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VULNERABILITY OF "AGENCY WORKERS" AND THE NEED FOR THEIR PROTECTION**

Temporary-work agencies are present in the labour market worldwide as a result of the flexibilization of work, economic crises, globalization, and digitalization, as well as the unemployment. There are more people looking for employment than jobs offered by employers for recruitment. Those kinds of situations may put workers employed through agencies in a discriminatory position. In addition, law systems mostly do not regulate the establishment and terms of temporary-work agency. As a result, so-called agency workers are offered bad terms of work, which can lead to abuse of this institute.

On those grounds agencies for temporary employment are established, creating a triangle of contract relationships. The employee is therefore responsible for his work to an agency, and there is a special relationship between the user undertaking and the temporary-work agency. This kind of relationship might be positive for employees and their rights, first of all as regards the additional chances for employment. It might be also welcome for a user undertaking in urgent need of hiring, inter alia. On the other hand, this kind of work might cause more vulnerability for workers, in the sense of minoring their working rights.

In this paper, the author brings up the thesis that the lack of provisions for work of agencies for temporary employment and the lack of supervision of their work might put agency workers in a discriminatory position compared to other workers, and it might also lead to their exploitation. It can be also argued that the work of these agencies requires the permanent protection of agency workers.

Keywords: vulnerability, agency employees, temporary-work agency, discrimination, exploitation.

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1. INTRODUCTION

Economic crises have influenced all spheres of society, including labour law and employment. One of the consequences of this is seen in the development of the term flexibilization in employment. That resulted in new ways of doing work tasks. The crucial part of flexibilization is laying down new employment rules that differ from the standard ones. Unluckily, flexible work reduces rights and benefits for employees, representing "labour deregulation", and is called atypical (Božičić, 2016, p. 268). Part-time work, as well as employment through an agency, are the product of so-called flexibilization. It is said that economic crises and unemployment benefited to temporary-work agency, due to the fact that employers were willing to reduce costs that include administration papers, lawyer work, etc. (Laleta, Križanović, 2015, p. 306). The fourth industrial revolution brings less social security and fewer chances for employment, unlike the previous industrial revolutions (Urdarević, Antić, 2021, p. 154). That was the reason for creating additional new forms of employment, such as platform work (Kovačević, 2023, pp. 557-574). Some authors point out statistics that have shown the lack of security for those employees who work under the conditions of this atypical employment, with lower wages and higher chances of poverty and unemployment (Urdarević, Antić, 2021, p. 158). Even more vulnerable are employees discriminated on other grounds, such as migrant workers, and this kind of employment just increases their vulnerability (Feng, 2019, pp. 396-417). On these grounds temporary agency employment was established, with the aim to raise the rate of employment in the period of economic crises.

2. TEMPORARY-WORK AGENCY

Temporary-work agency is recognized as the most insecure of all contractual forms of labour (Eurofound, 2017, p. 7). It is also known as "leasing of employees" (Radulović, 2019, p. 515). Some authors stand that the remark on the agency work is the position of employees who are in practice deprived of basic labour rights, although there are some significant improvements in the field of the rights of agency employees (Gioia-Carabellese & Shuttleworth, 2013, p. 638). Generally speaking, employment through a temporary-work agency involves three subjects: agency, user undertaking, and employee. This kind of employment is complex and no more a two-party contract. There is a contract signed by the temporary-work agency and user undertaking, who will use the work of the employee, and another one signed by the employee and the temporary-work agency, which represents the mediator between the user undertaking and the employee. This kind of relationship is far different from standard employment due to the fact that there is an inexistent contract between the user undertaking and the employee. The agency is given a special role, not only to conduct the recruitment process but also to be in a position of an employer, and present the knowledge and skills of an employee to a user undertaking who is in need of that profile of employee (Kovačević, 2021, p. 347). Also, some authors stand that there are two different employers, one who represents the temporary-work agency, the contractual party with an employee, and the other who will use the knowledge and skills of an employee and have normative, management, and disciplinary authority (Božičić, 2016, p.

268). The position of an employee is complex. The employee is a contractual party with the agency but the majority of his rights should be available at the employer's premises, although there is no legal connection between these two subjects. An employee gives his effective work to a user undertaking, that is legally connected with an agency through the contract on the assignment of the employee.

There are several benefits of using services of this kind of agency. For user undertakings it means an easy way to find a suitable candidate for work, because the agency looks for the best employee for the job position among the employees in employment relationship with the agency. User undertakings rely on the agency when it comes to verifying the knowledge and skills of a potential employee, without any kind of obligation. User undertakings may benefit from this situation because they only have to chose the most suitable candidate. Also, there are situations when employers have no time for recruitment process due to the emergency of hiring an employee. Those situations may occur when unplanned additions of work happen. As Reljanović suggests, agencies deal with this kind of request within their profession, and it is assumed that it will be more expensive for user undertakings to look for a suitable candidate (Reljanović, 2017, p. 274). Some authors' stand is that the main reason for user undertaking to hire an employee through an agency is, beyond those mentioned earlier, "shifting liability for organizing work permits, checking workers documents and ensuring on-going compliance".[1] This is also a win-win situation for employees, for joining the labour market quickly, earning some money and so wanted work experience. For some, starting working with the temporary-work agency is the beginning of a long-term working if an employee is allowed to sign a contract with a user undertaking after the elapsed time of working through an agency (Kovačević, 2021, p. 343). This advantage of temporary agency work does not do along with statistics that have shown a long transition rate for agency employees and there is no evidence for a "stepping-stone effect" (Eurofound, 2017, p. 8). There is also the other side of agency work related to a higher rate of injuries at work, lower wages, non-continuous work, and unimprovement of skills (Eurofound, 2017, p. 8). Although it offers benefit for employees to join the labour market, there are no statistics that agency work is the first step to stable employment (Senčur Peček, Laleta & Kotulovski, 2019, p. 1102). Because of the economic crisis, this kind of atypical work has become typical in nowadays labour law legislation (O'Neil, 2020, p. 57), demanding future analyses and legal development.

3. VULNERABILITY OF AGENCY EMPLOYEES

The agency workers are employed in a nonspecific way, far away from employment that is stipulated as secure and permanent, with full working time, at the user undertaking's premises. They are employed at an agency, but they work effectively at user undertaking. That is the reason why they are entitled to some rights with agency and others with the connection of user undertaking and agency. As agency employees work at the

[1] Prassl, J. 2015. *Reconsidering the Notion of Employer in the Era of the Fissured Workplace: Should Labour Law Responsibilities Exceed the Boundary of the Legal Entity?* Available at: https://www.jil.go.jp/english/events/seminar/2016_0229.html (26. 6. 2023).

user undertaking's premises, the user undertaking is obliged to provide those rights that are bonded with the premises such as health and safety at work at the premises, daily and weekly rest periods, and vacation (Reljanović, 2014, p. 201). The right to salary is the right that should be provided following the dual action of user undertaking and agency, the user undertaking takes record of employees' work and absence and the agency pays an employee on that basis. Reljanović points out the rights that are the agency's duty, such as allowing the employee to get to know new technologies and knowledge connected with the employee's work (Reljanović, 2014, p. 201).[2] We find this provision in Slovenian law, that stipulates that agency employees might be entitled to the right to improvement or education and that right will be provided in the agreement between the agency and the user undertaking, where the employee is doing work (Laleta & Križanović, 2015, p. 1110). This kind of provision is unusual and determined because it depends on the agreement of two subjects and their estimation. An important remark stays with the collective rights of agency employees, who are, under the Serbian Law on agency employment, entitled to syndical rights at agency and user undertaking, collective bargaining, as well as to take part in strikes at users undertaking, under the conditions of the Law on strike.[3]

Having in mind this complex position of agency employees, a higher level of protection of those employees comes as a necessity. As agency employees have practically two employers (Laleta & Križanović, 2015, p. 306), that is the reason why there is a need for special protection of this group of employees. We must admit that this group of employees is facing certain obstacles to finding a job. Their position in the labour market is insecure, due to the fact that agency might resign their employees as soon as there is no need for their work at the user undertaking's premises (Frenzel, 2010, p. 126). So, the position of agency employees at work is far from secure and that is the reason for special legal attention for this group of employees.

3.1. Protection of agency employees in the Private Employment Agencies Convention enacted by International Labour Office No. 181

The interest in prescribing agency employment in the International Labour Organization began with the Unemployment Convention No. 2[4], continued with Fee-Charging Employment Agencies Convention No. 34[5] and ended with Private Employment Agencies Convention No. 181.[6]

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[2] For comparison, this kind of provision is a part of the Croatian Act on Labour, *Narodne novine* nos. 93/2014, 127/2017, 98/2019, 151/2022, 64/2023, Art. 49, but the Serbian Law on Agency Employment lacks this kind of stipulation.

[3] Serbian Act on agency employer, Art. 30. Reljanović especially pointed out the need for changes in the Serbian Act on Labour, because of the specific position of agency employees who are practically working at users undertaking but under the employment contract with the agency.

[4] Unemployment Convention No. 2. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C002 (29. 6. 2023).

[5] Fee-Charging Employment Agencies Convention No. 34. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C034 (last visited 29. 7. 2023).

[6] Law on the Ratification of International Labour Organization Convention No. 181 on Private Employment Agencies, *Official Gazette of the RS - International Treaties* nos. 2/2013-155.

There are only several articles that consider the vulnerability of employees. First of all, one of the aims of the Convention that is proclaimed refers to the need for agency employees' protection (Art. 8). It seems that the legislator of the Convention was more focused on achieving another proclaimed aim that enables the functioning of the agencies for temporary employment (Božičić, 2016, p. 270). In Art. 11, it is stipulated that member states should take measures to protect workers who are employed by private employment, especially in the field of freedom of association, collective bargaining, minimum wages, working time and other working conditions, statutory social security benefits, access to training, occupational safety and health, compensation in case of occupational accidents or diseases, compensation in case of insolvency and protection of workers claims, maternity protection and benefits, and parental protection and benefits (Art. 11 of the Convention). In the next article, it is noted that member states should, as well, take measures to prescribe and provide the responsibilities of agencies involved in the process of employment (Art. 12 of the Convention).

We are close to a conclusion that this kind of provision is too general when it comes to the protection of employees. There are no provisions that become standard for states in regulating the position of agency workers. Also, there is no consideration that agency workers are even more vulnerable than the employees that are employed directly. Our conclusion is that this Convention has been passed to regulate the process of the new way of employment, rather than to recognize the vulnerability of so-called agency employees. Some authors stand that adopting this Convention was meant as a consensus and a need for increased flexibility in the labour system, as an "indirect nature of labour relations" (Standind, 2008, p. 366). The permanent higher unemployment rate and flexibilization as a solution are seen as minimizing all protective standards inside the ILO and "the attack on *raison d'être*" (Standind, 2008, p. 366). This kind of approach proves the lack of capacity of this organization to stand for the rights of employees who are hired with the help of agencies, without the effect on the unstoppable process of flexibilization.

3.2. Protection and vulnerability of agency workers in Directive 2008/104/EZ of the European Parliament and of the Council

The issue of agency work had its long path of regulation in EU law. Combining the interests of users undertaking and employees, taking into consideration the national policies resulted in passing the Directive 2008/104/EZ of the European Parliament and of the Council.[7] Some authors stand that this Directive was passed for employees to obtain better positions, security, and protection, by giving the agencies the position of quasi-employer (Senčur Peček, Laleta & Kotulovski, 2019, p. 1103). This Directive is seen as a tool to conduct flexibility and keep both employers and employees satisfied. For the user undertaking, recruitment through an agency brings the needed flexibility and can help him to obtain employees when he does not have time to do the selection of candidates. On the other hand, the flexibility that comes with this kind of employment contract

[7] Directive 2008/104/EZ of the European Parliament and of the Council on temporary agency work. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0104 (14. 6. 2023).

may bring benefits to employees to reconcile private life and professional responsibilities. Some authors conclude that these goals are too ambiguous due to the fact of huge discrepancy among national laws that make it hard to establish functional protection for workers, raise employment and establish so much wanted flexibility for employers (Petrović, 2019, p. 530). Others think that this Directive manages to do what Private Employment Agencies Convention issued by ILO failed to do, to protect agency employees by proclaiming the equal pay principle (Laleta & Križanović, 2015, p. 308).

First of all, we may notice line 15 of Preambule that specifies the fact that employment of an indefinite period is a general rule. That reminder is made with good reason, to mark the fact that the agency work is temporary, that may harm the consistency and security of employees and therefore there is a need for special protection of those workers. It is also suggested that agency workers should have a contract of an indefinite period with their agency to have all rights as other employees who are employed directly. If that is not the case, it must be an obligation of the state to provide safe conditions for that work, the supervision of applying the provisions and to make sure that these kinds of employees do not lack legal support (Reljanović, 2017, p. 279).

The more important is the equality principle, that should be provided for agency workers working with other employees who are working in the same working premises but are not employed through an agency. This concerns the equal pay principle because payment is the mark of the employment contract. This is crucial, bearing in mind the position of the agency employees. For a user undertaking, agency workers are more expensive than the others because, among other things, user undertakings bear the cost of paying for the favors of agencies, that is not the case with employees that are employed directly. The equality principle should provide the same conditions for all employees regardless of the way of recruitment. In practice, agency employees are deemed to lower salaries in order that the user undertakings might reduce the extra cost they have when hiring through an agency (Reljanović, 2017, p. 279). The user undertaking is not allowed to charge the employee for this kind of employment but user undertakings pay agencies for the assignation of their employees. Making the same rights, duties and responsibilities for all employees is a crucial matter when it comes to labour law, especially when agencies for temporary employment are involved. Agency employees are particularly vulnerable because they involve more costs for user undertaking. On the other hand, user undertaking wants to hire them because of the benefits of hiring through an agency but is also willing to reduce some of the rights of employees to compensate for that cost. That is the reason why the importance of the principle of equal pay is recognized and developed in Directive 2008/104/EZ (Art. 5 of the Directive). It stipulates the same working conditions for agency workers as well as for employees hired directly. The principle of nondiscrimination includes also special protection that is prescribed by the law for minors, and pregnant women as well as the principle of gender equality. The named article stipulates the same wage and other rights stipulated in the collective agreement.

These provisions are crucial for providing the equality of agency employees and those who are employed directly, but one cannot neglect the exception that is made in the Directive, which among others, allows a member state to pass different rules in the field of equal

pay if agency worker works for an indefinite time at the agency (Art. 5(2), (3), (4)). This exception is made with the idea that there will be no lower rate of protection for agency worker employed for an indefinite time and paid even when not hired by user undertaking because they are protected from the risk of unemployment and they will keep up with employment between assignations (Senčur Peček, Laleta & Kotulovski, 2019, p. 1113). As the equal pay principle is a compromise between the need of employees and the interests of user undertaking, it is justified to prescribe differences in wages for agency employees who are working for an indefinite time. We are not convinced that this kind of compromise will make good effects on agency employees with the fear of misusing this provision in practice. This can be connected with the situation when the employee is in an employment contract with an agency but his assignment with the user undertaking is over. The question is: will agency workers be paid until waiting for assignation? This is a very specific situation that touches upon the financial matters of an employee and the Directive only regulates the same terms of work just for the time when the employee is assigned to the user undertaking. We stand that this kind of provision should not have been missed in the Directive, considering its effects on the position of an employee. The Serbian Law on the Temporary-Work Agency prescribes the minimum wage for an employee who signed the contract for an indefinite time, intentionally excluding those who signed the contract for a definite time (Art. 24 of the Serbian Act on the Temporary-Work Agency). In Croatian law, the wage entitlement is stipulated only for the employee who signed the contract for an indefinite time, although there is a possibility to stipulate lower entitlement for employees with a definite period of time contract (Art. 95 of the Croatian Act on Labour). Slovenian law allows the entitlement of salary in both cases, but the rate of entitlement differs (ZDR, Art. 60). In the case of a contract for an indefinite time, the agency is obliged to pay 70% of the average salary and three months' salary is included. On the other hand, when an agency and an employee sign contract for a definite time, this entitlement can not be below 80% of the average pay. We can notice the difference between entitlements which are connected with the duration of the signed contract, aimed to protect with higher entitlement employees who signed a contract within a definite time.

3.3. Serbian Law on Agency Employment

The Serbian Law on agency employment was passed at the end of 2019 and its enactment began in 2020.[8] The expectation was high. One of them was the reduction of illegal work. Some experts were worried about the continuous supervision of the agency work,[9] others suggested that the maximum number of employees assigned to the user undertaking through the agency must be limited by the number that the user undertaking is hiring (Art. 14 of the Law on agency employment).[10]

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[8] The Law on Temporary Employment Agencies, *Official Gazette of the RS* nos. 86/2019.

[9] Komazec, M. Zakon o agencijskom zapošljavanju: radnici su izjednačeni, ali nisu isti. Available at: https://n1info.rs/biznis/a550662-strucnjaci-o-zakonu-o-agencijskom-zaposljavanju/ (26. 6. 2023).

[10] In accordance with this suggestion, there is a limitation on the maximum number of employees that may be assigned. The maximum number of assignations can not be higher than 10% of the number of

The Law on agency employment prescribes that an agency may opt to have an employee's employment contract for a definite or indefinite time (Art. 9 of the Law on Agency Employment).[11] We find that a good solution because it avoids hiring workers through various contracts beyond employment. Before enacting this law, employees in Serbia were often recruited with contracts that were not establishing employment, so employees did not enjoy some rights such as the right to vacation, or sick leave.[12] That was one of the reasons for enacting the law, to reduce illegal work and work beyond employment, but those expecting were in high demand and the situation in the labour market has not changed since. The time for this contract is supposed to be equal to the duration of the period that the employee will spend working for an user undertaking. So, we can conclude that the position of workers doesn't depend only on the concrete needs for work at the user undertaking, but, also it is related to the contract that is signed between the employee and the agency. That position gives agency employees more security, especially when it comes to payment.[13]

The important provision is also the one that bans the possibility for an employee to be hired at the same user undertaking through several agencies longer than 24 months.[14] Limitation of a period of assignation of an employee to one user undertaking is one of the measures that is usually used in comparative law, in order to prevent users undertaking to misuse agency workers in causing direct harm to employed employees on a definite or indefinite time (Kovačević, 2021, p. 346). This provision makes a good way of stopping the misuse of the contract of a definite time. If an employee keeps with his work under the contract of definite time at the same user undertaking for five days longer than 24 months, it is considered that he will continue working under the contract for an indefinite time (Art. 16). Although it makes a remarkable contribution to the protection of agency employees, it raises the question of probation for this kind of work in court. This kind of situation is made more difficult by the next provision in the same article, which entitles an employee to this kind of right only in case he brings a lawsuit. That may be discouraging for workers, considering the fact that they are not willing to confront user undertaking in court. For some employees, the financial aspect of gaining this right may stop them from pursuing it.

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employees hired at the user undertaking. This rule is very significant and prevents the user from undertaking to use agency workers when there is a need for permanent employment.

[11] In theory, it was spoken this question points out the necessity that the contract between agency and employee is made over a definite period of time, considering the fact that agencies serve to fulfil the current need for work of a user undertaking. In some countries, the law insists on signing the contract for an indefinite time, in order to make the position of employees more stable. For more read: Senčur Peček, Laleta, Kotulovski, 2019, pp. 1106-1108.

[12] Those were some of the problems in practice. For more: see Petrović, 2019, p. 532.

[13] Article 24 of the Act prescribes the entitlement of the salary for the period when the employee is not assigned to the user undertaking but signed a contract for an indefinite period of time with the agency. The Law on agency employment does not stipulate the wage entitlement for employees who signed an agency contract for a definite period of time.

[14] The exception can be made only where there is a legal possibility for an employee to work under the contract for a definite period of time which is longer than 24 months.

Salary is considered one of the main conditions relating to valuing the equality principle stipulated in Directive 2008/104/EZ. Agency employees should be given the same salary for the same work as well as they were directly hired by an user undertaking. Some authors stipulate the importance of the same salary, considering the fact of issues that work by agencies becomes the tool for reducing costs of a user undertaking to disadvantage of an employee (Laleta & Križanović, 2015, p. 327). In Serbian Law on agency employment, it is stipulated that agency workers are entitled to the same conditions during their employment period at the user undertaking as employees who are directly employed (Art. 18). The same condition is applied to working time, overwork, night work, vacations, salary, sick leave, health and safety at work, protection of minors, pregnant women and mothers as well as the ban of discrimination on any grounds. Our legislator specifies that the user undertaking is obliged to provide all the above-mentioned conditions, except salary. Agencies for employment are in charge of ensuring that agency workers have the same salary for the same work as employees who work directly at user undertakings. The law does not provide further information nor steps for equal entitlement, so we are close to concluding that this kind of provision is not precise enough and may leave space for misuse. In our opinion, the agency must keep a record of salaries of all employees who work the same job, supervised by labour inspection, taking in mind that the agency is obliged to pay the salaries with the working schedule of user undertakings. It is a positive thing that the law obliges agencies to pay salaries even in the case when a user undertaking is late with delivering the schedule, according to the average number of working hours (Art. 19). The work of the temporary-work agency is supervised by labour inspection, which is criticized as inadequate, due to the fact that a few people work within these inspections (Kovačević, 2021, p. 348). The solution might be seen in specialized bodies for supervision, such as public service for employment in Germany, or association of agencies for temporary employment in Belgium (Laleta & Križanović, 2015, p. 317).

4. COMPARATIVE LEGISLATION OF TEMPORARY–WORK AGENCY

The research on the vulnerability of agency workers cannot be complete without the comparative method, which provides a significant comparative preview of the position of this group of employees. Some of these provisions may help as a guide for national law, in order to improve the position of agency workers.

In Croatia, there is no special Law on Agency employment. This kind of work is regulated by a couple of provisions within the Act on Labour.[15] We will be focused only on provisions concerning the position of agency workers. Some authors witnessed the transformation of this institute in Croatian law, that is used to promote flexibility in labour law (Senčur Peček, Laleta & Kotulovski, 2019, p. 1104). The contract between agency and employee might be signed for indefinite or definite time that is notable, taking into account that employees will be working within the employment work and will avoid precarious terms that come with zero-hour contracts. When it comes to salary,

[15] Croatian Act on Labour, Arts. 44-52.

the agency worker is entitled to the same wage for the same work as employees who are directly employed by the same user undertaking (Art. 46, para. 6). Salary and other conditions of work must be in accordance with anti-discrimination laws. If there is no possibility that the salary of an agency worker is arranged by this law, it must be arranged by the contract signed by the agency and user undertaking. Laleta and Križanović stressed that this kind of provision was incomplete and it was unacceptable for the Act on Labour Law to have missed detailed regulation of salary (Laleta & Križanović, 2015, p. 327).

In Slovenian law agency employment is regulated by different acts.[16] In this country, the legislator insists on signing the contract for an indefinite time between the agency and the employee. This provision was not supported by user undertakings, but it was softened by the following rule that the number of agency employees that work under an indefinite time does not make a quota of a total number of assigned employees (Senčur Peček, Laleta & Kotulovski, 2019, p. 1108). The agency is obliged to provide all the rights for employees that are provided in the Labour Law (Senčur Peček, Laleta & Kotulovski, 2019, p. 1109). The salary of agency workers depends on the effective working hours done by the user undertaking, in accordance with the collective agreement and it is paid by the user undertaking.

Agency employment in Montenegro is stipulated by the Law on agency employment.[17] The legislator gives the agency the role of the legislator, using that term in the act (Art. 52). Montenegrin law stipulates that an agency may sign a contract for a definite or indefinite period of time with an employee. The Act also stipulates that the agency is in charge of providing the labour rights for the employees. This provision is unusual, having in mind the rights that employees are entitled to at the employer's premises and that they should be provided by the user undertaking. Although, we need to have in mind that further on the legislator brings the fact that the user undertaking is in charge of special protection of workers and taking measures that refer to the health and safety at work. The principle of equal pay is stipulated in the same way as in Serbian law. As for entitlement of salary, the law stipulates that right to the employee who is not assigned without his fault. The legislator fails to specify the terms of the entitlement and the cases when agency employees will have that right. Eventually, there is an important provision of Montenegrian law that stipulates the right of trade union associations (Art. 58), that makes a big contribution to the protection of this category of workers.

Italian law on agency employment is developed with the support of social partners (Voss *et al.*, 2013, p. 156). It is noted that social dialog has contributed to the quality of agency work, that resulted in training for employees established by collective agreement. The employee is entitled to the rights at the employer's premises provided by the user undertaking. The stability of the employment is stipulated by the obligation of hiring the agency worker if he

[16] According to the Law on the Regulation of the Labour Market, *Official Gazette of the RS* nos. 80/2010, 40/2012 – ZUJF, 21/2013, 63/2013, 100/2013, 32/2014 – ZPDZC-1, 47/2015 – ZZSDT, 55/2017, and according to the Law on Labour Relations, *Official Gazette of the RS* nos. 21/2013, 78/2013 – correction, 47/2015 – ZZSDT, 33/2016 – PZ-F, 52/2016, 15/2017 – decision of the Supreme Court.

[17] Montenegrian Law on Agency Employment, *Official Gazette of the Republic of Montenegro*, nos. 74/2019, 8/2021, Arts. 52-59.

works for the user undertaking longer than 36 months or has more than two extensions of the contract (Voss *et al*., 2013, p. 156). Interestingly, the agency is the one that is obliged to hire the employee for at least 12 months. Not the least, the authors stressed that economic crises jeopardize the labour market and the new reforms of the legislation do not contribute to the protection of the agency workers, on the contrary, they are focused on making it easier to use and dismiss temporary employees (Voss *et al*., 2013, p. 156).

Spain was the first country to provide rights for agency employees, introducing equal pay for equal work, as well as equal rights on overtime and holidays (Bentley, 2009, p. 17). But, these rights are prescribed by a collective agreement between the association of users undertaking and the association of agency employees and unions. That represents well legislative practice, having in mind the importance of the collective agreement. In Spain, this kind of regulation raised a question of protection of other employees who are directly employed, which developed another issue: the user undertaking must justify the reason for hiring the agency employees. That is why users undertaking in Spain are allowed to hire agency employees only in specific situations, such as unexpected growth of business and working instead of a worker who is on leave (Bentley, 2009, p. 17).

It is said that French law is the most regulated one when it comes to agency work and that it represents a good example of the functioning of agency employment. This type of work has been regulated by law and by collective agreement (Voss *et al*., 2013, p. 152). The agency work has been improved because it is realized that the employment of agencies for temporary employment is closely bonded with the qualifications and adaptability of its workers. As mentioned earlier, agencies are willing to provide training and new opportunities for employees, all with the aim to increase employability (Voss *et al*., 2013, p. 152). The equality principle is stipulated, especially when it comes to salary and other work employment, as well as other rights at work such as health and safety at work. Agency workers do not share capital with the user undertakings who are hired directly but do have compensatory bonuses after each assignment regardless of the type of contract employees signed.

5. CONCLUSION

Although there are benefits to establishing agencies for temporary employment, it seems that there is a need to review provisions to provide better protection for so-called agency employees. It was believed that an agency for employment should help in raising employment. But, that did not happen. There is no study that relates the higher rate of employment and agency employment. This kind of employment has also contributed to the lower quality of the employees' rights. Some point out the need of connecting laws and collective agreements to obtain employment flexibility together with the equality principle and security of the employer's premises (Eurofound, 2006, p. 38). First of all, it should be considered the period of assignment of an employee to one user undertaking. We agree with the authors who stand that the period of 24 months in Serbian law is too long, as well as who propose the possibility of introducing the rule of a maximum number of assignations of one employee to the user undertaking (Kovačević, 2021, p.

349). We consider that the position of employees might be advanced with a shorter duration of assignation and will be also a preventive measure for user undertaking not to use agency employment if there is a need for a permanent employee. We should also recall the rule of Directive 2008/104/EZ, which brings the obligation of states to adopt measures in order to prevent successive assignment of the same employee in order to circumvent the provisions of the Directive (Art. 5(5) of the Directive).

Furthermore, the possibility should be considered of forbidding agency employment in some professions, that bear a higher risk for health, such as construction work. Since agency employees are vulnerable and in insecure positions, there is also a suggestion that some categories should be excluded from agency work. For that reason, we stand that the migrant workers, as well as the disabled (Rajić, 2016, p. 175) and the young as sensitive and vulnerable category in the labour market should not be employed as agency employees because this kind of employment would increase that vulnerability. In our opinion, the position of these categories would be worsened by agency employment.

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