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POLICIES TO INCREASE EMPLOYMENT AND WORKFORCE COMPETITIVENESS

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EXECUTIVE SUMMARY

THE UNEMPLOYMENT PROBLEM IN SERBIA

High unemployment is certainly one of the gravest, if not *the* gravest economic and social problem in Serbia. As much as one quarter of the working population is out of work, hence they are not able to provide for themselves or their families. This puts Serbia at the European top with regard to unemployment.

A particularly unfavorable feature of unemployment in Serbia is its long-term character: as many as two fifths of the unemployed have been out of work for more than five years, and only one quarter has been unemployed for less than a year. This means that unemployment in Serbia is not cyclical, but rather structural unemployment, which makes the chances for re-employment increasingly slimmer. The youth are particularly adversely affected, as a good portion of them cannot enter the labor market for years, thus becoming a "lost generation".

The reverse side of the tragically high unemployment is the fact that a small segment of the working age population works, either as formally employed or as self-employed. In 2011, there was a mere 2.17 million of them in Serbia (including the gray economy), so the employment rate of the working age population (in the 15 to 64 age bracket) stands at just 45.4. This means that less than half of the working age population in Serbia actually works! Others are either unemployed or not working (there is as much as 40.6% of them).

Even a longer-term perspective of developments in the field of employment is very bleak: in some years, employment is decreasing, in others it is stagnating, so the underlying trend is a long-term decline in employment.

The adverse consequences of high unemployment and low employment in Serbia are numerous and serious:

- *lower gross domestic product of the country* in comparison with the potential one,
- *loss of human capital*, because the capacities and skills of the unemployed deteriorate with the lapse of time,
- *increasing poverty*, because the unemployed generate no income,
- *spreading of social and psychological problems*,
- *threat to political stability*.

There are several factors which produce such unfavorable results. There is no doubt that the world economic crisis exerts a strong impact on the slackening of demand for labor and that it continues to bring about effects, despite the fact that the world has partially emerged from the crisis. Local circumstances are very important, too, among them also being macroeconomic policies, weaknesses of the public administration and regulatory problems,

i.e., a non-enabling business environment. Finally, an important role is played by policies and institutions related to the labor market – from labor legislation, to labor taxation, to unsatisfactory functioning of some competent public institutions.

Labor legislation certainly affects the functioning of companies: the relations between employers and employees (recruitment, layoffs, strikes, collective bargaining, etc.), wages and other earnings of employees, the number of effective hours of work, internal organization of operations, the volume of administrative tasks in a company and generally, the operating costs of a company. More importantly, the regulation of labor relations impacts also upon the motivation systems of individuals, both employers and employees.

PROPOSED REFORMS AIMED AT BOOSTING EMPLOYMENT AND COMPETITIVENESS

Higher employment can only be achieved through a mix of various economic and social policies, definitely not by just one policy. Therefore, for the purpose of lowering the level of unemployment, different reforms are needed, in the fields of:

1. *demand for labor*: by creating a business environment conducive to investment and economic activity growth;
2. *supply of labor*: through reform of the education and training system, promotion of occupational health and resolution of the status of persons with disabilities in a more adequate manner;
3. *the labor market:* which should be made more flexible, by eliminating the weaknesses of the labor legislation and by broadening the scope of negotiations between the employee and the employer.

Serbia should not wait for the economic crisis to end and for employment to possibly start going up solely on the basis of increased economic activity, but to opt for upgrading the legal framework and policies, in particular the labor legislation, in order to contribute to the attractiveness of doing business and investing in Serbia in such a manner, as well as to the overcoming of the economic crisis and to economic growth and higher employment.

The reform of policies relevant to labor and employment should not be a current task that is performed on an *ad hoc* basis only by the line Ministry, but rather a strategic project which implies a long-term activity and proper planning of the necessary steps. In that respect, the main stakeholders of an action plan might include the following: (1) An Employment Board at the level of the Republic of Serbia which would take strategic decisions on reform policies and actions and which would supervise their implementation; (2) a Tripartite Committee of the Serbian Government, consisting of representatives of the government and relevant trade unions and employers' associations, and (3) an inter-departmental body of the Serbian government, which would coordinate operational and technical work carried out in line ministries.

The potential comparative advantage of Serbia is the relatively low cost of the labor force and it represents an important opportunity for the future. On that basis, Serbia can

attract both domestic and foreign investors and enable them to make productive investments to mutual benefit. The cost of labor in Serbia is increased by:

- *the exchange rate policy of the strong dinar*, which increases the wages of employees denominated in euros and discourages the inflow of foreign investment into Serbia; Serbia, just as many other developing countries, should pursue an exchange rate policy of the undervalued dinar, for the purpose of boosting exports,
- *high total tax wedge on labor* makes the labor force less competitive than it would have been otherwise in comparison with other developing countries; the solution should be sought in reducing the taxation of wages when budgetary and social circumstances allow for that.

There is no doubt that improvements in the often very sluggish operation of the public administration should be the priority task of the new government in Serbia, including those related to the labor market. Thus, courts should speed up trials and eliminate partiality which exists now. Inspection bodies should intensify their activity, also without partiality. More recent institutions (mediation, the Solidarity Fund, etc.) must try to justify their existence. And the Ministry of Labor would have to abide by the Law and refrain from political abuse of labor relations, particularly collective bargaining.

AMENDMENTS TO THE LABOR LAW

The existing labor legislation is not stimulating for employment, but has taken over the regulation which was common in the European Union, and even beyond that. The central idea of such labor legislation is the protection of employees against risks which inevitably surround economic activity, i.e., the shifting of these risks to the employer.

The most important features of the Serbian Labor Law and related regulations can be summed up in the following manner:

- restrictions imposed in all important fields, which prevent agreements between the employer and the employee even where they would be mutually beneficial;
- a chaotic system of collective bargaining at national and sectoral levels that also includes participants with disputable representativeness and in which the so-called extended effect is extensively used,
- a large number of legal and technical errors and meaningless arrangements, made because of the hasty adoption of the Labor Law.

Such system of labor relations:

- gives rise to a rise in unemployment and weakens the performance of the economy,
- increases labor costs, which also results in declining employment,

- distorts the equality principle, since it favors the currently employed at the expense of the unemployed, i.e. mostly older at the expense of younger generations,
- encourages non-compliance with the law, as life inevitably tries to circumvent unnecessary barriers,
- encourages movements to the shadow economy, without any employment contract,
- often leads to unnecessary conflicts within the company and the like.

Serbia needs action of the new government in order to create an appropriate legal framework for labor, which will encourage, rather than undermine employment in Serbia. Proposals for amendments to the labor legislation presented in the study proceed from the need to strike the right balance between the interests of employees and those of the employer.

- employees' interests must be respected through their fundamental rights: to adequate remuneration for work, to statutory working hours, to paid annual leave and other necessary forms of leave of absence, to free bargaining with the employer concerning the working conditions, to protection against discrimination and exploitation, to support in the case of termination of employment;
- the employer's interest must also be observed and he must be allowed to manage the business in the best way he can, without unnecessary restrictions, proceeding from the fact that the point of the company's existence is to create new value added, and not to conduct social policies (which should done by the government for the most part).

In addition to the employee's and the employer's interests, there is one more party whose interest should be taken into account in this type of thinking: that party is the unemployed person. A competitive labor market, without undeserved privileges for the already employed, is in their best interest.

Serbia's proclaimed goal is accession to the European Union; hence, it is the time for Serbia to start following the EU model in these matters, too, and carry out the reforms toward liberalization of labor legislation that have been underway there for the last 15 years or so.

The reform of labor legislation is necessary in order to achieve higher employment and lower unemployment, both directly – through creation of legal options for facilitated employment – and indirectly – through creation of an improved business climate that would attract investors and bring about economic progress and higher employment.

The proposal for amendments to the Labor Law is based on the following principles:

- the essence of the so-called European labor relations model has been preserved,
- the respect for the rights of employees, and all the provisions of the conventions of the International Labor Organization and the Revised European Human Rights Charter, has been preserved,
- the weaknesses of the existing law which are significant for employment and operation of the economy are eliminated,

- a bit more flexible, more liberal arrangement is proposed, which is in line with the present European trends toward liberalization of the labor legislation.

The main proposed amendments to the Labor Law include the following:

Work engagement: improvements of various options for work engagement and the introduction of new ones have been suggested, while eliminating or mitigating certain limitations:

- *Fixed-term employment*: to provide for a longer duration of one contract, of 24 months, while restricting the maximum number of contracts per employee to three; eliminate the obligation to state reasons for fixed-term employment;
- *Remote employment*: to replace the term 'homeworking' by the term remote employment and leave more leeway for negotiation to the employee and the employer;
- *Employment of aliens*: to adopt a new law that would be more modern than the current one (of 1978), and that would rest on the principle of equal status for local and foreign workers, with minimum derogations;
- *Job sharing contracts*: to add a new section in the Labor Law (LL) which provides for working in a pair, that is, the performance of work by two employees sharing one job by splitting the working hours;
- *Temporary employment through agencies:* to add a new section in the Labor Law (LL) which provides for legal and regulated operation by agencies which hire labor force that they then send to work in other companies, those which have a temporary need for workers;

Working hours: changes have been proposed toward more flexible arrangements which provide for more negotiations between the employee and the employer and better utilization of the time spent at work:

- *Overtime work*: the ceiling of 4 hours per day would be kept, but the ceiling of 10 hours per week would be replaced by 60 hours a month, as more flexible;
- *Redistribution of working hours*: the redistribution cycle would be extended from 6 to 12 months, as a more suitable cycle for seasonal jobs (construction, agriculture);
- *Secondment*: to provide for secondment to another appropriate position (up to 30 days) without amending the service contract;
- *Annual leave*: to prescribe (1) that the first part of annual leave has to last at least 2, instead of 3 weeks, as a more flexible solution, and (2) that the second part of annual leave may be used in smaller bits.

Personal income: suggested amendments are intended to enable modern forms of remuneration to employees:

- to delink the principle of the same pay for the same job from positions in the job classification;
- to eliminate the obligation to monthly calculate the parts of the wage based on the performance and the contribution to the employer's business success, as unnecessary red tape,

- to eliminate the inclusion of personal earnings in wages (Article 105, paragraph 3) and thus leave their potential taxation to tax laws;
- to set the basic wage and not the average wage (including bonuses) as the basis for determining compensation during absence from work;
- to remove the setting of the minimum wage from the purview of the Socio-Economic Council and prescribe it in the law, similar to the indexation of pensions.

Disciplinary liability: to reintroduce into the LL the notion of disciplinary liability (basic provisions), having in mind that this issue is currently completely unregulated, that is, there is practically only dismissal as a disciplinary punishment.

Dismissal: while keeping the basic arrangement according to which the employer has to state a valid reason for the dismissal of an employee, the following changes have been proposed:

- *Changes in some procedures*: dismissal stops being automatically unlawful if it has not been proven by virtue of a final and binding decision that (1) an employee has abused sick leave or (2) he/she committed a criminal offence; the employer is allowed to fire an employee and then prove in a court of law the grounds for it;
- *Illegal dismissal*: the proposal is to enable the employee whose employment was unlawfully terminated to choose whether to be reinstated to his/her post (with modest compensation) or to receive full compensation for lost wages (with a possible top-up);
- *Severance pay/retirement bonus:* (1) to abolish the retirement bonus, (2) to prescribe that the right to severance pay pertains only the those years of service spent with the employer that is paying the severance pay (instead for the full years of service) and (3) that severance pay may be paid in installments, but not more than six installments.

Collective bargaining suffers from serious deficiencies. The main problems do not arise so much from the provisions of the Labor Law as they do from their inappropriate implementation. The most important objections are related to: the inappropriately frequent use of the extended effect of concluded agreements, the problem of representativeness, weaknesses of the so-called social dialogue and non-compliance with the provisions of (extended) collective agreements.

Extended effect: in the recent years, the practice has gathered momentum according to which three representative associations sign collective agreements at the national or branch level, without broader consultations and transparency, and then these agreements are immediately given extended effect by virtue of the Minister's decision, meaning that the validity of one collective agreement is rolled out to include all employers in a branch or territory, i.e., also all those who are not members of the association which has signed the collective agreement. The result of such practice of collective bargaining is permanent imposition of the will of the minority on the majority.

Proposal: that the effect can be extended only of those collective agreements which have already covered at least a half of employees. That would prevent the minority from imposing their will on the majority.

Representativeness: The Labor Law has established an inadequate mechanism for determining representativeness: it is determined by unanimous vote of a tripartite committee

consisting of representatives of the government and representative associations of employers and trade unions. The weakness of the mechanism is reflected in the following: it is not realistic to expect the interested parties (existing associations) to be impartial when they decide on the representativeness of future competitive organizations, which has been confirmed in practice: in the past eight years of its operation (since its formation), there is a permanent blockage, so no other association has become representative for the territory of the Republic of Serbia. Dubious or non-existent representativeness of formally representative associations calls into question or denies the legitimacy of collective bargaining and social dialogue at the level of Serbia, i.e., very few people take them seriously or have any respect for them.

Proposal: to reassign the task of determining and reexamining representativeness from the tripartite committee to a professional body – the Business Registers Agency – which currently maintains the registers of associations of individuals, sports and similar organizations.

Once the mentioned issues of representativeness and extended effect are resolved, i.e., once collective bargaining becomes far more legitimate than it is today, social dialogue and compliance with collective agreements at higher levels will probably be promoted as well.

INTRODUCTION

HIGH UNEMPLOYMENT

High unemployment is definitely one of if not the greatest economic and social problem in Serbia. As much as one quarter of the economically active population is not employed, and cannot support themselves and their families. This places Serbia among the top European countries with regard to unemployment, together with Bosnia and Herzegovina, Macedonia and Spain. A particularly unfavorable characteristic of unemployment in Serbia is its long term: as many as two fifths of the unemployed have been jobless for over 5 years, and only one quarter for less than a year. This means that in Serbia unemployment is not cyclical but structural, meaning that the chances of re-employment are lessening. The young generation is particularly affected, as they do not even manage to enter the labor market for years, thus becoming "a lost generation".

The other side of the tragically high unemployment is a very low rate of employment, i.e. the fact that a small portion of working age population works, either in formal employment or is self-employed. In Serbia, there are only 2.17 million of them (including the shadow economy) in 2011 so the employment rate of the working age population (15-64) is only 45.4. This means that less than a half of working age population of Serbia actually works! The others are unemployed or non-active (making up as much as 40.6%)

There are numerous adverse effects of high unemployment and low employment in Serbia:

- *lower gross domestic product of the country* than the potential, since a large part of the labor force is not working and contributing,
- *loss of human capital,* since the knowledge and working skills of the unemployed diminish over time,
- *increased poverty,* as the unemployed do not earn any income, so many, particularly those who do not have family support, become poor, with all the associated consequences (low standard of living, homelessness, spread of diseases, etc.)
- *widening social problems,* since unemployment leads to psychological crises in an individual's life: from family relations (divorce, and similar), through gambling, abuse of alcohol to petty crime,
- *threat to political stability,* as the unemployed lose faith in democratic values and deem the government worthless for failing to provide them with jobs, they may easily fall prey to various demagogues and political extremists.

The are many factors that cause adverse circumstances, including macroeconomic policy and regulatory issues, that is, a non-conducive business environment, but an important role is also played by labor market related policies and institutions – from labor legislation, wage taxation to unsatisfactory operation of some responsible government institutions. Such

policies make the Serbian labor force expensive, much more expensive than is reflected in employee wages alone, since the total cost of labor includes taxes and contributions, the employer's administrative effort and costs associated with hiring, possible severance pays and all other employee compensations and benefits borne by the company.

The current labor policies adversely affect the competitiveness of Serbian businesses, reducing both worker and company productivity through various obstacles to doing good business: from inflexible working arrangements, through high levies to limiting modern remuneration systems. Thus the labor force is quite uncompetitive when the productivity (added value) is compared to wages, which shows that the labor costs per unit of product are exceptionally high in regional terms.

CHANGES AND ADAPTATION

The world in which the citizens of Serbia are living and working is changing ever faster. The old times, when a father's job would be handed down to his son or when a worker would do the same job his whole life, are long gone: they have been replaced by the era in which all economic and social processes are developing faster, which brings great new opportunities, but inevitably increases some risks.

The first factor that brings about change is technological progress, creating new products and services at amazing speed, changing the manner of production and consumption, demanding new skills from people and changes in production structure, and making the old know-how, techniques, firms and sectors obsolete overnight. The second factor is an ever increasing competition on the market that comes from both domestic and foreign sources. Integration of the global economy brings great business opportunities, accelerates economic development and, in the long term, increases employment, as demonstrated by the experience worldwide in recent decades. Stronger competition encourages economic actors to exert maximum efforts to increase efficiency in order to keep up, and lagging behind in the competitiveness game brings lagging behind in business results and threatens company survival.

Such fast changes require faster adjustments than before both on the part of businesses and their employees, including the reallocation of workers from declining firms, industries and sectors to the prosperous ones that have a future. The approach, common in Serbia, to delay dealing with problems in order to reduce social tensions and political problems is no longer sensible. Such a delay strategy produces negative results in the long term, which is clearly demonstrated by Serbia's experience in the past years. Delaying adaptation causes significant economic difficulties for all: unemployed individuals have little chance of getting a job and earning a living and employed individuals have little chance to get ahead; firms lag behind their competitors and risk insolvency, while the state finds itself in fiscal and social difficulties.

On the other hand, a country quick to accept technological innovation, improve the quality of labor force and develop good human resource management, improves

competitiveness of its businesses, is rewarded in the market with higher value added and better financial results, and is capable of significantly accelerating economic growth and even catch up with wealthier countries. The examples include Ireland, Korea, and Taiwan, as well as China and India

Weak competitiveness of companies from a country, including Serbia, may occur for many reasons, but most are associated with weaknesses in the government economic policy and regulation of economic activity and its individual segments. The overall cause may be wrong macroeconomic policy measures, such as overvalued local currency, which raises prices of domestic products on the international market and makes them too expensive. Another is excessive labor costs relative to the value of output (added value), which are a result not only of wages that are (too) high relative to productivity (a consequence of government regulation and/or collective bargaining), but also high taxes and contributions on wages that bring up their gross amount paid by the employer, as well as other high costs of the engaged labor force – for instance, numerous leaves and long holidays, through various benefits and salary top-ups to high severance and retirement pay or expensive administration of complex employment related procedures. The third cause lies in the weaknesses of labor legislation that may, for social or other reasons create significant difficulties for the company adaptation to changed business circumstances, primarily of labor force – in terms of volume, structure and wages.

Labor legislation and other employment regulation have a definite impact on the functioning of a company: on relations between employers and employees (hiring, firing, strikes, collective bargaining, etc.), on wages and other employee emoluments, on the number of effective working hours, on internal work organization, on the scope of administrative activities in the company and, generally, on the operating costs of a company. Even more importantly, labor regulation also affects the system of motivation of individuals, both employers and employees. Therefore, depending on the regulation a behavior system is created that may deviate from the standard or expected: for example, if dismissal of employees is forbidden, the employer will reduce hiring to the minimum; or if long-term receiving of decent unemployment benefits is provided for, the unemployed will not see an interest in seeking employment, etc.

In terms of required fast adjustments in a fast changing environment, the economically most efficient employment relations system is based on as free as possible contractual relations between employees and employers, since the employer then has a possibility, starting from purely economic criteria and company interests, to make all the necessary adjustments in a short time. Such free, flexible employment relations in a dynamic business environment carry a risk of relatively frequent job loss by a considerable number of workers, which in a growing economy with rising employment rates, is not necessarily a big problem: most workers will soon find a new job and thus be unemployed for only a short time. During that time they will receive unemployment benefits, perhaps participate in an active employment policy program and will ride out the jobless period without difficulty.

Wishing to reduce economic risks associated with the market economy most countries that make up the European Union today created the so-called welfare state. They built a model that emphasize social functions for the purpose of correcting market outcomes

and provision of as much security and income equality as possible. An important component of this project was legislation that, under the slogan of balancing the rights of employers and workers, very much restricted contractual relations between employees and employers and attempted to protect the employee from the employer and his actions as much as possible. A system of employment relations was created that made it more difficult and slow and sometimes impossible for companies to adapt to changed circumstances, which resulted in inferior economic results over a long period of time and, to the politicians' amazement, high unemployment.

Rigid labor legislation, therefore, makes it difficult for a company to adapt its operations to a changed business environment, so it is shown that the legislation that could be acceptable at the time of economic boom is not at the time of crisis, when the manner of operation needs to be changed, costs cut, perhaps the volume of production reduced, and sometimes labor force downsized, and when labor legislation ties companies' hands or is associated with costs of adaptation that are too high. Companies that operate within the framework of rigid labor legislation usually lag behind in economic competition in a very dynamic environment of open economies, resulting in losses of competitiveness for domestic companies compared to foreign competitors. Rigid labor legislation also limits opportunities in the labor market, particularly for new entrants.

Flexibility here means the ease of adaptation to changed circumstances by both employers and employees. It is a complex phenomenon comprising several components: (1) *the ease of change of a firm's labor force*, both in terms of numbers of employed workers and number of working hours; (2) *wage flexibility*, which refers to the ability of real wages to change so that the imbalances of supply and demand on the labor market would be eliminated; (3) *contractual flexibility*, where the employer and the worker can select a type of employment contract that suits them; (4) *flexibility of profession*, referring to the ability of the worker to perform different tasks and to acquire and apply universal skills, which can be applied in different jobs; (5) *geographic mobility,* which includes the possibility for and willingness of an individual to change their place of residence to make use of better conditions at another location, within the same firm or to find employment in another firm. All the above mentioned types of flexibility are needed for good functioning of a labor market, but the studies of this type are primarily concerned with the ones at the top of the list rather than those at the bottom.

THIS STUDY

The main objective of this project is to contribute to the improvement of labor market policies aimed at increasing employment and competitiveness of the economy for the purposes of accelerating economic growth. This objective may be attained if:

- labor regulation is improved to increase market flexibility and employability of workers,
- wage taxation, including social security contributions, is improved,

- regulatory burden of procedures companies face in relation to labor
- legal protection in courts and other government institutions is strengthened

Therefore, this study:

- presents the analysis of the Serbian labor market, including the dynamics by various indicators (employment, unemployment, productivity, labor costs, various structures, etc.)
- compares labor market indicators with the countries from the region and the European Union,
- provides a review of labor legislation, primarily the Labor Law and other related legislation (taxation, occupational health and safety, employment policy, etc.,
- compares legal arrangements in Serbia with global legislative practice, particularly the EU countries,
- examines the functioning of the main institutions dealing with labor relations in Serbia (courts, mediation, inspectorate) , and
- provides numerous recommendations for the improvement of labor market directed policies and institutions, particularly the Labor Law, and a developed framework for their implementation

In the course of work on this project, a number of consultative meetings were organized with the representatives of interested associations, the Ministry of Labor and Social Policy, as well as an expert round table on labor legislation issues. We would once again like to thank all of them for their cooperation and very useful information and suggestions most of which that are incorporated in this study.

Chapter 1

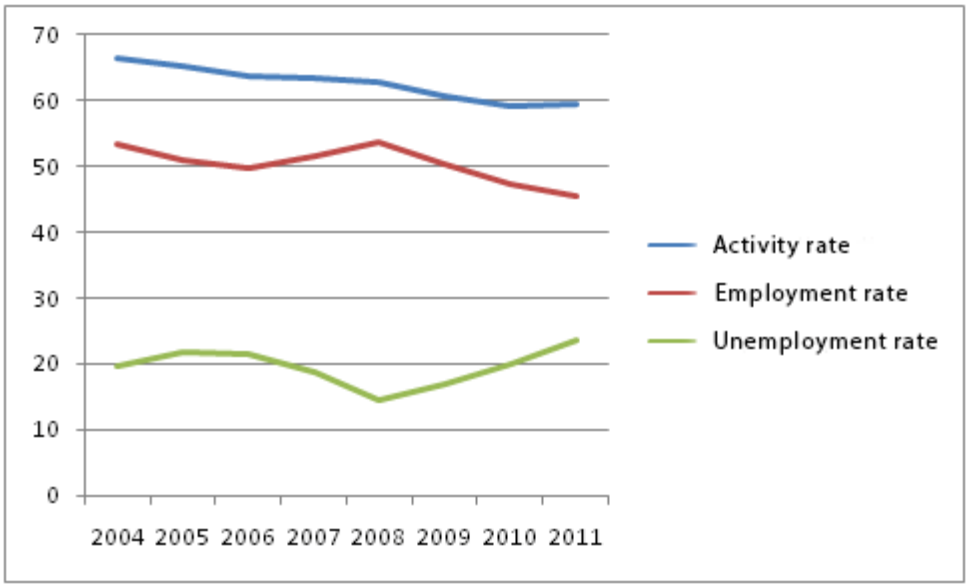
LABOR MARKET TRENDS

EMPLOYMENT, UNEMPLOYMENT AND ACTIVITY RATES

Employment and Activity

Labor market trends in Serbia have been extremely unfavorable in the past years, as is clearly seen from the figure below.

Figure 1.
Employment, activity and unemployment rates in Serbia, population aged 15 - 64, percent



SOURCE: Labor Force Survey, multiple years[1]

Between 2004 and 2011, the activity rate dropped from about 66.5% to below 60%, while employment rate dropped from about 53.5% to only 45.5%. At the same time, the unemployment rate mostly remained about 20%, but after the onset of the 2008 crisis until 2011 it rose from 14.4% to 23.6% in 2011 and to 25.5% in April 2012[2].

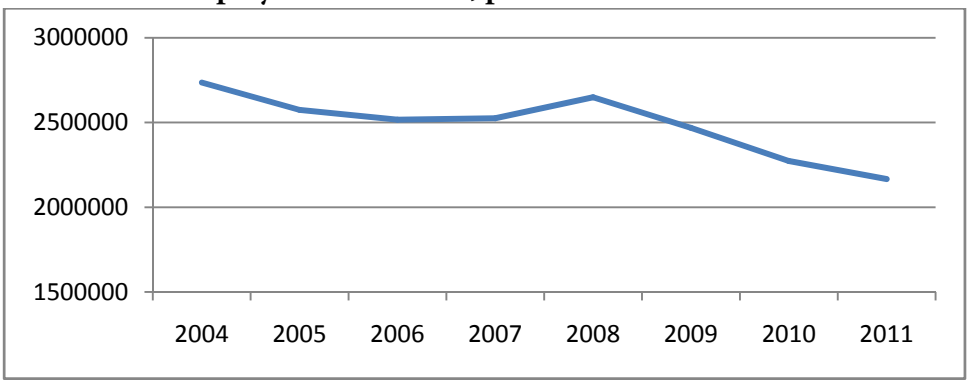
[1] In 2008, major change in methodology of the Labor Force Survey has been implemented, which resulted in increased employment rate and reduced unemployment rate, so data is not fully comparable over this period.

[2] As of October 2012. the Statistical Office of the Republic of Serbia has released only limited data set related to the April 2012 Labor Force Survey.

However, the most convincing proof of the unfavorable labor market trend is the total number of employees, which was down from about 2.75 million in 2004 to only 2.15 million in 2011, i.e. the total number of employees dropped by over 20%.

Figure 2.

Total employment in Serbia, percent



SOURCE: Labor Force Survey, multiple years

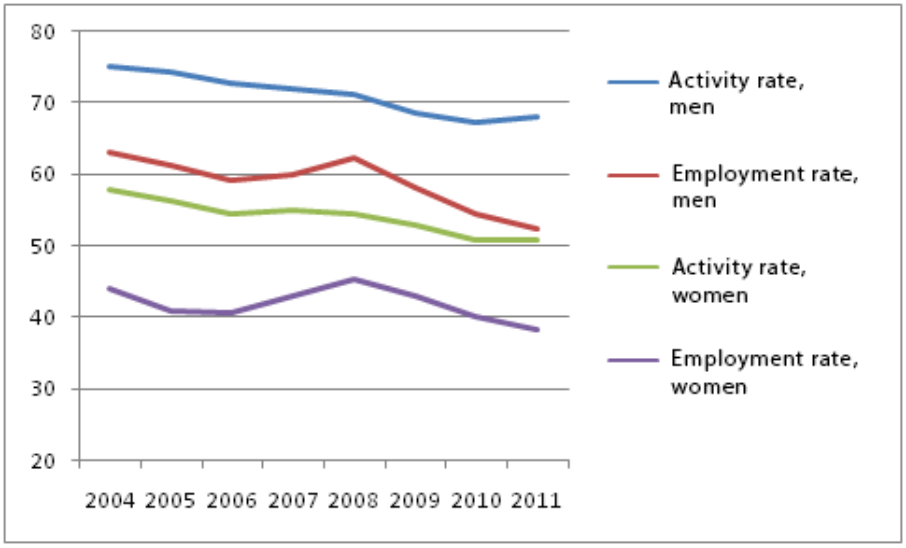
The initial employment decrease can probably be explained to a great extent by privatization, which was associated with elimination of fictitious jobs, and the decline since 2008 to date is primarily a direct or indirect consequence of the global economic crisis.

At the beginning of transition, it was expected that the disappearance of jobs in the public sector and bad companies will be followed by creating new jobs in new domestic or foreign firms. Although that happened to an extent, it was not sufficient to make up for the fall in employment. There were some indications that the situation with unemployment could start improving from 2008 onwards, but the global crisis ensued and led to a new fall in employment.

The following figure shows employment and activity rate trends by gender:

Figure 3.

Activity and employment rates in Serbia by gender, percent



SOURCE: Labor Force Survey, multiple years

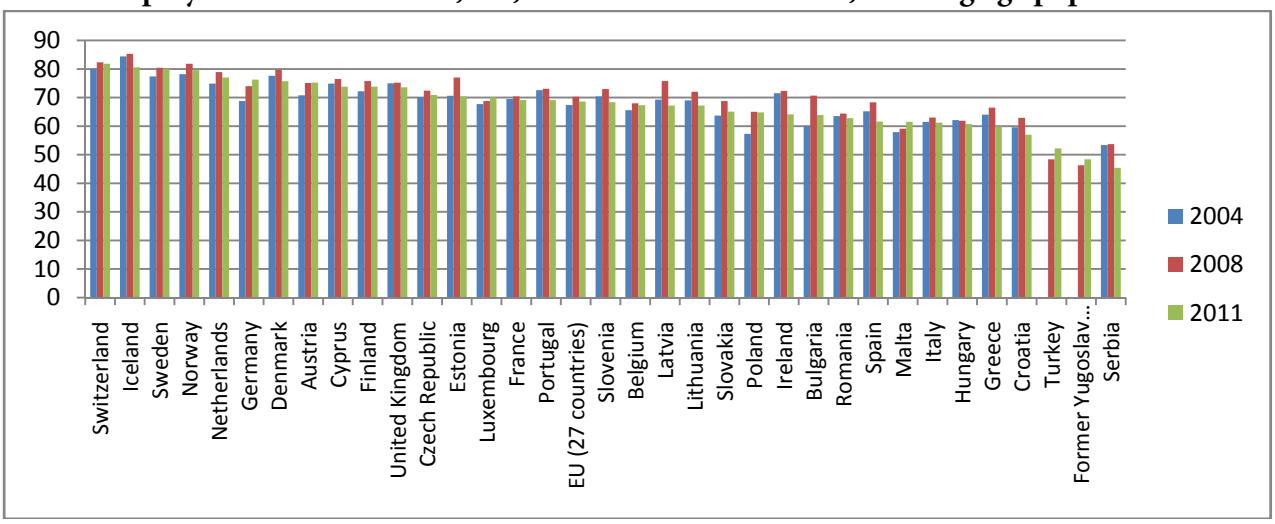
It can be seen that the trends are somewhat similar – while the activity rate for both genders was actually declining all the time, the employment rate had a certain „U shape“ in the period between 2004 and 2008, while it exhibited a significant decline (somewhat more pronounced in men) in the period between 2008 and 2011.

In addition to markedly negative trends, the current situation in the labor force market is exceptionally unfavorable also in comparison with the EU and neighboring countries.

The figure below shows the employment rates in EU member countries, candidate countries and Serbia in 2004, 2008, and 2011. As can be seen, Serbia is far behind the EU average in each year (53.4% vs. 67.4% in 2004, 537% vs. 70.3% in 2008, and 45.4% vs. 68.6% in 2011). In addition, in 2011, Serbia had the lowest employment rate of all the above countries.

Figure 4.

Employment rate in Serbia, EU, and candidate countries, working age population



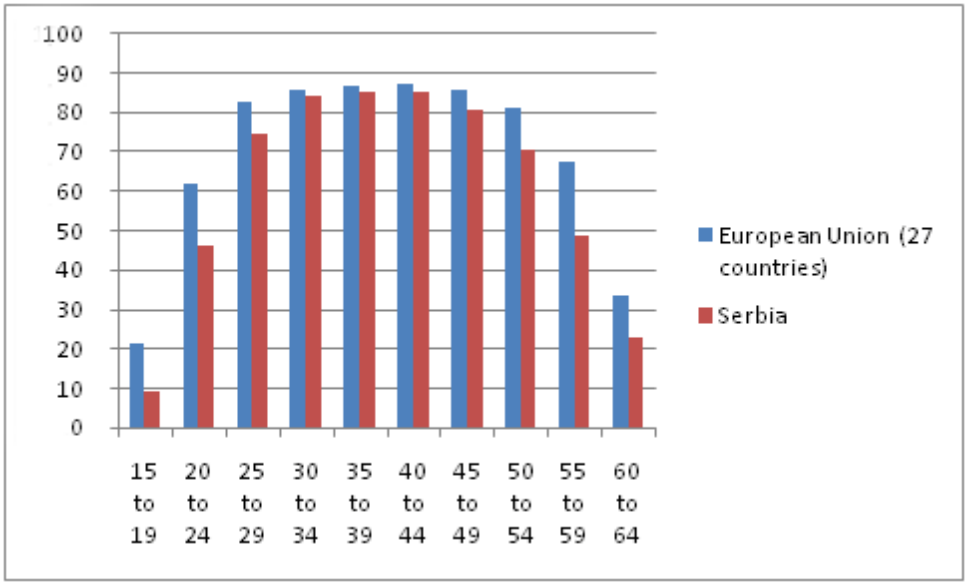
SOURCE: Labor Force Survey and Eurostat

Consequently, Serbia is now also behind countries from the region, such as Bulgaria, Turkey, Romania, Macedonia, and Croatia for this indicator, and lags behind some European countries by as much as 30 percentage points. Regarding the women employment rates, Turkey is the only country of all of the above where this rate was lower than in Serbia in 2011, which is extremely unfavorable.

If we look at the population activity, the overall activity rate of 59% in Serbia is much lower than the European Union average, which was about 71.2% in 2011. However, if we look at age groups, we can see that the activity rates in Serbia are significantly lower for persons below the age of 25 and in the 55 to 59 age group.

Figure 5.

Activity rates by age group in Serbia and EU average, 2011, percent



SOURCE: Labor Force Survey and Eurostat

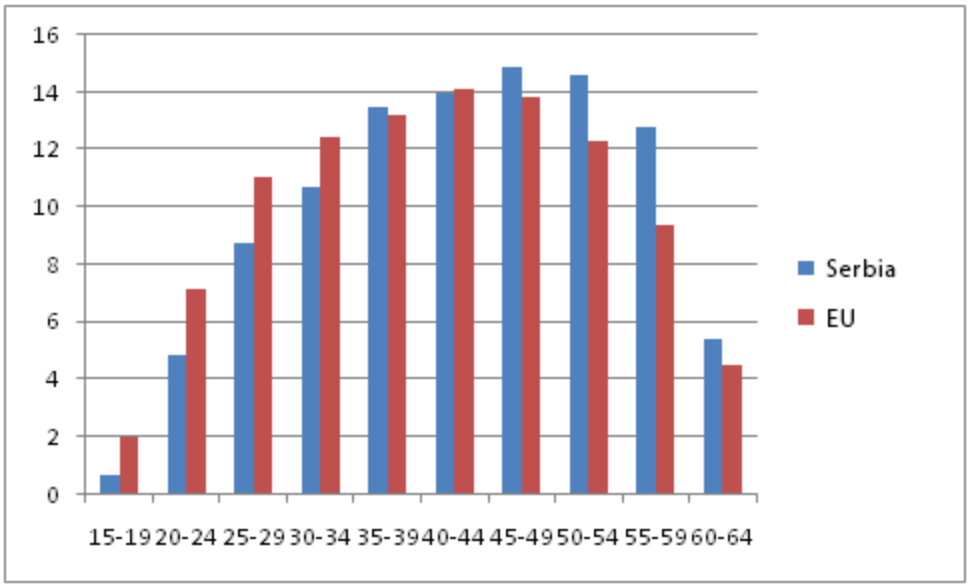
There is a particular problem, like in the case of employment rate, in the youngest population groups (aged 15-29), as well as the 54-59 group.

But there also an important problem among older people, particularly in the 55 to 59 age group, where the activity rate of the Serbian population is below the EU average by as much as 10 percentage points. Of course, it is primarily a consequence of the local pension system that allows very early retirement, particularly for women.

One of the most striking differences between Serbia and the EU average in the employment structure is the age structure, which can be seen from the figure below.

Figure 6.

Employee age structure, Serbia and EU average, 2011, percent



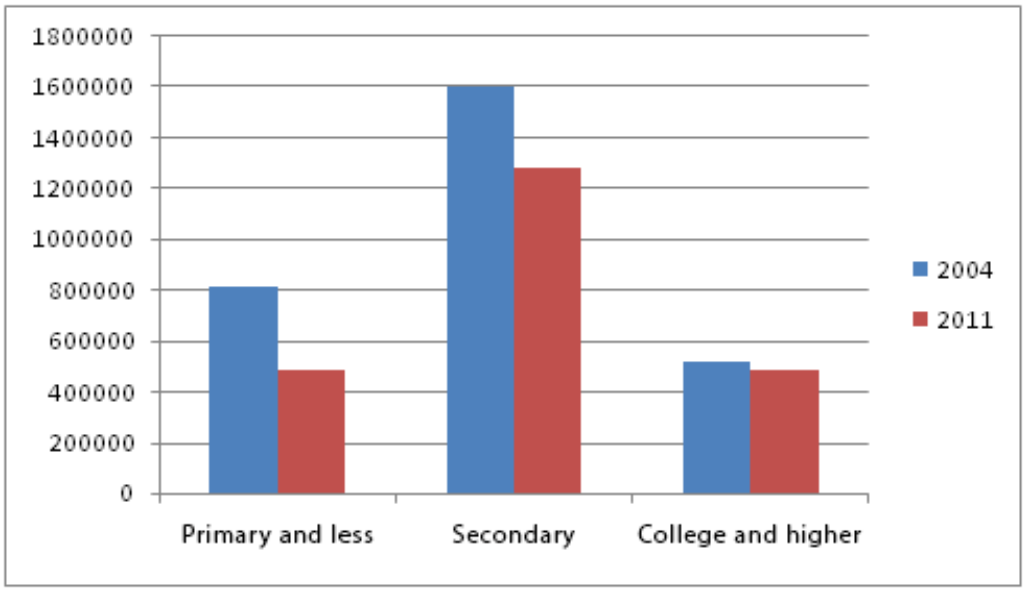
SOURCE: Labor Force Survey and Eurostat

In Serbia, the share of young people in total employment is much lower than in the European Union, and the share of older people is much higher. It is obvious that the age structure of employees in Serbia is far more unfavorable than the age structure of EU employees. While the share of the middle-aged (35-50 years) is about 42% in both cases, the difference in share of younger and older employees is whole 7 percentage points. This is particularly pronounced among men, and to a lesser extent among women.

In all, the average employee in Serbia is significantly older than the average employee in the EU. If this finding is correlated with the extremely high unemployment of the younger population, we have indications that there is a problem with attrition. In all probability, older workers do not lose their jobs fast enough in favor of the young. This is a serious problem and points to a marked inflexibility of the local labor force market.

Figure 7.

Number of employees by level of education, 2004 and 2011

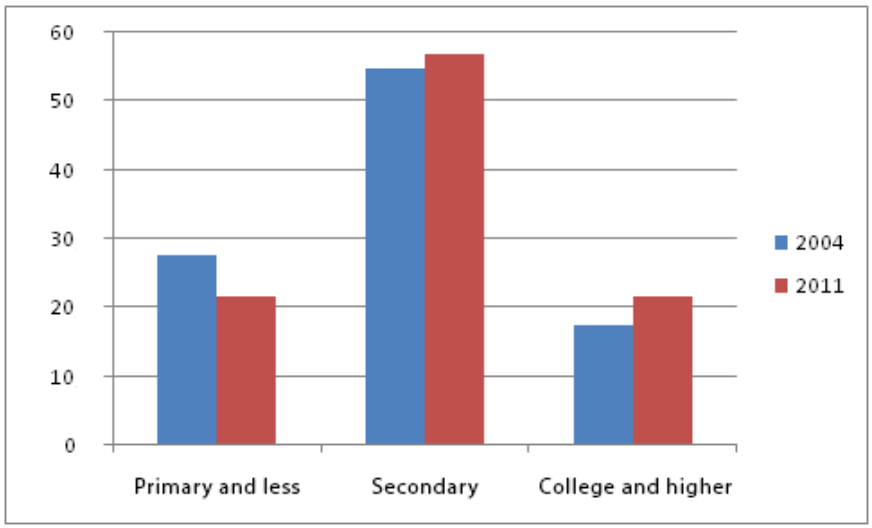


SOURCE: Labor Force Survey, 2004 and 2011

If we look at the employee educational structure, we can see that virtually the entire employment reduction in the period 2004-2011 affected those with less than a college degree, and the share of those with secondary school degree slightly rose, while the share of persons with a college degree or higher rose significantly, which implies that there was a significant rise in the level of education of an average employee.

Figure 8.

Educational structure of employees in Serbia, percent

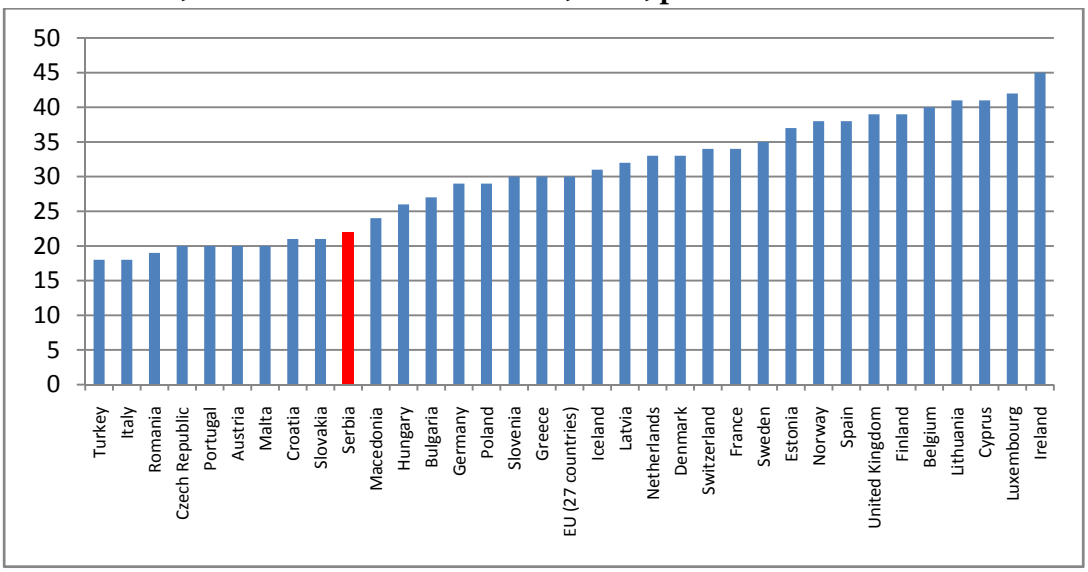


SOURCE: Labor Force Survey for 2004 and 2011

The next figure shows a comparison between Serbia, EU countries and other candidate countries in the share of employees with some kind of tertiary qualification. The impression is that the situation is not that bad:

Figure 9.

Percentage of employees with a tertiary qualification in total employee number, Serbia, EU and candidate countries, 2011, percent



SOURCE: Labor Force Survey and Eurostat

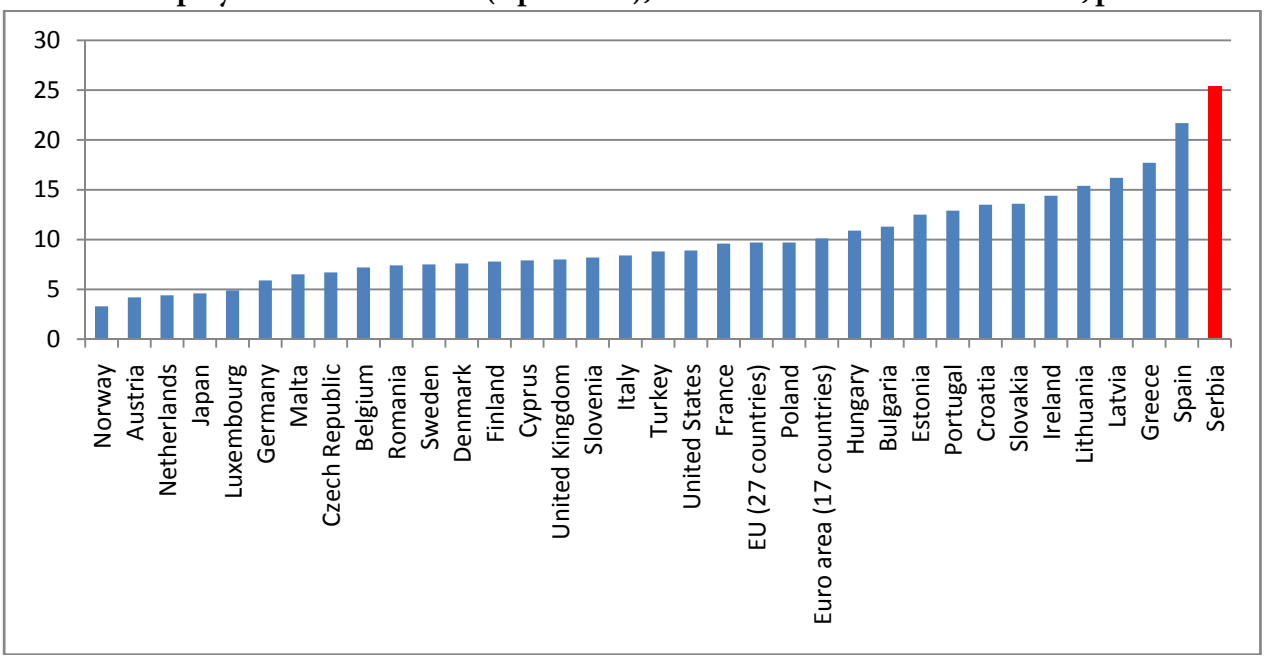
In Serbia, the share of the employee group with the highest level of qualifications exceeds one fifth, which is a favorable result that places it above some of the most developed countries. However, bearing in mind the exceptionally low level of youth employment in Serbia (who, by definition, cannot have an academic degree), perhaps such a favorable results is not so surprising.

Unemployment

In 2011, Serbia had the highest unemployment rate of all the countries for which Eurostat keeps records:

Figure 10.

Unemployment rate in Serbia (April 2012), EU and candidate countries 2011, percent

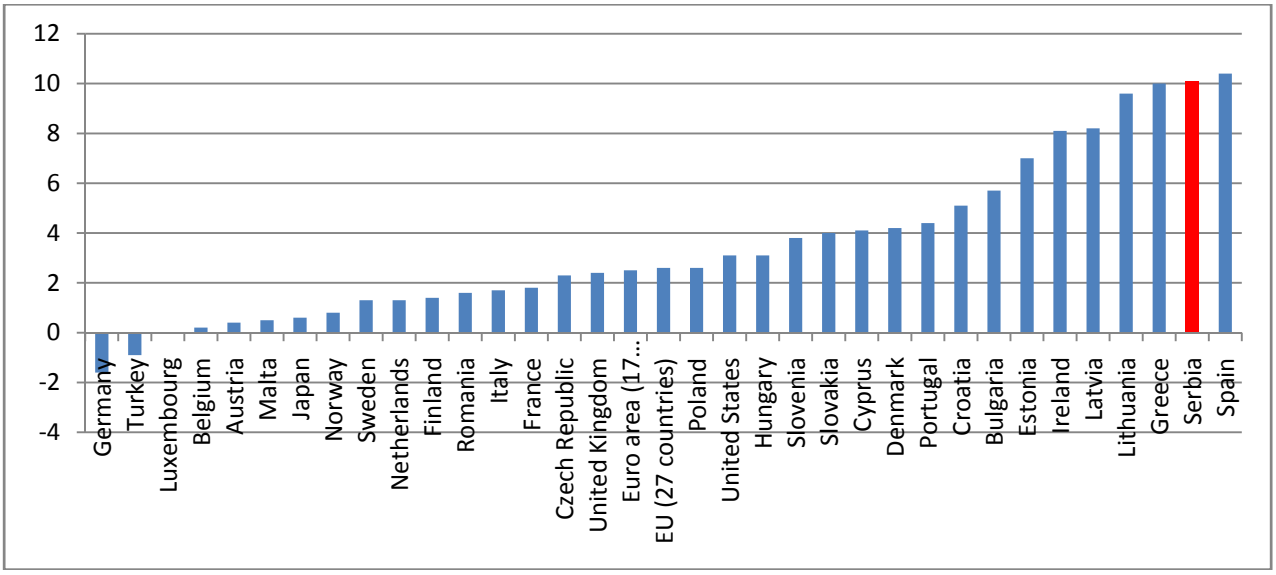


SOURCE: Labor Force Survey and Eurostat

In addition, Serbia exhibited the highest unemployment rate growth in the period between 2008 and 2011:

Figure 11.

Unemployment rate growth 2008 - 2011, percent



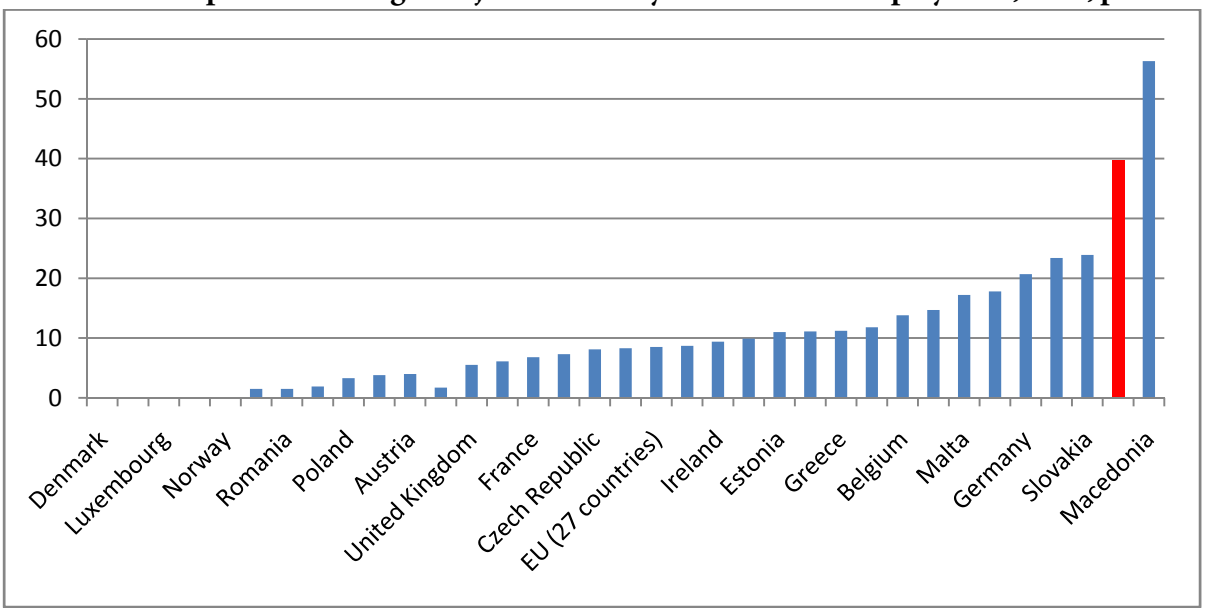
SOURCE: Labor Force Survey, Eurostat

As for the unemployed educational structure, persons with secondary school degrees dominate, with about 67%, followed by elementary school (16%) and university degree (9%)

In addition, Serbia is among the countries with the highest share of persons waiting for a job for over four years in total unemployment, with only Macedonia with a higher share.

Figure 12.

Share of persons waiting for a job for over 4 years in total unemployment, 2011, percent



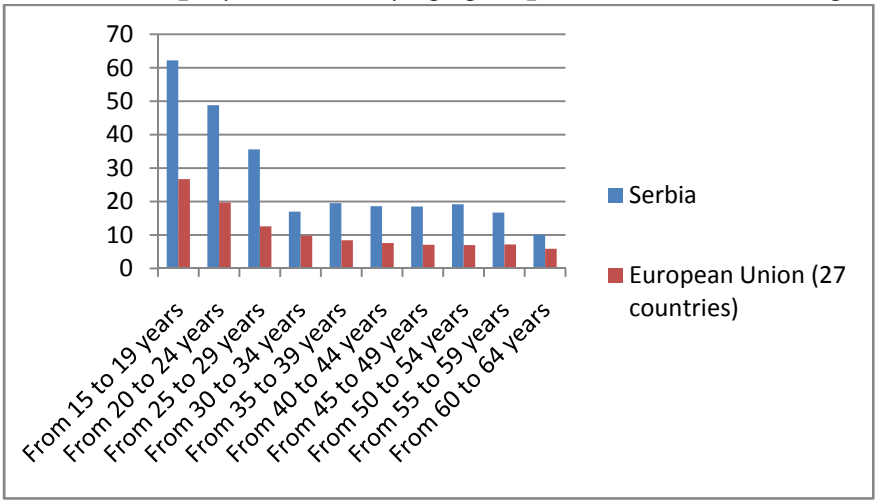
SOURCE: Labor Force Survey 2011 and Eurostat

As can be fully expected, the share of persons waiting for a job for less than a year is one of the lowest with only 26.2%.

The figure below compares the unemployment rate by age group in Serbia and the EU. The bars have a similar shape: much higher unemployment for young population, and unexpectedly low unemployment rate in the 30-34 age group.

Figure 13.

Unemployment rate by age group, Serbia and EU average, 2011



SOURCE: Labor Force Survey 2011 and Eurostat

The final conclusion cannot be positive by any means. If the current outcomes on the labor market are compared with other countries, or even with the situation several years ago, the situations is very bad. According to the latest data from the Labor Force Survey (April 2012) the unemployment rate exceeded 25%, while only four years ago it was below 15%, which was considered very bad at the time. Moreover, with the exception of Macedonia, there is virtually no country in Europe where unemployment is so high.

Aside from the very high unemployment level, low level of activity has become a very severe problem – about 40.6% of the working age population is not active. This leads to very low employment levels of the working age population (only 45.4%) which need to support not just children and elderly, but also non active and unemployed working age population.

That is a very serious problem for overall economic, social and political environment. On one side, total social productivity is lower, collected taxes and contributions are lower, while demands for social transfers are growing, leading to severe fiscal problems. On the other side, idle social capital is losing its value, and when we see it in the context of very high long term unemployment rates, where more than 40% of the unemployed are being unemployed for more than four years, we can also raise the question of employability of those people – what is left of their knowledge and work skills. Also, unemployed and their families are facing much higher poverty risk

These trends are partly the result of objective difficulties (transition with restructuring in the period up to 2008 and the global economic crisis since) but a significant factor are regulatory weaknesses and labor market policies, especially significant inflexibility of the labor market.

All this points to the necessity of a comprehensive reform in the country and to the problems existing on all three sides: on the labor force supply side, on the labor force demand side, and on the labor force market itself. To bring unemployment down to any decent level the following needs to be reformed:

4. Labor force demand through creating a business environment conducive to private business start-up and growth. The current business environment suffers from numerous weaknesses (authorities' arbitrariness, and making ad hoc decisions, incompetent and often corrupt public administration, inefficient judiciary, bad laws are implemented at certain times and not at others...),
5. Labor force supply, through the educational and training system reform. The current educational system, particularly at the secondary school level produces educational profiles that nobody needs any more, and does not produce the sought after profiles, such as persons trained to provide personal services, financial services, use of information technologies etc. In addition, there are very limited possibilities for additional education and training, and a system of certification is virtually non-existent.
6. Labor market is very inflexible (see later), so that even if significant reforms were to be implemented on the supply and demand sides, it is a big question whether positive results would be noticeable in such rigid market, where only a fraction of mutual relations can be resolved through the agreement between the employee and the employer.

LABOR COST AND PRODUCTIVITY
TRENDS IN SERBIA

Labor costs in Serbia are monitored through trends in average wage in the formal sector. According to official statistical data, the average wage in the first half of 2012 is close to RSD 56 thousand, while the net wage is slightly over RSD 40 thousand (Table 1).

Table 1

Gross Wages, in RSD (official statistics)

	Average total labor cost ('gross II')		Gross average wage	
	old methodology	new methodology	old methodology	new methodology
2002	15,421	..	13,260	..
2003	19,370	..	16,612	..
2004	24,132	..	20,555	..
2005	30,081	..	25,514	..
2006	37,427	..	31,745	..
2007	45,715	..	38,774	..
2008	53,850	47,882	45,674	40,612
2009	..	52,049	..	44,147
2010	..	55,944	..	47,450
2011	..	62,172	..	52,733
2012 (I-VI)	..	65,973	..	55,957

SOURCE: Statistical Office of the Republic of Serbia, RAD-1 survey; estimate of wages in small enterprises (up to 50 employees); Tax revenues data for employed by entrepreneurs

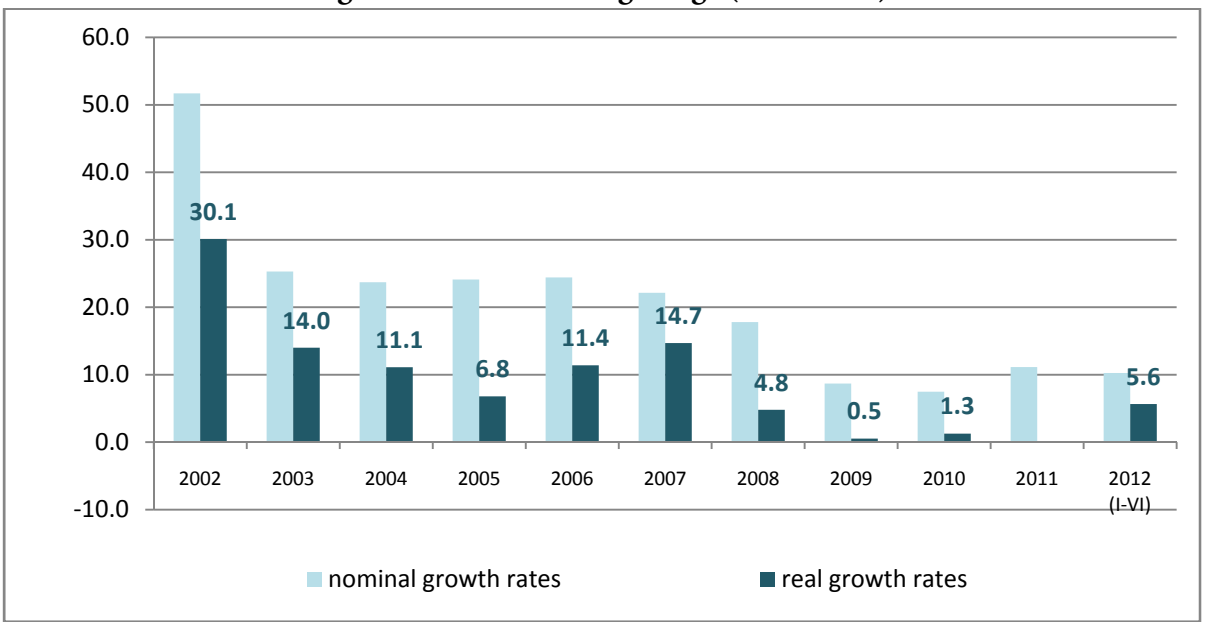
NOTE: 1. Change in methodology in 2009. so that wages of employed by entrepreneurs have been included 2. Total labor cost is calculated as social security contributions paid by employee are added to gross wage(17.9% of gross wage since 2005)

Statistics recorded exceptionally high rates of real wage growth that were above 10% annually in real terms almost all the time through to 2007. The highest growth was recorded in 2002, which can be explained by the fiscalisation of the economy as a result of the tax reform, but in the subsequent years, the growth rates reached as much as 14-15% in real terms. Average wages did not fall even during the crisis, and the only year for which the statistics does not record any real growth whatsoever is 2011. This can be explained by the loss of the lowest paid jobs, which led to the drop in employment, but not to the drop in the average wage.[3]

[3] Specifically, the number of employees in sole proprietorships, where the (formal) wages are traditionally the lowest, has decreased since 2007/2008 by 130 thousand workers.

Figure 14.

Nominal and real growth rates of average wage (2002-2012)



SOURCE: RSO

In all probability, official statistics, due to methodological problems, used to overestimate real wage growth, which is why SORS improved its methodology of statistical covering of wages by including data on the wages of persons employed with sole proprietors that are "taken over from the Tax Administration records and joined with the data obtained from the monthly survey".[4]

However, when the fiscal data relating to wage payment – wage tax and pension and disability insurance contributions for employees are used for the approximation of the total formal wage bill and average wage, the fact that more taxes and contributions are collected than would be expected on the basis of the official statistics data is still surprising (Table 2). These findings indicate that one should still be very cautious when analyzing official data on average wage and employee number.

[4] The basic (and the only) source of data on wage trends in the formal sector was, between 1960 and 2009, the monthly RAD-1 survey. As RAD form is not completed and sent by all the enterprises, a large part of the economy – the private sector and particularly those employed with sole proprietors, was left outside the reach of the statistics, which resulted in overestimating the growth and amount of average wage in Serbia.

Table 2.

Average wage series according to SORS and alternative series (estimate based on taxes and contributions)

	RSO	Based on wage tax	Based on employees' PDI contributions	Average wage of employees at entrepreneurs
2009	44,147	50,095	45,669	13,074
2010	47,450	53,657	53,982	14,598
2011	50,755	61,029	57,574	18,676

SOURCE: Author`s calculation based on MFIN, PDI and SORS data

When official data on the average monthly wage in Serbia expressed in euro is compared with other EU-candidate countries, we can see that Serbia is approximately on a par with BIH, Montenegro, even Turkey, while the wages are lower in Macedonia and Albania. Croatia, which is to become an EU member in July 2013, of course, stands out when it comes to the amount of the average wage.

Table 3.

Average monthly (gross) wage, EU-candidate countries (and Croatia)

	In EUR			in PPS		
	2000	2005	2010[a)]	2000	2005	2010[a)]
Albania	113	219	309	..	514	738
BIH	190	275	408	..	627	819
Montenegro	181	213	479	..	508	965
Croatia	642	848	1067	1149	1336	1528
Macedonia	168	207	335	..	573	862
Serbia	65	317	458	..	804	1011
Turkey	246	419	504	..	672	891

SOURCE: EUROSTAT database and 'Pocketbook on enlargement countries 2011'; RSO, NBS and EUROSTAT for Serbia; [a)] 2009. for Albania and Turkey

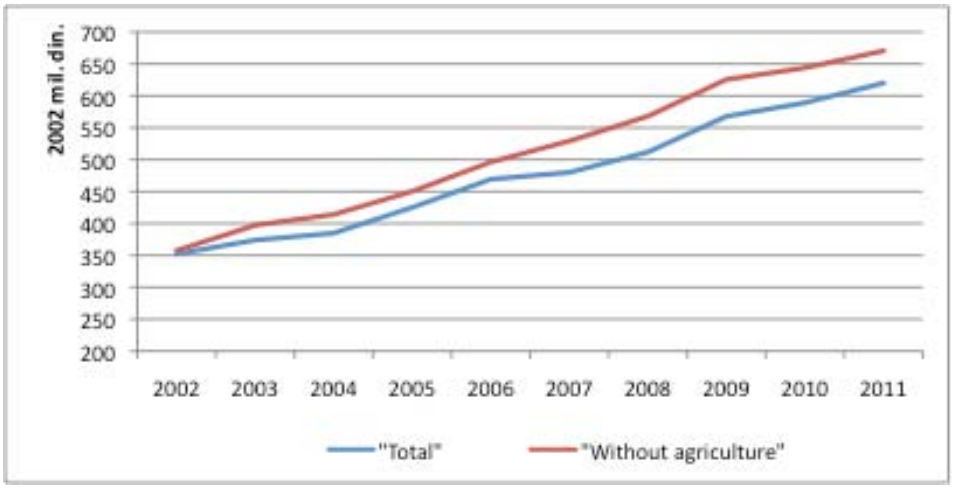
It is interesting to also look at comparisons of wages expressed in PPS.[5] If we exclude Croatia again, we can say that in this indicator, Serbia (with Montenegro) stands out among other countries by somewhat higher average wage, in terms of a slightly higher standard of living that it can provide compared to other candidate countries.

Labor productivity, expressed as the ratio of GDP in constant prices to the number of employees, has been constantly on the rise since 2002, although slightly slowing in the last two years. At the same time, total employment has constantly been declining, which indicates significant contingents of surplus employees. When agriculture is taken out from the equation, productivity growth is even faster.

[5] Purchasing Power Standard is an artificial EU-27 currency, which was constructed with the aim of eliminating price differences between EU countries. Theoretically, one PPS can purchase the same value of goods/services in every member country.

Figure 15.

GDP per employee, constant 2002 prices



SOURCE: Author's calculation based on SORS data

As for a comparison of labor productivity, one must say that it is made difficult primarily by the fact that EUROSTAT measures labor productivity primarily on the basis of worker hours through indices (not levels) – or in relation to the EU-27 average that is 100, or by growth indices. Productivity levels expressed in national currencies may be derived on the basis of data on GDP and number of employees.

Table 4.

Labor productivity (GDP/total employment), 2011

	In EUR	In PPS
EU-27	58,194	58,194
EU-15	67,119	63,507
Bulgaria	13,047	28,401
Czech Republic	31,589	42,979
Estonia	26,224	37,039
Latvia	20,050	23,503
Lithuania	30,705	27,505
Hungary	26,368	43,261
Poland	22,939	38,740
Romania	14,765	28,748
Slovakia	29,369	42,375
Slovenia	36,340	44,011
Croatia	30,079	44,420
Macedonia	11,337	28,639
Serbia	**14,458**	**29,634**
Turkey	22,984	41,030

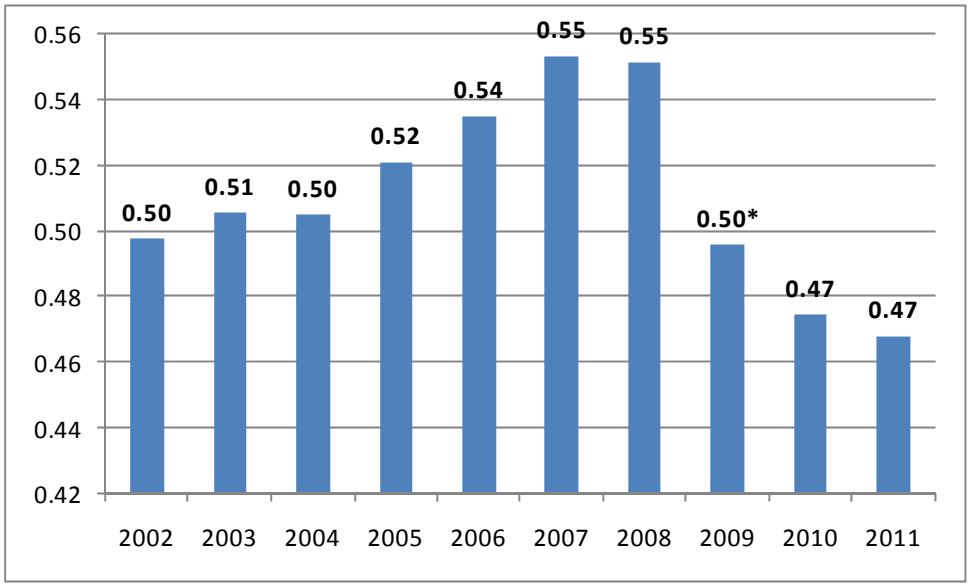
SOURCE: EUROSTAT database and 'Pocketbook on enlargement countries 2011'; SORS, NBS and EUROSTAT for Serbia; 2006 data for Turkey and Macedonia

When we compare labor productivity in Serbia expressed in euro with European Union country average, Serbia is far behind as can be expected, but also considerably behind the countries that joined the EU later, except Romania and Latvia, while Bulgaria and Macedonia are at a lower level than Serbia. When we compare labor productivity expressed in PPS, these findings are even more convincing, while Lithuania joins the group of countries with lower labor productivity.

The indicator of price competitiveness that is very often used is a *unit labor cost.* It shows the link between the amount of employee income and labor productivity. The unit labor cost may be calculated in different ways, as there is no single definition of unit labor cost. Figure 3 shows unit labor costs calculated as the ratio of total labor cost (average gross wage plus contributions paid by employer), excluding agriculture, to productivity expressed as GDP per employee, where employees also include sole proprietors.

Figure 16.

Unit labor costs, rate



*break in the series (change of wage monitoring methodology)
SOURCE: Author's calculation based on SORS data

The problem in this series is a well-known "break" that occurred due to the change of methodology of covering wages in 2009. Nevertheless, we can observe a slight drop in unit labor costs in the last few years. Due to the break, unit labor cost was calculated by approximating the total cost of employees on the basis of wage tax. The average cost per employee calculated in this manner may be related to the GDP per employed worker, which represents aggregate compensation for employees relative to GDP. We must point out that until 2005, wages did not grow faster than productivity, which official data indicated, but they did so between 2005 and 2007, after which they started declining. Therefore, we can say that price competitiveness of Serbia has been slightly improving in the last few years.

Figure 17.

Unit labor cost (aggregate total employee costs /GDP), percent

DATA SOURCE: MoF and SORS

NOTE: Aggregate total employee costs are derived from wage tax

As can be seen, at the aggregate level, unit labor cost is conceptually reduced to the "labor share" indicator – the total part of GDP that goes to labor.[6] Therefore it should be interpreted with caution. Unit labor cost at the level of a firm and the entire economy does not mean the same. At the firm level, reduction of labor costs is always welcome, whereas at the aggregate level it means a decline in capital productivity.

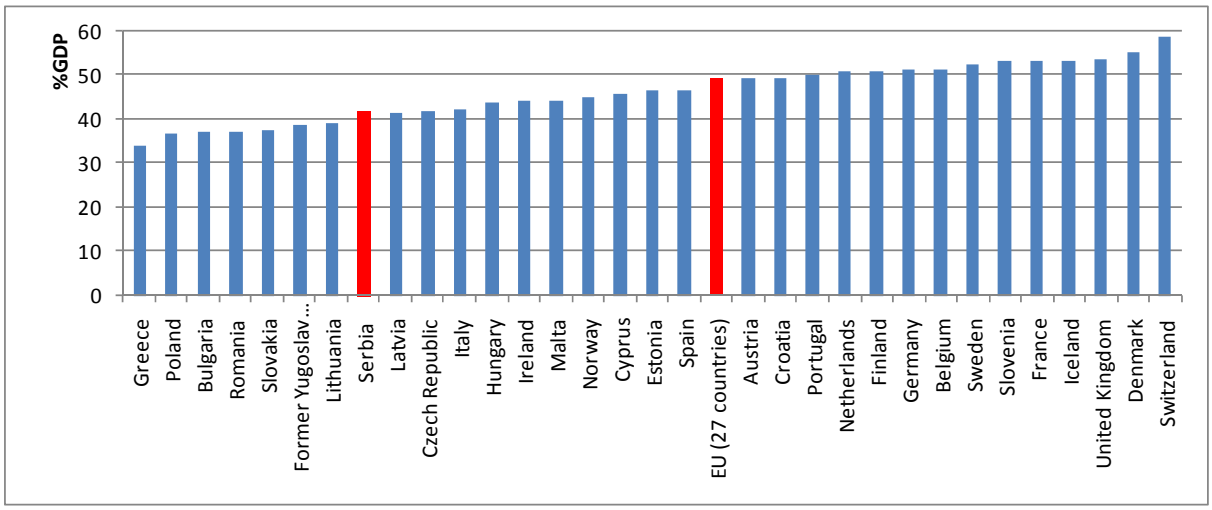
Concerning international comparisons of unit labor costs, what is usually monitored is their trend – indices in nominal and real terms – while the levels cannot be found in "ready-made" data series. For the purposes of price competitiveness comparisons, we need unit labor cost levels, so we will therefore look at the "labor share" indicator that is commonly calculated as the share of total employee compensation to GDP, from the national accounts.[7] The data for Serbia are derived from the wage tax, as SORS ceased publishing GDP according to income approach.

[6] As a rule, it should include the income of the self-employed, but is mostly calculated only for employee labor costs.

[7] This version is most commonly used for international comparisons, although it underestimates the labor share in GDP since it does not include the income of the self-employed, which is recorded in national accounts within the item "mixed income". For details see Lubker, M. (2007); „Labor shares", Technical Brief No. 1, ILO.

Figure 18.

Labor share in GDP, 2011



SOURCE: EUROSTAT, for Serbia, author's calculation on the basis of MoF data

Serbia has a much lower labor share than most EU countries, particularly the most developed ones, which is only to be expected as the labor share is generally higher in developed countries (Lubker, 2007), but it is slightly higher than in Lithuania, Macedonia, Slovakia, Poland, Romania, Bulgaria, and Greece. Thus, it is demonstrated that Serbia has price competitiveness compared to the European Union average and most member countries, and that, in this indicator, its competitors are Easter European countries that joined the EU in 2004 and 2007.

Overall, labor productivity in Serbia is very low, and in this respect, Serbia is trailing behind the European countries, together with come other Balkan countries. ON the other hand, in terms of labor costs, Serbia ranks higher, overtaking not only some Balkan but also some East European countries with a much higher labor productivity than Serbia. Therefore there is a mismatch in Serbia between productivity and gross wages, at the expense of productivity, thus harming the productivity of the Serbian economy in the foreign markets

PRIVATIZATION, RESTRUCTURING AND EMPLOYMENT

After the second wave of Serbian transition, the 2001 one, started, one of the unavoidable difficult questions had to do with employment dynamics in the coming years considering that, at the times of transition, it is common for employment to be among the first victims of structural changes. A drop in total employment, caused by the falling socially-owned and state-owned sector, is probably inevitable in at the initial stages considering that the process of destruction of the old, untenable job positions is usually faster than the process of creating new ones, particularly if the starting situation was farther away from what is an economically rational (balanced market) situation. Thus, in 2000 Serbia there was a considerable surplus in people employed in enterprises, which was created in the previous decades of self-management socialism and then increased in the 1990s that ruined the Serbian

economy. Later individual restructuring processes in individual companies showed that, most commonly, this surplus amounted to one third and one half of the inherited labor force.

The Government of Serbia initially focused on the following labor market strategy:

- A relatively liberal labor law, with the intention to increase labor market flexibility and so improve the investment climate in Serbia,
- Lowering wage taxes and contributions, so as to reduce labor costs and encourage new hiring, particularly through moving from then widely-spread shadow economy to the formal sector,
- Active employment policy measures, intended to facilitate new hiring, and
- Quite generous social programs for those who lost their jobs or who accepted to voluntarily leave the privatized companies, which was supposed to mitigate the consequences of job loss during the transition.

The idea behind the first item on the list was to facilitate the restructuring of companies, the second and the third were meant to encourage long-lasting employment growth, and the fourth was intended to help those who are left jobless.

In the years that followed – before the 2008 crisis – the plan was only partly implemented. The restructuring gradually decreased the number of employees in the privatized sector, but less radically than expected. The reason was somewhat slow privatization that was not based on any of the mass privatization concepts but rather on the sale of individual companies, which implies a more complex and more protracted procedure. On the other hand, the growth of autochthonous private sector, which was supposed to be the source of new employment, was very slow and therefore insufficient to make up for the losses caused by the restructuring of state-owned and socially-owned sectors; the result was only a moderate reduction of total employment.

Since the end of 2008 to date, the above mentioned process of restructuring-related reductions in employment was joined by the consequences of economic crisis and its impact on ever deeper drop in employment and rise in unemployment.

The fall of employment in the business sector involved in the privatization process was massive: in 2002, at the beginning of the privatization process, the number of people employed in this group of companies was about 680 thousand, and in 2010, these companies employed only 286 thousand people, or less by 58%.[8]

The process of corporate restructuring is not yet finished in all companies which have gone through the privatization process; and a large number of companies are yet to be privatized. Namely, there is a large group of companies without any business prospects, and many of them are still in the so-called restructuring program; namely, they are still receiving subsidies to be able to pay wages and formally stay away from the bankruptcy procedure. This group comprises almost two hundred companies, with about 100 thousand employees, and their proper restructuring (or bankruptcy) will definitely be accompanied by new unemployment.

[8] *Impact Assessment of Privatization in Serbia*, Privatization Agency, Belgrade, 2012

LABOR MARKET SEGMENTATION

An important characteristic of the Serbian labor market is that it is segmented. While developed economies will normally view their labor market as a more or less single unit, with practically identical or very similar institutional arrangements, identical or very similar manner of wage setting, and easy mobility of workers from one to the other part of the market, the analyses for developing economies are often based on the idea of a dual, or segmented labor market.[9] Labor market in this model is not integrated but rather consists of two or more 'submarkets', or autonomous markets with characteristics of their own, which are interconnected to an extent but which also feature their own specificities and dynamics. The usual division is the one into two segments, whether to make a distinction between a modern and backward sector or between a formal and informal sector. Divisions in more than two sectors are quite frequent too, depending on theoretical preferences and the current situation in the country concerned. The causes of labor market segmentation are often to be found in the combined effect of (1) institutional, i.e. regulatory differences, when individual parts of the market are differently regulated and directed by the government policy and legislation, and (2) internal characteristics of individual parts of labor market, such as the role of trade unions and employer associations, regional imbalance, etc.

In Serbia, four autonomous labor market segments can be clearly distinguished, namely:

- State sector,
- Formal sector in the private economic sector,
- Informal sector in the private economic sector, and
- Individual farming.

The distribution of employees between segments in 2011 was as follows:

Employment in 2011 (in 000)

State sector	678.1
Other formal sector, without farmers	1,051.3
Informal sector, without farmers	112.3
Farmers (and helping members of the household)	411.5
Total	2,253.2

SOURCE: ARS 2011, SORS

As can be seen, the state sector includes as much as 30.1% of all employees, which is comparatively a very high share, particularly in view of the fact that the other, i.e. private part of the formal sector is not much larger that the public part (only by a half) and accounts for 46.7% of total employment. Farmers account for 18.3% of total employment, and shadow economy for only 5.0%. An explanation for such a small share of shadow economy may be

[9] The roots of this idea may be found in Arthur Lewis' 1954 model of dual labor market

that, according to the Labor Force Survey, it does not include those who are employed in formal sector even when they take an active part in the shadow economy.

From the legislative point of view, formal private sector is governed by the Labor Law with accompanying institutional structure; governmental sector is governed by the Labor Law, but also by the Law on Civil Servants and Auxiliary Staff which partly changes a large number of the Labor Law arrangements (disciplinary responsibility, termination of employment, collective bargaining, and the like). In the remaining two sectors employment relations are virtually unregulated; namely, none of the laws governing labor, employment relations or hiring apply to these areas of economic activity.

Different regulation, even absence thereof, results in different functioning of these segments of the labor market, beginning with the manner of wage formation, hiring and firing, collective bargaining, and similar. Accordingly, individual segments have different basic characteristics:

- *State sector*: comprises public administration, greater part of education, health care, and similar activities, as well as public enterprises; provides for a higher level of job security, which is partly a consequence of the legislative protection of employees and partly of a higher financial stability; political parties have a strong impact on hiring, particularly for senior positions; there is a greater evenness of wages so that the lower rank employees often have higher wages and experts often have lower wages than in the private sector;
- *Formal part of the private sector*: comprises a larger part of the economy – from industry and trade through to different services; the Labor Law regulates employment relations in this segment, although it is not always fully applied, particularly in small firms; job security is lesser than in the public sector, primarily due to business risks; wage differentials are high; the role of trade union differs from firm to firm and collective bargaining is uneven;
- *Informal sector excluding farmers*: comprises shadow economy in different business activities: from street vendors, through craftsmen, to doctors who are employed in public institutions but work in private ones after hours; main reasons for its existence include the avoidance of government regulation of both rigid employment relations and tax liabilities; most are self-employed as small sole proprietors, while the number of 'employees' working for employers is modest; social security entitlements are mostly non-existent: contributions for social insurance are not paid and, consequently, they do not have health or pension insurance; the latest economic crisis has affected this sector and the number of employees dropped by more than in the case of formal sector because this market is more flexible and it more fully adapts to economic circumstances;[10]
- *farmers (with helping members)*: this segment is a source of (potential) labor force for other sectors; their number is decreasing in the long term, with demographic changes and the advancement of agricultural technology, but this decrease is slowed down at

[10] G. Matković, B. Mijatović and M. Petrović: *Uticaj krize na tržište radne snage i životni standard u Srbiji (Impact on the Crisis on the Labor Market and Living Standards in Serbia)*, CLDS, 2010, p. 24

the times of crisis; because of the existence of agricultural holdings, farmers are self-employed sole proprietors who occasionally, at the time of seasonal works, may employ people off the books; some of them pay social insurance and thus have pension[11] and health care entitlements, while others do not; since they are attached to their holdings, the inertia is the main characteristic of this labor market segment.

These labor market segments are interconnected, which is manifested by the transfer of people from one to the other segment, but also influences and modeling after the other, e.g., partly in wage setting. There is definitely a considerable dynamics in the overall labor market, particularly between the formal private sector and informal private sector and the unemployed and inactive populations. Considering the a declining employment trend in Serbia has already become long-term, a part of employees move to the unemployed group and a part to the group of inactive people who are not looking for a job because they do not believe they can find one.[12]

EMPLOYMENT AND WAGES IN PRIVATE AND PUBLIC SECTORS

According to the data of the Statistical Office of the Republic of Serbia (which, in addition the data for public administration, include public services and public enterprises, but do not include the police and the military) the Serbian public sector employs almost one in four formally employed persons, which is very much. When about 90 thousand persons employed in the police and the military[13] are added to this figure, we can see that for each 2.2 persons employed in the private sector, one person in employed in the public sector. In its report entitled "Proposed Fiscal Consolidation Measures 2012 – 2016", the Fiscal Council stated that the employment in the Serbian public sector is not excessive relative to the population, but that it is excessive relative to the number of employed persons.

A large number of persons employed in the public sector predominantly results from the incapability of earlier governments to reform the public sector and reduce it to a reasonable scale. This is probably best illustrated by the movements of employment in education where, within the past ten years, the ratio between students and employees fell from 9.2 to below 7 – although the number of students dropped from about 1.035 mil to about 0.86 mil, the number of employees increased from about 112 thousand to more than 122 thousand .

Simply put, hiring in the public sector is still a source of clientelism in Serbia – a government job is a common motive for joining a political party and political parties often use employment opportunities to reward their loyal and deserving members and their families. A certain measure of public administration professionalization implemented in the

[11] Cf. B. Mijatović – *Farmers' Pension Insurance*, CLDS, 2010

[12] G. Matković, B. Mijatović and M. Petrović, ibid, pp. 15-17

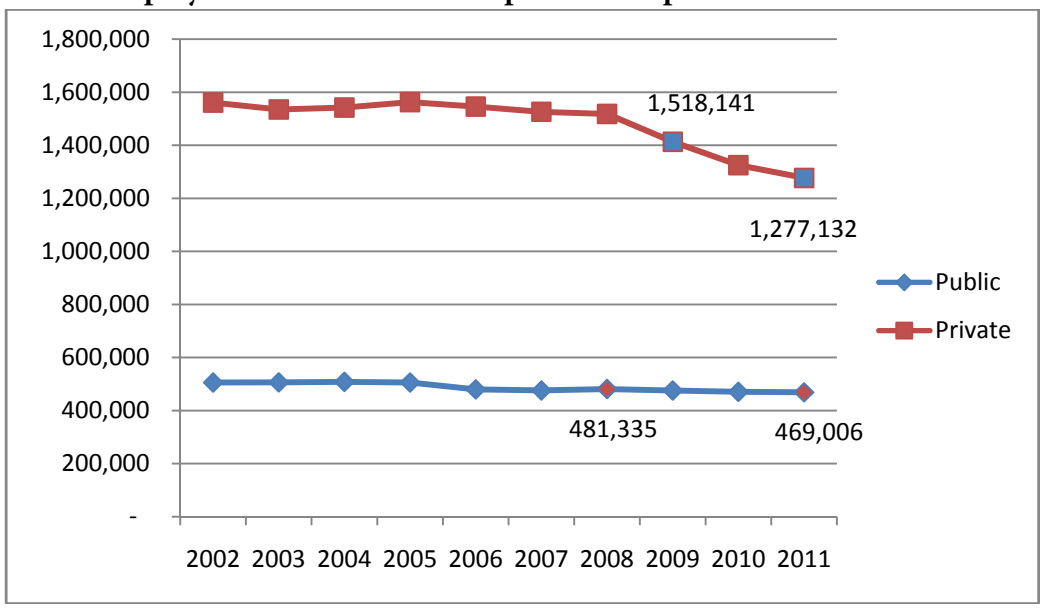
[13] The World Bank, Serbia: Right-Sizing the Government Wage Bill, 2010

previous period mostly related only to the highest government positions and bodies, while hiring at lower levels of government, and particularly in public enterprises, utility companies and public services, is mostly carried out on the basis of advertising vacancies where everything has already been agreed.

On the other hand, the past ten years saw a considerable drop in the number of private sector employees (does who receive wages, which means that the persons employed in shadow economy or agriculture are not taken into account). The total number of persons employed in the public sector slightly fell; we will see below, however, that this is mostly a result of lesser employment in public enterprises.

Figure 19.

Employment trends in formal private and public sector



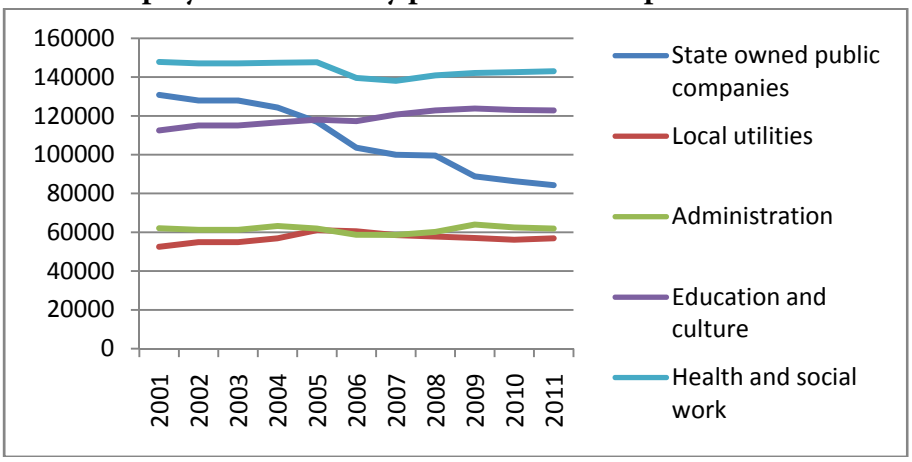
SOURCE: Ministry of Finance, Public Finance Bulletin

Specifically noticeable is that, since the onset of crisis in 2008, some 250 thousand (16%) jobs have been lost in the private sector, while only about 12 thousand (2.5%) jobs were lost in the public sector.

With regard to the public sector structure, there has been a considerable decrease in employment in the state-owned public enterprises (which was primarily due to divesting non-core activities and, in some cases, limited restructuring and privatization); some increase was seen in education and culture, while the number of employees largely stagnated in other areas (administration, health care, local utility companies).

Figure 20.

Employment trends by public sector components



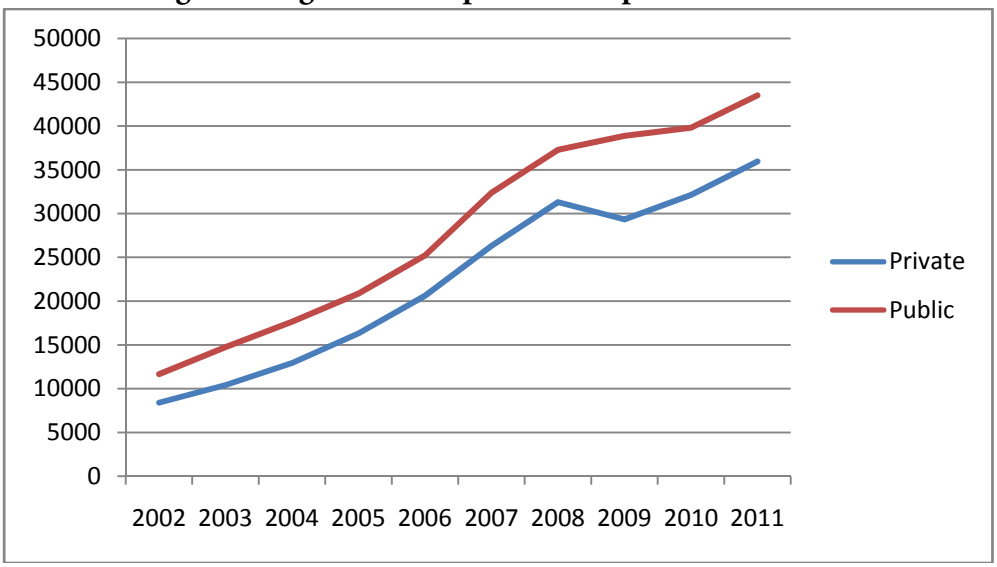
SOURCE: Ministry of Finance, Public Finance Bulletin

Therefore, some reduction of the public sector has been observed, although one may say that, compared with private sector employees, public sector employees have relatively painlessly weathered the crisis– there were practically no dismissals at all.

The employment and wage trends in the public sector have a large impact on the 'private' labor market since public and private sector compete for the same employees. Accordingly, the wage policy of the public sector sets a kind of benchmark for other employers. The figure below shows the average net wage trends in public and private sectors in Serbia. Any direct comparison would of course be questionable, considering that these groups are completely different. On the one hand, public sector employees are probably better educated and more experienced, and they often perform very dangerous and responsible tasks. On the other hand, job security is at a much higher level, and working conditions are better by far.

Figure 21.

Average net wage trends in private and public sectors



SOURCE: Ministry of Finance, Public Finance Bulletin

There is a particular problem in that the lowest to highest wage ratio in the public sector is much below the corresponding ration in the private sector. This means that, if compared to the private sector, public sector is a relatively good option for persons with a lower level of education and skills. This means that private sector must pay them more if it wants to employ them. It is questionable whether this is a serious problem at this point in time, when unemployment rate is extremely high, but it can become a serious problem if unemployment drops.

Serious fiscal problems faced by Serbia open up the question of sustainability of the existing model in which public sector hiring is often seen as a manner to prevent social problems. The reforms whose goal is to reduce the public sector costs and introduce incentives for better performance have been postponed for years, particularly in the sectors that employ the largest number of people – education and health care.

All things considered, the following governments will be under a great employee pressure to increase wages and there will be no room for it – the deficit needs to be reduced, and room needs to be made in the budget for the increasing cost of interest.

Chapter 2

GENERAL LABOR REGULATION

LABOR LEGISLATION

Early in the past decade, in the first phase of transition, Serbia reformed its employment relations and to some extent liberalized its labor legislation, i.e. the pre-reform model from the 1990s that was adopted in quite different circumstances. Already in 2005, a step backward was made and the Labor Law was made much more restrictive. That is why employment relations reform has not thus far been based on balanced relations between employees and employers, as it was proclaimed; rather, it has essentially transposed the regulations common in the European Union, and even more than that – it wrote into law many arrangements that caused the interest of employees to prevail over the interests of employers and the overall business interest and, consequently, inflexibility of employment relations and labor market. The central idea behind such labor legislation is to protect employees against the risks inherent to economic activity as such, that is, the transfer of these risks to the employer, with all financial and other consequences. Its main characteristics include considerable protection of employees, highly formalized and complex procedures in employment relations, important role of trade unions imposed by the law, extension of the term of the old General Collective Bargaining Agreement concluded in the pre-reform period which markedly expanded the rights and protection of employees, and the like.

Good illustration of the character of the Labor Law, namely its bias against employers, is Art. 12 – 17 which list the rights and obligations of main actors who determine their mutual relations. This catalogue contains provisions about the rights and obligations of employees and the obligations of employers. The rights of employers are not mentioned at all, as if there were not any. Even though they can be implicitly identified, the fact that their explicit mentioning is avoided suggests what is the ideological orientation of the lawmaker and that the imbalance is created at the very beginning of the legal text and is subsequently consistently maintained, namely that their rights are minimized and given only secondary importance, which is definitely not good for the attractiveness of doing business in Serbia.

The main features of the Labor Law and related legislation may be summed up as follows:

- Restrictiveness in all important matters: from the restrictions related to the types of work engagement and the provisions of working hours annual leaves, through the conservative approach to the regulation of remuneration, to rigid arrangements for the termination of employment and pro-union approach to the role of trade unions and collective bargaining;
- Extreme patronizing character of the Labor Law which, through extensive regulation of every single matter, prevents any agreement between the employer and the employee, even where it is in the best interest of both of them,

- Chaotic system of collective bargaining at national and sectoral levels that also includes non-representative participants and where the so-called extended effect is extensively used, thus distorting the idea of free collective bargaining and turning the collective bargaining itself into something quite opposite.

This system of employment relations relations gives rise to a drop in employment and competitiveness of the Serbian economy, because it:[14]

- disrupts businesses in their economic and financial adaptation to the dynamic change of environment and inhibits the transfer of employees from companies and activities with no prospects to ones with good prospects, thus causing a direct economic damage to the Serbian economy,
- is associated with increasing labor costs, which results in less hiring as it discourages employers to employ new people; together with slowed-down transition and the government's inappropriate response to economic crisis, this led to very negative trends in employment and unemployment,
- distorts the equality principle, since it favors the currently employed at the expense of the unemployed, i.e. mostly older at the expense of younger generations, through few people fired or hired, which results in a stable labor force in the company that hardly ever changes,
- encourages non-compliance with the law, as life inevitably tries to circumvent unnecessary barriers, so breaking the law is very common either for the purposes of resolving real problems (for instance, employees sign blank and dateless letters of resignation which are held by the employer), or due to the lack of required expertise on labor legislation in smaller firms; this in turn results in numerous litigations relating to the violation of statutory procedures which, due to the apparent bias of the courts in favor of employees,[15] leads to the distortion of the rule of law and losses in the economy,
- leads to non-standard forms of employment (fixed-term, temporary, casual employment, service contracts, etc.) with the idea to have the regular labor force in the company regulated in an easier and less costly manner;
- encourages movements to the shadow economy, without any employment contract, to avoid restrictive provisions of labor legislation and the increased costs relative to the market wage level,
- encourages the use of advanced technologies that save on the labor and outsourcing work assignments, for the same reasons,

[14] See *Reform of the Labor Market and Labor Relations*, in Four Years of Transition in Serbia, CLDS, 2005; *Serbia, Labor Market Assessment*, World Bank, September 2006; *Employment Protection Regulation and Labor Market Performance*, in OECD Employment Outlook, OECD, 2004; Serbia: A Labor Market in Transition, OECD, 2008; *White Book*, FIC, 2011

[15] Some believe that one of the reasons for this bias is the fact that the costs of court proceedings in Serbia are borne by the losing party and that it would be too much of a burden for many employees, and also that it is much easier to collect these costs from the employer.

- often leads to unnecessary conflicts within the company, since it introduces overly high standards in employment relations, and the like.

A comparison between arrangements in Serbia with arrangements in other countries is shown in the section below, and the discussion of specific weaknesses of the most important arrangements of the Labor Law is presented in Chapter 4.

Resistance to the changes in labor legislation on the part of the trade unions is large. Thus, the attempt at a very limited flexibilization of labor legislation towards the end of 2011, in the form of Serbian Government's proposed amendments to the Labor Law, was rejected by the unions. This made the Government give up its own proposal. The EU member states have been making progress in the process of change in a more liberal direction for an entire decade now, while Serbia lags behind the EU, by adhering to the old concept which is being gradually abandoned by the EU member states themselves.

COLLECTIVE BARGAINING

Industrial relations in Serbia are regulated by the Labor Law (2005) and the Law on Socio-Economic Council (2004). The main actors of collective bargaining at the branch of industry and national level are the Serbian Association of Employers (SAE), Confederation of Autonomous Trade Unions of Serbia (CATUS), Nezavisnost Trade Union Confederation (UGS Nezavisnost) and, since recently, the Confederation of Free Trade Unions (CFTU), representing the unions, and the Government of Serbia, as a participant in the tripartite, so-called 'social dialogue' and the employer for the public sector. The representativeness of the above mentioned organization of employers and the unions was recognized in accordance with the Labor Law. A number of associations have unsuccessfully been attempting to acquire a representative status in recent years (the Serbian Chamber of Commerce, Association of Free and Independent Trade Unions (AFITU), Association of Small and Medium Sized Enterprises (ASME), Poslodavac Association).

Collective bargaining in Serbia varies depending on the sector in which it takes place. The public sector applies branch agreements, and private sector mostly applies collective agreements at the company level and sometimes collective agreements of higher levels (branch and national) are adopted. Almost all employees are covered by collective bargaining agreements in the public sector, while this coverage in private sector is relatively low because of the low level of employee membership in trade unions[16] and the lack of understanding and knowledge of collective bargaining both on the side of some local trade unions and some employers.

Due to a relatively small number of company collective agreements and relatively small coverage of employees, trade unions traditionally try to compensate for this deficiency by adopting higher-level collective bargaining agreements, particularly the highest-level ones – the general collective bargaining agreement for the whole of Serbia, with extended effect. With this, the entire private sector in Serbia is covered by a single agreement.

[16] M. Arandarenko - *Serbia: Industrial Relations Profile*, Eurofound, 2012, pp. 5-6

After long years in which archaic General Collective Bargaining Agreement from 1997 was in force, a new agreement was adopted in May 2008 and lasted until May 2011. It was harshly criticized by employers but was of little practical value. At the time of crisis hardly anybody took any notice of its provisions. In the course of last year and this year, several branch collective agreements have been adopted, with extended effect.

The main problems with collective bargaining at the national level do not arise that much from the provisions of the Labor Law as they do from their inappropriate implementation. The most important remark from the employers concerns the careless implementation of the extended effect of concluded agreements and a wide-spread perception among Serbian employers that they are not represented in the bargaining process, considering that the officially representative association of employers does not represent their interests properly, but makes too many concessions to trade unions and the Government of Serbia. An illustration of such concession can be found, for instance, in the surges of minimum wage (13% in April 2012), or in the General Collective Bargaining Agreement signed by the Association in 2008, which particularly favored employees and trade unions and which excessively restricted the rights of employers in employment relations. A highly illustrative event took place in 2008 when an Annex to the General Collective Bargaining Agreement was signed providing for wage increase for all employees (its extended effect was signed to immediately) by as much as 20%; this anti-business act was annulled by the Government of Serbia.

The problem of participant representativeness is particularly acute as the process of determining the representatives at national level was very much non-transparent in the past. There are wide-spread rumors that the Serbian Association of Employers is not really representative, and some doubts have been raised with regard to UGS Nezavisnost. The competent Ministry of Labor is not taking any steps to clarify the situation, and a good illustration of doubts could be the letter that CATUS sent to the Serbian Association of Employers at the moment when their cooperation was discontinued: "Dear Sirs and Madams from the Serbian Association of Employers, we are now resolute in our intention to officially establish whom you are representing, namely whether you are competent under the Labor Law to participate as an equal social partner in the dialogue at the level of the Republic".[17] They failed in this intention and CATUS and SAE continued their collaboration.

In the past year the old practices continued: the three representative associations signed several branch collective agreements, without any wider consultation and transparency, which were immediately afforded extended effect (except the one for metal industry which was signed last). [18] Some of these agreements broadened individual rights of employees compared to the Labor Law: for instance, it increased the amounts of severance

[17] *Open Letter of CATUS Presidency dated 30 December 2008*, in R. Kosanović & Sanja Paunović - Collective *Bargaining*, FES, Belgrade, 2010, Exhibit 15.

[18] Interestingly, the authors of these industry agreements are inclined to copy the provisions of the Labor Law ad extenso, as if they would not apply without being 'endorsed' in the collective agreement. It is similar with a large number of provisions which read that the employer or the employee "may...", as if it were the branch specific collective agreement (BCA), rather than the Labor Law, that gives somebody a right to do things, or as if it were a matter of some natural right of the employer and the employee.

pay, more precisely specified criteria for identifying redundancies, increased compensation for working on non-working days and at night, as well as holiday allowance, meal allowance and field work allowance, imposed on employers a duty to provide its employees with insurance policies against death, occupational injury, impairment or loss of work capacity, etc.

The orientation of national collective bargaining actors in Serbia to collective bargaining agreements of a higher level (general or industry) creates new difficulties both for employers and employees. Since the conditions of working and operating on the (often local) market, technical, financial and staff characteristics of a business, labor relations and remuneration policy, work organization and similar factors differ between businesses, a single collective bargaining agreement of a higher level cannot suit everyone equally, meaning that it usually does not suit anyone. A uniform arrangement cannot suit everyone. To respect such diversity it is far better to bargain at an individual business level, as it is then possible to respect the specificities of a business, which will definitely benefit both employers and employees. Thus, for instance, only at the company level there may be a rational link between productivity trends and employee wages, which is a precondition for an efficient remuneration system and encouragement of good work.

This process has additional two serious shortcomings:

- Branch agreements, by all accounts, were not concluded by representative associations; namely the Labor Law also recognizes representative associations of industries and economic activities and establishes a quantitative requirement for them (15% of workers for an association of employers, and 10% for a trade union, Art. 220 & 222); it is not publicly known, however, that the three associations with 'general' representativeness for the territory of Serbia were also recognized as representative for branches and industries for which they have signed collective agreements; and if they are not – then branch collective agreements are not in conformity with the law and should not be valid,
- The insistence on the extended effect goes so far that branch collective agreements come into effect only when the minister extends their effect; thus, the branch agreement for the construction and construction materials industries reads: "The Collective Bargaining Agreement is concluded for a period of 12 months, from the date when the competent minister issues a decision whereby this Collective Bargaining Agreement shall fully apply to all the employers who are not members of the Association of Employers – the participants of this Collective Bargaining Agreement"; this is an extremely unusual step: as if the BCA were not made for own members but rather for those who are not, i.e. as if its provisions were not good and the signatories consequently refrain from applying them in 'their own' organizations; this definitely raises serious suspicions about the CBAs adoption process as well as their content.

More details about the substantial and legal aspects of problems with both the representativeness and extended effect of collective agreements are given in Chapter 4.

For quite some time now, Serbia has been promoting a so-called tripartite social dialogue (trade unions, employers, and the government) at the national level as an important institutional arrangement for mitigating the crisis and dealing with substantial socio-economic issues in the country. The institutional framework for social dialogue is the Social and Economic Council that was established by the 2004 Law of the same name.

The results of the Council are not great. The best is the adoption of the 2008 General Collective Bargaining Agreement. However, it was suspended to a large extent shortly afterwards. After it expired in May 2011, no new general collective agreement was adopted. One of its regular legal obligations is to establish the representatives of employees' and employers' associations, and the functioning of the Council, namely its Board, produces much criticism and dissatisfaction of interested parties because the work of the Council is frequently paralyzed. The second legal obligation of the Council is to determine the minimum wage, which is mostly reduced to a political haggle in which the Government holds the trump card: the legal provision stipulating that if the Council fails to reach agreement, it may autonomously determine the minimum wage. What is more, there were some periods when the Council did not meet at all because of bad relations between the participants.

On a wider social and political plane, the Social and Economic Council has not produced any visible results either. A good example is the only visible activity in this respect in recent years – the adoption of the so-called *Social and Economic Agreement* in April 2011, which was a response of the Government and associations of employees and employers to the extended crisis. With this Agreement the Government undertook to encourage growth and employment and promote social security; all associations undertook to comply with collective agreements, the employers undertook to protect the existing jobs and regularly pay wages and social security contributions, and the unions undertook to refrain from strikes. By all accounts, this Agreement is not producing any effect at all, apart from the provision concerning the conclusion of branch collective agreements, which is slowly moving forward.

INTERNATIONAL LABOR MARKET COMPARISON

Two models of global employment relations

Different employment relations created on the basis of different perceptions of the market strengths and weaknesses and its effects gave rise, globally speaking, to two models of employment relations in the modern world, of course with sub-types and varieties. The first model is pro-market, with employment relations mostly liberal and quite flexible; it covers the USA, Canada, Australia, New Zealand, the UK, and Ireland. The other model is interventional, protective, with quite rigid employment relations; it covers most European countries (except Anglo-Saxon), but with considerable differences between them. Such classification of models rests on different key institutions in the labor market: legal protection

of employees, collective bargaining, unemployment insurance and active employment policy measures. Moreover, this classification also corresponds to the classic distinction between legal traditions, namely between the Anglo-Saxon (common) law and the Continental (civil) law.

Let us underline right away that the extremes are not taken into account here: the market model is not entirely deregulated as there is government regulation, just as the interventionist model is not a planning model as there is a labor market. The difference is in the extent. The main features and outcomes of the functioning of the above models can be presented as follows:[19]

Market, flexible model:

- hiring and firing is relatively simple since (for instance, in the USA) each contracting party, meaning both the employee and the employer, has the right to freely enter into an employment contract and to terminate it at will; in recent times this right has been partly restricted by the prohibition of discrimination; European countries belonging to this group share, together with other European countries, the principle of justified dismissal, but in a more flexible manner;[20]
- the average duration of employment in on firm is shorter than in the case of interventionist model, which is an unavoidable consequence of simpler dismissal and creating a vacancy for somebody else; in other words, turnover (job changing frequency) is high;
- unemployment benefit is moderate, as part of activation strategy as in this way the unemployed are encouraged to actively look for jobs. In other words, it is believed that high unemployment benefit would discourage the unemployed from seeking employment;
- trade unions are not particularly influential actors on the labor market, because labor legislation does not vest them with any specific role or give them a privileged position or protection, and because the so-called social partnership is not considered a role model for a society; what is more, trade union membership in the USA has been declining for decades, and so is their role;
- employment relations within companies are often conflict-ridden because collective bargaining is not based on social mediation but rather on the market principle and bargaining capacity and skills,
- collective bargaining is mostly decentralized, that is, takes place at the company level, between the company trade union and the employer; industry branch bargaining is less common, and national bargaining is almost non-existent,
- income imbalance is relatively large, as the influence of government and trade unions on distribution is modest since the labor market mostly freely decides on wages

[19] See A. Kleinknecht: *Does Europe need more flexible labor markets*, TU Delft, 2008

[20] A British model of dismissal protection is considered "rudimentary", see *Dismissal protection in Europe*, CES Info, 2004

according to labor supply and demand and the employee's contribution to company business,[21]

- all individuals are in the same position (e.g., old and young), that is, no group is systemically discriminated (see the interventionist model);
- unemployment rate is usually lower than in the interventionist model, since the simplicity of hiring and firing (associated with low costs) encourages employers to recruit new workers during the economic upturn (they can easily dismiss them if they are no longer needed) while relatively low unemployment benefits encourage the unemployed to look for jobs.

Interventionist, rigid model:

- there is legal protection of employee against termination, as termination of employment is possible only if there is a valid reason (the International Labor Organization Convention No 158) and the person whose employment is terminated is entitled to a severance allowance to be paid by the employer;
- because of the restrictions imposed on dismissal and low frequency of dismissals, there is long-term attachment to the same firm, particularly compared with the market model; this attachment increases social security of individuals but may limit their careers and earnings;
- the level of unemployment benefit is higher than in the market model, since in the concept of social welfare state, attempts are made to avoid any significant decline in the living standards of people who become unemployed,
- trade unions are usually numerous and influential, which is both a result of the tradition of organizing in trade unions and of labor legislation that provides them with an important role in collective bargaining and generally accepted concept of social partnership,
- employment relations are mostly cooperative since the prevailing idea is social dialogue in which the representatives of the government, associations of employers and trade unions try to avoid conflicts between employers and employees by agreeing on solutions; this corporatist approach replaces both the market and individual bargaining, as well as the parliament in some issues;
- collective bargaining about wages and other vital topics is more centralized. In some countries it is implemented at the national and industry branch level and then applied to the companies that are covered and, sometimes, its effect is extended to include all employees;
- employee incomes are more balanced, which is a consequence of centralized collective bargaining about balancing the wages and stifling of the influence of labor market supply and demand on wages,
- older individuals – men (already employed) fare better than younger people, women and immigrants (prospective employees), since labor legislation protects the former

[21] D. Checchi and C. García-Peñalosa: *Labor market institutions and income inequality*, Economic Policy Issue 56, October 2008

from termination and ensures decent wages, while the latter make up the contingent of unemployed and remain both without income and without work experience

- unemployment rate is usually higher than in the market model since the regulation of dismissals is restrictive and, consequently, often costly. Demand for new labor force is therefore lower than it would normally be: employers delay recruiting new workers at the time of economic upturn since they know that it would be hard to dismiss them (or costly) if and when they are no longer needed. [22]

The main difference between the market and interventionist and continental model is in giving priority to different values. The market model gives priority to the economic aspect as it primarily attempts to facilitate good functioning of businesses at micro level and the functioning of the entire economy at macro level, and therefore allows companies, at the times of crisis or downturn, to make relatively simple and inexpensive adjustments in employment rates and/or wage levels. In a market system this is based on relatively free bargaining between employees and employers. The fundamental idea of this model is that healthy companies inevitably ensure the health of the economy which, in longer term results in high level of employment and high wages.

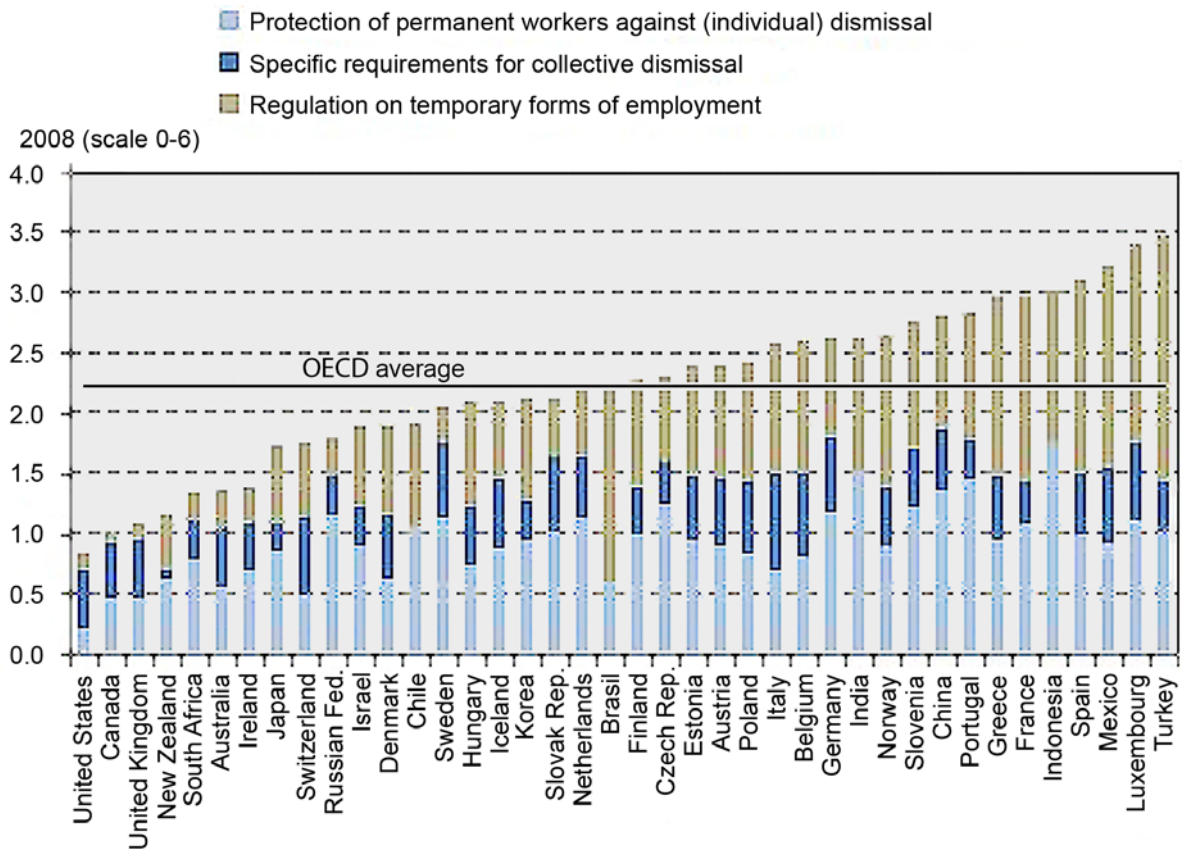
The interventionist model, on the other hand, gives priority to the social aspect, i.e. to the security of the employees' position and standard of living, particularly at the time of economic downturn when simple adjustment of companies through employment and wage level is not accepted, but instead, job security is ensured by making dismissal and reducing wages difficult. In this way, companies and economy are left to bear the burden of adjustment, irrespective of any adverse consequences. This model, therefore, generates a high level of employee security, but also companies with surplus employees and the economy with a higher number of unemployed people than in the Anglo-Saxon model, which is a result of the employers' refraining from employing new workers at the time of economic upturn since they know it will not be easy for them to reduce the labor force once the boom is over.

Let us now look at the ranking of OECD countries with regard to rigidity levels (including the components):

[22] See section *Flexibility, unemployment and growth*

Figure 1.

Protection of employment, 2008, scale 0 (lowest) - 6 (highest)



SOURCE: Danielle Venn - *Legislation, Collective Bargaining and Enforcement: Updating the OECD Employment Protection Indicators*, OECD Social, Employment and Migration Working Papers, No. 89, 2009

Obviously, the lowest level of rigidity is present among the English-speaking countries. The countries with the highest level of rigidity include two developing countries and Southern European countries. In the middle of the table are Central and Northern European countries and some non-European countries.

Comparing Serbia with other countries

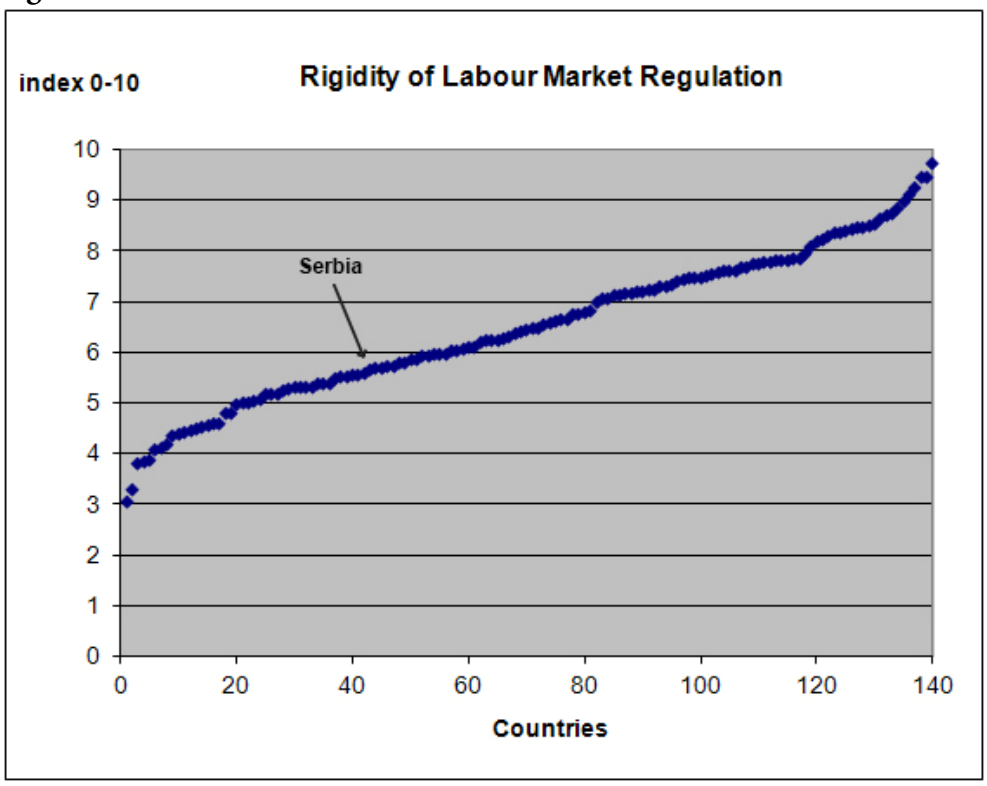
This Section will present some comparisons between the rigidity level of labor regulations in Serbia and the rest of the world, some peer countries. This will show where Serbia really is at the moment, which will be a valuable element for the definition of labor legislation reform policy.

We will first look at a synthetic rigidity indicator (from the Fraser Institute *Index of Economic Freedom*) and then at the comparison between specific labor legislation arrangements for eight countries, including Serbia (from the World Bank's *Doing Business* report).

The Fraser Institute's *Index of Economic Freedom* is based on the quantitative findings from the World Bank's *Doing Business* Report and the World Economic Forum's *Global Competitiveness Index*, and includes five components composed of a large number of indicators relating to the regulation of employment, dismissal, collective bargaining, and working hours. The Index covers 140 countries.

Graph 1 shows the value of the index of freedom, namely rigidity of employment relations and labor legislation for 2009. The value of index ranges between 0 (maximum rigidity) to 10 (no restriction).

Figure 2.



SOURCE: *www.freetheworld.com/2011/reports/world/EFWdataset2011.xls*

The range of indices for the countries worldwide is 3.1 – 9.7 and Serbian index is 5.7. Regarding its level of labor legislation rigidity, Serbia shares places 43 – 47 among 140 countries, which means that it is positioned in a more rigid half of the world, or, more precisely, at the turn from the first third of countries to the second third of countries. This position is not commendable and suggests that it is necessary to have the regulation of employment relations changed to make it more flexible.

Here below we will look at eight countries for some comparative labor legislation arrangements which are of importance for company operations and shed some light on the character of their respective labor legislations. These eight countries include, besides Serbia, its neighboring social welfare countries - Hungary and Croatia; some more flexible European countries - Denmark and Ireland, and large countries - USA, Russia, and Germany. The data

were taken from the World Bank's *Doing Business* report[23] and are thematically grouped in three tables.

Table 1.

Difficulty of hiring

	Croatia	Denmark	Germany	Hungary	Ireland	Russia	Serbia	USA
Fixed-term contracts prohibited for permanent tasks?	Yes	No	No	No	No	Yes	Yes	No
Maximum duration of fixed-term contracts, including renewals, in months	36	No limit	No limit* 24	60	No limit	60	12	No limit
Ratio of minimum wage to value added	0.32	Not existing	0.21	0.25	0.31	0.12	0.26	0.21

* In Germany there is no limit for the contracts with objective clause, but there is a 24-month limit for the contract without such clause.

Employment flexibility also reflects in the legal treatment of fixed-term contracts, and primarily by the following:

- Can these contracts be concluded only in extraordinary circumstances or it is possible to conclude them for regular, continual tasks, and
- What is the allowed duration of these contracts?

With regard to the first issue, Serbia is positioned in a smaller group of countries sharing a restrictive arrangement, considering that fixed-term contracts may be concluded only in extraordinary situations (Serbia, Russia, Croatia) while they can be concluded in regular circumstances in other five countries.

With regard to the second issue, Serbia has in place the most restrictive arrangement by far, considering that it is the only one that restricts the duration of fixed-term contract to 12 months. All other countries either allow longer duration of fixed-term contracts or do not have any restrictions in this regard whatsoever.

As to the relative level of minimum wages, Serbia is positioned around the average level in the observed group of countries; as it is stated in the relevant section, however, minimum wages in 2012 amount to very high level of 46% of average wages.

[23] *Doing Business 2012*, The World Bank Group, 2011, downloaded on 15 July 2012 from http://www.doingbusiness.org/data/exploretopics/employing-workers

Table 2.

Working hours and leaves

	Croatia	Denmark	Germany	Hungary	Ireland	Russia	Serbia	USA
Working day in manufacturing, hrs/day	40 a week	7,4	8	8	8	8	8	8
Minimum daily rest, in hours	12	11	11	11[a]	11	Not existing	12[b]	Not existing
Maximum overtime limit in normal circumstances, in hours	8 hrs/week	The limit is a daily rest of 11 hours	2 hrs/day or 20 a week [c]	200 hours a year	zero	4 a day; up to 120 a year	Zero	N/A
Maximum overtime limit in extraordinary circumstances, in hours	8 hrs/week	As necessary	Average of 48 hrs/week in 6 months	As necessary	zero	4 a day; up to 120 a year	4 hrs/day, 8 a week	N/A
Premium for overtime work, in % of hourly pay	Collective Agreement	Collective Agreement	Collective Agreement	50%-100%	Not existing	50% for the first two hours; other 100%	26%	50%
Premium for night work, in % of hourly pay	10%	0%	13%	40%	0%	20%	26%	0%
Paid annual leave for a worker with one year of tenure, in days	20	25	24	20	20	20	20	0

[a] can be reduced to 8 upon the agreement between the employer and the employee.

[b] can be reduced to 10 in specific circumstances.

[c] provided the average of 8 hrs/week is not exceeded over a 6 month period.

As it can be seen, an 8-hour workday (in manufacturing) features in most countries. The workday is somewhat shorter in Denmark (and in France, but this country is not discussed here), while Croatia has in place an interesting arrangement: maximum working hours are determined at 40 hrs/week, which leaves room for more flexible arrangements for the industries and companies which find them suitable.

Most commonly, minimum daily rest is 11 to 12 hours, but some countries (Serbia, Hungary) allow this break to be shortened in specific circumstances. Russia and USA do not have a legal requirement for minimum daily rest.

The treatment of overtime work is different and depends on whether the circumstances are regular or extraordinary. Regular situations are regulated more restrictively, beginning with prohibition (Serbia) through to lower allowed limits in working hours. In the case of extraordinary situations, legislators are usually more lenient: some countries allow as much overtime work as necessary (usually to prevent accidents, natural disasters, etc.) while others allow more overtime work hours. Admittedly, Croatia and Russia do not distinguish between these two types of situations. The most extreme, however, is

Ireland which does not allow any overtime work at all; rather, it suggests that existing working hours could be used more flexibly, i.e., should be redistributed. An increase of hourly rate for overtime work is provided in most countries – in some it is provided by law (Serbia, Hungary, Russia, USA), and in some by collective agreements (Croatia, Denmark, Germany).

Most countries pay a premium for night work, and Serbia ranks second in this group of countries, immediately behind Hungary, with regard to the level of premium (26%). There is no obligation to pay premium for night work in Denmark, Ireland, and USA; there it is presumed that adverse work conditions at night are taken into account in setting the wages.

Paid annual leaves are standard in Europe. Most countries share the same minimum of 20 days (Serbia is in this group of countries), while Denmark and Germany diverge. On the other hand, in the USA, employees are not legally entitled to an (paid) annual leave; rather, this matter is to be resolved between the employer and the employee, or through collective bargaining.

Table 3.

Termination of redundant workers

	Croatia	Denmark	Germany	Hungary	Ireland	Russia	Serbia	USA
Retraining or reassignment obligation before redundancy?	Yes	No	Yes	No	No	Yes	Yes	No
Priority rules for redundancies?	Yes	No	Yes	No	No	Yes	Yes	No
Priority rules for reemployment?	Yes	No	No	No	No	No	Yes	No
Notice period for terminating redundant worker with one year of tenure, in salary weeks	4.3	0	4	4.3	2	8.7	0	0
Notice period terminating redundant worker with 20 years of tenure, in salary weeks	13	0	30.3	12.9	8	8.7	0	0
Severance pay for terminating redundant worker with one year of tenure, in salary weeks	0	0	2.2	0	0.7	8.7	1.4	0
Severance pay for terminating redundant worker with 20 years of tenure, in salary weeks	26	0	43.3	21.7	9.8	8.7	25.3	0

In all observed countries the employer may terminate the employees no longer deems needed due to economic, organizational, or technological reasons. At the same time, the employer is not required to obtain any third party (government, union) approval to do this.

First three questions in this Table (Is the employer obliged to provide retraining or reassignment before redundancy? Are there any priority rules to protect particular categories of employees when composing the redundancy lists? Are there any priority rules for reemployment of terminated employees?) examine whether a termination by the employer is liberal or subject to statutory restrictions. As we can see, only Serbia and Croatia answered 'Yes' to all three questions, which means that they provide for maximum restriction.

Denmark, Hungary, Ireland, and USA answered 'No' to all three questions, meaning that the employer may freely chose an arrangement which he deems best. Germany and Russia fall somewhere between these two groups.

The Serbian arrangement for the notice period for terminating redundant workers is liberal – the termination is effective immediately. The countries sharing this arrangement include only Denmark and USA. Other countries provide a (paid) notice period which should provide the employee with an opportunity to find a new job.

And, finally, we will compare different arrangements for severance pay for terminated redundant workers. With regard to the employees with longer tenure (here with 20 years), Serbia ranks at the top of the list, immediately behind Germany and the same as Croatia: severance pay virtually amounts to 6 monthly salaries.

A conclusion from this overview may be that, with regard to the observed indicators, Serbia is usually among the countries with a restrictive arrangement. Therefore, the overall assessment may be that it has restrictive labor legislation.

FLEXIBILITY, UNEMPLOYMENT AND GROWTH

The basic opposition to flexible labor legislation and labor market stems from the concern that simpler dismissal of employees leads to greater unemployment and greater wage inequality. At first glance, such concern relating to unemployment seems absolutely justified since, in the short term, and at the time of declining business prospects and the crisis, unemployment may indeed rise faster in the countries with a flexible institutional framework than in those with a rigid one, as in the latter there are legal hindrances to the rise of the number of the unemployed.

However, this is not entirely true, as in the medium term it is easily possible, even likely, that the employment in a system with a market character will be higher than in the interventionist one. This argument is supported by at least three mechanisms:

- employers' readiness to hire workers more easily and in greater numbers since, as we have already said, they know that it will not be expensive for them (in terms of difficulties and costs of dismissals, including severance pays),
- increased unemployment may exert pressure on wages, so hiring may also be encouraged in this way, and
- at the moment of prospects recovery, companies in a market system (1) do not have excess employees like those in an interventionist system due to layoff restrictions and, therefore, cannot increase the volume of production with the existing labor force but have to recruit new workers, and (2) financially, such companies are usually stronger as they did not have non-productive labor force costs, and are readier for expansion and new hiring.

A confirmation of the need to look at the effects of labor legislation in the long term may be found in a recent analysis of the effects of financial crises in the period 1980-2008 in 97 countries of the world. It shows that the financial crises:

1. in the countries with flexible market institutions had a large negative impact on unemployment in the short term, but this effect rapidly disappeared in the medium term, when the recovery takes full swing,
2. in the countries with more rigid labor market, the negative effect was less pronounced, but more persistent.[24]

The assessment of total effects on the basis of immediate short-term effects would be wrong, as we can see. Therefore, compensating market mechanisms – those that arise from the depths of interdependences within the entire economic system and that act in the long term should be taken into consideration.

More specifically, a crucial question is the impact of the type of labor legislation on employment or unemployment: *does flexible or rigid labor legislation result in a higher rate of unemployment or the type of labor legislation does not affect unemployment at all?* Disagreements in principle about this issue direct us to empirical research which is the only one that can provide the answer.

For a long time results of numerous studies of this issue provided contradictory results: some studies found that rigid legislation led to unemployment increase, while others did not confirm such a position.[25] Previous studies had an important methodological problem in that their databases were limited: (1) they usually referred only to OECD countries, and not even all of them, and (2) they usually covered a small number of years, which produced a small total number of observations and, therefore, unreliable answers.

In recent times, much larger databases have been created, both in terms of the number of countries and time covered, so the results are more reliable and all confirm that flexible labor legislation produces better results in the area of unemployment than a rigid one. So Botero at al. conclude, from an example of 85 countries, that „more protective employment laws lead to higher unemployment, especially of the young ". Their other findings are also interesting: that there is not much support for the theory that labor regulations cure market failures, and increase labor market efficiency; that there is some support for the political theory on labor legislation as a product of leftist ideology and interest groups (trade unions); and that the basic determinant of labor legislation character is the legal tradition (common law, continental).[26] Similarly, Feldmann concludes on the basis of a sample of 73 countries that "rigid regulation increases unemployment around the world. Tight firing and hiring rules... most clearly seem to have adverse effects".[27] The analyses for developing countries by Djankov and Ramalho, on 87 countries, shows that "the main finding is that developing

[24] L. E. Bernal-Verdugo, D. Furceri, and D. Guillaume: *Crises, Labor Market Policy, and Unemployment*, IMF Working Paper, WP/12/65, March 2012

[25] For an overview see A. Bassanini and R. Duval - *Employment Patterns in OECD Countries: Reassessing the Role of Policies and Institutions*, OECD Economics Department Working Papers, No. 486, 2006.

[26] J. Botero, S. Djankov, E. La Porta, F. Lopez-de-Salines and A. Shleifer - *The Regulation of Labor*, Quarterly Journal of Economics, 2004, Vol. 4.

[27] H. Feldmann - *The unemployment effects of labor regulation around the world*, Journal of Comparative Economics, Vol. 1, 2009, str. 88

countries with rigid labor legislation tend to have larger informal sectors and higher unemployment, especially among young workers".[28]

Finally, the most extensive and most recent study of dynamic effects in 97 countries, in the period between 1980 and 2008: Bernal-Verdugo et al. conclude that "increases in the flexibility of labor market regulations and institutions have a statistically significant negative impact both on the level and the change of unemployment outcomes (i.e. total, youth and long-term unemployment)".[29]

After such results we may, with significant confidence, conclude that flexible regulation of employment relations has an impact on reducing employment and, vice versa, rigid regulation increases it.

The argument frequently mentioned in favor of employment protection is that it encourages commitment to the job, due to loyalty and long-term attachment to the firm, and investments in human capital and employee education. However, there are also arguments to the contrary: that (1) the protection against job loss may actually discourage work efforts, i.e. that the risk of losing it is actually the incentive for harder work, and that (2) employee education may not always be in the firms' interest, as it improves the negotiating position of the former and opens the door to requests for profit participation.

Another important question is whether and how rigidity influences trends in factor productivity, and, consequently, economic growth. The central hypothesis is that labor market rigidity, through employment protection, raises the costs of adaptation to changed economic circumstances and thus suppresses the necessary reallocation of labor from the firms and sectors that lag behind towards the firms and sectors that have good prospects. In this manner, rigidity makes more difficult the allocation of labor towards the most productive uses and so inhibits productivity growth.

Recent empirical analyses show that such negative link exists, that is, that job protection leads to the slowing down of productivity growth. OECD's analysis states that the impact is small but statistically significant,[30] while Bassaniani et al. present their results to the effect that "mandatory dismissal regulations have a depressing impact on TFP growth", and also that it seems that this impact " is transferred to labor productivity". „We argue that from our results we can infer that layoff restrictions have a negative impact on aggregate total productivity growth".[31]

As can be seen, restrictions in the area of recruitment and dismissal adversely affect not only (un)employment, but also productivity growth, which is a basic and increasingly important source of economic growth worldwide.

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[28] S. Djankov, R. Ramalho - *Employment Laws in Developing Countries*, Journal of Comparative Economics, Vol. 1, 2009, str. 12

[29] L. Bernal-Verdugo, D. Furceri and D. Guillaume - *Labor Market Flexibility and Unemployment: New Empirical Evidence of Static and Dynamic Effects*, IMF Working Paper, March 2012

[30] OECD Employment Outlook, OECD Publishing, 2007, p. 70.

[31] A. Bassanini, L. Nunziata and D. Venn - *Job Protection Legislation and Productivity Growth in OECD Countries*, Economic Policy, April 2009

EUROPEAN PROCESSES

European experiences and current trends in the development of labor legislation are certainly important for Serbia, primarily because Serbia intends to join the EU and is only natural that it should become familiar with the rules that apply in this organization of states and see their results. Secondly, as Serbia has basically accepted a continental model of labor legislation, it is natural to have an interest in the processes of reform of this area of legislation that are ongoing in the EU, because a question arises whether Serbia will follow them

A short history could be presented as follows. The fifteen countries that were to make up the European Union had, at the beginning of 1970s, a low unemployment rate –2% on average – as a result of fast economic progress during the first decades following the World War II. However, in the middle of that decade, after the oil crisis, unemployment started rising fast, to reach 9% in mid-1980s and exceed 10% at the beginning of 1990s.

Already in the 1960s and 1970s, the European social model had been built, with generous arrangements in the field of social policy (the unemployed, poor, government transfers, services), including labor legislation with protective clauses for employees. Therefore the social consequences of unemployment rise were not big: neither the standard of living of the newly unemployed was threatened (transfer benefits were considerable), nor were there any social tensions that would jeopardize social peace. Nevertheless, the dissatisfaction with weak economic growth and high unemployment gradually increased, and the term Eurosclerosis was used more and more often, due to the slowness of adapting to fast and broad changes. Questions were asked as to the cause of such unfavorable state of affairs. In the previous decades macroeconomic policy was thought to have been responsible, but in the early 1990s the labor market institutions began to be indicated as a potential (co)culprit.

The opinion turned on the OECD Job Study from 1994.[32] The study concluded that the cause of the rising structural unemployment in Europe and the inability of product and labor markets to adapt to the changes brought about by technological changes, globalization and individual competition, and "poorly functioning labor markets". It is obvious from the recommendations what was thought to be specific obstacles in the area of labor market institutions.

The Job Study proposed a broad program of actions and policies directed at unemployment reduction, including sound macroeconomic policy, diffusion of know-how, nurturing an entrepreneurial climate and encouraging competition on the product market. In the area of labor market institutions, the following was recommended:

- increase flexibility of working time (both short-term and lifetime) voluntarily sought by workers and employers (implicit criticism of rules on fixed working hours and mandatory retirement),
- make wage and labor costs more flexible by removing restrictions that prevent their adaptation to local conditions and workers' skill levels (implicit criticism of centralized collective bargaining),

[32] *The OECD jobs study: Facts, analysis, strategies*, OECD, 1994

- reform employment security provisions that inhibit expansion of employment in the private sector (implicit criticism of dismissal restrictions),
- enhance active labor market policies,
- improve labor force skills and competences through comprehensive changes in education and training,
- reform unemployment insurance and related systems so that the society's aim of equality would be achieved with less danger to efficient functioning of the labor market (implicit criticism of the amount and duration of receiving unemployment benefits, which is a disincentive to seeking employment, and advocating their reduction).

At the same time there appeared the *White Paper* of the European Commission, also known as Delors White Paper, in which the problem was understood in a similar way and solutions sought in the direction of greater flexibility. The findings and recommendations of these two studies, particularly *The Job Study,* were broadly accepted, even among politicians in West Europe. It became fashionable to advocate labor market reforms, in line with the spirit of the time and wider pro-market economic orientation.

In 1994, the work started on the European Employment Strategy to be included in its final form into the Amsterdam Treaty from 1997. The four pillars of the strategy were:

1. employability, particularly preventing long-term unemployment, facilitating transition from education to employment, priority given to active employment measures over the passive ones,
2. entrepreneurship, reducing obstacles to establishing and managing businesses and taxes and social contributions,
3. adaptability of businesses and employees, removing barriers to agencies for temporary employment, part-time work and other flexible forms of employment and promoting investments into human and physical capital,
4. equal opportunities, providing women and men equal access to employment and equal status at work.

The European Employment Strategy, like other similar acts, is not a legally binding document, but is based on coordination of member countries' actions. Common objectives and priorities are defined at the EU level, while the necessary policies are developed and implemented at member country level. Consequently, around this strategy developed a large bureaucratic system of coordination, guidelines, European programs, national plans, reports.... which operated without any major results during the next decade. In 2003, the above four pillars were replaced by somewhat vaguer (except the first one) objectives: full employment, improving quality and productivity at work and strengthening social cohesion and inclusion.

A particularly clear expression of these overly ambitious plans was the Lisbon Strategy from 2000, which set high goals: that the EU should overtake the USA by 2010 and become the leading global economy and achieve full employment, with additional objectives in the

field of employment. Already in 2005, the lack of success was admitted (Kok's Report), and the strategy renewed.

The above mentioned reorientation to more flexible employment from 1994 onwards did not at all mean abandoning the European Union's social model. All the time, at least verbally, a balance has been sought between a more flexible labor market and social protection of workers. Already in the late 1990s, Denmark coined the term flexicurity, derived from words flexibility and security. Over time it was used more frequently and gained popularity, so in 2007, the EU Council adopted the document *Towards Common Principles on Flexicurity*, which thus became a landmark document to guide member state policies. The four basic principles are as follows:

- flexible and reliable contractual arrangement,
- comprehensive lifelong learning strategies,
- effective active labor market policies , and
- modern social security systems.

Generally speaking, it is not yet clear whether the notion of flexicurity is more of a political phrase that should (through the lack of clear content and the possibility for everybody to interpret it at will, which is happening) hide the contrast between the two hardly reconcilable ideas (market flexibility and social security), or there is, after all, a possibility of coexistence at least at a certain number of points. As the detailed analysis shows, "despite the attempts to come up with a more precise definition, this review shows that the notion of flexicurity remains unclear".[33] Flexicurity is, to put it simply, often seen as a balance of the following: flexibility for employer and security for employees. That would entail a change of labor legislation towards liberalizing employment relations on the one hand, and strengthening social security of workers who are laid off through unemployment benefits, on the other, together with increasing their employability through lifelong learning and active employment policy measures on the third. In other words, secure jobs (removal of dismissal protection) would be replaced with worker security (provision of income through the social welfare system in the case of dismissal). However, its advocates claim that flexicurity is more than the above balance, although a developed analytical definition is as yet to come.[34]

Labor market institutions reform process in direction of more flexibility during the last fifteen years has not gone a long way. Some results have been achieved in a number of countries – Denmark, the Netherlands, and sometimes Sweden are given as positive examples – but in most other countries labor legislation has not significantly changed in substantive terms. Actually, the most visible, and important change is expanding the possibilities for entering into non-standard employment contracts: in addition to the usual ones for full time permanent employment, now it possible in many countries in the EU to relatively easily enter into temporary employment contracts, part-time employment contracts, through temporary

[33] E. Viebrock and J. Clasen - *Flexicurity and Welfare Reform: a Review*, Socio-Economic Review, No. 2, 2009

[34] There is an interesting discussion on flexicurity in the second wave of the European crisis in F. Tros - *Flexicurity in Europe: Can it Survive a Double Crisis?*, Working paper to be presented in ILERA World Congress 2012, Philadelphia, USA, July 2012

employment agencies, etc. Thus, in 2010, the share of part-time employment contracts at the European Union level was 19.2%, the largest being in the Netherlands 48.9%, followed by the UK, Denmark, Sweden Germany and Austria, all with over 25%. Temporary employment is somewhat less common: 13.9% at the EU level, mostly in Poland and Spain (one in four workers), followed by Portugal.[35] [36] These numbers do not demonstrate the current movements (trends), i.e. new employment contracts well. In Italy, for instance, over two thirds of new contracts in 2011 were for temporary employment, and less than on fifth for permanent.[37]

Standard employment has witnessed modest changes, generally speaking. Only under the impact of the crisis there have been some changes recently, and they occurred in the countries that were hardest hit. Thus in Italy, in the first half of 2012, Monti's government tried to change the inherited system, which practically secures lifelong employment for the employee, since in medium-sized and large companies it is unlikely that he will be laid off. This great attempt ended in a political compromise and small steps forward that satisfy nobody – neither the government, nor the trade unions nor the employers.

A fast rise of the number of employees on flexible contracts indicates, first, a very negative attitude of employers towards standard permanent employment, with all the associated rigidity, and, second, a failure to make labor legislation more flexible to the extent needed. Therefore, it seems, political elite agreed, out of necessity, to allow more flexible forms of employment as an outlet for rising unemployment and the way to make at least one segment of labor legislation "more market like". On the other hand, it is very favorable for the unemployed to work on flexible contracts, as it provides them not only with the badly needed income, but also with working experience, on the job training and a chance to enter the world of permanent employees.

Such market segmentation has led, on the other hand, to a new socio-political problem - unequal treatment of employees on standard and flexible contracts, leading to a very unbalanced distribution of risk and security, that is, to a certain extent it is disrupting the European social model. As the title of a new analysis, somewhat derisively, says: *Flexicurity in the European Union: Flexibility for Outsiders, Security for Insiders*.[38] Indeed, during the crisis of the past years, the employees on flexible contracts fared worse, while additional government protection measures were directed towards permanent employees.[39] The way out

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[35] Eurostat, downloaded on 22 July 2012, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Employment_statistics

[36] In Italy, there is a labor market with three segments: of the 27 million workers, 15 million, usually over 40 years of age, enjoy the privileges of standard stable employment; 8 million, mostly younger, are either freelancers or on rolled over temporary contracts, but with none of the benefits of standard employment; the remaining 4 million are the workers in the underground economy that are completely uncovered either with labor law protection or social insurance; the data come from the Instituto Nazionale di Statistica, presented in *Italy's Labor Pains*, Bloomberg BusinessWeek Magazine, 16 November 2011

[37] INAIL, Instituto Nazionale Assicurazione contro gli Infortuni sul Lavoro, presented in *Italy Lawmakers Clear Labor-Law Revamp*, Wall Street Journal, June 27, 2012

[38] O. Van Vliet and H. Nijboer – *Flexicurity in the European Union: Flexibility for Outsiders, Security for Insiders*, Leiden University, Department of Economics Research Memorandum 2012.2, February 2012

[39] F. Tros, *ibid*.

from this difficulty can be sought in making the positions of these two groups equal, but in two different ways: (1) by relaxing restrictions on standard employment (hiring, firing, working hours, etc.) or (2) by introducing additional restrictions on flexible forms of employment. The former would be better from the economic standpoint, while the latter would probably be closer to the old understanding of the European welfare state.

Economic crisis is the right time to review the existing arrangements and think new answers through. For the moment, we cannot see the European Union response, unless by that we mean the reforms in the most troubled countries. And they have, in Greece, Portugal and Ireland, involved the following: 1) reductions in severance pay for regular contracts and some simplification of individual or collective dismissal procedures (Greece and Portugal), along with measures to boost temporary employment by increasing the maximum work time under temporary work agencies (Greece); 2) measures to boost flexibility in working-time arrangements by reducing overtime pay and earnings of part-time employees and making averaging of working time possible (Greece); 3) measures to enhance flexibility in wage determination such as easing the conditions for firms to opt out from higher-level collective bargaining agreements (Greece and Ireland) and reforming sectoral wage agreements (Ireland); 4) introducing a sub-minimum wage for young people (Greece).[40] In addition, in Greece, all collective bargaining agreements became null and void as from 14 May 2012, and need to be approved again, with the adopted measures encouraging individual collective agreements.

[40] *Economic Policy Reforms 2012: Going for Growth,* OECD, 2012, p. 29

Chapter 3

OTHER FACTORS IMPACTING THE LABOUR MARKET

MACROECONOMICS AND BUSINESS REGULATION

Labor markets are, obviously, under strong influence of other parts of the economy. Business environment and macroeconomic stability determine the level of business operations and investments and significantly impact the demand for labor. Also, government's fiscal position influences both the possibility of the reforms in the wage taxation (including social contributions) and the possibilities for more active labor market policies.

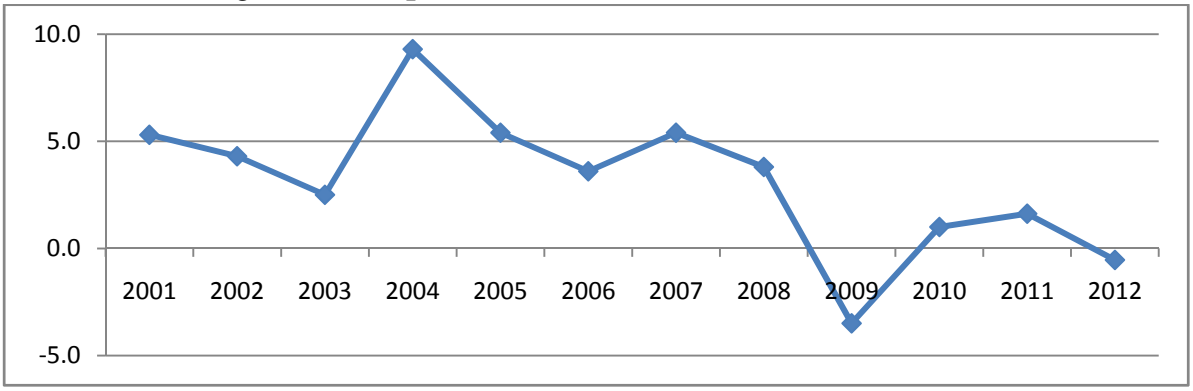
In the last 10 years or so, Serbia has gone a long way from macroeconomically devastated country to the one in which some macroeconomic stability was achieved, only to see such stability very much threatened again with the advent of the global economic crisis. Several IMF programs that were completed in the meantime have considerably helped the country to restore its credibility among investors.

However, despite some successes, significant macroeconomic weaknesses remain, and many structural reforms as well as business environment reforms are as yet to be implemented. Very high and rising unemployment is a particular problem. Some progress has been made with regard to other macroeconomic variables – inflation has been brought down, economic growth was very high for a while, public debt was brought under control, there was considerable inflow of foreign direct investment, but unemployment, throughout these 12 years, has been a serious problem, the number of employed persons has significantly dropped and there are no signs that the situation will improve in medium term.

The figure below shows GDP growth rates in Serbia in the past dozen years. As can be seen, Serbia achieved relatively high growth rates before the crisis. GDP per capita considerably increased, from below EUR 1,000 in 2000 to about EUR 4,500 in 2010, partially due to Dinar appreciation.

Figure 1.

Real GDP growth rate, percent



SOURCE: Ministry of Finance

Growth rates, until the onset of crisis in 2008, were for the most part quite good, even very high between 2004 and 2008. However, the crisis showed that such growth was to an extent unsustainable, and after the GDP drop in 2009, growth rates barely went over 0%. As already mentioned, growth was not accompanied by employment increase, but quite the opposite – its decrease. It makes some sense, since Serbia started 2001 with a large number of people employed only officially, and privatization, naturally, led to the elimination of such jobs positions.

It was expected that a large number of unemployed people will find jobs in the newly established foreign and domestic companies, but such optimism proved to be unfounded. Simply put, the business environment in Serbia was not very stimulating either for local or foreign investors.

In the past twelve years, Serbia has managed to put its public finances in order, to an extent, although public debt and deficit surged with the onset of the crisis. In addition, the cost of interest is rising fast, creditors believe that the risk is very high, and, most importantly, there is no political will for implementing structural and fiscal reforms.

General government expenditures to GDP reached 50% in 2012, which is higher than in most countries of the region. The slow pace of reform in the field of public and socially owned enterprises, and the public sector that is too large and inefficient contribute to this.

Serbia also has a very rigid public expenditure structure – non-discretional outlays make up over 70 percent of total outlays, dominated by expenditures in the social sectors (social welfare, pensions, health care and education), then employee salary related expenditures and social transfers. Public investments have been crowded out for the most part and are at a relatively low level, of about 3% to 3.5% of GDP.

Serbian public debt was significantly reduced in the period 2000-2008 both as a percentage of GDP and in nominal terms. There are three main reasons for this achievement: (1) High GDP growth in euro terms (which is to a large extent the consequence of considerable dinar appreciation), (2) Significant write-off of the former Yugoslav debt, and (3) significant privatization proceeds that were used for funding current deficits and repayment of some old debts. Therefore, debt came down from about 170% of GDP in 2000 to about 30 percent in 2008. In nominal terms it fell from about 14.2 billion euro in 2000 to 8.8 billion euro in 2008.

The conclusion may be that the public finance situation is very bad and that fiscal responsibility provisions have not succeeded at all in preventing further deterioration. The new government is preparing a fiscal consolidation program which, judging by what is known in the public, is based on further tax increase. Furthermore, it may be concluded that the long-term prospects for Serbian public finance will crucially depend on two things: (1) political will of the new government to implement painful structural reforms to comply with fiscal responsibility provisions relating to wages and pensions, and (2) resolution of the EU debt crisis.

Assuming the present EU crisis does not end in a full blown crash, Serbia will have to reduce its deficit to about 2-3% of GDP over the next several years, together with creating room for increasing capital and interest expenditures, as well as retaining a relatively competitive tax system. The only way to do this is through reducing the expenditures on

public sector wages and on pensions, either by complying with the fiscal rules on indexation, or by more difficult, but more needed measures of reducing the employment level in the public sector.

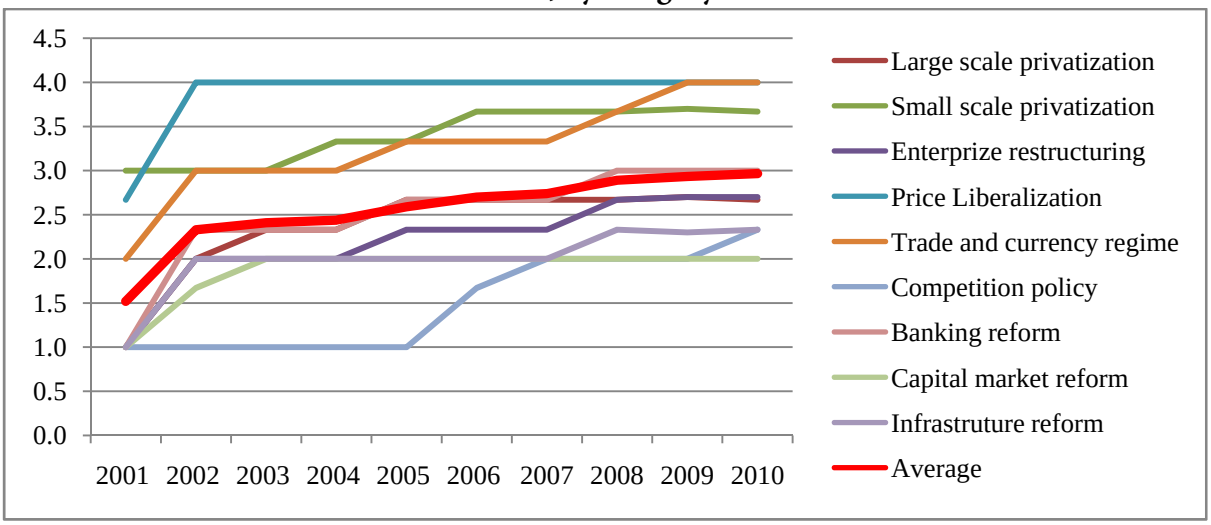
In summary, the fiscal situation is very complex and the room for any major employment promotion programs and for major reduction of the wage tax burden can hardly be created. In the medium term, employment in the public sector will probably have to decrease under fiscal pressures, so the public sector may even aggravate the situation with unemployment rather than improve it.

In the past eleven years, Serbia has implemented numerous economic, political and institutional reforms. However, in many international comparisons, Serbia is still lagging behind most of its neighbors. Probably the most comprehensive analysis is the Transition Report prepared every year by the European Bank for Reconstruction and Development, which takes into account reforms in the following categories: large-scale privatization, small-scale privatization, enterprise restructuring, price liberalization, trade and foreign exchange system, competition policy, banking reform, capital market reform, infrastructure reform (with sub-categories – roads, railways, electricity and water).

The figure below shows progress in all these dimensions, as well as the average score.

Figure 2.

EBRD transition scores for Serbia, by category

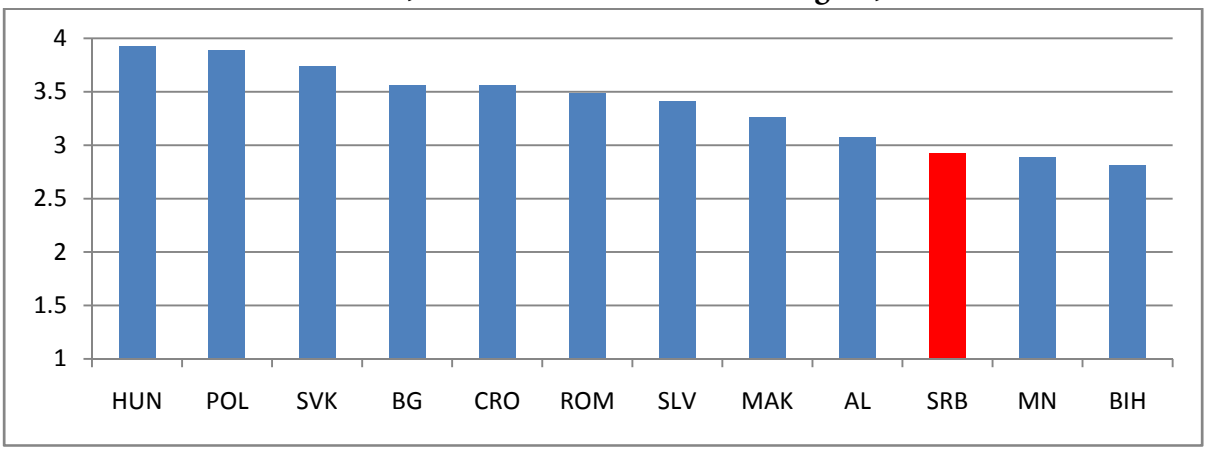


SOURCE: EBRD

As the figure shows, Serbia has made certain progress in each category. Major issues still remain in the area of infrastructure, regulation, capital market, and competition policy. In all, the picture may look good, but if we compare Serbia with the countries of the region, the conclusion considerably changes:

Figure 3.

EBRD Transition score, Serbia and countries of the region, 2010



SOURCE: EBRD

The only two countries somewhat behind Serbia are Montenegro and Bosnia and Herzegovina.

In addition, if we look at the indicators from the World Bank Doing Business Report, Serbia fares poorly in comparison with other countries. The table below shows the global ranking of Serbia in all categories, as well as its ranking among 13 countries in transition (Baltic countries, Visegrad Agreement countries, Western and Eastern Balkans):

Table 1.

World Bank Doing Business Ranking, Serbia

Criterion	Global ranking 2011	Regional ranking (among 13 countries)
Overall	98	12
Starting a business	83	10
Dealing with construction permits	176	13
Registering property	100	10
Getting credit	15	2-6
Protecting investors	74	8
Paying taxes	138	10
Trading across borders	74	74
Enforcing contracts	94	11
Resolving insolvency	86	9

Overall, there is no doubt that the economic situation in Serbia is very unfavorable: in 2012, economic growth is negative, with negative prospects; macroeconomic situation is unfavorable (inflation is rising, foreign debt crisis is approaching, public finances are in disorder); the business environment if unattractive for investors. Therefore it is unsurprising that employment is still declining, and unemployment is rapidly rising.

There is no doubt that the necessary prerequisite for raising employment is the improvement of the macroeconomic situation and business regulation, in order to ensure an enabling environment for employment growth in the private sector. Adequate macroeconomic policies are supposed to mitigate fluctuations in economic activity and keep relative prices aligned. The business environment is supposed to provide public goods needed for successful operation of the economy: infrastructure, access to finance and business regulation. These policies, together with the formation of human capital and the rule of law constitute fundamentals on which booming economic activity and employment policies rest.[41]

LABOR TAXATION

Current labor taxation

Wage taxation in Serbia is scheduler, with a proportional rate of 12% and the non-taxable amount that is currently RSD 7,822, or about 14% of the average (gross) wage. There are relatively numerous tax exemptions on wages that are not very important in aggregate terms (transport allowance, per diems, business trip accommodation, voluntary pension insurance premiums up to a specified limit, etc.)

In addition to tax, mandatory social security contributions are also paid and include pension and disability insurance (PDI) contribution, health insurance contribution, and unemployment insurance contribution. The basis for calculating contributions is the gross wage minus, in this case, the non-taxable portion. Contribution rates are 22% for PDI (paid by employer and employee at 11% each), then 12.3% for health insurance (paid by employer and employee at 6.5% each) and 1.5% for unemployment insurance (paid by employer and employee at 0.75% each). The aggregate contribution rate – paid by both employer and employee – is 35.8 % of the (gross) wage and is paid on the total amount of wage up to the 'ceiling' amounting to 5 times the average (gross) wage; the lowest tax base is 35% of the average (gross) wage in the previous quarter.

Finally, individuals whose annual net income exceeds three times the amount of average (gross) wage pay an annual personal income surtax at the rate of 10% of taxable income, while the net income exceeding six times the average (gross) wage is taxed at the rate of 15%.

As can be seen, the existing system has the elements of proportionality, progressiveness and regressiveness, so it is difficult to assess the overall progressiveness. Namely, the rates are generally proportional, while the non-taxable amount introduces an element of progressivity and the maximum base for pension and disability insurance introduces the element of regressivity. In addition to the above, the law provides for various moderate tax breaks for employment of different categories of unemployed persons (below the age of 30, above the age of 45 or 50, and for employing persons with disabilities).

[41] See *Jobs, World Development Report 2013*, The World Bank, 2012

The fact is that labor taxes and contributions are high. Comparisons with other European countries may lead us to conclude that the situations is not all that bad, but if we think about the incentives for both the employer and employee, it is clear that the tax rate of over 40% on total labor cost provides a serious incentive to both parties to avoid/evade paying taxes and contributions.

There is also a particular problem in that there is no difference between the health care contribution amount and service level, so the employees are motivated to minimize these payments. The amount of pension is directly linked to the amount of paid contributions, but such link may not survive in the long run, so even here there is no big wish among the currently employed to pay PDI contributions.

Changes in wage taxation

Wage taxation underwent big changes in the past decade. The June 2001 reform cut contribution rates, broadened the tax base and made a switch to the gross wage system. The average net wage burden is effectively lighter by almost 10 percentage points, but low wages, due to the broadening of the tax base, remained virtually at the same tax burden level as in the previous period.[42]

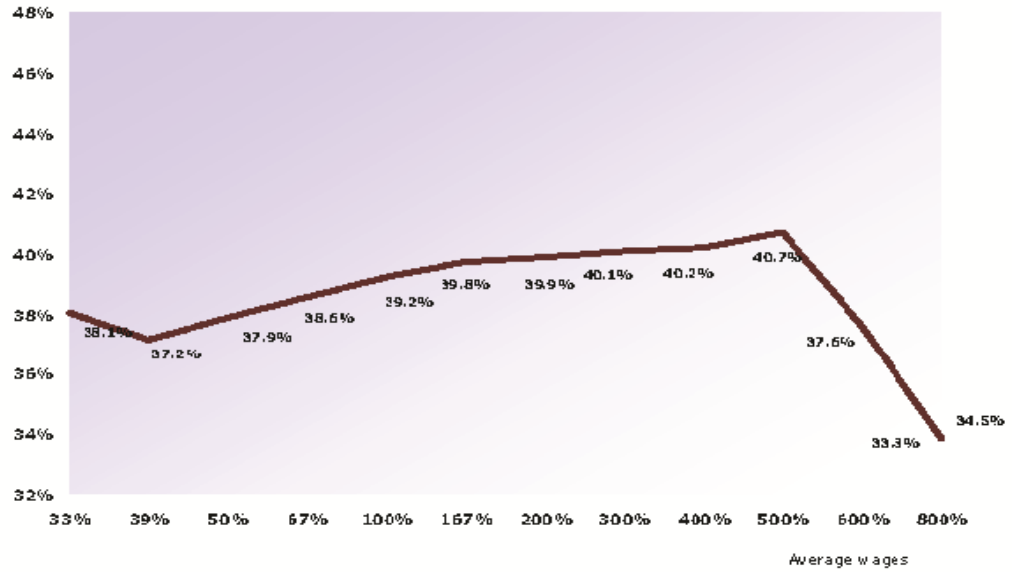
In the following years, due to the growing deficit in the PDI Fund, there were some small increases of the PDI rates. First in May 2003 the individual PDI rate rose from 9.8% for employee and employer each to 10.3%, which slightly increased the total wage burden, and then to 11% in 2004, but this was offset by the elimination of the tax on wage bill, so the overall burden on wages somewhat decreased.

The next major change in the wage taxation has applied since January 2007, when the total tax burden was reduced both by cutting the wage tax rate from 14% to 12%, and by introducing the tax exempt amount of the wage. In 2007, it amounted to RSD 5,000 (which equaled 23% of the net wage in the previous year) and was accompanied by the decision to adjust it at the beginning of each calendar year by the consumer price index in the previous year. Moreover, the lowest base for paying contributions was cut from 40% to 35% of the (gross) wage, and the threshold for annual personal income surtax was reduced from four to three average wages, with the introduction of one more rate – 15% on net income that exceeds 6 average (gross) wages.

[42] The meal allowance, that actually played the role of a tax allowance, was included in the tax base. Therefore, despite significant contribution rate reduction, low wages (e.g. 67% of average) effectively remained the same (for details see Arandarenko, M. and K. Stanić (2006), "Labor Costs in Serbia" background paper for the World Bank (2006) "Serbia: Labor Market Assessment"

Figure 4.

Fiscal burden for various wage levels (% of total labor cost)



These changes led to a slight reduction of the overall burden on labor cost, and the application of the non-taxable amount (with the reduction of the threshold for the annual personal income surtax and introduction of two rates) introduced mild progression in the wage taxation system, as illustrated in Figure 4.

Since January 2007, the total fiscal burden on labor has been slightly smaller – about 39% of the total cost of labor for an average employee or about 64% of the net wage. The non-taxable amount resulted in a slight progression for the wages between the amount equal to the minimum base (which is now 35% of the gross wage) and five average wages. However, there is still regression in the fiscal burden above the level of five average wages due to the 'ceiling' for social security contribution payments.

The so-called 'ceiling' for PDI contributions is not a rare phenomenon, but common practice in the pension system funding (except in the countries with a typical Beveridgean pension systems such as Australia, New Zealand, Ireland, Denmark), and in the developed countries it is at a quite lower level.[43] However, in the case of health insurance, this is not common practice considering that a large number of healthcare systems in OECD countries are funded from the budget[44]. Finally, the largest number of OECD countries has progressive personal income tax rates, 'ironing out' the alleviation of burden arising from the pension insurance 'ceiling'.

[43] For instance, the EU-15 average is about 2 average wages, while in the countries that joined the EU later it is at the level similar to ours. For details, see various editions of OECD publication „Pension at a Glance".

[44] „Health at a Glance", Figure 7.6.1, OECD, 2009

International comparisons

To compare the level of fiscal burden on wages with other countries, it is important first to make sure that it is done on the same base. In that respect it is best to use OECD methodology – the so-called 'tax wedge' – the ratio of all taxes and contributions to total labor cost.

The fiscal burden on wages in OECD countries varies greatly – from very low burden for an average individual in Chile, New Zealand and Mexico to very high such as in Belgium (55.5%) and Austria, Germany and France with close to 50% burden. These differences may firstly be explained by various types of welfare state among OECD countries, as well as different roles of the private sector in providing particular services.

Table 2.
Wage tax wedge (% of total labor cost), international comparison

	Individual with wage:		
	67% of average	**100% of average**	**167% of average**
Australia	20.6	26.7	32.2
Austria	43.7	48.4	51.6
Belgium	49.7	55.5	60.7
Croatia[c)]	38.1	40.1	44.4
Chile	7.0	7.0	7.8
Czech Republic	39.5	42.5	44.9
Denmark	36.8	38.4	44.8
Finland	37.2	42.7	48.5
France	46.5	49.4	53.5
Germany	45.6	49.8	51.3
Greece[a)]	34.4	38.2	43.7
Hungary	45.2	49.4	51.6
Ireland	21.3	26.8	38.7
Israel	13.0	19.8	28.4
Italy	44.5	47.6	53.0
Mexico	13.2	16.2	21.6
Netherlands	33.1	37.8	41.5
Norway	34.2	37.5	43.1
Poland	33.4	34.3	35.0
Portugal	33.1	39.0	45.8
Slovak Republic	36.1	38.9	40.8
Slovenia	38.6	42.6	47.7
Spain	36.6	39.9	42.5
Sweden	40.7	42.8	50.8
United Kingdom	28.5	32.5	37.9
United States	27.2	29.5	34.4
OECD-Average	31.6	35.2	39.6
OECD-EU 21	37.9	41.7	46.3
EU-15	37.7	41.8	47.2
EU-10	38.7	40.9	..
Serbia	**38.6**	**39.2**	**39.8**

a) Data for 2010, Source OECD, Source EC(2010), Grdović-Gnip and Tomić (2010) for Croatia

NOTE: unweighted average; NMS-new member states

SOURCE: OECD (2011), EC (2011)and EC (2010)

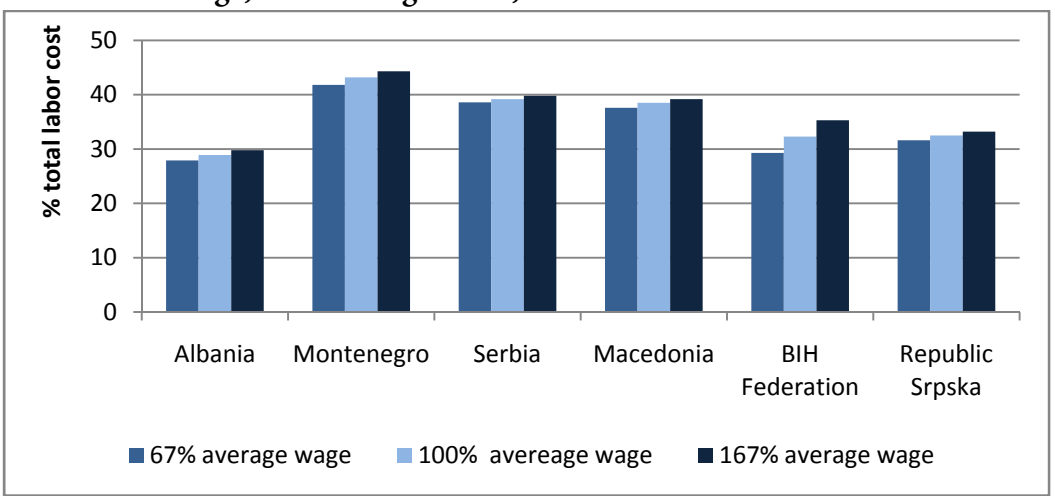
Speaking about averages, we can say that Serbia apparently 'sticks out' from the overall OECD country average (including the countries with a very small burden such as Chile, New Zealand and Mexico), and that is on a par with the EU countries in terms of the burden. In the case of the average wage, the burden is even lower than in the EU (both in the 'old Europe' and in the countries that joined the EU at a later date, including Croatia), and for above average wages, it is even smaller.

As for the data for the countries in the region that have not joined the EU, with a reservation that in the meantime there may have been some changes in the tax system of these

countries, we can note that the burden in Serbia was considerably larger than in Albania, and effectively larger than in Republika Srpska and BH Federation[45].

Figure 5.

Tax wedge, various wage levels, 2007



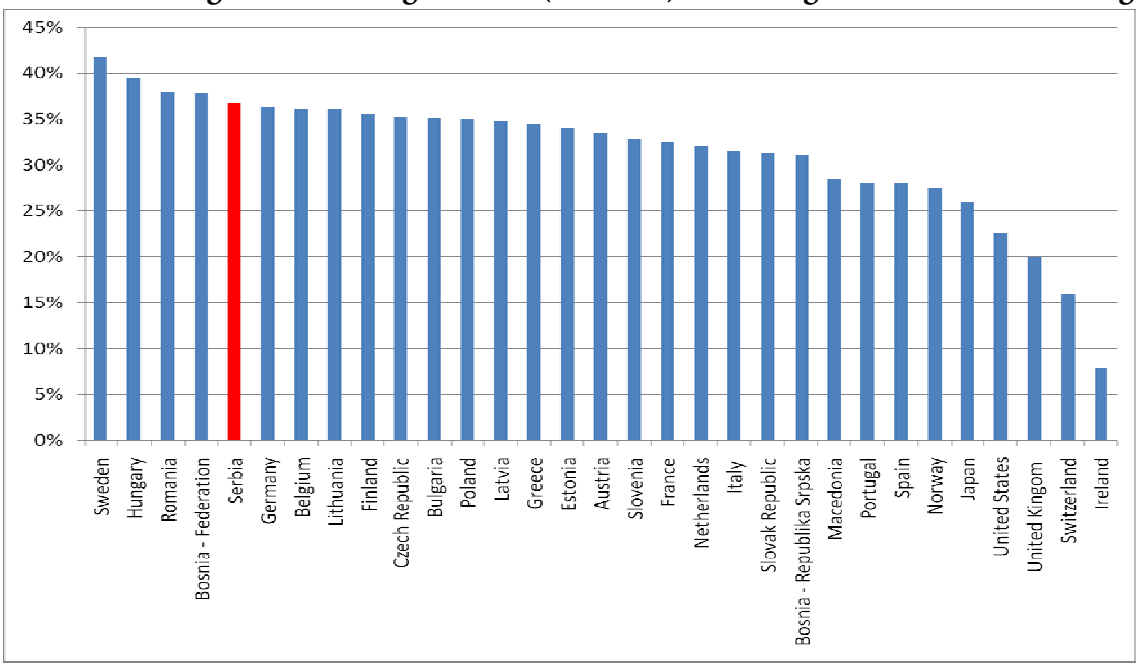
SOURCE: Arandarenko and Vukojević (2008)

However, when we look at very low wages (33% of average), the situation is somewhat different (Figure 3). Although in half of the observed countries, the burden is above 35%, we can say that a low paid worker in Serbia is comparatively more burdened than the others.

[45] In the Federation, the nominal burden is slightly over 40%, but there were fringe benefits that were not taxed

Figure 6.

Tax wedge for an average worker (childless) at the wage level of 33 % of average



SOURCE: "Does Formal Work Pay in Serbia?", World Bank, Technical Note, 2010

There are several reasons for it. First of all, health care system funding by contributions, which means that there is no redistribution towards those with low wages, which is the case in the countries financing health care from the budget. Furthermore, there is no synthetic (comprehensive) tax and lower tax rates and/or higher nontaxable amount. Finally, there is minimum base for contribution payment of 35%.[46]

In addition, when we compare our workers with families, particularly those with lower wages, we can say that such workers have a much larger burden. The reason for it is again the existence of the so-called 'synthetic' (comprehensive) income tax in most OECD countries which has different tax rates depending on the income level, as well as various tax benefits. In this respect, Serbia differs very much, due to scheduler wage tax, so the tax burden on a four member family in Serbia living on only one average wage is significantly higher than in most countries that are compared.

It is therefore interesting to see the data for the macroeconomic indicator called 'implicit tax rate on labor', calculated as the ratio of total taxes and contributions on paid on the basis of employment to total labor cost from the national accounts, which is commonly used in the EU. This indicator is in the EU typically lower than the hypothetical 'tax wedge' for an average worker and this difference is explained primarily by tax benefits that exist for families with children and workers with low wages, but can also be a consequence of inefficient tax revenue collection. Thus, this indicator for Serbia, calculated on the basis of tax

[46] We should not, however, forget the reasons for introducing this measure in Serbia, and that is tax/contribution evasion primarily in the form of registering a lower base.

revenue in 2005 was 40.82% instead of the 42.2% which was the 'tax wedge' for an average worker in the EU at the time.[47]

Therefore, international comparisons indicate that average worker in Serbia does not have a larger burden compared to the workers in other European countries and the region (except Albania and BH), while the workers with higher earnings have a smaller burden on average. However, the workers with very small earnings, as well as families with low total earnings are more burdened compared to OECD/ EU countries, primarily due to a completely different nature of the tax system in our country, as well as the manner of funding health care from contributions. On the other hand, wage taxation in Serbia is usually noticeably higher than in the rest of the world, both in many developed OECD countries and in developing countries.

Possible wage taxation reforms

Reducing labor taxation is definitely a desirable tax policy, because through reducing the total labor cost it would encourage using the production factor – labor force – that is underused in Serbia and increase the competitiveness of the Serbian economy relative to foreign competitors. Advocating reduced wage taxation has been present in Serbia in the past.

The basic problem with the orientation towards reducing the burden different levies place on wages has to do with the budget: it is hard to see how in the presently very tight fiscal system in Serbia one could find room for decreasing this revenue. The existing significant deficit needs to be reduced, even eliminated in the years to come, so any possible decreases in wage taxation would have to be compensated by increasing another tax, which is associated with new difficulties.

Moreover, the present wage taxation system is such that is very hard to reform. The thing is that both the wage tax and the social security contributions are own revenues of local governments (80% of wage tax is their revenue) and respective social security organizations (PDI Fund, Republic Health insurance Fund and National Employment Office).

Since the elimination or significant reduction of any component of wage taxation will directly jeopardize the operation of these institutions (or levels of government), the wage taxation reform requires the reforms of the social insurance and local government funding systems first. A detailed elaboration of such reforms is definitely beyond the topic of interest here, but in this context we can mention some options.

With regard to the pension system, it is very hard to see how contribution rates could go down if the present PAYGO system is retained. Namely, already now, the PDI Fund collects barely 50% of revenue through contributions, while the rest is transferred from the budget, that is, other general revenue. Introducing the second pension insurance pillar (mandatory private pension insurance) would hardly be able to result in lower rates. All in all, when it comes to pension insurance, particularly having in mind the dire demographic

[47] OECD 'Taxing Wages', 2011; "Taxation Trends in the European Union", European Commission, Taxation and Customs Unit, 2011; Arandarenko and Stanić (2006).

outlook, the current rates will have to be increased in the long run. The alternative to close the existing fund, finance current liabilities from tax revenues and completely replace state insurance with private insurance is always an option, but with no real political chance of being adopted and which could not bring results in the foreseeable future.

With regard to healthcare funding, we should point out that, today, virtually the entire burden of funding health care is borne by employed persons, whereas virtually all citizens of Serbia have the right to health care. From the legal point of view, the government has the obligation to fund health care from the budget for uninsured persons, but in practice, there are no such transfers. Therefore, the entire state healthcare system is financed by earmarked levy on wages (health insurance contribution). Such a solution is not uncommon, but a big question is whether it is right for a country like Serbia.

One of the reform options is abolition of contributions and funding health care from the budget, through general government revenue. Another option is to significantly reduce the scope of services available with mandatory insurance (which would reduce costs and potentially contributions), and there would exist a possibility for voluntary supplementary insurance. One of the obvious issues with the present system is that there is no direct link between the paid 'insurance premium' (contribution) and service quality. When there is no link between price and quality, it is only normal to minimize the price. Some call it 'solidarity', some call it 'leveling', but whatever you call it, it has considerable disincentive effect on the labor market, and incentive effect on shadow economy.

With regard to unemployment insurance, it could probably be abolished as a mandatory obligation and to leave it to the employees to continue paying contributions if they wish so.

With regard to wage tax, obvious possible reforms relate to increasing the non-taxable amount and increasing the present rate or, even, possibly introducing a progressive tax rate. Thus, the ideas mentioned so far are directed towards increasing the progressivity of the wage tax. The question of how justified it is to progressively tax income (including wages) is above all an ideological one, but the primary question is probably should not even be the progressive nature of the tax but its rate. A progressive tax rate (say 5% - 10% - 20%) is definitely less of a disincentive than the proportional 40% rate.

In fact, looking at the macro level, only two realistic ways of reducing wage burden:

- Reducing costs financed by taxes and contributions on wages (reducing the pension bill by cutting individual pensions or by moving the retirement age, reducing the scope of healthcare services, reducing the responsibilities of the local government level), or
- Redirecting the tax burden from wages to another tax base (consumption, property, profit).

The former is probably better, but a question arises as to how politically realistic it is, having in mind the political power of the groups that would bear the cost of such changes. The latter is probably politically more realistic, but it is very difficult to predict the effects of such changes, particularly having in mind limited capacity of the Serbian Tax Administration.

Cutting wage taxes and contributions to be offset by VAT increase is a proposal that has been circulating in the public for a while. The problem with it is that, in the first instance, it will result in a lower standard of living of the population and increase of poverty (due to increased prices of goods), [48] which is not a desirable option at the time of crisis, and, in the second instance, in attempts of workers to secure the increase of nominal wages to preserve the value of wages in real terms despite the increased VAT rate.

If relieving the burden levies pose on wages cannot be realistically expected now for the above reasons, it should, nevertheless, remain a long term tax policy objective. When the Serbian economy exits the crisis and social circumstances improve, and when the total fiscal revenues increase, this idea of relieving the wage burden should be revisited as an important way of encouraging employment and decreasing unemployment, as well as increasing competitiveness.

LAW ON EMPLOYMENT AND INSURANCE AGAINST UNEMPLOYMENT

This law governs, apart from administrative bodies, two different matters: insurance against unemployment and the system of active employment measures. The law regulates the insurance against unemployment in essential terms (the rights and all other material aspects are laid down); however, concrete measures of an active employment policy are not stipulated by this law, but by another act (National Employment Plan which is adopted by the Government of Serbia).

Insurance against Unemployment

Insurance against unemployment provides a pecuniary compensation and continued pension and health insurance for workers who lose their job. These entitlements are acquired by previous payments of mandatory contribution which is equally paid by employer and employee (0.75% of gross wage, each) in favor of the extra-budgetary fund maintained by the National Employment Service (NES). The currently applicable law was adopted in 2009 and has to some extent reduced the right to compensation for unemployment.

An unemployed who has been dismissed by employer due to the breach of duty and discipline and similar reasons of inadequate conduct does not have the right to compensation.

The level of compensation for unemployment depends on the previous wage of the unemployed, but with substantial limitations. Namely, the unemployed is entitled to 50% of his previous average wage but on condition that such obtained amount cannot be lower than 80% or higher than 160% of the minimum wage. Such tangible reduction of the amount of

[48] For such results see G. Matković and B. Mijatović: *The effects of proposed tax changes on poverty and vulnerable groups in Serbia* Economic Annals, July-September 2011

compensation relative to the previous wage encourages the (newly)unemployed to actively seek new employment, or the well-known phenomenon that high compensation discourages seeking of employment which is highly present in the European Union, is avoided.

Duration of the entitlement to compensation for unemployment is not equal for all, but depends on the previous insurance against unemployment and ranges between 3 months for previous insurance of up to 5 years to 12 months for insurance over 25 years. Exceptionally, an unemployed person may receive compensation for up to two years if two or less years are left until retirement.

Compensation recipient has a duty, under the threat of losing the entitlement, to participate in the NES programs, to actively seek employment, and not to refuse the one offered to him. These are standard measures that need to stimulate the unemployed to try to increase efforts in finding employment instead of waiting for employment to find him. If the unemployed does not find a job until the expiry of the right to compensation for unemployment and if does not have other income, another program is available – the program of pecuniary social assistance to poor households – which provides smaller amounts but which can be received on a lasting basis.

There are several issues concerning the insurance against unemployment:

- the compensation is received by a small number of unemployed (about 70 thousand during 2012), which is hardly ten percent of the total number over the recent years; the causes thereof are: (1) the large number of long-term unemployed young and not so young persons who have never been employed and are thus not entitled to compensation, (2) a substantial number of those who have worked but have accepted the severance pay and voluntarily left the companies during restructuring and, therefore, are not entitled to compensation and (3) a part of the unemployed have used their right to compensation,
- delays in paying the compensation are usually several months long because the revenue from the contributions for unemployment is significantly smaller than are the needs for paying the compensation, so that the permanently overburdened budget has to supplementary fund a considerable portion of the total cost,
- the NES does not sufficiently monitor the behavior of compensation recipients; consequently, NES does not exclude from the programs many of those who are not active.

Basically, the concept of insurance against unemployment has been well structured in Serbia: as a temporary means of support to the unemployed and as a means encouraging active job-seeking. The most important difficulties in the system arise from its implementation – from funding difficulties to difficulties in controlling the behavior of beneficiaries.

Active Employment Measures

The Law stipulates, in principle, numerous employment measures such as mediation in employment, professional orientation and advising on career planning, employment

subsidies, support to self-employment and training, public works, etc. But, total expenditures for active measures used through the NES are very modest, particularly when compared with the seriousness of the unemployment problem in Serbia: in 2010, they amounted to 3.7 billion dinars or to only about EUR 35 million. Of this amount, one-half was spent to reimburse the wages of the trainees recruited under the *First Chance* program. One-fourth was spent on public works, and for trainings only 8% of the already modest total assets.[49]

Indeed, the impact of active employment measures on the reduction of unemployment in Serbia has not been visible. The cause for that, no doubt, is the minimal amount of assets, but it is at the same time questionable whether a considerably larger amount would bring the necessary results. Actually, the experiences around the world show that the effects of active employment policies, if any, are generally modest. A broad analysis of European experiences, for example, shows that training programs have minimum effects, that programs of employment subsidies in the private sector and those supporting job-seekers have better effects, while the effects of the programs of direct employment in the public sector are modest, even negative. Disadvantageous is the fact that the programs dealing with the young show particularly poor results.[50] It is fair to say, though, that insufficiently good results of numerous programs of active employment policies are not the consequence of the weakness of the idea as such (supplementary training, for example) but of the deficiencies in the programmers' implementation.

An additional problem in Serbia is that active policy measures were often adopted within short deadlines, without in-depth studies and preparations, under the pressure of the political need that "something has to be undertaken" urgently with regard to unemployment, and were usually accompanied by a propaganda campaign. There is also dissatisfaction with the work of the NES on the part of a number of employers who were trying to cooperate on the training and other programs. Finally, there is no serious analysis, either, of the medium-term effects of active employment measures which could serve to indicate the direction in which to go further.

OCCUPATIONAL HEALTH AND SAFETY

The question of occupational health and safety is very important for the overall business environment. Overly strict regulation may create excessive costs for employers, and thus deter them from investment, and, on the other hand, may lead to avoiding it in practice, particularly in less sound companies. In this manner a deficient system is created in which those that comply with the regulations are handicapped in the market as their production costs are higher. Therefore, the state's standards in this area should be appropriate for the general level of development in the country and the capacity and integrity of inspection and other competent authorities.

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[49] See, *Izvešaj o radu Nacionalne službe za zapošljavanja za 2010. godinu (Work Report of National Employment Service for 2010)*, NSZ, 2011, p. 87

[50] J. Kluve - *The effectiveness of European active labor market programs*, Economic Journal, No, 6, 2010

The area of occupational health and safety has gone through very stormy changes in the past 20 years. Occupational safety and workers' health in socialist times were very high on the government's priority list, and there was even a parallel medical system of 'occupational medicine', and since the economy was dominated by large companies, quite a few of them had their own doctors' offices on factory grounds. With the break-up of the system and big economic crisis in the 1990s, the entire system collapsed, and now it is being rebuilt, albeit on different foundation, but there is still a burden of the past.

Occupational safety in Serbia is governed by the Law on Occupational Health and Safety, which was enacted in 2005. In addition to the law, several rulebooks were adopted, such as the Rulebook on the manner and procedure of the assessment of job and working environment related risk, as well as several rulebooks on preventive measures for safe and healthy work in the workplace and when using work equipment.

It must be noted that the law itself does not provide for the employer's obligation to insure its workers against work-related injury, but the current general collective bargaining agreement introduces such an obligation, as well as insurance against impairment or loss of work capacity. Among other things, Foreign Investor's Council raised objections to this article of the general collective agreement, as the competent ministry claimed that the issue of insurance will be dealt with in a separate law. Considering that in Serbia there is general disability insurance, and the system of extra service credits (discussed below), it is really unclear what is expected from the employer with regard to insurance – which type, what amount of premium, and the like.

As in many other areas, there is very strict legislation, but it is only selectively applied. The main illustration of its strictness is the requirement that all employers, regardless of the industry and risks faced by employees, are obligated by this law. Thus, the law applies to all employers, including those whose workers are exposed to no or minimal risk.

For instance, the law obligates all employers to adopt the following:

1. Occupational Health and Safety Act, and
2. Act on Job and Work Environment Related Risk Assessment

We believe that this arrangement makes no sense and that it generates unnecessary costs, particularly for small companies, and for a large number of large companies in the service sector, as well as institutions. In addition, the law not only refers to all employers, but also risk assessment has to be performed for each job position. We believe that the law should specify job positions considered risky, and then have detailed risk assessment performed only for such job positions, if they are provided for in the 'job systematization' document. The law could, thus, define most office and administrative jobs and some jobs in the service industry as "job positions with minimum risk".

We believe that legal exception (only few industries and only up to 10 employees) is extremely restrictive and that the list of industries should be extended and the number of employees increased. The law provides for draconian penalties (in many cases the minimum fine is RSD 800,000) even for some quite benign things, such as failing to adopt the occupational Health and Safety Act.

In addition to this law, other relevant legislation in the area of occupational health and safety is pension legislation that regulates the system of extra service credits towards pension for particularly hard and dangerous jobs, as well as general disability insurance. There are four groups of jobs that carry extra service credits, where 12 effective months on the job are calculated as 14, 15, 16 or 18 months. For the groups of jobs carrying extra service credits, the employer pays additional contributions. Such contributions are proportionately higher than the contributions for a standard pension to exactly match the length of service the credits add. With regard to the minimum retirement age, it is 55 for those whose 12 months are calculated as 14, 15 or 16 months (full application as from 2015) and 50 years of age for those whose 12 months of effective service are calculated as 18 months of service.[51]

EMPLOYMENT OF PERSONS WITH DISABILITIES

The Law on Vocational Rehabilitation and Employment of Persons with Disabilities, adopted in May 2009, has introduced special incentives for employment of persons with disabilities. However, because of the way the incentives are set, the law actually implies a tax on employment.

The Law envisages the following options for employers: (1) employment of a number of people with disabilities relative to the total number of employees in a company, (2) financing of wages of the corresponding number of persons with disabilities employed in a company for vocational rehabilitation and employment of disabled persons (CPRDP) or a social enterprise, (3) purchase of goods and services from a CPRDP, and (4) payment of a fine.

Ad 1. Each employer in Serbia employing at least 20 employees has a duty to employ a certain number of persons with disabilities, depending on the total number of employees:

- an employer employing from 20 to 49 employees is under an obligation to employ one person with disabilities,
- an employer employing 50 and more employees is under an obligation to employ at least two persons with disabilities, plus one such person on each new 50 subsequent employees.

It is important to note that a newly incorporated employer is exempt from the obligation to employ persons with disabilities for a period of up to 24 months from the date of incorporation.

Various difficulties surround employment of disabled persons. Employment is not possible in some industries because of the nature of work as such (building industry, catering, industry in general, etc.); moreover, in small places it is often not possible to find a disabled

[51] For the analysis and proposals for improvement, see *Analiza indeksacije opšteg boda i beneficiranog radnog staža (Analysis of General Credits and Extra Service Credit)*, CLDS, 2011

person with required abilities (technical or physical); finally, small-sized companies usually do not have supporting jobs that could be appropriate for disabled persons, etc.

Ad 2. Financing of wages of the corresponding number of disabled persons in a CPRDP essentially constitutes an option equaling to a sanction as it incurs only costs and brings no benefit to the paying company.

Ad 3. Purchasing goods and services from a CPRDP is the most attractive option, and the most productive from a broader perspective (provides work and not just salary), but its scope is limited since the assortment of a CPRDP goods and services is very narrow, and there are few companies registered as CPRDP.

Ad 4. If an employer fails to fulfill the obligation to employ a person with disabilities, he will pay penalties equaling to a triple amount of the minimum wage for each person with disabilities he has failed to employ.

Imposition of fines is not a good method for encouraging employment, which is evidenced by the fact that an increasing number of companies pay fines and do not employ disabled persons. It would be much better to encourage employment of disabled persons through incentives, rather than through sanctions, since in such a case those companies that have possibilities to employ disabled persons without special difficulties would be doing so to a much larger extent than so far, proceeding from their interest, while those companies not having a possibility to employ disabled persons would be relieved of this obligation.

Furthermore, it should be noted that the Personal Income Tax Law has already introduced tax incentives for employment of persons with disabilities – wage tax and contributions on the weight of the employer do not have to be paid for three years. The rationale for this provision may be arguable but, in principle, such a measure makes sense. However, this law introduces a sanction if a company does not employ the number of persons with disabilities as prescribed by the government, and it is difficult to explain the principle underlying the obligation of a company toward such persons, and why companies should be sanctioned in the first place.

Therefore, in principle, such legal arrangements do not make much sense, particularly not in a country where the unemployment rate exceeds 25% and where it is very difficult to find a job even to perfectly healthy persons. In practice, however, this problem is even more difficult because even the companies that are willing to meet the requirement and employ a person with disabilities (and thus avoid payment of fines) are very often faced with the serious problem of finding persons with disabilities who would be interested in working and who have the necessary qualifications and skills, particularly in some smaller places.

ANTI- DISCRIMINATION AND ANTI-MOBBING REGULATIONS

Over the past several years two more laws were adopted, which quite substantially touch upon the issue of labor relations– the Law on Prevention of Discrimination and the Law on Prevention of Mobbing at Workplace.

Although both laws are acceptable in principle, some provisions of both laws are highly problematic and disputable. For example, the Chapter *Employer's Rights, Obligations and Responsibilities* of the Law on Prevention of Mobbing at Workplace (Articles 7, 8 and 9) does not in fact set out any of the employer's rights. It rather provides only for the obligations and responsibilities, including essentially important obligations such as: „The employer shall be liable for damage caused by abusive behavior of a responsible officer or an employee to another employee with the same employer, in accordance with law", as well as the administratively cumbersome obligations such as "The employer shall inform an employee in writing, prior to his/her employment, about the prohibition of mobbing, obligations and responsibilities of the employee and the employer in relation to the prohibition of mobbing, in accordance with this law." We do not know the number of employers who actually do that, but it is clear that another obligation has been imposed on employers without any real need for it. On the other hand, the above mentioned stipulation that the employer shall be liable for damage caused by one employee to another constitutes a very high contingent liability for the employer, particularly bearing in mind very limited options of the employer (under the general Labor Law) to punish employees.

A separate problem is posed by Article 31 which places the burden of proof on the employer if the court finds that a statement of claim is grounded. It means that the employer has to maintain very detailed and precise documentation of all events in order for the purpose of defense in a court of law, which is too burdensome an obligation for small companies and an unnecessary cost for big companies. A very similar arrangement is also found in the Law on Prevention of Discrimination (Article 45), according to which the burden of proving there was no discrimination is on the employer.

Specifically, Article 16 of the Law on Prevention of Discrimination stipulates that „Discrimination shall be prohibited in the sphere of labor, i.e. violation of equal employment opportunities, or of enjoyment on equal terms of all rights in the sphere of labor, such as the right to work, free choice of occupation, career progress, professional advancement and vocational rehabilitation, equal remuneration for the work of equal value, equitable and satisfactory working conditions, rest, education and joining a trade union, as well as the right to protection against unemployment." This means that the employer practically may not freely take decisions related to these aspects. Having in mind that an employee can file a lawsuit against the employer, and that the employer bears the burden of proving that no discrimination has taken place, this means that the employer has to keep very detailed records of almost each decision on human resources, in order to be able to explain such decisions in court. Consequently, the company management is no longer accountable only to the owners for the human resources policy in the company, but has to be prepared for justifying all its human resources decisions in court – for example, that they have promoted the best performing employee, or that the most promising employee has been sent to advanced training. Another problem is the absence of case law so employers are still mostly "in the dark" and are not sure what evidence the court will exactly seek, and what kind of reasoning and explanation is compliant or not compliant with the law.

Additional issue is the fact that, in all likelihood, workers will often use their rights provided for by these two laws only after they have been laid off, and therefore the protection against mobbing and prohibition of discrimination have been *de facto* transformed into another restriction on employers to shed labor at the time of crises and try to replace bad workers by better ones.

The experiences, particularly in courts, with the application of these laws are still insufficient for assessing the laws, but the whole set of anti-discriminatory laws would probably need to be amended at least in one key segment: to reintroduce the presumption of innocence of the defendant (the employer, for example) and to shift the burden of proof from the defendant to the plaintiff.

PROTECTION OF RIGHTS AND INSTITUTIONS IN THE SPHERE OF LABOR

Introduction

Labor relationship is filled up with individual and collective rights of employees and employers. If these rights are violated, the regulations on the protection of rights from the labor relationship are activated. This protection can be individual and collective, based on mutual agreement, judicial and before the Solidarity Fund.

Protection based on mutual agreement is exercised in the labor environment (arbitrage) and with the Agency for Peaceful Settlement of Labor Disputes. Judicial protection is provided by the first instance court for individual and higher court for collective disputes, and if the employer is in bankruptcy – by the commercial court.

Operation of Institutions and Proposals

Labor Inspectorate

The Labor Inspectorate supervises the implementation of labor regulations (The Labor Law, the Law on Occupational Safety and Health, the Law on Volunteering, the Law on Prevention of Mobbing at Workplace, the Law on Strike, the Law on the Protection of the Population from Exposure to Tobacco Smoke), followed by collective agreements, rules on operation and other acts.

The Inspectorate acts preventively, correctively and repressively. Preventively – through control inspections which encourage orderly operations, efficiency and promptness. Correctively – through orders to eliminate identified violations of the regulations, and in a specific case to also postpone the enforcement of a decision by the employer. Repressively – through institution of relevant penal procedures.

There are obvious weaknesses in the work of labor inspections which contribute to the chaotic situation and non-respect for the laws and other regulations in the sphere of labor

relations. Operation of the Labor Inspectorate has to be improved for this reason by a more consistent application of general regulations on inspection surveillance that relate to: employment continuity, labor independence, efficiency and updatedness, expertise and working ability; curbing of corruption and any form of conflict of interests, and also by tightening of responsibility.

Moreover, labor inspectors need to demonstrate a higher degree of determination in some frequent, albeit serious infractions, such as:

- curbing of unregistered work by relying more on paragraph 2 of Article 32 of the Labor Law,
- institution of infringement proceedings when the conditions from Article 270 of the Labor Law are in place therefore,
- imposing the measure banning work, within the meaning of Article 66 of the Law on Occupational Health and Safety, etc.

Agency for Peaceful Settlement of Labor Disputes

The Agency is a place where disputes are settled involving both individual rights (cancellation of service contracts, wages, various allowances, discrimination, mobbing, etc.) and collective rights (collective agreements and the like).

The Agency activity after its establishment was sizeable (in 2006, the number of settled labor disputes was 1,670), then started to gradually fade away to finally become very modest recently. In 2010, the number of settled disputes was 87 (of which 10 collective), while in 2011 the number of settled disputes was 164 (of which 8 collective).[52] If the trend continues, such drop in the work result inevitably raises the question of whether further existence of this agency makes sense. Indeed, bringing down the number of mediations to minimum is not evidence of a substantially higher respect for laws by employers and employers, but either of the weaknesses in the Agency operation or of its insufficient reputation among potential clients.

Further, the Agency for amicable settlement of labor disputes settles individual and collective disputes which are also settled by courts. The Agency settles them based on the demand filed by mutual consent, and the court – based on the lawsuit. As disputes on individual rights can also be settled in the labor environment and in a litigation or in extrajudicial procedure, and as disputes concerning collective rights can be settled before the arbitration court and court of law, truly justified is to raise the question if such disputes need to be settled by the Agency for Amicable Settlement of Labor Disputes, particularly for the fact that it settles them without the constitutionally guaranteed right to appeal and because such disputes can be settled by application of the regulations on mediation. Therefore, we are of the opinion that the rationale for the further existence of this Agency needs to be reconsidered.

[52] *Work Report,* Republic Agency for Amicable Settlement of Labor Disputes, April 2012

Solidarity Fund

Protection of rights is taken to the Solidarity Fund when a company is in bankruptcy, for workers' financial claims (wages, sick leave pays, severance payments, etc.). Such claims are decided upon by the Governing Body of the Fund; however, in order for this decision-making to take place, a commercial court needs to first establish in bankruptcy proceedings the right of an employee to put such claims.

Basic difficulty in the Fund operation is of financial nature: over the recent past it used to dispose of hardly EUR 3-4 million per year,[53] which is insufficient to finance entitlements of former employees in the companies in bankruptcy. Thus, according to the statement of the Fund's director, in February of this year the Fund disposed of only one-fifth of assets necessary for this year so that it was able to finance the rights of three thousand users only, while about 11 thousand demands are on the "waiting list", and the same additional number is expected because several thousands of companies have gone bankrupt.[54]

Another, conceptual problem with the Solidarity Fund is the following: employees receive assets only after the court's decision become absolute, and not immediately after the dismissal when they need the money most. This arrangement makes sense because the Fund cannot deal with establishment of the rights of certain employees prior to the court decision but, on the other hand, the question then arises with regard to the reasons for its existence. For, the economic court as the court which deals with bankruptcy has a duty to establish everybody's rights, including those of employees and can, therefore, without major difficulty render the decision on payment of the legal claims to employees, both of the part pertaining from the bankruptcy estate and the part payable against the Republic budget that finances the Solidarity Fund. Therefore, we believe that it would be good to transform this fund into a budgetary fund without any administration, with all the decisions on payments being taken by a competent court, and all the payments being made by the Ministry of Finance on the basis of a court ruling.

Courts

Although the Labor Law (Article 195, paragraph 3) stipulates that lawsuits involving dispute filed by employee against employer have to be finally settled within 6 months from the date of their institution, they have been pending for years. The reasons for such a situation include: a chaotic courts network, large number of cases, insufficient training of judges, a small number of judges specialized in labor disputes and small number of trying judges, work inefficiency, etc.

In deciding in employee lawsuit filed against employer, often principle *in dubio pro laboris* (in the case of doubt, decision must be in favor of the worker) is applied when necessary to rule in unclear circumstances. The reason for applying this principle is explained by the fact that the worker is economically, socially and in any other way weaker and that it is natural and adequate to be given preference when preference must be given to someone.

[53] *Operation Report of the Solidarity Fund*, Solidarity Fund, January 2012

[54] "Novato", 13.2.2012

There remains the question whether what matters here is the acceptable partiality or not.[55] There is also, of course, the partiality in favor of employers, but it is then of corruptive origin.

Labor relationship disputes are under the second-instance control of appellate courts which resolve the appealed judgments of first-instance courts (which determine in individual disputes) and higher-instance courts (which determine in collective disputes). Higher-instance court resolves on appealed decisions concerning the conflict of jurisdictions. The Supreme Cassation Court decides on judgment revisions. In Belgrade, second-instance courts accept appeals in about 20% of cases, and in the rest of Serbia about 15%. Judgment revisions are accepted in about 10% of cases.

There is a problem in Serbia with regard to standardization of judicial practice, as most cases in the domain of labor relations are finalized at the level of one of the appellate courts (there are four of them in Serbia), so that the difference in practice among them is possible. Standardization is ensured only in disputes where revision of the proceedings is possible (commencement of employment and termination of employment, and collective disputes), because the revision is done by one court – the Supreme Appellate Court.

The Labor Law includes several deadlines that we believe need to be changed in order to speed up litigations.

Proposal:

1. to shorten the deadline for filing a lawsuit in employee/employer dispute (Article 195) from 90 to 30 days, because if these disputes are to be settled urgently (Article 438 of the Law on Civil Procedure) they also need to be urgently instituted,
2. the 6-month deadline for final settlement of lawsuits filed by employee against employer (Article 195) is unreasonably short, and needs to be extended (to two years, for example) or abolished,
3. to shorten the three-year limitation period for the claims arising from labor relationship (Article 196) to two years (or to even one year).

It would be advisable to consider introduction of separate courts specialized in settlement of disputes in the sphere of labor or, at least, specialization of judges for the resolution of disputes in this area. (The sphere of labor is broader than labor relations because it also covers labor beyond labor relationship). The mentioned specialization would improve the quality of trial and its efficiency.

[55] Partiality of the courts in favor of employees is notorious in Italy and France; see, A. Alesina and F. Giavazzi – *The Future of Europe, Reform or Decline*, MIT Press, 2006, p. 58

Chapter 4

MAIN WEAKNESSES OF THE LEGAL FRAMEWORK AND PROPOSALS FOR THEIR ELIMINATION

In this chapter we offer an overview of major weaknesses of the Labor Law that we believe are causing high unemployment rates, hurting productivity, and are decreasing the competitiveness of Serbian companies. We also present recommendations to boost employment, improve productivity and increase competitiveness by amending laws and regulations. Still, the applicable concept of labor legislation and the essential rights of employees are not questioned here. Instead, we have tried to identify those major issues that constitute weak points but can be addressed within the existing model of labor relations. Overcoming of these deficiencies would result, to a certain extent, in more flexible arrangements and, primarily, in the elimination of some evident shortfalls of the existing Labor Law, which are not necessarily connected with the choice of a labor relations model. Furthermore, not all the deficiencies of the Labor Law have been discussed here, including those more relevant, but only those which make functioning of the economy more difficult and contribute to high unemployment.[56]

TYPES OF EMPLOYMENT

Apart from the usual full time employment for an indefinite period, as an enduring standard type of employment, over the last decades more flexible, the so-called non-standard forms have increasingly developed, such as the fixed term employment contract, part-time employment contract, job sharing employment contracts, temporary employment contract, casual employment contract, telework agreement, on-call employee agreement, and the like. The main reason for the increasing popularity of the listed types of employment is certainly their better employment adaptability to the work characteristics and processes and interested workers, i.e. a higher flexibility of the employment at the time of increasing business uncertainties and fast technological and market changes. An additional reason, frequent in European countries, is to avoid numerous restrictions of the existing legislation applicable to standard employment, or the legislator's awareness that something needs to be done to make the labor legislation more flexible in order to enable new employment.

[56] A long list of almost senseless, nomotechnical errors in the Labor Law can be found in Z. Ivošević – *Thirty Reasons for Making a New Labor Law,* „Izbor sudske prakse" (A Selection from Case Law), vol. 6/2011

Fixed-Term Employment

The Labor Law does envisage the possibility of fixed-term employment but stipulates that it may not last for more than 12 months (Article 37, paragraph 1), and specifies that it may be established in the case of seasonal works, works on a specific project, increased volume of work lasting for a certain time. This arrangement is very rigid and reflects the aspiration to direct employers toward more hiring on a standard employment basis as more favorable for the employee. However, the mentioned objective is usually not accomplished because there are alternative ways for avoiding a standard contract:

- illegal employment (without any contractual relationship),
- circumventing the legal provisions, as done in Serbia, through (1) a 30-day break between the expiry of the previous and the beginning of a new contract, or (2) conclusion of a new fixed term contract formally for other activities, although the workers go on performing the original activities,
- shifting business activities to the gray economy,
- decrease of economic activity and non-hiring of workers, with unemployment higher than in the case of fixed-term work, etc.

All these modes of evading a standard employment contract are harmful both for the worker (his social and other rights and protection are reduced) and for the employer and society as a whole.

The solution with maximum 12-month fixed-term work both for one contract and in total is unusual from the point of view of comparative law arrangements. Only Spain has remained with the same 12 months. On the other hand, the number of countries in Europe which do not set any time limit whatsoever for fixed term work is increasing: currently, there are 13 such countries (for example, Austria, Belgium, Denmark, Ireland, Turkey, Ukraine). In most other European countries establishment of fixed-term employment is allowed regardless of the reason, and total duration is limited, ranging from 24 to 60 months (60 month-period is applied in Russia, Finland, Hungary and Macedonia; Estonia and Switzerland allow as many as 120 months.[57]

In analyzing the extension of fixed-term employment, there is an apprehension that employers might shift a vast majority of employees in a company from indefinite-period employment contracts to fixed-term contracts in order to improve their position as much as possible and thus abuse this possibility.[58] However, such reasoning is wrong. In most of the cases employers are aware that uncertainty of employment, as a consequence of the fixed-term contract, in many cases is not good for the company, either, as it encourages diligent and good workers to seek another job, in another company, which would not be the case with indefinite period employment contracts and higher certainty that they entail. Therefore, the employer would be facing a risk of losing good workers, the mainstays of the company's

[57] This and similar data which follows has been taken over from the database of *Doing Business 2012*, The World Bank, 2011

[58] See the statement of the Vice President of the SSSS, daily Novosti, 29 September 2012.

production, due to excessive utilization of fixed-term contracts. Therefore, in most of the cases the employer is interested in keeping indefinite period employment contracts with the workers who make up the core of the labor force, and keep only a smaller variable part of workers, whose number depends on the trends in business and who have lower qualifications and are less trained, on fixed term contracts. In other words, the employer will behave in accordance with his best interests and will not maximize the number of fixed-term contracts on account of indefinite period employment contracts: the employer will keep all workers that he counts with on a long-term basis on indefinite period employment contracts, while taking into account the number of workers necessary for the times of crisis and their quality and training (in which he has also invested), and will potentially shift to fixed term contracts only the part of the labor force that depends on business trends (cycles).

The basic idea behind relaxation of the restrictions on contracting fixed-term employment is not to shift the existing labor force from indefinite period to fixed-term contracts, but to *increase employment* through more flexible forms of employment. Actually, it has been long known that employers refrain from additional employment at the time of strong business cycles as they know that it will be neither easy nor cheap to shed redundant labor when a less favorable time or a crisis comes. The main reason for refraining is the inflexible labor legislation which makes layoffs more difficult procedurally and makes them expensive because of the obligation to provide severance payments. Therefore, higher fixed-term employment is one of the responses to this problem.

Proposal:

1. to modify the existing arrangement in the Labor Law laid down in Article 37, paragraph 1, and to enable a longer term for fixed-term work – 24 months or 36 months and even longer, if duration of a project is longer than 36 months (construction of a dam, subway, shooting a TV series, etc.);
2. to abolish the obligation to state reasons for fixed-term employment;
3. to limit the maximum number of successive fixed-term employment contracts with the same employee to not more than three in a reference period;
4. if the proposal presented in item 1 is not adopted, then envisage a possibility for newly incorporated employers of entering into three-year or four-year fixed-term employment contracts.

Such arrangements would increase the efficiency in the economy when facing dynamic changes in the business environment where uncertainty is increasingly evident (hence employers cannot plan the labor force), with economic crises and difficulties, with changing trends in the economy but also in individual firms, with a permanent need for reducing the operating costs in order to survive on the increasingly competitive market, etc.

Job sharing Employment Contracts

Employment established on the basis of a job sharing employment contract is unknown to our labor legislation. This is another demonstration of its unnecessary conservatism with respect to contemporary ideas in the domain of labor relations. Job sharing is a unique method of employing workers in a pair to fill one vacancy, who work as specific partners by splitting the working hours, cooperate in performing the job, are autonomous in deciding on distribution of the working hours among them, and are supported by the employer with regard to improvement of the cooperation necessary for performing the envisaged activities. Division of labor between the two can be proposed by the workers, but can also be made upon the employer's initiative. Needless to say, it is the employer's duty to strike a balance in the distribution of tasks in order to satisfy the needs and ambitions of both employees and to achieve efficiency in work.

Job sharing can be understood as a way for resolving one problem encountered with part-time work. Namely, the part-time work is convenient for many individuals in view of their family circumstances or leisure time preferences; however, employers face difficulties from time to time of how to "fill in" the non-covered working hours when they receive one part-time worker because they are not able to easily find a worker of the relevant profile and abilities who is willing to also work a part of the working hours. In such a situation, it is possible that the "first" worker finds a partner who is capable and willing to work in a pair, or to split working hours: it can be, for example, a spouse, or it can also be an unknown person found by the "first" worker thanks to his own channels. In this way, two goals can be complementarily achieved: the goal of the employees to work reduced working hours and the goal of the employer not to feel the negative consequences thereof, i.e. to have one worker on a full-time basis.

This type of non-standard employment contracts, together with some other, has been spreading over the developed world over the last few decades, starting from the 1970s.

Proposal:

1. to add a provision in the Labor Law (Section *Part-time Employment*) which would enable division of full time working hours between two or more workers, through a job sharing employment contract,
2. concrete arrangements would be regulated by an agreement of the interested parties (partners and employer), in accordance with the employer's bylaws.

Adoption of this amendment would be beneficial both for employees and employers and would not affect anybody's interests.

Remote Employment Contract

The next flexible type of employment is telework that can be defined, according to the European understanding, as „a form of organizing and/or performing work, using

information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis".[59] This work is usually performed at the employee' home, but it can also be carried out in other places – from rented premises to an internet café. Its basic characteristic is that the employee is not at the same location with his associates or with workers with whom he is performing joint work. Telework has become possible with the emergence of the modern communication technologies, primarily the Internet, telephony, video technology, etc.

Relative to usual method of work organization, advantages of telework are numerous both for the employer and the employee. The employer can significantly reduce the labor costs, particularly those for business premises and employees' transportation, and can also recruit some high qualified experts, who they would not be able to employ in the usual manner because of the distance of their place of residence. Telework also offers more opportunities to employees to find adequate employment without the need to move to other parts of the country or other parts of a big city and without long travels to the work post. Telework is particularly convenient for workers who find it hard or impossible to leave their house (because of the children or elderly parents), and also for persons with disabilities who can perform their tasks without the tiring daily journeys to their work posts. Moreover, this work method enables the employees to make better use of their time or to organize and plan by themselves the execution of their assignments.

Telework has expanded rather rapidly in the developed countries over the past decades. Thus, the number of workers in the United Kingdom who were working from home in 2010, either permanently or on an *ad hoc* basis, was 3.7 million.[60]

Serbia's labor legislation does not specifically regulate telework as such, although mention is made of one type, the most important one, of this form of employment – working at home – through the formulation „away of the employer's premises, or at home". This arrangement can be considered vague and create confusion in practice. Namely, it is incomplete because telework can be organized in several different ways of which only one is work at the employee's home. Therefore, possible application of the regulations concerning work at home to employees will depend on the concrete type of telework, which requires direct regulation of the work at home by the Labor Law provisions in order to avoid any lack of clarity in their application. The regulation of certain issues by collective bargaining agreements may have certain advantages, as they facilitate the respect for the specificities of some forms of this type of employment.

Proposal:

1. to modify the Labor Law by exclusively using the term *work away from the employer's premises* and by striking out the terms work „at home" (Article 42) and „family members" (Article 43),

[59] Framework Agreement on Telework concluded by ETUC, UNICE/UEAPME and CEEP, of 16 July 2002, item 2 of paragraph 1

[60] See http://www.bbc.co.uk/news/magazine-11879241

2. to narrow down the number of provisions from Article 42, paragraph 2, that an employment contract for this type of employment has to contain to the key ones only, such as the type of work and wage, and to leave the rest to the negotiations between the employer and the employee, either individually or through collective bargaining.

Individual or collective bargaining concerning the telework parameters represents a more convenient method for creation of the norms for employees' rights than the legal regulation of this matter because it is more flexible and enables regulation of the telework in the manner that best suits various situations in a given firm, branch or activity.

Temporary Employment Contract through Agencies

The Labor Law of the Republic of Serbia does not recognize another form of employment whose popularity in European countries is growing:[61] temporary work through agencies (or labor force hire). It involves activities of private companies (agencies) which, with a view to making profits, recruit workers who will be working in another company on a temporary basis (because of an increased volume of business, as a substitute for an absent worker, etc.), but in such a manner that employment contracts are made by and between the agency and the company, and not by the worker being recruited. In other words, the agency engages a worker exclusively to be able to temporarily "hire" his work to other companies in need of such worker and, consequently, there is no employment contract (or labor relation) between the company-beneficiary and the worker. Such engagement of a worker in an agency can be both for a fixed term and an indefinite period. In Germany, for example, workers are hired in agencies for a fixed term, with all usual benefits (pension, disability and health insurance, etc.).

Business relations between the agency, company and worker are usually established in the following way: (1) the agency has a long list of job-seekers, as well as the evaluation of their qualifications and work skills, (2) the employer in need of temporary workers approaches the agency and contracts the hiring of a certain number and certain composition of workers, wages per hour, etc., (3) the agency provides the necessary workers who perform the work with the employer, (4) the agency pays to the workers the contracted amounts for the work performed, and (5) the employer pays to the agency the contracted amount for the worker's services. In such a manner, the agencies ensure flexibility for both the worker and the employer. Some do it with unskilled workers, and some specialized ones with highly skilled experts.

The above type of work engagement can have favorable results for the employer: necessary workers can be found quickly, in a manner that is easier than if one is doing that on one's own; regular employment is avoided in the cases of temporarily increased needs for workers; there is a possibility to avoid incurring certain costs (health insurance, paid annual

[61] See *Temporary Agency Work in an Enlarged European Union*, European Foundation for the Improvement of Living and Working Conditions, 2006

leave, etc.). Employment through these agencies can also be attractive for workers as it is simpler than seeking job on one's own. It may also be a way for permanent employment because some employers use the temporary engagement as a trial when they intend to employ workers on a permanent basis; the worker knows that the private agency, unlike similar government services, will really do its best to find him engagement as it is interested in earning its mediation fee.

European practice is largely diverse, and during the last decade the restrictions that generally used to exist were reduced. Generally, the basic idea behind less stringent arrangements was the wish to encourage illegal immigrants (the Netherlands) or workers in the gray economy to get integrated into the legal system of labor relations, even at the cost of relaxing the provisions of the labor legislation.

Currently applicable provisions of the Serbian Labor Law which deal with temporary employment (Article 174) do not regulate this area adequately. Therefore, they need to be completely revamped and/or supplemented by the provisions on temporary employment through agencies, because the labor force hire from agencies is common practice in Serbia, too; hence this area should not be left in the zone of illegality, thus encouraging employers to avoid obligations through fictitious agreements with the agencies, and leaving employees without any legal protection.

Proposal:

1. to supplement the Labor Law with a chapter on temporary engagement of workers through agencies, which will include the basic arrangements (recognition of this form of work engagement, relationship with the general provisions concerning temporary and fixed-term employment, basic relations in the employee-agency-service user triangle, etc.),
2. to include the principle of equal treatment of workers employed on a fixed-term and on a permanent basis in the beneficiary's company, while leaving a possibility for a different solution through the collective agreement,
3. to regulate the operation of these agencies in the Employment Law (their existence, the reporting principle, possible financial guarantees, and the like) either by making appropriate changes in the existing section on employment agencies or by adding a new section on temporary employment agencies.

Regulation of temporary employment through agencies would bring to Serbia another mechanism for boosting employment which is increasingly present in European countries as a flexible and popular solution.

Employment of Aliens

The existing *Law on the Conditions for Employment of Aliens* originally dates back to 1978, i.e. the era of socialist Yugoslavia and is outdated in many aspects. The essential issue is

reflected in the fact that the area of employment of aliens in Serbia is not regulated in accordance with the modern market, economic and legal basis, which creates legal uncertainty and unnecessary costs for employers, and also results in non-registration of the employment of aliens („informal employment").

The main general question is whether, or to which extent, to level out the position of foreign and domestic workers, proceeding from the fact that the existing law gives priority to domestic workers. For example, whether to keep the existing arrangements: annual quotas for employment of aliens, prioritization of the domestic unemployed over unemployed aliens, different positions relative to the insurance against unemployment, etc. In addition, the applicable law does not cover the work of members of boards of directors and company owners, which altogether creates practical difficulties. Principled equalization of the position of domestic and foreign workers is a civilization-affirming requirement and should be observed with minimum restrictions in the case of particularly sensitive issues.

Another problem is created by complex and slow procedures for obtaining the necessary permits. First, the procedure for obtaining a business visa and residence permit is excessively complicated and time consuming. Besides the time necessary for gathering numerous documents in order to have the residence permit approved, the waiting period until definite issue of the permit is too long. Second, the procedure for obtaining a work permit from the National Employment Service after the residence permit has been obtained entails the need to face a new procedure which requires, *inter alia*, the submission of the opinion which the National Employment Service has issued itself to these aliens during the residence permit procedure.

Proposal:

1. to enact a new law on employment of aliens, based on the principles that are in line with Serbia's integration into international flows and market economy.

WORKING HOURS

Overtime Work

The Labor Law of the Republic of Serbia envisages (Article 53) that an employee at the request of an employer shall work overtime, but not longer than 4 hours per day and 8 hours per week.

Legal limitation of the number of overtime hours is certainly a civilization-affirming achievement and a natural way for protecting the employee against excessive work effort. In real life, however, urgent need often arises for overtime work for business-related reasons, which cannot be satisfied in a timely fashion by outsourcing work. This is why the limit set by the law turns to be insufficient from time to time. On the other hand, the legal arrangement does not take into account a possible interest on the part of the employee to achieve his material and other interests over a specific period of time by investing more effort at work. Accordingly, this legal arrangement might be set a bit more flexibly.

Comparative European arrangements differ significantly. Overtime work in some countries is practically not allowed (for example, the Czech Republic and Latvia, except in very exceptional cases), while in others there is no restriction on overtime work (for example, the UK if the worker agrees). Overtime work is possible in most countries, and time limitations vary. Some countries prescribe the maximum number of hours per day, some prescribe them per week, and some for longer periods (month, quarter, semester, year). Thus, Belgium has a limit of 65 hours in a quarter when usual overtime work is concerned and 130 hours in exceptional circumstances, which makes it possible to concentrate the hours in a smaller number of days. Many countries combine time restrictions of different durations: for example, Norway allows overtime work equal to 10 hours per week, 25 per month and 200 per year, which can be additionally increased with the consent of the trade unions and even more with the consent of the labor inspector; Turkey allows 270, and Poland and Portugal 150 hours per year. The existing Serbian arrangement with 4 hours per day and 8 hours per week is relatively frequent, although only one of these two criteria is usually applied (Croatia, Slovenia 8 hours per week). A frequent restriction is also 10 hours per week, particularly in the former Yugoslav republics (Macedonia, Montenegro, Bosnia and Herzegovina, but also Austria). In the Netherlands, the restriction is 4 hours per day, but also 20 hours per week, which means that on all five working days the maximum overtime work is allowed.

Another unfavorable arrangement is limiting overtime work exclusively to cases of unforeseen events (force majeure, a sudden surge in the volume of operations and similar unplanned reasons), which means that it is not allowed in situations of planned or seasonal volume of works. This arrangement is unnecessarily rigid: although it is intended to protect the worker, it prevents at the same time a quite natural orientation toward reliance on the existing labor force at times of temporarily increased volume of operations based on mutual interests of the employer and the worker. It should also be mentioned that the provision of the Labor Law on redistribution of the working hours does not satisfy these needs as it is suitable only for seasonal and similar works which also include periods of less intensive activities. Therefore, making overtime work conditional upon unexpected events is completely unnecessary and does not allow a natural response to a temporarily larger volume of operations.

Proposal:

1. to keep in the Labor Law the permitted number of overtime work of maximum 4 hours per day, and to replace the weekly limitation of 10 hours with a monthly limitation of 60 hours,
2. to supplement paragraph 1 of Article 53 with the provision that overtime work can also be carried out in other circumstances if the employer and employees so agree.

Redistribution of Working Hours

The Labor Law provides for (Article 57) a possibility to redistribute working hours for the purpose of their better utilization or for the needs of completing a certain task, provided that the working hours of the employee cannot be longer, on average, than full working hours. The redistribution cycle cannot be longer than six months.

This six-month cycle is often not sufficient as it is too short for many seasonal and similar works (agriculture, tourism, building industry, etc.) which are the only segments where redistribution of the working hours is possible considering that they work more intensively during the high season and weaker in off-season periods. As in the mentioned and other similar activities the high season lasts for about six months, it is significantly more natural to do the redistribution within one calendar year. Croatia has such an arrangement.

Proposal:

1. to change in paragraph 2 of Article 57 six months into one year as a framework for redistribution of the working time.

Secondment

The Labor Law does not envisage a possibility of short temporary transfer of a worker (for example, of up to thirty days) to another appropriate job with the same employer, which would not require modification of the employment contract. Such a need for substitution occurs frequently when an employee is on annual leave or a short sick leave, and the business process requires continuity in that workplace. This solution is significantly more advantageous for the company than short-time outsourcing of a worker, because it is simple in administrative terms and because an "insider" is already familiar with the company and its operations. On the other hand, secondment would not create any special difficulty for the worker since it is for a short time period.

Proposal:

1. to add to the Labor Law a section that would enable secondment of a worker to another corresponding job without amending the employment contract,
2. to set the maximum secondment period at 30 days.

Annual Leave

The Labor Law chapter on annual leave has several weaknesses and needs to be re-examined. First, the Labor Law envisages that the first part of annual leave, when used in parts, has to last at least three weeks. This long minimal term can cause difficulties in the company's operation. Therefore, it would have been better for the economy if the legislator

had observed the provisions of the ILO Convention No. 132 which envisages an uninterrupted two-week term for the first part. This particularly holds for the activities of a seasonal nature that are carried out during the more pleasant part of the year when companies are left without workers needed at the time of most intensive works.

The Law is not clear with respect to the remaining portion of the annual leave: does it have to be taken in whole or can it be divided into smaller parts. The Law needs to be amended so as to specify this matter. A better legal arrangement is to allow division into smaller parts, but to leave the definite outcome to the agreement between the employer and the employee. Entire annual leave would have to be taken by no later than 30 June of next year, as the case has been so far.

Second, the Labor Law stipulates the obligation for the employer to submit the decision on the use of annual leave at least fifteen days before its start. Such a decision is reasonable when an employee takes the annual leave upon employer's request, in order to have time to make adequate planning. However, this term is too long for frequent situations when, for business reasons, it is necessary to react faster than permitted by the applicable provision of the Law. It would be advisable to foresee a possibility of also issuing the decision on the use of annual leave based on employer/employee agreement, after the mentioned term.

Proposal:

1. to rephrase Article 73 of the Labor Law in the manner that annual leave may be used in parts, provided that the duration of the first part must be at least two weeks and used in the calendar year, and that the entire leave has to be taken until the 30th of June of next calendar year,
2. to supplement paragraph 2 of Article 75 with a provision that the decision on annual leave may also be submitted based on employee/employer agreement, after a 15-day period.

Voluntary Blood Donation

According to Article 77 of the Labor Law, voluntary blood donors are entitled to two days of paid leave of absence for each donation. This manner of stimulating voluntary donation has been inherited from the socialist era. Currently, the arrangement according to which a private employer, rather than the state, has a duty to stimulate or finance a humanitarian activity at his expense has no longer any sense.

Proposal:

1. to delete item 2 of paragraph 3 in Article 77 of the Labor Law.

The arrangements in the Labor Law relating to the determination of the wage and other types of personal income are excessively, and occasionally erroneously regulated, thus affecting the freedom of employer/employee bargaining, preventing the application of more modern remuneration methods and creating significant difficulties of administrative nature for the companies. Some of such weak points are highlighted below.

Same Pay for Same Job

According to the arrangements of the Labor Law, the employer may not raise the base wage of an employee relative to other employees working on the same jobs even if such employee achieves much better results than the others and even if his contribution to the company's success is larger. The Labor Law achieves this by invoking the "same pay for same job", but equating the value of the individual's work with the individual's job. Namely, the Labor Law stipulates the obligation for the company to adopt a general enactment defining the work posts, their description (contents), the qualification they require, i.e. the job classification (Article 24); on the other hand, the legal principle holds pursuant to which all employees have to receive the same pay for equal work, and equal works is equated with the same work post. In this way, raising the wage of an individual without raising the wage of all others performing the same job has been made practically impossible. According to the Labor Law (Article 104), "Employees shall be guaranteed the same pay for the same work or the work of the same value that they perform with the employer. The work of the same value involves the work requiring the same level of professional qualification, the same working ability, responsibility, and physical and intellectual work". Evidently, it is just the matter of formal criteria here (relevant for defining workplaces), and not of real, effective work of individual employees.

In other words, upon definition of work posts in the job classification act, and of the qualifications required for such work posts, each work post is connected with corresponding wage without a possibility of differentiation. In order to somehow manage to do what is necessary – to differentiate among wages and stimulate good work – employers are forced to invent other jobs, which are included in the job classification, when they wish to raise someone's wage relative to others doing the same job. Otherwise, wage differentiation will be contrary to law.

This arrangement is one of the major shortfalls of the Labor Law because it is not only unacceptable because of the linking of the wage to the work post under the threat of nullity of an opposite arrangement, but also because of its essential contradiction. Namely, contrary to the above quoted paragraph 2 of Article 104, a completely opposite arrangement is found in paragraph 4 of Article 107 which prescribes a possibility for the employer to negotiate with an employee a base wage higher than the one that the employee would receive based on the general enactment. The provisions of these two paragraphs from Articles 104 and 107 are in direct collision.

The employer must be given the freedom to differentiate among wages in employment contracts with employees even when they perform the same work, depending on his own evaluation of the work of individuals and the company's business priorities. Needless to say, the legal principle that wage differentiation is not conditional upon unpermitted discrimination based on personal characteristics of the worker (gender, religion, political affiliation, etc.) must be ensured. This can be achieved by application of anti-discriminatory laws, but the very possibility of contracting a higher wage cannot be excluded in the manner arising from the current wording of Article 104 of the Labor Law.

Proposal:

1. to amend the Labor Law by excluding paragraph 3 of Article 104 which defines equal work and which unnecessarily links the work of equal value not with the work effects but with the work post elements.

By this proposal, the principle of the same pay for the same job would be preserved in the Labor Law, but the wage would be delinked from the work post and the measuring of actual work performance would be made legal, including the reward for certain individuals through higher regular wages.

Complex Wage Calculation

A special difficulty in the wage calculation is the obligation to establish a part of the wage based on performance exclusively on a monthly level, which is unnecessary for a large majority of employees and also for the real situations prevailing in economic activities. Here, the Labor Law evidently does not take into account the fact that modern performance evaluation methodologies take also other time periods for benchmarking (the calendar year, for example), and not only the month, so that the employer's intention can often not materialize.

Moreover, this arrangement is often also harmful for workers because employers avoid excessive administering of this portion of the wage and avoid its calculation. They thus reduce the employees' wage to the basic wage only even when they would otherwise approve a reward based on performance. This issue needs to be resolved in a manner which will be in line with the reality, and not to link the performance exclusively with the monthly calculation. As an incentive system that rewards good work is in the interest of both the employer and the employee, the unnecessary red tape has to be avoided so as not to increase the operating costs and undermine the natural freedom of employee/employer arrangements.

Proposal:

1. to revise Articles 106, 121 and 122 of the Labor Law and relieve the employer of the obligation to monthly record and calculate the parts of the wage based on the performance and the contribution to the employer's business success.

Employee's Share in the Profit

Similarly to the above, an employee's share in the profit is envisaged as a possibility by the Labor Law, but is exclusively linked with the business year (Article 14). On the other hand, employer and employee may be interested in different calendar remuneration through profit-sharing, particularly with respect to the rewarding of managers based on the company's performance. Therefore, this linking with the business year is unnecessary and the decision on the time dimension is to be left to the employer and unions, or the general enactment and/or the employment contract.

Proposal:

1. to remove from Article 14 of the Labor Law the mentioning of the business year.

Compensation of Employee's Work

In addition to the monetary wage (including the part for particularly good work), as the basic mode for remunerating the work of the employed, there are also other forms that do not have a usual monetary form and, therefore, do not represent the wage in a narrow sense, but are part of the concept of personal earnings. Those are numerous benefits on top of the wage – benefits in kind, payment of some employees' costs by the company and some allowances – such as covering housing costs and the right to use the company car by the employee, supplementary pension and health insurance, covering of training and education costs, costs of recreation and annual leave, meals at work, etc.

According to the Labor Law, a part of the above compensation forms is formally included in the wage and is thus subject to a strict tax treatment, which includes both the wage tax and contributions for social insurance. Such definition of elements covered by the wage in the Labor Law is unnecessary, as it is not the task of the Law to regulate the tax aspect of some forms of remuneration for employees and of the services rendered to them by the employer. In other words, the Labor Law does not have to specify the wage elements and, accordingly, the method of taxation of certain elements, but to leave their taxation to fiscal legislation. In this manner, a more favorable tax treatment of certain benefits would be made possible, such as, for example, a housing cost allowance and the costs of using a company car.

Proposal:

1. to delete paragraph 3 of Article 105 of the Labor Law which specifies unnecessarily and incorrectly the content of the total wage. It is incorrect because it also includes in the wage the personal earnings which, according to the Labor Law, are not part of the wage.

In this arrangement, the taxation of some forms of employee compensation would be left to fiscal laws, as appropriate.

Wage Compensation during Leave of Absence

According to the Labor Law, wage compensation during leave of absence for various reasons (Articles 114-116) must be calculated in relation to the average wage in the preceding three months. As the average wage includes, besides the basic wage, the performance bonus, overtime work, night work and work in shifts, work on the days of public holidays, hot meal allowances, vacation bonuses, annual bonuses, etc., it means that the mentioned compensation is not calculated only in relation to the basic wage, but also in relation to all other elements. This arrangement is not good because it does not make sense for an employee who is not working in a given period to receive a wage whose base would also include the performance bonus as if such employee achieved top work results. This problem is particularly pronounced in situations where high one-time bonuses (annual rewards, for example) were paid in the preceding period, which distorts the picture of the employee's current wage. This also holds true for all other one-off bonuses which also lead to significant deviations of the three-month wage average from the standard wage. The legal arrangement results in significant differences in the wage payments of otherwise equal workers, depending on the time when they receive the payment. It is, therefore, quite a frequent phenomenon in practice that an employee takes paid leave of absence after the period in which he had high earnings.

In view of the above, it is much more equitable for the basic wage to be the basis for the calculation of benefits, excluding other wage elements, with a possible increase based on the years of service.

Proposal:

1. to revise Articles 114-116 of the Labor Law in such a manner that the basis for determining compensation during absence from work is defined as the basic wage and not as the average wage in the preceding three months.

Adoption of the proposed amendment would entail a fairer and more logical arrangement for compensation during absence from work.

Wage Increase for Night Work and Work in Shifts

In the Labor Law, the formulation of allowances for night work and work in shifts is not precise: "for night work and work in shifts, if such work has not been valued at determining the basic wage – by at least 26% of the base", Article 108, paragraph 1, item 2. A conclusion which arises from this formulation is that the wage of an employee who works in shifts needs to be raised on this basis by at least 26%, and when within such an arrangement he works by night – by further 26%. Such doubling for the night work was certainly not the intention of the legislator. Accordingly, this provision needs to be formulated with more precision so as to avoid dilemmas and conflicts between employers and unions, plus involvement of the government agencies.

Second, it is questionable whether night work (in shifts) needs to be at all envisaged as a basis for allowances topping the wage. Indeed, such allowance is not the internationally accepted practice (France, the UK, Sweden, Switzerland, Denmark, Norway, the Netherlands, Ireland, Turkey, Cyprus do not have allowances for night work) nor is it envisaged by the International Labor Organization conventions. Therefore, the percentage of the wage for the allowance based on work in shifts should not be imperatively prescribed by law, but may be left to general company regulations.

The third weak point is the fact that the Labor Law neither defines the work in shifts nor is precise in formulating what represents the basis for the calculation of the allowance on this basis, which creates dilemmas with respect to what is considered as work in shifts. On the grounds of the published opinions of the Ministry of Labor and case law, the majority view is that work in shifts involves a continuous rotation of all three shifts on daily and weekly levels according to a specific schedule, while the work in two shifts does not represent shift work. This needs to be explicitly defined by the Law in order to prevent different interpretations and make administration easier.

Proposal:

1. to rephrase Article 108, paragraph 1, item 2, of the Labor Law in order to make clear that night work as part of shift work may be paid only once,
2. to lower the allowance for night work to 10%, as prescribed by some comparable countries (Bulgaria, Croatia, and the Czech Republic).

Minimum Wage

Prescribing the minimum wage is a frequently used instrument in the world for protecting the lowest paid workers, which helps their wages rise above the level on which they would be according to the solution which is strictly market-based. Some authors emphasize the realistic possibility that the minimum wage above the market one leads to a decrease in employment of these workers due to the drop in the demand for their work. Without entering deeper in the discussion with respect to the value of the concept, we will analyze the applicable arrangement in the Labor Law of the Republic of Serbia. The basic provision is that the minimum wage is determined by the Social-Economic Council for a six-month period by taking into account numerous and different factors (Article 112).

The objection to this arrangement is that the Social-Economic Council is not the body that should decide on the minimum wage for at least two reasons:

- in countries with parliamentary systems, such as Serbia, it is natural that decision-making concerning such an important topic of a broader social interest needs to be made in the Parliament and not in a body which belongs more to the concept of a corporatist than a parliamentary state,
- the hitherto experience with the work of the Social-Economic Council has not been positive, starting from disputable representativeness of the participants to unavoidable

imposition of own (and personal) interests to politicization of each and every issue, including this one.

A visible demonstration of the Social-Economic Council's decision-making quality and orientation is the ratio between the average and the minimum wage in Serbia. In April 2012, when the rate of the minimum wage was raised to 115 dinars per hour, the minimum wage reached as much as 46% of the average wage in Serbia, practically one half. In other words, the wage of the lowest paid workers is now almost one-half of the average wage in Serbia which also includes significantly more qualified employees (up to university professors) and those in companies in good financial shape (from the financial sector, for example). Such a ratio cannot be acceptable and is evidently a consequence of the weak representation of true employers' and employees' interests, and a good one of the unions and the government. Namely, the mentioned ratio is permanently high in Serbia, and its surge in April is, no doubt, a consequence of the pre-election Government needs and the consent of the trade unions.

Further, the Labor Law has listed several factors which (should) influence the minimum wage movements (the cost of living, the average wage trend in Serbia, subsistence and social needs of the employee and his/her family, the unemployment rate, unemployment trends, and the overall level of economic development in Serbia). It is impossible to operatively take into account such a list of factors and this, therefore, gives rise to extreme voluntarism by the Social-Economic Council, or disregard for any objective factor, as is the practice.

A solution to this problem can be sought in two directions: (1) to set the minimum wage by the law or (2) to prescribe a precise mechanism for adjustment of the minimum wage level by the law, and make the adjustment automatic, similar to pension indexation.

Proposal:

1. to determine the initial minimum wage level in the Labor Law,
2. to envisage in the Labor Law the wage level indexation mechanism by taking into account the cost of living and average wage movements in Serbia according to the so-called Swiss formula (one half of the minimum wage depends on the cost of living and one half on the average wage).

DISCIPLINARY LIABILITY

One of the major weaknesses of the Labor Law is the lack of necessary provisions dealing with disciplinary liability, i.e. with sanctioning the employees for the breaches of duty and lack of work discipline. The existing provisions – on dismissal for these reasons and on temporary suspension without wage compensation for up to three days (Article 170), which is a symbolic and, therefore, ineffective sanction – cannot represent an integral model of disciplinary punishment.

The Labor Law does not contain other provisions concerning disciplinary liability, which is interpreted in different ways. One line of thinking believes that the Serbian law clearly provides for an employee's liability for the breach of duty and that, accordingly, the employer can autonomously, or together with the unions, regulate the issue of the breach of duty and work discipline by his regulations. An opposite interpretation holds that the Labor Law does not regulate at all, and that it moreover does not recognize the concepts of disciplinary liability, disciplinary measures and disciplinary procedure, nor does it envisage their more specific regulation by the employer's general regulations, so that the employer does not have the right to regulate this issue by his regulations anyhow. Such a view has won recognition, firstly, in the opinions of the competent ministry, and then in the decisions of the Constitutional Court of the Republic of Serbia which, when assessing the legality of the provisions of companies' general regulations which govern the issue of disciplinary liability, took the view that disciplinary liability, disciplinary procedure, disciplinary bodies, and disciplinary measures cannot be regulated by these regulations, as it has been frequently practiced by numerous employers (labor rules) and social partners (collective agreements).[62]

Such a stand of the Constitutional Court of Serbia means that an employee's disciplinary liability is exclusively limited to dismissal and temporary suspension from work, which quite unnecessarily denies the possibility of establishing a violation less serious than the one which deserves dismissal and prohibits other penalties (for example, a monetary sanction, temporary wage reductions) which would correspond to the weight of the infraction.

The above arrangement neither makes sense from the point of view of ensuring work discipline nor from the point of view of comparative legal arrangements. It is quite natural to have in place a whole scale of breaches of duty with corresponding sanctions. The existing arrangement can, on the other hand, be harmful even for workers as it encourages the employer to resort to dismissal also in situations where, if it were possible, they would be satisfied with a milder sanction.

As the subject-matter of disciplinary liability has traditionally been in the scope of labor legislation, both in the material legal sense and in the formal legal sense, it is necessary to re-examine the idea of the lack of disciplinary liability in the domestic labor legislation. The Labor Law will need to either (1) regulate more specifically the issue of disciplinary liability or (2) to make it binding on employers to regulate this issue by their general by-law (regulation).

Proposal:

1. to supplement the Labor Law with a section on disciplinary liability, which would include the basic arrangements only: types of sanctions (for example, reprimand, temporary suspension from work with a reduction of wage, monetary sanctions,

[62] Decision of the Constitutional Court of the Republic of Serbia, IU number 213/2004 of 23 June 2005 („RS Official Gazette", no. 68/05); Decision of the Constitutional Court of the Republic of Serbia, IU number 494/2004 of 14 July 2005 („RS Official Gazette", no. 68/2005)

transfer to another work post, dismissal), basic principles of the procedure, and the like.

Regulation of the basic principles of disciplinary liability and procedure in the Labor Law would enable fairer sanctioning of breaches of duty, and encourage a higher degree of respect for work rules and conduct.

DISMISSAL

This section will not discuss the abandonment of the European protective model of dismissal and the shift to a liberal concept, because it would imply the termination of the applicability of Convention no. 158 of the International Labor Organization and the Revised European Social Charter, both ratified by our state. However, among the provisions concerning dismissal there are also visible shortcomings in the Labor Law.

Complex Procedures

One problem is posed by the stipulated complex procedures in the case of some types of dismissal, which deter employers from dismissals even when the legal reason for the dismissal evidently exists. One of these reasons is the following: according to the view of the Supreme Court,[63] an employee may be dismissed on this ground only after the judgment becomes final and binding, which most often means only in a several years' time and which automatically implies that the dismissal prior to the finality of a judgment is illegal even if the criminal offence evidently exists; here, too, a better solution would be that the employer has the right to dismiss the employee based on his own information about the nature of the offence, and that (il)legality of the dismissal is then finally assessed according to the final and binding judgment.

Proposal:

1. to amend item 4 of paragraph 1 in Article 179 in such a manner that the *action underlying a criminal offence* rather than the criminal offence is a justified reason for lawful dismissal.

This amendment would lead to a more reasonable procedure and enable the employer to immediately dismiss the employee in the case of an evident criminal offence, without fearing that the dismissal is illegal only because the worker has not yet been convicted by a final and binding judgment.

[63] Legal understanding of the Civil Division of the Supreme Court of Serbia of 30 November 2004

Virtual Illegal Dismissal

The Labor Law contains an unusual construction relating to resignation by an employee, but with the consequences of an illegal dismissal by the employer. Namely, paragraph 3 of Article 178 sets out that „if an employee shall cancel the employment contract" because of the breach of duty by the employer, „the employee shall have the right to all entitlements arising from employment, as in the case of illegal termination of his/her employment".

Equalizing two different cases, in terms of their consequences, is certainly inappropriate. An employee whose employment terminates illegally has the right to be returned to work and be compensated for the damage in the amount of lost wages (with contributions) during the conduct of the labor dispute. On the other hand, an employee who himself terminates the employment contract cannot have the right to these entitlements by the nature of things because he did so of his own free will. His decision may not be influenced by possible illegality of the employer's decision, because the employee can challenge it through a labor dispute and seek fulfillment of the employer's obligation. If the employee has decided to terminate employment of his own free will, such employee cannot have the same rights as an employee whose employment was terminated against his will, by the employer's act.

Proposal:

1. to delete paragraph 3 of Article 178.

Consequences of Illegal Dismissal

The Labor Law stipulates in Article 191 the manners of compensating an employee when the court finally establishes that his/her employment was terminated illegally. The first mechanism is reinstitution and the second – the employer's obligation to pay to the employee the compensation for lost wages and other earnings, including the unpaid social contributions. If either the employee or the employer believes that reinstitution is not possible in the given circumstances, the Labor Law envisages additional compensation for the employee in an amount of maximum 18 wages (at the employee's proposal) or 36 wages (at the employer's proposal), depending on the years of service, social status, etc.

There is no doubt that compensation for the illegal dismissal is fair and makes sense, but there remains the question of its limits. The first question is whether it is fair to cumulate two rights – the return to the job and full compensation of lost wages. By such accumulation of the entitlements, the employee actually realizes net profit without any real loss: (1) the employee still has his job, and (2) he has received full gross wages for the time (usually several years long) in which he did not work. On the other hand, the employer has to pay lost wages usually for several years and to again have the concrete (unnecessary) employee on his payroll, which is a very severe, even excessive punishment. Therefore, it would be fairer not to

have full accumulation of the compensations, but to allow the employee to have the right of option: either to be reinstated (plus moderate financial indemnity) or to receive full compensation for lost wages (maybe increased by moderate damages), but without the right to return to work.

Another disputable arrangement is related to the employer's obligation to pay the lost wages for the entire period between the dismissal and the court's final judgment: it is disputable because it is not only the employer who is responsible for the duration of that period. Rather, it is the court which is usually responsible for that period due to its slow procedure (customarily lasting for several years). Particularly important is the fact that the Labor Law obliges the courts to definitively complete the labor disputes within a period of six months from the date of their institution. As this legal limit is usually not observed by the court, it means that it is not fair for the employer to be obliged to compensate the damage which was not caused by him but by the court's illegal acting. Therefore, limiting the employer's obligation through the maximum number of monthly wages that can be awarded would certainly make sense as a form of the employer's protection against the slow operation of the courts, but would also serve as encouragement for courts to more rapidly adjudicate in such labor disputes.

Third, there is an important essential difference concerning the question whether dismissal is illegal because of the lack of an objective, legal reason for dismissal (from Article 179) or because of the omissions of a procedural nature on the part of the employer (provided that the objective reason for dismissal existed). These two different causes would need to be treated differently: the former more strictly and the latter less strictly.[64]

Fourth, there is a significant lack of clarity with respect to the coverage and mode of calculation of compensation for unlawful dismissal. Namely, the Labor Law leaves the issue of damage compensation to the general rules of contract law, i.e. the provisions of the Law on Contracts and Torts. There is a dramatic difference in practice, however, between the disputes aimed at compensating the damage caused by lost profit on other grounds, and on the ground of unlawful dismissal. Plus, there are large differences in how the courts understand the level of the compensation. Some courts even award to employees the compensation according to the wage calculation for "comparative" workers, which also includes a part of the wage for the performance at work, wage top-ups for the work on the days of public holidays, night work, etc., costs of transportation, hot meal allowances, vacation bonuses, etc. This position is unacceptable from the aspect of the general rules of the Law on Contracts and Torts concerning compensation of damage, as the maximum amount that may be paid to an employee according to this law would need to be the base wage plus the years of service. In order to avoid dilemmas and create a fair system equal for all, the issue of damage compensation caused by illegal dismissal needs to be explicitly regulated in the Labor Law.

[64] Different treatment of the two causes of dismissal illegality is applied by Italy according to the new labor law of June 2012

Proposal:

1. to rephrase Article 191 of the Labor Law so that:
    a. a worker illegally dismissed without a valid reason referred to in Article 179 of the Labor Law has the right of option: either to be reinstated (plus moderate compensation) or full compensation of the damage in the form of lost wages (plus, possibly, some moderate compensation), but without the right to return to his/her job,
    b. a worker unlawfully dismissed for procedural omissions on the part of the employer, but for whose dismissal the objective reasons stipulated in Article 179 of the Labor Law existed, has the right to compensation in the form of six monthly salaries, without the right to be reinstated,
2. alternative: to amend item 2 of paragraph 1 in Article 191 of the Labor Law which regulates compensation of damage caused by illegal dismissal, in the sense of incorporating a 12-month limitation for the number of months for which compensation of damage for lost wages can be awarded; for the purpose of adjustment, to reduce the number of months from paragraphs 3 and 4 of the same Article,
3. to regulate more specifically in the Labor Law the issue of wage coverage and mode of calculation in the case of unlawful dismissal.

Acceptance of the proposed arrangements would entail a level of wage compensation payable by the employer for illegal dismissal which is more appropriate to his guilt.

Severance Pay

Severance pay is an important financial element at termination of employment, both at retirement and in the case of layoffs by the employer caused by redundancies. In Serbia, the employee's right to severance pay is not questioned, probably out of habit, as if it were a definitively acquired right or a civilization-affirming achievement.

It is questionable, however, whether the right to severance pay is based on good reasons. Firstly, the right to severance pay at retirement is highly disputable as one can see no good argument for the employer's obligation to improve the financial position of the former employee after his retirement. If the pensions in Serbia are low or paid with delay, this is something that needs to be corrected by the government through its pension policy rather than by individual employers. This solution discourages employers from employing older workers as they will be under an obligation to pay them severance pay in the near future at the point of their retirement.

The next problem with the severance pay in Serbia is its amount: at retirement, it is three monthly wages, and at dismissal of workers made redundant by technologically caused decreases in the volume of business it is at least one-third of the monthly wage for each of the first ten years of service and one-fourth of monthly wage for each following year. For

example, in the case of a worker with twenty years of service, it is 5.5 monthly salaries which is for a company facing financial difficulties a very high expense, and will probably act as a deterrent from shedding labor and, perhaps, push it to bankruptcy because it is not able to make such large severance pays. It is even probable that one of the reasons for legalizing such severance pays has been to turn employers away from dismissals. On the other hand, in the countries coping with the second wave of the crisis amounts of severance pay are declining, which is considered to be an incentive to employment through reduction of potential costs related with firing. In 2012, it was a road embarked on by Spain and Portugal.[65]

The third problem is the obligation to make severance payments in one bullet, prior to the date of dismissal (Article 158, paragraph 1). This „tough" solution is defended by the risk that some employers might fail to fulfill the legal obligation of making severance payments if the payments were allowed after the dismissal and in installments. Although there is some truth to such rationale, there is no doubt that it makes severance pays and dismissals highly difficult because many employers do not have financial reserves for their payment on the statutory terms. A better solution would be to combine a more flexible severance pay regime and a more efficient enforced collection of arrears, plus sanctions. At the same time, severance pays in installments would not be disadvantageous for the recipients, either, as they anyway spend the severance pay for self-support purposes during unemployment.

The fourth and the biggest problem concerning the severance pay in the domestic labor law is the provision of paragraph 2 of Article 158 of the Labor Law which envisages the obligation for employer to pay out severance pay for each year of employee's total length of service, and not for the years of service with the given employer. Such an arrangement has no justification and makes no sense, because there is no obvious reason for the current employer to make severance payments for the employee's years of service spent with another employer or, even, in his own private business. Nowhere in the world has such arrangement existed.[66]

This last of the mentioned arrangements not only makes the firing and severance pay very difficult, but also opens up a possibility for an employee to collect severance pay several times and in different companies for the same years of service. Such unacceptable outcome is the best illustration of the arrangement as it encourages manipulation and rent-seeking behavior, while discouraging employers from employing older workers in order to avoid the possibility of having to pay high severance payments for full years of service.

In autumn of 2011, the Government of Serbia proposed, as part of the draft amendments to the Labor Law, that this arrangement be replaced by another – and in two alternatives: (1) to calculate the period since the previously made severance pay (if any), and (2) to calculate only the period with the current employer (and its legal predecessor, if any). The latter solution is reasonable and along the lines of our considerations, while the former represents an attempt to compromise with the unions, that is, aims, as a minimum, at avoiding multiple collections, although it is still possible to base the calculation of severance

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[65] See, http://www.businessweek.com/news/2012-02-13/spain-cuts-severance-pay-on-new-open-ended-job-contracts.html; http://www.portugaldailyview.com/whats-new/labour-law-severance-pay-to-get-severely-severed

[66] See, R. Holzmann, Y. Pouget, M. Vodopivec, M. Weber - *Severance Pay Programs around the World: History, Rationale, Status, and Reforms*, The World Bank and IZA, May 22, 2011

pay on full years of service, if not previously received. However, this compromise was not acceptable, either, and was rejected by the unions, together with the overall set, and the Government desisted from reforming the law.

Proposal:

1. to delete item 1 of paragraph 1 in Article 119 of the Labor Law (relating to severance pay at retirement),
2. to amend paragraph 2 of Article 158 of the Labor Law so that the right to severance pay at dismissal is determined for the years of service with the employer making the severance pay and not for the total length of service of the employee,
3. to amend paragraph 2 of Article 158 so that severance pay for each year of service may not be lower than one-fourth of the employee's wage,
4. to amend paragraph 1 of Article 158 so that severance pay may also be paid in installments, but not more than six monthly installments.

This amendment would provide for a more equitable arrangement and enable economic revival of the company and its future progress. Moreover, reduction of total costs of the labor force through, *inter alia*, a less heavy burden of severance pay encourages new employment as employers know that possible severance pays will cost them less.

CONDITIONS FOR WORK OF UNIONS IN COMPANIES

A growing practical problem of companies in Serbia is the following: numerous newly established unions with small memberships are emerging and they are requesting from employers all statutory conditions for their operation – premises, technical support, paid leave of absence, protection against dismissal, etc. (Articles 211-212). The employer has no possibility to refuse these requests, because the unions have been established in accordance with the law which provides for their rights as listed above. Since the Labor Law does not stipulate a minimum number of members as a requirement for the establishment of a union even a smaller number is sufficient for establishment. On the other hand, the Labor Law obliges the employer to meet all of the mentioned requests for the union work, regardless of the number of members. Moreover, according to the *Rules on Labor Union Registration,* a labor union does not have a duty to report the number of its members even at registration. Thus, the number of members may never be known, as well as the information on whether there are any members at all.

Such a system does not make any sense. It encourages the establishment of small labor unions whose intention is not to fight for the rights of employees but to ensure privileges for a handful of "leadership" members. Therefore, it is necessary to set forth legal requirements for the size of labor unions the satisfaction of which would entitle a union to have the conditions for its operation provided by employer.

Additionally, the stipulations of the Labor Law are not clear with regard to union leaders who are provided certain rights (paid leave of absence, protection against transfer to another position and dismissal). Namely, there is a dilemma in practice as to who of the appointed or selected union representatives enjoys protection against dismissal. The formulation of paragraph 3 in Article 188, which states that the number of union representatives who enjoy protection shall be determined by the general enactment or special agreement of the employer with the union, results in frequent interpretations that the number may be narrowed down only based on the agreement between the union and the employer and, if not, all members of the union bodies enjoy the protection. This is unacceptable because it may result in serious manipulation since the number of members of the union bodies is completely beyond the employer's control. It is, therefore, necessary to explicitly regulate by the law that in the absence of the agreement-based definition of the number of union's representatives enjoying the protection, only the president of the union is entitled to such protection.

Article 181 is also disputable as it stipulates that when the employees' representative refuses transfer to the corresponding work post referred to in Article 171, the employment contract may be terminated by the employer only with the consent of the relevant ministry. In such a manner, the union officials are excessively protected, even in the case of a standard procedure necessary for organizational and economic reasons. Instead of the ministry, a court could judge in a labor dispute whether the transfer was objectively justified or if mobbing of the union official occurred.

Proposal:

1. to rephrase Article 210, paragraph 3 and state that the employer has a duty to provide the premises, technical and other conditions only to the union with a membership of at least 10% of employees,
2. to specify in Article 188, paragraph 3 of the Labor Law that in the absence of the agreement between the union and the employer on other appointed or selected union representatives, only the president of the union shall be entitled to protection against dismissal.

REPRESENTATIVENESS

For the activity of labor unions and the association of employers of great importance is their representativeness as in this way they acquire the right to participate in collective bargaining and in reaching the tripartite agreement at a certain level, in collective labor disputes, etc.

Pursuant to the Labor Law (Article 223-232), representativeness is established by the tripartite *Committee for Establishing Representativeness of the Labor Unions and the Union of Employers*, which takes decisions only unanimously. The line Minister has a duty to accept the Committee's proposal if all relevant factors have been established. In other words, the

mentioned committee establishes the facts and is, therefore, the main institution in the procedure, and if its opinion is not positive, it is not possible for the union or the association to get the status of representativeness. An additional aggravating circumstance is the provision that the Committee must take a decision unanimously in order for it to be valid, which means that each member of the Committee can block recognition of a candidate's representativeness.

The main shortcoming of the system of exercising and re-examining the representativeness lies in the tripartite nature of the Committee. It is not realistic to expect impartiality of the stakeholders when deciding about the representativeness of future competing organizations. Instead, it is natural to expect that they will try to block the decisions. Actually, the role and influence of each of the existing representative associations would diminish if an additional number of them became representative. And this is precisely what happens. On the other hand, the Serbian Government may also have its political interests and allies, and participate in such context in the activities relating to establishment of representativeness.

The unrealistic feature of the system has become evident over the past eight years of the system's functioning (since its inception), in which period no other union or employers' association has become representative for the territory of the Republic of Serbia, despite some attempts. A recent event reflects well the situation in this area. Last April, the Ministry of Labor approved representativeness to the Confederation of Free Unions, but not based on the opinion of the relevant Committee, which was not given, but based on the opinion of an (unknown) independent commission. There is no doubt that this decision was taken in an unlawful manner. The Minister of Labor was justifying the procedure by an alleged blockade of the Committee's work, while representatives of the representative unions and employers' association announced their intention to file a lawsuit against the Minister, claiming that the procedure was illegal and politically motivated.[67]

The issue of representativeness of the national unions/associations has been present since the establishment of the first representative organizations, or since 2005. Representativeness of the Autonomous Trade Union is not questioned by anyone, while representativeness of the Employers' Association is under serious suspicion. Consequently, the entire system of collective bargaining at the national level is of dubious validity and legitimacy.

The Labor Law provides for the possibility to re-examine the representativeness, but based on the procedure according to which such representativeness is approved (including the unanimity in the Committee), which means that invalidation of representativeness is practically impossible. The previous Labor Law (from 2001) included a better arrangement: the dispute concerning representativeness had to be settled by the court as an impartial party.

[67] See, http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=06&dd=04&nav_category=12&nav_id=615475

Proposal:

1. to rephrase Articles 223-232 of the Labor Law so that:
    a. the Agency for Businesses Registers (which is already maintaining the registers of associations of citizens, foundations, pious endowments, sports clubs and similar non-economic organizations) takes over the register of unions from the Ministry of Labor),
    b. the Agency for Businesses Registers pursues the procedure for establishing representativeness,
    c. a higher-instance court conducts disputes which relate to the matter of representativeness.

These proposals rest on the idea of introducing order and ensuring that only statutorily defined stakeholders participate in the process of collective bargaining at all levels.

DISAGREEMENT IN NEGOTIATIONS OF COLLECTIVE BARGAINING AGREEMENTS

In the course of negotiations over collective agreements disagreements among the participants are possible, as is their unsuccessful conclusion. This possibility is included in the Labor Law and is fully compliant with the principle of freedom of collective bargaining and collective agreement, as well as the ILO Collective Bargaining Conventions nos. 98 and 154.

However, the latest *Civil Procedure Law* (2011) provides for the arrangements that are not in accordance with the Labor Law and which affect freedom of collective bargaining. Namely, Article 443 of this Law stipulates: „In litigation involving collective bargaining agreements, participants in the conclusion of a collective bargaining agreement shall exercise the right of protection when dispute arises over an individual disputable matter in the negotiating process or in the process of amending and supplementing the already concluded collective bargaining agreement, if the dispute over the disputable matter has not been settled amicably or by arbitration formed by the participants in the collective bargaining agreement in accordance with the provisions of a separate law". In other words, if in spite of an unsuccessful collective bargaining procedure one party wishes to enter into a collective bargaining agreement, even against the will of other parties in the bargaining process, it may institute an arbitration procedure and, if such procedure is not successful, may institute proceedings before a court which will meritoriously decide how the nonaligned, disputed provisions of a non-concluded collective bargaining agreement should read, and thus ensure its existence.

This arrangement breaches not only the principle of freedom of collective bargaining but also the general legal principle that conclusion of an agreement requires concurrence of the free will of the participants. Interesting is also the question of "the protection of whose rights" and what type of rights the court is to ensure when the parties have not agreed and when the agreement is non-existent.

Proposal:

1. to delete Chapter XXX in the Civil Procedure Law,
2. alternative: to rephrase the Chapter so that settlement of a dispute in court may be instituted exclusively on the basis of a mutually agreed proposal by all participants in the collective bargaining.

EXTENDED EFFECT OF COLLECTIVE BARGAINING AGREEMENT

We have seen above that it is common practice to extend the validity of a collective bargaining agreement concluded at the level of the entire economy, or of individual sectors, to include all employers in Serbia, and/or in a given branch, once such agreement has been concluded. In this way, the association of employers, on the one hand, protects itself against losing the existing membership, which would certainly occur if the collective bargaining agreement were applied only to these employers: they would find that it would be beneficial for them not to be members of the union as the collective bargaining agreement would not be applicable to them in such a case. On the other hand, trade unions believe that the extension of the collective bargaining agreement is beneficial for them as they thereby advance the position of employees and also their own influence. It is also suitable for the government which demonstrates the care for employees in this way.

The possibility of extending a collective bargaining agreement in Europe largely differs from country to country – from the mere existence of the legal possibility of extension, to extension requirements, to the frequency of deployment of this mechanism. Out of 30 member countries of the European Economic Area (EEA),[68] 21 members have mechanisms for the collective bargaining agreements' extension, and nine do not (including Italy, the UK, Sweden and Denmark).[69]

It is standard practice among the countries where the extension is possible to set the conditions or thresholds that have to be met before a collective bargaining agreement can be extended. Indeed, the frequency of the extension depends on the conditions' strictness.

Quite a large number of countries are insisting, prior to deciding on extension, that the condition of the agreement's representativeness has to be satisfied or that it is representative in order to be extendable. Representativeness of a collective bargaining agreement is measured by the number of workers covered by the original agreement, i.e. by the percentage of all employees in a branch. Thus, the requirement in Germany, Slovenia and Latvia is that 50% of employees are initially covered, in Greece this percentage is 51% and 55% in the Netherlands. In Finland, the required percentage was also 50% until recently. The strictest regime is in the Slovak Republic where the extension of the collective agreement the requires employer's consent.

[68] EEA includes all EU member states and Norway, Island and Liechtenstein.

[69] Romania does not have the extension mechanism, either, but is not necessary there as collective bargaining is conducted at the branch/industry level so that signed agreement covers all employees.

According to accessible data, in most EEA countries the extension of a collective bargaining agreement either does not exist as an institute or is rarely or not applied at all. Extension of a collective bargaining agreement is frequent only in Belgium, the Czech Republic, Finland, France and Portugal. In other words, most countries have the legal basis for the extension mechanism for higher level collective bargaining agreements, but in many countries this possibility is rarely availed of, or not at all, so that application of this mechanism is usual in a smaller number of countries.[70]

The basic arrangements of the Labor Law concerning the extended effect are the following (Article 257):

- the Minister may decide that the collective agreement or some of its parts be also applied to employers who are not members of the employers' association which signed the collective agreement,
- this decision assumes the existence of "justified interest":
    - for the purpose of implementing economic and social policies in the Republic of Serbia, ensuring equal working conditions which represent the minimum rights of employees that arise from work and are based on work;
    - for the purpose of diminishing the differences in wages in a certain industry, which have a substantial bearing on the social and economic position of employees and entail, as a consequence, unfair competition; provided, however, that the collective agreement being extended is binding upon employers who employ at least 30% of the employed in a specific branch.

To date, the Minister has neither expressed a wish to provide arguments in the decision on the extension of a collective bargaining agreement proving the existence of justified interest, as envisaged by the Labor Law, nor does he prove the type of the relationship between the extension of a collective bargaining agreement and „economic and social policies", or that the extension leads to „diminishing of the differences in wages ….. that have a substantial bearing on the position of the employed", and even less that CBAs which are extended cover more than 30% of employees in the given branch.[71] All these legal requirements are formal and the Minister is obliged to respect them and report them as met in the rationale of his Decision, and particularly the last one which is quantitative and, accordingly, easily verifiable. Without taking into consideration these legal conditions and without their transparent disclosure in the relevant document (Decision), the mere act of the CBA extension remains disputable from the points of view of legality and legitimacy.

[70] For overview, see: *Extension of collective bargaining agreements in the EU*, Background paper, Eurofound, 2011.

[71] The text of these decisions includes only the provision on extension and nothing else. Thus, one decision fully reads as follows "Article 1: Branch Collective Agreement for Building Industry and Building Material Industry of Serbia ("RS Official Gazette", no. 1/11) shall also apply to employers performing the activity of building industry and building material industry, who have not participated in its conclusion. Article 2: This Decision shall become effective eight days following its publication in the "Official Gazette of the Republic of Serbia".

Generally, the system of collective agreements' extension has significant shortcomings:

- affects the freedom of collective bargaining because it also extends the agreement of two parties – trade union and employers' association – to those who have not participated in the bargaining, i.e. the employers who are members of other associations or are not members of any association and who represent a vast majority,
- it introduces legal uncertainty into business activity because employers do not know whether and when the Minister will use his mentioned right and regulate numerous crucially important elements of doing business (for example, employees' wages), which directly and materially reflect on the company's financial results,
- it introduces political motives into collective bargaining, because the relevant Minister may have in mind the interests of the government and the governing coalition when thinking about the decision on the extension; the politics thus interferes with economic life unnecessarily and with negative consequences, and begins to directly influence the operation of the private sector,
- it prompts the representative organizations of employers and employees to observe the impact of collective bargaining on them as organizations, and not on employees or employers; the Union of Employers has noticed that their members are leaving because of the acceptance of the collective agreements that only apply the employers from that association, so that they took the view and informed the Ministry that they would no longer sign the collective agreements if the expanded effect is not promptly prescribed for them;[72] only in such a case, they hope, the reason will disappear which was prompting the employers to leave their association (in order to protect themselves against the effects of the collective agreement),
- it expands the effect onto all companies of a system of collective agreements which are not compliant with the principles of the modern market economy (for example, wage determination based on the coefficient and minimum labor cost rather than on the basis of modern work performance measurement systems, etc.),
- it expands the effect of the collective agreement which was made with the participation of one employers' association whose representativeness is disputable and which cannot be believed to represent the essential part of the economy of Serbia, which undermines the legitimacy not only of the collective agreement but also that of its extension.

Such politicized system of extended collective agreement's effect, without the participation of employers who represent a dominant part of the economy, has turned into its contradiction where one party aspires to pre-election gathering of votes, the second party to

[72] *Analysis of the application of the General Collective Agreement 2008-2011*, Union of Employers, 2011, p. 36

satisfying its own interests, and the third to the interests of the stratum it represents, while interests of the economic recovery and development of the country are not respected very well.

It is even questionable whether the extension mechanism of collective agreements is useful for the trade unions, as it is generally thought, or not. For, if collective agreements are normally extended to all employers and employees, one can ask whether it makes sense to be a member of a union and pay the membership fee when all employees with all employers have the same benefits from the union's activity, and not only the embers of the union which signed the collective agreement.

Proposal:

1. to introduce into the Labor Law the concept of representative collective agreement which have to cover at least 50% of employees of a given sector or territorial unit; the second condition is that both parties in the bargaining (the unions together, and the employers together) have to ensure at least two-fifths of the said 50%, for the purpose of balanced significance of the signatories,
2. to stipulate that representative collective agreements can exclusively be extended,
3. to stipulate by the Labor Law, in order to regain confidence in legitimacy of utilization of the collective agreement extension mechanism, that each concrete decision on extension shall be signed by the president of the Republic (in Belgium, the extension is proclaimed by the royal decree),
4. alternative: to delete Articles 257-261 of the Labor Law which regulate the matter of extended effect.

These amendments would resolve the pressing problem of the existing practice with the extension of collective agreements' effect, and would enable that this institute of collective bargaining cease to be the stumbling block and, possibly, to gain more legitimacy than it currently has.

There is another type of extension effect of the collective agreements which is much less mentioned in the public and expert discussions: extension at the company level. Namely, the Labor Law envisages (in Article 262) that the collective agreement with employer is also binding upon the employees who are not members of the trade union which has signed the collective agreement. This arrangement brings along several difficulties: (1) it is also binding upon those who have signed no agreement, which is contrary to the freedom of bargaining, (2) creates a possibility that all employees are bound by the decisions of a minority trade union, i.e. the trade union which was the first to sign the collective agreement with the employer, (3) may lead to competition between the unions in the company with regard to the first signing of the collective agreement, which need not necessarily be in accordance with the employees' best interest.

Proposal:

1. to rephrase Article 262 of the Labor Law in the manner that all employees be bound only by the representative collective agreement with the employer, i.e. the collective agreement concluded by the majority trade union or the coalition of minority trade unions which represents the majority of the company employees,
2. alternative: to delete Article 262.

Chapter 5

ELEMENTS OF THE LABOR MARKET REFORM STRATEGY

The above chapters have discussed the problems on the Serbian labor market, weaknesses of policies on the labor market and numerous specific suggestions for improving regulation and operation of labor market public policies. This final chapter will discuss individual global and operational elements of the new government strategy for boosting employment and improving competitiveness, through amendment and promotion of policies and better functioning of government institutions.

Principles. The reform of the labor market policies as proposed in this study is based upon several general principles:

- *inclusion in the framework of general economic and social system reforms*; as future progress of the country principally depends on institutional factors and the economic policy quality – on well-arranged business ambiance, i.e. attractiveness for investing and doing business – ahead of Serbia is the task to continue and bring to end the transition processes initiated long ago and to definitely set up a vibrant economy, whereas the labor market and related policies reforms will have to fit into that framework;[73]
- *comprehensive approach*, which means a conceptual and temporal correlation of the reforms in different areas of the labor market; conceptual orientation would need to ensure that activities are harmonized in the same direction, without inter-policy conflicts, while temporal harmonization of activities would need to ensure synchronization of both the efforts and effects of the reform program; needless to say, temporal harmonization does not involve simultaneousness since the program implementation will inevitably take a somewhat longer period of time;
- *respect for the principle of equality,* each individual is in the same position both before the law and among other participants on the market, without rents and privileges; the position of a man who works needs to be determined by his merits in economic activity, and not by extra-market privileges.

Labor legislation. The existing labor legislation has changed the direction of the right and responsibility equilibrium pendulum in favor of employees, for the purpose of as complete protection as possible. In the longer run, the result of such shortcoming is the lower employment and less efficient economy, as proved to be the case in Serbia. If Serbia wishes to embark upon the path of a real economic recovery, one of the reform directions will also have to cover the labor legislation.

[73] 'For a complex approach to the reform program, see *Bela knjiga 2011, predlozi za poboljšanje poslovnog okruženja u Srbiji (White Book 2011, Proposals for Improving Business Environment in Serbia)*, FIC, Belgrade, 2011

Serbia needs action of the new government that will create an appropriate legal framework for labor, which will encourage and not undermine the employment. For that purpose, it is necessary to improve flexibility that will enable efficient adjustment of the needs of individual employees and the business needs.

The proposed reforms of labor legislation contained in this study start from the need to establish a true equilibrium between the interests of employees and interests of employers:

- employee's interests must be respected through his fundamental rights: to adequate remuneration for work, to legal working hours (except in special circumstances), to paid annual leave and other necessary absences from work, to free bargaining with employer concerning the working conditions, to protection against discrimination and exploitation, to support in the case of termination of employment;
- employer's interest must also be observed and he must be allowed to manage and conduct the operations and adapt the company to external challenges in the best way he can, without unnecessary restrictions, starting from the fact that the mission of a company existence is to create newly added value, and not the social policy (which needs to be mostly cared of by the government).

In addition to employee's and employer's interests, there is one more party whose interest would need to be taken into account in this type of thinking: that party is the unemployed. As he is not employed, he is not protected by law, and is not protected by the trade unions (in spite of their permanent proclamations concerning the fight against unemployment, they are representing the interests of the employed, usually older age workers). The point is the following: behind each dishonest or non-productive worker whose dismissal is impossible or prohibitively expensive there is one young man, honest and willing to invest his maximum efforts at work, only if offered a chance. Protection against dismissal, for example, is often the protection of undeserved privileges of insiders, those who have employment, against life risks, on account of all others: both the employers and the unemployed (usually young, frequently women, those without protection).

The proclaimed goal of Serbia is to integrate with the European Union. Therefore, natural is the interest in getting familiar with, and in using the experience, of the member states. Although the labor market regulation falls under the competence of the member states, a joint global model has nevertheless been established, contrary to the American liberal model, but with considerable differences in the concrete solutions. During the last 15 years or so, in Europe has been underway the process of liberalization of labor market institutions. The process is progressing slowly but, as it seems, unequivocally. The existing crisis has only spurred the reform movement. Chapter 2 speaks about this in greater detail. In the past decade, Serbia accepted the European model or, more specifically, its more restrictive version. It is the time now also for Serbia, if it is still intended to follow EU examples, to start following the more advanced member states in their reforms oriented to more flexible forms of regulation.

The reform objectives would need to be:

1. *flexible labor legislation,* without unnecessary paternalism which limits the possibility of employee/employer bargaining based on free will and awareness of one's own interests,
2. *free and well-regulated collective bargaining* of legitimate representatives, without imposing the will of minority participants on majority participants,
3. *simplification of the procedures*, shortening of deadlines, acceleration of trials so that employee's uncertainty is lesser and that employer can react efficiently and faster.

No waiting. Employment and unemployment in Serbia are extremely dramatic. Less and less people are working, more and more are unemployed (as much as one-fourth of the labor force), more and more of those inactive... The economic crisis in Serbia which has spilled over from the world at the close of 2008 is certainly one cause for such a situation, but not the only one. Others can be found in the weaknesses of the general economic regulation, particularly the labor relationship regulations, and in the institutions that are implementing them.

There is a two-way link between the economic activity and the labor force market. In one way, as has been noted, the level of economic activity determines the necessary number of workers, i.e. the current situation on the labor force market. On the other hand, the labor force market also influences on the level of economic activity. Depending on the situation on the labor force market – availability of the necessary profile of workers, predominant labor force price (including the level of imposts payable on wages), good regulating arrangements in the labor and related legislation, quality of operation of government and other institutions, character of collective bargaining, etc. – will also depend on the attractiveness of the ambiance for economic activity. If the trends in the mentioned areas are negative, and in Serbia they are, the labor market will then hinder the economic activity and represent an impediment to economic growth.

Such two-way feature of the economic activity and labor force market impact means that Serbia needs not wait for the economic crisis to pass and for employment to possibly begin to rise exclusively on the basis of increased economic activity and investment in Serbia. Instead, the regulatory ambiance needs to be improved, in particular the labor legislation, in order to contribute in that way to the attractiveness for doing business in Serbia, to help overcome the economic crisis, spur the economic growth and increase employment.

Desirable steps in the reform of labor and related legislation. Reform of policies relevant to labor and employment should not be a current task performed only by the line ministry, and only on occasions, when technical and political conditions have been created; instead, it should be a strategic project which implies a long-lasting sustained activity and proper planning of necessary steps. In that respect, basic elements of an action plan could be the following:

1. setting up an Employment Board at the level of the Republic of Serbia which would take strategic decisions on reform policies and actions and which would supervise their implementation; the Board would comprise representatives of the government, interested associations, leading experts and the like, and the Chairperson of the Board should be the President of the Republic or the Prime Minister.

2. establishing a Tripartite Committee of the Serbian Government, consisting of representatives of the government and relevant trade unions and employers' associations, whose task would be to harmonize operative elements of reform policies,
3. establishing an inter-departmental body of the Serbian government, which would implement the conclusions of the Employment Board and coordinate operational and technical work carried out in line ministries,
4. the Employment Board adopts a framework strategy of reform policies,
5. elaboration of a communications strategy for reform of labor and related legislation,
6. establishment of working groups for the drafting of legal texts,
7. the discussion of the drafts in the Tripartite Committee and the Employment Board,
8. communication activity, informing the public of the basic proposals,
9. a public debate about draft laws,
10. drafting of the final bill by the Employment Board and the Government and its submission to the National Assembly.
11. reform and/or promotion of work by public institutions (courts, National Employment Service, the Mediation Agency, the Solidarity Fund, etc.)
12. monitoring of the entire process by the Employment Board and timely responses to deviations from planned actions.

Successful reform requires strong commitment on the part of the country's political leadership, based on understandings of the true long-term interests of the nation and of the economy, even in those cases where there is no full consensus in the political sphere. It is usually better to build policies on good expected results than on bad political compromises.

Potential comparative advantages of Serbia. The relatively low price of the labor force compared with west European countries represents an important opportunity for Serbia in the future. On the basis of competitive wages, and with the fulfillment of other usual conditions, Serbia can attract both domestic and foreign investors and make possible productive investments for them, to mutual benefit.

The labor force price is Serbia is unnecessarily increased by the dinar exchange rate policy and fiscal duties. The policy of the strong dinar that has been pursued incessantly in Serbia is increasing employees' wages expressed in the euro, which represents the increase of the production costs of the export oriented sector and discourages the inflow of foreign investments in Serbia.

Also, the high total imposts payable on wages make the labor force less competitive when compared with other developing countries than it would otherwise be. Although the comparison of imposts payable on wages in Serbia with those in European Union has shown a similar level of burden, it does not mean that the Serbian system of wage taxation is mild vis-à-vis the taxpayers. To the contrary, since European taxation of employees is among the most austere in the world, a direct conclusion can be drawn that the Serbian, due to belonging to the same group, is highly austere if compared with other developing countries which can be Serbia's competitors in several economic sectors whose products are included in international trade.

Besides the labor cost of employees, in gross wage terms, on the demand for labor force and its employment also impact its standard (or average) working ability which is, in turn, determined by its expertise and skills on one side, and its physical and mental health, on the other.

Serbia's education system is giving poor results and is very much lagging behind in adapting to changed needs of economic life. This also holds true for the high education, but particularly for the secondary level of education. Indeed, secondary vocational education is changing the curricula and profiles very slowly fully because of the large number of teachers who have become redundant. A good example is that children are still educated for vocations that are almost not in demand nor will be in demand in the future (numerous metallurgical, chemical and similar schools), while within service-related activities are emerging the needs for workers of certain profiles that cannot be satisfied. Therefore, after two decades of unnecessary waiting, a serious reform of the secondary level of education becomes a high priority.

The health protection system, in general and in the workplace, would need to aspire for European standards, which *is* the official orientation. However, in practice appear the unavoidable trade-offs, i.e. the impossibility to reach European goals with Serbian financial resources. This explains the frequent discrepancy between the normative and the real, or non-observance of the standards in practice. Thus, the protection of occupational safety and health is often insufficient, even in the case of elementary things, which is particularly present in companies with smaller number of employees and in companies facing financial difficulties.

The system of protection of occupational safety and health needs to be developed further according to new health risks threatening the workers in Serbia, and also more completely implemented in practice, including through more active work of inspection authorities.

Implementation and institutions. Apart from legislative, there are also serious weaknesses in the implementation of the existing regulations, which additionally deteriorate the labor relations and employment in Serbia. Thus, the courts are very slow in trying labor and other disputes, manifesting also certain partiality, and thus contribute to prolongation of the conflicts and introduce uncertainty in mutual relations of the protagonists. Inspection authorities are insufficiently active and can also be partial, depending on circumstances. Recently established institutions (mediations, the Solidarity Fund, etc.) have not met the expectations, which raises doubts regarding the reason for their existence. Even the Ministry of Labor used to make moves of suspicious legality, particularly in the field of collective bargaining, dragging into labor relations the pure politics over all limits.

Clearly, such operation of government and other similar institutions does not contribute to pure labor relations and good operation of the economy in Serbia. Accordingly, it is not surprising that businessmen are dissatisfied with such a situation prevailing in this sphere: to illustrate, 74% of them see as negative the time necessary for carrying out all the procedures concerning labor law,[74] which is a very high percentage taking into account that these procedures do not involve any negative financial implications.

[74] *Istraživanje preduzeća 2011* (Company Research 2011), USAID BEP, 2011

There is no doubt that improvement of the frequently poor operation of the state administration would need to be a priority task of the new Serbian government. A part of the task needs also to be a due attention to be paid to operation of the institutions linked with the labor market so as to contribute to improvement of labor relations, more efficient operation and larger employment in Serbia.