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The peaceful resolution of labour disputes in the direction of social peace

Abstract

The purpose of this article is to point out the significance of the existence of the Republic Agency for the Peaceful Settlement of Labour Disputes through an assessment of its previous results. The number of cases resolved through the Agency unambiguously indicates its growing reputation in the last five-year period and an increasing number of employers and employees are contacting the Agency in search of advice on, assistance with or resolution of problems related to labour and labour relations. Through its activities, the Agency provides assistance to the social partners to initiate negotiations and find mutual and acceptable solutions for all parties around the negotiating table. Nevertheless, its task has been far from easy in the prevailing labour conditions in Serbia – an essential prism through which to view its achievements – but the familiarity of foreign investors with alternative dispute resolution mechanisms indicates that the law and social advance can go hand-in-hand, thereby also achieving the aims of the government.

Keywords: *Agency for the Peaceful Settlement of Labour Disputes, labour disputes, industrial conflict, social peace, reforms, dispute resolution*

Introduction

The process of political, economic and social reforms commenced after 5 October 2000, burdened with all the restrictions and negative heritage of the previous decade. European integration and/or Serbia's membership of the European Union represents one of the undisputed determinants of this process, at least at the political (or declarative) level. The process of establishing the legal framework for social peace, as well as the appropriate mechanisms, institutions and practice of social peace has been taking place within this context.

There is a series of reasons, starting from the heritage of recent history mentioned above to current political and social movements, as to why this process has not achieved the desired pace and results, given the industrial and social conflicts to which these things have often led. Realistically, under conditions of deep social contradictions and separations, restrictions and industrial and social conflicts that, at some points, have attained the most radical forms, it has been extremely difficult to build social peace mechanisms and practice.

The Agency in the context of the new social environment

Viewed from the aspect of changes in the social environment, it can be readily explained why the Law on the basis of which the Agency was set up was adopted only

in 2004, giving a start time for its formal and actual operation of June 2005. This had been preceded by the ratification of a number of international political-legal documents, the Labour Law and other laws governing labour, economic and social rights, and the principles and contents of mutual relations between the social partners – i.e. the state, employers and trade unions.

The sequence of the events which preceded the establishment of the Agency and practice thereafter confirms that the work of the Agency, its results, and thus the measures to improve its capacities, may be objectively and comprehensively estimated only if the Agency is viewed as part of the overall social environment. The relationships between the Agency and the social environment, which includes the political system, legal order and the operation in practice of institutions, function under the feedback principle. On the one hand, positive changes in the social environment leading to democratisation provide an impetus to the activities and results of the Agency and the improvement and widening of its social role and functions, and *vice versa*. Namely, every new radically-conflictual situation diminishes the motivation and the hope of the actors involved that the problem can be resolved in an amicable way and, thus, also their motivation to contact the Agency in the attempt to find resolution.

On the other hand, improvements in the legal position and real capacities of the Agency enable an increasing number of disputed matters to be settled in an amicable way; however, its overall impact on the democratisation of society and the affirmation of the advantages of social and industrial peace is at least as important.

Within the overall political, economic and social reforms initiated in Serbia after 5 October 2000, the process also commenced of the harmonisation of labour, trade union and social legislation. Alongside the entire process of transition, changes in the labour and social legislation, which always openly or covertly expressed the real relationship between the social forces, have taken place as a conflicting, contradictory and complex process in which the different interests and views of the social partners are confronted very radically and openly.[1]

This complex and contradictory process is still ongoing, and will surely continue for many years to come, as an obligatory component in building the legal basis for a democratic open society, on the one hand, and as a requisite condition for Serbia's European integration on the other. The process confirms that all three social partners understand the significance and power of the legal regulation of industrial relations and have attempted, each one separately, to secure as favourable and influential a position as possible.

Such an approach can be found across the entire history of industrial relations as well as in the practice of establishing a legal basis for industrial relations in successful transition countries. In this regard, prior practice confirms that industrial relations history, viewed as a process of movement from industrial and social conflict towards industrial and social peace, or as a movement towards the strengthening and affirmation of social democracy mechanisms and practice, represents to a great extent the history of establishing a new area of legal science and practice – the labour and social law. Through practical experience, all industrial relations actors have become aware of the

1 Centre for Liberal-Democratic Studies (2005) *Four Years of Transition in Serbia* Belgrade.

advantages of social peace and, in this context also, of establishing a legal basis for industrial and social peace. Thus, a parallel process of the practical development of industrial relations and the establishment of the autonomous mechanisms for social peace has, more or less, taken place initially which, in later phases, went on to obtain the power of legal norms. In other words, legal norms were developed to cover the level of the development of industrial relations achieved in practice.

In transition countries, Serbia included, the sequence which has been gone through in this process has differed. Namely, transition countries have used the experiences of today's developed countries in the EU, taking on their laws which are indisputably good, democratic and human. However, practice has very often shown that the social partners, and society as a whole, did not have the real capacities to enforce these laws and, thus, that a smaller or greater gap subsequently appeared between law and practice. Serbia is also facing this problem today, in all areas, including that of the peaceful settlement of labour disputes.[2]

This, however, does not change the amount of work that has been done as regards the adoption of legal regulations governing industrial relations and their harmonisation with international standards and EU legislation. Primarily, one has to take into account that Serbia, as the legal successor to the Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia, had accepted more than ninety previously ratified Conventions and Recommendations of the International Labour Organisation (ILO), which define key international labour standards and principles as well as the contents of relations between the state, employers and workers and/or trade unions. We should mention predominantly here Conventions 87, 98, 111, 131, 135, 147 amongst others, which deal with the right of employees and employers to organise freely and without restrictions, the right to collective bargaining, the right to strike, protection of worker representatives, minimum social security norms, etc. In the same way, Serbia has also ratified the key UN documents regulating this area, the Convention on Civil and Political Rights and the Convention on Economic, Social and Cultural Rights.

Ratification of the European Social Charter, the strategically important document of the Council of Europe which defines common standards in the area of labour, economic, social and trade union rights, was important in establishing the legal framework for democratic industrial relations, in accordance with civilisation standards achieved at the beginning of the XXI century and, within this framework, of a legal basis for the peaceful resolution of labour disputes. Ratification of the Charter was an important part of the processes of social reforms and European integration in Serbia. In particular, after 5 October 2000, within the process of political, economic and social reforms there also commenced the reintegration of our country into international organisations and its active inclusion into the life and activities of the international community. Within these processes, the Federal Republic of Yugoslavia – of which the Republic of Serbia was a constituent part at that time – became a member of the oldest and the widest European organisation – the Council of Europe. This, on the one hand, opened new possibilities for international co-operation, but also confronted Serbia with new obli-

2 Centre for the Study of Alternatives and *Social Thought* (1998) *Social Politics in Transition* Belgrade.

gations, one of the most important of which was to accept the ratification of the revised European Social Charter.

The reform of labour legislation, in all successful transition countries, was a priority in terms of facilitating a dynamic and time-limited privatisation as well as a definition of the rights and obligations of employers (the new private owners of companies) and of employees (who were losing their jobs and changing employers), both of whom were entering newly into employment relations and other matters concerning labour law and collective bargaining.

However, the course that this process followed in Serbia cannot be entirely assessed as satisfactory, because it was pronouncedly conflictual and irrational; a process in which all the social partners spent a disproportionally high quantity of energy given the eventual outcome. In other words, it can be said that the process of adopting new labour and social legislation was one of the subjects of the most radical industrial and social conflicts.

In the first steps of this process, the Labour Law was adopted in December 2001, with the aim of reforming the labour relations system into one which would, as a priority, encourage new and foreign investment in the Serbian economy since this was a dominant strategic goal of the government, which viewed foreign capital and its investment in Serbia in terms of its potential for increasing economic development. The dominant goal of the reform of labour legislation was to protect capital attempting, at the same time, not to imperil the protection of workers' rights below the level of social endurance. The establishment and strengthening of the social dialogue, collective bargaining and participation in company management were not the subject of the labour legislation to the extent required, because these issues would have led to dilemmas and increased uncertainty as regards foreign investors and the capital they might want to invest in Serbia. When presenting such an assessment, the industrial relations standards achieved today in the EU's most economically-developed countries and successful transition countries have been taken into account.

A new Labour Law was adopted on 17 February 2005.[3] The new Law is more comprehensive than the previous one, containing new provisions which harmonise the legislation with EU directives and regulate the matters that were previously addressed by the General Collective Agreement, which ceased to be valid in September 2005. The issues of employee and employer organisations dealing with the rights and obligations of employers and trade unions, the application of collective agreements, normative deeds, etc. were also regulated in greater detail.

In addition to the Labour Law, within the set of laws applied today in Serbia, representing the totality of sources of the law governing industrial relations, the Law on the Social and Economic Council[4] and the Law on the Peaceful Resolution of Labour Disputes[5] should be mentioned. These laws have a predominant impact on the establishment and development of the social dialogue, collective bargaining and industrial relations as a whole.

3 The Labour Law *Official Gazette of RS* 24/05.
4 The Law on the Social and Economic Council *Official Gazette of RS* 125/04.
5 The Law on the Peaceful Resolution of Labour Disputes *Official Gazette of RS* 125/04.

Analysing, within this context, the legal basis for the establishment and operation of the Agency for the Peaceful Settlement of Labour Disputes, a positive trend in the legal advancement of the Agency's social role and function may be observed, primarily in the sense of a widening of its jurisdiction. In this sense, special attention should be paid to the establishment of jurisdiction for the Agency over bullying-related labour disputes, as one of the most dangerous and most conflictual, and at the same time the most sensitive and most complex, forms of labour disputes.

This positive process came about as a result of several factors, among which one should particularly single out drawing on the experiences of the legislation and practice of economically-developed EU countries; and, above all, the significant role of similar institutions whose manner of operation has a series of advantages over expensive court procedures. At the same time, this positive process has been encouraged by the requirements of social practice, i.e. by society, particularly among the social actors, coming to countenance the increasingly evident need for mechanisms and practice for the amicable resolution of disputed matters.

In other words, there is an unquestionable trend towards the growth and improvement of the social role and functions of the Agency at formal-legal level. This has inevitably opened up a series of new issues, not only for the Agency but also for the social partners. Trade unions and employer associations must be the guideposts for the redirection of every specific labour dispute from the path of conflict towards social dialogue and amicable resolution.[6]

Results of previous work

In the last five-year period, the results achieved by the Agency have dissuaded even those who were sceptics at the time of the adoption of the Law. Not only employees and trade unions, but also a great number of employers, have contacted the Agency concerning the amicable resolution of labour disputes. The transition process itself was a realistic source of new learning here since the parties have come to the realisation that it is better to resolve labour disputes at the Agency within thirty days (the legal time limit) than after several years in court, because the amount of unpaid wages, with accrued interest, and then the return of the employee to the job, is very expensive for the employer. Additionally, where an employer makes a mistake as regards an employee, in any case it is better to become aware of it in a period shorter than that demanded by standard legal procedures:

> Arbitramentum aequum tribuit cuique suum.[7]

Furthermore, potential foreign investors are also interested in methods of the alternative (amicable) settlement of labour disputes, because institutions of this type have existed for many years in many economically-developed countries. The experience

6 Dejan Kostić (2010) 'New Legal Solutions in the Area of Peaceful Settlement of Labour Disputes' Association for Labour Law and Social Insurance of Serbia *Proceedings* No. 13/2010, p. 323.

7 A just arbitration renders to each their own.

they have already gained in their countries with alternative forms of the resolution of labour disputes means that they have information in advance about the possibilities, procedures and effects of the work of the Republic Agency for Peaceful Settlement of Labour Disputes.

Figure 1 below illustrates the Agency's work in resolving 1 659 individual labour disputes in 2006 and 1 110 in 2007. This high workload is explained in that, in the first years of its operation, a great number of individual labour disputes put to the Agency were remnants of the past. During 2008 and 2009, the number of resolved individual labour disputes (305 in 2008 and 266 in 2009) remained at the level of the first year of the Agency's operation (269 in 2005).

Figure 1 – Resolved individual labour disputes

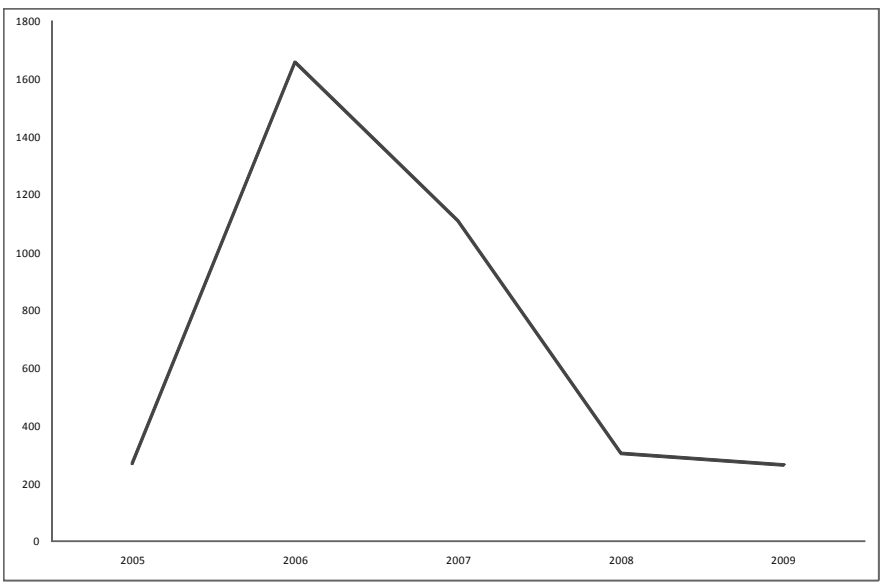
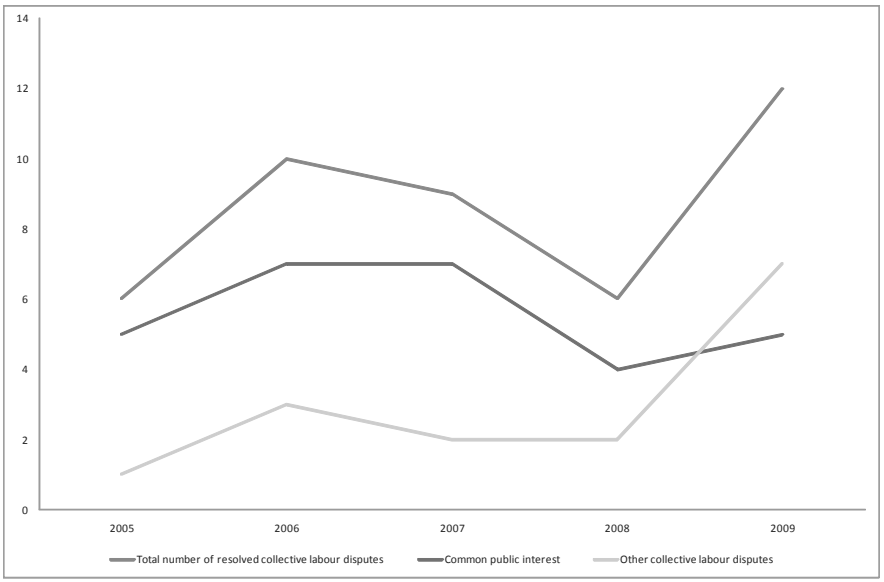


Figure 2 – Resolved collective labour disputes



In contrast to Figure 1, which shows that the number of individual labour disputes is decreasing, Figure 2 shows that the number of resolved collective labour disputes is on the increase. Up to 2008, there were more resolved labour disputes of common public interest before the Agency on an annual basis compared to other forms of collective labour dispute; whereas in 2009 we have the opposite situation, i.e. the Agency resolved five collective labour disputes of common public interest, but seven which fell into the category of other collective disputes. This finding leads us to conclude that the private sector has understood that it is in its interest to attempt to resolve all labour relations-related issues at the Republic Agency for Peaceful Settlement of Labour Disputes.

Concluding considerations

The primary purpose of this article was to estimate the significance of the Republic Agency for the Peaceful Settlement of Labour Disputes in the Republic of Serbia by looking at the results it has obtained. Every country has its court system to dispense justice, but the over-burdening of the courts with high numbers of labour dispute cases and expensive court procedures also contribute to the significance of the existence of this type of institution for the peaceful settlement of labour disputes – above all, to disburden the courts. If we aspire to the highest possible democracy as a society in transition, it must be realised that the Agency provides another possibility for resolving a labour dispute prior to initiating a standard court procedure: in the first place, because

this procedure is free of charge for the parties to a dispute, as well as being quick and efficient (the thirty-day legal time limit).

All the social partners must be aware of the significance of having such an institution, primarily by taking into consideration its results, which were not expected even by the most optimistic of supporters at the time the Law was enacted in 2004. Up to the end of 2010, the number of resolved cases is 3 676, justifying the purpose of the existence of the Agency in the past five-year period. The Agency's management team was recommended by the International Labour Organization, which organised the training of arbitrators and conciliators in Montenegro and Republika Srpska in 2010 – providing both an incentive as well as a point of satisfaction for our further work and future co-operation with such institutions in the region.

Furthermore, I have to mention the significant economic effects stemming from the work of the Agency, because the financial resources spent in total from the Agency's budget for 2010 amounted to 17 607 202 dinars, a sum which exactly matches the cost of a one-day strike in a larger company, an act which will inflict losses on all the social partners.

The ultimate purpose of the Agency is not only to resolve labour disputes, but essentially to assist and encourage the social partners to sit together around the negotiating table and, in a peaceful manner, to recognise mutual interests and reach acceptable solutions. Contrary to radically-conflictual methods, where everyone is defeated, victory must be gained by reason, wisdom, tolerance and the mutual responsibility of all the social partners involved.

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