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The COVID-19 Pandemic and Serbian Labour Rights

Introduction

According to official data, Serbia's first positive case of COVID-19 ('patient zero') was registered 6 March. The Government of the Republic of Serbia rendered a decision on 11 March banning public gatherings of over 100 people in closed spaces. A state of emergency was declared 15 March, with the co-signature of the President of the Republic, the President of the National Assembly and the Prime Minister. Subsequently, on 20 March, via a decision of the Minister of Health, Mr. Zlatibor Lončar, an outbreak of the coronavirus was declared throughout the country. In March, the Government introduced increasingly rigorous measures to restrict the freedom of movement of persons within its territory on the advice of Chinese experts visiting Serbia, at its invitation.

Legal Framework

The first question to be asked is this: what reforms have the Government failed to implement in regard to labour rights that could, in the very least, mitigate, if not completely circumvent the negative impact of the pandemic on labour rights in Serbia? We can list the following key aspects to be addressed through reform measures over the previous period:

- **a strategic approach to labour rights reform:** the area of labour rights (includes a number of other laws and bylaw provisions which govern this matter, in addition to the Employment Act) is one of the few areas of law that has failed to undergo strategic reform since the democratic changes of 2000, which could have been done, either alternatively or cumulatively, via codification (similar to the civil law codification process that began in 2006), alignment with ILO conventions and EU directives (individual changes to this end were made sporadically, through amendments, as was the case in 2014) and improving its implementation (reform documents such as the ERP and the ESRP in no way address labour rights reform, and/or its implementation, while certain public policy documents, such as the *Occupational Safety and Health Strategy in the Republic of Serbia for the Period 2018-2022*, address advancements in the application of only certain segments to do with labour rights);

- **eliminating discrimination against persons working as unreported employees:** reported employees, those employed under a temporary service contract, and persons working under temporary or occasional employment contracts are not on equal ground in terms of rights and obligations as those persons hired under a permanent employment contract, which, according to the Employment Act, are the only persons considered employees (regardless of the fact that the ILO Methodology declares all persons paid for labour as employees). Some of these rights include set working hours, paid vacation and leave;
- **reducing exclusion from the labour market of certain categories of the working population, such as persons with familial responsibilities:** despite the fact that the *Strategy for the Encouragement of childbirth* states that “labour market flexibility requires more flexibility in terms of gender relations, i.e. the substitutability of gender roles and abandoning the idea of grouping individuals into those who work and those who need to be looked after”¹, no action has been taken aiming to formulate and adopt appropriate amendments to the Employment Act;
- **adapting the labour law framework to new trends in the labour market:** The *National Programme for the Suppression of the Gray Economy* states that approx. one fifth of the total workforce (according to the Labour Force Survey) is employed ‘under the table’ and that it is necessary to regulate new forms of employment, such as work on portals, as this type of work is “not sufficiently regulated and leads to informal employment”²; however, nothing has been done as of yet to amend the Employment Act in this regard, despite the fact that data shows a large increase in both flexible forms of labour as well as work conducted under flexible and atypical conditions; for example, even before the current crisis ensued the number of persons working from home had increased in 2019 by as much as 58.6% in relation to 2018, from almost 100 thousand to as many as 160 thousand employees³;
- **improving social dialogue:** In the recent period, the Government failed to pay due attention to improving the legal framework and its implementation evident also in the fact that the European Commission’s assessment of Chapter 19 in the area of social dialogue, was most negative.

In response to the Serbian Government’s approach to labour rights, in 2018 and 2019 the Center for Democracy Foundation ranked labour rights in its Annual Reports on the Status of Labour Rights as very low (on a scale of 1 to 5), at 2.3 in 2018 and 2 in 2019. Time will tell what the further toll will be to labour rights in Serbia as a result of the COVID-19 epidemic, resulting from inertness and the Government’s unwillingness in the previous period to deal with labour law reform towards increased coverage and higher levels of protection for Serbia’s entire workforce.

As though the development of the Serbian government’s relationship with social rights (including labour rights) was not enough, the collapse of the rule of law that we have been witnessing over the past few years is an ongoing trend which gained momentum in the first weeks of the March

¹ Government of the Republic of Serbia, *Strategy for the Encouragement of Childbirth*, 2018, pg. 30

² Government of Serbia, *National Programme for the Suppression of the Gray Economy with the Action Plan for the Implementation of the National Programme for the Suppression of the Gray Economy for the Period 2019 - 2020*, 2019, pg. 36

³ Statistical Office of the Republic of Serbia, *Labour Force Survey*, 2019, pg. 7

2020 pandemic. At the end of March, representatives of the UN Committee competent for monitoring the implementation of human rights instruments warned of such developments, stressing that human rights must be respected by government measures taken during a pandemic and that “a state of emergency, or any other security measures, should be guided by human rights principles and should not, in any circumstances, be an excuse to quash dissent.”⁴ The subject of this analysis are not the individual legal issues which have sparked a reaction from the expert public, which is why we will mention just the necessary few, as these not only impact the current legal order, but also shed light on the government’s capabilities and intent to (embodied through the actions of the institutions it governs), in the coming period, dedicate its attention to establishing the rule of law, which, according to the Constitution is achieved by “constitutional guarantees of human and minority rights.”⁵ Key decisions and reactions in regard to the above are: declaration of a state of emergency, which, according to the opinions of many expert communities, was not conducted in line with the Constitution of the Republic of Serbia, considering that the parliamentary majority was able to organise a parliamentary session during which the state of emergency could have been declared, emulating many European countries that were able to organise the continued work of their parliaments, regardless of the pandemic⁶; the order rendered by the Ministry of the Interior on restricting and prohibiting the movement of persons over the age of 65 and/or 70, was, according to the assessment of legal experts, unconstitutional as this matter could only be the subject of a Government decree⁷; adopting then withdrawing the conclusion of the Government to inform the population of the situation and consequences of the infectious disease COVID-19, the contents of which was harshly judged by journalists’ associations and international organisations such as the Organisation for Security and Co-operation in Europe⁸.

Bearing the aforementioned in mind, let’s move on to an overview and assessment of the current impact the pandemic has had on labour rights in Serbia. This impact may be shown two-fold, formally and factually. The formal impact is reflected through normative actions taken by competent authorities, while the actual situation in the field, i.e. what is really happening, including, and as a result of, the normative actions that were or were not taken, yet should have been. By 8 April, the Government had passed a total of 45 acts, as follows: 15 decrees (as the highest form of a bylaw the Government is authorised to adopt, regardless of whether a state of emergency or peacetimes are in question), 23 decisions and 7 conclusions (in addition, relevant ministries rendered 5 orders and 1 guideline)⁹. Among which are key Government acts which impact the state of labour rights and their solutions can be chronologically listed and assessed in the following manner:

⁴UN Human Rights Treaty Bodies Call for Human Rights Approach in Fighting COVID-19’, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25742&LangID=E>, 24 March 2020

⁵ Constitution of the Republic of Serbia, Article 3, paragraph 2

⁶ Opinions on this subject were given, inter alia by Rodoljub Šabić in the text entitled ‘Condition or Situation, the Question is Now’ published on the Peščanik portal’: <https://pescanik.net/stanje-ili-situacija-pitanje-je-sad/>, 15 March 2020

⁷ These assessments were published in the text written by Tanasije Marinković, PhD. ‘Unconstitutional Order Prohibiting Movement’ published in the local newspaper, *Danas*: <https://www.danas.rs/drustvo/vladavina-prava/neustavna-naredba-o-zabrani-kretanja/>, 2 April 2020

⁸ ‘OSCE Concerned about the Government of Serbia’s Decision to Centralise Information on Covid-19’, <http://rs.n1info.com/Vesti/a584556/OEBS-zabrinut-zbog-odluke-Vlade-Srbije-da-centralizuje-informisanje-o-Covidu-19.html>, 1 April 2020

⁹ Source: <http://www.pravno-informacioni-sistem.rs/fp/covid19>, 8 April 2020

- On 15 March the **Decision to Suspend Teaching in Institutions of Higher Learning, Secondary and Primary Schools and Full-time Preschools** was rendered whereby those employed in these institutions were obliged to continue to perform their duties. Formally and legally, the disadvantages of this act from the perspective of labour rights are reflected in the fact that it only applies to permanent employees and not to other hired contractors (unreported employees) and does not contain all the elements of employers' actions, which were subsequently established in the Decree on the Organisation of Operations of Employers During the State of Emergency.
- On 16 March the **Decree on the Organisation of Operations of Employers During the State of Emergency** was rendered whereby employers are obliged to enable employees to perform work outside the premises of the employer (remote work and work from home), for all workplaces (positions) where such work can be organised in accordance with the general act and the employment contract”¹⁰, if not provided for in the general act and employment contract, the employer may render a decision allowing the employee to perform activities outside the employer's premises (the Decision), “if the organisational conditions so permit”¹¹. The Decree also prescribes that the Decision must include working hours and the way of supervising the work of the employee, and that the employer is obliged to keep records of employees who work outside the employer's premises. For an employer whose nature of activity is such that it is not possible to organise work outside the premises of the employer, the following obligations apply: arrange shift work (so that as few employees and all other employed persons as possible work simultaneously in one room), enable all business meetings to be held electronically and postpone official travel in the country and abroad. Finally, the Decree introduces an obligation whereby the employer is obliged to implement all measures related to the hygienic safety of facilities and persons in accordance with the Law on Protection of the Population from Infectious Diseases and for employees and hired contractors “in direct contact with clients or share a work space with multiple persons”, it is necessary to provide sufficient quantities of protective equipment¹². Formally and legally, the main disadvantages of this act are evident in the following: the main criterion for allowing employees to perform their duties outside the premises of the employer requires a general act or employment contract be drafted, yet it can be deduced that this condition was fulfilled in very few cases; then, as the alternative solution provides an unclearly defined criterion stating that the employer may allow for work to be performed in such manner if its organisational conditions allow for said; further, the Decree fails to prescribe other obligatory elements as prescribed in the Employment Act (Art. 42, paragraph 3, item 3), and, to develop, in accordance with the law, a legal standard on how to supervise the work of an employee performing work from home and working remotely (e.g. performance reports, performance measurement through specialised software or other appropriate means could have been prescribed)¹³; the Decree does not specify the maximum number of persons per shift, which allows

¹⁰ Decree on the Organisation of Operations of Employers During the State of Emergency, RS Official Gazette, No. 31/2020, Article 2, paragraph 1

¹¹ *Ibid.*, Article 2, paragraph 2

¹² *Ibid.*, Article 4, paragraph 2

¹³ In these sections of the Decree it completely fails to meet the requirements laid down in the Government Act, namely that the via this Decree, the Government develops in more detail, the relationship governed by law, in accordance with the purpose and objective of the law (Article 42, paragraph 1)

this number to be greater than that prescribed by Government orders; and finally, it fails to unambiguously describe the amount of protective equipment deemed sufficient for use by employees and other hired contractors¹⁴.

- On 16 March, the **Decision on the Suspension of the Work of Institutions for Pupils and Student Standard Founded by the Republic of Serbia** was rendered, whereby those employed by these institutions are obliged to continue to perform their duties, to draft the work plans of these institutions during the suspension of work, according to which as few employees as possible are to come to the institution, and “perform their work to the greatest extent possible from home”¹⁵. Formally and legally, the main disadvantage of this act is that the Decree on Performing Work Obligations From Home ‘for the most part’ prescribes fewer requirements in relation to those that apply to the Decree on the Organisation of Operations of Employers During the State of Emergency, according to which all employers must allow *all employees* to work from home for all workplaces (positions) where such work can be organised in accordance with the general act and the employment contract.
- On 16 March **Conclusion 05 Number 53-2561/2020** was passed, whereby all work requiring direct contact with clients was suspended in all government administrative bodies, the Autonomous Province of Vojvodina and units of local self-government, specific organisations, institutions, publicly-owned companies and other organisations where the founder or majority owner is the Republic of Serbia, the Autonomous Province or a unit of local self-government. Formally and legally, the main disadvantage of this act is that it does not include the prohibition of work requiring direct contact by other legal entities and entrepreneurs, which was possible to do, pursuant to Article 13, paragraph 1. The Law on Protection of the Population from Infectious Diseases, according to which, all legal entities, entrepreneurs and natural persons are obliged to act in line with the measures pertaining to the protection of the population from infectious diseases as stipulated by this Law, whereby Article 21 of the Constitution was violated, which prohibits discrimination, considering the fact that the decrees on measures taken during the state of emergency fail to prescribe limitations of this constitutional guarantee.
- On 19 March the new **Decree on Emergency Measures** (more specifically, amendments to the existing decree; however, for reasons of transparency, we will refer to the ‘decrees on emergency measures’) was passed which prohibits companies, legal entities and entrepreneurs from operating “when the nature of the activities they offer is such that it requires close contact between the provider and the user of the service, and service users among each other”¹⁶. Formally and legally, the main disadvantage of this

¹⁴ This too was pointed out by the United Branch Trade Union Independence, noting that in the Government acts and the laws governing this matter “there is an insufficient amount of information that can more specifically help employers organise work so as to ensure the application of the Law on Safety and Health at Work, which is why employers are left to organise themselves and to their own inventiveness,” ‘Occupational Health and Safety During the State of Emergency Caused by the Coronavirus - Recommendations for Employees’, <https://nezavisnost.org/bezbednost-i-zdravlje-na-rad-u-situaciji-vanrednog-stanja-zbog-virusa-korona/> , 24 March 2020

¹⁵ Decision on the Suspension of the Work of Institutions for Pupils and Student Standard Founded by the Republic of Serbia, RS Official Gazette, No. 32/2020, item 4.

¹⁶ Decree on Emergency Measures, RS Official Gazette, No. 36/2020, Article 4, paragraph 4

act is identical to that provided in terms of Conclusion 05 Number 53-2561/2020; in other words, this act also violates the constitutional guarantee of non-discrimination.

- On 21 March the **Decision on Limiting Service Provision in the Area of Retail, Including the Sale of Goods and the Provision of Services in Shopping Centres and Shops Entered into From Indoor Spaces**, was rendered which prohibits the direct sale of goods to consumers and the direct provision of services to users in shopping centres, unless the legal entity or entrepreneur “providing the service is selling food products, i.e. basic foodstuffs and medication and medical devices”¹⁷. Formally and legally, this act also violates the constitutional guarantee of non-discrimination, as in the case of the previous two acts mentioned.
- On 21 March the **Decision on Special Measures on Retail Services Relating to the Sale of Food and Drinks in Catering Establishments and the Sale of Takeaway Food** was rendered allowing those legal entities and entrepreneurs who perform these activities to operate, in that they must implement special measures to protect their employees and service users. Formally and legally, this act also violates the constitutional guarantee of non-discrimination, as in the case of the previous three acts mentioned.
- On 24 March, **Conclusion No. 53-2787/2020** was passed, granting beneficiaries the right to paid leave benefits on the basis of absence from work for special child care and other such benefits under said basis, whose rights expire 15 March 2020 and later, the right extended on the basis of previously rendered decisions, for a maximum period of three months, i.e. for the duration of the state of emergency. This act is in line with the provisions of the acts rendered during the state of emergency, and the Employment Act and the Law on Financial Support for Families with Children.
- On 26 March, **Conclusion 05 No. 132-2865/2020** was passed allowing employers to issue a decision to grant consent to send employees on paid leave of over 45 days without the need for the prior opinion of a representative union branch or activities founded at the level of the Republic, thereby derogating paragraph 3 of Article 116 of the Employment Act. Formally and legally, this act violates the constitutionally guaranteed right to work (Art. 60), considering that the decrees on emergency measures for the duration of the state of emergency fail to prescribe the limitations of this constitutional guarantee.
- On 31 March, the **Decree on Supplementary Pay on Base Salaries For Those Working in Healthcare Institutions and Certain Employees Working in Healthcare, and/or the Protection of the Health of the Population of the Republic of Serbia, and/or Healing and the Prevention of the Spread of the Epidemic Resulting From COVID-19 caused by the SARS-CoV-2 Virus** which approves a salary supplement in the amount of 10% of the base salaries of those working in healthcare institutions, military healthcare institutions, healthcare protection in social protection institutions and physicians working in prisons. This act is in line with the provisions of the acts rendered during the state of emergency.
- On 1 April the **Decision on Restricting the Organisation of Gambling**, whereby it is prohibited to organise gambling unless via electronic devices. Formally and legally, this

¹⁷ The Decision on Limiting Service Provision in the Area of Retail, Including the Sale of Goods and the Provision of Services in Shopping Centres and Shops Entered into From Indoor Spaces, RS Official Gazette, No. 39/2020, item 3.

act violates the constitutional guarantee of non-discrimination, as in the case of other acts where only certain employee categories and hired contractors are able to work without coming into direct contact with others.

- On 2 April, **Conclusion 05 Number 53-3008/2020-2** was passed whereby employers were recommended to provide their staff with the right to 100% salary compensation in the event that they are temporarily absent from work as a result of a confirmed diagnosis of COVID-19 infection, i.e. due to being placed in isolation or self-isolation, which ensued as a result of their exposure to risk while working or performing their official duties. Also, this Conclusion recommended employers provide funds for the aforementioned purpose from their own sources for the first 30 days of absence from work, while upon the 31st day of absence from work a portion of the funds (65% of the salary compensation) would be provided from the compulsory health insurance fund, while the remaining amount up to 100% of the salary compensation would be provided by the employer. Formally and legally, the main disadvantage of this act is in that it is not in accordance with the Government Act. More precisely, this law prescribes that the Government expresses its positions on an issue (which may include recommendations) via declarations (Article 45), while Article 43 prescribes that the Government renders decisions via decisions and rulings, and paragraph 3 of said Article refers to conclusions (“When it does not pass other acts, the Government passes conclusions”) which, by analogy, may also be interpreted as an act on which the Government decides upon, not recommends. Furthermore, the Ministry of Labour, Employment, Veteran and Social Affairs published its interpretation on its website, stating that this Conclusion passed by the Government “relates foremost to our physicians, medical staff, army and police”. What’s more, according to the wording of the aforementioned Conclusion, the provided interpretation is inaccurate as it refers to all employers, not just those that fall under specific categories, as was the case of this Ministry’s interpretation¹⁸.
- On 3 April, the **Decree on the Procedure for Obtaining Consent for New Employment and Additional Work Engagement with the Beneficiary of Public Funds**, which prescribes that beneficiaries of public funds may, “without the consent of the Committee, retain the number of temporary employees, persons hired under a service contract, temporary and periodical jobs, via youth and student associations and persons engaged under other grounds, due to an increase in the volume of work, at the level it was on 15 March 2020”¹⁹. This act is in line with the provisions of the acts rendered during the state of emergency.
- On 7 April, **Conclusion 05 Number 53-3041/2020** was passed whereby the Government recommends that employers allow staff who are obliged to regularly perform their work during the state of emergency to use the portion of their annual vacation leave from 2019 up to 31 December 2020 (this does not apply to employees allowed to work remotely or from home), and those employees unable to organise work processes, to give priority to the use of employees' annual leave over other forms of

¹⁸ ‘For Employees Who Have Contracted the Virus or Were in Contact with Individuals Infected with COVID-19 Due to Their Work, Salary Compensation Has Been Provided in the Amount of 100% of the Employee Salary’, <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/za-zaposlene-koji-su-usled-rada-obleli-ili-su-u-samoizolaciji-zbog-kontakta-sa-zarazenima-covid-19-obezbedjena-naknada-zarade-u-visini-pune-zarade>, 3 April 2020

¹⁹ Decree on the Procedure for Obtaining Consent for New Employment and Additional Work Engagement with the Beneficiary of Public Funds, RS Official Gazette, No. 50/2020, Article 8, paragraph 6

absenteeism. This act is in line with the provisions of the acts rendered during the state of emergency, however it is discriminatory toward employees who continued their work obligations during the state of emergency outside employers' premises, considering that in terms of them, employers were not recommended to extend the use of annual vacation leave from 2019, thus violating the constitutional guarantee of the right to work (which includes the right to paid annual leave).

Confusion among employees and other hired contractors, and employers in Serbia was contributed to not only with the passing of acts that contain contradictory, unlawful and incomplete solutions, but also by the slow response of the competent ministry, that provided an explanation as late as 24 March, describing the rights and obligations of workers and employers during a state of emergency²⁰. In this manner, the public was notified that the Ministry of Public Administration and Local Self-Government passed a Recommendation for the Organisation of Work in Public Administrations and Government Institutions, which, as stated, refers foremost to those employed by state institutions, public agencies, public departments and units of local self-government, but, as stated, this recommendation should also apply to the private sector, "if the activity performed by the employer so permits". This act recommends that people suffering from chronic diseases and those over the age of 60 should be allowed to work from home, as well as those employees who are single parents with children up to the age of 12, or if one parent has been declared an essential employee, and if this is deemed impossible, to organise shift work ensuring that the shifts of each parent do not coincide.

Factual State

In regard to the factual state, this situation is considerably more difficult to reliably assess, mostly due to the lack of reliable data, from statistical and administrative sources, and data collected by civil society organisations, international organisations and other actors monitoring the state of work rights and human rights in general. What worries all employees and other hired contractors most at this time is the application of labour law regulations²¹. It is important to mention here that the Employment Act, and other regulations that have not been (or whose individual provisions have not been) suspended via Government decisions rendered during the state of emergency, remain in force during said state. However, the legal insecurity that has increased due to certain contradictory solutions contained in the Government acts (shown in the previous segment of this analysis of the legal framework), and the lack of activity of the competent authorities in further protecting the worker, or at least, accurate and timely notifying employers and their staff of their rights and obligations during the state of emergency, speaks of the fact that the quality of these

²⁰ 'Detailed Description of the Rights and Obligations of Employees and Employers During the State of Emergency' <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/detaljno-objasnjenje-prava-i-obaveza-radnika-i-poslodavaca-u-toku-vanrednog-stanja>, 24 March 2020

²¹ The media reported unofficial information about the violation of the rights of those employed by the following companies: Jura, Benetton, Johnson Electric, Post of Serbia and Calzedonia. More information available at: 'Jura Failed to Implement Any Protective Measures in Regard to the Virus?' <https://www.danas.rs/ekonomija/jura-nije-uvela-nikakve-mere-zastite-od-virusa>, 'Calzedonia Continues with Production Despite the Threat of the Spread of the Virus', <https://www.masina.rs/?p=12908>, 'Postal Workers Do Not Receive Adequate Protection From the Company - Forced to Buy Their Own Masks and Gloves', <https://www.masina.rs/?p=12759>

regulations is under severe threat²². For the reasons stated above, here we summarise and chronologically list issues raised by the public in this regard:

- **17 March**, an extraordinary session of the Social and Economic Council was held, upon which, the President of the United Branch Trade Union Independence, Mr Zoran Stojiljković, asked for a ‘moratorium’ to be introduced in regard to the legal state of labour during the state of emergency in order to avoid salary reductions and changes in employment status²³.
- **17 March**, the A11 – Initiative for Economic and Social Rights proposed the formation of a ‘third crisis headquarters’ which must urgently take action to eliminate or mitigate the consequences that have arisen on the poorest and most vulnerable categories of persons under the jurisdiction of the Republic of Serbia. It was also established that the competent Ministry of Labour, Employment, Veteran and Social Issues has failed to propose any measures to facilitate the position of the most vulnerable members of society, including those working in the informal economy²⁴.
- **19 March**, the United Branch Trade Union Independence sent a list of questions to the²⁵ Ministry of Labour, Employment, Veteran and Social Issues relating to employee rights pertaining to the protection of employees and hired contractors, including measures taken to maintain occupational health and safety during the epidemic. Inter alia, answers to the following were demanded: when will protective gear be made available for those employed in the private sector; will the acts passed by the Government allow employers to immediately send employees on annual vacation leave, prior to the expiry of the legally prescribed 15-day deadline; will the Government acts render it official that one employed parent (of children 12 years or younger) may remain at home, once this information has been released by the media; what is the status of employees in self-isolation; are labour inspectors reacting to employee complaints where employers are changing the employment status either verbally or via SMS messages, in violation of the Employment Act; will the Government prescribe the minimum amount of supplementary salary during the suspension of labour caused by an order issued by the competent state authority or competent body of the employer, and pursuant to Art. 117 of the Employment Act which fails to prescribe the minimum supplementary salary amount in this case; how will working hours and employee obligations be harmonised in retail facilities, i.e. length of working hours and transportation to/from work; how will employees whose employment contract was terminated as a result of redundancy be able to register with the National Employment Service when, as of 17

²² According to the President of the United Branch Trade Union Independence, Mr Zoran Stojiljković: “It is clear that there are many uncertainties in terms of the implementation of provisions defined by Government regulations.” ‘Addressing Membership’, <https://nezavisnost.org/obracanje-clanstvu>, 18 March 2020

²³ ‘Will the Laws Protect Labour Rights During the State of Emergency?’ <https://www.masina.rs/?p=12643>, 17 March 2020

²⁴ ‘Urgent Action Needed to Protect the Most Vulnerable While Fighting the SARS-CoV-2 Virus’, <https://www.a11initiative.org/neophodno-je-hitno-preduzimanje-mera-za-zastitu-najugrozenijih-tokom-borbe-protiv-virusa-sars-cov-2>, 17 March 2020. Zrenjanin Social Forum has shed light on the difficulties facing collectors of secondary raw materials, estimating that these workers have failed to be recognised by the state as such and that they are in great danger of being exposed to the coronavirus, considering that they do not wear protective equipment while in direct contact with waste: ‘Collectors of Secondary Raw Materials Gloveless in the Fight Against COVID-19’ <http://www.zsf.rs/vesti/sakupljaci-sekundarnih-sirovina-goloruki-u-borbi-sa-covidom19/>, 26 March 2020

²⁵ ‘Questions for the Ministry of Labour’, <https://nezavisnost.org/pitali-smo-ministarstvo-za-rad/>, 19 March 2020

March, the work of this institution was suspended (as per the Conclusion passed by the Government on 16 March)

- **20 March**, the United Branch Trade Union Independence informed the public of measures taken at the Sevojno Copper Mill, as an example of good practice: as early as 11 March additional assets were distributed to employees for personal hygiene; on 13 March, an order was issued by management, initiated by the union, on enhanced safety measures; no material impairment was imposed on the salaries of employees in isolation; a Crisis Centre was set up in which union representatives are also involved; work was organised into shifts and work from home, use of annual vacation leave provided, provision of organised bus transportation, strict control was imposed on the work of the staff restaurant, daily disinfection of factory premises and purchase of 2,000 reusable masks²⁶.
- **23 March**, the Minister of Labour, Employment, Veteran and Social Issues, Mr Zoran Đorđević, called all employees to retain their staff²⁷. In his words, from this date, the National Employment Service began to receive complaints from all employees whose employment was terminated. Furthermore, it was explained that the Labour Inspectorate “will inspect cases where employees were let go, which were not in line with the law and will take action”, adding: “we cannot act individually in terms of whether or not someone was unlawfully fired or not, we will make a record with the National Employment Service, and once this is over, in a month or two, we will go after these employers with all that we have and a list will be published of all those who broke the law and a record of these employers will be made”. He called all workers in self-isolation to “obtain a decision issued by the Ministry or the Ministry of the Interior, to have in their possession proof, in writing, because of those who will try to misuse this right because they do not wish to work, and because of those employers who may try to misuse this right and who will, from a legal point of view, be within their right to terminate the employment of staff who do not have official proof of self-isolation”.
- **23 March**, the Independent Culture Scene of Serbia sent a letter to the competent authorities with the aim of adopting concrete measures to support artists, cultural workers and those self-employed in the cultural sector²⁸.
- **25 March**, the United Branch Trade Union Independence called upon competent state authorities to make unannounced visits to all of Serbia’s plants to control the application of protective measures²⁹.
- **27 March**, media and journalists’ associations send proposals to the Government of Serbia on how to counteract negative consequences per the labour rights of journalists³⁰.

²⁶ ‘What Should the Union Be Doing During the State of Emergency’, <https://nezavisnost.org/sta-sindikata-treba-da-radi-u-vanrednom-stanju/>, 20 March 2020

²⁷ ‘Anyone Left Unemployed to Contact the Bureau to Receive Benefits: There Will Be a List of All Those Who Terminate Employment Unlawfully’, <https://biznis.telegraf.rs/info-biz/3169083-ko-je-ostao-bez-posla-da-se-javi-na-biro-zbog-nadoknade-bice-lista-svih-koji-nezakonito-daju-otkaz>, 23 March 2020

²⁸ ‘Notice of the Independent Cultural Scene of Serbia’, <http://nezavisnakultura.net/2020/03/23/saopštenje-asocijacije-nezavisna-kulturna-scena-srbije-strucnoj-javnosti/>, 23 March 2020

²⁹ ‘State Authorities to Make Unannounced Visits to Control the Application of Protective Measures in Serbia’s Plants’, <https://nezavisnost.org/drzavni-organi-bez-najava-da-kontrolisu-primenu-zastitnih-mera-u-svim-fabrikama/>, 25 March 2020

³⁰ ‘Proposals for the RS Government’, <http://nezavisnost.org/wp-content/uploads/2020/03/Medijaska-i-novinarska-udruzenja-predlozi-za-Vladu-RS.pdf>, 27 March 2020

- **31 March**, the Government presented a programme of measures for the economy and citizens worth EUR 5.1 billion, which, inter alia, provides for: deferral of payment of payroll taxes and contributions to the private sector during the state of emergency; direct assistance to large private-sector enterprises in the form of payment of aid in the amount of 50 percent of the net minimum wage for employees who have been terminated via a decision. Aid measures to the private sector apply to businesses that have reduced their number of employees by no more than 10 percent, not counting part-time employees whose contract expires during a state of emergency³¹. The draft package was not consulted on with social partners, civil societies and the expert public.
- **1 April**, the Nova.rs portal published the following article: ‘Clinical Centre of Vojvodina at Its Breaking Point: Without Protection for Its Nurses’ written by Ana Lalić, in which she described the difficult conditions under which those employed in the Clinical Centre of Vojvodina are working under without protective equipment³². That same day Ana Lalić was detained by the Ministry of the Interior, upon the notification of the CC Vojvodina, only to be released the next day as a result of public pressure.
- **2 April**, in response to information that over 15 percent of those infected with the new coronavirus were employed in the state healthcare system, the United Branch Trade Union Independence sent a letter to the Crisis Centre of the Republic of Serbia urging the following: to increase the salaries of those working in the social protection system as well as those working in the healthcare system; in healthcare and social institutions in which work orders and work organisation orders were issued to be monitored via written orders, in line with the applicable regulations; to implement additional triage and preventative protective measures³³.

In addition to the quality of labour law enforcement, expected negative developments in the labour market are of major concern. As in the case of labour law enforcement, the availability of data does not allow for a more precise description of the current situation, i.e. its development since the declaration of a state of emergency to today. Data pertaining to the number of persons who have registered for unemployment in March and April 2020 (those, who according to the law, have 30 days from the termination of their employment to do so) are still not available on the website of the National Employment Service. According to the estimates of various union representatives, the number of employees and hired contractors whose employment was terminated due to the epidemic ranges from a few hundred to ten thousand³⁴.

³¹ Government of the Republic of Serbia, *Programme of Economic Measures to Reduce the Negative Effects Caused by the COVID-19 Pandemic and Support to Serbia's Economy*, <https://www.mfin.gov.rs/wp-content/uploads/2020/03/Program-ekonomskih-mera.docx>, 31 March 2020

³² ‘Clinical Centre of Vojvodina at Its Breaking Point: Without Protection for Its Nurses’, <https://nova.rs/drustvo/kc-vojvodine-pred-pucanjem-bez-zastite-za-medicinske-sestre/>, 1 April 2020

³³ ‘To the Crisis Centre of the Republic of Serbia’, <https://nezavisnost.org/kriznom-stabu-republike-srbije/>, 2 April 2020

³⁴ ‘A thousand to 10,000 Left Unemployed in Serbia’, <https://www.danas.rs/ekonomija/bez-posla-u-srbiji-ostalo-od-hiljadu-do-10-000-ljudi/>, 5 April 2020

4. Conclusions

It is already evident that the COVID-19 pandemic has caused the breakdown not only of Serbia's labour protection system, but also, generally speaking, its domestic legal order (to a large extent), as well as the human rights protection system³⁵. It follows that legal analyses, conclusions and proposals with the usual level of relevance, justifiability and quality will suffer a similar fate of losing their legal certainty. Thus, it is of crucial importance at this time to closely monitor the development of the situation, record all changes in the legal framework and in the field, to then summarise them all the moment the epidemic ends so that appropriate changes to regulations and public policies may be urgently formulated on the basis of collected data. The overriding objective, of course, is to correct the wrongs committed, and to avoid such a breakdown, or at least to reduce it *if* (or better yet, *when*) such an event as the epidemic that hit Serbia in the early winter of 2020 occurs again. And to ensure that the weight of the economic and social burden is distributed evenly among all their parts, each in line with their own rights, capabilities and needs.

In relation to all of the above, we may conclude the following:

- the global and local trend of ignoring and dismantling human rights which include social and labour rights, has greatly reduced the ability of Serbia's authorities to successfully combat the current health crisis, and has greatly diminished their ability to handle crisis management successfully;
- the decisions rendered by Serbia's institutions since the outbreak of the health crisis at the beginning of March, starting with the manner in which the state of emergency was declared, are disputable from a legal aspect, which further undermines the rule of law and the possibility of exercising human rights as an integral part of the rule of law;
- the acts of the Government of the Republic of Serbia passed during the state of emergency have impaired labour rights further as they were not: passed in a timely manner; passed in line with the constitutional guarantee of non-discrimination; elaborated in more detail, legal provisions relating to remote work and work from home; passed in a form in which the government takes stands (declarations) when it comes to recommendations to employers that were adopted via conclusions; and because they were subsequently interpreted by line ministries in a manner that introduces legal uncertainty;
- in the coming period, in anticipation of the new wave of COVID-19 in the fall of 2020, it is necessary to - with the direct involvement of ILO experts and trade unions and broad social dialogue with civil societies, academia and all political parties, urgently amend the Employment Act and the Law on Safety and Health at Work, that is, adopt the necessary bylaws, improve the labour protection of employees and hire contractors, not only in situations such as epidemics and the like, but also under normal circumstances.

³⁵ For a detailed overview of derogations from international human rights standards, see: 'Analysis of the Derogations From Human and Minority Rights During the State of Emergency in the Republic of Serbia Caused by the Infectious Disease COVID-19 Epidemic', A11 - Initiative for Economic and Social Rights, March 2020, <https://www.a11initiative.org/wp-content/uploads/2020/03/Analiza-mera-odstupanja-derogacija-od-ljudskih-i-manjinskih-prava-tokom-vanrednog-stanja-u-Republici-Srbiji-izazvanog-epidemijom-zarazne-bolesti-COVID-19-1.pdf>, 30 March 2020