

Serbia – The challenges of new industrial conflicts

Abstract

The entire, highly conflicting course of the debate on proposed amendments to the law, which have an indisputable strategic importance for economic development, must be understood as a warning to all industrial relations factors concerning those things that have not been carried out in the transition process, and which reforms have not been successful or were not properly and effectively implemented. In this respect, it can be said as regards all three industrial factors that, in the past, they have proven to be poor pupils who have repeatedly failed to learn their lessons, or did not want to learn the lessons that did not support their own limited understanding of their own and also the general public interest. That is why all of them – employers, the state and trade unions – are faced with what pedagogy calls 'reviewing the lesson'. At the same time, each time they review the lesson, the price is socially and economically more expensive than the last one; in other words, it increases the price of a transition which is already socially and economically unbearable to most workers.

Keywords: transition, labour law, industrial relations, capacity building, trade unions, employers, collective bargaining, works councils, social partnership, social and economic councils, representativeness, industrial conflict, right to strike, flexibility

Introduction

Serbian society is still, two and a half decades since the beginning of the transition, mostly a conflictual society. There are numerous reasons for civil and worker discontent and, in recent months, one more has been added – the new bill on the Labour Law. It is a long time since a document (which is still not an official proposal of the government) has caused so much controversy and division, and such a sharply negative reaction from all trade unions, who are threatening strikes, public protests and other radical forms of industrial action. Whether it is, as many times before, an empty threat or whether something good will come out of it – as regards a connected and joint attack of trade unions in defending the common interests of the working class – only time will tell.¹

However, even a superficial glance at the history of labour legislation after 5 October 2000 confirms that this is nothing new. On the contrary, every Labour Act or amendment has been accompanied by conflicts and divisions. Moreover, a trend can be noticed – conflicts over labour laws have become sharper and sharper, and labour law and other laws in this area have become more and more restrictive. What has also

1 Marinković, D (2012) *The world of work – old challenges in a new era* Higher Educational Institution for Applied Studies in Entrepreneurship and Centre for Industrial Relations: Belgrade.

been notable is the tendency of some governments, in the period after 5 October 2000, to marginalise or completely exclude unions from key social processes. It does not, at first glance, appear to be the case, but the conflictual course of the social processes related to the adoption of labour legislation has also had one positive side: it confirms that all industrial factors – government, employers and trade unions – understand the importance of labour and social legislation in regulating their relationships and that they are trying to protect their own interests in the process. The problem is that, in this process, they are not paying attention to the interests of the others.

In any case, the conflictual processes that are today taking place on the territory of Serbia regarding the adoption of the new labour law can be defined as the endeavour of all industrial relations partners to assume a more favourable starting position for their future relations. All this is happening in a country where the labour, social and trade union rights of workers are, in practice, at a very low level. Can anyone in their right mind believe that the economy will rapidly develop, and that entrepreneurial initiatives will be encouraged, if the labour rights of employees are reduced? The experience of democratic, economically and technologically-developed Europe gives a clear answer to this question – the most economically-developed countries are those where labour, social and trade union rights are at the highest level. The foundation of such social practice is human and democratic labour and social legislation, constituting one of the legal foundations of the social market economy.

Unfavourable social environment

One part of this discontent about, and resistance to, these proposed law projects (the Labour Law, the Law on Privatisation and the Bankruptcy Law) among workers and their trade unions is a result of the generally negative social environment and the undemocratic way in which these legislative projects have been prepared and presented to the public and to unions. In this regard, it should be noted that this is not about making new laws but about amendments to existing laws, which were already bad for workers and unions. Above all, we live in a country with a general atmosphere of mistrust, poverty and social hopelessness. Workers have been cheated many times; they are the biggest victims of the transition and have paid a very high price for it: for a large number of workers this price has been socially unbearable, as well as economically and morally unacceptable. One proverb says that ‘Who is once bitten by a snake becomes afraid of lizards, too’.²

The practice of successful transition countries, in comparison with the experience of Serbia, warns that it is not enough only to adopt good laws: an integral part of this process should be the promotion of individual and collective capacity among the social partners to implement them. The merits of such a view is confirmed by the visible gap between the word of the law and social practice, which is often accepted as a constant of current social relationships. Namely, in order properly to establish a social partnership between the social partners, it is necessary to fulfil a series of conditions. Above all, before the processes of collective bargaining and social dialogue may start, a list of issues must be established which is non-negotiable because they represent the un-

2 Stajić, D (2005) *Burdensome transition* Institute for Political Studies: Belgrade.

deniable civilised achievements of the modern age, belonging to a group of human rights, and based on the initial premise of all the relevant international documents that human beings are born free and equal. It is unacceptable, both in civilised and legal terms, to dismiss a pregnant woman or to condition a woman of reproductive age to sign a statement that she will not have children: the harshest forms of persecution of employees in the private sector who want to organise trade unions. Talking about social partnership in companies in which such uncivilised things happen is, quite obviously, pointless.³

The conflictual nature of the process of adopting amendments to these laws is also an indicator of the under-developed state of the key mechanisms of social democracy. Serbia is still far from the concept of collective bargaining, in line with the international standards and practices of developed, democratic countries of Europe; that is, the principles of a social, and socially responsible, market economy. Several years were wasted on fruitless discussions on the General Collective Agreement, adopted back in 1991, which was essentially built on the foundation of the concept of the administrative distribution of wages from the time of socialism. Trying to revive it by introducing the so-called 'extended range' failed and, today, no-one remembers this document.

Collective bargaining often comes down in practice to negotiations on salary increase or some other material right of employees. There is no doubt that this is, among other things, the consequence of economic under-development and poverty in which the majority of employees fight to provide for their basic material existence.⁴ But it also represents the lack of a developed comprehensive strategy for collective bargaining. In truth, in some companies, collective bargaining is well-practised, and this can serve as a springboard for the development of a modern concept and practice for collective bargaining.

The situation is no better in terms of establishing the instruments and practices of social dialogue. This applies both to the state of legal and autonomous regulations and to the implementation of these in practice, where we must point out the following.

The legal system in Serbia has not, in line with European standards, regulated and protected the right of employees to information, consultation and co-decision. In particular, the principle that this range of laws applies not only to union members, but to all employees, is not respected. Truth be told, in a number of collective agreements the complexity of rights to information, consultation or co-decision has been defined, but these agreements have not defined effective instruments in which these rights may be exercised. In practice, where it exists, this right is limited to informing the leaders of the trade unions on the basis of selected information from the employer.

For example, in the legal system, as well as in practice, there is not a particularly effective instrument in which may be realised the rights of employees to information, consultation and co-decision. This may be defined as 'the principle of the empty chair', with reference to the right of union representatives to attend meetings of management

3 Krivokapić, B (2009) *Human rights* Megatrend University: Belgrade.

4 Golubović, Z (2005) 'Where does post-October Serbia (2000-2005) go?' *Official Gazette*: Belgrade, edition 'Attitude', Book 5.

bodies of enterprises and assemblies at various levels, and to participate in the work of these bodies but without voting rights.

On the other hand, however, the practice of the participation of trade union representatives in the governing boards of public funds, institutions and companies that are still socially-owned has not delivered the expected results and which, often, turns into a form of bribery of union leaders. This is ultimately an image and consequence of the under-development of the internal democratic structures and operation of trade unions themselves.⁵

The existing Labour Law defines the right of employees in companies with more than fifty employees to establish works councils, but this legal option is not used in any enterprise. It can be said that there have been almost no serious efforts to promote the idea of works councils, which represent an important achievement of modern societies and which are confirmed to be one of the most effective instruments of social democracy. One of the key reasons for this situation is the strong resistance of the trade unions which, wrongfully, perceive works councils as competition and parallel organisations that have the same tasks as a union. However, the facts show differently. The facts say that the average rate of unionisation in Europe is about 25% while, on the other hand, all employees, not just union members, have certain rights. The works council is a very efficient and suitable instrument for the realisation of these rights. At the same time, the experience of countries with developed practice of works councils (for example, Germany) confirms that, in those countries where unions are strong, works councils are also strong and their actions are complementary.⁶

More than a decade after the establishment of the first Social and Economic Council, the question of the representativeness of trade unions and employer organisations has not been appropriately resolved and is one of the major sources of industrial conflict, as well as division and conflict between trade unions. According to the existing Law, the representativeness of trade unions and employer organisations is established by a Committee consisting, partly, of unions whose representativeness has already been determined. In addition, the law specifies that representativeness shall be determined solely by consensus of the members of the representativeness committee. In other words, trade unions determine the representativeness of one another. It is obvious that the Ministry of Labour, within whose jurisdiction this issue belongs, has avoided its own duties and responsibilities by transferring this 'hot potato' to trade unions and employer organisations. A poor and inconsistent legal solution has, inevitably, itself become a source of abuse and conflict.

There are not systematic statistical records but, according to the research of the 'Trade Union Barometer' in 2008, the overall rate of unionisation in Serbia was then around 25% and this can only now have fallen. Bearing this in mind, it is estimated that, today, the only representative unions are SSSS and the Confederation of Free

5 Arandarenko, M (1999) 'Privatisation, labour market and trade unions' in *Proceedings 'The role of trade unions in the process of privatisation'* Centre for Education and Research UGS Neza-visnost, Belgrade.

6 Jeftić, M (2011) *The role of works councils and trade unions in representing the interests of employees in EU states* Friedrich-Ebert-Stiftung, Belgrade.

Trade Unions.⁷ In this sense, UGS *Nezavisnost* is not representative, since objective assessment shows that it has about 40 000 members. More than two years ago, other unions, in accordance with the law, started an initiative to determine the representativeness of UGS *Nezavisnost*. The leaders of this union refused this, but have continued to be members of the Social and Economic Council.

However, more important than the current situation is that all the parameters have changed in recent years – the economic structure, the structure of employees, the rate of unionisation and the structure of trade unions – which means that it is necessary, in accordance with these changed circumstances and parameters, to redefine and use new criteria to bring forward the question of the representativeness of trade unions. Unfortunately, the two trade unions which are currently formally classed as representative – UGS *Nezavisnost* and *Savez Samostalnih Sindikata Srbije* (the Confederation of Autonomous Trade Unions of Serbia) – refuse any discussion on the subject, trying at all costs, and contrary to the principles of trade union solidarity, to preserve their monopoly position in the social dialogue. This, of course, calls into question the legitimacy of the factors of social dialogue as a whole.⁸

Regarding the representativeness of employer associations, the representativeness of the Union of Employers of Serbia, which is currently the only representative employer association, has been disputed from the very beginning. However, the formal side of things is less important than the fact that many employers who are members of the Union of Employers of Serbia do not recognise unions in their firms. This raises the question of the actual legitimacy and appropriateness of their participation in all forms of social partnership. It should be pointed out that the Union of Employers, and other employer associations, have never publicly condemned and distanced themselves from cases of the gross violation of labour and of the economic and social rights of employees which have been manifested by a significant number of employers.

These problems and open questions have resulted in the social dialogue operating in a very poor state at all levels. This is primarily reflected in that social and economic councils have, at the local level, been formed only in about 15% of municipalities and towns. Furthermore, where they exist, their activities are unsatisfactory. When it comes to the Social and Economic Council at the national level, this was first established in 2001 by agreement between the social factors. Within a few years, the Law on the Social and Economic Council was adopted. However, the situation on the ground has not changed. On the contrary, the state of social dialogue has proceeded in a downwards direction, confirming that the law itself does not resolve problems if there are not motivated social partners who are capable of implementing it in practice. What supports this is that the Social and Economic Council has not had even one meeting in a year and that none of the laws that are the subject of the current conflict have been discussed by the Social and Economic Council.

7 The condition for obtaining the status of representativeness at national level, according to the current regulations, is that the union has 180 000 members, or 10% of the total number of employees.

8 Đukić, P (2006) 'The organised world of labour in Serbia today: between economic reforms and populism' *South-East Europe Review for Labour and Social Affairs* 9(4): 11-30.

The subjects of conflict between employers, government and unions

Generally adverse social circumstances; a long-term economic and social crisis carrying devastating consequences which, as always, have affected first and most of all members of the world of work; incomplete and inefficient instruments of social democracy; and the bad experiences of the past – all these have resulted in an extremely conflictual discussion on legal reforms, primarily to the Labour Law. Representatives of trade unions and employer organisations have not hid their mutual distrust and hostility. Representatives of the Union of Employers have marked trade unions as defenders of the old socialist system and as inhibitors of reforms; while the trade unions have argued that employers and the state were usurping their rights, wanting to bring them to the humiliating position of slavery. This is, obviously, a reflection of the negative legacy of the previous period. The conflictual course of the debate, which has moved all the factors away from a focus on the essential issues, has been influenced to a great extent by the behaviour of the Minister of the Economy – that is, the Ministry of the Economy – which, for unknown reasons, has appeared as the formal proponent of the Labour Law in place of the relevant Ministry of Labour and Social Policy. The Minister of the Economy has behaved in a rough fashion and, at the start, openly sided with employers which inevitably provoked resistance and a negative reaction from the unions.

Unfortunately, the representative trade unions – SSSS and UGS *Nezavisnost* – have tried in every way to exclude other unions, such as the Confederation of Free Trade Unions, Industrial Unions, United Unions ‘Unity’, and others, from discussion on the laws. These unions have reacted by joining in a united front and using alternative ways – public protests, talking to the media and other ways – to influence the course of events. However, mass protests, and effective ones, have also been organised by SSSS and UGS *Nezavisnost*.

When it comes to the causes of trade union dissatisfaction, and the reasons for the conflict, we should remember that conflicts, although in a milder form, started over the draft Law on Strikes, which was withdrawn from parliament after more than two years of preparation, with the working group that had worked on this project simply falling apart. Trade union representatives were dissatisfied with the cited reasons, noting that the proponents of the Law, knowingly or unknowingly, were ignoring and rejecting some indisputable facts: above all that the right to strike is an undeniable achievement of civilisation; that a strike is not an act of destruction, but a creative act of the world of work; that it belongs among the group of inalienable fundamental labour and social rights; and that no country, which at least formally has the title of being democratic, can limit or in any way prevent the exercise of this right. Likewise, the trade unions, supported by experts, pointed out that the history of industrial relations, as well as contemporary practice, confirms that strikers, within the methods of labour struggle, have also used picketing – occupations of the employer’s premises and other related methods – so as to prevent any obstruction of the strike. This represents a whole complex of rights giving force to a strike and making it one of the most radical and most effective means of labour struggle. Not a single union in developed, democratic countries of Europe have given up a fraction of this right; and neither have their governments or employers ever even tried to ask this of their unions. On the contrary, the potential

or real power of the strike makes this one of the cornerstones of the relative balance of social power of the world of work and the world of capital which is, in developed countries today, a basis of social partnership and social peace.⁹

Trade unions had reasons to suspect that the legislator had bad intentions: via the separation of the right to strike and the right to free association, it wanted to restrict the right to strike and the need and right of workers publicly to show their justified discontent. Inarticulate explanations or, more precisely, excuses of the officials have confirmed this suspicion.

Of course, this is not the only restriction contained in this Law. For example, the bill on the Law contained an unreasonably long list of so-called ‘special interest’ activities in which the right to strike would be restricted or completely denied, reflecting the efforts of the legislator effectively to ban strikes in most industries. The experience of recent strikes and public protests in Greece and France confirms that such bans do not make sense. It is clear that Greek, French and other workers, who have powerful and respectable trade unions, did not ask the political authorities for their permission to go on the streets and protest.

The greatest source of conflict between employers and unions was connected to the proposal to prolong the period of temporary employment to three years. This proposal, in a country with such a high unemployment rate, and with a number of negative experiences, cannot expect support from workers. Also, the labour legislation of democratic countries and the legal heritage of the EU applies the principle that permanent employment, for an open-ended period, is the rule with temporary employment being the exception.

Another subject of conflict and division refers to job-related flexibility, in which the Ministry has not accepted the established concept in the EU – that of ‘flexicurity’. Here, it has overlooked that the flexibility of the workplace is primarily technological, organisational and developmental in origin, and which includes the need for the worker to adapt to new technologies, changes in work organisation and to accept ‘life-long learning’, but that these things are not – or should not be – a mechanism for manipulating social and work security. Workers who work in flexible models of work organisation may not be denied labour rights on this basis. In this sense, the claim that an easier laying-off of employees will encourage employers to hire more workers represents pure nonsense or, frankly, insolence.

A major subject of confrontation has been the legal regulation of the establishment and operation of private employment agencies. However, in this case, the main problem was not the suggested legal solution but the bad practice which has been the experience in the past. Namely, past experience with employment agencies, on which the proponents of the Law are insisting, has brought disastrous results such that workers who are employed through these agencies receive, for the same work, much lower wages, with their other rights being limited. This is a gross violation of European and constitutional

9 Lubarda, B (2012) *Labour law – discussion on dignity at work and social dialogue* Faculty of Law: Belgrade.

principles – including equal pay for equal work – and contains within itself the elements of forced and slave labour.¹⁰

However, employers are right not to accept the payment of severance reflecting the total years of service of employees who are made redundant. This is discouraging, since it increases the cost to an employer who has done nothing wrong. It is another issue that a transition fund for this purpose has not been established earlier. One gets the impression that unions are ready to accept this solution, too.

It is basically the same issue concerning the issue of calculating reimbursement, holiday allowances, etc. Ultimately, these issues are less important because salaries do not depend on this but on the profitability of the company and on the balance of power of trade unions and employers in the collective bargaining process.

The bill on the Labour Law also launched another set of issues concerning the relationship between employers and unions. We are talking here about the material obligation of employers towards unions, in accordance with the existing Labour Law. The current Law requires the employer to allow trade unions to use the premises and technical equipment of the employer and grant a certain number of paid hours, or full exemption from work duties, in the performance of union activities, as well as other material help. It is clear that this leads to a dependence of unions on the employer and represents one of the potential sources for the formation of ‘yellow unions’. These suggestions, of course, were followed by fierce resistance from the unions. However, this question will inevitably come up again relating to trade unions and other factors of industrial relations.

Conclusion

Looking at the whole course of events related to the discussion of the reform of the legislation, one can notice the similarity with events in the previous period. Namely, the adoption of each strategic reform of the law has been slow, inefficient and has proceeded in an extremely conflictual way, identifying the dividing line between unions and employers which neither of them were ready to cross, defending only their initial positions. All of this has been accompanied by mistrust, despite the principle of *bona fide* (in good faith) being a *conditio sine qua non* of social partnership, identifying and defining the common interests of the world of work and the world of capital.¹¹ This is an apparent consequence of the social partners at the start not achieving social consensus about the goals, ways and social costs of the transition and the distribution of these across all social classes, in accordance with the economic power of certain social strata and the principles of social justice and solidarity. This was, in contrast, the case with all successful transition countries. Of course, this has multiplied the social costs of the transition, which has been transferred only to the working class and which has proved to be one of the biggest obstacles to building the mechanisms and practices of social partnership.

In this particular case, several months have been lost. Reformed laws must be adopted, because this is not only one of the conditions of entry to the EU but, above all

10 *European Social Charter* (2009), Council of Europe, Belgrade Office.

11 Milenković, T (2010) *Ways and byways of social dialogue* Workers' Print: Belgrade.

else, is related to the question of the future of Serbia. Only, the costs of the implementation of these laws will eventually be the greater, with this delay increasing the already unbearably high social costs of the transition. Experience, as has been the case many times before, confirms that the delay of the reform process, or the irrational flow of the time that surrounds it, is not an ally of reform. Of course, there must be consensus on the issues that these laws are regulating, while each of the social factors must see both their own as well as the common interest in the application of these laws as a necessary precondition for them to be put into practice.

In this regard, we might note the modern tendency to shift the subject of industrial and social conflicts from earnings and so-called redistributive demands in general to questions of legislative regulation and the creation of a favourable and stimulating environment for economic and technological development. This is just one of the indicators that economic and technological forms of organisation and questions of the standard and quality of life will become the focus of political and social life, as well as of trade union activities.

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