Bojan Urdarevic[*]

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THE CHANGING NATURE OF THE RIGHT TO STRIKE IN THE REPUBLIC OF SERBIA

Abstract

The right to strike is not an absolute right according to the Constitution of Serbia, however, its dimensions are determined by a constitutional provision, which perscribes it as a right of the employees regulated either in compliance with the provisions of the law dealing with the right to strike, or by a collective agreement. Although the right to strike today belongs to the corpus of basic human rights, under certain circumstances it can be prohibited or limited by an obligation to fulfill certain conditions. A general prohibition of strikes is not in compliance with the principles of the freedom of association. However, even the international labor standards allow the possibility to either prohibit or limit the right to strike for a certain type of employees. National legislations are obliged to adjust their internal needs to limit the right to strike so as to comply with the international norms. Any venture out of the framework of internationally recognized conditions for the limitation of strike can become its opposite, a restriction on the rights of employees to exercise and protect their socio-economic rights to organize a (lawful) strike.
The author reinvestigates the concepts of strikes, with a focus on Serbian legislation and most important Court decisions in this area. In addition, author analyzes most important international labour standards related to the right to strike and points out the state of the social dialogue in the republic of Serbia.

Key words: *Strike, International Labour Organization, trade union, collective agreement, social dialogue.*

1. INTRODUCTION

Strikes might have been among the most prominent objects of study in the field of industrial relations. The material costs of strikes are also well documented in economic research, focusing on losses and quality of

[*] LLD, Associate Professor, University of Kragujevac, Faculty of Law (bojan.urdarevic@gmail.com).

production.[1] Yet, only small number of studies have drown attention to the social aftermath of strikes. This is surprising because the aftermath of strike can be a long lasting, and involve severe personal and relational costs, which leads to a significant interpersonal conflicts that can harm productivity – even longer then the strike itself.

Strikes come in many forms, depending on the country and the times. They are a freedom in some common law countries, but more often they are a right, and a means of action only trade unions or recognized individual workers are authorized to take.

In the Republic of Serbia, due to the gravity of the economic and social crisis, problems with new company owners and the negative effects of the global economic crisis, the employees frequently resort to radical steps aiming to protect their rights. Because of that, the new wave of strikes increasingly resembles a social rebellion[2]. When reviewing the actual situation and the perspectives of the industrial relations in the Republic of Serbia, we should take into account another common characteristic related to the connection between industrial relations and social environment – the fact that the industrial relations to a great extent mirror the overall political, economic and social state of the society. Many issues and phenomena in the political and economic sphere, which can be concealed or at least embellished in other areas of life, mainly politics, inevitably come to surface in the industrial relations.

2. THE CONCEPT OF THE RIGHT TO STRIKE

The term "štrajk" in Serbian language is derived from the English term "strike", which itself appeared (in the sense of ceasing work) near the end of the XVIII century and in the beginning was an illegal method for solving collective labor disputes, which resulted in criminal and civil liability for those who participated in the strike.[3] With the recognition of the right to form trade union rights and the right to collective bargaining, the first necessary step was the abolition of criminal, and later civil and pecuniary responsibility

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[1] A. Mas, *Labour Unrest and the Quality of Production: Evidence from the Construction Equipment Resale Market,* Review of Economic Studies, 75/2008, 232.

[2] B. Urdarević, Z. Radulović, *Globalizacija i koncept socijalnih prava*, Srpska politička misao, 1/2012, 169-186.

[3] For example, in France, The Le Chapelier Law of 1791 characterised the strike as a crime of conspiracy, which was rationalized by the individualist philosophy of liberalism. See more in: N. Communod, M. Feron, *Le nouveau droit de la législation sociale*, Paris, 1983, 248.

for participation in a strike.[4] After the freedom to strike comes the recognition of the right to strike, which was eventually elevated to the rank of a constitutional right, and today, in the international instruments on human rights, the right to strike is classified within the corpus of fundamental human rights.

Today, the right to strike is regarded as a basic social right of workers and their organizations in order to promote and defend their economic and social interests, and in this sense it has the same rank of a fundamental right as does the right to work, right to own property or the freedom of entrepreneurship. At the international level, it is explicitly or implicitly recognized in international treaties, both universal and regional, and in national legislations as an explicitly or implicitly recognized right at the constitutional level. Thus, their respective constitutions explicitly recognize the right to strike in France, Sweden, Spain, Serbia, Montenegro, and it is implicitly constitutionally recognized in Germany, Belgium and Luxembourg, while in the UK, Denmark and Austria one can speak of a freedom to strike, but not the right to strike.[5]

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

In the labor law theory in Serbia, there are several definitions of the strike. Most often the term strike refers to a temporary collective termination of work by employees in order to exert pressure on the employer to comply with the requests of workers on matters that are the subject of the dispute.[6] In addition to this one, there are other, very similar definitions of a strike. So for example, a strike represents an industrial or an aggressive action to resolve a collective labor dispute or to protect social and economic rights,[7] or a strike represents a collective cease of work by employees in order to exercise economic pressure on the employer or the state, regarding the economic or social interests and rights of workers or the collective rights of a trade union;[8]

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

[5] B. Bercusson, *European Labour Law,* Cambridge University Press, 2009, 328.

[6] A. Baltić, M. Despotović, *Osnovi radnog prava Jugoslavije*, Beograd, 1978, 323.

[7] P. Jovanović, *Radno pravo,* Novi Sad, 2012, 391.

[8] B. Lubarda, *Leksikon industrijskih odnosa,* Beograd, 1997, 190.

or strike represents an organized exercise of economic or other pressure on the employer, increased by a work stoppage, in order to increase the employer's tolerance towards the requirements of the strikers.[9] As a rule, a strike is a means of struggle for the workers in order to achieve their professional and economic goals.

Of all the methods of industrial action for resolving collective labor disputes, the state has devoted the most attention to the method of strike, and in some countries, conducted its comprehensive institutionalization, which means that it can be used only within established legal rules, regardless of whether they are set through laws, by-laws or court decisions. Only lawful strikes are permitted means of labor struggle that do not entail negative consequences for its organizers and participants.

3. THE RIGHT TO STRIKE IN INTERNATIONAL LABOUR LAW

Winston Churchill presented his vision of Europe in Zurich in 1946, and the first step towards this vision was the establishment of the Council of Europe. The Council of Europe was founded in 1949, and the preamble of the treaty establishing it refers to the proclamation of certain principles, and in particular the following: the quest for peace through international cooperation and the moral inheritance of the European citizens, political freedoms and the rule of law. Article 1 of the Treaty Establishing the Council of Europe states that the aim of the Council of Europe is consideration of issues of common interest and taking certain actions on the economic, social, cultural and administrative level, as well as preserving and exercising human rights as well as fundamental freedoms.[10]

The Council of Europe had the possibility to influence the European labor standards via two instruments. The first was the European Convention on Human Rights of 1950, and the second the European Social Charter of 1961, which explicitly recognizes the right to strike. Unlike the convention, the charter is little known and often ignored in practice.[11] Although the European Social Charter had proclaimed the right to strike, its provisions on control of this right were insufficient.[12] According to EU legislation, neither

[9] Ž. Kulić, *Kolektivni radni sporovi,* Beograd, 2001, 200.

[10] T. Novitz, *International and European Protection of the Right to Strike,* Oxford, 2003, 127.

[11] B. Hepple, *Labour Laws and Global Trade*, Hart Publishing, Oxford and Portland Oregon, 2005, 197.

[12] *Ibid.*

freedom of association, nor the right to strike are explicitly protected. In other words, this means that the European Court of Justice has neither a particular role in this area, nor the possibility to act similarly to the Committee for Trade Union Freedom of the International Labor Organization.[13] This leaves the right to strike for the most part in the competence of Member States to regulate its protection, respecting the principle of market integration. Therefore, one can only conclude that, predominantly due to economic reasons, especially due to the effects that a strike has on competition, an appropriate regulation of the right to strike has not been enacted in the European law.[14]

On the other hand, the International Labour Organization (ILO) has regulated the right to strike indirectly, through conventions which are collectively known as the Conventions on Freedom of Association.[15] Considering the fact that the provisions of these conventions are quite general, and that they do not explicitly recognize the right to strike, the claim of the implicit recognition of the right to strike, came about by a broader interpretation of international labor standards contained in these conventions.[16] Fear of restricting the freedom of relations between employers and workers organizations, and fear of restricting the possibility of direct action, would seem to be one of the main reasons why so few ILO standards have been adopted on the strike and settlement of industrial disputes in general.[17] However, the ILO`s supervisory bodies have always considered that the right to strike arose from the articles of Convention No. 87 entitling trade unions to formulate their programmes and organize their activities.

During the 1998, the ILO finally adopted the Declaration on Fundamental Principles and Rights at Work to uphold the "fundamental

[13] B. Urdarević, *Međunarodni i evropski koncept prava na štrajk*, u: Slobode i prava čoveka i grđanina u konceptu novog zakonodavstva Republike Srbije (ur. S. Bejatović), knj. 2, Pravni fakultet Univerziteta u Kragujevcu, Institut za pravne i društvene nauke, Kragujevac, 2003, 188.

[14] B. Lubarda, *Konkurencija u radnom pravu*, Pravo i privreda, 5-8/2002, 897-902.

[15] They include: Convention no. 87 on Freedom of Association and Protection of the Right to Organise (1948); Convention no. 98 on Right to Organise and Collective Bargaining (1949); Convention no. 151 on Freedom of Association and the procedures for determining conditions of work in the public sector (1978) and Convention no. 154 on Collective Bargaining (1981). See: D. Paravina, *Međusobna uslovljenost obaveza i prava iz radnog odnosa*, Časopis za radno i socijalno pravo, Beograd, 3-6/1998, 22.

[16] B. Lubarda, *Radno pravo - rasprava o dostojanstvu na radu i socijalnom dijalogu,* Beograd, 2012, 995.

[17] J. M. Servais, *International Labour Law*, Wolters Kluwer, 2011, 122.

principles at work" or the "basic rights at work" which include: freedom of association and the effective recognition of the right to collectively bargain, elimination of all forms of forced or compulsory labor, effective abolition of child labor and elimination of discrimination in terms of employment and occupation. The Declaration was unanimously adopted but the question whether this proves to be the beginning or the end of labor standards arises.[18] It is also debatable whether the Declaration has any positive effects on work and labor standards. Two basic problems with the Declaration seem to arise. Firstly, the preamble to the Declaration on Human Rights adopted by the United Nations in 1948 declares that all human beings are born with equal and inalienable rights and therefore the mere division and classification into fundamental or essential standards implies that standards which are "less fundamental" or "less essential" also exist. What is the logic behind the claim that the elimination of discrimination is more important than the right to have social insurance, safe working conditions, maternity leave, etc? What does the guarantee of the freedom of association represent without a range of socio-economic rights to put this freedom into practice?[19] Secondly, the Declaration on the Fundamental Principles and Rights at Work considerably neglects actual workers' economic and social rights and mainly deals with negative aspects of some rights, for instance, individuals, groups and states are requested to "prohibit" discrimination, "abolish" forced labor and "eliminate" child labor.

4. THE CONCEPT OF STRIKE AND SOCIAL DIALOGUE IN SERBIAN LEGISLATION

If the right to strike is viewed in terms of its role in collective bargaining it is often seen as a collective right to be exercised by trade unions.[20]This means that the presence of trade unions is generally considered a prerequisite for labour strikes, without organization people lack the ability for collective action to address their grievances.[21] Most empirical studies on this subject are based on observation at a national level. Over the last few decades, however,

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[18] B. Urdarević, *Definisanje prava na štrajk u međunarodnom i evropskom pravu*, Pravna riječ, Banja Luka, 2004, 554.

[19] B. Urdarević, *Creation and Development of International Labour Standards*, New Perspectives of South East European Private Law, Skopje, 2012, 139-150.

[20] T. Novitz, *op. cit*, 275.

[21] D. Snyder, *Institutional setting and industrial conflict: Comparative analyses of France, Italy and United States*, America Sociological Review, 40(3)/1975, 265.

collective bargaining has decentralized in many countries, and has shifted away from national bargaining toward the level of individual firms and multinational corporations.[22]

Union membership rate is sometimes considered a key indicator for the "capacity to strike".[23] That's why, usually, the decision to strike is predominantly made by unions, and that in principle only union members will strike. Therefore, the capacity to strike should increase as union membership among workers increases.[24]

As a consequence of an insufficient level of development of collective bargaining and the lack of a harmonized jurisprudence, laws constitute the principle way of regulating the right to strike and the main source of this right. The main legal document which regulates the right to strike in Serbia is the Law on Strike (1996). Article 1 of the Law on Strike defines strike as a "disruption of work process, organized by employees in order to protect their professional and economic interests based on employment". Such a definition has its consequences. Firstly, the types of professional interests of employees which can lead to a strike are not specified. Secondly, the extent of violation is determined in the broadest possible way, so that even a strike organized due to a one-day delay in payment of wages can be considered legal. Third and probably most the significant issue, based on the Constitution of Republic of Serbia, deals with the concept of strike as the right of employees. According to Art. 3 of the Law on Strike, the majority of employees and trade unions are entitled to strike or to organize warning strikes against the employer, whereas a strike within an industry or occupation, as well as the general strike, are exclusive rights of trade unions. Such law provisions allow ample rights to organize strike, placing Serbia in the group of countries which allow both employees and trade unions to organize strikes.[25]

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[22] B. Urdarević, *Međunarodni okvirni sporazumi kao oblik socijalnog dijaloga na globalnom nivou,* Pravni život, 10/2011, 491.

[23] B. Kaufman, *The determinants of strikes in the United States, 1900-1977*, Industrial and Labour relations Review, No. 35, 1982, 475.

[24] G. Jansen, *Effects of Union Organization on Strike Incidence in EU Companies*, International Labour Review, No. 67(1), 2014, 62.

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

Although such broad legal freedom of employees to organize a strike seems like a privilege of the employees, in practice it leads to a culmination of senseless strikes, with no likelihood of success. Because of that, it is essential to proceed with a certain amount of caution in this area. This may imply that trade unions and other collectivities of workers should not be able to call on strike at any moment, at least before the parties have given a chance to use means of conciliation to come to an agreement. In some European countries, a doctrine of ultimum remedium has been well developed, which implies that trade unions involved in collective bargaining, cannot call on strike, unless they are convinced that there I no way they can come to an agreement with the employer[26].

Unfortunately, there is no information on the number of strikes in Serbia, mainly because no state agency or ministry keeps such records. Some information is available on web sites of representative trade unions, keeping only data on strikes organized by them. Therefore, records on strikes organized by the majority of employees working for the same employer who are not members of the trade union indeed are a contentious issue.

The key question which is still very relevant, and solutions vary from state to state, is whether only trade unions, only employees or both have the right to strike.[27]

If we take a brief look at the revised European Social Charter, particularly Part II Article 6 Item 4, we will notice that both workers and employers have a guaranteed right to take collective action in case of a conflict of interests, including the right to strike, in compliance with the obligations which may arise from previously concluded collective contracts.[28] This further implies that the right to strike must be understood as an individual right of all workers, and not only of those who are members of a trade union. That is exactly why the European Committee for Social Rights has taken a clear standpoint in its conclusion that every state which limits the right to strike by allowing only trade unions to organize a strike is actually in breach of the European Social Charter.[29]

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[26] L. Betten, *International Labour Law*, Kluwer, 1993, 115.

[27] O. Kahn-Freund., *The Right to Strike: Its Scope and Limitations,* Strasbourg, Council of Europe, 1974, 5.

[28]http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/escrbooklet/SerbCyrillic.pdf, last visited 21.09.2014.

[29] ECSR, Conclusions I, 185; Conclusions II, 28-9; Conclusions IV, 48-51; Conclusions VIII, 96, Conclusions XIII-1, 155-6; Conclusions XIV-1, 301.

Despite the significant influence of the EU community acquis on the national legislation, it is still not possible to say that Serbian labor legislation is "harmonized" with the EU regulations, but rather that it is a case of a lesser or greater extent of initial harmonization.[30] The same goes for legislation governing the right to strike. Transition in Serbia is remarkably conflictive. The conflictive nature of the transition processes in Serbia is manifested, by the increased number of conflicts in the area of work, usually taking more radical forms – strikes, protests, demonstrations organized opposite state or local authorities' buildings, road and railroad blockades, self-injuries etc. At the same time, the level of effectiveness of industrial and social conflicts is obviously decreasing. Inefficiency in resolving disputes by the use of violence is a warning factor to all stakeholders – employers, trade unions and the political establishment, pointing to the very high price paid by everyone, reminding them that their relations can not be built on the increasing level of conflict, but rather on mechanisms of peaceful dispute settlement, based on the idea of social peace.[31]

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

Social dialogue, as a principle, as a new and completely different method of regulating relations in the sphere of work, has become a vital characteristic of social conditions and relations on both global and national levels. It can be defined as a sum of social relations, socio-economic rights and institutional forms.[32] The fundamental goals of social dialogue are formulated and

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[30] S. Jašarević, *Harmonizacija prava i prakse u oblasti participacije zaposlenih - Srbija i EU,* Zbornik radova Pravnog fakulteta Novi Sad, 3/2011, 380.

[31] B. Urdarević, *Osnovni principi mirnog rešavanja radnih sporova,* u: Pravni sistem Srbije i standardi Evropske unije i Saveta Evrope (ur. S. Bejatović), knj. 3, Pravni fakultet Univerziteta u Kragujevcu, Institut za pravne i društvene nauke, Kragujevac, 2008, 47.

[32] P. Jovanović, *Građa za kolektivno radno pravo*, Časopis za radno i socijalno pravo, 2009, 143.

concertized mainly through the process of collective bargaining, by harmonizing the standpoints of social partners and by concluding collective contracts. The purpose of collective bargaining is to provide protection of social partners' interests in a market economy environment and to consequently diminish the probability of occurrence of conflict situations with adverse effect on economic and social trends as a whole.

The transition process in Serbia was to a great extent different to the same process in other countries of the same social setup. It is well known that the transition in Serbia came rather late, especially in comparison with the achieved level of transition in other former socialist countries. The delay of the reform processes of almost one decade has inevitably influenced the profile, the pace and the results of transition in Serbia. Although Serbia had a better starting position because of a more flexible economy, higher living standard and a certain level of individual rights and freedoms, a number of factors has contributed to Serbia's present-day position behind other countries in transition.

Finally, we can conclude that social dialogue refers to all types of bargaining, consultations and information exchange among the representatives of employers, workers and the government on social or economic policy issues relating to their common interest.[33] The whole point of the social dialogue is to balance the effects of market economy and create an environment for citizens' life and work.[34] It is, therefore, a powerful tool which, if efficiently used, can enable a society to overcome countless problems and build social cohesion. During the periods of economic changes and uncertainties, the social dialogue can play a key role in preserving the existing and creating new work places, which is an economic and social priority.[35]

5. THE RIGHT TO STRIKE IN THE PRACTICE OF SERBIAN COURTS

The legal system developed in the Republic of Serbia belongs to the European continental category. Most of the legally relevant relations are

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[33] R. Delarue, *Role of social partners in promoting sustainable development , inclusive growth an development,* ILO, Brussels, 2012, 5.

[34] D. Stajić, *Privatizacija u Srbiji između neoliberalizma i socijalne države*, Politička revija, br. 3, 2008, 971.

[35] A. Cardoso, *Industrial relations, social dialogue and employment in Argentina, Brazil and Mexico,* ILO Employment and Strategy Papers, No. 7, Geneva, 2004, 3.

regulated by the norms passed by legislative and executive bodies in form of laws and other general regulations. In line with the principle of division of powers established by the constitution, courts are obliged to consistently apply the general rules. Judges are expected to apply the law, and not to create it. In other words, case law is not considered a formal source of law. However, in reality, courts have always had a much more significant role in the process of shaping the legal system. It ranged from very broad interpretations of legal rules to creating individual rules which filled the gaps in the law, even to the point of creating the general legal rules.[36]

Regarding the exercise of the right to strike, the Constitutional Court of Serbia has the most significant role. This court has, inter alia, ruled on cases dealing with restricting the right to strike to certain professional groups. One such case was the Bylaw on Strike of Police Officers,[37] which envisaged the minimum of working process to be provided by at least 90% police officers employed in the organizational unit in which the work stoppage is organized, lasting 30 minutes at maximum. The request to appraise whether the Bylaw on Strike of Police Officers is in compliance with the Constitution and the law (constitutionality and legality) was brought forward to the Constitutional court by the Independent Police Trade Union from Belgrade, the Branch Trade Union of a Administration, Judiciary and Police Employees Nezavisnost and the Police Trade Union of Serbia. When evaluating the constitutionality and legality of the Bylaw, the Constitutional Court determined that the Government has transgressed its constitutional and legal powers by stipulating relations which are under the purview of legislative authority. The explanatory note of the Decision on the Bylaw's Noncompliance with the Constitution or the Law refers to the Art. 61 of the Constitution of Serbia, which reads that it „guarantees the employees the right to strike, in compliance with the law and collective contracts". The Constitution stipulates that the right to strike can be restricted only by law, depending on the nature and type of activity; therefore the bylaw, as a regulation governing the implementation of the law, can not regulate the conditions for exercising the right to strike. By the provision of Art. 135 of the Law on Police, which stipulates the possibility of exercising this right and its limitations, the Government is not permitted to further regulate the relations in this field. Considering these facts, the Constitutional Court found that the

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[36] D. Nikolić, *Elementi sudskog prava u pravnom sistemu Srbije i EU*, Zbornik Matice srpske za društvene nauke, Novi Sad, br. 126, 2009, 7.

[37] Bylaw on Strike of Police Officers (Uredba o štrajku policijskih službenika), *Official Gazette of the Republic of Serbia* (*Službeni glasnik RS*), No. 71/07.

Government, by enacting the challenged Bylaw, had overstepped its constitutional and legal mandate by regulating the relations which are under the purview of the legislative authority. The Constitutional Court also based this standpoint on the provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which allows signatory states to legitimately restrict the right to freedom of gathering and association to certain categories of employees, such as army officers, police officers and civil servants. However, restrictions are legal only if certain conditions are met, the first one being that the restrictions are prescribed by law.

Nevertheless, the most significant decision of the Constitutional Court of Serbia is the allowance of civil servants' strike. The Constitutional Court evaluated the constitutionality of Article 18 Item 1 of the Law on Strike, according to which the civil servants, after being proved to have either organized a strike or participated in one, shall have their employment contract terminated. In the proceedings, the Constitutional Court has found that the Law on Strike was passed based on the then valid Constitution of the Federal Republic of Yugoslavia, which envisaged that: employees have the right to strike in order to protect their professional and economic interests, in compliance with federal laws; that the right to strike can be limited by provisions of federal law, in cases when the nature of activity or public interest so requests; that the employees in public administration have no right to strike. Since the effectiveness of the Constitutional Charter of Serbia and Montenegro State Union,[38] this law continued to be applied as a republic level law, based on Article 64 Item 2 of the Constitutional Charter. The Constitutional Court concluded that the Constitution of the Republic of Serbia (1990), upon which the assessment of constitutionality of formerly adopted federal laws which continued to be applied as the Republic laws was based, ceased to have effect as of 8th November 2006, when the new Constitution of the Republic of Serbia came into force. Due to the fact that the term to harmonize the Republic laws with the Constitution of the Republic of Serbia of 2006 has expired, the constitutionality of Article 18 Item 1 of the Law on Strike is being assessed based on the Constitution from 2006. The valid Constitution grants the right to strike to all employees, including police officers, civil servants and public appointees. This right can be restricted only by law. The Law on Civil Servants, the particular law which regulates rights

[38] Constitutional Charter of Serbia and Montenegro State Union (Ustavna povelja Državne zajednice Srbija i Crna Gora), *Official Gazette of the Republic of Serbia and Montenegro (Službeni list SCG*, No. 1/03 and 26/05.

and duties of civil servants as well as some rights of public appointees based on employment, contains no provisions on right to strike for these categories. However, according to the provisions of the Article 4 of the Law on Civil Servants, general regulations on labor and collective contracts for civil servants and appointees apply if this law or another particular law does not regulate rights and duties of civil servants, unless stipulated otherwise by the law. In relation to this, the Constitutional Court has found that the Law on Labor, as the general labor regulation, has no provisions on the employees' right to strike. Nevertheless, Article 35 Item 1 of the Special Collective Agreement for State Administration stipulates that civil servants may organize a strike or a warning strike, under the conditions and in the manner regulated by law. From the above, it can be concluded that civil servants and appointees have the right to go on a strike which must be organized in compliance with the Law on Strike. This example clearly shows how necessary it is to pass a new Law on Strike as soon as possible, since certain provisions of the still applicable law are not in compliance with either the Constitution of the Republic of Serbia or the ratified international treaties. Responsibility for this lies both with the state and with social partners, who have not succeeded in establishing guidelines for social dialogue in Serbia.

6. CONCLUSION

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

The legal system of the Republic of Serbia falls into the category of legal systems with a particular law regulating the right to strike. This law has a number of weaknesses. The definition of a strike is imprecise, along with an insufficient number of legal guidelines regarding legal requests of strikers. There are also plenty of illogical decisions regarding the required conditions

to fulfill the right to strike – all leading to the conclusion that the Law on Strike should have been changed a long time ago.

Undoubtedly, the biggest deficiency of the current Law on Strike are considerable restrictions relating to the stipulated obligation to preserve the minimum working process. Firstly, the list of activities where this restriction applies is too long. Even less logical are the provisions pertaining to the manner of determining the minimum of working process since they give almost all power to the employer or the founder. All these provisions need to conform with the needs in Serbia, as well as the ILO principles on exercising the right to strike. For many years now, the process of drafting the new Law on Strike is underway in Serbia, which is a great opportunity to place Serbia, at least in terms of legal regulations, among the countries where the rights and interests of the working class can be efficiently protected by organizing a strike or by threat of strike. Of course, passing a new law with better solutions would be a great contribution to the perspective for the right to strike regulation in Serbia. However, without the strengthening of social dialogue, with strong and independent trade unions and employers' associations being a prerequisite, without a stronger Socio-Economic Council and collective bargaining practice, without improved judicial and alternative methods of work dispute resolution – which ought to be the final filter before a strike is organized, the right to strike in Serbia remains like a house without the foundations or the roof.

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