| Chapter 5 |

Serbia: Regulation of Employment Contracts and Collective Bargaining – Labor and Contract Law Aspects

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ABSTRACT

The authors give an overview of the current Serbian labor law—the theoretical and practical approach to employment contracts and collective bargaining. First, the chapter presents basic and supplementary sources of Serbian labor law. Secondly, an overview of the different theoretical approaches to the notion of employment contract in the literature is given. The effective labor law regulation is accentuated, with special regard to the rules of general law of obligations, which is being applied in subsidiary manner. This is followed by an overview of the regulation on collective agreements. A special part of the paper is dedicated to the issue of reforms of labor law in Serbia. In this context, regulatory issues related to employment contracts and collective bargaining are highlighted.

KEYWORDS

labor law, employment relationship, employment contracts, collective bargaining

1. The Position of Labor Law in the Serbian Legal System

Serbian labor law has undergone profound changes in the last three decades, under the influence of abandoning socialism, transition to a market economy, the process of joining the European Union, globalization, and changed circumstances in the world in the field of labor (flexibility, deregulation, digitalization). These changes are hallmarked by three trends: 1) further harmonization with international legal standards; 2) the 'marketization' of labor law; and 3) the liberalization and flexibilization of labor legislation.

Labor law represents a key branch of law in Serbia. However, it seems it does not always receive the necessary attention from the state. Legislative solutions are often belated in the light of the needs of practice. In addition, the state does not take sufficient care of the effective application of labor law, which is why regulations are often circumvented in practice. The Labor Inspectorate does not show sufficient

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initiative in the supervision of the application of labor law, especially in the case of work without an employment contract and in terms of protection of health and safety at work.[1]

In addition, judicial protection in labor disputes is too slow, so employees are reluctant to sue the employers in cases of violations of labor rights.[2] Due to the long duration of labor disputes and flawed execution of court decisions, Serbia has been held liable in several cases before the European Court of Human Rights in Strasbourg (due to the violation of the right to a fair trial).[3] This motivated the legislature to adopt the Law on Protection of the Right to Trial within a Reasonable Time in 2015. However, the situation has not yet improved significantly.

The sources of labor law in Serbia are manifold. Labor law is regulated by several types of legal sources. These are: 1) the so-called basic legal sources, 2) special statutes, 3) specific statutes, and 4) auxiliary acts. In particular, labor legislation consists of the Constitution, statutes, governmental and ministerial decrees, collective agreements, regulations on the work of employers and other acts of autonomous law and acts of the employer (statutes, labor rulebook, the systematization of job positions, acts on risk assessment, etc.).

The basic legal source is the Constitution of the Republic of Serbia. It specifies, among others, the basic socioeconomic rights, sources of labor law (statutes, collective agreements, general acts) and entities who create them.[4]

The most important so-called *systemic source* of labor law is the Labor Code (LC), adopted in 2005 (revised in 2014). The LC is the 'umbrella law' for all areas related to work, so it applies to all activities and all types of employees (in the private sector, in government agencies, and in the public sector).[5] It regulates the most important questions of individual and collective labor law. *Separate statutes* regulating specific and significant issues related to labor relationships, such as safety and health at work, the means of socioeconomic dialogue, the peaceful settlement of labor disputes, the prevention of harassment during work strikes, etc. In addition, there are so-called *special statutes* regulating the labor law status of specific categories of employees: civil servants, persons employed by the police and the army, employed in public services, etc. Finally, as source of labor law may also be considered statutes regulating various fields, but containing rules applicable to matters of labor law (so-called *mixed sources*

1 For example, regarding mortality of construction workers, Serbia is at the top in Europe. Every year on construction sites in Serbia, according to the data of the Trade Union of Construction Workers, between 25 and 30 workers die, and about 10 more die from injuries sustained at work. See *Svake godine u Srbiji na radu pogine oko 40 građevinaca,* BIZLife, 25 August 2011, https://www.bizlife.rs/21923-svake-godine-u-srbiji-na-radu-pogine-oko-40-gradevinaca/.

2 See Bećirović-Alić, 2018, pp. 175, 177, 185.

3 See for instance: *Stevanović v. Serbia*, Application No. 26642/05; *Stanković v. Serbia*, Application No. 29907/05.

4 Constitution, arts. 55, 60, 61 and 97.

5 LC, art. 2.

of law).[6] The most notable ones are the statutes pertaining to the law of obligations, bankruptcy law, personal data protection, etc.

Although not formally a source of law, case law plays a significant role in the system of sources of labor law. It supports the application of labor legislation, especially when it comes to legal gaps, vague or unconstitutional provisions of the law, and other acts. In this regard, decisions of the Supreme Court of Cassation of Serbia and the Constitutional Court of Serbia are particularly important. All courts of lower instance deciding in labor disputes (basic and higher courts) are obliged to abide to the decisions and principles laid down by the Supreme Court of Cassation, as required by the Law on the Regulation of Courts. Also, according Constitution the decisions of the Constitutional Court are final, executive, and generally binding.[7] This applies to decisions on the constitutionality and legality of regulations, collective agreements and acts of employers,' as well as to decisions on a constitutional appeal, which can also be filed when rights relating to employment relationships are infringed.[8]

2. Employment Contracts in Serbian Law

Labor law contracts (individual and collective) have undergone significant changes in Serbia, as in other countries. In addition, they have been changed under the influence of the development of labor law in the world, and under the influence of time and circumstances in which they have been applied.

Prior to the First World War, when a capitalistic environment has begun developing in Serbia, employment contracts were only beginning to emerge. Their legal regulation and scholarly analysis were in their infancy.

Between the two world wars, as in other European countries, Serbia's economy became increasingly based on capitalistic economic logic. Employment contracts and collective agreements began to be concluded intensively. During that time, a quite advanced Law on the Protection of Workers (1922), the Law on Shops (1931), and the Governmental Decree on Determining Minimum Wages, Concluding Collective Agreements, Reconciliation and Arbitration (1936) were passed. At that time, these acts regulated labor relationships, employment contracts, and collective agreements in a modern way.

In the 'socialist period,' employment contracts and collective agreements were of marginal relevance. They applied only in the narrow private sector.[9] Instead of employment contracts and collective agreements in the socialist enterprises, some

6 An indicative list of separate and special statutes, and mixed sources of labor law is given in Part II.

7 Constitution, art. 166 s. 2.

8 Constitution, art. 170.

9 An employer could not have more than five employees, thus collective agreements were in fact inapplicable, and employment contracts were rare.

other legal instruments were used (agreement on employment,[10] agreements on mutual employment— instead of employment contracts; self-governing agreements and social agreements— instead of collective agreements). They reappear in the legal practice after the abolition of socialism, which happened in the field of labor relationships with the adoption of the Law on Fundamental Rights from Employment (1989), adopted in the legislative competencies of the former Yugoslavia (of which Serbia was a part until its disintegration).[11]

It seems remarkable that some scholars of labor law in the 'socialist period,' although in practice they were almost nonexistent, under the influence of the Western theory of labor law, paid serious attention to the notion of employment contract. Today's theoretical assumptions are mainly based on the works from that period. Prof. Nikola Tintić should be singled out as having made the greatest contribution to the theory of labor law in the former Yugoslavia.

It should also be noted that in the former Yugoslav and modern Serbian theory, treatises on employment contracts and the legal nature of the employment relationship are constantly intertwined and overlap. In addition, when scholars write about the labor contract, they quite often actually mean employment relationship, and vice versa.[12]

2.1. Employment Contracts in Yugoslav/Serbian Doctrine

According to Tintić, the employment contract

> is traditionally a central category of labor law. [It is] the basis for establishing a labor relationship; form of regulating labor relationship; a basic means of scheduling the workforce; a means of regulating the intensity of work and harmonizing the interests of each worker with social interests as well as collective interests.[13]

Its *essential features* are voluntariness and consensuality. When it comes to its *content*, it expresses elements of onerosity, bilaterality and exchange.[14]

According to Tintić, the *constitutive elements* of an employment contract are: subjects (capable of establishing an employment relationship), consent of will

10 The agreement on employment was used from 1957 until the 1970s. See Baltić and Despotović, 1981, p. 168.

11 By the adoption of this law the Law on Associated Labor was repealed, according to which the employment relationship was a mutual relationship between workers, and not a relationship between the employer and employee, which excluded the use of employment contract (except for rare private employers). Instead of collective agreements, so-called self-governing agreements and social agreements were used.

12 See for more details Jovanović, 2018, p. 173; Šunderić, 1997, p. 946; Lubarda, 2012, p. 335; Baltić and Despotović, 1981, p. 190; Mirjanić, 2020, p. 117.

13 See Tintić, 1972, p. 165.

14 Ibid.

(agreement), subject matter, *cause,* and the prescribed form.[15] He divides them into employment contracts for indefinite and definite period. Their effect can be direct and indirect.[16] The condition for the *validity* of the contract is its perfection.[17] As with any contract, sometimes its interpretation is needed. *Revision* of the employment contract is also possible.

Speaking of the basic *legal features* of the employment contract, Tintić states that it is a contract creating obligations, consensual, commutative, synallagmatic and bilateral contract. By the way, as a variant of the employment contract in that (socialist) period, the same author mentions *contract of service* applicable to intellectual workers. In fact, the contract of service was used as a synonym for the employment contract before the Second World War.

According to Tintić, the key elements of an employment contract are the subject matter and the cause (causa).[18] The *subject matter* must be possible, permissible, determined or at least determinable. Similarly, the *cause* must also be sufficiently defined and (legally and morally) permissible.[19] The cause of the employment contract represents its economic and social function,[20] which is recognized by the legal order.

One of the most prominent Serbian scholars of labor law today, Lubarda,[21] points out that the *subject matter* of the employment contract must be a work conducted for the benefit of another person that is not prohibited. He asserts that the general rules of the law of obligations must be applied, in the sense that the subject matter of the contract must be *determined* or *determinable*, consisting of: 1) defined work, 2) remuneration, and 3) subordination.[22] If after the conclusion of the employment contract is established that there is a disagreement on some irrelevant element, the employment contract remains in force. The general rule of contract law shall be applied subsidiarily in this case, according to which this point will be determined by the court, if it may be inferred that the parties would have concluded a contract even without reaching an agreement on that specific point.[23]

According to the same author, a *de facto employment relationship* will occur if either of the two conditions for the existence of an employment relationship is not met when concluding the employment contract: 1) that the contract has a valid legal basis 2) the

15 Ibid.
16 Tintić, 1972, p. 166.
17 Ibid.
18 See Tintić, 1972, p. 175.
19 Tintić highlights that the cause of contract should be differentiated from parties' motives. See Tintić, 1972, p. 178.
20 According to Perić, it is the purpose for which the employment contract is concluded (Perić, 1950, p. 330). As for the differences between the cause of contract and motives in Serbian law see Dudaš, 2010, pp. 146–150; Dudaš, 2011, pp. 668–678.
21 Besides Lubarda, great contributions to the Serbian contemporary doctrine of labor law were made by other eminent scholars, such as Šunderić, Jovanović, Baltić, Despotović, Mirjanić, Pešić, Brajić, Jašarević, et al.
22 Lubarda, 2012, p. 328.
23 See Lubarda, 2012, p. 328.

employee began to conduct work. He notes that illegal work cannot qualify as a de facto employment relationship, as far as the cause (admissibility) of the employment contract is concerned, such as work of children under 15, which is prohibited by the LC.[24] De facto employment relationship will also exist if the legal basis for the employment contract has ceased to exist (e.g., if the employee loses his ability to work).[25] He states that in the case of de facto employment relationship, the person who worked in fact still has some rights. Therefore, in that case, the annulment has *ex nunc*, and not *ex tunc* effect, which is the rule in the general law of obligations. This means that the employer must fulfill the accrued obligations (pay the salary) and indemnify the employee in the event of an accident at work.[26]

Lubarda differentiates several *subtypes* of employment contract: fixed-term employment contracts, employment contracts of private and public law, and contracts on professional training.[27] He also identifies an interesting novelty: the appearance of the so-called *trilateral employment contracts* (which are, instead of two, as usual, concluded by three contracting parties). Such contracts appear in recent times in the case of 'assignment of employees,' or so-called agency work (assignment of employees through temporary employment agencies).[28]

In addition, Lubarda elaborates in detail the differences between employment and similar contracts (special service contracts, mandate contracts, employment contracts of adhesion, contracts for representation and agency, contracts for supplementary work, contracts for vocational training and internship, etc.).[29] As noted above, there is an element of conducting work in these contracts as well, but they do not establish an employment relationship. In essence, the distinction between these and the employment contract concerns the nonexistence of important elements of the employment relationship. In short, in most of these at least one of the basic features of the employment relationship is missing: 1) subordination (dependence), 2) onerosity (receiving a salary), 3) personal labor law relationship (conducting work personally within the organization), and 4) voluntariness, as well as durability and some other features of the employment relationship mentioned by some authors.[30] The purpose

24 The statutory condition of establishing an employment contract is that the employee is older than 15 years. (LC, art. 24 s. 1). See Lubarda, 2012, p. 331.

25 LC, art. 176.

26 See Lubarda, 2012, p. 333.

27 Lubarda, 2012, p. 339.

28 Lubarda, 2012, p. 348.

29 Lubarda, 2012, p. 357.

30 The list of essential elements of the employment relationship differs among scholars. In addition, there are important elements (without which the employment relationship cannot exist) and indicators (factors that can be indicators that there is an employment relationship). In this context, a notable source is the ILO's Recommendation on Employment, no. 198. As indicators of employment, the ILO recommendation specifies, for example: integration into work organization, supply of tools and materials, work at scheduled hours and at agreed times, economic dependence, organizational subordination, control of work, performing of work personally, etc. For Serbian theory see Baltić and Despotović, 1971, p. 30; Pešić and Brajić, 1979, p. 96; Jašarević, 2013, pp. 173–192.

of each of these contracts, the manner of work, payment of remuneration, management of the work, work organization, and even the legal basis, differ in relation to the employment contract. For example, in the case of special service contract, the subject matter is to deliver a thing or perform a certain work, but not to conduct permanent work by the employer's orders.[31] A contract on mandate is aimed at performing a certain task, without permanent engagement, inclusion of the mandatee in the work organization, etc.

For a long time in Serbia, one of the major topics regarding the issue of subsidiary application of the law of obligations was the amendment of the employment contract (explicitly or implicitly), and its unilateral termination. Lacking explicit regulation in the statute pertaining to labor law, it was a subject matter of profound theoretical debates for a considerable time. At present, it is explicitly regulated by the LC.[32] However, the court may still take into account the rules of contract law on the prohibition of exercising rights contrary to the purpose for which it was established or recognized by law, to interpret the behavior of the parties to the employment contract.[33]

In case law, the number of cases rises when it is necessary to determine whether there is an employment or another contract, which is in line with the growing practice of simulating some contractual obligations (usually contract for work) with content that unequivocally implies an employment contract. In assessing whether it is an employment contract or another contract of the law of obligations, the courts are generally guided by the doctrine of *primacy of facts*, irrespective of the 'labelling' the parties gave to the contract. In other words, it has been noticed lately that simulated contracts are being concluded for occasional and temporary work, fixed-term contracts, contracts for the recruitment of workers through work agencies, and other contracts of general law of obligations. In the assessment whether an employment relationship exists, the courts are mainly guided by the 'true nature' of the contract, i.e., they consider the essential components of the work performed by the employer (type of the work, its duration, the contractor's relation to the employer). This is the main reason a civil law contract or 'sham flexible work contract' between the employer and the contractor is forbidden, when the services or work to be performed coincide

31 A distinction between the employment contract and the special service contract can be found for example in the work of Baltić and Despotović. They mention, among others, legal and economic subordination as differences—which does not exist in a special service contract. Also, they notice that the risk in the case of an employment contract is borne by the employer, while in the case of a special service contract by the contractor. They also mention that in the case of a special service contract, the subject matter is the realization of concrete work, and not a permanent activity, as in the case of an employment contract. See Baltić and Despotović, 1971, p. 171. See also Tintić, 1972, p. 661; Lubarda, 2012, p. 338. Baltić and Despotović also write on the differences between the employment contract on the one hand, and hiring contracts, mandate contracts, and contracts on partnership on the other. See Baltić and Despotović, 1971, pp. 173–175.

32 LC, arts. 171 and 172.

33 See Milković, 2016, p. 694.

in essence with the characteristics of an employment relationship, or fall within the employer's regular scope of business.[34]

Regarding the application of the general rules of the law of obligations to issues of labor law, it should be mentioned that during the existence of an employment contract, other contractual relationships may emerge between the same parties that *do not arise from the content of the employment contract*. For instance, the employer may lend a certain amount of money to the employee, when a loan contract is concluded according to the general rules of the law of obligations. Another frequent example is a contract on education or specialization of the employee.[35] Quite similar are the disputes regarding the so-called *managerial contracts*. Namely, the managing director or a member of the management can conclude either a classic employment contract with the company (and establish an employment relationship) or another contract according to the general rules of contract law (called a managerial contract).[36]

2.2. The Regulation of the Employment Contract in the Effective Serbian Law

A brief overview of the effective Serbian rules on the employment contract is required to have a clearer picture of its legal nature. It is quite unusual that the legislature did not regulate the notion of the employment contract (neither the notion of the collective agreement). There is no definition in the LC, nor in the LO. The LC only indirectly defines an employment contract as a contract by which an employment relationship is established.[37] This provision of the LC applies only to private sector, public companies, and services. As we said, civil servants are, however, appointed and enter into employment relationship by an act called a 'decision.'

Many issues in relation to employment contract are regulated by the LC, such as the obligation to conclude an employment contract, the form of the employment contract, the different forms of employment (for a definite and indefinite period, for work outside the employer's premises, or for work at home), the time of conclusion of the contract, the content and its place in the legal system, appendices to the contract, termination, etc.[38] To other issues in relation to the employment contract, not regulated by the LC, the rules of the LO are applicable.

The LC specifies several formal requirements of the formation of an employment contract. It must be concluded in writing before the employee begins work, it must be signed and made in triplicate.[39] Also, the LC specifies the obligatory content of an employment contract.[40] It does not require additional verification by the notary public or any other public body. The employer is, however, bound to keep the employment

34 See the Decision of the District Court in Valjevo, Gž. I. br. 266/05 of 26. 05. 2005.
35 See Milković, 2016, p. 689.
36 LC, art. 48.
37 LC, art. 30 s. 1.
38 LC, Arts. 37, 42 and 43.
39 Pursuant to LC, art. 30, s. 2-4 and art. 32 s. 2.
40 LC, art. 33.

contract or any other contract falling in the scope of application of the LC, or its copy in the head office or other premises or the place of the work of the employee or any other person engaged to work for him or her.[41]

The LC specifies that apart from the employment contract, the following types of contracts may be concluded as well: temporary or occasional work contracts, special service contracts, contracts on apprenticeship or professional development, or additional work contracts.[42]

An employment contract cannot be concluded validly by a simple verbal agreement. However, if upon a verbal agreement concluded with the employer, the employee starts to work for him, it will be deemed that he is employed.[43] In this case, entering into an employment contract is considered to be 'consequential,' i.e., as conduct implying an intention to form a contract. The Supreme Court of Cassation holds that in such case, even though a contract has not been entered into, there is a legal presumption that the employee has entered into employment relationship for indefinite term.[44]

Nonetheless, LC specifies fines for the employer failing to conclude a contract with the employee (ranging from RSD 800,000–2,000,000, i.e., roughly EUR 6,500–16,500).[45]

The very conclusion of the contract is still not sufficient for entering into an employment relationship. The employee should commence with the work as well.[46] Should the employee fail to assume work, the employment relation shall be deemed not entered into, despite the fact that the employment contract has been signed.[47]

Also, a possibility to 'transfer an employment relationship,' i.e., an employment contract, is regulated. It occurs when an employee is being sent to another employer or if a business or part of it is being transferred to another owner. According to the LC, if there is a change of status, i.e., change of the employer, pursuant to the law, the succeeding employer shall take over the 'general act' (collective agreement or labor rulebook) and employment contracts concluded with the preceding employer in force on the day when the transfer occurred. The preceding employer shall notify in writing the employees affected by the transfer of the employment contracts to the succeeding employer. Should any employee refuse the transfer of the employment contract or fail to agree to it within five days after the notification of the transfer, the preceding employer may terminate the employment contract.[48]

41 LC, art. 35.
42 These contracts are regulated by LC, Arts. 197-202.
43 LC, art. 32 s. 2.
44 See the Decision of the Supreme Cassation Court, Rev. 2761/2012, of 23. 01. 2013, Belgrade and the Decision of the Supreme Cassation Court, Rev2 602/2014 of 23. 10. 2014.
45 For small employers (entrepreneurs) fines are somewhat less—RSD 300,000–500,000 (c. EUR 2,500–4,170). Anticipated fines for a responsible person with the employer are ranging from RSD 50,000–150,000 (c. EUR 420–1,250).
46 LC, art. 34.
47 LC, art. 34 s. 2.
48 LC, Arts. 147 and 149.

Certain provisions of the employment contract stipulating less favorable working conditions than the ones stipulated in the law and general act of the employer, [49] i.e., those that are based on incorrect information provided by the employer on certain rights, duties, and responsibilities of employees shall be invalid.[50] Invalidity of certain provisions of an employment contract is established by the regular civil courts. There are no statutes of limitations for the right to establish such invalidity.[51]

There is no specific regulation relating to the consequences of the invalidity of an employment contract. However, the LC implies that the parties must adjust their mutual relationship according to the law (and the employment contract) from the starting date of the employment relationship. A salary and other benefits received by the employee shall not be returned and such employee will be entitled to receive any unduly withheld payment. On the other hand, if the employee has received more than he was entitled to (i.e., contrary to mandatory rules), he must return the surplus. If a person was not eligible to enter into an employment contract (e.g., if the person is underaged and thus fails to meet the minimum age requirement),[52] the contract is considered null.

2.3. Special Labor Law Provisions Instituted because of the COVID-19 Pandemic

The COVID-19 pandemic imposed certain changes in the legal regulation of employment relationships. The need to adapt the legal environment to the new circumstances emerged at least in relation to two sets of questions: performing work under the state of epidemic declared by the government, and performing work at home.

To provide legal frame of conducting work under the new circumstances, the Ministry of Labor in 2020 enacted a ministerial decree on the preventive measures for safe and healthy work for the prevention of emergence and spread of an epidemic of an infectious disease. It prescribes the duty of the employer, among others, to enact a plan of implementation of measures for to prevention of emergence and spread of an epidemic of infectious disease,[53] which is considered a part of the employer's act on risk assessment. Its purpose is to adapt the general working conditions and individual labor of employees to the new circumstance, hence it does not require the modification of the employment contract.

The second set of questions in times of COVID-19 pandemic relates to setting up of a legal framework for organizing the employee's work from home. In this case it is necessary to conclude an annex to the employment contract[54] in line with the guidelines for safe and healthy work from home, issued in 2021 by the Directorate of Safety

49 Pursuant to LC, art. 8, collective agreement and labor rulebook are considered to be general acts.
50 LC, art. 9 s. 2.
51 LC, art. 11.
52 According to LC, art. 24 it is 15 years of age.
53 Arts. 3 and 4 of the Decree. Art. 8 prescribes the obligations of employees in relation to labor during the epidemic declared by the state.
54 Guidelines, point 2.

and Health at Work, within the Ministry of Labor, Employment, Veterans, and Social Affairs. Among other things, a risk assessment must be performed that work can take place safely from home. In this regard, the guidelines suggest that attention should be paid to the work environment, equipment for work including adequate computer resources, fire risk, and mental health of employees (stress is specifically mentioned as a serious risk).[55] It is expected that the employers change the terms of the employment contracts in light of the guidelines. Studies have shown that many companies, especially from the IT sector, plan to continue to organize their working processes partially based on the work of employees from home even after the pandemic ends. It is estimated that by 2025, 70% of the workforce will work from home at least five days a month.[56]

3. Collective Agreements in Serbian Law

3.1. Collective Agreements in Yugoslav/Serbian Doctrine

The approach to collective agreement in the Serbian theory of labor law is similar to that of the individual employment contract. Relatively few scholars paid due attention to the legal nature and theoretical features of collective agreements.[57] The majority discussed mostly the interpretation of statutory provisions and legal problems arising in the practice of collective bargaining.

Collective agreements in the former Yugoslavia appeared and began to develop somewhat later than in other, Western European countries. Before the Second World War, in the part of the territory of today's Serbia that formerly belonged to the Austro-Hungarian Monarchy (province of Vojvodina), collective bargaining was introduced by an amendment to the Austrian Act on Commerce in 1907. Though in the Kingdom of Serbia before the First World War, there was some sporadic practice of collective bargaining,[58] it is not mentioned is the Law on Shops from 1910.[59] After the First World War, the importance of collective agreements grew. They became regulated by statute in the Kingdom of Serbs, Croats, and Slovenes by the Law on the Protection of Workers from 1922.[60] In practice, they were called 'tariff agreements,' as their main goal was to regulate 'workers' tariffs' (wages). However, the trade union movement was not strong enough, so the concept collective bargaining was not well developed. After the Second

55 Guidelines, point 5.

56 https://startit.rs/pravilnik-o-radu-od-kuce-prava-i-obaveze-poslodavaca-i-zaposlenih/ (Accessed: 25 March 2022).

57 In this context, the most notable works are Tintić, 1969, p. 263; Adžija, 1928, p. 391; Sladović, 1939; Krekić; Kun, 1940; Lubarda, 1990; Jovanović, 2009; Jovanović, 2007, p. 9; Jašarević, 1992; Jašarević, 2005, p. 153; and Jašarević, 2003, p. 339.

58 According the Report of the Main Federation of Unions in Serbia. Cited in Tintić, 1969, p. 23.

59 However, according to art. 98 of that law, the association of employees (establishment of a trade union) was allowed.

60 See arts. 5, 37 and 109 of the Law. See Jašarević, 1992, p. 150.

World War, collective agreements almost disappeared from the Yugoslav legal order. They have been reintroduced in 1989 after abandoning the socialist economy.

As with the individual employment contract, the greatest scientific contribution and basis for the scientific study of collective agreements was given by Tintić.[61] According to him, 'a collective agreement is one of the autonomous, but professional, non-state sources of (labor) law, because it is the result of an agreement concluded between professional organizations and employers.'[62] He specifies the following *basic features* of a collective agreement: (a) by its legal nature—it is a *normative agreement* (containing rules that are being applied as general rules of law); (b) a trade union organization acts on behalf of the workers as a contracting party, while another entity not organized as a trade union may act on behalf of the employees, if permitted by law and when there are no trade unions to represent the employees; (c) it must be concluded in writing (the form is an *essential element*)—hence it is a *formal contract*; (d) is always concluded for an indefinite period; (e) the clauses of the contract may not infringe the law unless they act *in mellieus* (for the benefit of the worker); (e) the collective agreement has the legal effect vis-a-vis individual employment contract as statute; (d) the collective agreement aside its essential part (normative) part, may also contain an accessory part (obligations of the contracting parties,[63] as well as special clauses such as 'union security clauses').[64]

Tintić asserts that the *process of conclusion* of a collective agreement always has certain necessary elements: a) subjective and b) objective, which are either formal or substantive (essential). *Subjective* elements include: subjects (contracting parties), initiative and legitimacy of representation to conclude an agreement, consensus of the parties, and signing of the agreement. *Objective* formal elements include the procedure of conclusion of the agreement, form of contract, approval, deposition of the agreement, its publication, entry into force and control of its application. The important objective essential elements are its content and cause. The content of a collective agreement can be essential (without which there can be no agreement at all) or accessory.[65] The *procedure of the conclusion* of the agreement is left to the parties themselves to regulate. Regarding consensus (which consists of freely expressed will, without coercion, threat, defects, mistakes, dolus), the general rules of civil law on the conclusion of contracts apply. The same applies to the *interpretation* of a collective agreement. The conditions for concluding a collective agreement are reduced to 1) the form, 2) the content, and 3) the cause.[66]

61 See Tintić, 1969, pp. 263–334.
62 Tintić, 1969, p. 263.
63 In that sense, according to the Serbian contemporary theory of labor law the subject matter of a collective agreement comprises issues that could be classified in two categories: 1) the normative part of the collective agreement and 2) the obligations of the parties according the general rules of the law of obligations. See Jovanović, 2018, p. 74; Lubarda, 2012, p. 887.
64 Tintić, 1969, p. 264. On the 'union security classes' see Tintić, 1969, p. 280; Obradović, 2003, p. 289; Lubarda, 2012, p. 888; Jašarević, 1992b, p. 184.
65 Tintić, 1969, p. 278.
66 Tintić, 1969, p. 279.

According to Tintić, the *temporal validity* of the collective agreement should be limited and determined by the agreement.[67] A collective agreement may be *terminated*: 1) by agreement of the parties, 2) by concluding a new collective agreement, or 3) by unilateral termination: a) due to non-performance, or b) subsequent objective or absolute impossibility of its performance.[68] The *territorial scope* of the application of a collective agreement depends on the area of 'professional representation' of the trade union. In this sense, the following types mare possible: a) inter-confederal (i.e., inter-categorial) collective agreements, b) territorial (regional, local), and c) collective agreements within companies.[69]

The *personal scope* of a collective agreement implies that it applies to all employees falling under the scope of the application of the agreement, unless that agreement itself provides otherwise. In this sense, there can be an *extension* of the collective agreement (*imposed collective agreement*). This happens by a decision of a state organ, which extends its effect in terms of professional and territorial scope to all workers in a certain activity or in a certain territory. This ensures that the collective agreement has a normative effect broader than it would normally have.[70]

Tintić's views on the *legal nature* of the collective agreement are indispensable. They are mostly accepted and incorporated into contemporary textbooks of labor law in Serbia. According to the legal features arising from their conclusion (agreements) and effects (normative acts), collective agreements are 'at the crossroads between private and public law,' which is why it is rightly said that they are 'legal chameleons in the world of legal beings.'[71] Collective agreements are 'atypical agreements,' as they do not only affect the persons who conclude them (unions and employers), but all employees, even those who are not union members. The legal nature of the 'extended collective agreement' is especially unclear, which, according to Tintić, is 'one of the most original features of the collective agreement.'[72]

In general, concepts explaining the legal nature of collective agreement may be divided into: 1) contractual, 2) status-related, or 3) mixed (dualistic). Tintić states therefore that a collective agreement is a 'normative contract,' and not one concluded under the general rules of the law of obligations.[73] In addition, it is not a preliminary

67 In Serbia, until the amendments to the Labor Code from 2014, there were collective agreements concluded for indefinite period, since according to the Labor Code from 2001 collective agreements could have been concluded for indefinite or definite period. According to the amendments to the Labor Law of 2014, the provisions of collective agreements (and labor regulations) that were not in conflict with that Code could remain in force for the longest time six months. Since then, all collective agreements are valid for a maximum of three years.

68 Tintić, 1969, p. 282.

69 In some countries, so-called 'plant/production unit' collective agreements are also concluded (authors' remark).

70 Tintić, 1969, p. 283.

71 Cited in Fahlbeck, 1987, p. 268; S. Jašarević, 1992a, p. 11.

72 Tintić, 1969, p. 318.

Tintić, 1969, p. 318. On the nature of collective agreements see Lubarda, 1990, pp. 142, 144.

73 Tintić, 1969, p. 288.

contract either (as a basis for concluding individual employment contracts subsequently). In this context, Tintić offers various 'contractual concepts' as a ground of determining the legal nature of collective.[74]

Simply put, Tintić's (and our) conclusion is that collective agreements have some of the features of all the mentioned contracts and concepts. However, there are more merits to consider them more like *sui generis* juridical acts, with a mixture of contractual and elements related to legal status (which is closer to the theory of duplicity).[75] Such specific acts do not exist in any other branch of law, and some features of collective agreements cannot be explained otherwise than within the confines of labor law. By being classified as a concept of labor law, collective agreements gain an environment corresponding to their importance and role in the practice of employment relationships, which enables their unhindered development. Civil law regulations on contracts provide often only a narrow a framework for collective agreements. This does not mean that the numerous rules of the general law of obligations cannot be applied here either, especially when it comes to the legal and contractual capacity of the contracting parties (and their representatives) to conclude the contract, the form, interpretation, termination, and nullity of the contract.

According to Lubarda, 'The right to collective bargaining is a special expression of the philosophy of dialogue in general, that is, the philosophy of social dialogue.'[76] For him, collective bargaining is a kind of negotiating mechanism or 'negotiating machinery,' as a subsystem within the national economic and social system, directly including negotiating parties and social partners—unions and employers' associations from the enterprise level, across the branch into the cross-border level at the national level (both centralized and decentralized).[77] It can be bipartite or tripartite (when, in addition to trade unions and employers, state representatives also participate). He also states that collective bargaining is a collective right (of representative unions).[78] Then he explains in more detail some other issues, which we have already talked about, such as: domain of application (*ratione personae* and *ratione materiae*), negotiation mechanism (based on the principle of freedom of collective bargaining, good faith, subsidiarity principle, etc.).[79]

3.2. The Regulation of Collective Agreement in the Effective Serbian Law

The effective legal regulation of collective agreements in Serbia corresponds to the aforementioned theoretical views. As in relation to the employment contract, the legislature, for some reason, did not consider necessary to incorporate a *definition* of a collective agreement into the LC, though its subject matter and form are regulated.

74 Tintić, 1969, pp. 294–314.
75 See Jašarević, 1992a, p. 12.
76 Lubarda, 2012, p. 874.
77 Lubarda, 2012, p. 877.
78 Lubarda, 2012, p. 880.
79 Lubarda, 2012, pp. 880–884.

A collective agreement must be concluded *in writing*.[80] In accordance with the law and other regulations, the collective agreement regulates the rights, obligations, and responsibilities arising from an employment relationship, the procedure of amendments to the collective agreement, mutual relationships of the participants in the collective agreement, and other issues of importance for the employee and the employer.[81] This determines the frame of the potential *content* of the collective agreement, though the details depend on the negotiating will and 'negotiating power' of the subjects of collective bargaining. The parties are, in essence, free to determine the subject matter and content of the collective agreement.

The LC specifies the following *types* of collective agreements: 1) general, 2) special, or 3) concluded with the employer. A general collective agreement is concluded for the entire territory of the country. A special collective agreement is concluded for a certain branch, group, subgroup or activity, and can be concluded for the territory of the whole of Serbia, as well as for the territory of a unit of territorial autonomy (province) or local self-government (municipality).[82] The *participants* in the negotiations and formation of a collective agreement are a representative association of employers and a representative trade union of employees (the principle of bipartism).[83] Regarding collective agreements concluded on the level of enterprises, the signatory of the contract can also be a single employer. When it comes to public companies and public services, the founder (state), i.e., the competent body appears on the side of the employer.[84] In the case of a public enterprise (company), as well as a private employer, the collective agreement is signed on behalf of the employer by a person authorized to represent the employer.[85]

The LC also governs the situation when *no association can be considered representative*. Then the unions or the employers' associations can conclude an *association agreement*, to satisfy the condition of representativeness.[86]

The LC specifies another category of juridical act, in addition to the collective agreement. It is simply named 'agreement' (on wages), concluded by the employees' council or the workers themselves with the employer. If the union is not organized at all by the employer, the salary, salary compensation, and other employee benefits

80 LC, art. 240 s. 2.
81 LC, art. 240 s. 1.
82 LC, arts. 241–250.
83 The condition of the representativeness of a trade union is that it acts on the principle of freedom of actions of the union, that it is independent, mostly self-financed, registered, and having an appropriate number of members (15% of the employees of the given employer, or 10% in the branch, group, or activity). Employers are required to bring together 10% of employers in the branch, industry, and other negotiating unit, provided that these employers employ at least 15% of the total number of employees in the sector to which the agreement relates to. LC, Arts. 218–220, 221 and 222.
84 LC, art. 246.
85 LC, arts. 246–247.
86 LC, art. 249.

may be regulated by an agreement.[87] The agreement is considered concluded when it is signed by a person authorized to represent the employer and a representative of the employees' council or an employee who has received an authorization of at least 50% of the total number of employees. In this situation, too, the legislature favors the collective agreement (as he did in relation to the labor rulebook)[88] by specifying that the agreement ceases to be valid the day the collective agreement enters into force.

The rule prescribing that representatives participating in the negotiations must have the *authorization of their bodies*[89] seems democratic. Its goal is to have the representatives respect the interest of their 'base' in the negotiations, so as not to negotiate in their own name and in their own interest (which occasionally happened in the practice, to obtain certain privileges for themselves).

As in many other countries, the participants in the process of formation of a collective agreement have a *duty to negotiate*, but have no obligation to reach an agreement. If no agreement could be reached, they can initiate arbitration within 45 days to resolve contentious issues.[90] The composition and procedure of the arbitral tribunal and the effect of the arbitral award shall be determined by agreement of the parties. The deadline for delivering an arbitral award is 15 days from the day of the formation of the arbitration.[91] The next possibility is a mediation before the Agency for Peaceful Settlement of Labor Disputes. Also, according to the Act on Peaceful Settlement of Disputes, conciliators can help the parties in collective bargaining.[92]

The *personal scope of the application* of collective agreements is regulated bilaterally: in relation to employees, and in relation to employers. The collective agreement is binding on all employees, including those who are not members of the union, which signed the collective agreement.[93] Defining the agreement's scope of application in relation to employers is somewhat more complicated. The general rule is that a collective agreement applies to all employers who are members of the association that signed the collective agreement, as well as to those who join it subsequently. The collective agreement obliges even those employers who withdrew from the association

87 LC, art. 250.

88 According to the LC art. 3, the employer can adopt a labor rulebook only if no collective agreement in the company is concluded (there are no unions, negotiations were not initiated or they failed). An employer who does not accept the initiative for negotiations for the conclusion of a collective agreement, has no right to adopt a rulebook. When the collective agreement is signed, the rulebook is deemed repealed.

89 LC, art. 253.

90 LC, art. 254.

91 LC, art. 255.

92 According to art. 16 s. 1 of the Act on Peaceful Settlement of Disputes, participants in the negotiations may submit a proposal to the Agency for Peaceful Settlement of Labor Disputes for the participation of conciliators in collective bargaining to provide assistance and prevent the occurrence of a dispute. The conciliator in the collective bargaining procedure: 1) attends the negotiations; 2) indicates to the participants proposals that are not in accordance with the law and other regulations; and 3) provides assistance to participants to prevent the occurrence of a dispute. The conciliator is obliged to be impartial during the negotiations (art. 17).

93 LC, art. 262.

for the next six months from the day of the withdrawal.[94] The collective agreement may be accessed subsequently by an employer who is not a member of the association that signed it.[95]

The government may *extend* the effect of a collective agreement by prescribing that the collective agreement *as a whole* or *its individual provisions* also applies to employers who are not members of the association that signed the agreement. The legislature prescribed this procedure in detail.[96] The government may extend the effect of a collective agreement, if there is a justified interest. The condition is that the collective agreement whose effect is extended obliges employers employing more than 50% of employees in a certain branch, group, subgroup, or activity.

The LC also regulates the *temporal validity* of a collective agreement. It can be concluded for a maximum of three years. After the expiry of that period, the agreement ceases, unless the participants agree otherwise, no later than 30 days before the expiration of its validity. Its validity may be terminated earlier by an agreement of the participants or by termination, in the manner determined by that agreement. In that case, the collective agreement shall apply for a maximum of six months from the date of submission of the notice. After the termination, the participants are obliged to commence negotiations within 15 days.[97]

Dispute resolution has also been regulated by the LC, though not quite systematically. Disputes concerning the application of collective agreements (so-called legal disputes) can be resolved by ad hoc arbitration, formed within 15 days from the emergence of the dispute.[98] The composition and the procedural rules of the arbitration is to be governed by a collective agreement. In addition, judicial protection is also allowed.

To have the text of a collective agreement available to the public and facilitate the determination of its content, collective agreements concluded at all levels above the company level (general and special collective agreement) must be registered with the Ministry of Labor, Employment, Veterans, and Social Affairs, as well as their amendments.[99] They are also to be published in the Official Gazette of the Republic of Serbia.[100]

3.3. The Relationship between Individual and Collective Labor Law

The relationship between individual and collective labor law was not in the special focus of the legislature in Serbia. The provisions of collective and individual labor law are mostly regulated by the same act, usually in a basic law—the Labor Code.[101] The

94 LC, art. 256.
95 LC, art. 256a.
96 LC, arts. 257–258.
97 LC, arts. 263–264.
98 LC, art. 265.
99 According to the Ministerial Decree on the Registration of Collective Agreements.
100 LC, arts. 266–267.
101 The exceptions are the Act on Strikes and the Act on the Socioeconomic Council, which may be considered as special statutes in the field of collective labor law.

LC however does not clearly separate the provisions of collective and individual labor law, but are mostly intertwined.

Several provisions of the LC however tackle the relationship between individual employment contracts and collective agreements. The LC clearly gives priority to collective agreements. It stipulates that the rights, obligations, and responsibilities from the employment relationship, in addition to that law and special laws, are regulated by the collective agreement and the employment contract.[102] However, the significance of the individual contract is relativized in the LC: in the continuation of the same provision, it is stated that the employment relationship can be regulated by the labor rulebook and the employment contract only when the LC so provides. Thus, if there is a collective agreement, it has primacy. The priority of collective agreement is also confirmed by a rule stipulating that certain provisions of the employment contract that allow less favorable working conditions than the conditions determined by law and the general act of the employer (which include collective agreements and the labor rulebook) are automatically null and void.[103]

In practice, in collective agreements are often merely repeated the rules of the statutes, with few genuine legal solutions. In general, they represent a significant additional legal source on which employment contracts are based when it comes to topics such as salaries, benefits, salary supplements, other benefits, leave, severance pay, redundancy selection rules, additional social insurance. Collective agreements have been concluded in almost all areas and public sector enterprises, while they are quite rare in the private sector. Therefore, in the private sector, the impact of collective agreements on employment contracts is almost negligible.

4. Current Labor Law Regulatory Issues and Problems (with a Focus on Employment Contracts and Collective Agreements)

The effective labor law legislation in Serbia can in general be assessed positively.[104] However, that does not mean that it requires no 'fine-tuning.' In addition to the need for further harmonization with international standards (ILO and EU), the following reasons impose the need to innovate current labor legislation: 1) systemic inconsistency of regulations (inconsistency of individual regulations with the main legal source—Labor Code), 2) imperfection and obsolescence of certain legal solutions, 3) harmonization with new tendencies in the field of work.[105]

102 LC, art. 1. s. 2.

103 LC, art. 9. The general acts according to LC, art. 8 are the collective agreement and the labor rulebook.

104 This is the general assessment of the experts of the International Labor Organization as well. See for example Memorandum of Technical Comments on Draft Amendments to the Labor Code of the Republic of Serbia, 2014.

105 See Jašarević, 2019, p. 69.

Amendments to the Labor Code and some other laws are needed, along with the adoption of a new Law on Strike.[106] The levels of these changes would be in systemic—basic solutions (e.g., the concept of employee, employer, employment, employment contract would be innovated), as well as in changes concerning certain labor law institutes (strike, dismissal, earnings, violence at work). New concepts should also be introduced into labor legislation, such as 'digital worker,' 'worker' (a person who is not employed by the employer, but depends on him), 'dependent co-employee,'[107] 'secondary employer,' etc. An important reason imposing the need to innovate labor legislation around the world are the *new circumstances* in the field of labor. They are imposed by digitalization, which entered all areas of life and work. The result of the new way of working is a series of new forms and concepts of labor, such as digital work, digital worker, platform work, platform economy, etc.[108] The new concepts will require the revision of labor law regulations, which will regulate not only the position of employees, but all others who live from work and make their living outside an employment relationship, working for clients (working across platforms) or 'undercover employers'—who for employment use contracts of general law of obligation instead of employment contracts.

The contracts of general law of obligations are increasingly used to conceal the true nature of the employment of a person working through 'platforms,' 'digitally,' 'temporarily,' 'occasionally' or in any other nonstandard form of work. The goal of concluding such contracts is to hide the true nature of the relationship between the contracting parties, i.e., to avoid establishing an employment relationship and legal effects that it entails (responsibility like that of an employer toward the employee, tax obligations, social benefit payment obligation, etc.). Instead of concluding an employment contract, often an 'innominate' contract is concluded, according to which the 'fake' or 'secondary' employer (platform) is presented as a software service provider, intermediary, etc. This transfers all responsibilities to the worker. To avoid this, it would be necessary to innovate the Labor Code, the rules on the employment contract, the concept of the employee, and the employment relationship, to extend the protection of labor law to all persons who are in dependent work (element of subordination), and making their living out of such work (element of conducting work as one's trade or profession). It would be advantageous if all contracts of the law of obligations suitable to provide legal form to various forms of conducting work were included in the Labor Code and become a source of law applicable to such employees or workers. In that sense, some rules from the Slovenian and Croatian legislation could be singled out and implemented into Serbian law.

106 The ILO and EU consider the adoption of the new Act on Strike the most topical issue of labor law legislation in Serbia. See Memorandum of Technical Comments on Draft Strike Law, 2018; European Commission, 2011, p. 116.

107 These legal concepts could provide protection to workers who work on different 'platforms'—both international and local.

108 See the ILO's *World Employment and Social Outlook 2021: The Role of Digital Labor Platforms in Transforming the World of Work*.

The amended Slovenian Act on Labor Inspection deals with the role of labor inspection in determining 'false civil law contracts' when it comes to employment relationship. If the labor inspector established that a contract of general law of obligations has been concluded, which is contrary to the rule of the Labor Code which prescribes that if there are elements of employment relationship, the work cannot be performed based on such contracts. In that case the inspector orders the employer to provide the contractor a written employment contract within three working days of delivery of the decision.[109] The written contract must correspond to the actual situation arising from the decision (regarding the type and scope of the work performed), the salary must be comparable to the salary prescribed for the same work by the collective agreement and general acts binding on the employer (whereby the contributions to obligatory social insurance and tax obligations are also taken into consideration). If the employer fails to offer the contractor an employment contract, he or she has a right to resort to court within 30 days.[110]

Similarly, the solution of the Croatian Labor Code may also be qualified as progressive. If the employer concludes a contract with the employee for the performance of work which, given the nature and type of work and the employer's authority, has the characteristics of the job for which the employment relationship is established, according to the Croatian Labor Code it shall be considered that an employment contract has been concluded, unless the employer proves otherwise.[111] Furthermore, the Croatian Labor Code specifies that if there is an assignment of an employee to conduct work by a linked company, the former shall be considered employer in terms of the duty to apply the provisions of the Labor Code and other statutes and regulations governing safety and health at work (a so-called linked employer).[112] It would strengthen the protection of employees if a similar rule could be adopted in Serbia as well.

A conclusion may be inferred that there is a high level of compliance of the Serbian regulation of collective agreements with the international standards in this area, those of the ILO.[113] However, some solutions should be improved. First, the law should contain a definition of a collective agreement. By that would collective agreements be clearly differentiated from other agreements. According to ILO experts who analyzed the law of Serbia, there is a problem with the regulation of the *content of the labor rulebook* and its *relationship with the collective agreement*. They assert that the rulebook should not in any way replace the collective agreement (as provided in art. 3 of the Labor Code), since in comparative perspective, it usually has a narrower content than the collective agreement. In comparative law, for instance, wages are not regulated by the rulebook, as is the case with collective agreements, but work discipline and similar issues. In that sense, the memorandum explicitly states: 'If

109 Slovenian Law on Labor Inspection, art. 19. s. 2.
110 See Senčur Peček and Laleta, 2018, p. 422.
111 Croatian Labor Code, art. 10 s. 2.
112 Croatian Labor Code, art. 10 s. 4 p. 7. See Senčur Peček and Laleta, 2018, p. 421.
113 See Jašarević, 2000, p. 39.

there is no collective agreement, then the individual employment contract defines the rights and obligations established through individual negotiations.'[114] Therefore, the ILO considers that the issue of substitution of a collective agreement by a rulebook should be regulated differently, but still affirming the principle of good faith and fair dealing in negotiations.[115]

Furthermore, according to the experts of the ILO, the *possibility of expanding the scope of application of collective agreements* is not properly regulated in the LC. They should be fully in line with the standards of the ILO. They assert that legal solutions to this issue should arise from consultations with the social partners, in accordance with point 5 of Recommendation no. 91 on ILO collective agreements from 1951.[116] In addition, the effective legal solution (art. 257 LC) lacks the possibility provided for in art 5. sec. 2 subsection (c) of the recommendation, according to which, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.

The provision on the termination of a collective agreement also causes a great deal of difficulties in application. The validity of a collective agreement may cease before the expiration of three years by an agreement of all participants or by termination reached in a manner determined by collective agreement.[117] The source of the difficulties is in the wording that the contract is valid 'for a maximum of six months from the day the notice on termination was submitted.' Who decides how long the act will be valid after the cancellation? The party cancelling it (usually the employer) usually wants the termination as soon as possible, while the other party relies thereon that it will apply for another six months. In this 'vacuum,' expensive court disputes may occur, mostly regarding salaries and other compensations. The difference is not negligible. The amounts according to the 'new calculation' and according to the previously valid collective agreement may greatly differ. Therefore, the mentioned rule in this way does not support legal certainty, but on the contrary, it weakens it with the 'extensibility' of the mentioned deadline.

To facilitate the determination of the existence and the content of collective agreements in the event of a dispute, it would be useful to introduce a systematic database of concluded collective agreements available to the public—which does not currently exist in Serbia. Since the Ministry of Labor, Employment, Veterans, and Social Affairs already has a register of collective agreements (general and special), this could be easily implemented. In addition, we would propose the mandatory deposit of collective agreements with the employer in the same database, so that the authenticity of collective agreements could not be disputed later.

114 Memorandum, pp. 14–15.
115 Ibid.
116 See Memorandum on the LC from 2014, p. 13.
117 LC, art. 264.

5. Harmonization of Serbian Labor Law with EU Law

Until 2000, during the adoption of labor law regulations, Serbia was primarily guided by the documents of the ILO.[118] At the turn of the millennium, Serbia began the process of approaching and accession to the Union, while in 2012 gained the status of candidate country. By this the process of harmonization of Serbian Law with the *acquis communautaire* commences: the legal solutions from the *acquis* have been implemented into the national legal frame directly or only with minor changes.[119] In addition, the harmonization of domestic law with the law of the European Union influenced the development of special areas in relation to particular segments of labor law legislation, such as anti-discrimination laws, the protection of whistleblowers, protection against harassment at work, the protection of personal data related to work, legislation strengthening, social dialogue, etc.

After 2000, the legislative model has primarily been the EU law. Thus, in framing the Labor Code, the legislature referenced a range of the EU legislative acts. The most notable acts include: Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees; Council recommendation 92/443/EEC concerning the promotion of participation by employed persons in profits and enterprise results (including equity participation); Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation; Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Directive 93/104/EC concerning certain aspects of the organization of working time; Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer; Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses; Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies; Directive 97/80/EC on the burden of proof in cases of discrimination based on sex; Directive on an employer's obligation to inform employees of the conditions applicable to the contract of employment relationship; Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP; Directive 97/81/ECconcerning the Framework Agreement on part-time work

118 Serbia has adopted 77 ILO conventions. The list of adopted ILO conventions can be seen at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102839 (Accessed: 25 March 2022).

119 See Jašarević, 2014, pp. 153–169.

concluded by UNICE, CEEP and the ETUC; Directive 93/104/EC concerning certain aspects of the organisation of working time (and Directive 2000/34/EC); Framework Agreement on Telework, 2002.

Therefore, the Serbian Labor Code, as well as all other subsequent documents of the labor law, were largely harmonized with the EU legal standards. However, certain issues and institutes should be further developed, in the light of their evolution in the EU directives and regulations.[120] Alternatively, the rules of EU directives relating to labor law should be transposed integrally as it has been done in the laws of numerous member states.

120 Ibid.

Bibliography

Adžija, B. (1928) *Kolektivni radni ugovor.* Zagreb: Radnička zaštita.

Baltić, A., Despotović, M. (1981) *Osnovi radnog prava Jugoslavije.* Beograd: Savremena administracija.

Baltić, A., Despotović, M. (1971) *Osnovi radnog prava Jugoslavije i osnovni problem sociologije rada.* Beograd: Savremena administracija.

Bećirović-Alić, M. (2018) *Suđenje u razumnom roku.* Ph.D. thesis, University of Novi Pazar, Novi Pazar.

Brković, R., Urdarević, B. (2020) *Radno pravo sa elementima socijalnog prava.* Beograd: Službeni glasnik.

Dudaš, A. (2010) 'Kauza ugovorne obaveze prema Zakonu u obligacionim odnosima Republike Srbije'*, Zbornik radova Pravnog fakulteta u Novom Sadu*, 46(1), pp. 145–170.

Dudaš, A. (2011) 'Kauza ugovorne obaveze—francuski uticaj na Zakon u obligacionim odnosima Republike Srbije'*, Zbornik radova Pravnog fakulteta u Novom Sadu*, 45(3), pp. 663–669.

European Commission (2011) *Commission Opinion on Serbia's application for membership of the European Union* [Online]. Available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52011DC0668 (Accessed: 1 October 2022).

Fahlbeck, R. (1987) 'Collective Agreements, A Crossroad Between Public Law and Private Law'*, Comparative Labor Law Journal*, 8(3), pp. 268–296.

Gajić, B. (2017) 'Radni spor i rok za sudsku zaštitu'*, Pravni informator*, 20(4), pp. 34–44.

Grgurev, I. (2011) *Pravna priroda i sadržaj menadžerskih ugovora.* Zagreb: Radno pravo.

International Labor Organization (2014) *Memorandum of Technical Comments on Draft Amendments to the Labor Code of the Republic of Serbia.* Geneva: International Labor Office.

International Labor Organization (2018) *Memorandum of Technical Comments on Draft Strike Law.* Geneva: International Labor Office.

International Labor Organization (2021) *World Employment and Social Outlook 2021: The role of digital labor platforms in transforming the world of work.* Geneva: International Labor Office.

Jašarević, S. (1992a) *Uloga i značaj kolektivnih ugovora.* Mgr thesis. Novi Sad: Pravni fakultet u Novom Sadu.

Jašarević, S. (1992b) **'**Zaštitne sindikalne klauzule'*, Zbornik Pravnog fakulteta u Novom Sadu*, 26(1-2), pp. 184–187.

Jašarević, S. (2000) 'Bitni aspekti kolektivnog pregovaranja prema dokumentima Međunarodne organizacije rada'*, Radni odnosi i upravljanje*, 28(1), pp. 39–44.

Jašarević, S. (2003) 'The Autonomy of the Collective Agreement in Serbia and Montenegro' in Blanpain R. (ed.) *Collective Bargaining, Discrimination, Social Security and European Integration.* European Regional Congress of the International Society for Labor Law and Social Security Law, Stockholm (September 2002), Bulletin of Comparative Labor Relationships. The Hague/London/New York: Kluwer, pp. 339–352.

Jašarević, S. (2005) 'Pravni i faktički okviri kolektivnog pregovaranja u Srbiji', *Radno i socijalno pravo*, 9(1-6), pp. 153–172.
Jašarević, S. (2013) 'Radni odnos—tendencije u praksi i regulativi', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 47(3), pp. 237–255.
Jašarević, S. (2014) 'Zakon o radu i komunitarni pravni standardi', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 48(3), pp. 153–169.
Jašarević, S. (2019) 'Usklađivanje radnog prava Srbije sa novim tendencijama, standardima MOR i EU', *Radno i socijalno pravo*, 23(1), pp. 69–91.
Jovanović, P. (2007) 'Aktuelna pitanja kolektivnih prava zaposlenih', *Radno i socijalno pravo*, 11(1), pp. 9–26.
Jovanović, P. (2009) 'Radnopravni standardi u vezi kolektivnog pregovaranja', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 43(2), pp. 101–119.
Jovanović, P. (2018) *Radno pravo.* Novi Sad: Pravni fakultet u Novom Sadu.
Krekić, B. (no date) *Kolektivni ugovor.* Beograd: Oslobođenje.
Kun, I. (1940) *Kolektivni ugovor.* Zagreb: Grafičko nakladni zavod DD.
Lubarda, B. (1990) *Kolektivni ugovori o radu.* Belgrade: Radnička štampa.
Lubarda, B. (2012) *Radno pravo.* Belgrade: Pravni fakultet Univerziteta u Beogradu.
Milković, D. (2016) 'Ugovor o radu i zakon o radobveznim odnosima', *Zbornik Pravnog fakulteta u Rijeci*, 37(1), pp. 685–713.
Mirjanić, Ž. (2020) *Uvod u radno pravo.* Banja Luka: Pravni fakultet Banja Luka.
Obradović, G. (2003) 'Klauzule sindikalne sigurnosti', *Zbornik radova Pravnog fakulteta u Nišu*, 2003/18, pp. 289–302.
Perić, B. (1950) *Radno pravo FNRJ.* Sarajevo: Odbor za izdavanje udžbenika i skripata za studente Univerziteta i Visokih škola NR BiH.
Pešić, P., Brajić, V. (1979) *Radno pravo.* Senta: Društvo ekonomista.
Popović, T. A. (2016) *Smetnje za zasnivanje radnog odnosa—legitimni ciljevi i ograničenja.* Ph.D. thesis. Beograd: Pravni fakultet Univerziteta u Beogradu.
Radničko zakonodavstvo (1927) Beograd: Izdavačka knjižnica Gece Kona.
Senčur Peček, D., Laleta, S. (2018) 'Ugovor o radu i ugovor o djelu: područje primjene radnoga zakonodavstva', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 39(1), pp. 411–453.
Sladović, E. (1939) *Radno pravo i kolektivni ugovor kao njegovo vrelo.* Zagreb: Radnička zaštita.
Šunderić, B. (1997) 'Ugovor o radu i njegova priroda', *Pravo i privreda*, 34(5-8), pp. 940–952.
Tintić, N. (1969) *Radno i socijalno pravo I.* Zagreb: Narodne novine.
Tintić, N. (1972) *Radno i socijalno pravo II*. Zagreb: Narodne novine.
Uredba o minimalnim nadnicama, kolektivnim ugovorima i arbitraži (1937) Beograd: Izdavačka knjižnica Gece Kona.
Zakon o radnjama iz 1910. godine (1910) Beograd: Državna štamparija Kraljevine Srbije.