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## **PERSPECTIVES OF THE RIGHT TO STRIKE IN THE REPUBLIC OF SERBIA**

The right to strike is not an absolute right in terms of the Constitution of Serbia, however, its dimensions are determined by a constitutional provision which prescribes it as an employee right regulated either in compliance with the provisions of the law dealing with the right to strike or by a collective contract. Although the right to strike today belongs to the body of basic human rights, under certain circumstances it can be prohibited or limited by an obligation to fulfil certain conditions. A general prohibition of strikes would contravene the principles of the freedom of association. However, even the international labour standards allow the possibility to either prohibit or limit the right to strike for a certain set of employees. National legislations are obliged to adjust their internal needs to limit the right to strike so as to comply with the international norms. Any venture beyond the framework of internationally recognised conditions for the limitation of strike can become its opposite, a restriction on the rights of employees to exercise and protect their socio-economic rights to organise a (lawful) strike.

### **1. Introduction**

Observing from a purely theoretical point of view, considering the existence of the current law on labour, institutions dedicated to preserving safety and protection at work, organisations for peaceful settlement of labour disputes, inspectorates, or the Socio-Economic Council, one might get the impression that in this

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context strike is a “museum piece”, a relict of the past with no rational need for continued existence. In practice, due to the gravity of the economic and social crisis, problems with new company owners, negative effects of the global economic crisis, excessive indebtedness, *etc.*, employees frequently resort to radical steps aiming to protect their rights. Because of that, the wave of new strikes increasingly resembles social rebellion. When reviewing the current and prospective industrial relations in Serbia, we should take into account another common characteristic of mutual interconnectedness and conditionality of industrial relations and social environment – the fact that industrial relations to a great extent mirror the overall political, economic and social state of the society. Many issues and phenomena in the political and economic sphere, which can be concealed or at least embellished in other areas of life, mainly politics, inevitably come to surface in industrial relations. In other words, a suitable adage that applies to these matters is – *tell me about the industrial relations of the society and I shall tell you what kind of society you live in.*

## 2. The notion of a strike

The term “*strajk*” in Serbian language derives from the English term “strike”, which itself appeared (in the sense of ceasing work) near the end of the eighteenth century and in the beginning was an illegal practice of solving collective labour disputes, which resulted in criminal and civil liability for those who participated in strike<sup>1</sup>. With the recognition of the right to form trade unions and the collective bargaining rights, the first necessary step was the abolition of criminal, and later civil and pecuniary liability for participation in strike<sup>2</sup>. In the wake of the freedom to strike came the recognition of the right to strike, which was eventually elevated to the rank of a constitutional right, and today, in the international instruments on human rights, the right to strike is classified within the body of fundamental human rights.

Today, the right to strike is regarded as a basic social right of workers and their organisations enabling them to promote and defend their economic and social interests, and in this sense it ranks among such fundamental rights as the right to work, right to own property, or the freedom of entrepreneurship. At international level, it is explicitly or implicitly recognised in international treaties, both

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<sup>1</sup> For example, in France, The Le Chapelier Law of 1791 characterised the strike as a crime of conspiracy, which was rationalised by the individualist philosophy of liberalism. See more in: N. Communod, M. Feron, *Le nouveau droit de la législation sociale*, Paris 1983, p. 248.

<sup>2</sup> Thus, for example, in Italy in 1889, after the abolition of criminal sanctions for strikes, strikes qualified as a breach of employment contract, i.e. obligation to perform at work, in terms of civil law. See: T. Treu, *Labour Law and Industrial Relations in Italy*, The Netherlands: Kluwer, 2007, p. 22.

universal and regional, and in national legislations it is explicitly or implicitly recognised on the constitutional level. Thus, the right to strike is explicitly recognised by the constitutions of France, Sweden, Spain, Serbia, Montenegro, and it is implicitly recognised constitutionally in Germany, Belgium and Luxembourg, while in the UK, Denmark and Austria one can speak of the freedom to strike, but not the right to strike<sup>3</sup>.

Thus, different definitions of strike result from the differences in terms of the concept of the right to strike, as well as the differences regarding the object and purpose of strike which can be understood in a narrow or a broader sense.

In the labour law theory in Serbia, there are several definitions of strike. Most often the term strike refers to a temporary collective termination of work by employees in order to exert pressure on the employer to comply with workers' demands in the subject matters of the dispute<sup>4</sup>. In addition to this one, there are other, very similar definitions of strike. For example, strike represents an industrial or aggressive action to resolve a collective labour dispute or to protect social and economic rights<sup>5</sup>, or strike represents a collective work stoppage by employees in order to exert economic pressure on the employer or the state, regarding the economic or social interests and rights of workers or the collective rights of trade unions<sup>6</sup>; or strike represents an organised action to exert economic or other pressure on the employer, enhanced by work stoppage, in order to increase the employer's tolerance towards the demands of the strikers<sup>7</sup>. As a rule, strike is a means of workers struggle to achieve their work-related and economic goals.

Of all the methods of industrial action designed to resolve collective labour disputes, the state has primarily focused on strike and, in some countries, comprehensively institutionalised it, which means that strike can only be used within the established legal rules, whether the same are laid down through the laws, by-laws, or court decisions. Only lawful strikes are permissible means of labour struggle that do not entail negative consequences for its organisers and participants.

### 3. The concept of the right to strike in international law

Winston Churchill presented his vision of Europe in Zurich in 1946, and the first step towards this vision was the establishment of the Council of Europe. The Council of Europe was founded in 1949, and the preamble of the treaty

<sup>3</sup> B. Bercusson, *European Labour Law*, Cambridge University Press, 2009, p. 328.

<sup>4</sup> A. Baltić, M. Despotović, *Osnovi radnog prava Jugoslavije [Foundations of Labor Law in Yugoslavia]*, Belgrade 1978, p. 323.

<sup>5</sup> P. Jovanović, *Radno pravo [Labor Law]*, Novi Sad 2012, p. 391.

<sup>6</sup> B. Lubarda, *Leksikon industrijskih odnosa [Lexicon of Industrial Relations]*, Belgrade 1997, p. 190.

<sup>7</sup> Ž. Kulić, *Kolektivni radni sporovi [Collective Labor Disputes]*, Belgrade 2001, p. 200.

establishing it refers to the proclamation of certain principles, and in particular the following: the quest for peace through international cooperation and the moral inheritance of the European citizens, political freedoms and the rule of law. Article 1 of the Treaty Establishing the Council of Europe states that the aim of the Council of Europe is to consider issues of common interest and take certain actions on the economic, social, cultural and administrative level, as well as preserve and exercise human rights as well as fundamental freedoms<sup>8</sup>.

The Council of Europe could influence the European labour standards via two instruments. The first was the European Convention on Human Rights of 1950, and the second was the European Social Charter of 1961, which explicitly recognises the right to strike. Unlike the convention, the charter is little known and often ignored in practice<sup>9</sup>. Although the European Social Charter did proclaim the right to strike, its provisions on the control of this right were insufficient<sup>10</sup>. In terms of EU legislation, neither the freedom of association, nor the right to strike are explicitly protected. In other words, this means that the European Court of Justice has neither a particular role in this area, nor the power to act similarly to the Committee for Trade Union Freedom of the International Labour Organisation. This leaves the right to strike for the most part in the competence of the Member States to regulate its protection, respecting the principle of market integration<sup>11</sup>. Therefore, one can only conclude that, predominantly for economic reasons, especially due to the effects that strike has on competition, the right to strike has not been properly regulated in European law<sup>12</sup>.

On the other hand, the ILO has regulated the right to strike indirectly, through conventions collectively known as the Conventions on Freedom of Association<sup>13</sup>. Considering the fact that the provisions of these conventions are quite general, and that they do not explicitly recognise the right to strike, the claim of implicit recognition of the right to strike came about by a broader interpretation of international labour standards contained in these conventions<sup>14</sup>.

<sup>8</sup> T. Novitz, *International and European Protection of the Right to Strike*, Oxford 2003, p. 127.

<sup>9</sup> B. Hepple, *Labour Laws and Global Trade*, Hart Publishing, Oxford and Portland Oregon, 2005, p. 197.

<sup>10</sup> *Ibid.*

<sup>11</sup> B. Urdarević, *Definisanje prava na štrajk u međunarodnom i evropskom pravu [Defining the Right to Strike in International and European Law]*, Pravna riječ [Legal World – a journal for legal theory and practice], Banja Luka 2004, p. 554.

<sup>12</sup> See more: B. Lubarda, *Konkurencija u radnom pravu*, [Competition in Labor Law], “Pravo i privreda” [“Law and Economy”], No. 5–8/2002, p. 897–902.

<sup>13</sup> They include: Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948); Convention No. 98 on Right to Organise and Collective Bargaining (1949); Convention No. 151 on Freedom of Association and the procedures for determining conditions of work in the public sector (1978) and Convention No. 154 on Collective Bargaining (1981). See more: D. Paravina, *Međusobna uslovljenost obaveza i prava iz radnog odnosa [Mutual Dependence of Obligations and Rights in Employment]*, “Časopis za radno i socijalno pravo” [“Journal of Labor and Social Law”], Belgrade, No. 3–6/1998, p. 22.

<sup>14</sup> B. Lubarda, *Radno pravo – rasprava o dostojanstvu na radu i socijalnom dijalogu [Labor Law – a Discussion on Dignity at Work and Social Dialogue]*, Belgrade 2012, p. 995.

However, in 1998, the International Labour Organisation finally adopted the Declaration on Fundamental Principles and Rights at Work to uphold the “fundamental principles at work” or the “basic rights at work” which include: freedom of association and the effective recognition of the collective bargaining right, elimination of all forms of forced or compulsory labour, effective abolition of child labour, and elimination of discrimination in terms of employment and occupation. The Declaration was adopted unanimously, nevertheless the question arises whether this proves to be the beginning or the end of labour standards. It is also debatable whether the Declaration has any positive long-term effects on work and labour standards, except that it provided a perfect route for the United States to escape from the problem of not having ratified the key conventions herself, while applying sanctions in her domestic legislation and seeking them against other countries for their violations of core labour standards<sup>15</sup>. Two basic problems with the Declaration seem to arise. Firstly, the preamble to the Declaration on Human Rights adopted by the United Nations in 1948 declares that all human beings are born with equal and inalienable rights and, therefore, the mere division and classification into fundamental or essential standards implies that standards which are “less fundamental” or “less essential” also exist. What is the logic behind the claim that the elimination of discrimination is more important than the right to have social insurance, safe working conditions, maternity leave, *etc.*? What does the guarantee of the freedom of association represent without a range of socio-economic rights to put this freedom into practice<sup>16</sup>? Secondly, the Declaration on the Fundamental Principles and Rights at Work considerably neglects workers’ actual economic and social rights and mainly deals with the negative aspects of some rights. For instance, individuals, groups and states are requested to “prohibit” discrimination, “abolish” forced labour and “eliminate” child labour.

Brought to the foreground is the issue why it was necessary for the International Labour Organisation to adopt such a Declaration, considering its very limited range of impact. If the goal had been to force states to take on its obligations without the act of ratification and prove that universality is still its characteristic, it failed to accomplish this. It is well-known that the mere act of ratification does not necessarily entail the application of provisions of the convention. In fact, recent studies have indicated little evidence of statistical correlations between ratifications of ILO conventions and actual working conditions. Grave violations of the International Labour Organisation’s norms also include acts of non-abiding by the basic principles and fundamental conventions, which are nowadays considered basic rights at work. By accepting the organisation’s Constitution all ILO member states have committed themselves to respect, promote and realise the con-

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<sup>15</sup> P. Alston, *Core Labour Standards and the Transformation of the International Labour Rights Regime*, “European Journal of International Law” 2004, Vol. 15, No. 3, p. 467.

<sup>16</sup> See more in: B. Urdarević, *Creation and Development of International Labour Standards, New Perspectives of South East European Private Law*, Skopje 2012, p. 139–150.

ventions in good faith, regardless of their ratification. In a large number of cases it is the fundamental provisions that are violated, mostly through non-recognition of Union rights, discrimination, harassment, persecution and political campaigns against union members, existence of forced labour and extensive use of child labour. The social standards are not met, and this thesis is supported by the high numbers of unemployed and inadequately employed workers, low or unpaid wages, minimum social security of the population as a whole, high percentage of injuries in the workplace, occupational diseases and other deficiencies in what the International Labour Organisation called “decent work”<sup>17</sup>.

#### **4. Legal aspects of the right to strike in the Republic of Serbia**

If the right to strike is viewed in terms of its role in collective bargaining it is often seen as a collective right to be exercised by trade unions<sup>18</sup>. This, however, assumes that the trade unions are sufficiently representative of all the parts of the workforce that may wish to take industrial action, or that there are no insuperable barriers to a swift formation of a trade union by workers in order to exercise such a right effectively, should they wish to do so. Where these conditions are not met, or if the right to strike is regarded as a legitimate means of voicing political protest, then it may make more sense to regard this as an individual right linked to a person’s conscience. After all, different States have taken different views on this matter. Germany, for example, treats the right to strike solely as a collective right to be exercised by trade unions for collective bargaining purposes. Italy, on the other hand, recognises workers’ entitlement to have protest strikes in matters concerning economic and social policy.

As a consequence of an insufficient development of collective bargaining and unharmonised jurisprudence, principally it is the laws that regulate the right to strike and are the main source of this right. The primary legal document that regulates the right to strike in Serbia is the Law on Strike (1996). Article 1 of the Law on Strike defines strike as a disruption of work process, organised by employees in order to protect their professional and economic interests based on employment. Such a definition has its consequences. Firstly, the types of work-related interests of employees that can lead to a strike are not specified. Secondly, the extent of violation is determined in the broadest possible way, so that even a strike organised due to a one-day delay in payment of wages can be considered legal. The third, and probably the most significant, issue is the concept of strike as an employee right in light of the Constitution of Republic of Serbia. In terms of Art. 3

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<sup>17</sup> International Labour Organisation, Reducing the decent work deficit: A global challenge, last modified January 23, 2010, [http://www.ilo.org/public/english/employment/recon/eiip/download/dw\\_deficit.pdf](http://www.ilo.org/public/english/employment/recon/eiip/download/dw_deficit.pdf).

<sup>18</sup> T. Novitz, *op. cit.*, p. 275.

of the Law on Strike, the majority of employees and trade unions are entitled to strike or to organise token strikes against the employer, whereas a strike within an industry or trade, as well as general strike, are exclusive rights of trade unions. Such legal provisions grant ample rights to organise strikes, placing Serbia in the group of countries that allow both employees and trade unions to organise strikes<sup>19</sup>.

Although this broad legal freedom to organise strikes appears to be an employee privilege, in practice it leads to a culmination of senseless strikes with no chance of success. Unfortunately, there is no information on the number of strikes in Serbia, mainly because no state agency or ministry keeps such records. Some information is available on the most representative trade unions' web sites, but it is only limited to the strikes organised by those unions themselves. Therefore, records of any strikes organised by the majority of employees working for the same employer, who are not members of a trade union, indeed are a contentious issue<sup>20</sup>.

The new Law on Strike, now being drafted (June 2014), was expected to establish an acceptable level of social dialogue in the Republic Serbia, as well as to regulate strike in a manner which is modern and acceptable to social partners, after almost 20 years. Instead, only few corrections have been made along with some terminological clarifications, with very few substantial changes. For example, Art. 2 of the Draft Law on Strike defines a strike as a work stoppage by employees, aimed at exercising and protecting their socio-economic interests and rights at work and based on employment. In addition, Art. 8 envisages that the decision to go on strike is made either by the responsible body of the trade union or the majority of employees working for the same employer. Therefore, we may agree that the definition of the right to strike is more precise in the Draft Law on Strike compared to the former legislation, and that strikers' autonomy is partly restricted in terms of deciding on why and how they stage a strike. However, the concept of strike as a right of the majority of employees and trade unions still remains.

The key question that is still very relevant, and solutions to which vary from state to state, is whether only trade unions, only employees or both have the right to strike<sup>21</sup>.

If we take a brief look at the revised European Social Charter, particularly Part II Article 6 Item 4, we will notice that both workers and employers have a guaranteed right to take collective action in case of a conflict of interests, including the right to strike, in compliance with the obligations that may arise from

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<sup>19</sup> The latest draft of the Law on Strike, scheduled for parliamentary proceedings in late June 2014, contains no conceptual changes, defining strike more precisely. In fact, Art. 2 of the Draft Law on Strike, defines strike as employees' work stoppage aimed at exercising and protection of their economic and social interests, workers' rights and the rights based on employment.

<sup>20</sup> <http://www.sindikats.rs/protesti.html> the SSSS link on the number of strikes [5.08.2014].

<sup>21</sup> O. Kahn-Freund, *The Right to Strike: Its Scope and Limitations*, Council of Europe, Strasbourg 1974, p. 5.



previously concluded collective contracts<sup>22</sup>. This further implies that the right to strike must be understood as an individual right of all workers, and not only of those who are trade union members. That is exactly why the European Committee for Social Rights has taken a clear standpoint in its conclusion that every state which limits the right to strike by allowing only trade unions to organise a strike is actually in breach of the European Social Charter<sup>23</sup>.

Despite the significant influence of the EU *acquis communautaire* on national legislations, it is still not possible to say that Serbian labour legislation is “harmonised” with the EU regulations, but rather that it is a case of a lesser or greater extent of initial harmonisation<sup>24</sup>. The same goes for legislation governing the right to strike. Transition in Serbia is remarkably conflictive. The conflictive nature of the transition processes in Serbia is manifested, *inter alia*, by the increased number of conflicts in the area of work, usually taking more radical forms – strikes, protests, demonstrations in front of state or local authorities’ buildings, roads and railroads blockades, self-inflicted injuries, *etc.* At the same time, the effectiveness of solving industrial and social conflicts is obviously decreasing. This inefficiency of resolving disputes by use of violence is a warning factor to all stakeholders – employers, trade unions and the political establishment, pointing to a very high price paid by everyone, reminding them that their relations cannot be built on escalating the conflict, but rather on mechanisms of peaceful dispute settlement based on the idea of social peace. Serbia today can waste no time to initiate an intensive, dynamic and systematic process of harmonisation of labour and social legislation, also in the areas that relate to the mechanisms, instruments and the real functioning of social dialogue. This process includes two important and mutually related aspects: internal harmonisation, when it comes to harmonisation of the existing and new laws in Serbia, and external harmonisation related to international standards, especially the ones of the ILO and European Union.

## 5. The right to strike in the practice of serbian courts

The legal system developed in the Republic of Serbia belongs to the continental European category. Most of the legally relevant relations are regulated by the norms passed by legislative and executive bodies in the form of laws and other general regulations. In line with the principle of division of powers estab-

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<sup>22</sup> <http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/escrbooklet/SerbCyrillic.pdf> [21.08.2014].

<sup>23</sup> ECSR, Conclusions I, 185; Conclusions II, 28–9; Conclusions IV, 48–51; Conclusions VIII, 96, Conclusions XIII–1, 155–6; Conclusions XIV–1, 301.

<sup>24</sup> S. Jašarević, *Harmonizacija prava i prakse u oblasti participacije zaposlenih – Srbija i EU* [*Harmonisation of rights and practice in the area of participation of employees – Serbia and EU*], “Zbornik radova Pravnog fakulteta Novi Sad” [“Proceedings of the Faculty of Law in Novi Sad”] 2011, Vol. 45, No. 3, p. 380.



lished by the constitution, courts are obliged to consistently apply the general rules. Judges are expected to apply the law, and not to create it. In other words, case law is not considered a formal source of law. However, in reality, courts have always had a much more significant role in the process of shaping the legal system. It ranged from very broad interpretations of legal rules to creating individual rules that filled the gaps in the law, even to the point of creating general legal rules<sup>25</sup>.

Regarding the exercise of the right to strike, the Constitutional Court of Serbia has the most significant role. This court has, *inter alia*, ruled in cases dealing with restricting the right to strike to certain professional groups. One such case was the Bylaw on Strike of Police Officers<sup>26</sup> which envisaged the minimum of the working process to be provided by at least 90% police officers employed in the organisational unit in which the work stoppage is organised for 30 minutes at the maximum. The request to judge whether the Bylaw on Strike of Police Officers complies with the Constitution and the law (constitutionality and legality) was brought forward to the Constitutional court by the Independent Police Trade Union from Belgrade, the Branch Trade Union of a Administration, Judiciary and Police Employees *Nezavisnost* and the Police Trade Union of Serbia. When judging the constitutionality and legality of the Bylaw, the Constitutional Court determined that the Government had transgressed its constitutional and legal powers by stipulating relations which are under the purview of the legislative authority. The explanatory note to the Decision on the Bylaw's Noncompliance with the Constitution or the Law refers to Art. 61 of the Constitution of Serbia which reads that it "guarantees the employees the right to strike, in compliance with the law and collective contracts". The Constitution stipulates that the right to strike can be restricted only by law, depending on the nature and type of activity; therefore the bylaw, as a regulation governing the implementation of the law, cannot regulate the conditions for exercising the right to strike<sup>27</sup>. By the provision of Art. 135 of the Law on Police, which stipulates the possibility of exercising this right and defines its limitations, the Government is not permitted to further regulate the relations in this field. Considering these facts, the Constitutional Court found that the Government, by enacting the Bylaw challenged, had overstepped its constitutional and legal mandate by regulating the relations which are under the purview of the legislative authority. The Constitutional Court also based this standpoint on the provision of the European Convention for the Protection of

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<sup>25</sup> D. Nikolić, *Elementi sudskog prava u pravnom sistemu Srbije i EU* [Elements of judicial law in legal system of Serbia and EU], "Zbornik Matice srpske za društvene nauke" ["Collection of Matica Srpska for Social Sciences"], Vol. 126, Novi Sad 2009, p. 7.

<sup>26</sup> "Bylaw on Strike of Police Officers", No. 110-4534/2007 ["Official Gazette of the RS", No. 71/07].

<sup>27</sup> D. Stevandić, *Уредбе о правном поретку Србије* [Bylaws in the legal system of the Republic of Serbia], "Pravni zapisi – casopis Pravnog fakulteta Univerziteta Union", Vol. 3, No. 2, Belgrade 2012, p. 422.

Human Rights and Fundamental Freedoms, which allows the signatory states to legitimately restrict the right to freedom of gathering and association to certain categories of employees, such as army officers, police officers and civil servants. However, restrictions are legal only if certain conditions are met, the first one being that the restrictions are prescribed by the law.

Nevertheless, the most significant decision of the Constitutional Court of Serbia is the granting of the right to strike to civil servants. The Constitutional Court judged the constitutionality of Article 18 Item 1 of the Law on Strike, in terms of which civil servants, after being proved to have either organised a strike or participated in one, shall have their employment contract terminated. In the proceedings, the Constitutional Court found that the Law on Strike had been passed based on the then valid Constitution of the Federal Republic of Yugoslavia, which envisaged that: employees have the right to strike in order to protect their work-related and economic interests, in compliance with the federal laws; that the right to strike can be limited by provisions of the federal law, in cases when the nature of activity or public interest so requires; that public administration employees have no right to strike. Since the effectiveness of the Constitutional Charter of Serbia and Montenegro State Union<sup>28</sup>, this law continued to be applied as a republic level law, based on Article 64 Item 2 of the Constitutional Charter. The Constitutional Court concluded that the Constitution of the Republic of Serbia (1990), upon which the judgement of the constitutionality of the formerly adopted federal laws which continued to be applied as the Republic laws was based, ceased to have effect as of 8th November 2006, when the new Constitution of the Republic of Serbia came into force. Due to the fact that the timeframe within which to harmonise the Republic laws with the Constitution of the Republic of Serbia of 2006 has expired, the constitutionality of Article 18 Item 1 of the Law on Strike is being reviewed based on the Constitution from 2006. The valid Constitution grants the right to strike to all employees, including police officers, civil servants and public appointees. This right can be restricted only by the law. The Law on Civil Servants, the particular law which regulates the rights and duties of civil servants, as well as some rights of public appointees based on employment, contains no provisions on the right to strike for these categories. However, in terms of Article 4 of the Law on Civil Servants, general regulations on labour and collective contracts for civil servants and appointees apply, if this law or another particular law does not regulate the rights and duties of civil servants, unless stipulated otherwise by the law. In relation to this, the Constitutional Court has found that the Law on Labour, as the general labour regulation, has no provisions on the employees' right to strike. Nevertheless, Article 35 Item 1 of the Special Collective Agreement for State Administration stipulates that

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<sup>28</sup> *Constitutional Charter of Serbia and Montenegro State Union*, "Official gazette of Serbia and Montenegro", No. 1/03 and 26/05.

civil servants may organise a strike or a token strike, under the conditions and in the manner regulated by the law. From the above, it can be concluded that civil servants and appointees have the right to go on strike which must be organised in compliance with the Law on Strike. This example clearly shows how necessary it is to pass a new Law on Strike as soon as possible, since certain provisions of the still applicable law do not comply with either the Constitution of the Republic of Serbia or the already ratified international treaties. The responsibility for this lies both with the state and its social partners, who have not succeeded in establishing the guidelines for social dialogue in Serbia.

## **6. Social dialogue as an instrument of balancing market economy**

The ability to exercise the right to strike within a legal system depends largely on the established level of social dialogue. A system with a developed and institutionalised social dialogue is a filter for resolving a large number of work-related conflicts which would otherwise lead to a strike. On the other hand, countries with an unenviable level of social dialogue face the problem of a great number of strikes and other forms of workers' protests, largely inefficient and poorly organised, which more often further deepen the initial problems rather than resolve them, and very often create new ones. Low level of social dialogue increases the number of strikes, which further impedes social dialogue, thus creating a vicious circle of industrial conflict which is difficult to break through.

Social dialogue, as a principle, as a new and completely different method of regulating relations in the sphere of work, has become a vital characteristic of social conditions and relations on both global and national levels. The fundamental goals of social dialogue are formulated and concretised mainly through the process of collective bargaining, by harmonising the standpoints of social partners and by concluding collective contracts. The purpose of collective bargaining is to provide protection of social partners' interests in a market economy environment and to consequently diminish the probability of conflict situations with adverse effects on economic and social trends as a whole.

In East and Central European countries the beginning of the economic and social transition also marked the initial appearance of social dialogue, the process unknown in the former socialist system, according to many unnecessary, as well. However, the transition process in Serbia was to a great extent different to the same process in other countries with the same political system. It is well known that the transition in Serbia came rather late, especially in comparison with the level of transition achieved by other former socialist countries. The almost a decade-long delay of the reform processes inevitably affected the profile, pace,

and results of Serbian transition. Although Serbia had a better starting position, because of a more flexible economy, higher living standard and a certain level of individual rights and freedoms, a number of factors have contributed to Serbia's present-day position behind other countries in transition. The consequence is a high tendency towards conflict in our society. The very process of establishing the social consensus is essentially conflict-prone as well. That is conditioned by the nature of this process in which all stakeholders start with their own interests, but in the process of harmonisation have to waive some of their demands and interests, so as to achieve consensus about what the common interest is. In the absence of such consensus, social dialogue is most frequently reduced to a dead letter. At the core of a successful social dialogue lies the need to establish social partnership, to bring about democratic changes and development, an awareness that "we are on the same boat", and that therefore, despite all the differences, there is an area of common interest of employers, trade unions and the Government to reach a stable and dynamic economic and social development. Therefore, social dialogue presumes clearly defined roles of all participants. Due to the delayed transition we in fact have stakeholders out of whom only the representatives of the state have a more or less shaped physiognomy. Employers by definition should be the owners of assets – stakeholders with sovereign disposal over their property, which is not the case with Serbia, and thus there are no employers with clearly defined interests. On the another hand, the trade unions, as the third stakeholder, mainly represent themselves, rather than clearly defined work-related interests of employees.

Finally, we can conclude that social dialogue refers to all types of bargaining, consultations and information exchange among the representatives of employers, workers and the government on social or economic policy issues relating to their common interest<sup>29</sup>. The overarching objective of social dialogue is to balance the effects of market economy and create an environment for citizens' life and work<sup>30</sup>. It is, therefore, a powerful tool which, if efficiently used, can enable a society to overcome countless problems and build social cohesion. During the periods of economic changes and uncertainties, social dialogue can play a key role in preserving the existing and creating new work places, which is an economic and social priority<sup>31</sup>.

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<sup>29</sup> R. Delarue, *Role of social partners in promoting sustainable development, inclusive growth an development*, ILO, Brussels 2012, p. 5.

<sup>30</sup> D. Stajić, *Privatizacija u Srbiji između neoliberalizma i socijalne države* [*Privatisation in Serbia between neoliberalism and welfare state – meaning of social dialogue in lical community – example of privatisation in Vranje*], "Politička revija" ["Political Review"] 2008, Vol. 7, No. 3, p. 971.

<sup>31</sup> A. Cardoso, *Industrial relations, social dialogue and employment in Argentina, Brazil and Mexico*, ILO "Employment and Strategy Papers", No. 7, Geneva 2004, p. 3.

## 7. Conclusion

The current situation in the industrial relations in Serbia is characterised by inconsistency between the theoretical basis and the exercise of the right to strike in practice. Employees' and employers' associations can hardly take care of themselves, let alone their members' interests. The Socio-Economic Council exists only formally because in practice its meetings are rare, and the main decisions relevant to the status of employees (and employers) are made without the Council's influence. The Authority for Safety and Protection at Work, as well as the Republic Agency for Peaceful Settlement of Work Disputes are both in their initial phase of work and they operate without sufficient support from the state. The Labour Inspectorate is constantly struggling with the ever growing responsibilities, on one hand, and the decrease in staff and funding, on the other. All this means that the right to strike in Serbia has no adequate base for further development.

The legal system of the Republic of Serbia falls into the category of legal systems with a particular law regulating the right to strike. This law has a number of weaknesses. The definition of strike is imprecise and comes with an insufficient number of legal guidelines regarding legal demands of strikers. There are also plenty of illogical decisions regarding the conditions required to fulfil the right to strike – all leading to the conclusion that the Law on Strike should have been changed a long time ago.

Undoubtedly, the biggest deficiency of the current Law on Strike are considerable restrictions relating to the stipulated obligation to preserve the minimum working process. Firstly, the list of activities where this restriction applies is too long. De facto, what should be an exception to the general rules relating to strike has been made a rule, because more than 50% of the total work force in the Republic of Serbia is employed in these areas. Even less logical are the provisions pertaining to the manner of determining the minimum of working process, since they give almost all power to the employer or the founder. All these provisions need to conform with the needs in Serbia, as well as the ILO principles on exercising the right to strike. For four years now, the process of drafting the new Law on Strike has been underway in Serbia, which is highly conducive to Serbia being placed, at least in terms of legal regulations, among the countries where the rights and interests of the working class can be efficiently protected by organising a strike or by threat of strike. Of course, passing a new law with better solutions would largely improve the prospects of the right to strike regulation in Serbia. However, that is not sufficient in itself. Without strengthening social dialogue, the prerequisite for which are strong and independent trade unions and employers' associations, without a stronger Socio-Economic Council and collective bargaining

practice, without improved judicial and alternative methods of work dispute resolution – which ought to be the final filter before a strike is organised, the right to strike in Serbia remains like a house without the foundations or the roof. At the same time, the inappropriately articulated dissatisfaction of the working class continues and increasingly expresses itself through radical and destructive protests with no chance of success, while the means that are tested, planned, very effective and globally recognised are replaced with strikes.