pursuant to Article 3 of the Law on Employees in Autonomous Provinces and Local Self-Government Units. To that effect, Article 11 of the Law on Employees in Autonomous Provinces and Local Self-Government Units prescribes that an official is entitled to salary, compensation and other earnings in accordance with the law governing salaries, compensations and other earnings of officials in autonomous province and local self-government unit. Until the Law on Salaries of Civil Servants and State Employees in Bodies of Autonomous Province and Local Self-Government starts to apply, the salaries of officials are regulated by the Law on Salaries in State Bodies and Public Services, as well as with the Regulation on coefficient and payment of salaries of appointed and persons and employees in state bodies.

It is necessary to regulate the officials' salaries by new regulations, since they are currently not covered by the Law on Salaries of Civil Servants and State Employees in Bodies of Autonomous Province and Local Self-Government Unit.

When it comes to the types of jobs of civil servants, they are divided into positions and operative jobs. Positions are jobs in which a civil servant has special powers and responsibilities with regards to managing the work and coordination of the work of the body, service or special organisation. Precisely due to its importance, these positions are set out by the Law on Employees in Autonomous Provinces and Local Self Government-Units, as opposed to being set out in the Rulebook on Organisation and Staffing. Therefore, the positions are held by civil servants appointed by the competent body for a certain period to be in charge in managing and coordinating the work of a body, service or organisation. On

177 RS Official Journal Nos. 25/2015, 50/2015, 20/18.
178 RS Official Journal No. 113/17.
179 Law on Amendments to the Law on Salaries of Civil Servants and State Employees in Autonomous Provinces and Local Self-Government Units, RS Official Journal No. 95/18.

the other hand, operative jobs are all jobs that are not considered as positions, and hence they are occupied by civil servants who have established employment relationships in order to perform work from the competence of the body, that is, from the business activity of the service, under the supervision and control of the civil servants on positions. It is important to emphasise that jobs, their classification according to rank, job descriptions, the necessary number of employees etc. are regulated by the Rulebook on Organisation and Staffing. The existing ranks, according to the Law on Employees in Autonomous Provinces and Local Self-Government Units are the following: independent advisor, advisor, junior advisor, associate, junior associate, senior clerk, clerk and junior clerk. Exceptionally, there is also a rank of senior adviser, as the highest rank of an advisor, but only in the bodies of the AP Vojvodina and the city of Belgrade. Here we can identify two major issues that arose in practice.

The first one concerns the fact that the ranks of civil servants on the local level, as prescribed by the Law on Employees in Autonomous Provinces and Local Self-Government Units have been transferred to the Rulebook on organisation and staffing. However, the delayed application of the Law on Salaries of Civil Servants and State Employees in Bodies of Autonomous Province and Local Self-Government Unit and of the Law on the System of Salaries of Employees in the Public Sector, has resulted in the direct application of the Law on Salaries in State Bodies and Public Services,[180] which regulated the salaries, additions to salaries and other earnings of elected, appointed and employed persons in bodies and organisations of territorial autonomy and local self-government. Article 9 of the Law sets out the coefficients for the payment of salaries of elected persons in territorial autonomy and local self-government bodies, whilst paragraph 3 of the same Article sets out the coefficients for employees, up to the coefficient corresponding to the rank of independent expert associate in state bodies. Further, concrete ranks are set out in a general act; for instance, in Belgrade they are set in the Rulebook on ranks, professions and salaries of employees in the City administration[181]. Article 3 of this Rulebook prescribes that the ranks of employees in the City administration are the following: independent expert associate, senior expert associate, expert associate, senior clerk and clerk. A corresponding coefficient is envisaged for each of these ranks in Article 24 of the Rulebook. However, if such a general act does not exist on the local level, the Regulation on coefficient for computing and payment of salaries of appointed and employed persons in state bodies[182] applies. Therefore, due to the delayed application of the Law on Salaries of Civil Servants and State Employees in the Bodies of Autonomous Province and Local Self-Government Unit, the act that directly applies to their salaries is the Rulebook, that is, the Regulation the contents of which do not correspond to the statutory text in the part concerning the titles of the civil servants' ranks, and hence the ranks of civil servants according to the Law are directly aligned to the most similar ones from the secondary act, that is, from the general act. This creates considerable legal uncertainty, since one civil servant can have a higher and the other one can have a lower coefficient, depending on the local self-government. On the other hand, a civil servant is given a ruling on the established rank according to the Law on Employees in Autonomous Provinces and Local Self-Government Units, but receives his or her salary according to the coefficients established before this law has enters into force, which do not recognise his or her current rank.

The second issue concerns the fact that Article 39, paragraph 4 of the Law on the System of Salaries in the Public Sector prescribes that the employee continues to receive

180 RS Official Journal Nos. 34/2001, 62/2006 – other statute 63/2006 – corrigendum of other statute, 116/2008 – other statutes, 92/2011, 99/2011 – other statute, 10/2013, 55/2013, 99/2014 and 21/2016 – other statute.

181 Rulebook on ranks, professions and salaries of employees in City administration, City of Belgrade Official Journal Nos. 29/2003, 7/2004, 8/2004, 25/2005, 10/2008, 17/2009, 29/2010, 39/2010, 3/2012, 36/2014, 51/2014.

182 RS Official Journal Nos. 44/2008, 2/2012.

the salary he or she received on the job to which he or she was assigned, that is, for the work done on the day the special laws start to be applied, where the manner in which such salary shall be adjusted is set forth so as to ensure it is aligned with the salary the civil servants would effect through the application of this and special laws, which must be gradual and suited to the budgetary limitations. Given that the application of the Law on Salaries of Civil Servants and State Employees in Bodies of Autonomous Province and Local Self-Government Unit is postponed, the employees continue to receive the same salary, regardless of their ranks established in the ruling. Consequently, there is a paradoxical situation in practice, where a civil servant who had the rank of a senior advisor is assigned to a lower rank but continues to receive the salary he or she had as a senior advisor, whilst another civil servant, who advances to a higher rank, does not receive an increased salary. This situation shall last until the Law on Salaries of Civil Servants and State Employees in Bodies of Autonomous Province and Local Self-Government Unit starts to be applied, which means that the employees shall continue to have the coefficient for computing and payment of salary determined by regulations that were in force before this law started to apply. This may give rise to numerous labour disputes, given that employees in bodies of autonomous provinces and local self-government units have their ranks determined by a ruling, but the ranks are not in line with their salaries.

It is necessary to start applying systemic laws in this field as soon as possible, because otherwise the adverse consequences will be immeasurable. At this moment, there is a large number of civil servants whose salaries, based on the continuation of salaries, are higher than they should be in lieu of their ranks, and the same number of civil servants who have higher ranks, but do not have the corresponding salaries.

Finally, we must reflect on the most unusual and legally incorrect way in which the law enters into force, which causes considerable legal insecurity. Namely, Article 203 of the law stipulates that the law shall enter into force on the eighth day from the day of publication in the Republic of Serbia Official Journal, and shall apply as of December 1, 2016, except for the provisions of Articles 116 – 122, relating to vocational training, and provisions of Articles 172 – 183 and Article 192 paragraph 4) on the appeals commission and provisions of Articles 188 – 191, governing issues related to human resources, which will apply as of the next day from the day this Law enters into force. Further, provisions of Article 20 relating to promotion to salary ranks shall apply after the adoption of regulations governing payment ranks for employees in autonomous provinces and local self-government units, while the provision of Article 190, paragraph 4 shall apply as of October 1, 2016.

It is simply unbelievable that this Law stipulates as much as five different days for its implementation in the legal system of the Republic of Serbia. The first is day it enters into force, which was March 12, 2016. The second day is the day of the start of its application, which is December 1, 2016. The third day is the day the provisions of the Law governing vocational training, appeals commission and human resources start to apply, which is March 13, 2016. The fourth day, for which a date has not been set, is the day Article 20 starts to apply, following the adoption of regulations governing salary ranks. Finally, the fifth day, relating to information on civil servants and state employee's nationality shall apply as of October 1, 2016. Such gradual introduction of a regulation into the legal system is dangerous as it relies on gradual synchronisation in the adoption of other regulations relevant for the law that is entering into force. Failure to implement only one of them can cause the entire system to collapse.

ARTICLE 8 – EMPLOYEE'S COLLECTIVE RIGHTS

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

1. WHO CAN BE A MEMBER OF TRADE UNION?

Labour Law defines the trade union as an organisation of employees and only employees are guaranteed the freedom of trade union organisation and action, right to association, right to participate in bargaining in order to conclude collective agreements, right to peaceful resolution of collective and individual labour disputes, the right to be consulted, informed and to express attitudes on important issues in the field of work. Pursuant to the Labour Law, an employee is a natural person employed by the employer. This means that means that the right to strike is not granted to workers who work for the employer outside of employment relationship do not have collective rights guaranteed to employees pursuant to Labour Law; additionally, collective rights are denied to persons who work for the employer on any other grounds other than an employment relationship – pupils and students at apprenticeship, volunteers, self-employed workers, workers who perform free professions, unemployed, pensioners, etc.

Labour Law should be amended towards a wider definition of the notion of employee or introducing the notion of worker, so that all persons who work for the employer or any grounds would be recognised the right to trade union association and action.

Provisions of the Labour Law which recognise the right to trade union association and action only to employees are not in accordance with the Constitution of the Republic of Serbia and are contrary to international agreements ratified by Serbia, primarily to ILO

87 Freedom of Association and Protection of the Right to Organise Convention of 1948[183] (hereinafter: ILO Convention No. 87), ILO 98 Right to Organise and Collective Bargaining Convention of 1949 [184] (hereinafter: ILO Convention No. 98) and ILO 135 Workers' Representatives Convention of 1971[185] (hereinafter: ILO Convention No. 135), as well as to Workers' Representatives Recommendation No. 143 of the same year.

The Constitution of the Republic of Serbia guarantees freedom of political, trade union and any other form of association, as well as the right to stay out of any association[186]. The Constitution prescribes that all laws and other general acts enacted in the Republic of Serbia must be in compliance with the Constitution and that they may not be in noncompliance with the ratified international treaties and generally accepted rules of the International Law, which are a part of the legal system of the Republic of Serbia. This means that ratified international treaties and generally accepted rules of international laws have a higher legal force then the laws, or, in other words, that laws, the Labour Law included, cannot be contrary to the Constitution.[187].

ILO Convention No. 87 guarantees that that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. The Convention states, inter alia, that each state that has ratified this Convention shall take all necessary and appropriate measures to ensure that workers may exercise freely the right to organise.

The ILO Committee on Freedom of Association (hereinafter: the Committee) is a specialised, impartial, tripartite body of the International Labour Organisation (hereinafter: ILO), which examines complaints if trade unions and employer's representatives from the ILO conventions' signatory states with regards to implementation of the conventions. Based on that activity, through analysing several thousand concrete cases, the Committee has developed a system of decisions and positions on the freedom of association and collective bargaining, which is used for interpretation of conventions and their easier and more correct implementation in practice (through national legislation).[188] The Committee's practice unambiguously shows that all workers, without any discrimination whatsoever with regards to profession or legal grounds on which they work, have the right to organise. Consequently, the right to organise can be exercised by: workers in private and public sector; workers of all professions – customs officers, prison staff, employees in inspectorates, workers in public media outlets, teaching staff, workers who carry weapons due to their work and who are not members of the army or the police (e.g. security officers, private agents), airline workers and port workers, hospital staff, workers in free customs zones; workers regardless of the legal grounds for their work– employees, workers, temporary workers, trainees etc., workers in cooperatives, domestic workers etc; workers who have been dismissed – it is expressly stated that dismissing a worker cannot result in termination of trade union status (e.g. a trade union leader is dismissed); retired workers[189]. Only members of armed forces and the police can be denied the rights guaranteed by the ILO Convention No. 87 or such rights can be limited for them.

183 Regulation on the ratification of the ILO Convention concerning Freedom of Association and Protection of the Right to Organise No. 87, FRNY Official Journal – International Treaties and Other Agreements No. 8/58.
184 Regulation on the ratification of ILO Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively No. 98, FNRY Official Journal – International Treaties and Other Agreements No. 11/58.
185 Law on Ratification of the ILO Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking No. 135, SFRY Official Journal – International Agreements No. 14/82.
186 Constitution of the Republic of Serbia, Article 55.
187 Constitution of the Republic of Serbia, Article 194.
188 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006.
189 In one of the positions of the Committee it is clearly stated that the decision on whether a trade union should gather retired workers and represent their interests is solely up to the trade union autonomy.

2. COUNCIL OF EMPLOYEES

Even though the Labour Law, in only two provisions envisaging the forming of a Council of Employees, does refer to worker participation in managing the company,[190] Serbian labour legislation does not have a legal framework for institutionalising informing, consulting and co-deciding of workers in a company, that is, for worker participation. The Labour Law envisages the possibility of establishing a Council of Employees (for employers with over 50 employees); however, this provision only gives the legal grounds for the establishment of the Council, but does not include the rules necessary to effect this possibility. Thus, the procedure, elections, composition, method of work, relevance and scope of decisions, scope and forms of cooperation with the employer, relationship with trade union and other issues relevant for worker participation, are not regulated. Consequently, the provision on Council of Employees in only a proclamation, which is of no real nor legal significance.

At the same time, consultation and worker participation in decision-making is set very narrowly, that is, it is limited to economic and social rights of employees, which seems to exclude the issues related to the business operation of the company, organisation of work, introduction of new technologies and the like, which cannot be specifically determined as economic and social rights of employees.[191]. This solution deters from the comparative practice of developed European states,[192] which envisage much wider powers for workers' representatives' bodies in managing the company, which is aimed to prevent aggressive corporate management and secure the balance between labour and capital.

Worker participation in managing the company is an international labour law standard guaranteed by the most important sources of labour law[193], the exercise of which should be supported through the creation of sound conditions in national legislation. Trade unions should be included in the adoption of the relevant regulatory framework, so that the final legal solutions would not jeopardize the role and position of the trade unions and so that they would be aimed at promoting, not supressing social dialogue.

3. ESTABLISHMENT AND REGISTRATION OF TRADE UNIONS

The Labour Law prescribes mandatory registration of trade unions in order for them to acquire legal personality, but the regulations governing registration do not set the time limit within which the Ministry of Labour must pass a ruling on registration or denial of registration of a trade union. Consequently, the registration process lasts for long, usually a few months (in some cases even longer), which gives rise to various problems in the work of newly-formed trade unions, jeopardizes organisation and complicates or prevents the work of trade unions. In addition, the current practice can lead us to conclude that trade unions founded under the auspices of certain influential trade union leaders are registered more quickly than other trade unions.

It is necessary to set an adequate deadline within which the Ministry must decide on the motion for registration, under the threat that the Ministry's silence shall be interpreted as approval of the motion in full.

190 Labour Law, Article 205.

191 In second paragraph (out of two relating to worker participation), the Labour Law refers to types of worker participation in managing the company, and prescribes that council of employees provides opinions and participates in the decision-making relating to economic and social rights of employees, in the way and under the conditions specified by law and bylaw.

192 M. Jevtić, Uloga saveta zaposlenih and sindikata u zastupanju interesa zaposlenih u državama Article icama EU (partnerstvo and konkurencija) (The Role of Councils of Employees and Trade Unions in Advocating for the Interests of Employees in EU Member States (partnership and competition)), Beograd, 2011, 10, 18 and 28.

193 Law on Ratification of Revised European Social Charter, Articles 21 and 22 of the Charter.

A trade union is founded when the employees, trade union members, pass a decision on its establishment (founding act), adopt the trade union general act (statute, rules etc.) and elected bodies, that is, the person authorised for representativeness. A trade union is established in accordance with its general act, without prior approval of any public authority.[194] A trade union at the employer is under the obligation to forward the decision on the election of president and members of trade union bodies to the employer within eight days from election.[195] The trade union acquires legal personality by registration in the Trade Union Register (hereinafter: Register), kept by the Ministry of Labour, Employment, Veteran and Social Care (hereinafter: the Ministry of Labour).[196] Mandatory registration is prescribed by the Labour Law,[197] while the registration is done pursuant to the provisions of the Rulebook on Entry of Trade Unions in the Register (hereinafter: the Rulebook). Due registration is one of the requirements for trade unions' representativeness,[198] and is also necessary for the trade union to become legally relevant for the employer, since the Labour Law requires that a trade union organised at an employer forward the ruling on registration to the employer within eight days from the day of being served such ruling[199].

A newly formed trade union gains legal personality (and all related rights and obligations) only once it is entered in the register, and the period before the founding and the registration of the trade union is „frozen" (unproductive) in terms of trade union's legal personality, but also of trade union work. The trade unions established at an employer are in a particularly difficult situation due to the statutory obligation to forward the decision on the election of president and members of trade union bodies within eight days from the day of election. This means that elected trade union representatives must be „disclosed" to the employer soon after their election (within eight days) while the trade union obtains a ruling on registration much later (usually after a few months). This provides employers who do not look favourably to trade union organisation with an opportunity to suppress or weaken the newly-formed trade union even prior to its formal registration. The fact that the statute does not prescribe a deadline within which the Ministry of Labour is to decide on the motion for registration, coupled with the described registration practices, departs from the international labour law standards and practice and jeopardizes trade union association, organisation and activity.[200]

Rulebook on the entry of trade unions in the register prescribes that the register is kept as a public and electronic database,[201] but, to date (Rulebook was adopted in 2005) it has not been organised in such a way, and the general public hence does not have insight into data on registered trade unions. Thanks to that, representatives of public authorities can give statements containing incorrect or semi-correct information which, on the one hand, seriously undermine the reputation of trade unions, and on the other, support the false image of developed trade union organisation in Serbia.

It is necessary to effect the provision of the Rulebook on entry of trade unions in the register and establish the Register of trade unions as a public and electronic database.

Information circulating in the general public is that there are over 24,000 registered trade unions in Serbia, which is used by the public authorities as an argument that trade union organisation in Serbia is very developed, and that, due to such a large number of trade

194 Labour Law, Articles 206 and 215.
195 Labour Law, Article 208.
196 Labour Law, Article 238.
197 Labour Law, Article 217.
198 Labour Law, Article 218.
199 Labour Law, Article 208.
200 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 338. Report, case No. 2273, para 294.
201 Rulebook on entry of trade unions in the register, Article 2.

unions, it is necessary to organise the trade union scene. What is actually the issue here? The Labour Law and the Rulebook prescribe that trade unions of all levels of organisation must be registered – this includes trade unions at the employer (in a privately or publicly owned company, institution, state or other body or organisation), trade unions established for a given territory e.g. autonomous province, city, town, municipality or other territorial organisation unit (e.g. several municipalities, a county and the like), and state-level trade unions and trade union associations. Regulations also require that all branch, business activity, profession trade unions must be registered as well. THIs means that the majority of registered trade unions are in fact organisational units or different levels of organisation of several trade union centrals, as opposed to being so-called house trade unions, established independently, as presented to the general public. If the Register of trade unions were publicly available, it would be easy to check the affiliation and organisational level of any given trade union.

4. DOES THE LABOUR LAW SUPPORT DIFFERENT FORMS OF TRADE UNION ORGANISATION?

The Labour Law does not prescribe a mandatory form of trade union organisation, but the rule it includes indirectly limit trade union organisation at the employer to a form of trade union organisation, since certain rights are recognised only to trade unions organised in such a manner. Over the past several years, the largest trade unions in Serbia have started to change their statutes and envisage new models of trade union organisation, but the labour legislation did no follow this trend. Consequently, some forms of trade union organisation cannot be realised in practice, which violates the freedom of trade union organisation and action (e.g. appointing a trustee outside of the employer or establishing a trade union organisation not attached to one employer)[202].

Positive legal rules should set the widest possible base for trade union organisation and allow trade unions to freely opt for models that are most suitable for them, where the rules should not favour any form of trade union organisation either directly or indirectly. The legislation should enable trade union organisation in all forms recognised by international labour law and practice, envisaging only such limitations that are necessary in the interests of national security or public order or for the protection of the rights and freedoms of others[203].

In a large number of companies (particularly small and medium-sized companies) trade unions cannot be organised in their classical form (a trade union organisation at the employer), but a certain number of employees from such companies are trade union members through direct membership in branch or territorial form of trade union organisation. The Labour Law limits the rights and freedoms of such employees and their trade unions and puts them in an unfavourable position compared to the trade unions organised in a way „recommended“ by the law. Thus, the Labour Law, inter alia, prescribes that the employer is under the obligation to provide technical conditions and space to a trade union gathering employees at the employer, in accordance with the employer's spatial and financial capacities. The employer is also under the obligation to enable such trade union access to data and information necessary for the performance of trade union activities.[204] Interestingly, amendments to labour legislation that are characterised by diversity and flexibility of

202 Statute of the Association of Independent Trade Unions of Serbia.
203 International Covenant on Economic, Social and Cultural Rights have the right to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.
204 Labour Law, Article 210. paragraph 1.

various grounds and forms of work, which have been intensively pursued ever since the 2014 amendments to the Labour Law, are not accompanied by regulatory changes aimed at more flexible trade union organisation; quite to the contrary, regulations seem to mould trade unions in a singular way.

Rigid solutions of the Labour Law are not in line with international labour law standards, which guarantee that trade union representatives who are not employed at the company, but whose trade union has members employed at such company, access to that company, and the signatory state is under the obligation to regulate the way in which trade union representatives shall exercise such right by national rules.[205] Other international law standards include similar rules, although set in a more general manner.[206] Thus, ILO Freedom of Association and Protection of the Right to Organise Convention No. 87 guarantees workers' (and employers') organisations the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes and at the same prescribes that public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof[207].

5. TRADE UNION REPRESENTATIVENESS

The Labour Law does not envisage that representativeness at an employer can be obtain by a trade union for a given territory if it meets the requirement regarding the number of members who are employed with the employer, while such possibility is allowed for branch trade unions. This favours branch over territorial type of trade union organisation, which is contrary to the role and powers the public authorities should have in relation to trade union organisation and activity.

The Law should prescribe that a representative trade union at the employer is also a trade union whose members account to at least 15% of employees of the given employer.

The Labour Law prescribes the requirements for representativeness of trade union, and one such requirement is the census with regards to the number of employees. Thus, a representative trade union is a trade union that holds as members at least 15% of the total number of the employer's employees, or a trade union in a branch, group, subgroup or line of business which holds as members at least 15% of that employer's employees. A representative trade union for the territory of the Republic of Serbia, i.e. territorial autonomy unit or local self-government, i.e. for a branch, group, subgroup or line of business, is considered to be a trade union that holds as members at least 10% of the total number of employees in the branch, group, subgroup or line of business, i.e. in the territory of a specific territorial unit. Such proposal is justified by the practice, given that an increasing number of workers directly join trade unions established for the territory of a city, town or a municipality where they live, which could also be a formula for trade union organisation of agency workers, even though the current Draft of the Law on Agency Employment pursues

205 Convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking and Workers' Representatives Recommendation No. 143; Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 334. Report, case No.br. 2316, para. 505.

206 International Covenant on Economic, Social and Cultural Rights; ILO Freedom of Association and Protection of the Right to Organise Convention No. 87

207 Regulation on the ratification of ILO Freedom of Association and Protection of the Right to Organise Convention No. 87.

a completely different path.[208]

Through amendments, the Labour Law widens the rights recognised to representative trade unions as opposed to trade unions that are not representative. Non-representative trade unions are denied important mechanisms of trade union fight, which should not be made conditional on representativeness, whereby the public authorities undermine healthy competition among trade unions and secure a status quo on the trade union scene.

The Labour Law grants to a representative trade union certain rights not granted to a trade union that does not meet the requirement of representativeness. These are the rights to collective bargaining and concluding of collective agreements, the right to participate in resolution of collective labour disputes and the right to participate in the work of tripartite and multipartite bodies on adequate level (e.g. SEC, Employment Council etc.) and other rights envisaged by law. Even though it is understandable and justified for a representative trade union to have the powers that set it aside from non-representative trade unions, thus „rewarding" its representative quality, where primarily we refer to collective bargaining and concluding of collective agreements, further widening of these rights, as done by the 2014 amendments to the Labour Law, is not justified (e.g. the employer's obligation to inform only a representative trade union on the reasons for extending the payment of minimum salary 6 months after its introduction, guaranteeing minimum number of hours of paid leave due to trade union activity only to a person authorised to represent a representative trade union). Guaranteeing new rights and „benefits" only to representative trade unions undermines healthy competition among trade unions, while non-representative trade unions are put in an unfavourable position and prevented in further trade union efforts. The situation is additionally aggravated by the employer's action, where the employers grant other rights to representative trade unions (loyal to them) and/or their members where such rights are legally allowed but not expressly prescribed by law, all in order to weaken healthy trade union competition and reduce trade union organisation only to „subservient" trade unions (e.g. buying through an attachment of salary).

The number of members of a trade union at an employer, when representativeness is determined, is verified by a board, based on trade union membership application forms. In this way the employer can learn exactly which of his employees are trade union members, which can potentially put them in an unfavourable position.

It would be useful for the verification of the requirements for determining representativeness to be entrusted to a neutral party (e.g. notary public) who would under the obligation to establish and communicate the number of trade union members but keep their identities secret.

The procedure for establishing representativeness at the employer is initiated by the trade union, which files a written request to the employer. The employer then forms a commission, tasked with verifying whether the statutory requirements for representativeness are met, and which informs the employer thereof, with a proposal for passing an adequate ruling. The Commission should comprise representatives of trade unions established at the employer (interested trade unions) and representatives of the employer. This solution is

208 Article 26, paragraph 1, items 5 and 6 of the Draft Law on Agency Employment prescribes the obligation of the user undertaking to enable the consigned employee the right to freedom of association and the right to collective bargaining, and to provide the trade union at the employer with information on all types of employment and work engagement. Article 29, paragraph 1 of the Draft sets out that the consigned employees, when the requirements for selecting a worker's representative are examined, are counted in the total number of employees of the user undertaking. This may lead us to conclude that a consigned employee cannot at the same time be a member of a trade union at the agency and at the user undertaking, nor can such employee freely choose where to exercise his or her right to organise, which is contrary to the Constitution of the Republic of Serbia and ILO Conventions which are an integral part of the Serbian legal system.

supported by the Opinion of the ILO Committee on Freedom of Association, according to which it is not necessary to present the list of trade union members in order to determine the number of members, but that the number of member can be determined based on trade union membership dues or in another manner,[209] (authors' comment . the employer knows who trade union members are because the employer has insight into withheld trade union dues, which is why this manner of payment of trade union dues, despite its benefits, is actually detrimental to the trade union.).

The Board for Determining Representativeness of Trade Unions and Associations of Employers (hereinafter: the Board) has difficulties reaching a quorum for work and securing the majority necessary for making decisions; hence, the requests for determining representativeness cant take months, sometimes even years to be decided on. This seriously violates the freedom of trade union association, organisation and action, and even sometimes completely prevents it. The power of the Minister of Labour to decide on the issue even without a proposal from the Board, which is an attempt to resolve the inefficiency of the work of this body, is not conducive but, quite to the contrary, undermines cooperation of the social partners and inappropriately extends the role of the public authorities.

A solution must be found so as to unblock the work of the Board. This could be done by changing its structure or by forming another body that would take over its competence. In any case, a single measure is not sufficient to resolve this issue; what it takes it the creation of a conducive environment for a healthy debate between representatives of workers and employees, with as little intervention from the public authorities as possible.

The Board is a specialised body, formed on the state level, which has a prominent role in determining the representativeness of trade unions and employers' associations. The Board is composed by three representatives of each: the Government, the trade unions and the association of employers, members of the Republic Social and Economic Council, nominated for a four year term of office. The quorum for work of the Boards is 2/3 of members, while decisions are adopted by majority vote of the total number of Board members. If the employer fails to respond to the trade unions' request for determining representativeness or the trade union finds that the employer has violated the law in the course of this procedure, the trade union may submit the request for determining representativeness to the Board. The Board renders a proposal on adopting or denying the request, based on which the Minister of Labour passes a ruling on determining the representativeness or on denying the request. Representativeness of a trade union for the territory of Serbia, that is, for a territorial autonomy or local self-government unit, that is, in a branch, group, subgroup or line of business and of employer's association is also determined by the Labour Minister, at Board's proposal. In mentioned cases, if the Board does not forward a corresponding proposal to the Labour Minister within the time limit set forth by the law, the Minister can decide on the request without the Board's proposal.[210]

6. EMPLOYERS' REPRESENTATIVENESS

Requirements set forth by the Labour Law for establishment and representativeness of employers' associations in the Republic of Serbia are difficult to meet. The general atmosphere in the society and in the business sector is such that employers' business interests, including their interests with regards to trade unions and workers, are realised by influencing politics, that is, by influencing political leaders and parties or in other similar manner. Consequently, employer do no need association and instruments that promote social dia-

209 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See 327th Report, Case No. 2132, para. 661.

210 Labour Law, Articles 223. – 232.

logue. This is particularly true when it comes to big and powerful national and international employers, who leverage their financial and political powers to create labour law legislation and practice. In such an environment, trade unions either have no one to enter into social dialogue with, or are forced to negotiate with de fact non-representative employers' association, which renders the results of such negotiations weak or non-existent.

Employers' associations can be established by employers who employ at least 5% of employees of the total number of employees in a given branch or line of business, or on the given territory. Representative employers' association is also an association of employers which holds 10% of the total number of employers in a branch/line of business/on a given territory, provided that such employers employ at least 15% of the total number of employees in a branch/line of business/on a given territory.[211] Employers are additionally „encouraged" not to associate following the introduction, of more stringent conditions for the adoption of a decision on extended effect of collective agreement, whereby the number of concluded collective agreements is reduced to a statistical mistake.[212]

7. AUTHORISED TRADE UNION REPRESENTATIVE

The Labour Law envisages abstract legal protection for all employees but does not prescribe concrete and efficient protection for those who need it the most – to authorised representatives of employees. This solution is not in line with international labour law standards, which insist on concrete and efficient protection of trade union/workers' representatives.[213]

Pursuant to the Labour Law, only employees can have the status of a representative, and only such representatives' status is protected by law, whilst other workers (persons engaged on other legal grounds) cannot be union representatives and enjoy no legal protection in the given sense. This statutory solution divests workers who are not in an employment relationship of the right to workers' representation, and consequently of the exercise of other collective labour rights, which is a continuation of other provisions of the Labour Law that deny collective labour rights to all workers except employees.

Labour Law would have to guarantee freedom of trade union association, organisation and action to all workers, not just employees and also provide concrete and efficient protection to workers' representatives. It should prescribe which workers' representatives are protected by virtue of the law, and which can be protected by a collective agreement. Violations from which workers' representatives are protected should be prescribed, along with the period to which such protection pertains, which must always exceed the duration of the representative's mandate.

The Labour Law prescribes that the employer can neither terminate the employment contract, nor in any other way put the employee in a disadvantageous position because of his status or activity as an employee representative, trade union member, or because of his participation in trade union activities. The burden of proof that the termination of the employment contract or placing an employee in a disadvantageous position is not a consequence of the status or activities referred to in paragraph 1 of this Article is on the employer.[214] This statutory provision was introduced by the 2014 amendments of the Labour

211 Labour Law, Articles 216., 221 and 222.
212 Labour Law, Article 257. The requirement most difficult to meet is that the collective agreement whose effect is being extended obligates employers who employ more than 50% of the employees in a particular branch, group, subgroup, or line of business (according to the old solution, 30% was sufficient).
213 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 1996 Overview, paragraph 700; 304th Report, Case No. 1853, para 299.
214 Labour Law, Article 188.

Law, while at the same time the solution that envisaged special protection for authorised representatives of trade unions/workers was deleted, even though it protected, with some minor deficiencies, this category of employees in a satisfactory manner.[215]

Authorised representatives of trade unions and other workers' representatives stand before the employer with their own name and surname, which, as a rule, renders them more vulnerable than other employees, and more exposed to risk of harassment. This is why they should be awarded special protection by virtue of the law.

Efficient protection of workers' representatives is insisted upon in the ILO Workers' Representatives Convention (No. 135) and the Workers' Representatives Recommendation No. 143, requiring that national legislation prescribe concrete, special protection for workers' representatives - workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.[216]

8. FREEDOM OF TRADE UNION ACTION

Two of strongest trade union's weapons, which help them achieve their goals, are collective agreements and strike. Whether and to what extent does a society award the freedom of trade union activity is assessed by the conditions for and results of collective bargaining and the manner in which the right to strike is ensured.

8.1 COLLECTIVE BARGAINING AND CONCLUDING OF COLLECTIVE AGREEMENTS

Serbian labour legislation does include formal grounds for collective bargaining and concluding of collective agreements. However, it does not fully incorporate international labour law standards and is not inducive for the social partners to enter into collective bargaining and conclude a collective agreement. The Labour Law provides a declaratory advantage of the collective agreement over a rulebook on work, but such declaratory advantage is neither supported nor elaborated in the provisions of that or other laws.

This statement is corroborated by the fact that, for ten years now, there is no General collective agreement in Serbia, while currently a number of special (branch) collective agreements are in place, particularly in the private sector. Over the past several years, a practice has emerged whereby the representative association of employers and the representative trade union for a certain branch or line of business conclude a collective agreement, but tie the start of its implementation to the adoption of the decision on the extended effect of the collective agreement. Given that the requirements for the adoption of a decision on extended effect of collective agreement prescribed by the law are almost impossible to meet, the concluded special collective agreements are never implemented, that is, remain

215 The employer cannot cancel the employment contract nor otherwise put the workers' representative in a disadvantageous position during such mandate and one year after the expiry of such mandate, in so far as they act in conformity with the law, general act and employment contract; the representatives enjoying such protection are: 1) member of the Council of Employees and employees' representative in the employers' management and supervisory board; 2) president of a trade union at the employer; appointed or elected trade union representative. If the mentioned persons act contrary to law, general act and employment contract, the employer may cancel their employment contracts. The number of trade union representatives who enjoy such protection is set out in the collective agreement, that is, by agreement of the trade union and the employer, depending on the number of trade union members at the employer. With Ministry's consent, the employer may cancel the employment contract of a workers' representative, if he or she refuses the offered job in terms of measures for dealing with redundancies.

216 Law on Ratification of the ILO Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking No. 135, Article 1.

„a dead letter".[217] Collective agreements with employers, in private and public sector alike, are an exception rather than a rule. It is estimated that under 30% of employers in private and public sectors have concluded an individual collective agreement. Even though relevant research has not been conducted to that effect, it is safe to conclude that the coverage of Serbian workers by collective agreements, irrespective of the level of the agreement, is considerably below the European average, which is around 80%, and that the situation has drastically worsened following the 2014 amendments of the Labour Law. The Labour Law directly regulates collective bargaining and collective agreements in Articles 240 to 267, but issues relevant for collective agreements, e.g. rights from employment relationship, representativeness, legal and business capacity of trade unions and employers' associations, termination of employment relationship, are indirectly regulated through the entire law. Collective bargaining and collective agreements are indirectly dealt with in other laws, which refer to the implementation of certain collective agreements, or where certain issues related to employment relationship governed by such laws are put within the scope of collective agreements (e.g. Law on Strike, Law on Civil Servants, Law on Health and Safety at Work etc.).

The Labour Law sets a very wide base for unilateral regulation of employment relationships at the employer, that is, for the adoption of the rulebook on labour, albeit in the form of exceptions. Thanks to these exceptions, the rulebook on labour becomes a rule, whilst the collective agreement becomes an exception. To that effect we point out the provision according to which the employer may adopt a rulebook on labour if the participants of collective bargaining do not reach an agreement for concluding a collective agreement within 60 days from the day the bargaining had begun.[218] This means that the employer can lawfully evade concluding a collective agreement by fictively commencing the bargaining and „lasting" for 60 days, after which the employer is free to unilaterally regulate the rights and obligations from the employment relationship. It is important to underline that it is irrelevant whose fault it is that the collective bargaining has failed.

The Labour Law refers to elaboration and more detailed regulation of rights and obligations from employment relationship in a general act, which is a common name for collective agreement and the rulebook on labour. This means that the collective agreement and the rulebook on labour are fully equated, that is, that all rights and obligations from

217 Special collective agreement for chemistry and non-metals of Serbia, RS Official Journal No. 77/2016 – will start to be implemented once a decision on the extended effect is adopted to cover all employers from the chemical and non-metal business in Serbia; Special collective agreement for the area of agriculture, food industry, tobacco industry and water production of Serbia, RS Official Journal No. 76/2016, is implemented but its effects are not extended, September 2016 - September 2019; Special collective agreement for health care institutions founded by the Republic of Serbia, autonomous province and local self-government unit, RS Official Journal No.106/2018, January 2019 - January 2020. Special collective agreement for employees in pre-school upbringing and education institutions founded by the Republic of Serbia, autonomous province and local self-government unit, RS Official Journal No. 43/2017, May 2017 – May 2020; Special collective agreement for state bodies, RS Official Journal Nos. 25/2015, 50/2015, 20/2018 and 34/2018, May 2018 ; Special collective agreement for „Elektroprivreda Srbije", RS Official Journal Nos. 15/2015 and 38/2018, May 2018 – February 2021; Special collective agreement for construction and construction material industry of Serbia, RS Official Journal No. 77/2016, shall start to be implemented once a decision on the extended effect to all employers in the construction sector and the construction materials sector is passed; Special collective agreement for communal publicly owned companies on the territory of the Republic of Serbia RS Official Journal Nos. 27/2015, 36/2017 – Annex and 5/2018 - Annex II, January 2018 – March 2021; Special collective agreement for police officers, RS Official Journal Nos. 22/2015 and 70/2015 – Annex, January 2016 – March 2019; Special collective agreement for work engagement of showbusiness and musical artists and performers in hospitality sector, RS Official Journal No. 23/2015, has extended effect, and is valid until February 2021; Special collective agreement for cultural institutions founded by the Republic of Serbia, autonomous province and local self-government, RS Official Journal No. 106/2018, January 2019 – December 2021; Special collective agreement for employees in elementary and secondary schools and pupils' boarding schools, RS Official Journal No. 21/2015, March 2015- March 2019; Special collective agreement for employees in student standard organisations founded by the Republic of Serbia, RS Official Journal No. 1/2019, January 2019 – January 2020; Special collective agreement for travelling economy of the Republic of Serbia, RS Official Journal No. 14/2018, has an extended effect as of June 2018, March 2018 – March 2021.

218 Labour Law, Article 3.

the employment relation can equally be regulated by either act – unilaterally, through a rulebook on labour, or contractually (two/three party contract), through a collective agreement.[219] The exception are certain rules related to the trade union, and the rule on redistribution of working hours, which is the only true example of an incentive to conclude a collective agreement. [220]

The collective bargaining procedure is not sufficiently regulated in the Labour Law. The fundamental principles of collective bargaining on which the participants have to base their behaviour are not prescribed (except in Article 3, paragraph 3 – continuation of bargaining in good faith); negotiation technique is not regulated and the Law does not envisage equal responsibilities of the negotiating parties for the success of the negotiations or lack thereof (while the inactivity of a trade union during bargaining implies a serious sanction in the shape of employer's right to unilaterally regulate employment relationships, there are not sanctions envisaged for employer's unconscientious, irresponsible or inactive behaviour)[221].

There are no organisations (associations) that are true representatives of employers, given that employers have no interest to formally organise for the purpose of taking part in collective bargaining. Employers' organisations in Serbia are not representative in the true sense of the word because they do not represent the majority in quantitative terms (share in the labour market) or in terms of economic strength. Employers' associations gather a small number of employers with little economic and general social influence. The largest and most influential employers are not members of employers' associations and consequently do not take part in collective bargaining. Representative trade unions are thus forced to negotiate with non-representative counterparts, which ultimately compromises the efficiency of the bargaining. One of the reasons for the employers' lack of interest (at all levels) lies in the fact that there is no incentive for the employers in Serbia to take part in a dialogue with labour organisations. They can effect their business interests, including labour-related interest, more effectively and more cheaply through other channels, which eliminates the need to negotiate with social partners. In addition to economic, political and other social factors, this perception, on the part of employers, is also supported by the regulatory framework, which in no way stimulates the employers' interest to enter into collective bargaining process. If the regulatory framework is such that it enables the employer to unilaterally regulate the rights and obligations of his employees with little complication and virtually no adverse consequences, the majority of employers will seize such an opportunity. Lacking the adequate regulatory framework, any invoking of social consciousness or achievement of civilisation is a misguided effort.

Even though the Labour Law does envisage the institute of extended effect of a collective agreement (branch and general), the requirements set for such effect are so demanding that they render this option only theoretical. The requirement that is most difficult to meet is the one that the collective agreement the effect of which is being extended is mandatory for the employers who employ over 50% of employees in a given branch, group, subgroup or line of business (this threshold used to amount to 30%). The two additional requirements – a reasoned proposal of the line Ministry and the opinion of the Social and Economic Council – are also hard to meet, given the state of play with regards to social dialogue in Serbia and

219 According to Article 8, paragraph 1 of the Labour Law, the term „general act" is a common name for a collective agreement at the employer and the rulebook on labour. The Labour law refers to the general act to regulate or prescribe in more detail certain rights and obligations from an employment relation (e.g. rights of employees who do not work full time, rights of trainees, duration of annual holiday leave, paid and unpaid leave, stay of employment relationship, salary, compensation of salary, other earnings, severance pay, non-compete clause, damages, suspension, annex of an employment contract, referral to work to other employer, reasons for dismissal, arbitrary resolution of contentious issues, contract on vocational training, compensation of salary for trade union representative).

220 Labour Law, Article 57 paragraph 3.

221 Labour Law, Article 3, paragraph 2, items 2 and 4.

the deep divide between the social partners. The final decision on extended effect is passed by the Government of the Republic of Serbia, not the Minister of Labour, as previously was the case, which additionally complicates the realisation of this labour law institute.[222] Serbian employers' associations are not representative in the true sense of the word, given that they gather a small number of employers, with a small number of employees and are of negligible economic importance. The majority of employers, particularly the large and powerful employers, are not and most likely will not become members of employers' associations. This is why the 50% threshold is practically impossible to achieve in most lines of business. Even if all the requirements could be met, the final decision on the extended effect is passed by the Government. Even if all members of the Government were to agree on the decision on the extended effect of a particular collective agreement, the procedure for scheduling and holding of a Government session is much more complex than the modus operandi of a single minister; should the ministers fail to agree, the entire matter would become even more complex. Such demanding requirements for extended effect of collective agreement were introduced by the 2014 amendments of the Labour Law; beforehand the Law envisaged requirements that were more suited to the Serbian conditions, that is, it was possible to fulfil them.[223] After more than four years of enforcement of this regulatory solution, only one collective agreement in the private sector was granted extended effect – the Collective agreement for employees in the travelling economy sector.[224] Furthermore, the employers are additionally „encouraged" not to associate, since the danger from extending the effect of the collective agreement is reduced to the level of a statistical mistake.

The 2014 amendments of the Labour Law have brought a „revolutionary" rule, according to which all collective agreements cease to be valid six months after the entry into force of these amendments, regardless of whether they are in accordance with the law or not. Therefore, in January 2015, the Labour Law has quashed all collective agreements, including those that were fully aligned with the Law.[225]

It is necessary to demand ratification of the ILO Collective Bargaining Convention No. 154 and the ILO Collective Bargaining Recommendation No. 163. These acts directly relate to collective bargaining, and Serbia has not adopted them to date. Introduction of these sources to the Serbian labour legislation would give a clear signal that the authorities are in favour of developing social dialogue, while at the same time setting groundwork for further regulation of the subject-matter.

The system of legal acts that govern the rights and obligations from employment relationship at the employer should be regulated so as to truly favour consensual over unilateral regulation of employment relationships, or, in other words, so that the possibility of adopting a rulebook on labour is truly reduced to an exception.

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222 Labour Law, Article 257.

223 The minister can decide that the collective agreement or some of its provisions shall extend to the employers who are not members of the employers' association – participant in the collective agreement.
The Minister can pass the decision from paragraph 1 of this Article if there is a justified interest for doing so, and in particular:
1) in order to effect economic and social policy in the Republic of Serbia, for the purpose of securing equal working conditions that constitute the minimum of employees' rights from labour and on the grounds of labour;
2) to mitigate the differences in salaries within in a particular branch, group, subgroup, or line of business that significantly affect the social and economic position of employees which has, as a consequence, unfair competition, provided that the collective agreement whose effect is being extended obligates employers who employ more than 30% of the employees in a particular branch, group, subgroup, or line of business.
The Minister passes the decision from paragraph 2 of this Article at the request of one of the participants in the conclusion of the collective agreement whose effect is being extended, after having obtained the opinion of the Social and Economic Council.

224 Decision on the implementation of the Special collective agreement for the travelling economy of Serbia, RS Official Journal No. 46/2018.

225 Labour Law, Article 117.

The laws governing the rights and obligations from an employment relationship and with regards to employment relationship should be amended so as to enable the contents of the employment relationship to be regulated by the collective agreement as much as possible (Labour Law, Law on Strike, Law on Health and Safety at Work etc.). Statutory regulation of rights and obligations from employment relationship should be such so as to provide a strong incentive for both employers and employees to conclude a collective agreement. A good example for such regulation (unfortunately, also the only example) is the way in which the Labour Law regulates redistribution of working hours.[226] The Law should envisage general solutions that protect the fundamental principles of labour law and set guidelines for more detailed regulations of labour law relations on a lower or individual level, and should not, either openly or covertly, discourage social dialogue and collective bargaining.

The procedure of collective bargaining and concluding of a collective agreement should be regulated in more detail in the form of a special Law or within the Labour Law, and entrust the monitoring and supervision over the implementation of these rules to the line inspectorate. It would be useful to establish and regulate: technical issues related to the submission of initiatives for collective bargaining and responses to the initiative, bargaining procedure (time, place and manner in which meetings are held, timelines, dynamics, keeping of minutes), the basic principles of bargaining, violations of the rules of bargaining and corresponding sanctions, availability of relevant data to those participating in the bargaining, special protection for representatives of trade unions who partake in the bargaining, etc.

It is necessary to introduce the obligation of participants of the collective bargaining, regardless of the line of business in which the agreement is negotiated, to initiate, in cases when problems arise that prevent the continuation of bargaining, the procedure for amicable settlement of collective labour disputes before the Agency for Peaceful Resolution of Disputes.

8.2 RIGHT TO STRIKE

Strike is a temporary collective stoppage of work, whereby the employees exert economic pressure on the employer and/or the state in order to effect or protection their professional and economic interests based on work. The right to strike is one of the fundamental rights of workers and trade unions, and at the same time, one of the most sensitive rights, which is why the manner in which it is regulated in national legislation is important.

8.2.1 Who has the right to strike?

The Constitution of the Republic of Serbia and the Law on Strike recognise the right to strike only to employees; the notion of employee is set out in the Labour Law, which states that an employee is a natural person employed by the employer (a person who has concluded an employment contract with the employer)[227]. This means that the right to strike is not granted to those who work for the employer outside of employment relationship, that is, on any grounds other than an employment contract – workers (occasional and casual work, vocational training , special service contract work)[228], seasonal workers, volunteers, pupils under apprenticeship schemes, etc.

226 Labour Law, Article 57. paragraph 3.; Collective agreement may determine that the rescheduling of working hours should not be associated with the calendar year, i.e. that it may last longer than six months, but not longer than nine months.
227 Labour Law, Article 5.
228 Labour Law, Articles 197. – 202.

It is necessary to recognise the right to strike to all workers, regardless of the legal grounds on which they are engaged.

The Constitution of the Republic of Serbia (hereinafter: the Constitution) guarantees the right to strike to employees, in accordance with the law and collective agreement. The Law on Strike defines strike as a stoppage of work organised by employees in order to protect their professional and economic interests on the basis of work.

International legal standards do not include any grounds for failure to recognise the right to strike to workers working outside of employment relationship. International labour law standards, together with other collective labour rights, is either explicitly or implicitly recognised to all workers, regardless of the legal grounds on which they work for the employer, and strike can be prohibited to employees in certain lines of business – army, police and state administration.[229]

8.2.2 Political strike

The Law on Strike does not allow for a purely political strike, since strike is defined as a work stoppage organised by the employees in order to protect their professional and economic interests on the grounds of work. However, one could say that a strike that has political demands is not prohibited in Serbia, provided that such demands are closely related to the realisation of economic, social and professional objectives, particularly in cases of general or branch strike (what is demanded is improvement of provisions of labour legislation, resignation of the minister of labour, adoption of the social programme etc). The opinions of the ILO Committee for Freedom of Association are along the same lines, including the one stating that „while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies".[230]

What has to be borne in mind are the specificities of the social, political and economic environment in Serbia. The regulations in the field of labour and commercial law (and not only those) are often unclear, ambiguous and incomplete, and their enforcement is problematic to say the least. Many regulatory solutions are not enforced or the law is evaded through enforcement. All of this happens with implicit consent or passive attitude of the state authorities that are charged with monitoring the implementation of regulations and removing the irregularities in implementation of law. Court procedures last for very long, which in many cases stultifies this form of legal protection. Social dialogue is on a very low level in Serbia. The credibility, reputation and even the formal status of organisations that should represent social partners is undermined (number of members, representativeness, method of financing, independence from public authority etc.), while rare instances of collective bargaining are often a farce, which is corroborated by the small number of concluded collective agreement at all levels, and their low quality (as they mostly copy the norms of the law). The influence of politics on trade and business (and consequently employment relationships) is very prominent and often state authorities and services seem to work in the interest of specific individuals and business entities. Under such circumstances it becomes justified, even necessary to dislocate strike from the trade union (employees) – employer relationship, since the reasons for strike are often a consequence of dysfunctional social and economic system, and therefore cannot be resolved without this system

229 Law on Ratification of the International Covenant on Economic, Social and Cultural Rights, Article 8.

230 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 1996 Overview, position 482; 300th Report, case No. 1777, paragraph 71; 304th Report, case No.1851, paragraph 280, and case No.1863, paragraph 356.

also being amended and improved. The employees who are on strike are not only workers, but also the citizens of Serbia, while the reasons for which they are dissatisfied or forced to strike are directly or indirectly caused by certain actions or failures to act on the part of state bodies and services.

8.2.3 Types of strike

The Law on Strike does not recognise the right to strike which would be organised on a smaller territorial unit (in a city, town, municipality or province) and also does not envisage the right to sympathy strike.

It is necessary to envisage the possibility of organising the right on a smaller territory (town, municipality, province), and of a sympathy strike. The rules on sympathy strike should be set in way that will not stultify it and preventing it from taking place in practice.

The Law on Strike expressly lists the types of strike, and recognises the strike at the employer, in a branch or line of business and the general strike. The Law also allows for a warning strike, which may last for one hour at the most.[231] The Draft Law on Strike of 2018, in the section entitled „Types of strike", inter alia, recognises the right to strike on the territory of autonomous province or local self-government unit, as well as the right to sympathy strike, which, however, is restricted in multiple ways. Sympathy strike is restricted to support to strikers at the same employer or in the same branch, group, subgroup or line of business, on a specific territory, which means that a sympathy strike cannot support strikers at a different employer if such employer does not belong to the same branch and the same territory as the sympathy strikers. Sympathy strike in support of strikers abroad is excluded, and the duration of strike is limited to only one day. The mentioned restriction considerably stultifies the sympathy strike.

8.2.4 Place of strike

The Law on Strike envisages that if strike is exercise by a gathering of the employees, the place of gathering of strikers cannot be outside of the offices – working premises of the employer, that is, outside of the business premises of the employees on strike.[232] In this way, strike is prevented from becoming visible to the general public and strikers are prevented from obtaining wider support for their demands.

It is necessary to enable workers to organise peaceful strikes outside of employer's business premises, in a place and in the manner that will make the strike visible to public authorities, where the only limitations are those related to safety.

Restricting the strike to employers' business premises can be justified by the fact that the relations between the employees and the employer are not public, which is why the problems in relation to them should be resolved internally, without involving third parties and the public. However, the specificities of the social, political and economic environment in Serbia must be borne in mind here, alongside the fact that the reasons for strike are often directly or indirectly caused by unlawful or irregular actions or failures on the part of state bodies and services. Furthermore, in the public sector, in addition to the direct employer there is also the founder (the Republic, autonomous province, local self-government unit), who has a considerable (decisive) say in the labour law status of employees, and whose seat is outside the employer's business premises.

The 2018 Draft Law on Strike links the organisation of strike outside of employer's

231 Law on Strike, Article 2.
232 Law on Strike, Article 5. paragraph 3.

business premises to the regulations governing the public gathering of citizens.[233] Subsuming strike under a public gathering of citizens is not a proper way to regulate the subject matter, because strike is a specific type of protest, with special nature and dynamics, which can hardly be adjusted to the requirements of organising a public gathering. ILO Committee for Freedom of Association took the position that a time restriction placed by legislation on the right to demonstrate is not justified and may render that right inoperative in practice,[234] whilst the Law on Public Gathering prescribes that public gatherings may be held at a time between 6 and 24 hours and demands the application of gathering to include the information of the time of the gathering. In addition, the relevant state body may deny permission for a public gathering or can approve a public gathering at a place or time that does not suit the interests of strikers, which jeopardizes the exercise of this right.

8.2.5 Picketing

The Law on Strike does not expressly recognise the right to picketing, but also does not seem to prohibit them.

It is necessary for the law to expressly envisage the strikers' right to picketing, with an indication that picketing cannot be accompanied by threat or coercion.

Picketing is peaceful deterring of employees from work during strike, where a certain number of strikers is at the employer's entrance and peacefully inciting other workers who are not on strike to keep away from the workplace and join this collective action. The purpose of picketing is to achieve greater solidarity among employees, and to make the strike visible to the public, because pickets often carry banners and other strike-related signs.

The Law on Strike prescribes that the employee is free to decide on his or her participation in the strike, and that the striker's board and employees who are on strike cannot prevent the non-strikers from working.[235] Even though this prohibition is not formulated in a particularly clear manner, preventing strikers from working, most likely, refers to use of threat or coercion but not to peaceful and firm persuasion of employees to join the strike.

The 2018 Draft Law on Strike envisages that the employee is free to decide on strike, cannot be prevented from taking part in a strike, and cannot be exposed to threats or coercion to take part or not take part in a strike, but does not expressly envisage the strikers' right to picketing.

8.2.6 Decision to start the strike

The Law on Strike prescribes that the decision to start the strike at the employer is passed by the trade union body so determined by the trade unions' general act or a majority of employees.[236] The request that the decision on the start of strike is passed by the majority of employees jeopardizes the exercise of the right to strike of the employees who are not members of a trade union, and as such is contrary to the international labour law standards. This problem is particularly prominent in large companies, companies with complex and territorially scattered organisation, as well as in companies where the trade union gathers a large number of employees.[237]

The Law does not regulate the manner in which the employees vote on the start of

233 Law on Public Gathering, RS Official Journal No. 6/2016.
234 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 320th Report, case No. 2023, para. 425.
235 Law on Strike, Article 1. paragraph 2. and Article 7. Paragraph 3.
236 Law on Strike, Article 3. paragraph 1.
237 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 1996 Overview, paragraph 507.

strike in cases when the strike is organised without the trade union. What is usually done is practice is that a list of names of employees supporting the strike is drawn up, and each employee provides a hand signature next to his or her name. The list is forwarded to the employer, so that the employer can verify that the decision to strike was adopted by the votes of the majority of employees. In this way the employer learns which employees support the strike and use this information against them.

It is necessary to eliminate the threshold with regards to the number of employees who can pass a decision on strike; should such threshold remain in place, the verification of the number of employees who support strike should be entrusted to a neutral party (e.g. notary public), who would have to establish and communicate the number of employees who support strike, but would be under the obligation to keep the information about their identities secret.

The 2018 Draft Law on Strike prescribes that the list with employee's signatures is the integral part of the decision to strike when the strike is organised by majority of employees at the employer or employer's organisational unit, which is a solution that should be avoided.

8.2.7 The manner in which strike is organised and led

According to the Law on Strike, a strike is organised and led so as not to endanger the safety of persons and property and health of people, prevent the incurring of direct material damage and enable the continuation of work once the strike is over.[238] The mentioned requirements are not sufficiently precise, and some are even illogical (e.g. it is not clear what the strike is supposed to be like to enable the continuation of work once it is over).

Organisers of strike and strikers can only be responsible for direct material damage, if such damage is incurred intentionally or with gross negligence, which is why the Law should be amended to that effect.

The essence of strike is to exert economic pressure on the employer in order for the strikers' demands to be met. It is quite understandable that strike cannot be exercised in a violent manner, by damaging or destroying anyone's property, including the employer's property, but the strikers cannot be expected to be accountable for potential impossibility of continuation of work once the strike is over. The 2018 Draft Law on Strike does not resolve this issue, but adds that strike must be organised in such as manner so as to prevent the incurring of damage on operative assets and equipment, for the purpose of continuation of work once the strike is over.

8.2.8 Announcement of strike

The time limits for announcing strike prescribed by the Law on Strike fit international labour law standards their shortening should be considered, given that they are too long for Serbian conditions, and thus complicate or sometimes even prevent the exercise of the right to strike.

The Law on Strike does not envisage the possibility for holding a spontaneous strike, which should be allowed in the Republic of Serbia, given the mass violations of fundamental labour rights, but only exceptionally and under the conditions prescribed by law.

The time limits for announcing the strike should be shortened and spontaneous strike in case of violation of fundamental labour rights should be enabled.

238 Law on Strike, Article 7 paragraph 1.

The Law on Strike prescribes the time limit within which the strikers' board must announce the strike, that is, must forward the decision on the start of strike to the employer/employers' association/relevant state body. In case of a general strike, the strike must be announced at least five days before the day set for the start of strike, and in case of lines of business where minimum service must be provided, the strike is announced at least ten days before the start of strike. A warning strike must be announced at least 24 hours before the day set as the start of strike.[239]

The decision on the start of strike is not passed easily but is relatively easily abandoned. Instead of negotiating with the strikers on the way to overcome the problems that have resulted in the decision to strike, employers often use the time between the announcement and the start of the strike to „convince" the strikers to forego strike. The persuasion methods range from promising privileges to those who opt out of strike to „friendly advice" on strike not being a smart move, to open threats and pressures (threat of dismissal, downgrading, denial of assistance etc.).

The 2018 Draft Law on Strike takes a step towards extending the time limits for announcing the strike, since the time limits are prescribed in working days (weekends and bank holidays do not count), unlike the current legislation, where the time limits are set in days (weekends and bank holidays count).

There are legislations that allow for spontaneous strike without an announcement (e.g. Sweden allows a spontaneous gathering of employees that can become a strike due to a default in payment of salaries). Violations of fundamental rights in Serbia are frequent (defaults in payment of salaries, failure to observe the rules on working hours, unlawful extension of the duration of overtime, failure to observe the rules on health and safety at work and the like), and it is also commonplace for the employers to reduce employee's rights suddenly, without any prior announcement or explanation, which is why it would be just and opportune to introduce the possibility of a spontaneous strike to Serbian legislation. This possibility would be available to workers only in exceptional cases, when the employer is violating some of the fundamental labour rights the observance of which must be secured as soon as possible (e.g. the right to limited working hours, the right to health and safety at work and the like).

8.2.9 Special strike regime

The Law on Strike prescribes the lines of business for which a special regime of strike is in place – minimum service and early announcement of strike. The spectrum of these business activities is set very widely, and the right to strike is hence limited in business activities that are not of vital importance to life, health and safety of the population, which is a departure from international labour law standards. Pursuant to the Law, these lines of business include public interest activities (electric power supply, water production, transportation, information (radio and TV), postal, phone and telegraph services, communal activities, production of basic foodstuffs, health and veterinarian care, education, social care of children and social protection) and the business activities where stoppage of work, due to the nature of the activity, could jeopardize the life and health of people or cause damage of grand scale (chemical industry, steel industry, ferrous and non-ferrous metallurgy). In addition, the Law awards the status of public interest activities to activities of special interest for the country's defence and safety, and the activities necessary for the enforcement of the country's international obligations.[240] Strike is allowed in the mentioned lines of business (hereinafter: essential services), but is coupled with an obligation of early

239 Law on Strike, Article 5 paragraph 1 and Article 11.
240 Law on Strike, Article 9.

announcement of strike and minimum service.

The right to strike in the Republic of Serbia is limited by the minimum service regardless of the scope, duration and consequences of strike both on radio and on TV,[241] in metal and oil industry ,[242] in agriculture,[243] in transport,[244] in postal services,[245] in communal services,[246] in education,[247] and even in the field of sport and recreation[248], which is contrary to international labour law standards.

The ILO Committee for Freedom of Association took the position that limiting strike by minimum service is allowed only in the following cases: services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and in public services of fundamental importance.[249] The Committee refers to the following examples of essential services: health care, water and electric energy supply, air traffic control, police and armed forces, firefighters, prisons, service of food to pupils and maintained of school hygiene, phone services. Essential services, according to the Committee's opinion, do not include: radio and television, metal and oil industry, agriculture, food supply and distribution, working in ports, banking sector, transportation, postal services, communal services, education (where the right to strike can be limited or prohibited to directors and deputy directors), state printing service, state monopoly to tobacco, alcohol and salt.[250] National legislation may envisage that the activities not considered to be essential service may become essential only if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population.[251] When it comes to civil servants, the right to strike, in Committee's opinion, can only be restricted or prohibited only for public servants exercising authority in the name of the State.[252]

Some drafts of the Law on Strike (e.g. the 2013 draft) envisaged that the list of activities in which the right to strike is restricted by minimum service is not final in the Law on

241 Regulation on minimum service in the Publicly Owned company "Radio and Television of Serbia", RS Official Journal No. 4/2003.

242 Law on Mining and Geological Exploration, RS Official Journal Nos. 101/2015 and 95/2018 – other statute; Collective agreement for Publicly owned company "Srbijagas Novi Sad", RS Official Journal Nos. 116/2006 and107/2009.

243 Special collective agreement for the business activity of agriculture, food industry, tobacco industry and water industry of Serbia, RS Official Journal No. 76/2016.

244 Regulation on the minimum service during strike in the Public Railway Transport Company „Beograd", RS Official Journal No. 50/2002 and 34/2004 – CC decision.

245 Regulation on minimum service during strike in the Publicly Owned Company PTT traffic „Srbija", RS Official Journal No. 60/2001.

246 Decision on determining minimum service in communal activities in case of strike, Official Journal of the city of Kragujevac, Nos. 2/2000 and 35/2008.

247 Law on Elementary Education and Upbringing, RS Official Journal Nos. 55/2013, 101/2017 and 27/2018 – other statute; Law on Secondary Education and Upbringing, RS Official Journal Nos. 55/2013, 101/2017 and 27/2018 – other statute; Regulation on minimum service of faculties and universities founded by the Republic of, RS Official Journal No. 65/2003.

248 Decision on determining minimum service in case of strike in Publicly owned company Sports centre „Mladost" Official Journal of the city of Kragujevac, No. 3/2011.

249 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 1996 Overview, para 556; 316th Report case No. 1985, paragraph 324; 320th Report, Case No. 2057, paragraph 780; 329th Report, case No. 2174, paragraph 795; 333.

250 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006.

251 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 1996 Overview, paragraph 541; 320th Report, Case No. 1963, para. 229; 321st Report, Case No. 2066, para. 340;330

252 Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Freedom of Association, International Labour Office Geneva, 2006. See: 1996. Overview, paragraph 534; 04th Report, Case No. 1719, para. 413; 338th Report, Case No. 2363, para. 731, and Case No. 2364, para. 975.

Strike, but that it can be extended in other laws, adopted for a specific line of business. The services where the right to strike is restricted or can be restricted can only be envisaged by the Law on Strike, and not by other, special laws.

The objectives to be secured by the minimum service, according to the Law on Strike, are not sufficiently clear and are set very widely – safety of people and property, irreplaceable condition for citizens' life and work or work of other company, that is, of natural or legal person engaging in commercial or other activity or service.[253] According to international labour law standards, the minimum service must be limited to such services that are necessary to avoid the risk to life, personal safety or health of people, and cannot be so determined to render strike ineffective.

The Law needs to set a rule that minimum service must be ensured only for such services and to the extend necessary to avoid danger to life, personal safety and health of people.

In the Republic of Serbia there are many examples of established minimum service that depart from the international law and practice framework, and one of the most problematic ones is the minimum service that has to be delivered by teachers and expert associates in elementary and secondary schools, which amounts to 30, that is 40 minutes per class within the daily schedule and exams, and in case of an expert associate or educator, that is, of a teacher in after school care – 20 hours a work a week. A minimum service so determined ranges from 65% to almost 90% of service, which renders the right to strike in these activities almost pointless.[254]

The Law on Strike envisages that the minimum service for public services and publicly-owned companies is set by the founder, and in case of other employers, by the director, therefore, but the employer. Even though, when deciding on minimum service, the employer is under the obligation to take into account the opinion, objections and proposals of the trade unions, they are not binding, and hence the final decision is on the employer alone.[255] The Law does not concretely limit the employer in determining minimum service; what often happens in practice is that minimum service covers almost all jobs at the employer (not only essential service) and also 70, 80 or even as much as 90% of employees, which renders the right to strike pointless. This solution does not abide by the international labour law standards, according to which the procedure for determining minimum service would have to ensure equal participation of employees' associations, employers' associations and the public authorities. By allowing the employer to unilaterally determine minimum service, the Law favours the employer over employees, which is impermissible from the standpoint of international labour law and practice.

Even though the Law prescribes that the manner in which minimum service is provided is set out by the employer's general act, pursuant to the collective agreement, which is in line with international labour law standards,[256] in reality this decision is also reduced to the employer's unilateral will, both due to the rules on setting the minimum service described above, and due to a small number of concluded collective agreements.

The procedure for determining minimum service should be regulated so as to enable equal participation of the trade union, employers' association/employer and public authorities in the process. If would be useful for minimum service to be determined in the collective agreement, and is acceptable for an independent, third party (conciliator, arbitra-

253 Law on Strike, Article 10 para. 1.
254 Law on Elementary Education and Upbringing; Law on Secondary Education and Upbringing.
255 Law on Strike, Article 10 paras 2. and 3.
256 Law on Strike, Article 10 para. 4.

tor) to partake in the process, should problems arise, and should participants freely agree. The rules of procedure must ensure equal participation of all interested parties and timely setting of the minimum service (before the strike starts), but also have to prevent potential obstructions of the process, that is, to enable the exercise of the right to strike even when minimum service is not determined before the strike starts without employees' fault.[257]

In the Republic of Serbia, strike is not allowed to professional members of the Serbian Army,[258] in health care institutions that provide emergency medical care,[259] to members of Security and Information Agency[260]. Members of the police have the right to strike in accordance with the restrictions set forth in the Police Law,[261] while civil servants can strike while providing minimum service.

257 Sometimes the employer does not set minimum service, thus wishing to prevent the start of strike.
258 Law on Serbian Army, RS Official Journal Nos. 116/2007, 88/2009, 101/2010 – other statute, 10/2015, 88/2015 – CC decision US and 36/2018.
259 Healthcare Law, RS Official Journal Nos. 107/2005, 72/2009 – other statute, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013 – other statute, 93/2014, 96/2015, 106/2015, 113/2017 – other statute and 105/2017 – other statute.
260 Law on Security and Information Agency, RS Official Journal Nos. 42/2002, 111/2009, 65/2014 – CC decisions 66/2014 and 36/2018.
261 Police Law, RS Official Journal No. 6/2016, 24/2018 and 87/2018.

ARTICLE 9 – SOCIAL SECURITY AND SOCIAL CARE

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance

The second periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights[262] (hereinafter: the Report) submitted by the Serbian government to the Committee on Economic, Social and Cultural Rights (hereinafter: the Committee) in 2011, in the part relating to the subject-matters regulated by Article 9 of the Covenant under the title „Social Security" includes a description of this system in the Republic of Serbia, according to which the social security system includes social insurance and social and child care. When it comes to social insurance, it includes pension, disability and health insurance, and unemployment insurance[263]. Further, it is stated that the amount of funds collected through contributions is insufficient to effect the rights to pension and disability insurance. When it comes to social protection, the Report lists the rights in this field, and references to the legislative and strategic framework. When it comes to the child protection system, the Report describes the rights that can be effected by the beneficiaries. It is important to note that the Republic of Serbia has provided data on the share of state expenditures for social protection, which also include pensions, in the country's GDP. Namely, it is stated that this share was increased from 15.6% in 2005 to 16.4% in 2008. On the other hand, the share of the most important types of social assistance – financial support to the family and child benefits – was reduced from 0.58% in 2005 to 0.44% % share of the GDP in 2008.

When it comes to information the Republic of Serbia has provided in the Report, it should first be borne in mind that the Committee, assessing the state of play in Serbia, inter alia, based on data provided the Republic of Serbia, in its Concluding observations on the second periodic report of Serbia[264] (hereinafter: Concluding observations), adopted at the 55th Committee session held in April and May 2014, has expressed concern about the lack of systematic collection and processing of disaggregated data which would allow for an accurate assessment of the fulfilment of economic, social and cultural rights. It is important to emphasise that in its General comment No. 19 singles out „monitoring the extent of the realization of the right to social security" as one of the core obligations, to which purpose the necessary mechanisms or institutions need to be established.[265] In cases when the realization of the right to social security is transferred to local self-governments, the state must secure that they monitor the necessary services and facilities in the social security system. In addition, in the General Comment No. 19 the Committee lists as one of the core obligations „ to adopt and implement a national social security strategy and plan of action"[266] and the allocation of adequate resources on the national level. These documents, inter alia, should include objectives, targeted values, national benchmarks and indicators (such as: adequacy, coverage of social risks and contingencies, affordability and accessibility) that will be continually monitored, and the right to social security indicators. The Committee also underlines that the programmes such as universal pension and health insurance have been adopted in state parties with a considerable share of informal economy.

262 Government of the Republic of Serbia, Second periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, 2011.
263 This part of the Report shall not analyse health insurance and unemployment insurance, as they are analysed in the parts of the Report pertaining to Articles 6 and 12.
264 Committee on Economic, Social and Cultural Rights, Concluding observations on the second period report of Serbia, 2014., p. Source: https://www.refworld.org/docid/53fdbbb64.html
265 CESCR General Comment No. 19: The right to social security (art. 9), 16.
266 Ibid., 12.

The Republic of Serbia has not adopted a single national strategy for the full realization of the right to social security, established in the interpretation of the Committee as one of the obligations of the state party to the Covenant. The last umbrella document of this type was the Poverty Reduction Strategy, which expired in 2010. The strategic documents do not cover the field of pension and disability insurance nor the social protection (the Social Protection Development Strategy has expired, while a new one has not been adopted, even though the work on its development started in 2018[267]) and child protection (the National Plan of Action for Children has expired). The other fields of social security are covered by the following strategic documents: Public Health Strategy in the Republic of Serbia 2018-2026 and the National Employment Strategy for the 2011-2020 period. When it comes to the content and monitoring of realization of the implementation of the documents in force, none meet all the requirements set by the Committee, as shown in table 14.

Table 14 – Coverage of social security field with strategic documents as per Committee standards

Field	Strategic document	Objectives	Target values	National benchmarks	Indicators*	Right to social security indicators	Report on the implementation of the strategic document
Pension and disability insurance	/	/	/	/	/	/	/
Health insurance	YES	YES	NO	NO	NO	NO	NO
Unemployment insurance	YES	YES	YES	NO	NO	NO	NO
Social protection	/	/	/	/	/	/	NO
Child care	/	/	/	/	/	/	NO

* *Adequacy, coverage of social risks and contingencies, affordability and accessibility*

It should be noted that in 2016 the Government of the Republic of Serbia has drafted and adopted the Employment and Social Policy Reform Programme (ESRP), which sets priority strategic measures and activities in the field of employment, education, social and health care by 2020. The document was developed in cooperation with the European Commission, as the „social" counterpart of the Economic Reform Programme. However, the report on the implementation of this document has not been made public by the Government to date, as noted in the European Commission 2018 Progress Report for Serbia. This is by no means an exception when it comes to strategic documents, since the Government of the Republic of Serbia has not published almost any reports on the implementation of strategic documents in the field of social security.[268]. One of the documents that covers not only the field of social security but is relevant for monitoring the state of play with regards to social security, is the National Report on Social Inclusion and Poverty Reduction in the Republic

267 Source: Ministry of Labour, Employment, Veteran and Social Care, https://www.minrzs.gov.rs/sr/dokumenti/ostalo/strategija-socijalne-zastite-u-republici-srbiji.

268 According to SIGMA assessment, monitoring and reporting on sectoral strategies is not improved, while its public availability has worsened. Source: Monitoring report: The Principles of Public Administration, Serbia, November 2017, http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf.

of Serbia. The third edition of this report of 2018 states that in the previous period there has been a change in the main objective of the pension system from maintaining incomes at old age to prevention of poverty, which is a „significant change of objective and essence of the pension system"[269] that requires public debate and analysis both in terms of its advantages and disadvantages.

The Committee has asked the Republic of Serbia to provide, in its next report, detailed information on the number of persons who are not entitled to old-age or disability pension, disaggregated by sex, age and national or ethnic origin. In addition, it requested information on what types of social assistance are available to such persons instead of pension (paragraph 48 of Concluding observations). Answering to these questions, the Republic of Serbia did not provide data on the number of persons not entitled to old-age or disability pension, but has only explained the types of social assistance available to persons without income.

Answering the Committee's additional question relating to „detailed informtion on the number of persons who do not meet the requirements for old-age or disability pensions"[270], as recommended in the previous concluding observations, the Republic of Serbia again did not provide the requested data, but has instead described the requirements and the dynamics for acquiring the right to old-age and disability pension.

Furthermore, answering the Committee's additional question concerning whether old-age or disability pensions have universal coverage, the Republic of Serbia has provided data on the requirements to acquire old age and disability pension, benefits in case of disability and types of social services purusant to the Social Care Law.

In the beginning, it is important to note the interpetation of Article 9 of the Convenant by the Committee as provided in General Comment No. 19, according to which the state parties to the Covenant „must take effective measures, and periodically revise them when necessary, within their maximum available resources, to fully realize the right of all persons without any discrimination to social security, including social insurance"[271]. The Committe further points out that the wording of Article 9 of the Covenant indicates that the measures that are to be used to provide social security benefits cannot be defined narrowly and, in any event, must guarantee all peoples a minimum enjoyment of this human right. State parties are under the obligation to provide social security to persons who did not acquire the right to pension and have no other source of income, which may include benefits, services and other types of support.

Having in mind the cited Commitee interpretations, when it comes to the coverage of old-age and disability pensions, it should be noted that, according to the last, 2011 Census, the coverage of population older then the statutory threshold (which amounted to 60 years for women and 65 yers for men in 2011) amounted to around 85%, or, in other words, that, according to some estimes, some 230,000 persons in Serbia were older then the statutory threshold but have not effected the right to old-age pension.[272] It should be noted that in

269 Government of the Republic of Serbia, Treći nacionalni izveštaj o socijalnom uključivanju and smanjenju siromaštva u Republici Srbiji, (Third national report on social inclusion and poverty reduction) 240.

270 Office for Human and Minority Rights of the Government of the Republic of Serbia, Odgovori na dodatna pitanja Komiteta za ekonomska, socijalna and kulturna prava u vezi sa Drugim periodičnim izveštajem o primeni Međunarodnog pakta o ekonomskim, socijalnim and kulturnim pravima (Ansewrs to additional questions of the Committee on Economic, Social and Cultural Rights related to the Second periodic report on the implemenation of the International Covenant on Economic, Social and Cultural Rights), 38. Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/odgovori1.doc.

271 CESCR General Comment No. 19, 2.

272 Gordana Matković, Katarina Stanić, „Socijalna zaštita u starosti: Dugotrajna nega and socijalne penzije" (Social protection in old age: Long-term care and social pensions), Government of the Republic of Serbia, Social Inclusion and Poverty Reduction Team, Beograd, 2014.

2014 the threshold for old-age pension was increased to 65 years of age and 15 years of service for men, whilst the threshold for women is increased by six months annualy until 2020, that is, by two monhts annually until 2031. When ti comes to beneficiaries of disability pensions, according to the data of the Republic Pension and Disability Insurance Fund, in December 2018 their numebr amounted to 285,192. According to the Pension and Disability Insurance Law (hereinafter: PDI Law), old-age pensions do not have universal coverage, but constitute a right in the social isnurance system that is effected by payment of contributions, reaching the required age and years of service.

Furhtermore, it is very important to point to the fiscal consolidation measures taken by the Government of the Republic of Serbia in an attempt to resolve the consequences of the economic crisis. These measures also included the reduciton of pensions through the Law on Temporary Regulation on the Manner in Which Pensions are Paid. According to this law, adopted in 2014, the pensions higher than 5,000 dinars were reduced. The oppossition political parties, pensioners' associations and trade unions have considered the solutions embeded in this law unconstitutional, as they encroached on the pensioner's acquired rights. The Constitutional Court has conducted the procedure for assessing the constitutionality of this law and found that its provisions were not unconstitutional, since it enabled the implementation of Article 70, paragraph 2 of the Constitution, that is „taking care of pensioners' economic safety"[273]. This Constitutional Court decisions has caused a stirr in the general public, while its critics have assessed that it „opened the gates of Strasbourg"[274]. What ensued was a number of judgments passed by the basic courts which admitted the claims of pensioners who were thereby damaged and several thousand litigation procedures were launched before Serbian courts, coupled with initiatives of individuals, trade unions and civil sector organisations before the Constitutional Court and the European Court of Human Rights.[275] When it comes to the measures taken by the Government of the Republic of Serbia in 2014, it should be noted that the Committee underlines in General Comment No. 19 that the right to social security includes „ the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately" as well as the right to „equal enjoyment of adequate protection from social risks and contingencies"[276]. The Committee also emphasises that social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy. At any rate, even when the funds for social transfers are restricted, it is important to ensure that social security covers vulnerable groups. According to the Committee's interpretation, all retrogressive measures taken in relation to the right to social security are prohibited. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at all aspects of state's actions, including whether there was „genuine participation of affected groups in examining the proposed measures and alternatives" [277] and whether there was an independent review of the measures at the national level. None of the standards listed in the Committee's interpertation have been met when the contested law on the reduction of pensions was proposed or when it was annulled in Serbia. To top all this, in 2018 an additional attack on the pension and disability insurance system in Serbia was effected through the amendments of the PDI Law, where a provision on the alignment of pensions in a manner established by the regulations governing budget

273 Source: Constitutional Court, http://www.ustavni.sud.rs/page/view/sr-Latn-CS/88-102186/saopstenje.
274 Source: http://rs.n1info.com/Vesti/a95474/Odluka-Ustavnog-suda-o-penzijama-pravna-ili-politicka.html.
275 Source: https://www.penzin.rs/uspvls-kako-osteceni-penzioneri-mogu-naplatiti-stetu-zbog-smanjenja-penzija/.
276 CESCR General Comment No. 19, 4.
277 Ibid., 13.

and budgetary system was introduced, until financial viability of the pension and disability insurance system is reached. The Fiscal Council has assessed that the cancellation of the formula for the aligment of pensions jeopardizes the predictability, which characterizes European pension systems. [278]

Answering the Committee's call to the Republic of Serbia to take „effective measures and ensure urgent protection and long-term rehabilitation of abused"[279], and to provide, in its next report, information on the measures taken and the number of reported cases child abuse that have been reported (paragraph 51 of Concluding observations), the Republic of Serbia has provided data on legislative and strategic measures taken on national and local level aiming to protect and rehabilitate abused children.

Answering the Committee's request to provide information on the number of reported cases of child abuse, the Republic of Serbia did not provide the requested data. It should first be noted that, within Universal Periodic Review (UPR), of January 24, 2018 in Geneva, Serbia was issued 190 recommendations, of which it accepted 175 and noted 15. The recommendations issued by the UN member states to the Republic of Serbia includes the one related to the need Establish legislative and other measures to protect children from abuse and violence, to which the Republic of Serbia has responded that the development of a new strategy and action plan for prevention and protection of children from abuse for the 2018-2022 period is underway[280]. Further, it should be noted that the Committee on the Rights of the Child has expressed serious concern on account of a high number of reported cases of violence against children, and inadequate implementation of the general and special protocols for protecting children from violence[281]. To that end, the Committee on the Rights of the Child has called on Serbia to adopt a comprehensive strategy against child abuse and to set up a national database on all cases of violence against children. In its 2018 Progress Report for Serbia, the European Commission has also called on Serbia to adopt a national action plan to counter violence against children and assessed that domestic violence often goes unreported. According to the assessments of the Government of the Republic of Serbia, violence against children is still widespread, particularly peer violence in schools and child abuse in the domestic context. In addition, the protocols for protecting children from abuse and neglect are not harmonised with best EU practices, even though this is envisaged in the Action Plan for Chapter 23 – Judiciary and Fundamental Rights.[282]. According to the Republic Social Protection Institution data, in the 2013 – 2017 period the number of reported cases of child abuse in social services has grown by 128%[283]. Two groups of children are particularly vulnerable – children living and working on the streets and children living in social protection institutions[284]. Coalitions of non-governmental organisations that monitor the realization of the rights of the child have been warning for years that there is no systemic collection of data in the field of rights of the child, and that data are collected from various sources have the purpose to track the service providers, not

278 Republic of Serbia Fiscal Council, Ocena Predloga zakona o izmenama and dopunama Zakona o penzijskom and invalidskom osiguranju (Assesment of the Draft Law on Amendments of the Law on Pension and Disability Insurance), http://www.fiskalnisavet.rs/doc/ocene-and-misljenja/2018/Ocena_Predloga_iz_and_dopuna_Zakona_o_PIO.pdf.
279 Government of the Republic of Serbia, Second periodic report, 132.
280 Office of Human and Minority Rights of the Republic of Serbia, Answers of the Republic of Serbia to UN member states' recommendations from the III cycle of Universal Periodic Report, 32. Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/8._odgovori_rs_na_preporuke_-_iii_ciklus_upr.doc.
281 Committee on the Rights of the Child, Concluding observations on combined second and third periodic report of the Republic of Serbia, 5.
282 Government of the Republic of Serbia, Third national report on social inclusion and poverty reduction.
283 Republic Social Protection Institutions, Deca u sistemu socijalne zaštite 2017 (Children in social protection system). Source: http://www.zavodsz.gov.rs/media/1420/deca-u-sistemu-socijalne-zastite-u-2017-lat.pdf.
284 UNICEF, Determinante and faktori nasilja nad decom u Srbiji: pregled nalaza. (Determinants and factors of violence against children in Serbia: an overview of findings). Source: https://www.unicef.org/serbia/media/2751/file.

the service users[285]. To that effect, the announcement of the start of the development of an application to track domestic and partner violence in the social services is encouraging[286].

In answering the additional question of the Committee relating to the way in which the Strategy for the improvement of the status of Roma in the Republic of Serbia for the 2012-2014 period and the Action plan for the implementation of the Strategy, and the new Strategy for Prevention of and Protection From Discrimination have contributed to better access to, inter alia, social care, the Republic of Serbia has provided data on the activities and results of the project „Technical assistance for Roma Inclusion" financed by the EU, and implemented by the OSCE Mission to Serbia.

In its concluding recommendations, the Committee has expressed concern about the prevailing discrimination against Roma as evidenced, inter alia, by limited access to social protection. In addition, the Committee has expressed regrets due to the shortcomings in the implementation of the Strategy for Improvement of the Status of Roma 2012–2014, and the insufficient implementation of the nationally agreed priorities regarding Roma at the local level. Consequently, the Committee has urged Serbia to „to take further measures in order to overcome the prevailing discrimination against Roma in the enjoyment of economic, social and cultural rights, including the revision of the Strategy for Improvement of the Status of Roma," [287], and to ensure that the nationally agreed priorities on Roma are duly communicated to the local authorities to be effectively implemented. In addition to this, it should be noted that the Republic of Serbia has received several recommendations within the third UPR cycle concerning the social inclusion of Roma. These include, inter alia: ensure the effective integration of Roma people into Serbian society; timely birth registration immediately after birth, without discrimination and regardless of the legal or documentation status of their parents; ensure the full implementation of the new strategy for Roma inclusion and adopt the action plan promptly.

It is necessary to take into account the interpertation of Article 9 of the Convenant provided by the Committee in General comment No. 19, according to which the state parties to the Convenant must provide financial assistance and social services to all families, without discrimination. The state parties must take all necessary measures to de facto discrimination on prohibited grounds, whereindividuals are unable to access adequate social security, and toprovide additional support to individuals and groups who have difficulties in realising the right to soical security, such as persons working in informal economy and minority groups. In addition, particular care should be given so that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through the imposition of unreasonable eligibility conditions or lack of adequate access to information. This obligation includes providing access to information and raising awareness, particularly in rural and deprived urban areas, and among minorities.

The mentioned observations and interpretations of the Committee are particularly important in the case of the Republic of Serbia, since the Roma are among the vulnerable groups most exposed to discrimination, as noted by the European Commission in its progress reports on Serbia. The Commissioner for the Protection of Equality indicates in annual reports that multiply discriminated persons are a particularly vulnerable category, which includes the Roma. This is corroborated by the information that every otehr complaint submitted to this independent body regarding discrimination on the grounds of nationality

285 Koalicija za monitoring prava deteta, Drugi i treći alternativni periodični izveštaj o primeni Konvencije o pravima deteta u Republici Srbiji (2008-2014). (Second and Third Alternative Periodic Report on the Implementation of the Convention on the Rights of the Child in the Republic of Serbia). Source: http://cpd.org.rs/wp-content/uploads/2017/10/Drugi_and_treci_alternativni_periodicni_izvestaj_o_primeni_Konvencije_2008_2014_sr-latin.pdf.

286 Source: Republic Social Protection Institution, http://www.zavodsz.gov.rs/sr/aktuelnosti/podaci-o-nasilju-u-porodici/.

287 Committee for Economic, Social and Cultural Rights, Concluding observations, 4-5.

concerns the discrimination of Roma. It is interesting that these findings align with the populations' perceptions, because, according to the Commissioner's research, the respondents have identified the Roma as the most endgangered group of citizens.[288]. It is important to underscore that the Commissioner has pointed out that the social protection system lacks human resources , while the strikes of employees in this system are indicative of their disadvantageous financial position and difficult working conditions[289].

Given all the above, it is particularly important for the state bodies to set an example in the activities of supressing discriminatory behavour and lead by their actions, observing the relevant standards. However, the situation in the Republic of Serbia is far from such partice. The Government of the Republic of Serbia has adopted a Strategy for the Social Inclusion of Roma for 2016-2025 period, but the action plan for the 2019-2020 period has still not been adopted, while the 2019 budget of the Republic of Serbia does not provide for the necessary funds to continue the implementation of this strategy. Furthermore, the Government is yet to publish a single report on the implementation of the Strategy and the realization of the action plan for its implementation. The Regional Cooperation Council has developed one such report, which shows that very little progress has been achieved when it comes to social inclusion of the Roma in the field of social protection. For example, the activities related to additional engagement of associates of the social services from among the Roma population and relaxation of the criteria for the realization of the right to cash benefits through amendments of the Social Protection Law have not been realised.[290]. These solutions would have been very important, since, for example, data shows that the largest percentage of the poorest population did not apply to receive child benefits, since they were orally told that they do not meet the criteria (23%), while the percentage of those for whom the related administrative procedures were too complicated or too expensive is also high (28%)[291]. Civil society organisations also point out to discrimination of the Roma population, including the discrimination in the social protection system. Thus, according to some estimates, around 30% of children in foster families in Belgrade are of Roma origin, whilst the share of the Roma population in the city's population is a mere 2%[292], which may support the indirect discrmination claim. Under such circumstances, when the most endangered families, most of which are Roma families, have difficulties realising their social rights, including the right to social protection, in 2018 the line ministry of social affairs presents to the public the draft amendments of the Social Protection Law [293] whose solutions would result in even more severe seggregation of the poor and socially vulnerable. A coalition gathering several hundred non-governmental organisations has reacted swiftly, pointing out some of the solutions that would have the most devastating effect on the most vulnerable; the most paradigmatic of these solutions is the one whereby the realisation of the right to cash benefit is made conditional on participation in public works (this obligations has already been unlawfuly introduced by the Government regulation on measures of

288 Skraćeni redovan godišnji izveštaj Poverenika za zaštitu ravnopravnosti za 2017. godinu (Summary annual report of the Commissioner for the Protection of Equality), 64.

289 Thus the Board of trustees of the „Nezavisnost" trade union decided to start a strike in February 2019 due to „difficult financial position of the employees in the City of Belgrade social services, abundance of problems, difficult working conditions, employers' inadequate behaviour towards employees, an almost 100% increase in workload without securing a sufficient number of employees, failure to pay the compensation for being on call, increased risk to health and safety, decline in health and human relations". Source: http://www.gszsz-nezavisnost.org/novosti/najavljen-strajk-u-gradskom-centru-za-socijalni-rad-beograd/.

290 Regional Cooperation Council – Roma Integration 2020, Progress report Serbia for 2017. Izvor: https://www.rcc.int/romaintegration2020/download/docs/Serbia_Progress%20Report%202017%20SRB.pdf/0f2652703af363578940322b9b80f11b.pdf.

291 UNICEF Beograd, Srbija – Istraživanje višestrukih pokazatelja 2014 (Serbia - Multiple Indicator Survey 2014) and Srbija – Romska naselja (Serbia – Roma settlements, Multiple Indicator Survey), Beograd, 2017.

292 European Roma Rights Centre, Family Life Denied: Overrepresentation of Romani Children in State Care in Serbia, 2017, 5.

293 RS Official Journal No. 24/2011.

„social inclusion of social assistance“ in 2014, the implementation of which was criticized by the Serbian civil society[294]) and accomplishments in the educational system[295]. The draft has still not been adopted by the Government as in not refered to the National Assembly; in addition, the line ministry did not publicly respond to the criticism.

The Committee has urged the Republic of Serbia to continue bilateral talks with the Republic of Croatia on the payment of pensions to refugees residing in Serbia (paragraph 49 of the Concluding observations). In response to this Committee demand, the Republic of Serbia has indicated in the Report that the solution to the problem of unpaid pensions is still not in sight, due to the Republic of Croatia refusing that the Croatia pension fund take over the obligation to pay the unpaid pensions.

Responding to the Committee's additional question whereby information was requested on the steps taken in order for the supporting documents for passing the decisions on pensions in Serbia to be recognised and accepted, the Republic of Serbia has responded that the problem of realisation of the right to pension of the refugees from the Republic of Croatia is still not resolved, even after seven expert's meetings of the bilateral working group and one expert mission. At the last meeting of the working group in 2013 it was concluded that a solution cannot be reached on a technical level, and hence the resolution of this issue was transferred „from expert to political level“[296]. As indicated further, according to the position of the Republic of Croatia delegation, the resolution of this issue can only be achieved within a new social insurance agreement with the Republic of Serbia.

In its Concluding observations, the Committee has expressed concern due to the fact that a considerable number of refugees from Croatia still has not realised the right to payment of unpaid pensions. The European Commission has also noted in its 2018 Progress Report for Serbia that Serbia and Croatia have still not resolved the issue of refugees' pensions. Even though the Government of Serbia Workplan for 2018 envisaged the establishment of a draft law on ratification of a Social Insurance Agreement between Serbia and Croatia, the Government did not realise this activity, while the assessment of the numbers of damaged parties range from 40 to 50 thousand.[297]

In response to the additional questions of the Committee whereby clarification was sought for the level of protection and services provided by the Serbian legislation to vulnerable groups, such as persons with disability, persons with low income and to the long term unemployed, and to provide information on the duration of social benefits and clarify potential intermissions in social insurance compensations and their duration, the Republic of Serbia has provided information on the objectives and main new solutions of the Social Care Law streamlined towards advancement and social inclusion of sensitive groups. The conditions for realisation of the right to cash benefits are particularly elaborated, given that it is the main type of financial support to social benefit recipients. When it comes to its duration, it was stated that the right to cash benefit is only granted to persons who are able to work (that is, to families in which the majority of members are able to work) for nine months within one calendar year at the most, whilst this right is granted without limitations as to duration to individuals, that is, families in which the majority of members are not capable of working. It is additionally stated that this right is re-examined in the month of May, according to the requirements for its realisation, based on the incomes effected over the past three months. Finally, data was provided on territorial coverage of the Republic

294 For more information see: http://www.a11initiative.org/wp-content/uploads/2018/10/Uredba_SR.pdf.
295 Source: https://www.tragfondacija.org/pages/posts/organizacije-gradanskog-drustva-zahtevaju-povlacenje-nacrta-zakona-o-izmenama-and-dopunama-zakona-o-socijalnoj-zastiti-2098.php.
296 Office for Human and Minority Rights, Answers to additional questions of the Committee, 50.
297 Source: https://www.penzin.rs/da-li-ce-srbi-iz-krajine-ostati-bez-penzija-iz-hrvatske/, http://www.veritas.org.rs/rts-27-06-2017-kakve-su-sanse-za-isplatu-penzija-srbima-iz-hrvatske-video/.

of Serbia by social service institutions, their work, activities and on efforts to make their activities accessible.

In its Concluding observations, the Committee has expressed regret that the Republic of Serbia has failed to respond to the question on whether social assistance benefits are periodically adjusted in order to ensure a living standard to all endangered persons. In that vein, the Committee has called on Serbia to take the following steps: increase the social assistance benefits in order to assist all concerned individuals and families, including persons with disabilities, older persons, children, low-income families and those in a situation of long-term unemployment to enjoy an adequate standard of living, Consider the introduction of a minimum-income benefit that would

bring together all the existing social assistance benefits and prevent any unjustified interruptions in the allocation of social security benefits, such as benefits to those who are unable to work (who have the right to social assistance benefits for ten months a year).

In doing so, the Committee has invoked the Committee's General comment No. 19 in which it provided the interpretation of Article 9 of the Covenant, relating to adequacy as an element of the right to social security. Namely, according to this interpretation, the benefits must be adequate both in terms of amount and duration, in order to ensure that the right to family protection and assistance is secured to all. In any case, one of the state's core obligations according to the Covenant is to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

When it comes to the duration cash benefit, unlike most European Union countries, which grants this right for an unlimited period of time, while the requirements for its realisation are in place, Serbia grants such benefits to persons who are able to work in a limited duration of nine months within one calender year. This regulatory solution has no legal or economic grounding and is in direct contravention of international standards. Thus, the European Committee of Social Rights has establsihed that Bulgaria has violated the provisions of the Revised European Social Charter (Article 14 relating to right to social protection) by the introduction of similar provisions in the social protection system, and limiting the duration of right to social assistance benefit to persons who are able to work[298].

When it comes to adequacy of social benefits, the European Commission has recommended that Serbia improve the adequacy of cash benefits „ to provide more effective support for parts of the population most in need"[299]. The Council of Europe has also indicated on several occassions that it is necessary to improve the adequacy of the social benefits system in the Republic of Serbia social protection system. According to the assessment of the European Committee of Social Rights, the level of assistance is „manifestly inadequate" [300] as the total cash benefit that could be obtained by a single person without resources falls below the poverty threshold (table 15).

298 Source: Mreža organizacija za decu Srbije, „Za jednakost svakog deteta", 2019., http://zadecu.org/wp-content/uploads/2019/03/MODS_za_jednakost_svakog_deteta.pdf.
299 European Commission, Republic of Serbia: 2018 Progress Report, 72
300 European Committee of Social Rights (ECSR), Conclusions 2017 – Serbia, 35.

Table 15: Poverty line, RSD per month per consumer unit

2010	2011	2012	2013	2014	2015	2016	2017
8,544	9,483	10,223	11,020	11,340	11,556	11,694	12,045

Source: Government of the Republic of Serbia, Social Inclusion and Poverty Reduction Team

For the sake of comparison, having in mind the poverty line presented above in 2017 a child was entitled to cash benefit in the maximum amount of 2,436 per month, and the next adult was entitled to 4,060 dinars[301]. The documents of the Republic of Serbia Government also point out to the inadequacy of the main social benefits in the social protection system - the social assistance benefit and child benefit, which raise only single-parent families above the poverty level (these families are entitled to an increase in benefits), while in case of families with both parents, they would need to receive one third of the amound or one half of the amount more to rise above the poverty threshold[302]. This is why it is worrying that the announced trends in allocations for social protection are declining, as indicated in the Economic Reform Programme (ERP) adopted by the Government of the Republic of Serbia in 2019. Namely, this document states that the expected share of social care expenditures will decline from 15% of GDP, as they amounted to in 2017, to 14.2% of GDP in 2021[303]. These projections are consistent with the trend shown in the data on the declining number of recipients of social benefit – from 275 thousand in 2014 to 260 thousand in 2017[304].

Furhtermore, it should be borne in mind that with regards to physical accessiblity as an element of the right to social security, the Committee provided an interpretation in the General Comment No. 19 that recipients should have physical access to the social security services in order to access benefits and information, that particular attention should be paid in this regard to persons with disabilities, migrants, and persons living in remote or disaster-prone areas. Cooperation with local authorities is crucial in ensuring physical accessibility of social security services. However, according to the findings of the Ombudsperson this is precisely the missing link in the realisation of the right to social protection. Local self-government units do not have good cooperation with the social services, while the cooperation that is in place is not planned, but depends on the current circumstances. In addition, accessibility is not given the needed prominence within the competences of the social services[305]. In this context, it its worrying that the Government of Serbia has still not developed nor adopted the strategy for improving the status of persons with disability, once the previous strategy has expired. The Committee on the Rights of Persons with Disabilities has also expressed concerns due to Serbia not having a strategy for ensuring accessibility and due to low accessiblity of public buildings. In this has thus recommended that Serbia develop a comprehensive accessibility plan.[306]

301 Source: Social inclusion and Poverty Reduction Team, http://socijalnoukljucivanje.gov.rs/rs/socijalno-ukljucivanje-u-rs/statistika/administrativno-siromastvo-siromastvo-po-zakonskim-kriterijumima/.
302 Government of the Republic of Serbia, Third national report on social inclusion and poverty reduction in the Republic of Serbia 2018, 113.
303 Government of the Republic of Serbia, Economic Reform Programme for 2019 -2021 period, 2019.
304 Third national report on social inclusion and poverty reduction in the Republic of Serbia, 100.
305 Ombudsperson's special report „Accessibility for all", Beograd, 2018.
306 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Serbia, 2016.

ARTICLE 10 – PROTECTION OF FAMILY, MOTHERS AND CHILDREN

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

1. PROTECTION AND ASSISTANCE TO FAMILY

The Second period report on the implementation of the International Covenant on Economic, Social and Cultural Rights[307] (hereinafter: the Report) submitted by the Serbian Government to the Committee on Economic, Social and Cultural Rights (hereinafter: the Committee) in 2011, in the part pertaining to the subject-matter governed by Article 10 of the Covenant, in the part entitled „Social and economic indicators£ states that the population most in need from the at-risk-of-poverty aspect includes, inter alia, children under the age of 14 and households with two or more children under the age of 6. Further, under the title „Social security" the Report describes the rights in the field of child protection – parent's benefit, which is a population policy measure, and child benefit, which is a social policy instrument. The Report also describes the measures for countering domestic violence, which is prohibited by Family Law.[308]. According to this Law, the following measures can be pronounced to a family member who acts violently: issuing a warrant for eviction from family apartment or house, regardless of the right of property or lease of immovable, restraining order, prohibition of access in the vicinity of place of residence or work of family member, prohibition of further molestation of family member . In addition, domestic violence is incriminated in the Criminal Code, and protocols on how to deal with victims of domestic violence have been adopted in the internal affairs and health care sectors.

Responding to the Committee's appeal to the Republic of Serbia to „take effective measures to counter domestic violence" and to provide advisory services to victims and perpetrators (paragraph 50 of the Concluding observations), the Republic of Serbia has stated in the Report, inter alia, that the amendments of the Criminal Code have extended the notion of a family member and that criminal sanctions for domestic violence offences have been increased; that the growing trend of reporting of this criminal offence is caused

307 Government of the Republic of Serbia, Second periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, 2011.

308 RS Official Journal Nos. 18/2005, 72/2011 – other statute and 6/2015.

by numerous campaigns, conferences and events advocating against domestic violence; that in the period from 2006 to April 2010 a total of 12,105 criminal offences of domestic violence has been recorded; that children are mostly indirect victims of domestic violence. In addition, the Report stated that there were nine safehouses in Serbia that provide services to women and children who are victims of domestic violence, and that social services offer marriage counselling and family counselling.

Responding to the Committee's additional questions related to the effectiveness of the measures taken in order to counter domestic violence, which include the training of law enforcement authorities and providing help to victims based on the Gender Equality Law, and on the reasons for lack of statistical data per national and ethnic origin[309], the Republic of Serbia has stated in the Report that the corresponding protocols have been adopted. In 2011, the Government has adopted the General Protocol for Action and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women within the Family and in Intimate Partner Relationship, which, inter alia, defines for the first time that a child who is a witness of family violence is considered as the victim of family violence. In addition, in 2013 the Special Protocol on Conduct of Social Service Centres in Situations of Violence against Women within the Family and in Intimate Partner Relationship was adopted, while the Ministry of Justice and State Administration has adopted, in 2014, the Special Protocol for the Judiciary in the Situations of Violence against Women within the Family and in Intimate Relationship. Further, data on cases of domestic violence in 2012 are provided, based on the records of the Republic Social Protection Institution; the data is on: number of children who are witnesses of domestic violence, number of children victims of family violence who were removed from family in order to be protected from domestic violence, number of procedures for the protection of victims of domestic violence initiated by social services ex officio and the number of victims of domestic violence per origin of the report, location in which the violence took place, type of violence and age.

When it comes to information provided by the Republic of Serbia in the Report[310], it should be first pointed out that the Committee's Concluding observations on the Second periodic report of Serbia[311] (hereinafter: Concluding observations), adopted at the 55th session of the Committee held in April and May 2014, urged Serbia to implement the following measures: effectively investigate, prosecute and punish all acts of domestic and gender-based violence, including abuse and neglect of children; to support victims of such acts, including by providing for adequate crisis centres that offer safe lodging and necessary assistance; to provide training to law enforcement officials and judges; and to undertake information campaigns in order to increase public awareness about the pervasive nature of domestic and gender-based violence, including abuse and neglect of children. It should be pointed out that, within the Universal Periodic Report (hereinafter: UPR) that the Republic of Serbia has undergone on January 24, 2018 in Geneva, the Republic of Serbia was issued 190 recommendations, out which it accepted 175, and noted 15.[312] The recommendations

309 Office of Human and Minority Rights of the Republic of Serbia Government, Odgovori na dodatna pitanja Komiteta za ekonomska, socijalna and kulturna prava u vezi sa Drugim periodičnim izveštajem o primeni Međunarodnog pakta o ekonomskim, socijalnim and kulturnim pravima (Answers to additional questions of the Committee on Economic, Social and Cultural Rights related to the Second periodic report on the implementation of the International Convenant on Economic, Social and Cultural Rights) 55. Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/odgovori1.doc.

310 This part of the Shadow report shall not analyse the measures in the field of combating violence against women and children, given that they are analysed in the parts of the Report pertaining to Articles 3 and 12. .

311 Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Serbia, 2014. Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/e_c-12_srb_co_2_17290_e_clean1.doc.

312 Office of Human and Minority Rights of the Republic of Serbia Government, Answers to recommendations of UN member states from the III cycle of Universal periodic review (UPR), 14. Izvor: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/8._odgovori_rs_na_preporuke_-_iii_ciklus_upr.doc.

issued by the UN member states to the Republic of Serbia include those relating to countering domestic violence, such as: improve legislation and laws related to domestic violence; take further measures to combat domestic violence by, inter alia, establishing shelters and supporting centres with medical, psychological and legal support; monitor and step up efforts to implement the legislation on domestic violence and strengthen support for victims. When it comes to the normative framework, the Republic of Serbia has answered that the Law on Prevention of Domestic Violence[313] has been adopted, and that new criminal offences have been introduced in the Criminal Code.

When it comes to the normative solutions, certainly the most important novelties have been introduced by the Law on Prevention of Domestic Violence, which defines domestic violence as "an act of physical, sexual, psychological or economic violence" (Article 3.). The new solutions include the duty of the police to immediately inform the competent police officer of any domestic violence or immediate danger from it, no matter how they find out, and the right of the police patrol to, on their own or at the request of a competent police officer, bring the potential perpetrator to the relevant organizational unit of the police to conduct the procedure; in addition, the law introduces the individual plan of protection and support to victims, which is adopted by the coordination and cooperation group (comprising representatives of the police, public prosecutors' office and centre for social work) with the aim to ensure the safety of the victim, stop the violence, prevent it happening again and protect the rights of victims, and provide measures of support to enable the victim to provide psychosocial and other support for the sake of her recovery, empowerment and independence[314]. Furthermore, this Law prescribes a series of preventive measures, which include: obligation of the public authorities to act towards raising citizens' awareness about violence; obligations of the police officer, public prosecutors and judges who act in domestic violence cases to undergo specialized training; obligation of every citizen, public body, organisation or institution to report domestic violence; cooperation between state bodies, organisations and institutions; the preventive role of the police and the public prosecutor's office; emergency measures– measures of temporary removal of the offender from the apartment and measure of a temporary restraining order.[315].

The biggest drawback in the improvement of the regulatory framework is the failure to adopt the Gender Equality Law, which was planned to be adopted in the II quarter of 2016, according to the Chapter 23 Action Plan. The importance of this law is reflected in the fact that it envisaged alignment with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and the introduction of: safe houses, psychological counselling, national free helpline, perpetrators' treatment programme, principle of due diligence, multi-sector cooperation and cooperation with the civil society organisations. Moreover, the new strategy for prevention and suppression of violence against women in the family and in intimate partner relationship and the action plan for the prevention of and protection of children from child abuse for the 2018 – 2022 period still remain to be adopted.

When it comes to the implementation of regulations, according to official statements, the police has so far, in implementing the Law on Prevention of Domestic Violence, pronounced 23,118 emergency measures, 6,928 of which are temporary removal of the offender from the apartment and 16,190 are restraining orders.[316] According to the data of the Republic Social Protection Institution, there is a trend of increased number of reports

313 RS Official Journal No. 04/2016.
314 Source: Astra, https://www.astra.rs/sta-bi-trebalo-da-znate-o-novom-zakonu-o-sprecavanju-nasilja-u-porodici/.
315 Gorjana Mirčić Čaluković, „Mere prevencije predviđene novim zakonom" (Prevention measures envisaged by the new Law). Source: https://iskljucinasilje.rs/rs/mere-prevencije/.
316 Source: http://rs.n1info.com/Vesti/a438513/Izreceno-23.118-hitnih-mera-po-Zakonu-o-sprecavanju-nasilja.html.

of violence in the social services in the 2013-2017 period, while the number of reports on violence against children has grown by as much as 128%[317]. However, when it comes to implementation of regulations, some difficulties can be identified, such as the police officers failing to react to criminal reports filed by women who are victims of violence or to properly assess the risk. In addition, it has been noted that the education, health care and social protection system do not have any feedback from the courts and public prosecutor's offices when it comes to ongoing procedures. Moreover, cases were reported where the minutes of the coordination and cooperation group have ended up at the hands of the offender.[318] When it comes to specialised trainings on countering domestic violence, these were mainly organised under the auspices of the Human Resource Management Service and the Judicial Academy within various modules, where the members of the State Prosecutors' Council have assessed that the training on the Law on Prevention of Domestic Violence should be prolonged from one to several days and extend the curriculum by incorporating additional topics.[319] Some particularly worrying aspects of implementation include: lack of security risk assessment in almost every one in four reported cases of violence; lack of electronic databases; an exceptionally small number of ex officio actions for pronouncing protection measures from domestic violence; lack of publicly available information on the work of the Council for Countering Domestic Violence[320].

2. PROTECTION OF MOTHERS BEFORE AND AFTER CHILDBRITH

The Republic of Serbia has stated in the Report, within additional information related to certain Articles of the Covenant, that, with regards to Article 10, the Government of the Republic of Serbia has adopted a Birth-Promotion Strategy in 2008. In addition, the Report describes the conditions for realisation of the right to maternity leave and leave for tending for a child and its duration. Responding to the Committee's additional questions relating to the manner in which the compensations during maternity leave are regulated and whether they are conditional on the duration of the employment contract, the Republic of Serbia has described the normative solutions pursuant to the Law on Financial Support to Families with Children[321].

As assessed by the European Commission in its 2018 Progress Report on Serbia, informal employment, unemployment and economic inactivity are still very high, particularly among women[322]. Inadequate support to women in efforts to balance family and work and discriminatory behaviour of employers towards young women are listed as some of the causes of high rate of inactivity of women. In addition, it has been noted that the data of the Republic Statistic Office on the status of men and women show considerable gender differences in the fields of work, use of time, political participation, property and access to resources[323].

317 Republic Social Protection Institution, Deca u sistemu socijalne zaštite 2017 (Children in the Social protection system 2017), Beograd, 2018.

318 Source: Ministry of Justice, https://iskljucinasilje.rs/rs/aktuelnosti/odrzana-konferencija-o-efektima-primene-zakona-o-sprecavanju-nasilja-u-porodici/.

319 Council for the Implementation of the Action Plan for Chapter 23, Report No. 2/2018 on implementation of Action Plan for Chapter 23. Source: https://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%202-2018%20o%20sprovo%C4%91enju%20Akcionog%20plana%20za%20Poglavlje%2023.pdf. https://www.mpravde.gov.rs/files/Report%20no.%202-2018%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf

320 Autonomni ženski centar, Šesti nezavisni izveštaj o primeni Zakona o sprečavanju nasilja u porodici za period april-jun 2018 and pregled glavnih godišnjih nalaza and zaključaka (Sixth independent report on the implementation of the Law on the Prevention of Domestic Violence for the April – June 2018 period and an overview of main annual findings and conclusions)

321 RS Official Journal Nos. 113/2017 and 50/2018.

322 European Commission, 2018 Republic of Serbia Progress report.

323 The rate of inactivity of women is by 16,3 p.p. larger than the rate of inactivity of men (54,6% and 38,2% respectively). Source: Women and men in the Republic of Serbia, Statistical office of the Republic of Serbia, Beograd, 2017.

When it comes to the protection of family and mothers, it is important to note that a practice has been recorded whereby employers offer employees to sign statements whereby they waive a considerable number of rights, or more precisely, waive all the rights for which the Labour Law envisages that the employee can waive them, or restrict them by providing a written consent. In this way, under the excuse of reducing red tape and increasing efficiency, the employers in fact force the employees to provide blank consent for an indefinite period of time, which is unlawful,[324] as such consent may be given only for specifically reasoned circumstances, when so demanded by the working process and when such consent is given for a limited period of time. In this way, pregnant workers, parents and single parents waive the right not to work overtime, at night and in the rescheduling of working hours (Articles 91 and 92 of the Labour Law), which definitely reduces the quality of the protection envisaged by the Labour Law. The state must take efficient actions against such employers and prevent the abuse of statutory options to adversely affect the quality of working conditions for these categories of employees.

he adoption and start of implementation of the new Law on Financial Support to Families with Children, on July 1, 2018, has considerably reduced the protection of mothers and family. The analysis provided above has already elaborated on the confusion and legal inconsistency that arose from the introduction of the right to other compensations to women who have given birth that was not accompanied by related amendments of the Labour Law. However, the bad solutions of this law exceed pure nomo- technical issues and lead us to conclude that the main goal was to render the rights regulated therein pointless, that is, to considerably reduce the number of recipients and the scope and quality of the enjoyment of the right. Moreover, as mentioned before, (and the text below will put additional focus on certain norms), some of the solutions embedded in the Law are discriminatory and unconstitutional.

When it comes to the right to compensation of salary during maternity leave, leave of absence for tending for a child and leave of absence for special care of the child, some on the main drawbacks in the regulation of these rights must be pointed out:

The period considered in the calculation of average income in order to establish the base for the payment of compensation has been extended and is now 18 months compared to the previous 12. There is no other country in Europe which requires so a period of work prior to the exercise of this right. According to one Council of Europe study, out of all the member states of this organisation, only Andorra requires a period of work service that is longer than 12 months, while some countries do not even set a period of work as a qualification – e.g. Austria, Slovakia, Finland and Italy[325]. In addition, Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC [326] prescribes that entitlement to leave may be subject to a period of work qualification and/or a length of service qualification which shall not exceed one year.

For every month in which income has not been effected, the base of zero dinars is calculated. This dramatically reduces the base and as a result renders the right pointless in practice, as the amount of the compensation is not only insufficient for a normal life of a pregnant woman/mother/family, but is in some cases absurdly low. If the beneficiary had six or more payments in lieu of the minimum base for contribution at least, she will be en-

324 Sporni zahtevi fabrike Leoni: Kršenje zakona ili pravo poslodavca? (Contentious requests of the Leoni factory: Violation of the law or employers' right?), https://insajder.net/sr/sajt/tema/13190/.
325 Parental Leave in Council of Europe member States, Council of Europe, 2004.
326 Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (Text with EEA relevance). Source: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32010L0018.

titled to a correction of this amount up to the amount of the minimum salary, but only for the duration of maternity leave and not for the duration of leave for tending for a child and leave for special care of a child.

- Even though a minimum amount is not practically guaranteed, the new Law has reduced the maximum amount of compensation a beneficiary can receive from five to three average salaries, which directly discourages and discriminates against the women who are most successful. This is a very bad political message, given the existing gender gap (see analysis of Article 3).
- The 18-month period does not apply to farmers who are insured; instead, they have to have paid contributions for 24 months. This is provisions is discriminatory and unconstitutional, as explained in the previous analysis.
- The 18-month period used to calculate the compensation does not include the period the mother spends being temporarily unavailable to work in order to maintain the pregnancy. There is no rational explanation for this solution and it is also discriminatory towards women with risky pregnancies.
- The persons who receive compensation of salary are not entitled to other benefits on the grounds for tending for a child. This practically means that they are denied the right to assisted living benefit from the Law on Social Protection[327]. As explained above, this provision – in addition to being highly immoral – also constitutes discrimination of parents with gravely ill children.
- All of the cited provisions violate the ILO Maternity Protection Convention No. 183, as their overall effect stultifies the right to compensation of all the women who do not meet the more stringent requirements, which are unrealistic and are not in accordance with the expected qualifications that the beneficiaries of these rights should meet. They also result in the fact that these rights, although they formally exit, de facto cannot effect the protective goal for which they were introduced in the first place, and cannot give the family a chance at a normal life directly after a child is born. According to Article 6, paragraph 4 of the Convention, the amount of cash benefits cannot be lower than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits. In this respect the Law on the Financial Support to Families with Children does not depart from the Convention, given that it prescribes full compensation of earnings. The violation of the standards of protection, however, refers to the paragraph 2 of the same Article, which mandates that cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. When it comes to the implementation of this Convention, trade unions have filed complaints to the relevant ILO bodies on two occasions; these bodies have called on Serbia to provide information, that is, to eliminate the deficiencies in the national legislation in light of the alignment with the standards prescribed by this Convention.[328]

Furthermore, the EU directives the transposition of which Serbia has committed to in the EU accession process should be borne in mind. Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are

327 Article 92. para 1.

328 This is a complaint regarding Article 1, which relates to atypical forms of work. Source: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3148309:NO. In addition, a complaint was filed with regards to Article 8. para 2 concerning the he right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave. Source: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3148306:NO.

breastfeeding[329], establishes the obligation of payment of benefits to pregnant workers, workers who have recently given birth and workers who are breastfeeding, that is, the payment of adequate benefits. The benefit shall be deemed adequate if it guarantees an income equal to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down by national legislation. The directive allows member states to make entitlement to pay or the benefit conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation, where these conditions may under no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement. Further, Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC[330] imposes an obligation the Member States to take the necessary measures to ensure that female self-employed workers and female spouses and life partners may, in accordance with national law, be granted a sufficient maternity benefit enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks. This benefit is be deemed sufficient if it guarantees an income at least equivalent to: the benefit which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health and/or; the average loss of income or profit in relation to a comparable preceding period subject to any ceiling laid down under national law and/or; any other family related benefit established by national law, subject to any ceiling laid down under national law.

It should be noted that the Revised European Social Charter, ratified by the Republic of Serbia in 2009, sets out in Article 8, paragraph 1, item (1) imposes and obligation on the members states to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks. The European Committee of Social Rights has assessed in its conclusions on the implementation of Article 8.[331] that, under Article 8 of the Charter, maternity benefits must be at least equal to 70% of the previous salary. The right to benefit may be subject to conditions such as a minimum period of contribution and/or employment. However, such conditions shall not be excessive; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record. The Committee asked Serbia to provide any relevant information, in particular statistical data, on the proportion of women getting, as maternity benefits, less than 70% of their previous salary. The Committee furthermore asked whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

The so-called other earnings during maternity leave, leave for tending for a child and leave for special care of child, regulated with considerable drawbacks discussed above, essentially follow the course taken in regulation of compensation of salaries (and repeat the same drawbacks). In case of these drawbacks there are no lower thresholds on the amount that can be paid, and hence they are rendered completely pointless during the entire period the compensation is received if the person receiving had worked for only a short period of

329 Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. Source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085.

330 Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC. Source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-%3A32010L0041.

331 Conclusions 2015 – Serbia – article 8-1. Source: https://hudoc.esc.coe.int/eng#{%22tabview%22:[%22document%22],%22ESCDcIdentifier%22:[%222015/def/SRB/8/1/EN%22]}.

time or her income base was low. The examples of payment of ridiculously low compensations are numerous; the one that certainly stands out is the example of a compensation amounting to 280 dinars per month (the equivalent is around 2.4 EUR), which was also five months late.[332]

It should be noted that the recently adopted solution according to which the state pays the compensation directly to the beneficiaries, in order to avoid the employer as the intermediary and the considerable instances of default that occurred in the future, does not work. This is primarily the case because the employers were not the obstacle to the efficiency of the system – it was the state, which was in default in payment of compensations. Now, when the employers are no longer a part of the payment system, it is evident that the compensations are in default for several months (in practice defaults of from three to five months were recorded) primarily because the state authorities are late in computing and paying the compensations.

The Law, however, has some other bad solutions. The requirements for realisation of the right to parent and child benefits need to be particularly pointed out. Article 25 regulates the special conditions for the realisation of the right to parent benefit: child vaccination and regular attendance in preschool programme and elementary school. Article 26 makes the realisation of the right to child benefit conditional on regular attendance in preschool programme, in elementary and secondary school. Such a solution is erroneous for a number of reasons. What is particularly important to underline is that these solutions primarily target the Roma population, where a larger share of the population does not vaccinate children and where the larger share of children do not attend school regularly or drop out of school at an early age. This renders the mentioned solutions a source of indirect discrimination, and consequently unconstitutional and contrary to the purpose of the right to social support to family.

Additionally, incomes computed as relevant when realising the right to child benefit include practically all incomes a household can realise (Article 5 of the Law). This renders the right to child benefit pointless, as in practice it will be available only to families that have no income at all, which is not the purpose of the right to child benefit.

3. PROTECTION OF CHILDREN AND YOUTH

Responding to the Committee recommendation addressed to the Republic of Serbia to ensure that minorities are protected from economic and social exploitation, and to take all necessary measures in order to combat the employment of children younger than (paragraph 53 of Concluding observations), the Republic of Serbia described in the Report the normative framework which includes the corresponding measures envisaged by the Labour Law and the Law on Health and Safety at Work. It was also stated that in the previous two years the Labour Inspectorate did not receive any requests for supervision due to the work of persons younger than 15, nor have the inspectors found persons younger than 15 working in this period.

Responding to the Committee's additional question related to the measures taken to counter child work in informal economy, and in particular of Roma children younger then 15, the Republic of Serbia has described the normative framework governing this issue, including the Constitution of the Republic of Serbia and the Family Law. As indicated, the Law on the Social Protection for the first time recognises children and young victims of human trafficking and victims of violence and exploitation recipients

332 Mame su zakon: Mogu li ministri preživeti mesec sa 280 dinara, (Mothers are supreme: Can Ministers survive on 280 RSD per month) https://www.danas.rs/drustvo/mame-su-zakon-mogu-li-ministri-preziveti-mesec-sa-280-dinara/.

of social benefits. In addition, information was provided on the shelters for children who live and work on the streets and the number of children using their services.

In its Concluding observations the Committee has expressed concern that many children, in particular Roma children, below the minimum age for employment of 15 years work in the streets and in the informal economy and are exposed to exploitation and trafficking in persons. Consequently, the Committee urged Serbia to take the following measures: strengthen the monitoring of child labour, in particular by enhancing the Labour Inspectorate, in order to detect and prevent the worst forms of child labour, in particular by street children; improve protection and reintegration programmes that focus on family empowerment and elimination of various forms of abuse and economic exploitation of children, including positive parenting programmes for marginalized communities, and compile information thereon, including statistics.

Further, it should be noted that the Committee on the Rights of the Child has recommended to the Republic of Serbia to take the following measures with regards to children who live and work on the streets: assess the number of children living and/or working on the streets, and update studies on the root causes of their situations; implement, and monitor and evaluate the implementation of the Special report on Child Begging in the Republic of Serbia, with the active involvement of children in street situations; ensure that support, particularly reintegration with family or placement in alternative care, is provided with full respect for the child's best interests and giving due weight to their views in accordance with their age and maturity.[333]

In 2018 the Republic of Serbia has adopted the Regulation on Establishing the Work Dangerous for Children[334], and the Checklist for Inspection Oversight over Child Labour and the Special protocol for labour inspectorate for protecting children from child labour abuse. However, having in mind the limited capacities of the Labour inspectorate and the delayed application of a single software for services and bodies, and having in mind the existing drawbacks in communication and cooperation between social services and the police on the one hand and the labour inspectorate on the other, the implementation of these documents under such circumstances shall require years of efforts. In addition, the documents do not resolve some of the particularly problematic situations that arise in practice – such as child begging, child domestic labour and labour on family farms, the resolution of which requires further regulatory intervention.

333 Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of Serbia, 5.

334 RS Official Journal N o. 53/2017.

ARTICLE 11 – RIGHT TO ADEQUATE STANDARD OF LIVING

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

1. STANDARD OF LIVING

The UN Universal Declaration on Human Rights states in Article 25 that the right to a standard of living adequate for the health and well-being of individual and of his family includes food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Serbia is at the top of the list of European countries in at-risk-of-poverty rate. According to the data of the Survey of Income and Living Conditions (hereinafter: SILC) which is carried out as of 2013, one quarter of Serbian citizens has for years been having incomes equal to or less than 60% of median income on the national level. Positive economic growth indicators and labour market indicators (growth in employment and decline of unemployment) are not reflected in the population's living standard. Compared to 2013, the number of citizens at-risk-of-poverty has increased by 45,000 and amounted to 1,795,000. In 2017 there has been a shift in the poverty rates of men and women, and, unlike in previous years, the poverty rate for women (26%) was higher than the poverty rate for men (25,4%).

When the poverty rate is observed by professional status, degree of urbanisation and age (table 16), for years the risk of poverty is highest among the low educated, the rural population and children. Despite the fact that every other unemployed person is poor, the state takes no measures to protect them: only 5% of the unemployed receive unemployment benefit, where the majority receive it for up to six months in the amount that is below the risk of poverty threshold (see analysis of Article 6). More than a third of rural population is poor and the number of the poor is growing in urban areas. Children are the age category at the highest risk of poverty: one in three children aged 12-17 lives in poverty.

Table 16: At-risk-of-poverty rate by status in the labour market, educational attainment level and degree of urbanisation

	2013	2014	2015	2016	2017
Population	23.6	24.2	26	25.2	24.8
Status in the labour market					
Employees	6.4	7	8	7.8	6.8
Self-employed	38.4	38	38.9	34.3	35.5
Unemployed	48.4	46.8	50.2	47.7	50.7
Retired persons	14.4	15.6	16.7	16.6	17.5

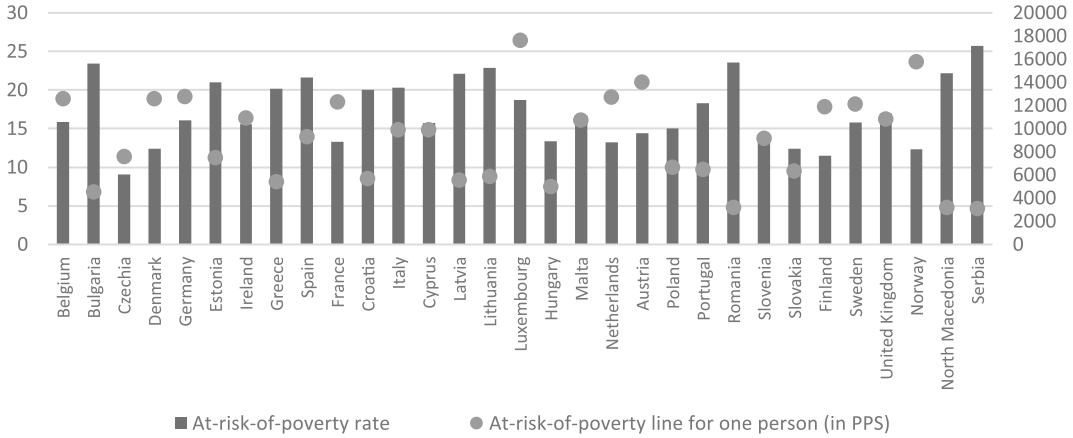
Degree of urbanisation					
Cities	13.6	15.9	14.2	19.1	18.1
Towns and suburbs	23.5	21.9	24.3	21.8	21.8
Rural area	36.1	37.5	36.7	34.1	35.2
Educational attainment level					
Less than primary, primary and lower secondary	36.5	38.6	42.5	40.4	41.6
Upper secondary and post-secondary non-tertiary	21.3	21.4	23	22.4	21.7
Tertiary	6.1	8.3	8.6	9.8	9.1
Age					
Younger than 6	27.2	26.8	26.8	26.2	27.8
6-11	29.6	29.8	31.7	29.1	29.3
12-17	32.2	31.1	34.5	35.3	34.2
18-64	24.4	25.1	27.3	26.3	25.7
65-74	18.1	17.7	17.5	17.8	17.8
75 or more	21.1	23.8	24.9	24.1	26

Source: Eurostat, SILC database

When the data on the poverty threshold for the population of Serbia is compared with the data for the populations of EU countries, a picture of relative poverty of the population of Serbia is obtained. In addition to the poverty rate being among the highest in European Countries, the at-risk-of-poverty threshold expressed in purchasing power standard is the lowest in Europe (image 8). The poor in Serbia are 5.7 times poorer than the poor in Luxemburg, three times poorer than the poor in Slovenia and two times more poor than the poor in Slovakia. Serbian citizens whose income is equal to the median (5145 PPS) in 26 European states would be classified in the at-risk-of-poverty group. In the light of this information, the explanation provided in the description of the methodology of the Survey on Income and Living Conditions that the at-risk-of-poverty-rate "represents the share of persons whose equivalised disposable income is below relative poverty line. These persons are not necessarily poor, but they are at the higher risk of poverty than others."[335] needs to be modified. It can be said for the persons who are statistically above the poverty line that this does not necessary mean that they are not poor.

335 Survey of Income and Living Conditions – methodology, p. 2, available at http://publikacije.stat.gov.rs/G2013/Pdf/G201320057.pdf.

Image 8: At-risk-of-poverty rate and at-risk-of-poverty line (in PPS) in 2017



Source: Eurostat, SILC database

The difference between Serbia and EU countries is not only in the poverty rate and poverty line, but also in the protection from poverty. When the data on poverty rates before and after social transfers are compared, the poverty rate in Serbia is reduced from 31.6% to 25.7%. In Ireland, which has a higher poverty rate before social transfers then Serbia, the at-risk-of-poverty rate after social transfers is reduced from 32.9% to 15.6%.

In its 2018 Progress report for Serbia, the European Commission states, as in the previous reports, that the coverage and adequacy of cash benefits is insufficient and that Serbia needs to improve the adequacy of the social transfer system in order to ensure more effective support to the population that needs it the most. According to the data from the Third national report on social inclusion and poverty[336], when it comes to coverage and adequacy of financial assistance, Serbia is going the opposite direction then recommended: the number of beneficiaries of financial assistance in 2017 amounted to 260,759, which is a reduction by 14,550 compared to 2014. The funds allocated for this purpose have been reduced from 0,37% BDP in 2014 to 0,33% BDP in 2017. According to the SILC data, from 2016 the coverage of individuals from the poorest income quintile stood at 10.5%, and the coverage of individuals at risk of poverty – at 9.4%. Even though children at the highest risk of poverty, in 2016 only 44.8% of children in need received child benefit, and their share has been reduced compared to 2014, when 47.7 % of children at risk of poverty received child benefit.

People's lives stand beyond and above the statistical indicators of poverty. How do citizens assess their own living standard is visible from the self-assessment of poverty (table 17) provided by SILC data. Citizens who assess themselves as poor are those who, when asked to respond on the ability of the household to make ends meet say that it is difficult or very difficult. Close to two thirds of households in Serbia is subjectively poor. Among those who are at risk of poverty, over 80% has considerable difficulties or difficulties in making ends meet. Even though with incomes above 60% median they are not classified as poor, one in two "not poor" households is subjectively poor. On the other hand, the share of households who make ends meet easily or very easily is expressed in one figure.

336 Government of the Republic of Serbia: Third national report on social inclusion and poverty reduction in the Republic of Serbia; available at http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2019/02/Treci_nacionalni_izvestaj_o_socijalnom_ukljucivanju_and_smanjenju_siromastva_2014%E2%80%932017.pdf.

Table 17: Ability of the household to make ends meet by income situation in relation to the risk of poverty threshold

	Total		Below 60% median		Above 60% median	
	With great difficulty	With difficulty	With great difficulty	With difficulty	With great difficulty	With difficulty
2013	33.8	30.8	56.2	29	26.5	31.4
2014	34.9	33.4	53.9	32.8	28.5	33.6
2015	31.9	32.8	51.1	33.6	25.4	32.5
2016	32.7	31.2	54	29.2	25.4	31.9
2017	29.4	32.2	49.3	31.4	22.5	32.4

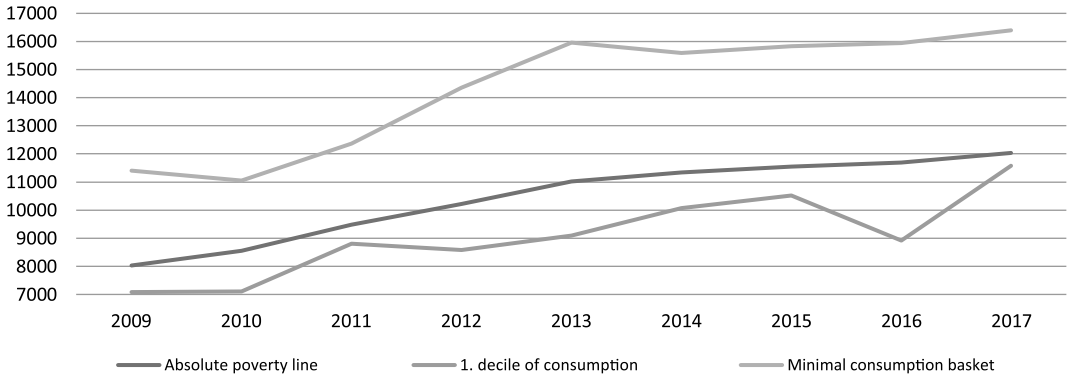
Source: Eurostat, SILC database

The data on how much funds are necessary for a dignified life of an individual and his or her family does not exist in Serbia. Fixed consumption necessary to satisfy minimum living needs is defined as the absolute poverty line and food clothes, footwear, housing, health care, education, transport, recreation, culture, other goods and services.[337] This line was set in 2006 and is annually increased by the amount of inflation (measured by the consumer price index). The methodology for calculating the consumption basket defines the minimum consumption basket as "household consumption which ensures maintenance of life and working capacity of members of the household".[338] At first glance it could be said that the absolute poverty line and minimal consumption basket define the existential needs in the same way. However, the amounts of minimal consumption basket and the absolute poverty line per adult equivalent differ (image 9) even though they use the same dataset – household consumption survey. Absolute poverty line is some 30% lower in the observed period from the amount of minimal consumption basket per adult equivalent.

337 According to: B. Mladenović, Siromaštvo u Republici Srbiji 2006-2016 (Poverty in the Republic of Serbia 2006-2016) Beograd, 2016, available at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2017/09/Siromastvo_u_Republici_Srbiji_2006-2016._godine_revidirani_and_novi_podaci.pdf.

338 Statistical office of the Republic of Serbia: Izvod iz metodologije izrade potrošačke korpe (Excerpts from the shopping basket calculation methodology), 2010, page 2., available at: http://mtt.gov.rs/download/izvod-iz-metodologije-izrade-potrosacke-korpe/izvod_iz_metodologije_izrade_potrosacke_korpe_2010.pdf

Image 9. Minimal consumption basket, absolute poverty line and 1. decile of consumption per adult equivalent (in RSD)



Source of data: For absolute poverty line Social Inclusion and Poverty Reduction Team, for minimal consumption basket the Ministry of Trade, Tourism and Telecommunications (author's calculations), for 1. decile consumption Statistical Office of the Republic of Serbia (author's calculation)

There is also a considerable discrepancy between the value of the poverty line and household consumption. In 2017 the absolute poverty line amounted to 12,045 dinars, whilst the absolute poverty rate was 7.2% which means that close to half a million of Serbian citizens were in absolute poverty. However, if we look at the data from the Household consumption survey for 2017 [339] 10% of the poorest household has spent 11,589 per equivalent adult, which is below the absolute poverty line, and it is hence reasonable to ask how is it possible that the absolute poverty rate is 7.2% when 10% of the population had a consumption that is below the absolute poverty threshold. The poorest households in Serbia have been below the absolute poverty threshold per consumption (image 9) for years, and are even further away from minimal consumption basket.

Minimal and average consumption basket in Serbia is not calculated based on nutritional standards and service standards but is based on household consumption[340]. Hence, the minimal consumption basket is established on the basis of the consumption of the first three deciles of households, therefore, the 30% of the poorest households, while average consumption basket is calculated on the basis of the consumption of 60% of households that are between the third and eighth decile. If we compare household incomes from the SILC with the amount of the minimal consumption basket, we can see that half of the households cannot use their incomes (27,778 dinars) to "cover" the costs of minimal consumption basket (36,090 dinars). Average incomes of households with two adults and one child, which amounted to 35,695 dinars in 2017 are also insufficient to cover minimal consumption basket.

Article 112, paragraph 3 of the Labour Law describes the criteria for establishing the minimum price of work: existential and social needs of the employee and his family expressed through the value of the minimal consumption basket, movement of the employment rate in the labour market, growth of the rate of gross domestic product, consumer price trends, trends in productivity and movement of the average salary in the Republic."

339 Household consumption survey, Statistical office of the Republic of Serbia, 2017. Available at: http://publikacije.stat.gov.rs/G2018/Pdf/G20185639.pdf.

340 Statistical office of the Republic of Serbia: Izvod iz metodologije izrade potrošačke korpe (Excerpts from the shopping basket calculation methodology), 2010, available at: http://mtt.gov.rs/download/izvod-iz-metodologije-izrade-potrosacke-korpe/izvod_iz_metodologije_izrade_potrosacke_korpe_2010.pdf

Article 112, paragraph 4 states that the decision on determining the minimum price of work contains an explanation that reflects all elements referred to in paragraph 3. However, the Decision on the amount of minimum price of work for the January-December 2017 period[341] includes no such explanation. Truth be told, it would be very difficult to explain that the minimum salary in 2017 sufficed to pay for 64% of minimal consumption basket, which means that the employees who receive minimum salary did not have enough money to spend as much as 30% of the poorest inhabitants of Serbia spend. Compared to the average salary, the minimum salary was half as low.

2. RIGHT TO HOUSING

General Comment No. 4 identifies some of the main issues the Committee finds relevant in the field of housing. According to the opinion on the Committee, the right to adequate housing should primarily be primarily seen as the right to live somewhere in security, peace and dignity. The Committee underlines the importance of the notion of adequacy and factors that have to be taken into account when assessing the adequacy of housing, such as legal protection of tenure, availability of materials and services and affordability.

Affordability means that personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Participation of housing costs in the total available income (table 18) is on the rise since 2013 and is considerably more burdensome for poor households. According to the same source of data (SILC) in 76.9% of poor households the cost of housing constitute a considerable burden, but are also a considerable burden for 60.8% of households that are above the poverty threshold.

Table 18: Share of housing costs in total available household income (in %)

	2013	2014	2015	2016	2017
Total	34.4	36.7	36.2	35.2	37.7
Households with incomes below 60% median	58.6	63.6	63.3	61.9	66.8
Households with incomes above 60% median	26.9	28.4	27.2	26.3	28.6

Source: Eurostat, SILC database

According to General observations No. 4[342] of the Committee, adequate housing should be have certain equipment necessary for health, safety, convenience and nutrition. Poor population is considerably more deprived in terms of housing: a third lives in apartments that are damp, leaking or do not have adequate windows, one in ten poor persons live in an apartment without a bathroom or toilet. In 2017, as much as 56.9% of population was not able to adequately heat their apartments, of which 79.9% persons below poverty threshold and 49% persons above the poverty threshold. The overcrowding rate is exceptionally high and has a tendency of growth. In 2017, it amounted to 56.2% for total population, 65.2% for persons below the poverty threshold and 36.6% for those above the poverty threshold.

341 RS Official Journal No. 77/2016.

342 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: https://www.refworld.org/docid/47a7079a1.html

Table 19: Share of population with housing deprivation per type of deficiency of housing (in %)

	Ruined	No bathroom	No toilet
Total	20.8	3.3	4.3
Income below 60% median	31.2	10.2	12.5
Income above 60% median	17.3	1	1.4

Source: Eurostat, SILC database

In the period since the last reporting cycle of 2014, when the Committee of Economic, Social and Cultural Rights has adopted the Concluding observations on the second periodic report of Serbia, certain steps were taken in order to advance the field of housing, and harmonisation with the relevant international standards, but the results achieved are still far from satisfactory.

The Committee of Economic, Social and Cultural Rights has provided, in its General comments No. 4 and 7, comprehensive interpretations of the right to adequate housing, and on the prohibition of discrimination in the General Comment No. 20. Consequently, the right to adequate housing is interpreted as the right to live somewhere in peace, safety and dignity, with the right to legal certainty of the tenure status, protection from forced eviction, respect of the right to freedom from arbitrary interference in home, privacy and family and freedom to choose own dwelling, freedom of movement, equal and non-discriminatory access to adequate housing, right to restitution and participation in the passing of decisions related to housing. When it comes to adequacy, the Committee has formulated minimal standards that must be met that a given type of housing could be considered adequate. These minimum standards concern: 1) legal security of tenure; 2) availability of services, materials, facilities and infrastructure; 3) affordability; 4) habitability; 5) accessibility; 6) location; and 7) cultural adequacy. Furthermore, the Committee underlines that, for the purpose of realisation of this right, the state parties are under the obligation to take whatever steps as are necessary, within the available fund, at the same time defining such obligations that enter into force immediately and do not depend on available funds. Such obligations primarily concern prohibition of discrimination in all its forms, legal security of tenure, and participation of marginalised groups in the definition of all housing policies and the like. When it comes to available funds, they should be planned so as to first ensure adequate housing for the persons from the most disadvantaged social groups and who are in most need, while providing main services such as water, electricity, sewage, garbage collection etc.

The Committee for Economic, Social and Cultural Rights has indicated in its Concluding observations on the second periodic report of Serbia to the main problems in the field of housing, which concern the living in over 583 informal settlements without access to main services (water, electricity, sewage), forced evictions that are carried out in contravention of the provisions of the international human rights law and which affect the most disadvantaged groups and the small number of constructed social housing for low-income families.

There are 583 informal (substandard) settlements on the territory of the Republic of Serbia, which are almost entirely inhabited by the Roma population.[343] These settlements

343 OSCE Mission to Serbia: Osnovne karakteristike podstandardnih romskih naselja u Srbiji i predlog budućih razvojnih inicijativa za unapređenje uslova života romske zajednice (Main characteristics of substandard Roma settlements in Serbia and proposal for future development initiatives for improving the living conditions of the Roma community), 14.

are distributed over the territories of 120 local self-governments (out of 169), and the majority is located in Belgrade and its vicinity.[344] Informal settlements were mostly developed on land which is in public property, the on land the property structure of which is unclear, without corresponding permits and legal security of tenure, and in contravention of the usual construction standards; some of them can be dated back to the beginning of the last century. Due to the settlements being illegal, they are not legally connected to the water, sewage and electricity networks, and hence their inhabitants mostly live without access to main life services.

One of the possible solutions that was considered in order to resolve this issue was legalisation of informal settlements. In 2014 a Pre-draft of the Law on Legalisations of Sustainable Informal Roma Settlements was fined, with the aim to create the preconditions for legalisation of individual buildings in the settlement,[345] and contribute to the creation of lasting and sustainable housing solutions for a large number of persons in need. However, despite many arguments in favour of adoption of such a law, it was never adopted. The Strategy for the Social Inclusion of the Rome in the Republic of Serbia also includes some parts dealing with legalisation of sustainable Roma settlements within several operative objectives. Thus, within operative objective 2 the Strategy envisages the creation of spatial planning preconditions for improving housing in sustainable Roma settlements, whilst operative objective 3 envisages the creation of normative preconditions for resolving the ownership status of lots and objects in sustainable Roma settlements with the final objective of legalisation and improvement of housing facilities in these settlements.[346] These, however, remain unrealised, since, other than several donor projects and international organisations, the state does not deal with this issue strategically. Coupled with the fact that a considerable number of adopted urbanistic plans envisages the removal of Roma settlements from their present locations, not their improvement, it is clear that the inhabitants of these settlements live in constant fear of forced eviction, which take place almost regularly in a manner that is in direct contravention to international standards.

The conditions in informal settlements are very bad, and in most cases verging on inhumane. This was witnessed by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living in her report on the visit to Serbia:" Living conditions in settlements are often inadequate, with virtually no utilities or infrastructure such as electricity, piped drinking water, sewage or regular garbage collection. In some cases, other essential services such as ambulances or public transport are not available. Many are isolated from employment, schools and medical centres. Some settlements that the Special Rapporteur visited were overrun with rodents; in others, children had nowhere to play except on garbage heaps, on broken glass, in complete squalor. These conditions are in violation of the right to adequate housing". In both reporting cycles, the Committee on Economic, Social and Cultural Rights has pointed out to the poor living conditions of the Roma in informal settlements. In its Concluding observations to the initial report of Serbia and Montenegro (2005), the Committee has expressed its grave concern about the poor conditions in which thousands of Roma families live in sub-standard informal settlements without access to basic services such as electricity, running water, sewage facilities, medical care and schools and urged the Serbia to ensure, by legalizing and improving the infrastructure of existing settlements or through social housing programmes, that Roma have access to adequate and affordable housing with legal security of

344 Ibid.

345 M. Davinić, V. Macura, M. Ferenček, Ž. Klisarević, O. Balić, Prednacrt Zakona o legalizaciji održivih neformalnih romskih naselja (Pre-draft of the Law on Legalisation of Sustainable Informal Roma Settlements), Stalna konferencija romskih udruženja građana- Liga Roma, Beograd, 2014.

346 Strategy for social inclusion of Roma in the Republic of Serbia (2016-2025), 69-71.

tenure, safe drinking water, adequate sanitation, electricity and other essential services.[347]

According to the findings of the Committee on the Elimination of Racial Discrimination, such settlements are inhabited by over 60 thousand Roma, Ashkali and Egyptians who, in addition to living in conditions that are far below the standards guaranteed by international law, also face number obstacles in enjoyment of other human rights – inability to register residence, difficulties in obtaining personal identification documents, enrolling children to school, reporting to the National employment service, access to social and other benefits. In Serbia, access to social services, the National employment service, obtaining a passport etc. is made conditional on report of residence, which has particularly adverse effect on the inhabitants of informal settlements who cannot report their residence in objects in informal settlements. These include some returnees according to the readmission agreement who, after being forcedly returned to the country of origin did not obtain support and help from the relevant authorities, particularly in the field of housing. The status of internally displaced persons from Kosovo is particularly complicated, as they are registered as residing in the place they left several tens of years ago, where they have no intention of returning. This problem was identified by the Committee on Economic, Social and Cultural Rights in its Concluding observations addressed to Serbia in its last reporting cycle and expressed its concern that many internally displaced Roma living in informal settlements without a registered residence did not have their permanent address re-registered from their last place of permanent residence.[348]

In order to overcome this situation and reduce the number of persons without residence, the provisions of Article 11, paragraph 2 of the Law on Citizens' Residence and Domicile[349] provides an option to citizens who cannot register their residence based on ownership of apartment, contract on lease of apartment or on any other legal grounds, to have the relevant authority establish their residence at the address of their permanent residence, the address of their spouse's of extra-marital partner's residence, the residence of their parents or the address of the social service. Even though these legislative amendments have resulted in a drastic reduction of the number of persons without residence and improved the status of a certain number of inhabitants of informal settlements, inconsistency in implementation of the regulations still creates difficulties for many of them. With regards to this, the Committee on Economic, Social and Cultural Rights has emphasised in its General comment No. 20 the importance of the principle of prohibition of discrimination and indicated that the realization of the rights from the Covenant should not be conditional on or determined by persons current or former place of residence.[350] According to the opinion of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, permanent residence mechanism reinforces social exclusion, stigma and discrimination.[351] In that vein, the Committee on Economic, Social and Cultural Rights has recommended that refugees, returnees and internally displaced persons, in particular Roma without a registered residence who live in informal settlements, are provided access to procedures for birth and residence registration in order to facilitate access to personal documents. [352]

347 Committee on Economic, Social and Cultural Rights, Concluding observations to the initial report of Serbia and Montenegro, para. 30. and 57.
348 Committee on Economic, Social and Cultural Rights, Concluding observations on second periodic report of Serbia, 2014., par. 13.
349 Law on Citizens' Residence and Domicile, RS Official Journal No. 87/2011.
350 Committee on Economic, Social and Cultural Rights, General comment No 20, par. 34.
351 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia, par. 41 available at:https://documents-dds-ny.un.org/doc/UNDOC/GEN /G16/037/37/PDF/G1603737.pdf?OpenElement.
352 Committee on Economic, Social and Cultural Rights, Concluding observations on second periodic report of Serbia, 2014, par. 13.

The right to legal certainty of tenure and prohibition of forced eviction are some of the core elements of the right to adequate housing. Forced eviction is defined as permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.[353] Forced evictions are resorted to for different reasons, but most of all in order to create conditions for the implementation of development and infrastructure projects, beautification of the city or preparation for prestigious international events. Regardless of the reasons, forced evictions are a grave violation of the entire spectrum of human rights (e.g. right to adequate housing, right to health, life, education, labour, right to personal safety, right to respect of private and family life and inviolability of home, right to peaceful enjoyment of property, etc.), and in the majority of cases only deepen the problem they were set out to solve.

The right to adequate housing, however, does not prohibit development or modernisation projects that might result in relocation. Sometimes there are real and justified needs to relocate, but with regards to that, there are clear conditions and procedural limitations in place. International human rights law allows forced evictions only in the most exceptional cases, as the final option and when substantive consultations with persons affected by the eviction have been enabled and all feasible alternative solutions have been exhausted. Before any decision to start the eviction, the state authorities must demonstrate that evictions are unavoidable and in accordance with international human rights law[354], authorised by law and undertaken solely for the purpose of promoting the general welfare.[355] If there is no alternative to eviction, during the eviction process the following must be ensured: 1) full consultation and participation throughout the entire process to all potentially affected groups and persons; 2) adequate and reasonable eviction notice; 3) availability of information on the proposed relocation in reasonable time; 4) presence of government officials on eviction site; 5) identification of persons who are carrying out the eviction; 6) prohibition of eviction at inclement weather or at night; 7) access to legal remedy and legal aid.

Despite the above-mentioned prohibition of forced eviction and observation of international human rights law in this area, over the past period grand-scale forces evictions took place in Serbia. This was particularly the case with the city of Belgrade, whose authorities have carried out largest forced evictions so far; the tendency is similar in other cities and towns where information settlements are located in places where the local authorities want to build shopping malls, boulevards, parks. In Belgrade, in the 2009-2012 period 2000 Roma persons were forcedly evicted from two informal settlements in a procedure that was in direct contravention to international standards. One part of these families was forcedly resettled to the place of their last residence, mostly to the locations in the south of Serbia (Niš, Vranjska banja, Leskovac), to facilities that do not have proper conditions, without water, electricity, sewage and access to other essential services (schools, hospitals, employment etc), which constituted not only a violation of their right to adequate housing, but also of their freedom of movement and residence.[356] This is a textbook example of forced evictions deepening the problem they were supposed to solve. The families that had registered residence in the city of Belgrade were resettled to metal containers of around 14m^2 in size, scattered in five locations in suburban areas of Belgrade - Makiš 1, Makiš 2, Resnik, Jabučki rit and Kijevo, while some of those who were evicted become homeless.[357]

353 Committee on Economic, Social and Cultural Rights, General comment No. 7, par. 3.
354 Basic principles and guidelines on development-based evictions and displacement, Annex 1 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, par. 40.
355 Ibid. par. 21.
356 Amnesty International, Serbia: Romi još uvek čekaju na odgovarajući smeštaj (Roma are still waiting for adequate housing) April 2015, available at: https://www.amnesty.org/download/Documents/EUR7013082015SERBIAN.PDF.
357 Ibid.

The inhabitants of those informal settlements that are owned by privatized socially-owned companies are under a constant risk of forced eviction, as the new owners exert different types of pressure to local authorities to evict and relocate the Roma. On the other hand, pressures are exerted to the very inhabitants of the informal settlements by collective disconnection from the electrical supply network, blocking of access to the settlement, petitions, threats and the like.

With regards to that, the Committee on Economic, Social and Cultural Rights has expressed concern, in its Concluding observations on the second periodic report of Serbia, about incidents of forced evictions and reports that some of the concerned families with children were not consulted beforehand and were left without adequate alternative housing, compensation and protection and consequently recommended that Serbia take urgent measures to consult affected communities throughout all stages of evictions, to ensure due process guarantees and compensation and to provide in particular for adequate alternative accommodation in locations suitable for social housing construction, taking into account the Committee's general comments No. 4 (1991) and 7 (1997) on the right to adequate housing and on forced evictions.[358] Let us recall that back in 2005, as a part of its Concluding observations to the Initial report of Serbia and Montenegro the Committee has also expressed concern because many refugees, internally displaced persons and Roma are being evicted from illegal collective centres and informal settlements which are being closed down without sufficient provision of adequate alternative housing.[359] A similar situation was also pointed out by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living in her report on the mission to Serbia and recognised the recurrence of forced eviction and resettlement of internally displaced persons and other disadvantaged groups from settlements in Belgrade and other municipalities, without adequate consultation, alternative housing, compensation or access to remedies as one of the three main concerns related to adequate housing.[360] Consequently, she recommended to the Serbian government to adopt a national law on housing that is the result of genuine consultations and the participation of all stakeholders. The new law should be compliant with international human rights law with regard to housing and non-discrimination. This law should ensure the prohibition of forced evictions and set out provisions to ensure full compliance with international human rights law in this area, ensure security of tenure for the urban poor, including those who live in informal settlements, require full consideration of housing alternatives in situ and prior to resettlement or relocation, in close consultation with and the participation of residents of informal settlements and establish viable procedures for regularization and improved living conditions, with access to adequate services for persons living in informal settlements.[361]

The Law on Housing and Maintenance of Buildings was adopted in December 2016 as a long-anticipated answer to numerous and mass forced evictions of the inhabitants of informal settlements and as an attempt to regulate the issue of forced evictions in accordance with the relevant provisions of human rights law concerning housing.

However, the provisions of this Law only partially regulate the issue of forced eviction and are not consistently aligned to international human rights' standards. In addition, the new law does not include legal certainty of tenure as one of the key elements of the right to adequate housing and protection from forced evictions and other forms of disturbance.

358 Committee on Economic, Social and Cultural Rights, Concluding observations on the second period report of Serbia, 2014, para. 30.

359 Committee on Economic, Social and Cultural Rights, Concluding observations to the initial report of Serbia and Montenegro, 2005.

360 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia, par. 13.

361 Ibid., par. 100 (b).

Securing legal certainty of tenure to inhabitants of informal settlements was one of the recommendations of both the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on adequate housing. [362]

The procedure of eviction and relocation is governed by provisions of Articles 78-87 of the new Law, which prescribe the conditions under which evictions can be carried out, on the consultation process with the affected persons, define the rights and obligations of various stakeholders prior to, during and after eviction, and the obligation to provide adequate accommodation for the persons being relocation. What the law does not prescribe, which undoubtedly demonstrates the lack of consistent alignment with international human rights' standards, is the mandatory nature of genuine consultations as a process in which the local authorities should consider all available alternatives before deciding on the eviction. Only if the eviction is deemed unavoidable due to a lack of feasible alternative can a decision on necessity of eviction be passed. The Special Rapporteur for adequate housing has thus recommended to the Republic of Serbia to fully consider housing alternatives in situ and prior to resettlement or relocation, in close consultation with and the participation of residents of informal settlements.[363] In practice, this type of consultations is most often carried out in the form of an informative meeting where the representatives of local authorities inform, usually very laconically, the residents of informal settlements that they will be covered by eviction and that they will be provided with some form of accommodation. This practice not only directly violates international regulations but also results in inviable housing solutions and increased risk of homelessness. The provisions of Article 79, paragraph 1 of the Law relating to relocation to adequate accommodation are also problematic, as a person who, together with members of his or her family household owns another property that can be lived in are not entitled to such accommodation. This is practically a continuation of the practice that was in place before the adoption of the new law, where evicted persons were commonly relocated to objects without proper living conditions (no electricity, water, sewage or access to other rights) on which they had some form of ownership, but which could not be said to be in line with international standards. Furthermore, provisions of paragraph 2 of the same Article prescribe that if the person being evicted who meets the requirements for relocation to adequate accommodation does not have registered residence on the territory of local self-government unit that has passed the eviction ruling, adequate accommodation shall be provided by the local self-government unit on the territory of which such person has had last registered residence, that is, on the territory of which the institution or social service is located if the person has a registered residence to the address of an institution or social service. With regards to that, the Committee on Economic, Social and Cultural Rights has underlined in its General Comment No. 20 that the realization of the rights from the Covenant should not be condition or determined by a person's current or former place of residence.[364]

One more issue has proven to be problematic in relation to the eviction and relocation process, and that is the location for resettlement. Evicted inhabitants of informal settlements, who are, for the most part, of Roma nationality, are resettled to housing facilities located on the outskirts of cities and towns, which are built exclusively for the Roma, far from source of income, health care and educational institutions, whereby the tendency of their segregation is housing is continued. Such relocations are often accompanied by protests and threats from the local population. There were a lot of such cases, particularly in Belgrade and Niš, where the local self-governments have disregarded their obligation of

362 Ensure the security of tenure for the poor in urban areas, including those who live in informal settlements.
363 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia, par. 100(b)(iv).
364 Committee on Economic, Social and Cultural Rights, General Comment No. 20, par. 34.

timely consultation with the members of the recipient communities. Thus, for instance, the protests of the inhabitants of the Belgrade Ovča settlement against the relocation of some twenty Roma families from cardboard settlements to Ovča have resulted in the stoppage of construction of social housing of the EU Project "Livelihood Enhancement for the Most Vulnerable Roma Families in Belgrade, Let's build a home together". Let us recall that the local population of this Belgrade municipality has protested on the same grounds back in 2008, saying that the settlement of Roma would additionally burden the existing infrastructure, elementary school capacities and the otherwise unsatisfactory living conditions would be additionally worsened if new inhabitants were to settle there. Such form of expression of open intolerance towards the Roma is not an isolated incident and happened frequently, particularly in Belgrade and its vicinity. It is notable that in cases where the local and relevant authorities reacted adequately and timely, the problems were successfully resolved.

Another problem faced by the beneficiaries of social assistance and persons with low incomes is the incapability to pay the high price of communal services and lease of social housing.

Thus, the Special Rapporteur for adequate housing has stated that lack of affordability of utilities and other housing-related costs also presents many challenges. Electricity consumption remains high mainly because of the widespread use of electric heating and poor insulation. Furthermore, the Special Rapporteur learned that social benefit entitlements are, for the most part, inadequate and provided to the majority for just nine months of the year, and sometimes reduced by a new property tax, levied since 2015 against homeowners and social housing tenants and equivalent to a month of social benefits. Of particular concern is the high cost of utilities for social housing tenants, despite being on a fixed, low income. Many live in fear of eviction owing to arrears.[365] The Committee on Economic, Social and Cultural Rights has pointed to the same problems and called on Serbia to consider the introduction of a minimum-income benefit that would bring together all the existing social assistance benefits in order to ensure an adequate standard of living for all, in particular disadvantaged and marginalized individuals and families and to prevent any unjustified interruptions in the allocation of social security benefits, such as benefits to those who are unable to work, which are recognized only for a period of up to nine months per calendar year.[366]

During the 1990s, the existing social housing fund was mostly privatised, and the state did not provide the funds necessary for its renewal, particularly in the field of social housing. This is corroborated by the data from the 2011 Census, according to which the share of apartments in private ownership amounts to as much as 90,4%. This is indicative of an exceptionally small public housing fund, or, in other words, lack of social housing. There is a clear need for housing accommodation, particularly in Belgrade, but the majority of the population is facing real difficulties in securing housing on market terms. Aside from projects financed by donor funds in order to cater to the needs of certain marginalized groups (e.g. Roma, refugees and internally displaced persons), the state did not systemically address the programmes of construction of social housing and the resolution of this serious problem, which primarily concerns housing, but also adversely affects may other spheres of life. This problem was pointed out by the Committee on Economic, Social and Cultural Rights, expressing its concern at the small number of social housing units constructed annually for low-income families.[367] When the Law on Housing and Maintenance

365 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia, par. 32.
366 Committee on Economic, Social and Cultural Rights, Concluding observations on the second period report of Serbia, 2014, para. 24. (b) and (c).
367 Ibid. par. 31.

of Buildings entered into force, the Law on Social Housing was annulled; the new law has instead introduced the institute of housing support. This is precisely the institute envisaged as a mechanism for providing support to persons who cannot resolve their housing needs from own funds in market conditions and who therefore need housing support. Even though the law, to this effect, recognises numerous marginalised groups (homeless persons, victims of domestic violence without an apartment, social assistance beneficiaries, persons who have the status of I category veteran, beneficiaries of rights form veteran and disability care and care of civil victims of war, persons with disability, persons who have deficitary occupations that is of interest to the local self-government unit or a state administration body), this institute has not provided a satisfactory answer to the housing problem of either of the mentioned groups so far. Data on realised housing programmes unambiguously show the lack of clear, sustainable and efficient housing policy and of an effective service that would manage the existing housing fund in a satisfactory manner. One of the main reasons for this on the local level is reportedly lack of human resources, assets and the employment ban. With regards to this, the Committee on Economic, Social and Cultural Rights has recommended that the Republic of Serbia take policy and financial measures to expand the network and quality of social housing for low-income families.

The adoption of the Law on Enforcement and Security has brought more frequent forced evictions either due to inability to pay loan instalments or on account of another debt. There are is no data on how many people have lost the right to their only home. The only available data comes from organisations working on prevention from forced evictions, Ombudsman's reports and the repot of the Council for Countering Corruption on irregularities in the work of enforcement agents, which will be discussed in more detail in the following section.

3. POVERTY WITHOUT PROTECTION

The Law on Social Protection in Article 4 prescribes that every individual and family in need of social assistance and support in order to overcome social and life difficulties and creating conditions for satisfying the basic life needs is entitled to social protection. The provisions that prescribe the requirements for the realization of the right to cash benefits show a complete lack of understanding of what social and life difficulties are and what are the basic life needs. According to Article 81, the right to cash benefit belongs to an individual or a family who effect from their work, incomes from property or from other sources an income that is below the amount of the cash benefit. The criteria for establishing the base are not defined, and it is established by a ruling on the nominal amounts of cash benefits of the minister in charge of labour, employment, veteran and social issues. The base for establishing social cash benefit is far below the at-risk-of-poverty line or absolute poverty line[368], and in 2017, it amounted to 8,201 dinars.[369] Therefore, those receiving the cash benefits need 32% of funds to cross the absolute poverty line, and almost two benefits to achieve relative poverty.[370] According to the criteria set out in the law, not only are persons who are absolutely and relatively poor not considered poor, the right to cash benefit is also denied to those who are below the income census but own some of the following assets: more than half an acre of land, movable property the value of which is six times the amount of the base or accommodation with one room more than the number of household members. In

368 Absolute poverty line is defined as fixed consumption necessary to satisfy minimum living needs is defined as the It was established in 2006, and is adjusted annually only for changes in prices.

369 RS Official Journal No. 94/2017.

370 In 2017 the absolute poverty line amounted to 12045 RSD (according to the Assessment of absolute poverty in 2017 by the Social Inclusion and Poverty Reduction Team), while the relative poverty line amounted to 15,600 RSD (author's calculation based on Eurostat SILC database data)

other words, the rural population, which is at highest risk of poverty, those who have an old car which is worth 210 EUR or single persons who have two rooms. Even if they meet such restrictive income and asset-related criteria, those entitled to cash benefits who are able to work or families in which the majority of members are able to work face another limitation. According to Article 85, paragraph 3, they are entitled to nine months of cash benefit during one calendar year. The Regulation of the measures of social inclusion of recipients of social benefits[371] the beneficiaries are required to do community work, or face the possibility of cash benefits being reduced or withdrawn. In the end of 2014 the Ombudsperson has filed an initiative for assessing the constitutionality of the Regulation, and the civil sector has filed three such initiatives; the Constitutional Court is yet to respond to these initiatives. [372].

The Law on Enforcement and Security (hereinafter: Enforcement Law), in Article 258 envisages that enforcement on salary, wage compensation of salary, that is compensation of salary and pension can be exercised on up to two thirds of the salary, wage, compensation of salary or salary or pension, that is, up to their half, if their amount is equal to or smaller then minimum salary established by the law. In the situation where the majority of households are burdened by housing costs and where incomes do not suffice to meet the elementary needs, this provisions directly jeopardizes existence.

General comment No. 7[373] defines forced as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. As further indicated in the General comment, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land.

The Law introduced a new institute in the legal system – enforcement agents, justified by the need for more efficient payment of debts for communal services and relieving the workload of the courts. Seven years after the introduction of this institute the Ombudsperson's report[374] states that, even though the Ombudsperson is not in charge of their work, citizens address the Ombudsperson, expressing the lawfulness and regulatory of the work of enforcement agents. IN addition, the citizens who are not satisfied by the work of the Ministry of Justice related to its follow up to complaints to the work of enforcement agents. Information on the work of enforcement agents is for the most part not available to the public. Even though the Statute of the Chamber of Enforcement Agents[375], the Chamber is under the obligation to forward its annual work reports to the Ministry of Justice, such reports are not available. The Ministry of Justice webpage features only two reports on the operation of enforcement agents in 2015 and 2016.

The Anti-corruption Council Report of 2014 has voiced serious objections to the work of the enforcement agents, particularly with regards to the performance of jobs that enable

371 RS Official Journal No. 112/2014.
372 See: http://www.a11initiative.org/cetiri-godine-prinudnog-rada-u-srbiji-rezultati-primene-uredbe-o-merama-socijalne-ukljucenosti-korisnika-novcane-socijalne-pomoci/.
373 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, E/1998/22, dostupno na: https://www.refworld.org/docid/47a70799d.html.
374 Ombudsperson's annual report for 2018, available at https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji.
375 Statute of the Chamber of Enforcement agents, RS Official Journal No. 105/2016.

vast systemic corruption in cases of enforcement against immovable property. In the Report on the transfer of enforcement to enforcement agents[376], the Anti-corruption council states that public enforcement agents are not a body that can be considered independent and impartial, since they do not meet the standards of independence from Article 6 of the Convention on civil and political rights. According to the Council's opinion of 2012, the law protects the creditors and the state did not achieve a fair balance and proportionality between the interests of creditors and debtors by transferring competences to enforcements agents. The majority of applications filed to the Council concern the means of enforcement: power of the enforcement agent to change the means of enforcement; enforcement against mortgaged property; property appraisal and sale; disproportionality between the debt and the value of the immovable property which is the means of enforcement. The Council points out some of the key problems in the work of the enforcement agents. The right of the enforcement agents to obtain property appraisal from natural persons is conducive for corruption, to the detriment of the debtor whose property is under-valued. The Council finds that special attention should be dedicated to the principle of proportionality between the debtor's debt and the means and value of the object of enforcement.

376 Available at http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028-3278/izvestaj-o-prenosu-izvrsenja-u-nadleznost-javnih-izvrsitelja.

ARTICLE 12 – HEALTH PROTECTION

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

1. RECOGNISING THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

Article 12, paragraph 1 the Covenant on Economic, Social and Cultural Rights prescribes the obligation of state parties to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Second Periodic Report on the Implementation of the Covenant on Economic, Social and Cultural Rights[377] (hereafter: the Report), submitted in 2011 by the Republic of Serbia to the Committee on Economic, Social and Cultural Rights, states that in relation to provisions of Article 12 of the Covenant, citizens of Republic of Serbia as well as other persons residing in Serbia enjoy the right to health protection in accordance with the Law on Health Protection. Moreover, the report describes the following: the extent to which health care is provided at the territorial level; rights concerning the compulsory health insurance and the scope of right to health protection provided by the compulsory medical insurance. Besides, under the heading "Social Security", the report states that health insurance is characterised by "the wide scope of population enjoying health protection; gap between widely defined rights and financial means for their enjoyment; dominant state ownership of buildings and equipment; centralised management system at the republic level[378], as well as dominance of secondary and tertiary protection as opposed to primary health protection. It is also stated that private sector is not integrated in the system and there is a voluntary system in addition to compulsory system. In the response to comments of the Committee to ensure universal access to primary health protection (e.g. by increasing the number of doctors at the local level) and to include everyone in the system of compulsory health insurance "including refugees, internally displaced person and Roma"[379] (para 60 of the Concluding Comments), the Republic of Serbia stated that Serbia provides enjoyment of rights deriving from compulsory health insurance both to insured parties and members of their families. As stated, the health insurance is provided according to national contributions and the following categories are also regarded as insured parties: persons who are exposed to special risk of falling ill; persons whose health protection is required in order to ensure

377 The Government of Republic of Serbia, Second Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 2011.
378 Ibid. 13.
379 Ibid. 142.

early prevention, diagnosis and treatment of illness of social importance; and persons who are socially deprived. Contributions for compulsory health insurance are provided for these persons in the budget of the Republic of Serbia. In addition, the report provides a total number of insured persons and states that all refugees are included. With regard to Roma population, it is stated that the issuance of health cards is simplified and it is done on the basis of a personal statement and the registration of residence or according to the statement on the place of temporary residence.

With regard to additional questions of the Committee related to measures Serbia undertook to ensure access to health care to those who do not have health cards, as well as measures to solve the problem of limited access to primary health care in rural areas[380], the Republic of Serbia repeated the information contained in the part of the Report on the status of Roma. It was repeated that refugees, internally displaced persons and asylum seekers have also access to health protection.

In assessing the situation in Serbia and taking into account data provided by the Republic of Serbia, the Committee, in its Concluding Comments adopted on 55th session of the Committee held in April and May 2014, expressed concerns regarding "inadequate budget for the health protection system, the lack of access to health care for certain individuals without health cards and limited access to health services, especially in rural areas".[381] With regard to this, the Committee recommended to Serbia to do the following: to strengthen measures with the aim of allocating greater budget resources to health; to provide vulnerable persons with health cards with the aim of ensuring the access to health care, as well as to widen the scope of health services in rural areas. With regard to allocation of budget funds for health, in its General Comments, the Committee emphasised that protection of vulnerable members of the society must be ensured through economic programmes, even at times of exceptional financial shortfalls. The state may breach its obligations prescribed by Article 12 of the Covenant by failing to respect, protect and achieve rights. Thus, the state violates its obligations by not using maximum of its available resources to achieve the right to health. According to the World Health Organisation data for 2014, the Republic of Serbia allocates only $812 PPP per capita as compared to the European standard which is $1.879 PPP per capita, as per NSO data.[382] At the same time, the income expenditure per household for health services amounts to 36% out of total income expenditure as compared to the European average of 26.6%. This is contrary to Comments on Serbia, adopted by the European Committee for Social Rights within the Council of Europe stating that "health protection expenditures should not represent a great burden for individuals".[383] Besides, sustainability of health insurance is still not resolved. In its Screening Report on Chapter 28 (Protection of Consumers and Health), the EU stated that "the overall financial sustainability of the health sector remains seriously endangered".[384] On the other hand, as stated in the 2019 Financial Strategy, greater allocation for health may be expected in order to improve "the social component of the budget".[385]

With regard to enabling vulnerable persons to acquire health cards with the aim of having access to health care, it should be noted that, within the Universal Periodic Review-which took place on 24 January 2018 in Geneva, Serbia received 190 recommendations;

380 Office for Human and Minority rights of the Serbian Government; Answers to Additional Questions of the Committee for Economic, Social and Cultural Rights in relation to the Second Periodic Report on the Implementation of the Covenant on Economic, Social and Cultural Rights, p. 71. Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/odgovori1.doc.
381 Ibid. 11.
382 Source: World Health Organization, Health for All, https://gateway.euro.who.int/en/hfa-explorer/.
383 European Committee of Social Rights (ECSR), Conclusions 2017 – Serbia, 21.
384 Screening Report for Serbia for Chapter 28 (Protection of consumers and health) 14.
385 The Government of Serbia, the 2019 Fiscal Strategy with plans for 2020 and 2021, 42.

Serbia accepted 175 recommendations and took note of 15. Recommendations, such as those related to ensuring efficient access to health service to members of national minorities and continuing provision of "non-discriminatory and adequate health protection to mothers and children of Roma ethnicity", are among recommendations sent by UN members to the Republic of Serbia.[386] The EU provided similar assessment in the Screening Report on Chapter 28 stating that "discrimination remains prevalent in access to healthcare" [387] and thus there is a need to improve the access for vulnerable groups, such as Roma. In particular, support for the work of Roma health mediators needs to be continued. In the 2018 Progress Report for Serbia, it was stated that there is a need to improve access to healthcare, in particular to "persons with disabilities, persons with HIV, children and adults abusing drugs, convicted persons, female sex workers, LGBT, internally displaced persons and Roma".[388] Unfortunately, Serbia did not make desirable progress in regard to these challenges since 2014. According to 2017 data of the Gender Equality Commissioner, the number of complaints based on health care related discrimination rose compared to number of complaints in the last year; these complaints comprise the fourth most frequent category.[389] What is especially concerning is the fact that persons who do not have health insurance have twice the rate of instances when they were not provided with medical services as opposed to persons having a health insurance.[390]According to official information, vulnerable groups and children are still not fully included in the health insurance due to complex administrative procedures. This mostly concerns children of Roma ethnicities whose mothers are not well educated and who are from families with the lowest income (this concern.[391] Despite this, the new Public Health Law, adopted in 2016, does not recognise Roma population as one of the vulnerable groups. The following categories are considered as vulnerable groups according to this statute: women, elderly, persons with disabilities, poor and "other vulnerable groups".[392] Besides, reforms undertaken in the area of health insurance sometimes lead to more difficult access to health protection such as the process of replacing old health cards which in certain instances lasted for three months.[393] The European Commission flagged this as a problem in its 2018 Report by emphasising delays in issuing the electronic health card system which was financed by the EU.

With regard to increasing the scope of health services in rural areas, it must be noted that Serbia received, within the Third UPR Cycle, recommendations from UN members to develop provisions of health services, including provision of mental health services in prison. Serbia accepted this recommendation and stated that it will continue implementing the Strategy of developing a system of criminal penalties enforcement by 2020. Serbia also stated that provision of mental health services is now available to persons deprived of liberty. According to the EU evaluation, the Screening Report identified very difficult situation in rural areas due to lack of medical and administrative staff in primary healthcare institutions and the freeze on employment in the public sector. The European Commission reports indicated that alongside this problem, significant numbers of doctors are leaving the country, while the National Health HR Management Plan is still not implemented. Bearing in this situation, the Serbian Government extended the freeze on employment in the public sector until the end of 2019. Moreover, the Government of Serbia still has not amended

386 Office for Human and Minority Rights of the Serbian Government, Serbia's Answers to Recommendations of UN members within the Cycle III of the Universal Periodic Review (UPR), p. 14. Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/8._odgovori_rs_na_preporuke_-_iii_ciklus_upr.do.
387 Screening Report, 17.
388 European Commission, Republic of Serbia, the 2018 Progress Report, 91-92.
389 Summary of the 2017 Regular Annual Report of the Commissioner for Gender Protection 48.
390 The Government of Republic of Serbia, Third National Report on Social Inclusion and Reduction of Poverty in the Republic of Serbia 250.
391 Ibid., 251-252.
392 Public Health Law, Official Journal RS, No. 15/2016, Article 6.
393 Source: http://www.rtv.rs/sr_lat/drustvo/zahtev-za-zamenu-knjizice-nije-podnelo-800.000-osiguranika_793934.html.

the Regulation on Medical Institutions Network Plan (as planned by the 2018 Working Programme of the Government) which determines the "number, structure, capacities and locations of state owned health institutions on the territory of Serbia".[394]

The Committee adopted the General Comment No 14: The Right to the Highest Attainable Standard of Health (Art. 12).[395] According to the Committee, the right to health includes several interrelated and essential elements: *availability* (functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the state[396]), *accessibility (*health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party; accessibility has four overlapping dimensions: non-discrimination, physical accessibility; economic accessibility and information accessibility); *acceptability* - all health facilities, goods and services must be respectful of medical ethics and culturally appropriate) and *quality*. According to the Committee, one of the main obligations of the state with regard to right to appropriate primary health protection is to adopt and implement a national public health strategy and plan of action (and periodically reviewed) which shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.

States should establish statutory national mechanisms for monitoring the implementation of national health strategies and plans of action. The other important aspect is the participation of citizens in the decision-making procedure; the Committee believes that states have to create an environment whereby other actors such as civil society and corporate sector will take their own responsibilities for the full enjoyment of the right to health. Moreover, in responding to the comments of the Committee (Serbia was invited to "identify classified indicators and appropriate national benchmarks related to priority health issues, including HIV and in accordance with the General Comment No. 14 Serbia was asked to include in its subsequent report information on the process of identifying those indicators and benchmarks[397], as per para 62 of the General Comments), Serbia responded that the Public Health Institute publishes its annual Health Statistic Bulletin which systematically presents main data on population health indicators. It was also stated that the Government regularly monitors and reports on the progress in meeting the Millennium goals, including those relevant for health. It is also noted that the Government adopted the Strategy for Combatting HIV in 2005, which identified indicators necessary for monitoring and evaluation the implementation of the strategy. In its Concluding Comments, the Committee expressed concerns regarding the lack of systematic processing of data for monitoring the realisation of economic, social and cultural rights. In that respect, the Committee provided Serbia with the following recommendations: to establish the system for processing statistical data on main factors which affect the enjoyment of economic, social and cultural right prescribed by the Covenant (according to sex, age, urban/rural areas, ethnicity, disadvantaged/marginalised groups); to undertake regular and systematic evaluations based on clearly defined indicators on the extent to which those economic, social and cultural rights are enjoyed (taking into account conceptual and methodological framework of indicators of human rights developed by the UN High Commissioner for Human Rights) and to apply human rights indicators as a part of the National Strategy for Development and Integra-

394 The Government of Republic of Serbia, the 2018 Working Plan of the Government 661.
395 CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12).
396 For example, this refers to trained medical and professional staff who have competitive salaries at the domestic market and most important medicines, as defined by the Action Plan on the most important medicines of the World Health Organisation (note: the WHO list of most important medications was published in 2017 and is available at https://apps.who.int/iris/bitstream/handle/10665/273826/EML-20-eng.pdf?ua=1).
397 The Government of Republic of Serbia, the Second Periodic Report, 143.

tion. Within the context of interpreting Article 12 of the Covenant by the Committee, it should be noted that in 2017 Serbia adopted the Public Health Strategy 2018-2026 followed by an Action Plan[398]. This Strategy contains most of the elements recommended by the Committee – objectives, resources and indicators and attention is devoted to improving the status of vulnerable groups. On the other hand, the Strategy does not contain national benchmarks and targeted values are only sporadically determined. Thus, the mechanism for monitoring the implementation of the Strategy and the Action Plan is not established and precisely defined revision process is also missing, including the principles of participation and transparency. With regard to public health statistics, the Screening Report on Chapter 18 (Statistics) states that the Republic of Serbia is still not developing public health statistics.[399] Thus, the EU recommended further work on introducing statistics. Moreover, the 2018 Progress Report stated that public health statistics in line with the acquis are not yet available[400]. Furthermore, the Committee in its General Comment No. 14 noted that right to health is breached when the state fails to undertake measures prescribed by law. The lack of national policy and non-application of legislation on safety and health at work and occupational health services represent a good illustration. Despite the fact that the Republic of Serbia adopted the new Strategy on Safety and Protection at Work in December 2018,[401] it does not contain identification of appropriate resources for its implementation not does it address main challenges in this area, already recognised in the Screening Report on Chapter 19 (Social Policy and Employment)[402]: alignment with EU law; introduction of the electronic register of injuries sustained at work; increasing the number of labour inspectors and improvement of accessibility of IT in their work. The 2018 Progress Report also emphasised that the labour inspectorate's capacities need to be further strengthened by employing new staff and providing them with the necessary equipment and training. With regard to application of legislation in this area, the Committee of Experts on the Application of the ILO Conventions and Recommendations on several occasions pointed out numerus deficiencies. For example, in 2015 the ILO Committee of Experts asked the Government to put additional efforts in providing occupational health services in accordance with risks with the employers, as well as to undertake measures to improve risk assessment at work.[403] Within this context, the reduction of occupational health services is especially alarming. According to the Republic Fund for Health Insurance, the State Audit Office recommended to the Fund not to finance employment in the area of occupational health.[404]

A training of medical personnel, including training on issues such as the right to health and human rights is the main obligation of the state indicated in the General Comment No. 14. Moreover, the states are invited to encourage judges and members of the legal profession to pay greater attention to violations of the right to health in the exercise of their functions. With regard to the Committee's interpretation of Article 12 of the Covenant, there is no information on adequate training of medical personnel and judges in the Ministry of Health Bulletin.[405] The Judicial Academy offers elementary training focusing on

398 The Government of Republic of Serbia, the Public Health Strategy 2018-2026
399 Screening Report: Serbia, Chapter 18 – Statistics.
400 According to the Government of Serbia, the IT health data system needs to be improved. As stated in the Third National Report on Social Inclusion and Reduction of Poverty (p. 270): "although many databases are developed, it difficult to search data and especially in regard to data delayed for two to three years. There is no possibility to monitor modern indicators on health system performance; it is almost impossible to monitor healthcare expenditures according to areas (prevention, long-term care and treatment, etc.) and there are no developed national indicators of (in)equality and social inclusion".
401 The Government of Republic of Serbia, the Strategy on Safety and Health at Work 2018-2022
402 Screening Report: Serbia, Chapter 19 – Social Policy and Employment
403 CEACR: Direct request, 2015, https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3244378:NO.
404 Source: http://www.politika.co.rs/sr/clanak/373938/Nesuglasice-oko-ukidanja-medicine-rada-blokirale-plate.
405 The Bulletin is available on the web page of the Ministry of Health: https://www.zdravlje.gov.rs/view_file.php?file_id=319&cache=sr.

the content of the European Convention on Human Rights, as well as domestic legislation with regard to protection against discrimination, gender equality and domestic violence.[406] The National Academy of Public Administration focuses on the following issues within the 2019 training programme: protection against discrimination; discrimination by public authorities; mechanisms for monitoring the status of human rights in Serbia with a special focus on vulnerable groups, gender equality; protection of human rights and the Ombudsperson; right of national minorities and enforcement of the ECtHR decisions.[407]

Another important aspect emphasised by the Committee in the General Comment No. 14 is the gender perspective – the states should integrate a gender perspective in their health-related policies, planning, programmes and research in order to promote better health for both women and men. Moreover, the Committee points out that states should adopt and apply "comprehensive national strategies for improvement the health of women throughout the whole life-cycle".[408] It is also worth mentioning that the Committee on the Elimination of Discrimination against Women submitted questions to Serbia related to taking step to improve "the access to high quality health services for women and to secure effective implementation of laws and policies providing compulsory health insurance and free service to all women, girls, and especially Roma women".[409] With regard to the Committee's interpretation of Article 12 of the Covenant, as well as obligations Serbia has according to the Convention on the Elimination of All Forms of Discrimination Against Women, the National Strategy of Gender Equality 2016-2020 contains the strategic objective to "systematically introduce gender perspective in adoption, implementation and monitoring of public policies" with the following benchmarks – "gender equality introduced in all strategic documents" and "gender evaluation of policies, programmes and measures".[410] On the other hand, the Public Health Strategy 2018-2026 contains only one activity that concerns gender equality – "continuous promotion of non-violent and non-discriminatory behaviour, gender quality and public shaming of violence". In addition, indicators and targeted values are not based on gender disaggregated data and no gender analysis was done in the introductory part as an analytical basis for formulating strategic objectives, activities and results.

With regard to children and adolescents, the Committee, in its General Comment No. 14, emphasizes a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage. With regard to the Committee's interpretation of Article 12 of the Covenant, it should be noted that within the Third UPR Cycle, Serbia received series of recommendations related to the improvement of the status of children. In response to a recommendation to prescribe statutory and other measures for protecting children against abuse and violence, Serbia stated that the Government is drafting a new strategy and action plan for protecting children against violence 2018-2020. In response to a recommendation to introduce statutory prohibition of corporal punishment of children, Serbia stated that working version of the Amendments to the Family Law already contains this provision. Finally, the Republic of Serbia took a note but has not ratified the Optional Protocol to the Convention on the Rights of the Child as "this requires a prior amendment of domestic legislation".[411] Furthermore,

406 Programme of Elementary Training of the Judicial Academy, Source: https://www.pars.rs/images/dokumenta/Pocetna-obuka/Program-pocetne-obuke-PA.pdf.
407 National Academy for Public Administration, the 2019 General Programme for Civil Servants, Source: http://napa.gov.rs/wp-content/uploads/2019/02/Opsti-program-obuke-DU.pdf.
408 CESCR General Comment No. 14, 8.
409 The Government of Republic of Serbia, Answers to Additional Questions of the Committee on the Elimination of All Forms of Discrimination against Women in regard to the Fourth Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women 22-23. Source: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/odgovori_cedaw_iv_izvestaj_serb_2018.doc.
410 National Strategy for Gender Equality 2016-2020, 35.
411 Serbia's Answers to Recommendations of UN members within the Cycle III of the Universal Periodic Review, 440

the Committee for the Rights of the Child recommended to Serbia to amend Family Law in order to "eliminate all exceptions which enable entering into marriage for persons younger than 18".[412] Moreover, the Committee recommended to Serbia to introduce the system for monitoring child marriages, especially among Roma girls; to provide victims with shelter, rehabilitation and counselling and to organize campaigns to raise awareness about detrimental effects of child marriages.[413]. Child marriages are especially prominent among Roma girls – according to MICS findings, 17% of Roma girls is married before they reach the age of 15, while more than half of girls is married before 18 (compared to 7% of women in general population).[414] In the 2018 Progress Report, it is stated that child marriage and early and forced marriages remain a concern and there is a lack of support services for girls subject to child marriage. Within this context, the failure to adopt main statutes, which should regulate preconditions for combating this problem is particularly worrying. Amendments to the Family Law and the Law on the Rights of the Child and Children's Ombudsman were not drafted by the Government in 2018, although this was indicated in the Governmental Working Plan for 2018.

With regard to elderly persons, the Committee in its General Comments No. 14 indicates the need to adopt measures focusing on attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity. The European Committee for Social Rights within the Council of Europe concluded that older persons living in rural areas in Serbia are less informed about their rights compared to others.[415] The Programme of Reforming Employment and Social Polices (ESPR) adopted by the Serbian Government in 2016 indicates two measures in this respect – the development and strengthening of work concerning home care and providing palliative care in local health centres and establishment of special palliative care units for extended treatment and care within secondary care health institutions. However, the Government has not yet prepared and made available the report on the implementation of the ESPR in order to see if those two measures are implemented. Moreover, other strategic documents identifying measures and activities in this area are not implemented or there are no reports on their implementation, including the Social Protection Strategy and the Palliative Care Strategy. What is also worrying is the fact that Public Health Strategy does not contain a single reference to palliative care nor does it contain measures or activities for addressing this issue. In 2018, on the basis of citizens' and NGOs' complaints, the Commissioner for Gender Equality sent a recommendation to the Ministry of Health "to undertake measures and activities within its competence with the aim of developing and improving palliative care of patients and providing to support to their families at the whole territory of Serbia".[416] In their reports, civil society organisations invited the Government to strengthen home care services, as well as palliative care services in local health centres[417].

2. STATUS OF ROMA

When it comes the status of Roma, the Report describes the following initiatives aiming to improve the health status of the Roma: health mediators, TBC control project, project

412 The Committee on the Right of the Child, Concluding Comments on Combined Second and Third Periodic Report of Serbia, 5.
413 Ibid. 9.
414 UNICEF Srbija, "Violence against Children – Determinants, Factors and Interventions", 2017, 9.
415 ECSR, Conclusions 2017 – Serbia, 27.
416 The Commissioner for Gender Equality, Measures recommended to the Ministry of Health in order to achieve equality in regard to palliative care 2018, Source: http://ravnopravnost.gov.rs/preporka-mera-za-ostvarivanje-ravnopravnosti-ministarstvu-zdravlja-povodom-palijativnog-zbrinjavanja/.
417 Amity, "Alternative reports of the Committee for Elimination of All Forms of Discrimination against Women in the Republic of Serbia", 2018, p. 16. Source: http://www.amity-yu.org/wp-content/uploads/2018/07/Amity-Alternativni-Izvestaj-o-diskriminaciji-starijih-zena-u-Srbiji.pdf.

for combating HIV/AIDS and the analysis of the health care policy measures to availability of health care to the Roma population in the Republic of Serbia.

Responding to the Committee recommendation that Serbia take special measures to mitigate the poverty rate among the Roma (paragraph 56 of the Concluding observations), the Report states that the project "Implementation of the Action Plan on Healthcare for Roma" is underway. In addition, the Report repeated the information on the engagement and results of work of health mediators and stated that an electronic database was created on the health status of Roma, their education, employment and living conditions.

Answering the Committee's additional question related to the information on the Ombudsperson's assessment of effectiveness of the measures of Roma inclusion in Serbia, Serbia has responded that the Ombudsperson indicated in his Report on the implementation for the advancement of the status of Roma that the problems in implementation of inclusion measures relate to several areas, including healthcare.

Responding to the Committee's additional question relating to the manner in which the Strategy for the improvement of the status of the Roma for the 2012-2014 period and the Action plan for its implementation, as well as the new Strategy for prevention and protection from discrimination have contributed to, inter alia, healthcare, the Republic of Serbia has responded that the Strategy defines, for the purpose of continuous improvement of the quality of healthcare and the safety of patients "an obligation of the ministries in charge of health and social policy to advance their cooperation in improving the availability and accessibility of the healthcare to particularly vulnerable groups, inter alia, particularly to Roma."[418]. Further, it was stated that the Law on Health Insurance implements an affirmative action measure whereby citizens of Roma nationality who do not have a permanent residence are enabled to realize the right to health insurance in a simplified procedure for issuing a health insurance booklet. Furthermore, the previously provided information, that the project "Implementation of the Action Plan on Healthcare for Roma" and the project of introduction of Roma health mediators into the healthcare system of the Republic of Serbia, "Health mediator", are being implemented, was reiterated.

In its Concluding observations, the Committee has expressed its concern over the prevalent discrimination of the Roma, which is confirmed, inter alia, by inadequate healthcare. Additionally, the Committee has expressed regret over the shortcomings in the implementation of the Strategy for Improvement of the Status of Roma 2012–2014, as conceded by the State party, and the insufficient implementation of the nationally agreed priorities regarding Roma at the local level. The Committee has therefore urged Serbia to take further measures in order to overcome the prevailing discrimination against Roma in the enjoyment of economic, social and cultural rights, including the revision of the Strategy for Improvement of the Status of Roma[419], and to ensure that the nationally agreed priorities on Roma are duly communicated to the local authorities to be effectively implemented. In the context of these observations by the Committee, it should be noted that the Republic of Serbia has received several recommendations concerning the ensuring of non-discriminatory and adequate healthcare for mothers and children of Roma nationality within the III UPR cycle from UN member states. In its Progress Reports for Serbia, the European Commission regularly assesses that the Roma are among the most discriminated social groups. It this context, it is worrying that the Strategy for prevention and protection from discrimination has expired and the new one has not been adopted. According to the Draft revision of the Action plan for Chapter 23 – Judiciary and Fundamental Rights[420], the deadline for its

418 Office of Human and Minority Rights, Answers to Committee's additional questions, 13.
419 Committee on Economic, Social and Cultural Rights, Concluding observations, 4-5.
420 Governmetn of the Republic of Serbia, Action Plan for Chapter 23, 2016.

adoption is the II quarter of 2019.[421]. Further, even though the Government of the Republic of Serbia has adopted the Strategy for Social Inclusion of Roma 2016-2025, the Action plan for the 2019-2020 period has still not been adopted, and the budget of the Republic of Serbia for 2019 does not allocate adequate funds for the continuation of implementation of this strategy. What is most alarming is the delay in implementation of obligations from Chapter 23 concerning the introduction of health mediators as accessory healthcare staff in the job classification, and the provision of additional funds for increasing the number of healthcare mediators. Namely, according to the Draft revision of the Action plan for Chapter 23, instead of the introduction of health mediators in the healthcare system as accessory healthcare staff, there is an unclearly defined activity named "Implementation of a sustainable model of institutionalisation of health mediators", and instead of the commitment to engage 90 mediators by 2017, this target value is now redefined as "Number of engaged health mediators increased to 85 with a tendency of growth during 2019 and 2020"[422].

3. MEASURES TO REDUCE STILLBIRHT-RATE, INFANT MORTALITY AND PROVISION OF HEALTHY DEVELOPMENT OF CHILD

Article 12, paragraph 2 of the Covenant obliges the states to take measures in order the achieve the full realization of every person's right to the highest attainable standard of physical and mental health. These steps include the ones necessary for the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child (paragraph 2 item a)).

When it comes to birth control, the Report provides data on maternal mortality, that is, of mortality of women related to diseases and conditions during pregnancy, at childbirth and six weeks after childbirth. Furthermore, the Report provides data on: rate of deliberate termination of pregnancy of women of reproductive age, percentage of women of reproductive age who use modern contraception methods and mortality of women of reproductive age.

In General Comment No. 14, the Committee has provided an interpretation of this item of Article 2, paragraph 2 as "measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information".[423] In the context of this interpretation of Article 12 of the Covenant by the Committee, it is important to note that, after the expiry of the previous strategy, the Government of the Republic of Serbia has finally adopted a new Birth Promotion Strategy in 2018[424] and in the same year established a Population Policy Council presided by a Government vice-president. However, even though this strategy does include relevant measures in the context of state's obligations as established by Article 12 of the Covenant and Committee General Comment No. 14, it does not include a projection of relevant budget funds on the national level or on the local self-government level. On the other hand, as communicated at the 5th session of the Population Policy Council in February 2019, the Government has allocated 650 million dinars from the budget for co-financing population policy measures on the local level, which is 150 million dinars more compared to 2018, and five times more compared to 2016.[425]. Furthermore, according to some assessments of the civil society, the strategy is an unambitious document which fails to refer to the

421 Source: Ministarstvo pravde, https://www.mpravde.gov.rs/files/Revizija%20AP%2023%20Osnovna%20prava.docx.
422 Ibid.
423 CESCR General Comment No. 14, 5-6.
424 Government of the Republic of Serbia, Birth Promotion Strategy, 2018.
425 Source: Cabinet of the Minister without portfolio in charge of demography and population policy http://www.mdpp.gov.rs/aktivnosti.php#a169.

catastrophic status of the Roma population in Serbia, women and children in particular.[426]

4. IMPROVEMENT OF ALL TYPES OF HYGENE AND INDUSTRIAL HYGENE

Article 12, paragraph 2 of the Covenant imposes an obligation on member states to take certain steps to achieve the full realization of the right to the enjoyment of the highest attainable standard of physical and mental health. These steps include those aimed to improve all aspects of environmental and industrial hygiene (paragraph 2 item b)).

Responding to the Committee's objections in which the Committee reminded the Republic of Serbia to "ensure access to safe drinking water within, or in the immediate vicinity of each household" and to "identify disaggregated indicators and appropriate national benchmarks in relation to the right to water, in line with the Committee's general comment No. 15 (2002), and to include information on the process of identifying such indicators and benchmarks in its next report" (paragraph 59 of the Concluding observations), the Republic of Serbia has responded in the Report that he prices of communal products and services are limited by Government regulation, including those provided by publicly owned companies founded by the local self-government. Furthermore, the Report provided the information from the Statistical Office of the Republic of Serbia, according to which 99% of the population has access to "advanced sources of drinking water""[427] where this share is 100% in urban environment and 97,6% of population in rural environments. According to the same research, the main source of drinking water are the local waterworks, but a considerable percentage of rural households (19,7%) uses closed wells, hydrants and open sources (including lakes and streams).

In its concluding observations the Committee has expressed grave concern about the poor conditions in which thousands of Roma families live in sub-standard informal settlements without access to basic services such as electricity, running water, sewage facilities and medical care. In that vein, the Committee urged Serbia to take measures to enable that Roma have access to safe drinking water and adequate sanitation. In addition, the Committee has expressed concern because of lack of direct access to safe drinking water in 17.5 per cent of rural households in Serbia and about the poor quality of water in some parts of Serbia. The Committee therefore recommended that Serbia "undertake additional measures to implement water supply projects to ensure equal access to safe drinking water in all parts of the country. "[428] In that regard, the Committee invited Serbia to take into account its general comment No. 15 (2002) on the right to water.[429]. In this comment, inter alia, the Committee states that core obligations of the states include the obligation to adopt and implement a national water strategy and plan of action addressing the whole population, which should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored. Both documents shall give particular attention to all disadvantaged or marginalized groups. On the other hand, the Committee includes the following in the violations of the right to water: failure to enact or enforce laws to prevent the contamination and inequitable extraction of water; failure to effectively regulate and control water services providers; failure to protect water distribution systems. In the context of these Committee observations, the Government of the Republic of Serbia has adopted a Water Management Strategy in 2016.[430]. However, this strategy, even though it sets the

426 Source: MONS, https://mons.rs/jedan-kriticki-osvrt-na-strategiju-podsticanja-radjanja.
427 Ibid., 142.
428 Committee on Economic, Social and Cultural Rights, Concluding observations, 11.
429 CESCR General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights).
430 Government of the Republic of Serbia, Strategy for Managing Waters on the Territory of the Republic of Ser bia until 2034.

provision water supply to population as a priority above all other types of usage of water and states that there are still areas in which adequate water supply is not secured, lists as priority activities the resolution of the state of affairs in inhabited settlements in Vojvodina, more precisely in Zrenjanin, Kikinda and other settlements where the use of drinking water is prohibited. The Strategy never takes notice of the difficult status of the Roma in informal settlements regarding access to drinking water, even though the fact that many Roma households do not have access to drinking water was pointed out by the European Commission in its 2018 Progress Report, and in its previous reports. Additionally, international human rights' protection organisations, have been pointing out this issue for years, and hence Amnesty International has noted in its report on Serbia that Roma families in informal settlements are denied access to social and economic rights, including the right to water[431].

5. PREVENTION, TREATMENT AND CONTROL OF EPIDEMIC, ENDEMIC, OCCUPATIONAL AND OTHER DISEASES

Article 12, paragraph 2 of the Covenant imposes an obligation on member states to take certain steps to achieve the full realization of the right to the enjoyment of the highest attainable standard of physical and mental health. These steps include those necessary for prevention, treatment and control of epidemic, endemic, occupational and other diseases. (paragraph 2. item c)).

When it comes to infectious diseases, the Report indicates: infectious disease mortality rate, tuberculosis incidence rate and HIV/AIDS incidence rate, as well as the HIV infection/AIDS mortality rate. Responding to the Committee's additional questions with regards to measures taken "in order to improve the health of adolescents and provide advisory services on reproductive health and services provided to the general population, particularly with regards to fight against the spreading of HIV virus"[432], as well as on the number of children infected with HIV virus and measures for providing them the necessary medical care, the Republic of Serbia has provided data on the number of officially registered persons infected with HIV. In addition, the Report states that the Republic of Serbia has, in 2011, adopted the Strategy on HIV infection and AIDS, the activities of which are sufficiently age- and gender sensitive. Furthermore, the Report points out that some the Strategy activities are essential age or gender specific, e.g. prevention of vertical transmission directed towards pregnant women, or prevention of HIV/AIDS directed towards children and youth from different population groups.

In its concluding observations, the Committee has expressed concern about the increase of HIV/AIDS, and "the absence of information on sexual and reproductive health and rights as part of the education curricula"[433]. The Committee has thus recommended that Serbia continue to address the spread of HIV/AIDS by promoting adolescent health and providing health counselling and services to the general public and provide for comprehensive sexuality education. In the context of these Committee observations, it should be noted that in 2018 the Government of Serbia has adopted a Strategy for Prevention and Control of HIV infection and AIDS in the Republic of Serbia 2018-2025, the general objective of which is "the prevention of HIV infection and other sexually transmitted infections, and the reduction of mortality and improvement of quality of life of persons living with HIV"[434]. The Strategy includes relevant measures and activities in the context of Committee's recommendations. However, despite the recommendation from the Screening report

431 Source: Amnesty International, https://www.amnesty.org/en/countries/europe-and-central-asia/serbia/report-serbia/.
432 Office of Human and Minority Rights, Answers to Committee's additional questions, 72.
433 Committee on Economic, Social and Cultural Rights, Concluding observations, 11.
434 Government of the Republic of Serbia, HIV infection and AIDS Prevention and Control Strategy in the Republic of Serbia, 2018-2025, 17.

on Chapter 28 – Consumer protection and health, and from the 2018 Serbia Progress Report of the European Commission, that additional attention should be given to effective and sustainable financing of the national HIV/AIDS strategy, some measures and activities in this strategy do not have related budgetary projections. For instance, there are no budgetary projections for the activities: „1.1.3. Conduct counselling and diagnostic HIV testing recommended by the doctor", „1.7.1. Develop and implement health education programmes in elementary and secondary schools while using existing educational system resources, including distribution of preventive materials" and „1.7.2. Implement parent and teacher education programmes", nor for measures: „2.2. Increased number of diagnosed persons infected with HIV on ART who have stable viral suppression ", „2.3. Increased accessibility of social care and accommodation services for persons living with HIV (accommodation in home, palliative care)" and „2.4. Every person who lives with HIV in Serbia has access to quality and timely peer support adjusted to individual needs ".

Answering to the Committee's recommendation to the Republic of Serbia to "intensify its anti-smoking and healthy diet campaigns with a view to combating the causes of cardiovascular diseases "[435] (paragraph 61 of Concluding observations), the Republic of Serbia has responded in the Report that the following measures were taken: Tobacco Control Strategy was adopted; the Law on Protection of Population from Tobacco Smoke was adopted; nine campaigns were organised in which harm from tobacco consumption and exposure to tobacco smoke were presented, including the national anti-smoking campaign "Leave and win"; the National Programme for prevention, treatment and control of cardiovascular diseases in the Republic of Serbia until 2020 has been adopted.

In its General comment No. 14 the Committee provided an interpretation that industrial hygiene refers to the minimization of the causes of health hazards inherent in the working environment (e.g. abuse of alcohol, and the use of tobacco, drugs and other harmful substances). In the context of this interpretation, it should be noted that in its 2018 Progress Report for Serbia, the European Commission has assessed that there was no progress in the development of the new tobacco control strategy, use of image warnings and increasing the price of cigarettes, and that the use of tobacco in public venues is not in accordance with EU recommendations. Furthermore, in the Screening Report for Chapter 28 – Consumer rights and health it was suggested that Serbia consider the introduction of bans related to distance sale of tobacco and use of tobacco promotional products, as well as the introduction of measures of information regarding the costs of advertising, marketing and promotion and reducing the sponsorship of any type of events.

6. CREATION OF CONDITIONS WHICH WOULD ASSURE TO ALL MEDICAL SERVICE AND MEDICAL ATTENTION IN THE EVENT OF SICKNESS

Article 12, paragraph 2 of the Covenant imposes an obligation on member states to take certain steps to achieve the full realization of the right to the enjoyment of the highest attainable standard of physical and mental health. These steps include those necessary for creation of conditions which would assure to all medical service and medical attention in the event of sickness. (paragraph 2 item d)).

Responding to the Committee's observations in which the Committee asked the Republic of Serbia to "ensure the provision of adequate counselling and other assistance to victims of physical and sexual violence and other traumatizing experiences related to armed conflict, in particular women and children" [436] and to include information on these

435 Government of the Republic of Serbia, Second periodic report, 142.
436 Ibid., 144.

and other mental health services, as well as on the number of victims of such violence, in its next report, the Republic of Serbia has responded in the Report that the Government has adopted, in 2007, the Strategy for the Development of Mental Health and related Action Plan. It additionally stated that the social services provide services of protection and care to all adults and children who are in some type of social need, which includes help and support to victims of all forms of violence and traumatizing experiences.

Responding to the Committee's additional question on measures taken "in order to ensure access to mental health and rehabilitation services to victims of physical and sexual violence"[437], the Republic of Serbia has provided information on the following activities of the Ministry of Labour, Employment and Social Policy: all social protection institutions have been forwarded the Special protocol on protection of children from abuse and neglect, a Rulebook on prohibited actions of social protection employees has been adopted and a Memorandum of cooperation was concluded with the Initiative for the rights of persons with mental disabilities for the purpose of implementation of the project "Monitoring of Institutions in Social Protection Reform". It was further stated that there are 12 safe houses in Serbia, which are available to victims of violence free of charge 24 hours a day, seven days a week. It was additionally pointed out that an SOS helpline for reporting violence was opened and that it is available 24 hours a day non-stop.

In its Concluding observations, the Committee has expressed concern about the limited network of mental health services for children and recommended to Serbia to extend the network of mental health services for children while replacing institutional care with community-based support services. In the context of these Committee observations, it should be noted that the Committee for the Rights of Disabled Persons has stated it was deeply concerned about the number of children with disabilities living in institutions, especially those with intellectual disabilities.[438] The Committee has urged Serbia to strengthen its efforts to deinstitutionalize children, in particular those with intellectual and/or psychosocial disabilities, as well as to provide children with disabilities with sufficient early childhood intervention and development services. Furthermore, the Committee has expressed its concern on use of involuntary hospitalisation and forced institutionalization of children and adults with disabilities and urged Serbia to prohibit all types of forced actions against children and adults with disabilities. This is why the assessments of the European Commission's 2018 Progress Report for Serbia, that there was no progress in the development of mental health institutions in the local community or the deinstitutionalisation of persons with mental health issues are worrying. The assessments of the civil society are also critical towards the current situation in the field of mental health. It is thus stated that persons with intellectual or mental disabilities, although regularly recognised as particularly vulnerable in terms of discrimination, have still not benefited from non-discrimination legislation, as they seldom appear before the court when cases of discrimination against them are heard. [439] Moreover, it is suggested that independent bodies, primarily the Commissioner for the Protection of Equality and the Ombudsperson be more proactive with regards to the protection of the rights of persons with disability, particularly when it comes to mental disability, and the users of residential institutions.[440] In this context, it is worrying that the Government of the Republic of Serbia has envisaged, in the revised Action Plan for Chapter 23, the adoption of the Strategy for deinstitutionalisation and development of community-based services as late as the IV quarter of 2020.[441]

437 Office of Human and Minority Rights of the Republic of Serbia, Answers to Committee's additional questions, 71.
438 Committee on the Rights of Persons with Disabilities, Concluding observations on the Initial Report on Serbia, 2016.
439 M. Reljanović (2017).
440 Beogradski centar za ljudska prava, Ljudska prava u Srbiji 2018 (Human Rights in Serbia 2018).
441 Source: Ministarstvo pravde, https://www.mpravde.gov.rs/files/Revizija%20AP%2023%20Osnovna%20prava.docx.

ARTICLE 13 – RIGHT TO EDUCATION

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

1. SYSTEM OF DUAL EDUCATION OF CHILDREN

The Serbian Law on Dual Education of Children introduced a system of dual education in the high schools. Although the concept of practical education in schools is not a new concept, ways of implementing statutory provisions raised concerns that the system is conceived with the aim of legalising the exploitation of children. The main deficiency in regulating the status of children at work in dual education (as stated in the statute "learning through work") concerns the basis of child's employment. A child does not sign an employment contract with the employer who is providing the apprentice scheme for a child. In most cases, a child does not sign a contract but his or her parents or carers/legal representa-

tive (a pupil signs the contract only if he is an adult) sign on his or her behalf. Thus, according to the Labour Law, a child may become employed (children older than 15) and cannot sign a contract concerning learning through work. The employer signs a contract with the school in order to receive children undertaking dual education; however, the assessment of requirements for this scheme and the grant of necessary licences are done by the Serbian Chamber of Commerce, which is an association of employers. This association has unusually wide discretion not aligned with its nature and objectives. Its effective engagement in the education of children is especially alarming (for example, according to Article 32, paragraph 4 of the Law on Dual Education, the Serbian Chamber of Commerce nominates representatives of employers to the Commission for leaving certificates), especially as this is not prescribed by any of the statutes regulating the education and upbringing of children. In regard to the nature of the contract parents sign with the employer, it must be noted that this is not an employment contract and children learning through work do not enjoy the same employment rights except several provisions prescribed by the Law on Dual Education. These rights are minimal: children have the right to protection at work and right to some form of remuneration (travel expenses, food expenses and insurance); their salary is below minimum wage (a pupil is paid per hour and it amounts to 70% of minimum wage per hour as per Article 34, paragraph 2 of the Law on Dual Education; this is in breach of Labour Law and any labour law standard as well as ILO Minimum Wage Fixing Convention (No. 131). What is more important is that provisions of the Law on Dual Education may indicate a correlation between children's learning through work with forced labour. The ILO Forced Labour Convention (No. 29) defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". As the child is not independently signing the contract and he or she is subjected to much worse working conditions than what is the legal minimum prescribed by Labour Law, coupled with a possibility of being deprived of right to education if he or she does not accept work, it becomes evident that there is a similarity between forced labour and the learning through work within the system of dual education in Serbia.

2. SEGREGATION AND INCLUSION OF ROMA CHILDREN IN EDUCATION

The segregation of Roma children in education is a problem in Serbia which is well documented in various studies.[442] By amending the Law on the Education and Upbringing System, the old provision whereby a child attends the school according to its place of residence was replaced with the provision giving parents a choice where to send their child to school. This leads to children leaving school in areas which are mostly populated by Roma. With regard to the complaint about the segregation in a primary school in Leskovac,[443] the Commissioner for Equality Protection issued an opinion stating that in this particular case there was no breach of Law on Prohibition of Discrimination; however, the local authorities must address the issue of segregation which is the result of statutory provision giving parents a choice where to send their children to school. The Commissioner for Equality Protection has raised concerns about the existence of segregation of Roma population in schools and emphasised that certain local authorities undertook necessary measures to that end, while some local authorities ignored recommendations and opinions.[444] The overview

442 See more in Segregation in Education, http://romaworld.rs/segregacija-u-obrazovanju/; Jasmina Čekić-Marković, The Analysis of Application of Affirmative Measures in Education of Roma and Recommendations for Improvement, Beograd, 2016.; Still far from the Goal – Overrepresentation of Roma Children in "Special Schools" in Serbia, Report of the European Centre for Roma Rights, Budapest 2014.

443 A complaint of Company R v the Ministry of Education regarding discrimination on the basis ethnicity in education in upbringing No. 07-00-00445/12 of 11.03.2013.

444 Segregation of Roma Children and Resistance to Inclusive Education – the Greatest Problems https://www.dijalog.net/segregacija-romske-dece-otpor-inkluzivnom-obrazovanju-najveci-problemi-u-srbiji

of Commissioner's practice with regard to segregation is collected and published in the special editions of the Commissioner[445] and *Special Report on Discrimination of Children*[446].

In its 2014 Concluding Comments (point 35), the Committee expressed concerns about placing Roma children into special schools and classes and recommended measures which will guarantee the enrolment of Roma children in regular classes.

In its Concluding Comments with regard to the 2017 Second Periodic Report for Serbia, the Committee on Elimination of Racial Discrimination indicated a need for the state to react and eliminate the segregation of Roma which is *de facto* present in schools (CERD/C/SR.2604). The Committees is deeply concerned that majority of parents take their children out of schools where Roma children attend and emphasised the need to work on education and de-segregation in schools.

The Strategy of Social Inclusion of Roma in Republic of Serbia 2016-2025 recognises the problem of segregation of Roma children as one of the main impediments in achieving equality in education, low inclusion of children and high levels of children leaving schools. Unjustified enrolment of children in "special schools" is recognised as an important problem – the percentage of Roma children in these schools is around 30%, while the percentage of Roma population in general population is disproportionately lower, 3-4%. The segregation is increasing and there is a lack of effective measures of de-segregation. With regard to measures identified in this document as appropriate for de-segregation, short-term measures should include formation of mixed classes and urgent action in cases of emergence of segregated classes or tendency of taking children out of schools leading to segregation of Roma children. This also includes measures of addressing unjustified enrolment of Roma children in special schools.

The situation on the ground is far from satisfactory. In the World Bank analysis[447] which used data from 2017, only 17% of Roma children (3-6 age) attended pre-school programmes; the gap between enrolled and non-enrolled Roma children in pre-school institutions in Serbia is the second widest in the Balkans (41% of non-Roma children as opposed to 17% of Roma children). With regard to primary school education, the percentage of enrolled children is negligibly increasing (80% of Roma children were enrolled in primary schools in 2011, while in 2017 it amounted to 84%). However, data on Roma population demonstrated that 1/3 of Roma population from 18-21 years of age did not complete primary school education which indicates a high percentage of those who quit school. With regard to high school education, the percentage of Roma which completed this level of education in Serbia is the lowest in the Balkans. The percentage of Roma children in segregated schools is 9%, while it amounts to 2% in special schools. Only 14% of Roma population acquires a high school diploma and only 1% has a university degree.

445 Edited collection of opinions and recommendations of the Commissioner for Gender Protection – Acting upon complaints related to discrimination of children, Belgrade, 2013 and the Second Edited Collection of opinions and recommendations of the Commissioner for Gender Protection – Acting upon complaints related to discrimination of children, Belgrade, 2015.

446 Special Report on Discrimination of Children, Belgrade 2014.

447 Roma at a glance – Serbia, UNDP, World Bank, European Commission, April 201

OTHER ISSUES OF RELEVANCE FOR THE IMPLEMENTATION OF THE COVENANT

1. SERBIA'S REFUSAL TO SIGN THE PROTOCOL TO THE COVENANT

The Optional Protocol to the International Covenant on Economic, Social and Cultural Right (hereafter: the Protocol) was adopted in 2008 at the session of the UN General Assembly and entered into force in 2013. Forty five UN members have signed the Protocol, while 24 states have ratified it, 10 of which are European countries (including some neighbouring countries – Bosnia and Herzegovina and Montenegro).

The Protocol was adopted "in order to further achieve the purposes of the Covenant and the implementation of its provisions". Article 1 of the Protocol prescribes the competences of the Committee to receive and consider communications (hereafter: the Committee), including communications submitted by the contracting parties to the Protocol. Furthermore, the Protocol stipulates that communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party, as well as communication submitted by a third person on their behalf and with their consent (Article 2). Communications can be submitted provided that all available domestic remedies have been exhausted, except when the application of such remedies is unreasonably prolonged. The Committee shall transmit received communications to the State Party concerned which has six months to submit response and information on measures for remedying the subject matter of the communication (Article 6). After adopting its views on the communication, together with its recommendations, the Committee shall transmit them to the state party and other interested parties. The State Party has six months to submit a written response, including information on any action taken in the light of the views and recommendations of the Committee (Article 9). The Protocol prescribes competences of the Committee for friendly settlement of dispute which is the subject matter of the communication (Article 7). Beside communications, the Protocol prescribes two additional proceedings: inter-State communications and inquiry procedure. With regard to inter-state communications, a State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant (Article 10). With regard to the inquiry procedure, a State Party to the present Protocol may at any time declare that it recognizes the competence of the Committee to launch an inquiry procedure on the basis of information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, including a visit to its territory (Article 11).

The Protocol also addresses some other important issues such as the establishment of a trust fund to provide expert and technical assistance to States Parties with the aim of improving the realization of rights guaranteed by the Covenant (Article 14) and the obligation of State Parties to disseminate the Covenant and the present Protocol and to facilitate access to information about the views and recommendations of the Committee and to do so in accessible formats for persons with disabilities (Article 16).

In its Concluding Comments on the Second Periodic Report for Serbia adopted on the 55th session of the Committee held in 2014, the Committee invited Serbia to "consider signing and ratification of the Protocol" to the Covenant.

Within the third cycle of the Universal Periodic Review (UPR) carried out in 2018, Serbia received 190 recommendations from 74 states. Serbia accepted 175 recommendations and took note of 15 recommendations. Among recommendations noted by Serbia is the recommendation submitted by Costa Rica which stipulates the following: ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights". In the agreed response of the Serbian delegations the following was stated: in order to accede to the Protocol, it is necessary to "amend relevant domestic legislation which is not a priority, bearing in mind the current situation".

The refusal to sign the Protocol was criticised by the civil society in Serbia. It was estimated that this represented a missed opportunity for Serbia to take steps in guaranteeing human rights standards, which exist in developed countries. This also demonstrates that Serbia is still not ready to guarantee additional protection of rights to its citizens. In December 2018, 51 civil society organisations submitted an initiative to the Office for Human and Minority Rights for the ratification of the Protocol which would "position Serbia among states which provide the highest levels of protection of these rights." The Office has forwarded this initiative to the Ministry of Labour, Employment, Veterans and Social Affairs that dismissed the initiative without any explanation.

2. DIRECT APPLICATION OF THE COVENANT AND OTHER INTERNATIONAL SOURCES

Although the Constitution guarantees the direct application of ratified international treaties (Article 16, paragraph 2 Constitution: "Generally accepted rules of international law and shall be an integral part of the legal system in the Republic of Serbia and applied directly. Ratified international treaties must be in accordance with the Constitution."), this does not happen in practice. In administrative bodies' decisions it is impossible to find a direct reference to international instruments on human rights; references to international sources in court decision are rare, almost an exception in court decisions, with the exception of the Constitutional Court. It is not possible to precisely determine the percentage or the number of court decisions which invoke international sources of law. Some surveys showed that this number is negligible; a reference to sources is not done to additionally justify the court decision or to clarify the situation in a specific case. Making a reference is at the level of abstraction and is reduced to listing international instruments which may be applied to a specific case, with a noticeable lack of explanation of their significance and indication of provisions prescribed by those instruments that judge has in mind when stressing their importance. The Survey on the Implementation of the Law on Prohibition of Discrimination demonstrates that judges, in cases with regard to discrimination, rarely take international instruments into consideration, despite the fact that Serbia approved majority of multilateral agreements in this area. "In many cases, Serbian courts had a problem to apply international instruments in determining the legislative framework and passing decisions. This problem is not only specific to cases of discrimination. Although, there is a clear obligation to apply ratified instruments in the Constitution of Republic of Serbia, international standards are generally applied in proceedings before national courts only if they are incorporated into domestic laws or as a result of an effort undertaken by lawyers in specific cases. The sample analysis shows that only in seven cases (which are 8% out of 87 cases) courts invoked international instruments. In all seven cases, there was a reference to the European Convention on Human Rights; the International Covenant on Civil and Political Rights was invoked in three cases, while the reference to European Social Charter and the Universal Declaration of Human Rights was made in one case. In most of these decisions, international instruments were mentioned without further explanation of their

importance for the specific case. Only in few cases, the courts mentioned specific article of an international instrument which was relevant for the case – it was always in relation to Article 14 of the ECHR and Article 1 of Protocol 12 to the ECHR. In majority of these decisions, the courts considered conventions as a result of prosecutor's claims that a defendant violated convention in question. Courts never stated if these claims were correct or wrong. In all decisions which invoked international instruments, those instruments are simply listed – there is neither indication of the court's position in regard to those instruments nor any indication of how they are applied in the decision. Maybe the most illustrative example of this problem concerning discrimination can be identified in one of the decisions of the Higher Court in Belgrade.[448] In Pfeiffer case and in relation to the claims of former pilot of German origin who was discriminated by national air company JAT, the court decided that JAT discriminated against the pilot but only in relation to period after 2003 (as discrimination was not prohibited before that time by Serbian (Yugoslav) laws. The judge obviously did not know that first anti-discriminatory rules found their place in the 1974 Constitution of Yugoslavia and that former Yugoslavia ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1971 (both Covenants entered into force in 1976 after 10 ratifications were deposited).“[449]

In its 2014 General Comments, the Committed in point 5 stresses the following: "Recognising that the Covenant forms an integral part of the legal system and it is directly applicable, the Committee regrets that the State Party was neither able to provide information on cases of direct applicability of the Covenant before national courts nor information on available remedies for individuals who reported the violation of their economic, social and cultural rights. The Committee invites the State Party to gather and include the following information in the next periodic report: information on justification of rights contained in the Covenant, including cases of direct application of the Covenant before national courts and the information on available remedies for individuals who reported the violation of their economic, social and cultural rights." In that respect, the Committee refers to its General Comment No. 9 on the internal application of the Covenant. The Committee also recommends to the State Party to improve its training programmes on human rights in order to promote better knowledge, awareness and the application of the Covenant, especially among holders of those rights." With regard to this specific recommendation of the Committee, it seems that there is no improvement in regard to education of judges and there is no awareness among individuals who apply those legal provisions that direct application of international instruments is not voluntary and that international instruments have to be taken into account in deciding on rights of individuals or groups or deciding in disputes among parties. This is particularly important when the state cannot ensure effective enjoyment of rights guaranteed by the Covenant, in accordance with the General Comment on the application of the Covenant in domestic legal system.[450]

448 Decision of the Higher Court in Belgrade 5P1.430/10 of 5 January 2012
449 M. Reljanović (2017), 16-17
450 Committee for Economic, Social and Cultural Rights, E/C.12/1998/24

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