

THE RULE OF LAW IN NEGOTIATION CHAPTER 19 SOCIAL POLICY AND EMPLOYMENT

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The Rule of Law in the Chapter 19

- Social Policy and Employment –

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ABBREVIATIONS USED IN THE TEXT

AP19	Action Plan for Chapter 19, Social Policy and Employment
AP23	Action Plan for Chapter 23, Judiciary and Fundamental Rights
EC	European Commission
ERP	Economic Reform Program
ESF	European Social Fund
ESRP	Employment and Social Reform Program
EU	European Union
ILO	International Labor Organization
MLEVSP	Ministry of Labour, Employment, Veteran and Social Policy
NCEU	National Convention on the European Union
NA	National Assembly (of the Republic of Serbia)
NES	National Employment Service
OCM	Open Coordination Method
SEC	Socio-economic Council
UN	United Nations

1. PROGRESS OF THE ACCESSION PROCESS IN THE CHAPTER 19 SOCIAL POLICY AND EMPLOYMENT

The Explanatory Screening Meeting for Chapter 19 Social Policy and Employment was held from February 10 to February 12, 2014, in Brussels, while the bilateral meeting was held from June 24 to June 26, 2014. The screening report was published on January 18, 2016. The Republic of Serbia was informed about the results of the screening on April 28, 2016, by the Committee of Permanent Representatives of the Council. On that occasion, it was pointed out that the Republic of Serbia couldn't be considered sufficiently ready for negotiations on Chapter 19. A criterion was set for the opening of the Chapter: "Serbia should submit to the Commission an action plan on the implementation and application of the acquis in all areas covered by the Chapter on Social Policy and Employment."¹ The plan should include a timetable, the human resources in charge of each task, the institutions involved, their mandate and role in the accession negotiations, and the accompanying support activities in the context of the negotiation process.

The screening report established the framework for harmonization with the EU acquis that Serbia should achieve by joining the membership in the following areas:

- Labor law
- Safety and health at work
- Social dialogue
- Employment policy
- European Social Fund
- Social inclusion
- Social protection
- Prohibition of discrimination in the field of employment and social policy
- Equality of men and women in the field of employment and social policy.

The first draft of the Action Plan for Chapter 19 (AP19) was prepared in 2016 and presented to the European Commission (EC) in order to obtain comments and suggestions for further improvement. The EC recommended changing the methodology for drafting AP19, as well as adding the envisaged budget funds. At the moment, the third draft of AP19 is in force, which is also the first draft around which civil society organizations were consulted. The Government of the Republic of Serbia adopted the Action Plan in May 2020.

The first consultations of the Ministry of Labor, Employment, Veterans, and Social Policy (MLEVSP) with civil society organizations, gathered in the National Convention on the EU (NCEU), on the occasion of drafting AP19, were held on January 15, 2019. On this occasion numerous comments and suggestions were given by the civil society organizations. Comments ranged from general, on the structure of the AP, methodology, deadlines, envisaged resources, to comments for each area covered by Chapter 19.

¹ Screening Report Serbia - Chapter 19 Social Policy and Employment, pp18-19.

The second version of the third draft of AP19, was presented on the second meeting held on June 14, 2019. The Ministry gave explanations on the NCEU's comments. The text of the draft was positively assessed by the EC in October 2019 during informal consultations with the MLEVSP. The adoption of AP19 has been announced for the beginning of 2020 (March 2020 in the Information Booklet of the MLEVSP). Until May 2020, when the analysis was prepared, AP19 was not adopted, and given the current circumstances, it is very likely that it will not be adopted by the end of the first half of 2020.

2. RULE OF LAW IN THE CHAPTER 19

Fundamental Rights in Chapter 19

Fundamental rights in the Chapter 19 are identified through the intersection of European, international and national regulations. At the European level, these are the European Charter of Human Rights, the European Convention on Human Rights of the Council of Europe, as well as other conventions of the Council of Europe.

The European Charter of Human Rights² lists the following rights relevant to Chapter 19: Prohibition of slavery and forced labor (Article 5, section Dignity), freedom of assembly and association, (Article 12, section Freedom), Freedom of choice of occupation and right to work, (art. 15), prohibition of discrimination, (art. 21, section Equality), equality between women and men, (art. 23), integration of persons with disabilities (art. 26), the right of workers to information and counseling in the enterprise (art. Art. 27, section Solidarity), the right to collective bargaining and action (Art. 28), the right of access to employment services (Art. 29), protection in the event of unlawful dismissal (Art. 30), fair and just working conditions, (Art. 31), prohibition of child labor and protection of young people at work, (Art. 32), family and professional life (Art. 33), social insurance and social assistance, (Art. 34), health care (Art. 35), law to an effective remedy and a fair trial (Art. 47, section Justice).

The European Convention on Human Rights states the prohibition of slavery and forced labor (Article 4 of the Convention), the right to a fair trial (Article 6), freedom of assembly and association (Article 11), the prohibition of discrimination (Article 14) and the general prohibition of discrimination. (Article 1 of Protocol No. 12)

The revised European Social Charter of the Council of Europe³ further defines the obligations of the member states of the Council of Europe to respect the corpus of social rights, among which we emphasize: the right to work, the right to fair working conditions, the right to safe and healthy working conditions, the right to fair compensation, the right to collective bargaining, the right of children and youth to protection, the right of employed women to maternity protection, the right to vocational guidance, the right to vocational training, the right to health protection, the right

² Charter of Fundamental Rights of the European Union

³ Revised Charter of Fundamental Rights of the European Union

to social security, the right to equal opportunities and equal treatment in employment and work without discrimination on the grounds of sex, the right of workers to protection of their claims in case of insolvency of the employer, the right to dignity at work, the right of workers with family obligations to equal opportunities and equal treatment, etc.

At the international level, an unavoidable source of fundamental rights is the International Covenant on Economic, Social and Cultural Rights, other UN Conventions, including the UN Convention on the Rights of Persons with Disabilities, to which the EU is a signatory. International Labor Organization (ILO) conventions are sources of fundamental rights also invoked by the EU when evaluating Serbia's progress in complying with international standards. The most important ones are Convention no. 29 and Convention no. 105 - on the Abolition of Slave Labor, Convention no. 87 on trade union freedoms and rights, Convention no. 98 - on the right to organize and bargain collectively, Convention no. 138 - on child labor, Convention no. 182 - on the worst forms of child labor, Convention no. 100 - on the equality of male and female labor for work of equal value and Convention no. 111 - on discrimination in employment and occupation.

[Review of National Regulations Guaranteeing and Securing Fundamental Rights](#)

The Constitution of the Republic of Serbia guarantees the right to work, equal access to jobs, respect for dignity, safety and protection at work, limited working hours and rest, as well as the right to fair work compensation. Forced labor and discrimination are prohibited, while women, youth and people with disabilities are provided with special protection at work and special working conditions. The right to strike and freedom of association are guaranteed.

The Constitution provides for the right to salary compensation in the event of temporary inability for work, as well as the right to compensation in the event of temporary unemployment. The Constitution provides the right to social protection to citizens who need social assistance in order to overcome social and life difficulties and create conditions for meeting basic living needs. Everyone is guaranteed the right to health protection. Children, pregnant women, mothers during maternity leave, single parents with children up to the age of seven and the elderly are guaranteed the realization of health care from public revenues. The state is obliged to take care of the economic security of pensioners.

The Labor Law is the basic law that regulates the rights based on labor. It applies to all employees unless otherwise provided by special laws. Special laws regulate employment rights in certain activities and services: the Law on Civil Servants, the Law on Employees in Autonomous Provinces and Local Self-Government Units, the Law on Employees in Public Services, the Law on Police, the Law on the Army, and the Law on Simplified Employment on seasonal jobs in certain activities. The Law on Volunteering regulates volunteer work.

The Law on Prevention of Harassment at Work prohibits harassment at work and in connection with work. It prescribes measures for the prevention of harassment and the procedure protecting persons exposed to harassment.

The Law on Safety and Health at Work regulates rights, obligations, and responsibilities related to safety and health at work on Safety and Health at Work, and the Strategy of Safety and Health at Work for the period 2018-2022 is in force, followed by an Action Plan for its implementation. The draft of the new Law on Safety and Health at Work was presented in 2019 when a public debate was held. In December 2019, the Government sent the bill to the Assembly for adoption, but this bill has not yet been included in the session's agenda.

The Law on the Socio-Economic Council regulates the establishment, scope and manner of work, as well as other issues of importance for the work of the Socio-Economic Council (SEC). The last general collective agreement ceased to be valid in 2011. Special collective agreements are in force in certain areas, such as the Special Collective Agreement for State Bodies, the Special Collective Agreement for Social Protection, Special collective agreements for health and cultural institutions founded by the Republic of Serbia, Autonomous Province and local self - government unit, Special Collective Agreement for Construction and Construction Material Industry of Serbia or Special Collective Agreement for Police Officers.

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The Law on Employment and Unemployment Insurance regulates issues of importance for employment, increasing employment and preventing long-term unemployment. The rights and obligations of an employee who concludes an employment contract with a temporary employment agency for the purpose of assigning temporary work to an employer are regulated by the Law on Agency Employment, while the conditions and procedure for employing foreigners are regulated by the Law on Employment of Foreigners.

National Employment Strategy for the period 2011–2020. it has entered its final year, and National Employment Action Plans are adopted each year. Local governments adopt local employment action plans. In 2016, the Government of the Republic of Serbia adopted the Employment and Social Policy Reform Program (ESRP). Economic Reform Program for the period 2020-2022. (ERP) also deals in part with the issue of employment and the labor market, as well as social protection and inclusion.

The issue of the right to strike is regulated by the 1996 Strike Act. The draft Law on Strike was presented in 2018, when a public debate was held. The draft law was submitted to the SEC for an opinion, but that body did not reach a consensus of its members on the text of the draft law.

The postponement of the adoption of the new law on strike was also stated in the Report of the European Commission for Serbia for 2019. According to the latest information, the working group

for drafting the law has been dissolved⁴. Also, although planned in 2018 by the work plan of the Government, the Law on the Social and Economic Council was not included in the work plan of the Government for 2019, although in August 2019 a working group was formed for its drafting.

The Law on Social Protection regulates the rights and services of social protection, the rights and obligations of users, procedures for exercising rights, as well as numerous other issues in the field of social protection. In addition to this law, rights in the areas of social protection and social inclusion are regulated, inter alia, by the Law on Financial Support to Families with Children, the Law on Pension and Disability Insurance, the Law on Voluntary Pension Funds and Pension Plans, the Law on Health Care, the Law on Health Insurance, the Law on Professional Rehabilitation and Employment of Persons with Disabilities, the Law on Prevention of Discrimination against Persons with Disabilities, the Law on Refugees, the Law on Adult Education, the Law on Youth, the Law on the Use of Sign Language, the Law on Movement with a Guide Dog. The Poverty Reduction Strategy was adopted in 2003, and other strategic documents in this area are the Strategy for Improving the Position of Persons with Disabilities for the Period from 2020 to 2024, the Action Plan for the Implementation of the Rights of National Minorities, the Strategy for Social Inclusion of Roma period 2016-2025. National strategy for resolving the issue of refugees and internally displaced persons for the period 2015-2020. Strategy for reintegration of returnees under the readmission agreement, Strategy for the development of adult education, National Strategy for Youth for the period 2015-2025. The National Strategy on Aging ceased to be valid in 2015, and the law on the elderly has not yet been passed. The general acts of local self-government units are also important for the realization of certain social protection services.

General prohibition of discrimination, forms, and discrimination cases are prescribed by the Law on Prohibition of Discrimination. The prohibition of discrimination against persons with disabilities is specifically regulated by the Law on Prevention of Discrimination against Persons with Disabilities. Provisions on the prohibition of discrimination are also found in many sectoral laws. The prevention and protection against discrimination referred to the period 2013-2018, and a new one has not been adopted yet.

The Law on Gender Equality regulates issues of importance for achieving equality between men and women. In 2016, the National Strategy for Gender Equality was adopted, which in 2020 entered the last year of validity.

The Law on Free Legal Aid, which should facilitate access to justice for vulnerable categories of the population, began to be applied in October 2019.

[Institutions for implementation and protection of fundamental rights in the Chapter 19](#)

The body in whose competence is the management of affairs related to the exercise of the largest number of rights from Chapter 19 is the Ministry of Labor, Employment, Veterans, and Social Policy, whose scope is regulated by the Law on Ministries. The Labor Inspectorate and the

⁴ Center for Democracy Foundation, Report on the state of labor rights in Serbia for 2019

Directorate for Safety and Health at Work have been established as administrative bodies within the ministry.

The Labor Inspectorate performs inspection activities in the field of labor relations and safety and health at work. The Labor Law stipulates that the labor inspection supervises the application of labor regulations, general acts, and employment contracts. The Labor Inspectorate has 257 employees and two appointed persons, of which 245 are labor inspectors - lawyers and engineers of various technical professions. The labor inspector is, among other things, authorized to order the employer to eliminate the established violations of regulations, general act, and employment contract, to order the employer to conclude an employment contract with the employee in writing, to submit a request to initiate misdemeanor proceedings if he finds that the employer committed a misdemeanor, to postpone the termination of the employment contract until the final decision of the court.

The Directorate for Safety and Health at Work performs tasks to improve safety and health at work, reducing injuries at work, occupational diseases, and diseases related to work. The scope of its functions is determined by the Law on Safety and Health at Work. Sectors for work and employment, for pension and disability insurance and veteran-disability protection, for family care and social protection, for protection of persons with disabilities, for anti-discrimination policy, and promotion of gender equality have been formed within the MLEVSP.

Violations of employees' rights are adjudicated by courts of general jurisdiction in civil proceedings, and the Law on Civil Procedure provides for a special procedure in labor disputes. The Law on Peaceful Settlement of Labor Disputes regulates the manner and procedure of peaceful settlement of collective and individual labor disputes and establishes the Republic Agency for Peaceful Settlement of Labor Disputes. The Law on Prevention of Harassment at Work regulates the procedure for the protection of persons exposed to abuse and stipulates that protection can be sought in proceedings with the employer, as well as before a court in civil proceedings (labor dispute), and prescribes certain special rules for court proceedings.

The Socio-Economic Council, which consists of representatives of executive bodies, employers and trade unions, among other things, considers the issues of improving collective bargaining, employment policy, wages and prices, education and professional training, health, and social protection.

The Law on Employment and Unemployment Insurance established the National Employment Service, which performs activities pertaining to employment, unemployment insurance and the exercise of rights from unemployment insurance, inter alia through employment mediation services, vocational guidance, additional education and training, professional rehabilitation and employment of persons with disabilities.

The establishment of social protection institutions is regulated by the Law on Social Protection. The Center for Social Works decides on the exercise of the rights of users and on the use of social protection services. The law also provides for the establishment of centers for family accommodation and adoption. The Decree on the Network of Social Protection Institutions

determines the network of social protection institutions that provide home accommodation services, social health institutions, and centers for family accommodation and adoption established by the Republic of Serbia, ie the Autonomous Province. Social protection institutions that provide home accommodation services are established as institutions for children and youth or as institutions for adults and elderly users.

The Republic Directorate for Social Protection was established to perform development, advisory, research and other professional work in social protection. The Institute for Social Protection was also formed. Provision and implementation of compulsory health insurance is performed by the Republic Health Insurance Fund, within which the Provincial Fund, branches and sub-branches were formed as organizational units. The Republic Fund for Pension and Disability Insurance was established by the Law on Pension and Disability Insurance in order to exercise the rights from pension and disability insurance and to provide funds for the exercise of these rights. The Provincial Fund was formed within this body, as well as the network of branches and outlets.

In 2009, the Government of Serbia established the Team for Social Inclusion and Poverty Reduction, whose main role is to strengthen the capacity of the Government to develop social inclusion policies, as well as to coordinate and monitor their implementation.

The largest number of rights in the field of employment, social protection and social inclusion are exercised through administrative procedure (Law on General Administrative Procedure). The Administrative Court performs judicial control of the administration by deciding on final administrative acts in an administrative dispute (Law on Administrative Disputes).

The Protector of Citizens is an independent state body that takes care of the protection and promotion of human and minority freedoms and rights and which controls the work of administrative bodies. Suppose in the conducted procedure, it finds that there are shortcomings in the work of the body. In that case, the Protector of Citizens sends a recommendation for the elimination of shortcomings. In case of non-compliance with the recommendation, he is authorized to inform the public, Assembly and Government, and recommend determining responsibility. The Protector of Citizens has the right to propose laws within his / her competence, as well as to initiate a procedure for assessing the constitutionality and legality of general acts. A Provincial Ombudsman has been formed for the area of AP Vojvodina, and there are also local ombudsmen in local self-government units.

The Law on Prohibition of Discrimination prescribes procedures for protection against discrimination, and the Commissioner for the Protection of Equality has been established. The law provides for judicial protection in the case of discriminatory treatment in a special litigation procedure, and the specifics of the procedure relate to issues of active legitimacy, territorial jurisdiction, burden of proof and interim measures. The Law on Prevention of Discrimination against Persons with Disabilities also prescribes a special civil procedure for the protection of rights.

The Commissioner for the Protection of Equality is an independent state body that receives and considers complaints and gives opinions and recommendations in specific cases, and in case of non-compliance with the recommendations, it is authorized to issue a warning measure, ie to inform the public. The Commissioner is, among other things, authorized to file a lawsuit for discrimination and misdemeanor charges, warn the public of cases of discrimination, recommend taking measures to achieve equality, initiate the adoption or amendment of regulations, and submit a proposal to assess constitutionality and legality.

The Law on Gender Equality also provides protection of rights in civil proceedings and in a similar way as the Law on Prohibition of Discrimination prescribes certain special rules of procedure. In 2014, the Government of Serbia established the Coordination Body for Gender Equality, which is in charge of coordinating the work of state administration bodies related to gender equality.

There has been no Ministry of Human and Minority Rights in Serbia since 2011, and the Office for Human and Minority Rights was established in 2012 by a government decree. The office has the status of a government service, and its scope includes activities related to the protection and promotion of human and minority rights, monitoring the harmonization of domestic regulations with international ones, exercising the rights of national minorities, etc.

Violation of certain rights that are the subject of consideration in Chapter 19 is a criminal offense. Thus, the Criminal Code prescribes criminal offenses: violation of labor rights and social security rights, violation of employment and unemployment rights, violation of the right to strike, failure to take occupational safety measures, racial and other discrimination. The courts of general jurisdiction in criminal proceedings (Code of Criminal Procedure) decide on the existence of a criminal offense, responsibility and sanction. A number of laws governing the rights in this Chapter provide for misdemeanor liability for violations of the provisions of the law. The misdemeanor courts decide the determination of misdemeanor responsibility and the imposition of a misdemeanor sanction in the misdemeanor procedure (Law on Misdemeanors).

The role of the Constitutional Court of Serbia is also important for the protection of rights, which decides on the legality and constitutionality of general acts, as well as on constitutional appeals against individual acts and actions.

3. EUROPEAN COMMISSION MONITORING: THE RULE OF LAW IN THE CHAPTER 19

The monitoring of the European Commission is carried out through the established methodology of accession negotiations and the publication of annual reports. Simultaneously, Serbia is preparing to participate in the Open Method of Coordination (OMC) process with member states in those areas where there is no developed EU acquis, as is the case with employment and social policy. The European Commission is also monitoring the implementation of the Economic Reform Program, which is relevant to Chapter 19, given that the ERA includes the labor market and social inclusion among the strategic reforms.

Chapter 23

Certain rights from Chapter 19 and institutions that have a role in exercising and protecting these rights are also covered by the Chapter 23. Their compliance with the *acquis communautaire* and the achieved level of preparedness can be monitored through accession negotiations on the Chapter 23.

When it comes to rights, it primarily refers to prohibiting discrimination and equality of women and men. The Action Plan for Chapter 23 (AP23) envisages amendments to the Law on Prohibition of Discrimination and the adoption of a new law on gender equality. However, this has not been done so far. The EC's annual progress reports and the status reports in Chapters 23 and 24 (non-paper documents) state that these regulations' adoption is seriously delayed. The EC reports also point out that the old Strategy for the fight against discrimination expired in 2018 and that the new one has not been adopted yet.

Significant diffusion through these two chapters' rights also exist in the areas of social inclusion and social protection. AP23 envisages the implementation of a series of activities aimed at improving the position and social integration of persons with disabilities, children, persons belonging to national minorities, particularly Roma, and internally displaced persons. Thus, for example, AP23 envisages improvement of the system of cash benefits intended for vulnerable families of children with disabilities, enactment of laws on the protection of persons with mental disabilities in social protection institutions, improvement of the foster care system, development of the capacity of social protection institutions, more comprehensive application of the constitutional principle for minorities in the public sector, the establishment of councils for interethnic relations at the local level, strengthening of the network of Roma coordinators, expansion of the network of pedagogical assistants, introduction of health mediators in the nomenclature of occupations, registration of legally invisible Roma, an increase of Roma children in education, implementation of Roma employment measures, finding solutions for informal settlements, improving housing conditions for internally displaced persons.

Making progress on these issues is a matter of continuing reporting of the European Commission's reporting. Thus, the EC's annual reports, among other things, point out that the National Action Plan for Children expired in 2015, and concerns are expressed about the violations of children's rights that take place in large institutions, especially children with disabilities. Regarding the exercise of the rights of persons with disabilities, the EC Report for 2018 states that little progress has been made and that the situation is still challenging, especially in terms of access to services, employment, and education, while the report for 2019 emphasizes that there was no progress. The non-paper report on the situation in Chapters 23 and 24 from November 2019 indicates that adopting the law on the protection of persons with mental disabilities in social protection institutions is seriously delayed. Regarding the exercise of the rights of national minorities, the EC reports assess that there is an adequate legal framework, but that it is necessary to ensure consistent application of the law. Thus, for example, it is pointed out that national minorities are insufficiently represented in public administration despite the legal obligation. Regarding the inclusion of Roma, the EC reports indicate that there is a severe delay in establishing a legal basis for Roma coordinators and pedagogical assistants, that in

connection with the registration of births of children whose parents do not have documents, it is necessary to amend bylaws, that it is necessary to resolve the problem of segregation in education, that measures aimed at formalizing undeclared work must be adopted, and that the new provisions of the Law on Financial Support to Families with Children condition the right to parental allowance by vaccinating children, but it is indicated that only 12.7 percent of Roma children received all vaccines, compared with 70.5 percent of non-Roma children. As for IDPs, it is estimated that about one-third of the total number of IDPs remain vulnerable, but solutions are slow and limited.

Concerning the institutions in charge of exercising and protecting the rights under Chapter 19, EC monitoring is also partly carried out as part of the monitoring of progress in Chapter 23, through monitoring progress in the field of justice. Given that for many rights from Chapter 19, protection is provided in court proceedings, the situation in judicial institutions is of great importance for the realization of these rights. EC reports regularly point out that Serbia has achieved only a partial level of preparedness and additional measures need to be taken and significant progress made on several issues. The need to strengthen the independence and improve the judicial system's efficiency and effectiveness is particularly emphasized. Thus, it is established that the existing constitutional and legislative framework leaves room for inappropriate political influence on the judiciary. In practice, there is great pressure on the judiciary. It also highlights the need to revise the existing system of election, transfer, and promotion of judges to ensure that their careers are based entirely on merit. It is also emphasized that amendments to the Law on Civil Procedure and its harmonization with European standards are needed. The reports express concern over the massive backlog of cases and point out that the length of proceedings and failure to resolve compensation claims undermine the quality of justice. The long-awaited Law on Free Legal Aid, which should facilitate access to justice, came into force in October 2019. The latest EC non-paper report on the situation in Chapters 23 and 24 states that some NGOs have expressed concern about the risk of under this law, some of the most vulnerable groups will no longer be entitled to free legal aid.

In addition to the courts, administrative bodies, as well as independent state bodies, play an important role in the protection and exercise of Chapter 19 rights. The EC progress reports mention only a few bodies individually - the Labor Inspectorate, the Socio-Economic Council, the Commissioner for the Protection of Equality, the Protector of Citizens, but significant attention is paid to public administration as a whole and the need for its reform. The EC's annual reports reiterate that Serbia is moderately prepared in the area of public administration reform. Thus, it is stated that some progress has been made, but it also indicates that Serbia is not fully implementing the recommendations from previous reports. Of particular concern is the political influence on the appointment of senior officials and, in particular, the excessive number of acting officials. Regarding employment in the civil service, the reports state that there is a legal framework for merit-based employment, but that the heads of institutions still have too wide a discretion in the appointment of election commissions. It is pointed out that there is still no improvement in the remuneration of civil servants, and that the implementation of the Law on the System of Salaries of Public Sector Employees from 2016, which introduces the principle of

equal pay for equal work for all public sector employees, has been postponed until November 13, 2020 (the law was further postponed to 2021).

The EC reports point out that the Protector of Citizens has a crucial role in ensuring citizens' right to good governance and that state bodies should submit reports on implementing his recommendations. For several years, the National Assembly did not discuss the annual reports⁵ of the Protector of Citizens at the plenary session.

When it comes to administrative procedure, the report for 2019 states that the legal framework for simplification of procedures was set in 2016 by the Law on General Administrative Procedure, but that citizens are often not aware of their rights. It is also emphasized that the Administrative Court works with an insufficient number of judges in expanding jurisdiction, which affects its efficiency.

Chapter 19

This part of the analysis presents the findings of the European Commission on Chapter 19, starting from the screening in 2014 until March 1, 2020. Since the completion of the screening, the EC has published three annual reports on Serbia.⁶

In the Screening Report, in the field of labor law, the EC identifies the need to harmonize legislation, strengthen institutions and ensure the application of the law, emphasizing the problem of informal work in Serbia. In terms of safety and health at work, the EC refers to the activities carried out in that period to improve the legal framework, emphasizing the importance of the capacity of the Labor Inspectorate as a key institution that directly applies the legal framework. The lack of capacity and the need to involve the social partners in planning the work of inspection bodies is highlighted in the report. In the field of social dialogue, the necessity of strengthening both the tripartite and bipartite dialogue was reiterated, as well as the strengthening of the Agency for the peaceful settlement of labor disputes. Employment policy in the first place emphasizes the low activity of women in the labor market, the high number of young people who belong to the so-called NEET group (neither in the education or training system, nor employees), and a high percentage of informal work. The National Employment Service is recognized as one of the key actors whose capacities need to be strengthened.

In the area of social inclusion, the Screening Report highlights the need for social inclusion of the vulnerable groups - Roma, persons with disabilities, young people, the elderly and other economically disadvantaged groups. For persons with disabilities, the application of the legal framework is a priority issue. Equal access to health care services is especially emphasized in the part dedicated to social protection, especially from the point of view of vulnerable groups. In the part dedicated to discrimination in the field of employment and social policy, the application of existing regulations and the need to raise awareness in law enforcement institutions, including the judiciary, are highlighted as a special challenge. There is a lack of statistical mechanisms for monitoring cases of discrimination in employment and use of social protection services. Within

⁵ The National Assembly did not discuss the annual reports for 2014, 2015, 2016 and 2017

⁶ EC report for 2016, 2018 and 2019

the work on gender equality, the need to improve the rights is emphasized, especially for equality in the workplace, maternity leave, sexual harassment, inequality in earnings and career advancement.

All three EC reports⁷ state that Serbia is moderately prepared in the area of social policy and employment. The report for 2019 states that the allocations from the budget for active employment policies have slightly increased, but with still very limited coverage of measures for training the unemployed. In the same report, the EC stated that in the coming period it is necessary to provide adequate financial and institutional resources for employment and social policy in order to more systematically target young people, women and the long-term unemployed and improve the adequacy of social benefits for people below the poverty line. It is further stated that it is necessary to improve bipartite and tripartite dialogue. Consistent application of regulations is emphasized as a priority for the next period.

When it comes to rights in the field of labor law, the EC stated that the activities of the Labor Inspectorate⁸ have intensified, especially in relation to the suppression of undeclared work. Taking into account that the share of undeclared workers is still over 20%, the EC finds that the results of the work of the Labor Inspection are missing⁹. Regarding the capacity of the Labor Inspectorate, it is a worrying fact that from 2017 to 2018, according to the Reports of the Labor Inspectorate, the number of labor inspectors decreased by seven, despite the fact that the EC has emphasized the need to increase the capacity of this ministry body.

In the field of safety and health at work, in December 2018, a strategy and accompanying action plan for the period 2018-2022¹⁰ were adopted. The EC also pointed to the problem of the increased number of fatal injuries at work, which in 2018 amounted to 53, which is the highest number since 2016.

In its annual reports¹¹, the EC has been repeatedly stating that social dialogue is unsatisfactory. It also emphasizes the need to harmonize the legal framework, strengthen the capacity of the social partners, as well as strengthen social dialogue at all levels. The draft AP19 also recognizes the need to strengthen bipartite social dialogue, but AP19 itself does not refer to existing shortcomings in removing barriers to negotiation in the real sector, as noted in the Screening Report¹². The progress in social dialogue was noted by the EC in 2019, due to held consultations on ERP and AP19. However, problems such as extremely short and unrealistic deadlines given for the consideration of the law, the adoption of laws by urgent procedure, as well as a couple of situations that led to the interruption of trade union participation in the SES, indicate that further

⁷ EC report for 2016, 2018 and 2019

⁸ European Commission, Report on Serbia for 2018 and Report on Serbia for 2019

⁹ European Commission, Report on Serbia for 2019

¹⁰ Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2018/96/1/reg>

¹¹ Report on Serbia for 2016, Report on Serbia for 2018 and Report on Serbia for 2019

¹² Comments of NCEU on the second version of the Third Draft Action Plan for Chapter 19 Social Policy and Employment

improvement of social dialogue is needed. In its reports, the EC stated that the SES budget was increased both in 2017 and in 2019.

Referring to the employment policy, in 2018 the EC found that the indicators on the labor market have slightly improved. Also, it has been noted for years that access to the labor market is difficult for Roma, women and people with disabilities, but that allocations from the budget for active employment policies are too small to include all job seekers. The Employment and Social Policy Reform Program adopted in 2016 expired in 2020. The first report on the implementation of the ESRP (for 2016 and 2017) was adopted only in May 2019, and the second (for 2018) in April 2020, and the EC Commission also stated that the said reports were not prepared timely. Additionally relevant to Chapter 19 is that the EC, in the part of the report dedicated to the Chapter 18 - Statistics, requires that Serbia develops statistics on job vacancy.

With regard to the European Social Fund (ESF), which is the oldest European structural and investment fund, and which deals with the social dimension of the EU, the EC notes that there has been no progress since the Screening Report.

In the area of social inclusion and social protection, the EC notes in the last two years that there has been no progress in terms of social protection services at the local level and in the decentralization process. As further stated, in Serbia about half a million people are not able to meet basic living needs, income inequality is the highest among all European countries, and the at-risk-of-poverty rate is 25.7%, which means that about 1.8 million people live in poverty. The EC also points to the need to improve the quality of services, strengthen supervision, regulatory mechanisms, monitoring and evaluation.

Regarding the prohibition of discrimination in the field of employment, the EC stated that women are particularly exposed to discrimination in the labor market, and that the Roma population is exposed to discrimination in all areas of life. In 2017, the Commissioner for the Protection of Equality published the "Equality Code", and the EC has indicated in the last two reports the need to fulfill the recommendations from the Code. In the area of equal opportunities for women and men in employment, all EC reports state that the employment rate of men and their activity rate is higher than that of women, and that women's inactivity is a reflection of their greater participation in unpaid household work, inadequate support women to reconcile their work schedule and personal lives, discriminatory behavior of employers towards young women, existing differences in the salaries of men and women, etc.

4. EXISTING ASSESSMENTS OF THE RULE OF LAW IN CHAPTER 19

Assessments of the rule of law in Chapter 19 are given based on the analysis of documents, usually annual reports, competent state bodies, judicial bodies, independent institutions, primarily the Protector of Citizens, the Commissioner for the Protection of Equality, and the Agency for Peaceful Settlement of Labor Disputes.

Given the limited scope of the methodology of this analysis, and given the large number of fundamental rights relevant to the Chapter 19, this section focuses on labor rights, the right to protection against discrimination in employment and social policy, and gender equality in employment. and social policies, the right to social protection, and the right of persons with disabilities and other vulnerable groups. Access to justice and the right to a fair trial are considered in terms of protecting fundamental rights in the area covered by Chapter 19.

Labor law

The most numerous cases of non-compliance with labor rights in practice relate to non-payment of wages, delays in the payment of wages, non-payment of social security contributions, denial of the right to sick leave and the right to paid annual leave. Mechanisms for the protection of labor rights are extremely inefficient, and the state does not apply measures to sanction employers who violate these rights of employees. It is necessary to emphasize that due to the too narrow concept of employee in the Labor Law (only persons who have concluded an employment contract with the employer), a large number of employees on other grounds (contracts for temporary and occasional jobs, work through student or youth cooperatives) are off the radar "and have no right to protection of some basic rights (eg. limited working hours, minimum wage, etc.).

According to the data from the Regular Annual Report of the Protector of Citizens for 2019, complaints in the field of labor law, most often related to harassment at work, arbitrariness and illegality when making a decision on termination of employment, non-payment or irregular payment of wages and social security contributions. Complaints were also sent regarding the work of the Labor Inspectorate. As stated in the report, the Protector of Citizens himself initiated proceedings against the Labor Inspectorate in the previous year regarding accidents at work that resulted in severe bodily injuries or death. One of the Protector's observations based on citizens' complaints in the field of labor was that the employees themselves insufficiently use the existing legal possibilities for protection of rights, they do not sufficiently address the Republic Agency for Peaceful Settlement of Labor Disputes, Labor Inspection or Judicial Protection¹³.

From the beginning of the work of the Commissioner for the Protection of Equality until the end of 2019, one third of the total number of complaints submitted to this body is regarding discrimination in the field of labor and employment. In this area, complaints are submitted to the Commissioner based on almost all personal characteristics listed in the Law on Prohibition of

¹³ Protector of Citizens. Regular annual report of the Protector of Citizens for 2019

Discrimination¹⁴. The Commissioner's report on the public opinion poll "Attitudes of citizens towards discrimination in Serbia" states that the area of work and employment was seen by the respondents as the area in which discrimination often occurs (74%)¹⁵. The Labor Discrimination Survey states that every fourth employer and employee surveyed (23%) has not heard of an institution for protection against discrimination. It was further stated that the most uninformed are among the unemployed (31%)¹⁶. The commissioner has the authority to file lawsuits in court for violating regulations prohibiting discrimination, in his own name and with the consent and on behalf of the discriminated person. As stated in the Special Report on Discrimination in the Field of Labor and Employment, the problems faced by the Commissioner in initiating these "strategic litigation" are related to obtaining evidence for the first hearing, but also obtaining the consent of the person who suffered discrimination (fear, mistrust, etc.). The Commissioner is also authorized to initiate misdemeanor proceedings for violation of rights under the Law on Prohibition of Discrimination. Report states that a great challenge in these proceedings is the passage of time and the occurrence of absolute obsolescence for conducting misdemeanor proceedings. The most common violations of rights, due to which proceedings were initiated, are due to discriminatory advertisements, discrimination based on gender and marital and family status.¹⁷

In relation to the possibility of protection of employment rights, the action of courts of general jurisdiction, misdemeanor courts, the Labor Inspectorate, and the Republic Agency for the Peaceful Settlement of Labor Disputes is crucial.

Judicial protection of labor rights is ineffective and access to justice is difficult. Bearing in mind that the need for protection of labor rights most often arises in the case of dismissal or denial of other rights to an employee (right to earnings) who has lost his income, court fees are too high for him. Second, a labor dispute can only be initiated by an employee, in terms of the provisions of the Labor Law. The deadline for initiating a labor dispute is very short, and labor disputes last too long (on average about five years). According to the Law on Civil Procedure, the court should pay special attention to the need for urgent resolution of labor disputes. In 2019, 70,741 labor disputes were conducted before the courts in Serbia, and 284 judges¹⁸ acted on them. According to the statements of the president of the Association of Judges of Serbia, many judges, in addition to labor disputes, also deal with other lawsuits, which means that they can schedule three to four hearings a year in a dispute, forcing them to violate the legal principle of urgency¹⁹. Persons who work outside the employment relationship cannot seek protection in an employment dispute but

¹⁴ Commissioner for the Protection of Equality, Special Report of the Commissioner for the Protection of Equality in the Field of Labor and Employment

¹⁵ Commissioner for the Protection of Equality, Report on the Public Opinion Survey "Citizens' Attitudes Towards Discrimination in Serbia"

¹⁶ Equality Commissioner, Labor Market Discrimination Survey

¹⁷ Commissioner for the Protection of Equality, Special Report of the Commissioner for the Protection of Equality in the Field of Labor and Employment

¹⁸ Supreme Court of Cassation, Annual Report on the Work of Courts in the Republic of Serbia for 2019

¹⁹ <https://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:728442-Sudije-o-radnim-sporovima-vecaju-i-po-pet-godina>

can only initiate a lawsuit in which they will seek compensation in terms of the provisions of the Law on Obligations.

For the assessment of the scope of supervision in the protection of labor rights by the Labor Inspectorate during 2019, indicative data can be found in the quarterly reports on the work of the MLEVSP²⁰. For example, in the period from April to June 2019, the Labor Inspectorate performed a total of 20,166 inspections, of which 12,009 in the field of labor and 7,966 in the field of health and safety at work, for a total of 151,025 companies and 265,972 entrepreneurs²¹. Based on the performed inspections in the field of work, 1,737 requests for initiating misdemeanor proceedings were submitted. In the period from July 1 to September 30, 2019, labor inspectors performed a total of 12,102 inspections in the field of labor relations and safety and health at work. In that period, labor inspectors submitted 1,407 requests for initiating misdemeanor proceedings and 311 in the field of safety and health at work²². In order to analyze the conduct of misdemeanor courts upon the requests of the labor inspectorate and case monitoring, as well as the analysis of outcomes, duration of proceedings and other elements necessary for assessing efficiency in the protection of fundamental rights, an analysis of misdemeanor courts is necessary.²³

In July 2019, the Ministry opened a free info line for reporting irregularities related to maternity protection, maternity leave, leave from work for child care and leave from work for special child care. In the period from July to September 2019, 249 telephone calls were sent to the labor inspection via the info line, most of which referred to non-payment of salary compensation during maternity and childcare leave, as well as to termination of employment contracts for employed pregnant women and non-submission of salary calculations and salary compensations²⁴. In March 2018, the MLESVP opened a free info line where citizens can report "undeclared work". In the period from July 1 to September 30, 2019, the Labor Inspectorate received a total of 1,076 calls and 75 e-mails, of which only 651 calls contained all the necessary data for performing inspection supervision.²⁵

From the establishment of the Republic Agency for the peaceful settlement of labor disputes in 2005 until 2018, 15,265 proposals for the peaceful settlement of labor disputes were submitted to the agency, of which 5,905 disputes were resolved on the merits, and the rest were resolved in administrative proceedings. During 2019, the agency acted in 2,300 labor disputes, which is two and a half times more than the previous year. As stated in the Informant on the work of this

²⁰ The annual report of the Inspectorate for 2019 is not available at the time of making this analysis

²¹ Since mid-2015, the competence of the Inspectorate has been extended to unregistered entities

²² Information on the work of the Ministry of Labor, Employment, Veterans and Social Affairs for the period from July 1 to September 30, 2019

²³ In 2012, the Center for Democracy Foundation conducted a survey "Towards more effective conduct of misdemeanor courts and labor inspections in the protection of workers' rights

²⁴ Information on the work of the Ministry of Labor, Employment, Veterans and Social Affairs for the period from July 1 to September 30, 2019

²⁵ Ibid.

agency, the consent for a peaceful solution was obtained in 92%²⁶. Although there is an increasing number of disputes and the full potential of this institution has not been used. The publication "Analysis of the Situation of Economic and Social Rights - Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights", Center for Dignified Work²⁷, stated that one of the reasons for not applying conciliation to a greater extent could be that according to the Law on Peace Arbitration is used instead of conciliation (mediation, mediation) to resolve labor disputes.

Safety and Health at Work

From 2019, occupational injuries are analyzed according to a new methodology that is harmonized with the ESAW methodology (Methodology of European Statistics on Occupational Injuries)²⁸. The Directorate for Safety and Health at Work issued a report²⁹ in 2019, stating that in 2019 there were a total of 13,306 injuries at work, of which 14 were fatal, 1,233 severe, severe in arrival and departure to work 597 and minor injuries 11,462. That is, compared to 2018, an increase in the total number of injuries at work, but also a decrease in those with a fatal outcome (in 2018 there were 53 fatalities). The largest number is in the manufacturing industry (28.3%), followed by health and social protection (10.51%), transport and storage (7.14%), and followed by trade and construction.

According to the annual report of the Labor Inspectorate for 2018, based on 26,515 inspections, the most common irregularities concerned the failure of the employer to determine special rights, obligations and measures related to safety and health at work of young people, women working in high-risk workplaces, persons with disabilities and occupational diseases. Among the fatal injuries, a third are workers who worked "illegally". The practice of non-reporting of injuries at work by the employer is widespread.

Social Dialogue

In the field of social dialogue, 2019 was marked by:

- a) postponement of the adoption of the Law on Strike
- b) decentralization of collective bargaining and cessation of sectoral dialogue at the national level
- c) termination of trade union participation in the work of the SES
- d) lack of progress in the preparation of the draft Law on the Social and Economic Council.

²⁶ Republic Agency for Peaceful Settlement of Labor Disputes, Labor Information Booklet, March 2020

²⁷ Center for Dignified Work, Analysis of the Situation of Economic and Social Rights - Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights

²⁸ European statistics on injuries at work

²⁹ Directorate for Safety and Health at Work, Work Report for 2019

The Joint Declaration adopted at the IX meeting of the Joint Consultative Committee of EU-Serbia Civil Society from October 2019 sent a recommendation to the SES to discuss, at least once a year, the state of collective bargaining in Serbia, as well as the implementation of collective agreements.³⁰

Regarding the right to information and counseling in the company, the Labor Law provides for the formation of a council, but there are no more precise provisions on the manner of formation and operation of the council.

Employment policy

The lack of statistics on job vacancies at the institutional level, and in practice the unavailability of data on job vacancies for the largest number of unemployed, indicate one of the critical points in employment policy. The policy of banning employment in the public sector due to the fact that employment permits were issued by the Ministry of Finance also contributed to the reduced transparency. The practice of employment is one of the runways for party employment, especially in the public sector, but at the same time it is a field for various forms of corruption. Anti-Corruption Strategy 2013-2018, in the section on Prevention of Corruption, (item 4.2. System of employment and promotion in government bodies based on criteria and merits) it is stated that "the system of employment and career advancement is still not entirely merit-based, and employment and promotion are still subject to political influence. Participants in the election procedure are not in a completely equal position, and the leaders still have too many discretionary powers in the selection of candidates from the list made by the election commissions according to the competitions held. In addition, there are no criteria for fixed-term employment, but contracts are concluded without internal or public competition."³¹

In the field of employment policies, it is important to note that for most of the unemployed registered with the NES active employment policy measures are not available (only 4.1% of the unemployment register according to the NES Work Report for 2017).

Prohibition of discrimination in the field of employment and social policy

In the field of discrimination, it is important to point out the contradictory provisions of the Law on Prohibition of Discrimination and the Labor Law, which indicates "Analysis of the situation of economic and social rights in the Republic of Serbia - Report on the implementation of the International Covenant on Economic, Social and Cultural Rights", by the Center for Dignified Work³². The competitiveness of the provisions of these two laws leads to negative case law because "although Art. 16. of the Law on Prohibition of Discrimination prohibited discrimination

³⁰ Available at: <http://www.esc.europa.eu/en/agenda/ur-events/events/yat-mesing-eu-serbia-civil-societi-joint-consultative-committee/yoint-declaration>

³¹ National Strategy for the Fight against Corruption in RS for the period from 2013 to 2018

³² Center for Dignified Work, Analysis of the Situation of Economic and Social Rights - Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, p. 18-19

in the field of labor, which includes the protection of every employed person regardless of the legal basis, the Labor Law contains provisions (Articles 18 to 23) relating to the prohibition of discrimination against persons employed" significantly narrows the circle of persons entitled to protection against discrimination. The same analysis indicates that the Labor Law in Art. 22 "still maintains an insufficiently precise provision according to which it is not considered discrimination to differentiate, exclude or give priority in relation to a certain job when the nature of the job is such or the job is done in such conditions that the characteristics are things and the decisive condition for doing business the purpose to be achieved is justified, which is not in line with the EU anti-discrimination directives on employment".³³

The "Study on the Implementation of the Law on Prohibition of Discrimination in Serbia" conducted by YUCOM³⁴ states that since the adoption of the Law on Prohibition of Discrimination until 2017 (when the analysis was published), about 150 cases have been initiated before Serbian courts. As stated in the analysis, out of 87 analyzed cases, 75 (86.2%) had the character of labor disputes or were related to labor and social rights of persons. The general conclusion of the study is that the judicial system in Serbia does not use anti-discrimination regulations effectively, and that anti-discrimination regulations are not yet fully enforceable.

The report of the Equal Rights Trust organization "Equality in practice, application of anti-discrimination laws in Serbia" states that access to justice for victims of discrimination in Serbia is seriously difficult due to three factors: many people in Serbia do not know their rights to equality and non-discrimination; cannot afford to seek legal redress when a violation occurs; and have difficulty physically reaching the courts.³⁵

Gender equality in employment and social policy

In the field of gender equality, the Regular Annual Report of the Protector of Citizens for 2019 states that in the previous year there were most complaints of violation of the right to salary compensation during maternity leave, termination of employment contract upon return from maternity leave and leave for care, the rights of pregnant women and mothers, as well as domestic and partner violence. When it comes to non-fulfillment of the obligation to calculate and pay maternity wages, the report states that misdemeanor and criminal charges were filed to a greater extent, that the penalty policy is mild, and that it often happened that the report was not acted upon due to the statute of limitations. It is stated that neither the Labor Inspectorate nor the Tax Administration have feedback on the outcome of the proceedings, the number and types of fines imposed, and it is impossible to monitor the effects of their reports. Numerous criticisms of the Law on Financial Support to Families with Children in relation to discriminatory provisions and the fact that the provisions of the ILO Maternity Protection Convention were not respected should be added here.

³³ Ibid, str 27.

³⁴ YUCOM, Study on the implementation of the Law on Prohibition of Discrimination in Serbia

³⁵ Equal Rights Trust, Equality in Practice, Application of Anti-Discrimination Laws in Serbia, p. 84

Research shows that women are more exposed to discrimination when looking for work and employment, as well as in the workplace. The Special Report of the Commissioner for the Protection of Equality on Discrimination in the Field of Labor and Employment states, among other things, that from introducing the Commissioner, to the publication of that report, most complaints were filed in the field of labor and employment - one third of all complaints. Complaints were filed on the basis of almost all personal characteristics listed in the Law on Prohibition of Discrimination, and most complaints were filed due to discrimination based on sex, in the majority of cases due to discrimination against women in the labor market, and approximately the same number of cases related to marital and family status. The Commissioner's report also shows that as a basis for discrimination, these two personal characteristics often appear as a combined basis for discrimination. Namely, the most common cases are when a woman is assigned to a lower position, or her employment is terminated upon return from maternity or childcare leave, and the practice of some employers is still present in applications, vacancies and interviews for jobs unjustifiably involve issues of family and marital status, or automatically indirectly exclude women due to the presumption of inability to balance private and business obligations. The traditional division of gender roles, the burden on women with housework and family care, consequently affects their position on the labor market. The causes that lead to the subordination or superiority of the sexes, the stereotypical role of the sexes, continue to produce inequalities in everyday life³⁶.

According to the Gender Equality Index in the Republic of Serbia for 2016, in the field of work, Serbia shows a lower value by 3.3 points compared to the EU 28 average and ranks 22nd according to the value of the index in the ranking with EU member states³⁷. It is important to note here that the lack of gender-relevant data from official statistics makes it difficult to monitor the exercise of the right to equal pay.

In addition, A11 - Initiative for Economic and Social Rights issued a report: "Secondary Rights - Social Rights in the Light of Austerity Measures" which estimates that the ban on employment in the public sector has disproportionately affected the position of women in the labor market, especially those coming from multiple discriminated groups, as a proportionately larger number of women are employed in the public sector. The report states that the data of the Republic Bureau of Statistics show that out of the total number of employees in the centers for social work, almost 80% are women, over 70% are in the education system, and about 70% are in the judiciary³⁸.

Regarding discrimination against persons with disabilities, the Report of the Commissioner for the Protection of Equality for 2019 points out that the largest number of complaints of discrimination on the grounds of disability in 2019 was filed due to discrimination in proceedings before public authorities (21.9%), in the field of social protection (37.7%), in the provision of public services or in the use of facilities and areas (32.5%), in the process of employment and

³⁶ Regular annual report of the Commissioner for the Protection of Equality for 2019

³⁷ RS Government Social Inclusion and Poverty Reduction Team, Gender Equality Index in the Republic of Serbia

³⁸ A 11 - Initiative for Economic and Social Rights, Second Order Rights - Social Rights in the Light of Austerity Measures (Serbia 2012-2020): p. 6-7

work was submitted 6.9%, in the field of education and vocational training was submitted 11, 9% of complaints.

Social protection

Regarding the right to social protection, the Committee on Social Rights of the Council of Europe, in conclusions for 2017 and 2016, determined that the amount of social assistance belonging to individuals without means of subsistence is obviously inadequate and does not exceed the poverty line³⁹. In the report "Material support as a measure of poverty reduction", the State Audit Institution states that the practice has shown that the beneficiaries generally stay in the social protection system for a long time and that active inclusion programs have not taken root, and that a new strategy for social protection⁴⁰ development should be adopted. On the other hand, "limiting the duration of financial social assistance to a maximum of nine months during a calendar year for able-bodied persons has no basis in international standards," reads the Analysis of the Situation of Economic and Social Rights in the Republic of Serbia - Report on the International Covenant on economic, social and cultural rights" of the Center for Dignified Work⁴¹.

The Special Report of the Protector of Citizens on the implementation of the strategy for social inclusion of Roma men and women points out that measures in the field of social protection are not harmonized with affirmative measures in the field of employment, and that jobs offered to cash social assistance beneficiaries are not adequate⁴². The access of Roma men and women to social protection is limited, due to insufficient information, insufficient capacities of social work centers and insufficient training of staff, as well as due to discriminatory practices. The draft Law on Social Protection foresaw additional criteria for acquiring the right to social protection, which will further complicate access to social protection, which was pointed out by a group of non-governmental organizations⁴³.

The Regular Annual Report of the Protector of Citizens for 2019 states that the number of employees in the centers for social work is not harmonized with the needs of citizens, which negatively affects the quality of services provided. The number of employees in social work centers has decreased by almost a fifth since 2014. The Protector of Citizens sent recommendations to the MLEVSP for additional employment of professional associates, on the basis of which the MLEVSP submitted a proposal to the Ministry of Finance and the Government Commission for approval, but no new employment took place. The complaints also referred to the untimely actions of the Republic Pension and Disability Insurance Fund, the impossibility of exercising the right to a pension in full due to the lack of data on length of service, salaries and

³⁹ European Committee of Social Rights, Conclusions 2017 – Serbia – Article 13 Paragraph 1 – Adequate assistance for every person in need

⁴⁰ State Audit Institution, Material Support as a Poverty Reduction Measure, p. 10 and 22

⁴¹ Available at: <https://petsanik.net/vp-content/uploads/2019/07/ceo-izvestaj-CAR.pdf>

⁴² Protector of Citizens, Special Report of the Protector of Citizens on the Implementation of the Strategy for Social Inclusion of Roma Men and Women with Recommendations, p. 74

⁴³ Available at: <http://www.centaronline.org/sr/dogadjaj/11813/zahtevamo-povlacenje-nacrta-zakona-o-izmenama-i-dopunama-zakona-o-socijalnoj-zastiti-podrzy-inicijativu>

salary compensations for certain periods, the lack of cooperation between the Pension Fund and the Tax Administration.⁴⁴

Social inclusion

Vulnerable groups whose members are particularly at risk of social exclusion most often include the elderly, young people, women, refugees and internally displaced persons.

Members of the Roma national minority and persons with disabilities are most often classified in the groups that are least integrated into the society. The Special Report of the Protector of Citizens on the implementation of the strategy for social inclusion of Roma men and women states that “according to all indicators, Roma are a social group in the most unfavorable social, economic and educational position, and that they face problems of access to and realization of recognized rights. public authorities and concludes that, despite progress in certain areas, results have been very limited”⁴⁵. Other reports also state that many groups, including Roma and people with disabilities, face exclusion from certain areas of life and face obstacles that prevent them from fully exercising their rights to employment, education and health services.⁴⁶

Regarding the inclusion of persons with disabilities, the Protector of Citizens in the Regular Annual Report for 2019 points out that there are still systemic problems that prevent the exercise of their rights, including insufficiently developed accessibility of public facilities, unfinished deinstitutionalization process, the practice of complete deprivation of legal capacity, poverty and social exclusion⁴⁷. As pointed out in the Study on Forms of Discrimination and the Legal and Strategic Framework on Protection against Discrimination in Serbia, the unemployment rate of persons with disabilities is three times higher than the unemployment rate in the general population, and only 13% of persons with disabilities are employed while 1% is employed in the economy and public sector. Even some affirmative measures do not give the expected result, although employers with more than 20 employees are obliged to employ one person with a disability, and if they do not, they are obliged to pay "penalties", most employers choose to pay "penalties" because they find it more cost-effective.⁴⁸

EXAMPLE OF THE RULE OF LAW IN CHAPTER 19

⁴⁴ Protector of Citizens, Regular annual report of the Protector of Citizens for 2019

⁴⁵ Protector of Citizens, Special Report of the Protector of Citizens on the Implementation of the Strategy for Social Inclusion of Roma Men and Women with Recommendations, op cit, p. 7 and 75

⁴⁶ See eg Equal Rights Trust, Equality in Practice, Application of Anti-Discrimination Laws in Serbia, op. cit., p. IV

⁴⁷ Protector of Citizens, Regular Annual Report of the Protector of Citizens for 2019, op. cit, p.53

⁴⁸ Praxis and The Equal Rights Trust, Study on Forms of Discrimination and the Legal and Strategic Framework on Protection against Discrimination in Serbia, p. 13

An indispensable condition of the rule of law is that institutions whose task is the protection of rights, act promptly, impartially, consistently and efficiently. Conversely, if the institutions to which citizens turn for the realization and protection of rights take an unreasonably long time to make decisions and if their decisions cause legal uncertainty, the principle of the rule of law is seriously compromised. The role of the courts is especially important in this regard, because they are bodies whose task is to protect the freedoms and rights of citizens and to ensure constitutionality and legality. However, the functioning of the courts in Serbia is still burdened with numerous shortcomings. As mentioned above, EC reports point to a number of problems that undermine the rule of law. Among the biggest problems are certainly the length of proceedings and the impact of politics on the judiciary. These shortcomings are most often manifested and are most noticeable in proceedings in which courts of general jurisdiction decide on the individual rights of citizens. However, probably even more serious consequences arise if such shortcomings occur in the work of the Constitutional Court, whose decisions in the procedures of assessing the constitutionality and legality of general acts, have a more far-reaching effect and apply to a large number of people.

When it comes to exercising the rights from Chapter 19, one of the most important and most controversial issues in the last few years was the reduction of pensions, which began to be implemented in October 2014 and lasted for four years on the basis of the Law on Temporary Regulation of Pensions. Immediately after the adoption of the law, numerous decisions became the subject of serious criticism, and dozens of initiatives for constitutional review were submitted to the Constitutional Court of Serbia, in which, among other things, it was emphasized that this law violates the principles of unity of law and rule of law, prohibition of discrimination, that encroaches on acquired property rights, that violates the principle that the achieved level of human rights cannot be reduced, and that the law violates the obligation of the state to take care of the social security of pensioners. However, in September of the following year, the Constitutional Court rejected the initiatives for the assessment of constitutionality as unacceptable, assessing that the stated reasons for the challenge did not support the claim that there were grounds for initiating the procedure for assessing constitutionality. In this way, the court actually refused to initiate a procedure in which the compliance of the disputed law with the Constitution and international law would be considered, but only focused on the assessment of the admissibility of the allegations made in the initiatives. Several judges disagreed at the time, expressing disagreement with such a decision, and among the remarks were that the reasoning of the decision essentially coincided with the reasoning of the bill, and that the court at least dealt with the question of whether the law is constitutional or not, much more by the question of the expediency of passing the Law and explaining the justification for its adoption ⁴⁹, ie that the reasoning of the decision was aimed at justifying the legal measure, and that such a court decision not only did not provide effective protection of acquired rights, but "gave almost blank

⁴⁹ Separate opinion of Judge Olivera Vučić on the decision of the Constitutional Court of Serbia IUz-531/2014, dated 23 September 2015

support the executive, which has been given the 'permission' of the constitutional judiciary to infringe on basic human rights indefinitely."⁵⁰

This was followed by the submission of new initiatives to assess the constitutionality of the law, as well as proposals from authorized proposers, in which new arguments were put forward - primarily that the circumstances that led to the introduction of pension reductions have changed in the meantime. However, the Constitutional Court avoided deciding on these initiatives and proposals as long as the impugned law was in force. Only after more than half a year has passed since the expiration of the law, in April 2019, the Constitutional Court issued a decision suspending the procedure and rejecting the initiatives. This time, some judges in their separate opinions especially emphasized the inadmissibly long decision-making, emphasizing that the Constitutional Court had to and could act much faster⁵¹, that "there is no rule of law without effective control and protection of constitutionality." If the years pass between the submission of the initiative or from the initiation of the procedure and the decision-making of the Constitutional Court, we can hardly talk about the efficiency of the constitutional court protection of the Constitution and the rule of law in general.^{52"}

Unfortunately, a similar fate is currently shared by initiatives for assessing the constitutionality of some other regulations whose application calls into question the exercise of certain rights from Chapter 19. Thus, the Constitutional Court has not yet ruled on initiatives and the Protector of Citizens' proposal to assess the constitutionality and legality of the Decree on Social Inclusion Measures for Beneficiaries of Financial Social Assistance, which were submitted at the end of 2014, as well as on initiatives to assess the constitutionality of the Law on Financial Support to Families with Children, which were submitted almost two years ago.

⁵⁰ Separate opinion of Judge Dragan M. Stojanović on the decision of the Constitutional Court of Serbia IUz-531/2014

⁵¹ Separate opinion of Judge Milan Škulić on the decision of the Constitutional Court of Serbia IUz -351/2015, dated 25 April 2019

⁵² According to the dissenting opinion of Judge Tamas Korhec on the decision of the Constitutional Court of Serbia IUz -351/2015.

See also, A 11 - Initiative for Economic and Social Rights, Second Order Rights - Social Rights in the Light of Austerity Measures (Serbia 2012-2020), p. 23

5. RECOMMENDATIONS

The Government of the Republic of Serbia and the relevant ministries and bodies (Ministry of Labor, Employment, Veterans and Social Affairs, Office for Human and Minority Rights) should:

- Include in their activities more detailed monitoring of the institutional protection of fundamental rights, primarily through the work of judicial bodies, the Labor Inspectorate, the Agency for the Peaceful Settlement of Labor Disputes;
- Adopt new strategies in lieu of expired ones, as well as missing strategies; Given that a number of strategic documents governing Chapter 19 issues have expired or are obsolete, while some strategies are entering their final years, the competent authorities in all these cases need to develop and adopt new strategies in a timely manner, with the involvement of stakeholders, especially non-governmental organizations;
- Adopt new laws and amendments to existing ones in order to harmonize the legal framework with the EU acquis; it is necessary to involve all interested parties in the process of drafting the law. Non-governmental organizations that continuously monitor certain issues in the area of Negotiating Chapter 19 need to be included in working groups for the preparation of draft laws;
- Harmonize laws containing competition provisions, in particular the Law on Prohibition of Discrimination and the Labor Law; in accordance with the stated assessments of the European Commission that the legal framework governing certain issues is not harmonized with the *acquis communautaire*, it is necessary to adopt new or amend existing regulations in order to eliminate these contradictions. Bearing in mind that the provisions of certain domestic regulations are not mutually harmonized, it is necessary to amend them in order to harmonize these acts, including the harmonization of the provisions of the Labor Law relating to discrimination with the Law on Prohibition of Discrimination;
- Strengthening the capacity of social protection institutions, through the employment of new staff, training, improved professional management and technical equipment; since it is crucial for efficient implementation that the bodies and institutions within whose scope the exercise of these rights is acted effectively and promptly, and bearing in mind that the EC reports point out the insufficient capacity of these bodies as one of the biggest shortcomings, it is necessary to take measures to improve their capacities, both through increasing the number of employees, conducting trainings and improving professional management, and through better technical equipment. In that sense, it is first of all necessary to strengthen the labor inspectorate, social protection institutions and the National Employment Service;

- Taking measures to ensure equality between men and women in employment and social policy; In order to eliminate inequality and discrimination, and achieve full equality of all citizens in the field of employment and social policy, as well as full integration of vulnerable groups in society, it is necessary to take measures and activities to ensure equality between men and women and improve position and social integration of persons with disabilities, members of national minorities, internally displaced persons and other marginalized groups.

To the Government of the Republic of Serbia, independent institutions, public companies, local self-government units and the private sector:

- It is necessary to establish transparency in advertising vacancies, in the public and private sectors; Given that the unavailability of data on job vacancies is recognized as one of the biggest shortcomings in the field of employment policy, it is necessary to take measures that will ensure full transparency in advertising vacancies, both in the public and private sectors.
- Elimination of political influence in public sector employment; In the EC reports and in the Anti-Corruption Strategy, the political influence on employment and advancement in the public sector was highlighted as a significant problem. It is therefore necessary to take effective measures to suppress and prevent political influence on public sector employment and to ensure that career advancement is based solely on merit.

It is recommended that NGOs and other organizations monitoring the accession negotiations and the implementation of reform policies:

- Include a human rights-based approach as a methodology for monitoring the adoption and implementation of strategic documents, laws and bylaws, and the implementation of laws by competent authorities.
- Within the issues monitored through Chapter 23, include the findings from Chapter 19 related to judicial reform, respect for fundamental rights, prevention of discrimination and the fight against corruption;

The Government of the Republic of Serbia, independent institutions responsible for the protection of human rights, local self-government units, as well as non-governmental associations and the media should:

- Continuously improve citizens' awareness of rights and available mechanisms for protection of rights. Bearing in mind that citizens are often not sufficiently aware of their rights, both due to frequent changes in the law and inadequate public information, which calls into question the

realization of these rights, it is necessary to continuously improve citizens' awareness of their rights and available mechanisms for protection.