PROPOSALS FOR THE IMPROVEMENT OF LABOR LEGISLATION
“Proposals for the improvement of the labor legislation” are integral part of the document “Labor legislation as an obstacle to more successful operation of economy”, which has been prepared as an integral part of the project “Strengthening the Voice of Business.” The project is being implemented by the Serbian Association of Managers (SAM) and the Center for Liberal-Democratic Studies (CLDS), in partnership and with the support of the Center for International Private Enterprise (CIPE) in Washington DC, USA. CIPE, SAM, and CLDS are working together to strengthen the voice of business in the dialogue with government on priorities for economic reform in Serbia. The partnership between the three organizations also focuses on building the capacity of the Serbian business community to participate meaningfully in the policymaking process. In preparation of this document, SAM and partners closely collaborated with regional Serbian chambers of commerce and business representatives in Valjevo, Niš, and Požarevac to jointly identify and select the issues that represent key legislative impediments for businesses in Serbia. Cooperation with regional businesses and chambers of commerce resulted in a broader consensus among private sector representatives and think tank experts on the top reform priorities. “Proposals for the improvement of labor legislation” will be used by business sector representatives as a tool for advocating to improve the overall business climate in Serbia.

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This text will provide concrete proposals for amendments to the Labor Law, which would help promote labor relations in Serbia and thus encourage more positive business operation and economic growth. The proposals are based on a concept of labor relations which are more flexible than they have been up to now, which is in keeping with the European processes registered in the past decade.

A more extensive discussion on the weak points of the Labor Law is included in our other text (Labor Legislation as an Obstacle to More Successful Operation of Economy, CLDS, May 2012) and, consequently, we shall neither repeat here in detail the conceptual weaknesses of the Labor Law nor the arguments provided in that text but shall primarily focus on proposed amendments. Basically, the two texts are complementary and should be consulted together.

In our opinion, the proposals made below aim to address the most important and most visible weaknesses of the existing labor legislation, without at all trying to be exhaustive. Serbia’s labor legislation is characterized by numerous and extremely serious weak points, but proposals for dealing with all or most of them would go beyond the scope of this brief text, the basic purpose of which is to trigger a debate on reform.17

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17 The paper entitled Radno zakonodavstvo kao podrška društveno odgovornom preduzetništvu (Labour Legislation as a Support to Socially Responsible Entrepreneurship) by B. Lubarda, Lj. Kovacevic, Mimeo, 2012, was used to formulate the proposals.
EMPLOYMENT

Fixed-term employment

The existing Labor Law provision stipulates that fixed-term employment must not exceed a period of 12 months, interruptions included, specifying that this type of employment is allowed only in the case of seasonal jobs, project-based work, increased volume of work over a specific period of time etc.

The solution has been laid down in order to induce employers to employ more people on a permanent basis as this is a more stable and more favorable option for employees. However, the goal is usually not achieved, since this rigid solution is avoided either through illicit work (no employment at all) or non-hiring of employees, leading to higher unemployment in the country, or through the transfer of business activities to the grey zone etc.

It is precisely to increase employment that the legal limit for fixed-term employment should be extended from the present 12 months to 24 or 36 months or even more if a given (infrastructure, art etc.) project lasts longer. Broadening the possibility of fixed-term employment would be a response to the need for the increasingly intensive and frequent adaptation of both overall business operation as well as the workforce, which can hardly be secured under standard permanent employment contracts.

The proposed solutions would be fully in keeping with comparative law solutions, as fixed-term employment is legally enabled in the European Union (EU) member states regardless of reasons for it but, as a rule, its duration is limited to 24 or 36 months. Employee security is guaranteed in these countries by limiting the number of successive fixed-term employment contracts, usually to a maximum of three successive contracts with one employee (the
next contract would have to be a permanent employment contract).

A highly favorable solution for newly-founded businesses (as in Germany) is the result of the need to support a new business at critical points, namely in the first few years of its operation when it is faced with fierce competition from the existing firms, the starting point being the evident need to assist the development of new businesses in Serbia as well.

In considering fixed-term employment, it is often believed that employers will take advantage of this option by replacing permanent contracts of all or nearly all employees in their firms with fixed-term contracts in order to secure an optimal position for themselves. This is however not true. Employers are usually aware of the fact that the insecurity of employment resulting from a fixed-term contract is often not good for a firm because it would prompt good employees with whom a fixed-term contract would be concluded instead of a permanent contract to contact another firm in a search for a job, which would be more secure/obtained under a permanent contract. As a result, the employer that used fixed-term contracts too liberally would be faced with a risk of losing good or best employees, whom it really needs and deems valuable. The average employer is therefore interested in keeping the workforce core indefinitely and, possibly, in keeping a smaller, fluctuating segment, the size of which depends on business trends and which is mainly made up of less skilled or trained workers, for a fixed term. In other words, the employer will act in keeping with its best interests and will not maximize the number of fixed-term contracts at the expense of permanent contracts: it will keep under permanent contracts all employees it counts on in the long term, taking into account the requisite number of employees in times of crisis and their quality and training level (in which it has invested itself) and possibly granting the status of fixed-term employees only to the workforce segment depending on business (economic) cycles.

The central idea of broadening fixed-term contract possibilities is not, however, the mere redistribution of the existing
workforce from permanent to fixed-term contracts, but securing *higher employment* through more flexible employment forms. Namely, it was observed long time ago, in European countries in particular, that employers refrained from additional employment when economic trends were favorable (positive business operation and growth) because they knew it would be extremely difficult to get rid of redundant workforce once the favorable trends became unfavorable, i.e. once they turned into a crisis. The main cause of these problems lies in inflexible labor legislation, making dismissal difficult and expensive due to the obligation to provide severance pay. The United States (US) legislation is far more flexible and, consequently, it is easier for US firms to dismiss employees in times of crisis, as well as to hire more people in prosperous times.

*Proposal:*

1. to modify the existing solution, provided for by Article 37, Paragraph 1 of the Labor Law, so as to extend the period of fixed-term employment to 24 or 36 months or even more if the project duration exceeds 36 months;
2. to remove the obligation to state the grounds for fixed-term employment;
3. to limit the maximum number of successive fixed-term employment contracts with one employee to a maximum of three contracts in a reference period;
4. in the case of newly-founded employers, to envisage the possibility of fixed-term employment contracts being concluded for a period of three or four years.

Such solutions would improve the economy’s efficiency in coming to grips with dynamic changes in the business environment, characterized by increasingly pronounced insecurity (so that it is hard for employees to plan their workforce), economic crises and difficulties, changing trends in the economy as a whole as well as individual businesses, the constant need to reduce operating costs in order to survive in an ever more competitive market etc.
Job share contract

Our labor legislation makes no mention of the form of employment entered into under a job share contract, demonstrating once again its unnecessary conservatism vis-à-vis modern ideas in the field of labor relations.

Job sharing rounds off the concept of part-time employment, attractive to many persons because of their family and other circumstances (raising children, taking care of one’s own health/education, looking after one’s elderly parents, preference for more extensive spare time etc.). However, part-time work can create difficulties for the employer: when it hires one part-time employee, it may not succeed in covering the remaining working hours with another employee with adequate qualifications and skills, who is also willing to work only part time. The problem can be solved with the help of the “first” employee who can himself/herself find an adequate partner, who can either be his/her spouse or someone else found by the “first” employee through his/her channels. Two goals can be achieved in this way: the persons’ goal to work part time and the employer’s goal to cover a given job full time.

For Serbia, job sharing is indeed an unusual way of hiring employees sharing a single position on a part-time basis as partners. The main idea is for them to cooperate in performing their job duties, agreeing on how they will split their working hours. The division of work can be proposed by employees themselves or can be initiated by the employer.

Job sharing is a comparatively recent type of employment, which has been under expansion in the US and Europe since the 1970’s and which is becoming increasingly popular among both, persons as well as employers.

Proposal:

1. to add a provision in the Labor Law (section Labor relations for part-time work) enabling the division of full time between two or more employees under a job share contract;
2. to regulate concrete solutions through arrangements made by the parties concerned (partners and the employer), in keeping with the employer’s legislation.

The adoption of this amendment would benefit both employees as well as employers, without jeopardizing anyone’s interests.

**Telework contract**

Although the relevant reference material does not provide a universally accepted definition of the term “telework” (remote/distance work, telecommuting), its major feature is that it is voluntary (freely agreed on by an employee and the employer) and that it is done outside the usual workplace (company offices), with the help of modern communication technology (Internet, telephony, video equipment etc.). Telework is usually done at an employee’s home but other locations can be used, too, such as public spaces as well as rented premises.

Telework is characterized by numerous advantages compared to the standard method of work organization. For the employer, this means a chance to lower considerably the cost of labor and in particular the cost of office space and transport of employees. The system also enables the employer to hire highly skilled professionals it could not hire otherwise because they live too far.

On the other hand, telework improves the employees’ chances of employment without their having to move to other parts of a country or a big city or to commute to work in big cities, which is a time-consuming activity. Telework is in particular a good solution for families whose active-age members find it hard or impossible to leave home (children, elderly parents), as well as disabled persons who can work without having to go through a strenuous and risky ordeal of having to travel to work every day. The system by all means enables employees to better organize and use their time, as well as
to achieve greater independence in the organization, planning and performance of work.

Domestic labor legislation does not directly define telework, but there is no obstacle to its being organized in keeping with the Labor Law provisions governing performance of jobs outside the employer’s premises (so-called work at home). Still, such a solution seems to be insufficient, since telework can be organized in several different ways, i.e. it does not have to be done at an employee’s home only, but also at the premises owned by third parties (e.g. work in the so-called tele-cottages/tele-centres, the opening of which could be especially suitable for domestic entrepreneurs at local self-government level, i.e. it could be done under the auspices of local entrepreneur associations). Consequently, potential application of the regulations on work at home to teleworkers will depend on a specific type of telework, which makes it necessary to define telework directly under Labor Law provisions and/or separate collective agreements (concluded for an industry/a local self-government). The regulation of some issues under collective agreements can even be an advantage due to easier respect for the specific features of some forms of this type of work in some firms or sectors.

Proposal:

1. to secure the generality of the Labor Law in terms of work outside the employer’s premises, i.e. to stop using completely the terms of work “at home” (Article 42) and “members of family” (Article 43);

2. to narrow down the number of provisions in Article 42, Paragraph 2 which a work contract for this type of work arrangement must contain to only those that are important, such as provisions on a job type and salary, leaving the rest to be arranged between the employer and an employee, either individually or through collective bargaining.

Individual or collective bargaining over telework parameters represents a more favorable method of development of norms
governing employee rights than the legal regulation of the matter, since it is more flexible and enables the regulation of telework in a way most suitable for different situations in a specific firm, industry or sector.

**Temporary agency contract**

A contract for temporary or permanent work is concluded between an employee and a temporary work private business (agency). What is characteristic of this type of contract is that an employee has to (agree to) perform work not for his/her immediate employer but for another business, the user of work which is in a direct contractual relationship only with a temporary work agency. Due to the fact that an employee is assigned to another business to perform the actual work, this form of work contract is also referred to as a mission contract (in French *le contrat de mission*). Typical cases when temporary agency work is used include the following: replacement of a suddenly absent employee, replacement of an employee whose work contract has been suspended, the need to perform urgent jobs, the need to prevent potential accidents at work and a sudden, temporary increase in the volume of work.

Serbia’s Labor Law makes no mention of this form of work arrangement, which is becoming increasingly popular in European countries, providing only for a conventional form of temporary assignment of an employee to work for “another employer”, if “the need for his/her work has been temporarily discontinued” in his/her parent company (Article 174), as well as for similar work obtained via youth/student employment agencies. Hiring employees via agencies is therefore not regulated in Serbia so that the question is how and whether it ought to be done.

The European practice in the domain varies greatly, starting from the issue of whether this type of work arrangement is at all regulated under separate provisions or whether general temporary employment rules apply to it. Over the past decade, earlier standard restrictions, ranging from agency regulation, via the standardization
of the most important contract provisions (salary payment etc.) to limiting the possibility of hiring an employee temporarily in terms of duration, type of employment or sectors (e.g. the clause on when hiring employees via agencies is allowed in France) have been eased. The fundamental idea behind the enacted solutions was often the intention to encourage illegal immigrants (Netherlands) or people working in the grey economy to join the legal labor relations system, even at the cost of easing labor legislation provisions.

On the other hand, the application of the principle of equal treatment of employees temporarily hired via an agency and regular employees in the user business performing similar jobs, in all relevant segments (salary, benefits, annual leave, social insurance, use of collective facilities in a firm etc.), is underway in the EU. To this end, a Directive on Temporary Agency Work, providing for the balancing of rights as well as the mechanisms for the derogation of this principle based on collective bargaining or, in some cases, arrangements among social partners at national level, was adopted in 2008. Consequently, in Germany, the principle of equal salaries has been derogated under collective agreements concluded in nearly all temporary work agencies with a view to maintaining the competitive position of this type of work arrangement vis-à-vis others.

The currently applicable Labor Law provisions on temporary assignment (Article 174) do not define the sphere properly and, consequently, should be substantially amended.

Proposal:

1. to amend the Labor Law adding a section on temporary hiring of employees via agencies, which will contain the basic solutions (existence of this type of work arrangement, relation with the general provisions on temporary and fixed-term employment, basic relations in the triangle comprising an employee, an agency and a user etc.);

2. to include the principle of equal treatment of temporarily and permanently employed people in the user business,
envisaging however the possibility of another arrangement being made under a collective agreement;

3. to regulate agency work under the Employment Law (existence of agencies, registration principle, possible financial guarantees etc.).

The regulation of temporary agency work would provide Serbia with yet another mechanism for boosting employment, which is increasingly present in European countries as a flexible and popular solution.

**PERSONAL INCOME**

The Labor Law excessively and wrongly standardizes the regulation of salaries and other personal income, using an old-fashioned method similar to remuneration rules from the Socialist era, which limits the freedom of employee-employer arrangements, rendering extremely difficult or even impossible more modern methods of employee remuneration and burdening employers with increased administrative efforts and costs. Consequently, some major provisions, which do not even represent an employee protection mechanism but unnecessary red tapeism, should be amended.

**Impossibility of salary differentiation**

The Labor Law has a negative bearing on the possibility of good remuneration of employees based on the quality of their performance and their contribution to their company’s success, imposing the system of balancing different employees’ salaries. Consequently, the employer cannot increase the base salary of a good employee compared to other employees doing the same job, even if that employee works much better than the others, contributing more to his/her company’s success. The Labor Law achieves this as follows: by combining (1) the principle guaranteeing
employees “equal salary for the same work or the work of the same value performed for the employer” and (2) the definition describing the work of the same value as “the work for which the same educational level, same working ability, responsibility as well as physical and intellectual work are needed” (Article 104, Paragraphs 2 and 3). The definition of the work of the same value is evidently wrong, because it does not take into account the effective work and its actual results but normative, ex ante assumptions on the work of the same value which do not at all have to lead to the results of the same value. In practice, these provisions are consistently and correctly interpreted as the principle of equal salary envisaged for equal jobs under job systematization.

Proposal:

1. to amend the Labor Law by removing from Article 104 Paragraph 3, defining the work of the same value and unnecessarily linking it to job elements rather than work effects.

The proposal would enable to keep the principle of equal salary for the work of the same value in the Labor Law, but salaries would no longer be linked to jobs, whereas actual performance measurement and the related remuneration of some employees through a higher regular salary would be legalized.

Complex salary calculation system

Under the Labor Law, the employer has to calculate and keep records of a performance-based salary share on a monthly basis, based on the provision laying down that performance-based remuneration is a part of a salary (Article 106) and the provision stipulating that the calculation and keeping records of a salary should be done on a monthly basis (Articles 121 and 122). The solution laying down that the performance-based salary share

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18 Article 107, Paragraph 4 of the Law is in contradiction to this paragraph, but this contradiction has been tolerated for years.
should be calculated on a monthly basis is quite unnecessary for most of the employees and real circumstances in companies, since e.g. quarterly remuneration is more adequate in some situations. Similarly, the provision of Article 105 stipulating that the salary based on an employee’s contribution to the employer’s business success be a separate additional mandatory salary category, which is therefore calculated in the above way, is a further unnecessary complication of the salary system in Serbia, leading to additional administrative costs. In view of the fact that incentive-based remuneration of hard and efficient work is in the best interests of both the employer as well as an employee, it is not at all good to increase operational costs and stifle the natural freedom of employee-employer arrangements through unnecessary legal standardization and red tape.

Proposal:

1. to revise Articles 106, 121 and 122 of the Labor Law to free employers from the obligation to calculate and keep records of the performance-based salary share and that based on the contribution to the employer’s business success on a monthly basis.

Salary and some compensation forms

In addition to a salary (including the share based on excellent performance) as the basic form of employee compensation, there are also other forms of compensation, which do not have a standard monetary form and are therefore not considered a salary in its strict sense, being covered instead by the term of personal income. They include different non-salary benefits such as benefits-in-kind, the coverage of some employee costs by a company and some bonuses such as accommodation cost coverage and an employee’s right to use a company car, additional pension scheme and additional health insurance, training and education cost coverage, recreation and annual leave cost coverage, provision of meals at work etc.

Under the Labor Law, a number of these forms of employee
compensation are formally included in a salary and, as a result, are subject to rigid tax treatment including payroll tax and social contributions. There is no need for the Labor Law to specify what a salary includes since it is not for the Law to define the tax aspect of specific employee remuneration modalities and services provided to employees by the employer. In other words, it would be more acceptable for the Labor Law not to define the salary components and, consequently, the method of taxation of specific components, leaving it instead to tax legislation to deal with the taxation of these compensation components as well. This would enable the exclusion of some of the above benefits, such as accommodation cost coverage and the use of company cars, from a salary and their more favorable tax treatment.

Proposal:

1. to remove Paragraph 3 from Article 105 of the Labor Law because it unnecessarily and wrongly specifies the total salary components. It does it wrongly because it includes in a salary the personal income not being part of a salary under the Law itself.

Under this solution, the taxation of specific employee compensation forms would be left to tax legislation, as it should be.

Salary compensation during leave

Under the Labor Law, compensation during leave for one of several different reasons (Articles 114-116) is calculated based on the average salary in the preceding three-month period. This means that a salary based on performance, overtime, night shifts and shift work, work on public holidays, company-paid meal, holiday cash grants, annual bonus etc. must also be included, which is not a sensible and good solution. For, it does not make any sense that the compensation base of an employee on leave/currently not working should include different irregular and non-standard work-related elements, such as a performance-based salary or other bonuses
and one-off or occasional compensation, leading to considerable deviation of the three-month salary from the standard salary. Such a solution leads to significant differences in salary compensation of otherwise equal employees, depending on when they are due to receive it. It is far more logical that, during leave, a base salary without the salary segment calculated on other grounds should constitute the compensation base, which could then be increased by stored-up labor.

Proposal:

1. to revise Articles 114-116 of the Labor Law to define the compensation base during leave as the base salary rather than average salary in the preceding three months.

The adoption of the proposed modification would ensure a more just and logical solution for salary compensation during leave.

**DISCIPLINARY ACCOUNTABILITY**

The Labor Law does not take a clear stance on disciplinary accountability, since it does not contain clearly-defined provisions on disciplinary accountability principles, rules and proceedings and the sanctioning of employees for the violation of their duties and failure to observe labor discipline. It only contains (1) provisions on dismissal on disciplinary grounds and (2) provisions on suspension from work without pay (Article 170). The Labor Law includes no other provisions on disciplinary accountability.

The lack of more specific provisions on disciplinary accountability is interpreted differently, but the view taken by the competent Ministry and the Constitutional Court has prevailed, with the Court taking the stance that disciplinary accountability, proceedings, bodies and measures cannot be defined under the employers’ by-laws, based on the fact that the Labor Law makes no mention of these terms. The Court’s position means that, in Serbia, an employee can be sanctioned on the grounds of disciplinary accountability by two extreme measures only, namely dismissal or
brief suspension from work. Such an approach needlessly makes impossible a gradual gradation of offences according to their gravity and the imposition of a sanction in proportion to it (e.g. a fine).

The above solution is not good either from the point of view of ensuring labor discipline in a company or from the point of view of comparative law solutions. In view of the fact that the limited regulations on disciplinary accountability are felt as a major problem in practice, the Labor Law should lay the basis for the term of and proceedings for determining disciplinary accountability and enable employers to define it more closely under their respective by-laws.

**Proposal:**

1. to amend the Labor Law adding a section on disciplinary accountability, which would contain only the main solutions including the type of sanctions (e.g. caution, suspension from work with reduced pay, fine, transfer to another job, dismissal), the basics of the proceedings etc.

The regulation of the basics of disciplinary accountability and the related proceedings under the Labor Law would enable a more just sanctioning of labor discipline violations and would stimulate greater respect for work rules and the code of conduct.

**DISMISSAL**

The issue of restrictiveness/liberality of the employer’s right to dismiss an employee is probably the most important individual issue in the labor relations sphere as regards both an employee, since the security of his/her employment largely depends on it, as well as the employer, due to its (im)possibility to alter efficiently the current level and structure of company workforce in keeping with its needs.

Two different approaches to the issue can be singled out in the world. One is the US approach, based on the free employment doctrine, under which an employee as well as the employer can
terminate employment unilaterally, i.e. the employer, too, can
dismiss an employee regardless of the grounds for it. The other is
the European approach, under which dismissal is also possible
but only on valid grounds. The European concept is enshrined in
Convention 158 of the International Labor Organization (ILO) and
the European Charter of Fundamental Rights, ratified by Serbia.
Consequently, we shall not re-examine the fundamental concept of
dismissal in the text below.

Quite a number of dismissal-related provisions are
problematic: the procedures are often complex, severance pay is
high and badly defined, especially in this time of crisis, it is uncertain
whether the consequences of wrongful dismissal are well meted
out etc. The legislators’ evident intent is to make the dismissal of an
employee considerably more difficult in the administrative sense as
well as expensive, even in situations when this is economically quite
justified and inevitable.

**Complex procedures**

Let us mention an example of a complex/wrong procedure
for dismissal due to *a labor-related offence*: under the stand by the
Supreme Court of Cassation, dismissal on these grounds is only
possible once a ruling to this effect becomes final, which usually
means in a few years. Such a stand implies that any dismissal before
a ruling’s finality is wrongful, even if an offence evidently exists.
This solution is essentially absurd: the employer must for years
keep in employment a person who has evidently committed an
offence, because his/her dismissal before a ruling is passed would
automatically be declared wrongful, with all the resulting financial
consequences. A better solution in this case as well would doubtless
be for the employer to be entitled to exercise the right to dismissal
also by investigating itself the nature of an offence, while the (il)
legality of dismissal would be definitively assessed not according

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19 Belgium, where it is not necessary to state the grounds for dismissal, in which
case severance pay is higher, is an interesting exception.
to the point of dismissal but according to the merits of the matter, i.e. the success (failure) in proving the nature of a given offence in court.

Proposal:

1. to amend Article 179, Paragraph 1, Point 4, by stipulating that the *perpetration* of an offence rather than the offence itself be a valid ground for dismissal.

The amendment would lead to a more sensible procedure, enabling the employer to dismiss an employee immediately in situations when evident offences have been committed, without being afraid that dismissal is wrongful just because the employee has not yet been sentenced under a final ruling.

**Consequences of wrongful dismissal**

Article 191 of the Labor Law provides for compensation for damage done to a dismissed employee if a court delivers a final ruling that he/she has suffered wrongful dismissal. Under these provisions, the employer has to compensate the injured employee in the amount of the lost salary and other emoluments, for the entire period starting on the date of his/her dismissal and ending on the date of the finality of a ruling.

The principle of compensation for damage caused by wrongful dismissal by all means makes sense and should be applied, however, the question is of where to set the limits to that compensation. For, it is not only the employer that is responsible for the number of months during which an employee does not work following his/her dismissal, but usually also the court itself due to the slow pace of its proceedings. Disputes usually last up to several years despite the explicit Labor Law provision that a dispute brought to a court should be ended validly within six months. It is therefore not fair that the employer should bear the cost by compensating the damage which it did not cause itself but which was caused by someone else instead (i.e. the court). This contradiction can be
overcome by limiting the employer’s liabilities to a small number of monthly salaries to be awarded to an employee. This would be a way to protect the employer from the consequences of the slow pace of the courts’ proceedings, but also a stimulus to the courts to process labor disputes of this kind faster. The alternative is for the courts to compensate damage in such cases due to their failure to meet the deadlines set for "trials within a reasonable period of time", which would nevertheless constitute an unusual practice.

Proposal:

1. to amend Article 191, Paragraph 1, Point 2 of the Labor Law regulating compensation for damage caused by wrongful dismissal by limiting to 12 months the number of months for which the compensation can be awarded for the loss of salary,

2. for the purpose of coordination, the number of months set under Paragraphs 3 and 4 thereof should be reduced.

The acceptance of the proposed solutions would result in salary compensation paid by the employer for wrongful dismissal that is more in proportion to its blame.

**Severance pay**

In Serbia, severance pay is a major calculation element for both the employer as well as an employee in the event of dismissal when there is no longer a need for a specific job or the volume of work has decreased. Even though the legal right to severance pay is not universally accepted in the world, so that many countries do not envisage it, this employee entitlement is recognized in Serbia and in an extensive way, too. Namely, the provision under Article 158, Paragraph 2 of the Labor Law stipulating that the employer has to provide severance pay for each year of an employee’s total years of service rather than the years of service accumulated at the employer in question, is extremely unjust and poses a problem. It (a) enables an employee to become entitled to and collect severance pay
several times in different companies for the same years of service and (b) makes it obligatory for the employer to finance severance pay for all the years of service an employee has not accumulated with it. Not only is such a solution unfair, but it frequently makes impossible dismissal and at least partial adaptation of the workforce to the needs even when this is absolutely justified and essential, due to the high cost of severance pay many firms cannot finance in a crisis.

Proposal:

1. to amend Article 158, Paragraph 2 of the Labor Law defining minimum severance pay so as to base the right to severance pay on the years of service accumulated at the employer due to provide it rather than on an employee’s total years of service.

The amendment would lead to a fairer solution, enabling the economic recovery of companies to secure their progress in the future. Moreover, cuts in total labor costs by reducing the burden of severance pay stimulate new employment since employers are aware that potential severance pay will not cost them so much.

EXTENDED APPLICATION OF COLLECTIVE AGREEMENTS

In Serbia, the system of extended application of collective agreements functions contrary to the nature of this mechanism and the legislators’ basic intention. Major changes are therefore badly needed.

The main reason why the basic principles of extended application of collective agreements have been betrayed lies in the non-democratic methods used when extending their application, because the will of minority employers is imposed on the majority employers and employees working in their firms, with the domination of political and private interests of some actors in social
dialogue. Namely, one employer organization (Union of Employers) involved in collective bargaining is faced with the serious problem of debatable formal as well as substantial representativeness, since it rallies small businessmen (shop owners and similar) only, so that their share in employment or added value in Serbia is insignificant. Consequently, it neither represents a relevant economic force, nor does it include a relevant number of employees. It is also evident that the Union too lightly and almost indiscriminately signs industry collective agreements so that, moreover, its leadership has informed the competent Ministry that it will no longer sign collective agreements unless it is immediately stipulated that they have extended application.20

Such methods (1) violate the freedom of collective bargaining, guaranteed under ILO conventions, (2) bring legal insecurity to business operation, since employers do not know when conducting planning if and when the competent minister will extend the application, thus changing many crucial elements of business operation (e.g. employee salaries), (3) introduce political motives to collective bargaining, since the competent minister can be governed by the interests of the Government and the ruling coalition when considering the extended application, (4) enable the forming of coalitions based on personal interests of actors in social dialogue rather than the interests of groups they represent.

For all these reasons, the system of extended application of concluded collective agreements ought to be revised.

We believe that the main cause of these problems is the concept of representativeness applied when concluding collective agreements, which, under the Labor Law, is based on the representativeness of participants in bargaining, namely trade unions (at least 10% of employees in the relevant territory or industry) and employer associations (at least 15% of employees in the relevant territory or industry). Even putting aside the

deficiencies of the system of determining the representativeness of participants in bargaining, the Law has thus enabled those who are extremely minority participants to impose their will in tandem with the competent minister on everybody else, i.e. the great majority, through the extended application of a collective agreement.

To eliminate the above weak points, we propose that the concept of representativeness of participants (organizations) in collective bargaining be replaced with the representativeness of a collective agreement in the Labor Law provisions on extended application. In other words, the proposal is that the minister should be able to extend the application of a concluded collective agreement to other employers in an industry or a specific territory only when a collective agreement is representative.\(^{21}\)

Proposal:

1. to introduce the term of representative collective agreement to the Labor Law, laying down that the condition of representativeness should imply at least 50% of employees in a given industry/territorial unit; the other condition is that one party to bargaining (trade unions taken together or employers taken together) must secure at least two fifths of the above 50% in order to balance the importance of signatories,

2. to amend Article 257 of the Labor Law providing for the possibility of extended application so as to replace the term of collective agreement with the term of representative collective agreement.

These amendments would solve the existing grave problem of the current practice of extended application of collective agreements, ensuring that the institution of collective bargaining becomes what it originally should have been.

\(^{21}\) The system is applied in Germany and a number of other countries.