Sociedad Internacional de Derecho del Trabajo y de la Seguridad Social
XXIII Congreso Mundial
7 - 10 de Septiembre de 2021 - Lima, Perú

RETOS DE LOS SISTEMAS DE LEGISLACIÓN LABORAL Y SEGURIDAD SOCIAL

- Transformación del trabajo: desafíos para el Derecho del Trabajo
- Comercio internacional y trabajo
- Nuevos retos de la Seguridad Social
- Trabajadores migrantes
- Trabajadores atípicos e informales
- Igualdad en el trabajo
- El Estado y las nuevas formas de voz colectiva

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Retos de los Sistemas de Legislación Laboral y Seguridad Social

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TRABAJADORES MIGRANTES

MIGRANT WORKERS

LEGAL POSITION OF MIGRANT WORKERS IN THE REPUBLIC OF SERBIA, WITH SPECIAL REFERENCE TO TIME OF COVID-19 EPIDEMIC OUTBREAK

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ABSTRACT: Although the need to provide decent working conditions is at the heart of the labour law rules on protection of migrant workers in the Republic of Serbia, a significant challenge for the State remains to create such conditions for their decent employment. The article discusses development of migratory movements of workers on the territory of the Republic of Serbia, as well as key legal aspects of employment of migrant workers in this country. Also, the risk of labour exploitation of migrant workers was investigated on the basis of case study. Finally, the status of migrant workers in Serbia in times of COVID-19 epidemic outbreak is examined, especially regarding the consequences of declaration of the state of emergency (special movement restrictions, validity of temporary residence and work permits, vulnerability of workers in the informal economy), as well as the position of returnee circular and seasonal workers.

KEYWORDS: Republic of Serbia; migrant worker; right to work; dual permit regime; labour exploitation; COVID-19 epidemic outbreak.

1. DEVELOPMENT OF MIGRATORY MOVEMENTS OF WORKERS ON THE TERRITORY OF THE REPUBLIC OF SERBIA

The first instances of organized employment of foreign nationals in Serbia date back to the nineteen-twenties, when refugees from Russia reached Serbian territory after the October Revolution.[1] The status of these and other immigrants was governed by the Regulation on the Employment of Foreign Workers of November 24, 1925. However, this issue was extensively regulated by the Regulation on Employment of Foreign Nationals (1935),[2] which included provisions on the issuance of work permits to foreigners, as well as provisions on the protection of domestic labour market from increasing influx of foreign workers during economic crisis. After World War II, the employment of foreigners was under the responsibility of the Federal Labour Administration, which was formed under the auspices of the Ministry of Labour of the Federal People's Republic of Yugoslavia, or rather under the authority of the Labour Administration of the People's Republic of Serbia. The practice of certifying contracts and giving work licences continued in the decades to come, with these tasks becoming the

1 M. Milenković, T. Milenković, *Zapošljavanje u Srbiji – od začetka do oslobođenja zemlje 1944*, 2002, p. 98.

2 Regulation on Employment of Foreign Nationals (*Official Gazette of the Kingdom of Yugoslavia*, 11 April 1935).

responsibility of the employment bureaus at the level of federal republics, and with special regulations established for employment of foreigners in the field of construction. Further development of the Yugoslav economy caused the employment of foreigners, for the first time, to be regulated by a special law - Law on Requirements for Entering into an Employment Relationship with a Foreign National (1978),[3] which was in force for 27 years. It introduced the regime of grants for entering into an employment relationship with a foreigner and a work permit became a prerequisite for their employment. On the other hand, this Law did not provide for the right of priority of domestic workers over foreigners, as the legal solutions were mainly aimed at solving the problem of employment of foreign nationals who had acquired permanent or temporary stay in Yugoslavia, such as political immigrants and spouses of Yugoslav nationals - much more than the employment of foreigners for economic reasons, i.e. reasons related to the lack of domestic workers.[4]

A need to respond to the changes that have taken place in the world of work, especially as a result of the intensified globalization process, became apparent at the beginning of the new millennium. During this period, the National Employment Service (NES) issued, on average, about 2,500 permits for entering into an employment relationship with a foreigner, annually. This shows that the Republic of Serbia wasn't an immigration country, especially as this number was much lower than the number of work permits issued in the surrounding countries.[5] However, legislator believed that this trend can change and that it would be necessary to regulate the issue of employment of economic migrants in accordance with the new tendencies, especially as the accession processes of the Republic of Serbia to the European Union (EU) as well as to the World Trade Organization (WTO) necessitated the introduction of new solutions, for the purpose of harmonizing the Serbian law with the standards of the aforementioned organizations. Hence, the Law on Employment of Foreign Nationals was adopted in 2014 and is still in force to this day.[6] Its provisions are in line with International Labour Organization (ILO) conventions number 97 and 143, ratified by Serbia. Besides, in accordance with the Stabilization and Association Agreement between the European Communities

3 *Official Gazette of the SFRY,* no. 11/78 and 64/89*, Official Gazette of the FRY,* no. 42/92, 24/94 and 28/96, and *Official Gazette of the RS,* no. 101/05.

4 S. Arsenov, "Zapošljavanje stanaca u Jugoslaviji", *Migracijske teme*, Vol. 3, No. 1/1987, p. 91.

5 B. Latković, "Zaključivanje ugovora o radu sa strancem", Pravo i privreda, no. 7-9/2015, p. 406.

6 *Official Gazette of the RS*, no. 128/14, 113/17, 50/18 and 31/19.

and their Member States and the Republic of Serbia[7], the Law on Employment of Foreign Nationals is, in principle, in line with directives 2003/109/EC and 2004/38/EC. This Law also regulates the employment of foreigners who have applied for asylum, refugees who have been granted asylum, as well as foreigners who have been granted subsidiary protection. It has been shaped by EU law, or, more specifically directives 2001/55/EC, 2004/81/EC, 2009/52/EU, 2011/95/EU and 2013/33/EU. Finally, the Law on Employment of Foreigners incorporated the requirements for completion of the accession of the Republic of Serbia to the WTO. This included the introduction of rules on provision of services by individuals, whether they are foreigners working in a company, persons temporarily residing in Serbia in order to establish business contacts or foreign employers preparing to start their activity here. The same applies to persons posted by their employer to temporarily work in Serbia, as well as to independent professionals, i.e. self-employed persons registered abroad, who, based on a contract with their employer or the end user of services in Serbia, carry out business activity on the territory of Serbia.

An amendment to the Law on Employment of Foreigners was adopted in April 2019 and came into force on 01 January 2020. It is primarily aimed at simplifying the procedure for issuing work permits to foreigners, with the objective of developing a more favourable business environment, since attracting foreign investments has been identified as one of the priorities of the Government. It should be noted that the Republic of Serbia, in the process of European integration, shares the experience of other Central and Eastern European countries that had an increased influx of migrant workers as they approached EU membership. Thus, the number of work permits issued to foreigners by NES doubled from 2015 to 2019: 6.362 permits were issued in 2015, that number increased to 7.340 the following year, to 7.642 permits in 2017, 8.989 in 2018 and 13.802 in 2019.[8]

It should also be noted that Serbia entered into several *bilateral agreements* that regulate employment procedure, working conditions and protection against

7 *Official Gazette of the RS*, no. 83/08.

8 *Report on the performance of the NES for 2019*, 104. Analysis of jobs reffered in requests for issuing work permits shows that in most of the cases, migrant workers are engaged for perfomance of well-paid jobs, i.e. of supervisory jobs and jobs whose performance presupposes high qualifications and important work experience, as well as skills and knowledge that are deficitary at Serbian labour market.

social risks, as well as remittances to the country of origin. However, material scope of these agreements does not cover student exchange programmes, scholarships, professional exchange programmes and traineeships. In the past, these agreements were concluded primarily due to the transition from extensive employment policy (in which employment was seen as an instrument for solving certain social problems and combating unemployment, which caused considerable latent unemployment) to intensive employment policy (employment according to the objective needs of the work process, overall economy and organization of work).[9] As a result of this transition, under the auspices of the 1965 economic reform, Yugoslavia faced a growing problem of unemployment, and managing emigration of domestic workers was supposed to contribute to overcoming it.[10] Therefore, bilateral agreements concluded with most European countries and Australia regulate the establishment and prerogatives of agencies that recruit workers for employment abroad, send offers from foreign employers to domestic workers in surplus occupations, conduct professional training of workers for certain jobs, inform workers about working conditions abroad etc. In addition, we should mention the Agreement on Recruitment and Temporary Employment of Citizens of the Republic of Serbia in Germany, which was signed in 2013 with the Federal Employment Agency (*Bundesagentur fur Arbeit /BA/*). It is an agreement that covers employment of nurses and technicians from Serbia in health care institutions throughout Germany, under the „Triple Win" project, which is jointly implemented by NES, German Organization for International Cooperation (*GIZ*) and German International Placement Services (*ZAV*).[11] From 2013 to 2019, a total of 784 nurses and caregivers from Serbia were recruited through the "Triple Win" project. At the time the Agreement was entered into, there was no deficit of healthcare workers in the Serbian labour market, however, that is no longer the case, which is why it is rumoured that the Serbian side will initiate the termination of the Agreement, although interested healthcare work-

9 D. Paravina, "Socijalni i pravni položaj jugoslovenskih radnika zaposlenih u inostranstvu", Zbornik Pravnog fakulteta u Nišu, no. 12/1973, p. 150.

10 P. Jovanović, *Radno pravo*, 7th edition, 2015, p. 108.

11 Serbia was the first country to sign this type of agreement with Germany. *GIZ* is in charge of getting the selected healthcare workers ready to go to Germany and providing them with the initial support, in order to facilitate their integration into the new work environment and the German society. On the other hand, it is the duty of the *BA* to check the credibility of the employers before starting the recruitment process, as well as to prepare the bilingual employment contracts. In addition, under the auspices of the project, Serbian workers are provided with assistance related to language and professional preparations and keeping up with their departure to Germany and integration.

ers will still be able to get employment in Germany through other accredited employment agencies. This is the only bilateral agreement concluded by the Republic of Serbia applicable to healthcare workers. Although its personal scope primarily covers nurses and technicians, it has been applied to medical doctors as well, whenever there is a possibility for them to get employment in Germany through NES. On the other hand, a great number of healthcare workers migrated to work or search for work abroad without mediation of NES, i.e. at their own initiative or with mediation of German employment agencies. Also, it should be mentioned that at faculties of medicine of Universities in Serbia, there is a possibility to attend courses that are taught entirely in English. On the other hand, health-care workers who, after specialization which costs were borne by their employer, initiate the termination of employment contract because of their migration, are deem to be in the breach of the obligation stipulated by Health Care Law to perform the work for the public health-care institution in period which is twice longer than the period of specialization.[12] These workers have to compensate the costs of their specialization (costs of scholarship, specialization exam, issuing diploma etc, without the costs of wages that were paid to them durig specialization), like all other health-care workers who failed to work for public health care institution during prescribed period of time.[13]

Ministry of Labour, Veterans and Social Affairs and NES in cooperation with *GIZ* implemented the Migration & Diaspora program, which enables the exchange of experiences of institutions in Serbia and Germany in the field of regular migration. This is especially useful for the Serbian side, due to the efforts of the Ministry to, by implementing the Strategy on Economic Migration for the period 2021-2027, build and strengthen institutional capacity critical for regular migration, as well as harmonize the education system with the needs of the economy, and create conditions for monitoring, encouraging and supporting circular and return migrations. A network of seven migration service centres has

12 Health Care Law (*Official Gazette of the RS*, no. 25/09), Art. 175, paras. 7-8.

13 Some public health-care institutions whose employees failed to fulfill the obligation to work for the institution in period which is twice longer than the period of specialization, claimed from their employees to compensate, along with costs of their specialization, the damage caused to institution by preconceived termination of employment and by the fact that institution could not engage other health-care worker during the period of time for which migrant health-care worker was expected to perform working tasks. Also, in some cases, Serbian Medical Chamber did not wanted to issue a ceritficate about a period of employment of migrant health-care workers without the payment of compensation of costs of their specialization, which in some cases resulted in bringing proceedings before the court.

been established as a part of NES, which provide migrants and persons interested in migration with information on their rights, visa procedures and work and residence permits, as well as employment opportunities abroad and migration risks. One of their activities is also the referral of immigrants, readmission returnees and asylum seekers in the process of integration in Serbia, to relevant local institutions, in order to effectively exercise their rights.

Finally, we should not lose sight of the fact that Serbia has been facing an increasing influx of *asylum seekers* in recent years, because, for many migrants, including irregular migrants from Africa, Afghanistan and the Middle East, who seek to reach other EU Member States through Greece, Bulgaria and Romania, Serbia is simply in their path. In this regard, it should be noted that the Amendment to the Law on Employment of Foreigners of 2019 takes into account the changes that have occurred in migratory movements, especially considering the needs of asylum seekers and people who were granted asylum, since employment is one of the pillars of their integration into the community: even though these people did not leave their country for work related reasons, they still need to have the right to work, as soon as they reach a safe environment. This is crucial because until the Law on Employment of Foreign Nationals came into force, conditions in Serbia for effective enjoyment of freedom of access to the labour market for these categories of migrants were not met. This is mostly because a personal work permit could only be issued to foreigners who were granted asylum and persons with refugee status, while the remaining categories of foreigners under international protection did not have the opportunity to exercise the right to work by entering into employment relationship.[14]

The sensitive position of *irregular migrants*, however, hasn't been recognized in the Law on Employment of Foreign Nationals, which only regulates sanctions for employers who employ such persons.[15] *Irregular migrants hold a delicate position* insofar as other regulations do not recognize the need for their special protection, or their right to access the labour market, nor do they recognize the instruments that facilitate settlement of overdue claims that they may have against employers in cases of labour exploitation and other forms of abuse.

Finally, we should also note that Serbia is located in an area that is traditionally known for having a large number of *emigrants*. The last decade of the

14 B. Latković, G. Grujičić, *Pristup tržištu rada tražilaca azila i lica kojima je priznat azil*, 2018, p. 3.

15 Law on Employment of Foreign Nationals, Art. 34-36.

19th and the first few decades of the 20th century were characterized by overseas migrations of the local population. Migratory movements continued in the second half of the last century, when a large number of Yugoslav citizens went to European countries for temporary work, with chain migrations of their family members.[16] The aforementioned bilateral employment agreements facilitated the employment of Yugoslav citizens, primarily in the Western Europe, as well as certain African countries, which became a destination for temporary work in the 1980s. The 1990s were also marked by an intense wave of emigration,[17] although this period is also known for the arrival of a large number of refugees from the former Yugoslav Republics.[18] The trend of departure of Serbian citizens continued in the last decade and significantly affected Serbian migration policy.

16 Until 1971, the records of Yugoslav citizens temporarily working and residing abroad were particular, based on different methodology, and didn't allow for a realistic estimate of the total number of citizens working abroad. It was the 1971 census that for the first time tallied, in a comprehensive manner, persons working/residing abroad (203.981 citizens of the Socialist Republic of Serbia were recorded as working abroad, which accounted for about 2.8% of the total population of this republic within the SFRY). Government of the Republic of Serbia, *Migration profile of the Republic of Serbia for 2010*, p. 12.

17 According to the 2002 census, 414.839 persons were recorded as working/residing abroad, which accounted for about 5.3% of the total population of the Republic of Serbia (in the country and abroad). We've witnessed a decline over the last twenty years in the number of Serbian citizens working in the countries that traditionally receive migrant workers (primarily Sweden and France, and other Western European countries), with a proportional increase in interest of migrant workers in new destinations, such as Hungary, the Russian Federation and Great Britain. Besides, employment of Serbian citizens in Canada, USA and Australia has intensified, propelled by their somewhat more liberal immigration regulations, as well as the mass departure of young and highly educated workers from Serbia. Moreover, in second decade of 21st century, participation of highly educated persons in the emigrants population is 11 times higher than it was in 1970s (*Stanje i perspektive politike zapošljavanja mladih u Republici Srbije*, 2017, p. 12). It should also be noted that Serbian legislation specifically recognizes the "Diaspora", which includes citizens of the Republic of Serbia living abroad and Serbian people, emigrants from the territory of the Republic of Serbia and the region, and their descendants. Although there is no precise information on the size of the Diaspora, estimates by the Serbian Ministry of Religion and Diaspora since 2012 indicate that it could be as large as 4 million people. Acc. to: *Migration profile of the Republic of Serbia for 2010*, p. 13.

18 The 2002 census results showed that the Republic of Serbia had a little over 762.000 immigrants from the former Yugoslav republics Bosnia and Herzegovina, Croatia, Slovenia and Macedonia, which accounted for 22.2% of Serbian migrants. *Migration profile of the Republic of Serbia for 2010*, p. 13.

2. EMPLOYMENT OF FOREIGNERS IN THE REPUBLIC OF SERBIA – KEY LEGAL ASPECTS[19]

Republic of Serbia tends to protect its national interests by enacting regulations in the field of migration and by managing migrations in its own territory, which is why the position of migrant workers is at an intersection between immigration and labour law. In this regard, we should keep in mind that the Constitution states that "the Republic of Serbia is a state of Serbian people and all citizens who live in it", and that "pursuant to international treaties, foreign nationals in the Republic of Serbia shall have all rights guaranteed by the Constitution and law with the exception of rights to which only the citizens of the Republic of Serbia are entitled under the Constitution and law".[20] Constitution also states that the generally accepted rules of international law and ratified international treaties constitute an integral part of Serbian legal system. In 2004, Serbia signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, but has not ratified it to date, while the following are among the ratified conventions: Refugee Convention; Convention relating to the Status of Stateless Persons; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; ILO Migration for Employment Convention (Revised) No. 97 (with the exception of Annex III); ILO Migrant Workers Convention No. 143; and Revised European Social Charter.

On the other hand, provisions of Labour Law apply to all employees working in the territory of the Republic of Serbia, including foreign citizens and stateless persons, unless otherwise provided by law.[21] A foreign citizen or a stateless person may enter into an employment relationship under the conditions established by Labour Law as well as special laws.[22] Regulating the conditions and

19 This chapter is based on article Lj. Kovačević, "L'emploi de ressortissants étrangers en République de Serbie", Revue de droit comparé du travail et de la sécurité sociale, no. 1/2020, pp. 206-211.

20 Constitution of the Republic of Serbia (*Official Gazette of the RS*, number 98/2006), Art. 1 and 17.

21 Labour Law (*Official Gazette of the RS,* no. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17, 113/17 and 95/18), Article 2, paras 1 and 4.

22 *Ibid.,* Article 29. Foreigners enjoy same individual as well as collective labour rights. Officials of two repesentative trade unions – Confederation of Autonomous Trade Unions of Serbia (*SSSS*) and United Branch Union "Independance" (*UGS `Nezavisnost`)* told the co-authors of this article that they lack information about migrant workers unionisation and their membership in trade unions branches.

requirements for establishing employment with foreigners, as well as restrictions for their employment, is closely related to the circumstances and needs in the domestic labour market (in general and/or in certain occupations), as well as the goals of the migration, demographic, economic and employment policy. Legal entry into the territory of Serbia is, thus, a prerequisite for establishing an employment relationship with a foreigner. Regarding the conditions for his/her employment, *a dual permit regime* applies, which means that a foreigner can enter into an employment relationship only if he/she fulfils two cumulative conditions. The first one is the possession of a temporary or permanent stay permit for the Republic of Serbia and the second condition is the possession of a work permit.[23] *Stay permits* are issued by the Ministry of Interior in accordance with the Law on Foreigners,[24] where they check for obstacles for stay in Serbia, such as being a threat to the public order or public health and safety. In addition, this condition for employment of foreigners is aimed at checking if he/she has the financial means to support himself/herself and his/her family members during their stay in Serbia. On the other hand, *a work permit* is a legal document on the basis of which a foreigner may be employed in Serbia and is issued by the NES. Personal work permit is issued at the request of a foreigner and a work permit is issued at the request of an employer.

A personal work permit, which allows a foreigner to freely take employment, be self-employed or exercise unemployment rights, can only be issued in the following three cases: a) if a foreigner has a permanent stay permit; b) if a foreigner has refugee status; c) if a foreigner belongs to a special category. The last case, more precisely, applies to asylum seekers,[25] persons granted temporary protection, victims of trafficking and persons granted subsidiary protection. This is important because the aforementioned categories of foreigners are now treated the same as foreigners who have been granted permanent stay, in terms of their opportunity to independently enter the Serbian labour market through job search and employment, which significantly reduces their dependence on the employer

23 In addition to the restrictions on employment of foreign workers, protection of national interests is ensured with a ban on their employment in state authorities. Law on Civil Servants (*Official Gazette of the RS,* no. 79/05, 81/05, 83/05, 64/07, 67/07, 116/08, 104/09, 99/14, 94/17, 95/18 and 157/20), Article 45, paragraph 1.

24 *Official Gazette of the RS*, no. 24/18 and 31/19.

25 For example, 5.702 people intended to seek asylum in Serbia in 2017, but only 280 requests for asylum were submitted to the authorities. This happened because majority of people who stated their intention to seek asylum never submitted their requests because they left Serbia in the meantime and because some were placed into transition centres, without proper legal procedure.

and the risk of employers' abuse of prerogatives in the hiring process, as well as employment. However, there is *an obligation to pay an administrative fee*, which can be a serious burden for many asylum seekers and persons who were granted asylum. Although, in some cases, this fee will be covered by the organization providing legal assistance to asylum seekers, it would be fairer to eliminate this obligation for asylum seekers and persons who were granted asylum, especially given their financial situation and the size of the fee.[26] In addition, there is a need to improve the procedure for recognizing foreign diplomas for these categories of foreigners (especially given the duration and cost of this procedure), as well as to create conditions for learning Serbian, as not knowing the language of the host country reduces their chances to find and retain employment.

In addition, a personal work permit is issued for the purpose of family reunification, at the request of a member of the immediate family of a foreigner with permanent stay visa, as well as at the request of a member of the immediate family of a foreigner who has refugee status and who has been issued a permanent or temporary stay visa. The same applies to foreigners who are members of the immediate family of a Serbian citizen as well as to foreigners of Serbian descent to the third degree of lineal kinship. In each of these cases, a work permit is issued to a member of a foreigner's immediate family for the duration of the stay visa.

On the other hand, a foreigner with a *work permit* in the Republic of Serbia can only do the jobs for which he/she has been granted a permit for employment, self-employment or special employment cases (employment of foreigners posted by their employer to temporarily work in Serbia, movement of foreigners within a company registered abroad, and employment of independent professionals). A foreigner can perform working tasks just for the employer at whose request his/her work permit is issued. The employer cannot assign a migrant worker to work for another employer.[27] If migrant worker performs the job for which he/she has not been granted a permit, his/her work permit shall be annulled.[28] Also, temporary employment agencies are not allowed to assign migrant workers to work for user and under the user's supervision, because work permit is issued only for performance of a job for employer who requested a work permit. However, these rules do not apply to migrant workers with personal work permit, since their position is equated with the labour law position of domestic workers.

26 B. Latković, G. Grujičić, pp. 3-4.

27 Law on Employment of Foreign Nationals, Art. 15, par. 1, point 1.

28 *Ibid.*, Art. 29, par. 1, point 1.

A work permit may be issued to a foreigner who has a temporary stay visa and fulfils all the employment conditions established by the employer's act on organization and systematization of jobs. This permit is issued for the planned period of employment, or, at most, for the duration of the temporary stay visa.[29] The dual permit regime has further limitations, including requirement stating that it wasn't possible to find among domestic workers someone with necessary qualifications for the job, ten days before submission of the request for a permit, or, in special cases, within an even shorter timeframe. The same applies if an employer, during the aforementioned timeframe, couldn't find suitable candidates for the job amongst the people who have free access to the labour market, or amongst the foreigners with a personal work permit who are in the NES database. The lawmakers even went a step further regarding work permits for employment, by requiring that the employer, prior to submitting the request for a work permit, hasn't laid off workers due to technological, economic or organisational changes in jobs for which work permits have been requested. However, the Government may decide to *limit the number of foreigners who are issued work permits*, in the event of disruption in the labour market, in accordance with the migration policy and the movements in the labour market. *The quota* can be established at the proposal of the ministry in charge of employment, with previously obtained opinion of the Social Economic Council and the NES. However, the quota will not apply to a foreigner, or an employer hiring said foreigner, who submitted the request for a personal work permit, unless it is issued at the request of a special category of foreigners or for movement within a company.

The possibility of issuing a work permit to a foreigner who has been granted a long-stay visa based on employment also contributes to the improvement of the procedure for issuing work permits to foreigners. This solution was included in the Amendment to the Law on Foreigners from 2019, and it concerns the simplification of the procedure for granting a temporary stay visa as well as a

29 In 2019, the highest number of foreign workers with temporary stay in Serbia came from China (3.040), Russia (2.749) and Turkey (762). As for the permits issued to foreigners with permanent stay, Chinese citizens had the highest number of permits issued (109), Russian citizens held second place and citizens of North Macedonia third place. Near the end of 2019, there were 703 unemployed foreigners registered at the NES, which is 0,14% of the total number of unemployed in the Republic of Serbia (81,37% of unemployed foreigners are women and 73,51% of them are persons without any formal education and persons with a primary school degree). Acc. to: *Migration profile of the Republic of Serbia for 2019*, pp. 12-17.

long-stay visa based on employment. The employer is, in fact, allowed to initiate the procedure for issuing a work permit before the NES, during the procedure for granting a long-stay visa based on employment which is conducted before the relevant diplomatic/consular mission.[30] Work permit issued on the basis of a long-stay visa based on employment is issued for the duration of the visa, at the longest.

Finally, we should bear in mind that, in the spirit of the provisions of Directive 2004/38/EC, EU citizens will have free access to the Serbian labour market from the date of accession into the EU, unless an international treaty that is binding for Serbia does not provide otherwise. The same goes for family members of EU citizens, who are non-EU nationals but hold a temporary or a permanent stay visa in those countries, which proves their right to free access to the labour market. The aforementioned persons will not need a work permit to get a job in Serbia, but they must have sufficient resources to support themselves and their family members. EU citizens, as well as their non-EU family members shall have free access to the labour market in Serbia even if they, through no fault of their own, lose their jobs, provided that their employment in Serbia lasted for at least one year, that they are in the NES register, and that they are involved in further education and training programs. On the other hand, in the spirit of the provisions of Directive 96/71/EC, an employer with a domicile in an EU Member State, a Member State of the EEA or the Swiss Confederation, will be able to post a non-EU foreigner to work in the Republic of Serbia without a work permit. This possibility is conditioned by the requirement that a contract has been concluded with the employer or the end user of the services, and that an employment contract has been concluded with a foreigner posted to work in Serbia. In addition, an act on posting for temporary work in Serbia must be drafted and must establish how the rights and obligations of the employee

30 This is important due to the fact that the NES will be informed, based on the direct exchange of official information with the diplomatic or consular representatives, that the conditions for issuing a work permit to a foreigner have been met. This will significantly speed up the procedure for issuing work permits and enable foreign nationals to start working as soon as they arrive in Serbia. This is important when hiring highly qualified experts, who are working in positions of interest for Serbia. The solution described is very much in the spirit of jurisprudence of the European Committee of Social Rights, which has deemed the possibility to obtain a stay visa and a work permit by submitting a single application, and to do so within a reasonable amount of time, as the biggest contribution to the simplification of formalities related to employment of foreigners. Conclusions XVII-2, Germany; Conclusions XVII-2, Portugal, *Digest of the case law of the European Committee of Social Rights*, p. 176.

will be regulated, as well as their accommodation and board during their stay in Serbia. The foreigner must have a stay visa and a work permit in the country where the foreign employer is domiciled.

Special conditions for employment of foreigners do not apply to a foreign national who, during his/her stay in Serbia, is engaged in employment for *seasonal jobs*, in accordance with the Law on Simplified Employment in Seasonal Jobs in Certain Economic Sectors[31]. The aforementioned law only regulates work engagements without entering into an employment relationship. More specifically, it refers to migrant workers who were hired for seasonal jobs in agriculture, forestry and fishing, who don't have to have a work permit.

Finally, it should be noted that there are no special programs for low skilled migrant workers or highly skilled migrant workers. Serbia has not entered into agreements that promote and facilitate migration of skilled labour. Therefore, the same rules contained in the Labour Law and the Law on Employment of Foreigners shall apply to all migrant workers, regardless of their education and skills. This means that access to certain labour rights won't depend on the migrant's country of origin, his/her education and occupation, or employment contract type. Migrant workers who have academic qualifications won't get beneficial treatment with regards to recognition of acquired professional qualifications, and, if they need them to work in Serbia, will have to initiate a procedure for recognition of acquired qualifications, in accordance with the Law on National Qualifications Framework in the Republic of Serbia[32], which allows recognition of formal, non-formal and informal education acquired through different forms of education of adults. In this regard, most foreigners who work in Serbia, who have acquired higher education abroad, do not need nostrification of their diplomas in order to obtain a work permit. Namely, recognized foreign qualifications are not a requirement for obtaining a work permit, unless it is for employment in health care institutions. This is a regulated profession, and in order to protect public interest, certain restrictions of the right to work were introduced, and foreign healthcare workers, in addition to the employment requirements that must be met by all foreigners, must meet special requirements determined by the Health Care Law, including temporary license.[33] Furthermore, National

31 *Official Gazette of the RS*, no. 50/18.

32 *Official Gazette of the RS*, no. 27/18 and 6/20, Art. 9.

33 Temporary license is issued to foreign healthcare workers, if they meet the following requirements: 1) that they have received a written invitation from a healthcare institution for temporary or

Assembly of the Republic of Serbia passed the Law on Regulated Professions and Recognition of Professional Qualifications,[34] which entered into force on 26th September 2019, and will be applied from the date of accession of Serbia to the EU.

3. RISK OF LABOUR EXPLOITATION OF MIGRANT WORKERS

Following the outbreak of the epidemic, the public in Serbia was alarmed by the news of a possible exploitation of work of a group of workers from India, whose vulnerable position was used to make a profit, as these workers had no alternative but to continue working in degrading conditions. Their vulnerable position stemmed from their difficult financial situation, and exploitation of their work consisted of violations of their labour rights and other human rights. The case, more precisely, refers to 150 workers from India who were hired to work for a Serbian construction company that participated, as a subcontractor, in the implementation of government capital infrastructure projects, such as the construction of a high-speed railway between Belgrade and Budapest, Corridor 11 and the Cortanovci viaduct.[35] The workers were hired on the basis of contracts signed in their home country with a company based in the US, with a branch in Serbia. The American company (employer) sent these workers to work for their branch – a construction company in Serbia, based on the agreement on business and technical cooperation between the two companies, whereby the owner of the Serbian construction company also served as its Director, and as the Director of the aforementioned US company. From May to July 2019, workers arrived in groups from India, and, depending on the needs of the company, were assigned to work in different places throughout Serbia, prior to which they had their passports confiscated. They were provided with accommodation in prefabricated barracks and small containers, with electricity and water occasionally running out, and food that was often scarce. The working conditions were undignified as well. This is mostly a reference to their wages, as they were partly

occasional performance of healthcare activities; 2) that they possess a license or another suitable document issued by the relevant authority in state in which they have a residence; 3) that they use healthcare technologies used in Serbia, or technologies not used in Serbia that are licensed to be used in Serbia as new healthcare technologies and apply treatment methods and procedures, medicinal products and medical devices in accordance with regulations on healthcare.

34 *Official Gazette of the RS*, no. 66/19.

35 The circumstances of the case have been described in the text "Slučaj radne eksploatacije radnika iz Indije u Srbiji", *https://www.astra.rs/slucaj-radne-eksploatacije-radnika-iz-indije-u-srbiji/*, 3.11.2020.

paid through "cash in hand" payments, with the amount barely enough to meet their basic needs (around 40 Euros a month), while the remaining wages were paid to their families in India, in an effort to avoid banking charges. In addition, the employer had absolute freedom to initiate termination of employment, without any restrictions related to the standards for valid (justified) reasons for termination and right to notice. Also, the employer could impose draconian fines on workers (for example, a fine of four per diems for absenteeism, a fine of 90% of their wages for participating in a strike, or 1.5 times their wages for organizing a strike). In addition to insufficient means for subsistence or funds to return home (employer was not obliged to reimburse the cost of a plane ticket in case of termination of engagement before expiration of the contract), the position of the migrant workers was very delicate because they didn't speak Serbian, and only a few of them spoke basic English.

Following an inspection, the labour inspectorate filed two misdemeanour charges against the company: one for hiring several workers without a work permit (i.e. for failing to apply for such permit) and the other for not having the necessary documentation for workers on the site. However, the labour inspection stated that it wasn't in their jurisdiction to take action regarding undignified working conditions, as these workers were, in accordance with the agreements on basis of which they were hired, subject to US regulations, as the company who sent the workers to Serbia is headquartered there. It took several months for the Ministry of Interior to react to a number of reports that were submitted regarding this case, which resulted in the passports being returned to the migrant workers.[36]

In early 2020, 70 of these migrant workers went on strike, some of them on a hunger strike, demanding that their claims be settled and that they be allowed to return to their home country. Under such pressure, the construction company bought plane tickets to India for 25 workers on strike, but instead of paying their full unpaid wages, paid them only 50 Euros, while the remaining workers were promised that unpaid wages would be paid if they continued to work. The director of the American company and its branch in Serbia rejected all the allegations of the workers, explaining that none of them complained about the accommodation, that the workers initiated termination of employment before

36 S. Dragojlo, "Pod kojim uslovima Indijci grade srpske puteve?", *https://www.istinomer.rs/analize/pod-kojim-uslovima-indijci-grade-srpske-puteve/*, 31.10.2020.

expiration of their contracts, that due wages were paid and that the employer covered the costs of their accommodation, food and health insurance for the duration of their stay in Serbia, even after they terminated their employment. The Director also claimed that the workers on hunger strike would come to the plant every day to eat, and then return to the building of the Municipality of Kraljevo to continue their strike. In her opinion, the workers went on strike because they heard that during the state of emergency which was declared because of COVID-19 epidemic outbreak, minimum wages were paid to everyone in Serbia, and demanded that they be paid the same, even though they had previously initiated termination of their contracts. The case ended with the return of Indian workers to their home country immediately after the re-opening of flights to India, with the employer covering the cost of plane tickets, but not paying the workers all of their due wages.

This case once again highlights the serious challenges that accompany the enjoyment and protection of the rights of migrant workers, and the importance of workers' organizing in order to create pressure that, if strong enough, can stop labour exploitation and help them protect their rights.[37] On the other hand, it is not easy to evaluate the actions of the labour inspection, primarily because we never had insight into the contracts on the basis of which migrant workers were hired and from the data available in the media we cannot conclude with certainty what's the legal nature of these contracts. Some sources say that they were employment contracts, while others indicate they may be independent contractor agreements.[38] Based on available data, it can be indirectly concluded that there were basic elements of the employment relationship between the workers and the employer, primarily legal subordination, expressed in the fact that the employer organized, managed and supervised the work of workers. Also, the employer had the authority to impose fines for certain violations of work obligations and violations of work discipline, and we know that disciplinary prerogative represents a unique form of punishment in private contractual relations, i.e. the prerogative of one of the contracting parties to discipline the other party for improper and negligent performance, immediately after the violation,

37 *Cf.* M. LeVoy, E. Geddie, "Irregular Migration: Challenges, Limits and Remedies", Refugee Survey Quarterly, no. 4/2009, p. 108.

38 M. Reljanović, "Dole suverenitet, živela eksploatacija!", *https://pescanik.net/dole-suverenitet-zivela-eksploatacija/*; L. Marinković, "Radnici iz Indije i Srbija: Jeftina radna snaga za koju ne važe svi srpski zakoni o radu i zapošljavanju stranaca, smatraju stručnjaci", *https://www.bbc.com/serbian/lat/srbija-51401999*, 3.11.2020.

is specific only to the employment contract. Hence, we can conclude that, if the workers were really hired on the basis of a contract that does not establish an employment relationship, this was a matter of false self-employment, i.e. there was room to apply the principle of primacy of facts and establish employment. In this case, just as if they had entered into an employment contract, these workers had to have been provided with the protection enjoyed by all workers working in the territory of Serbia, in accordance with the Law on Employment of Foreign Nationals and the Labour Law, whose application is supervised by the labour inspection. Any other conclusion would have opened the door to a dangerous precedent, according to which employers could reduce labour costs in a relatively comfortable way (by establishing a company in a country with lower protection of workers, which would then send workers from a third country to work in Serbia), without fear of labour inspection applying corrective and repressive measures due to violations of labour rights. Especially because, due to the outflow of labour from Serbia, construction companies find it harder and harder to satisfy their needs for workers amongst its citizens, which is why foreigners are increasingly hired for jobs in this industry. At the same time, it should be noted that employers prefer hiring migrants, precisely because they know that, due to their intense dependence on employers, they can be treated less favourably than Serbian citizens.

4. STATUS OF MIGRANT WORKERS IN TIMES OF COVID-19 EPIDEMIC OUTBREAK

In Serbia, COVID-19 epidemic outbreak was accompanied with many measures of importance for the world of work. The nature and content of these measures reflected different approaches of the state to the epidemic which were on the scale from most relaxed to most restrictive.[39] According to official data, "patient zero" in Serbia was registered on 6 March 2020, and on 15 March 2020 state of exception (state of emergency) was declared in order to suppress the infectious disease, and later the restriction of freedom of movement was introduced.[40] Upon declaration of the state of emergency, a great number of

39 See: I. Krstić, M. Davinić, "Serbia: Legal Response to COVID-19", in: J. King, O. Ferraz (eds), Oxford Compendium of National Legal Responses to COVID-19, *https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e7?rskey=aRhuzH&result=14&prd=OCC19*.

40 Decision on Declaration of the State of Emergency (*Official Gazette of the RS*, no. 29/20). On March 16 2020, the Decree on Measures During the State of Emergency (*Official Gazette of the RS*, no. 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53/20, 56/20, 57/20, 58/20, 60/20

Governmental regulations co-signed by the President of the Republic were adopted. On the basis of these regulations, different measures were introduced as instruments for the functioning of the state and the economy in the context of the epidemic. After more than 50 days, the National Assembly of the Republic of Serbia issued a Decision on lifting the state of emergency, effective as of 6 May 2020.

Upon declaration of the state of emergency, important measures to ease the situation of migrant workers regarding their temporary residence and work permits were adopted. Namely, the Directorate for Administrative Affairs within the Ministry of Interior did not receive any requests for the extension of personal documents. All expiring personal documents of Serbian citizens were considered valid while the Decision on Declaration of the State of Emergency was in force. This also applied to all foreign nationals who needed to extend temporary residence in the Republic of Serbia. On the other hand, a work permit issued to foreigners under the Law on Employment of Foreigners, which has expired or was due to expire during the state of emergency, was deemed valid while the Decision on Declaration of the State of Emergency and/or the Decision Concerning the Validity of Work Permits Issued to Foreigners During the State of Emergency[41] were in force. More precisely, it was not necessary to reapply for temporary residence and work permits should they expire during the state of emergency, as they were deemed valid under the Government Decision. Among much else, this was very important for laid-off migrant workers who would otherwise confront the expiration of their work permits and the risk of being unable to return to their families.[42] Also, in accordance with ILO Convention

and 126/20) introduced the ban on transportation of passengers by air and by road. Three days later, Decision on Closing All Border Crossings for Entry into the Republic of Serbia (*Official Gazette of the RS*, no. 7/20) stipulated an entry ban on all foreign citizens, as well as mandatory referral to isolation after entry for domestic citizens and foreign citizens who had been granted temporary or permanent residence in Serbia. Since 21 May 2020, border crossings have been reopened, while the Government only changed the regime for passengers entering from countries with a high level of risk. However, the Government decided that all foreign passengers arriving into Serbia will need to have a negative RT-PCR test for SARS CoV-2, while citizens can have either a negative test, or undergo a mandatory quarantine.

41 *Official Gazette of the RS*, no. 43/20.

42 *COVID-19 and World of Work: Impacts and Responses*, 2020, 9. Like other workers in Serbia, foreigners who were fired due to the economic consequences caused by the epidemic are entitled to unemployment benefits, if they have had insurance for 12 months. The same applies to foreigners who lost their jobs unwillingly and through no fault of their own, provided that they are registered by the NES, actively seek employment, have a valid work permit and a temporary or

No.143, which is ratified by Serbia, migrant workers who have resided legally in the territory for the purpose of employment, shall not be regarded as being in irregular situation for the mere fact that they have lost their employment as a result of the economic impact of COVID-19, i.e. the loss of employment does not in itself imply the withdrawal of the authorization of residence or the work permit.[43]

The Decision on Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia is also very important for the position of migrant workers.[44] It restricted movement of asylum seekers and irregular migrants, and increased supervision and security in 17 asylum and reception centres, guarded by the Serbian Army, which, according to the Commissioner for Refugees, at the time of the declaration of the state of emergency, held around 6,000 migrants.[45] Leaving the facilities was allowed only in exceptional and justified cases (e.g. provision of health care), with a special, time-limited permit from the Commissariat for Refugees and Migration. Regarding the measures introduced by this Decision, the civil society organisation "Initiative for Economic and Social Rights A11" filed a complaint with the Commissioner for Protection of Equality against the Government for discrimination against refugees, migrants and asylum seekers based on legal status, origin and place of residence, by explaining that anyone can be a carrier of the corona virus, that there are no confirmed cases of the virus among the population of refugees, migrants and asylum seekers, and that the persons in this category living in private accommodation are not subject to any special movement restrictions.[46] The Commissioner for Protection of

permanent residence on the territory of Serbia. In this regard, it's justified to ask if foreigners can in fact meet the requirements for unemployment benefits, since they are obliged, after expiration of their temporary residence and their work permits, to leave Serbia within 15 days from the date of expiration of temporary residence.

43 ILO Migrant Workers Convention, 1975 (No.143), Art. 8, par. 1.

44 *Official Gazette of the RS*, no. 32/2020.

45 In a statement to the media, the Commissioner for Refugees welcomed the Decision, explaining that it has "the force of a directive and gives the opportunity to treat differently those who are not in the centers at the moment but will certainly be collected and referred to the centers, or assembly points, where they will be examined and triaged within the overall set of measures to prevent the spread of the virus". "Privremeno ograničeno kretanje azilanata i migranata", *https://www.rtv.rs/sr_lat/drustvo/privremeno-ograniceno-kretanja-azilanata-i-migranata_1103573.html*, 2.11.2020.

46 Acc. to: "Izbeglice, tražioci azila i migranti nezakonito i arbitrarno lišeni slobode na osnovu diskriminatornih kriterijuma", *https://www.a11initiative.org/izbeglice-trazioci-azila-i-migranti-nezakonito-i-arbitrarno-liseni-slobode-na-osnovu-diskriminatornih-kriterijuma/*, 1.11.2020.

Equality requested from the plaintiff amendments to the case, but did not decide on it, as her mandate expired on 26 May 2020, and was only renewed on 26 November 2020. This was a consequence of a failure to elect the new Commissioner in a timely manner and prior to parliamentary elections. The state of emergency further contributed to this delay. Consequently, the institution of the Commissioner, handled only current operational tasks of receiving and filing complaints, but the handling of complaints could not be completed until the new commissioner takes office. Finally, this means that, for six months, there has been no possibility for protection against discrimination before this independent controlling institution.

When it comes to the issue of enjoyment and protection of labour rights during the epidemic, migrant workers enjoy the same rights and protections as other workers in the Serbia. However, *adverse effects of the epidemic crisis are not distributed equally*. They are being felt most by those who already belong to *the most vulnerable groups such as the working poor and informal workers*, who are usually overrepresented among migrant workers.[47] Namely, epidemic crisis is resulting in the deterioration of working conditions that are already exploitative, moving migrant workers further along the vulnerable situation. This is especially true for *migrant workers who work in the informal economy*, i.e. perform paid work that is not declared, regulated or protected in accordance with applicable laws, as well as unpaid work in an income generating business, which in particular refers to work without an employment contract or other legal basis as well as failure to exercise (individual and collective) labour rights, and social security rights. We should also bear in mind that, unlike the countries in the region, Serbia has not adopted any measures aimed at supporting the workers in the informal economy.[48] This jeopardized their position, as many of them were left without means of subsistence, and we can safely assume that a large number of migrant workers who worked in the informal sector during the epidemic were deprived of adequate health and safety at work, due to the efforts of their employers to reduce labour costs and the fear of workers that they will face retaliation from

47 *Issue Paper on COVID-19 and Fundamental Principles and Rights at Work*, 2020, 11; V. Escudero, H. Liepmann, *Delivering Income and Employment Support in Times of COVID-19: Integrating Cash Transfers with Active Labour Market Policies,* 2020, 1.

48 S. Bradaš, M. Reljanović, I. Sekulović, *The Impact of the COVID-19 Epidemic on the Position and Rights of Workers in Serbia with Particular Reference to the Frontline and Informal Workers and Multiply Affected Workers Categories*, 2020, 42-43.

the employer if they request appropriate protective equipment or initiate proceedings for protection of their labour rights.

It is important to take into account the fact that under the obligation to adopt all possible measures to ensure occupational health and safety, employers in Serbia were obliged to enable employees to work outside the premises of the employer (work from home and telework), for all jobs where such work can be organised in accordance with the collective agreement, labour rulebook and employment contract.[49] However, this prerequisite was fulfilled in very few cases, because prior to the epidemic, many employers were hesitant to organize remote working, primarily for reasons of lack of their controlling prerogatives or stereotypes concerning reduced levels of commitment of workers working from home.[50] If not provided for in the aforementioned legal acts, an employer could render a decision allowing an employee to perform activities outside the employer's premises, if one unclearly defined criterion was fulfilled ("if the organisational conditions so permit").[51] In both cases, it was unclear what was the role of the consent of an employee in transferring to teleworking, i.e. it was unclear whether employees were subjected to an order from their employer to perform their duties from home, were they required to agree with it, at least with implicit consent, and were they entitled to the right to work from home to protect their health. Moreover, Government failed to develop a legal standard on how to supervise the work of an employee working from home and working remotely. Also, it was not clear whether or not workers had to have the proper equipment and space for teleworking, and many employers burdened their employees with costs that should've normally been borne by the employer. On the other hand, for an employer whose activity is of such nature that it is not possible to organise work outside the premises of the employer, there was an obligation to arrange shift work, to implement measures related to the hygienic safety of facilities and to provide sufficient quantities of protective equipment

49 Decree on the Organisation of Operations of Employers during the State of Emergency (*Official Gazette of the RS*, no. 31/2020).

50 *Cf.*: O. Vargas-Llave, I. Mandl, T. Weber, Mathijn Wilkens, *Telework and ICT-based Mobile Work: Flexible Working in the Digital Age*, 2020, 42; D. Mangan, E. Gramano, M. Kullmann, "An Unprecedented Social Solidarity Stress Test", European Labour Law Journal, no. 3/2020, 258.

51 According to official data, in 2019 in Serbia 133,927 workers worked from home. There is still no official data regarding the number of employees who, due to the epidemic, were asked to work away from the employer's premises. One recent analysis shows that in the majority of sectors work from home was impossible to organize, mostly due to the nature of the work. S. Bradaš, M. Reljanović, I. Sekulović, 36.

for employees. However, Government did not specify the maximum number of persons per shift nor the amount of protective equipment deemed sufficient for use by employees and other workers.[52]

For employers whose activities were intensively limited or forbidden during the state of emergency, the interruption of business operations had resulted in termination of temporary agency workers employment contracts as well as of civil and business law contracts on the basis of which many migrant workers were engaged without having the status of employees. Also, epidemic crisis caused termination of employment and unpaid leave in industries especially affected by the crisis: according to official figures, about 15,000 people lost their jobs from March to mid-June 2020.[53] With many of them, an agreement for termination of employment was concluded in order to circumvent the obligations deriving from the rules on collective redundancy (social program, notice period, severance payments, etc). On the other hand it was unclear how would the employees, whose employment contracts were terminated as a result of redundancy, be able to register with the NES, because the work of this institution was suspended.

Greater number of dismissals was limited via regulations providing benefits for employers that did not decrease the number of employees for more than 10% from the date of declaration of the state of emergency. This financial incentive for job retention was introduced in favour of all employees, including migrant workers.[54] However, these measures were introduced very late, since the first wave of dismissals marked the period immediately after the state of emergency was declared. On the other hand, there is a risk of some enterprises burdened by financial problems in the aftermath of the crisis, dismissing their workers or

52 I. Sekulović, *The COVID-19 Epidemic and Serbian Labour Rights*, 2020, pp. 4-5.

53 Acc. to: "Serbia: Lower Wages and More Layoffs", *Collective Bargaining*, no. 6/2020.

54 Serbian Government passed the Regulation on Fiscal Benefits and Direct Aid to Businesses in the Private Sector and Financial Aid to Citizens to Mitigate the Economic Impact of COVID-19 (*Official Gazette of the RS*, No. 54/20 and 60/20), which allowed postponement of payment of wage taxes and social security contributions incurred during the state of emergency until the end of 2020. As of January 2021 the businesses have an option to further postpone the payment of taxes and contributions by another 24 months with no interest. Regulation also stipulates employment retention measures, such as: a) all entrepreneurs and micro and small enterprises are entitled to grants in the amount equivalent to one minimum wage per employee (250 EUR/month), for each of the three months of duration of the state of emergency, provided that they haven't dismissed more than 10% of their employees; b) all large private enterprises who have been in position to refer the employees to the leave due to the discontinuation of work or work decrease during the state of emergency, can be granted upon request, compensation equivalent to the 50% of minimum monthly wages of the employees.

even relaxing their labour standards or being pushed into the informal economy, where it is easier to breach the rights of migrant workers.[55]

During the state of emergency, legal insecurity had been increased due to certain contradictory solutions contained in the Government acts, and the lack of activity of the competent authorities in further protecting the workers, or at least, timely notifying employers and their employees of their rights and obligations during the state of emergency. This problem was even more pronounced for migrant workers due to the *lack of information on Government measures during the state of emergency, as they weren't officially translated into languages that migrants understand* or made available in all collective accommodation facilities.[56]

On the other hand, social partners were not consulted in the process of designing the anti-crisis measures. A climate of trust, built through social dialogue and tripartism, could be essential in the effective implementation of measures to address the COVID-19 outbreak and its impacts.[57] In that sense, social dialogue at enterprise level is critical, as workers need to be kept informed, consulted and kept aware both as regards the impact on their own conditions of employment and as to the steps they can take for their own protection. All the more so due to the fact that the social partnership in Serbia is underdeveloped and access to social justice is difficult, because, among other things, labour inspection is burdened with numerous problems, the most significant of which is the low number and insufficient training of inspectors. A contributing factor is also the unclear structure of the inspectors' jurisdiction, which often results in cases being designated as outside of their jurisdiction. On the other hand, most of the labour disputes are solved before the courts general jurisdiction,

55 This is especially true for employers in wholesale and retail trade, accommodation, transport, food and beverages, service activities, forestry and logging, and crop and animal production, as sectors at high risk in terms of employment impacts in which workers are severely affected. Jobs that were curtailed only temporarily during the lockdown are increasingly at risk, as the health crisis continues. Over 700,000 workers in these sectors are at immediate risk because of the characteristics of their job (*COVID-19 and the World of Work: Serbia. Rapid Assessment of the Employment Impacts and Policy Responses*, 2020, 34).

56 M. Pajvančić *et al.*, *Gender Analysis of COVID-19 Response in the Republic of Serbia*, 2020, 25. This requirement is confirmed in the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86), par. 5 (2). It is also in line with the WHO Considerations for Public Health and Social Measures in the Workplace in the Context of COVID-19 (Annex to Considerations in adjusting public health and social measures in the context of COVID-19), which asks that special attention be paid to reaching out to and engaging vulnerable and marginalized groups of workers, such as those in the informal economy and migrant workers.

57 *ILO Standards and COVID-19 (coronavirus)*, 2020 - Version 2.1, 7.

in lawsuits that last around four years on average, while the potential that the peaceful settlement of labour disputes can have on establishing and maintaining social peace is not being used nearly enough.

It seems difficult at this moment in time to assess the long-term impact of the epidemic on employment of migrant workers in the Republic of Serbia. However, bearing in mind that the number of foreigners employed in the Republic of Serbia is not particularly large in relation to the total number of employees, it is safe to assume that the reduction in the number of foreign workers, resulting from the outbreak, will not significantly affect the domestic labour market. On the other hand, the idea of helping a large number of Serbian nationals - *returnee circular and seasonal workers* with incentives to stay and work in Serbia (later refined to include all those who will not be able to move for temporary work outside Serbia last year), appears to have been dropped.[58] It would still be important to design some incentives for all those Serbian nationals who had work permits in a foreign country, since they are a mostly vulnerable population whose number is estimated by the ILO experts to be in the range of 150,000 potential migrants.[59]

58 *COVID-19 and the World of Work*, 48.

59 *Ibid*.