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**Submission from the CENTRE FOR DIGNIFIED WORK SERBIA (CDR SRBIJA)
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I CENTRE FOR DIGNIFIED WORK - CDR SERBIA

Centre for Dignified Work (hereinafter: CDR) is a non-government, non-profit association of lawyers and other social science experts, established on June 19, 2013, with the aim to promote, through its programmes, projects and overall public activity, the right to dignified work and healthy and safe working environment as a precondition for the realisation of human rights, modern market economy and democratic society.

CDR specifically advocates for:

- *Reconsideration of various provisions of valid legislation* that are constantly abused in practice, coupled with a thorough reform of labour law in the Republic of Serbia, based on observance of international law and standards that apply in the European Union;
- *Establishing lasting and quality mechanisms of social dialogue* between trade unions and employers;
- *Promoting „tripartite plus“ model of social dialogue* and wider participation of various social groups in the process of modelling employment policy and social policy;
- *Broader engagement of the state in monitoring the implementation of regulations and more efficient sanctioning of their violation;*
- *Creating good practice of inclusion and affirmative actions, as well as permanent mechanisms for cooperation between that state, the trade unions and the employers with civil society organisations;*
- *Creating, maintaining and promoting the atmosphere of tolerance and peaceful dispute resolution.*

II MAIN ISSUES OF CONCERN AND QUESTIONS FOR THE GOVERNMENT OF THE REPUBLIC OF SERBIA

1. ARTICLE 7. THE RIGHT TO FAIR CONDITION OF EMPLOYMENT

1.1. General framework of application of labour legislation

The main problem in the realisation of individual and collective rights of workers currently is the failure to implement existing legislation; it is coupled with chronic drawbacks in regulating certain institutes of labour law. A second issue of concern is the extremely high unemployment rate, which causes the workers, out of fear of loss of job and difficulties in finding a new one, to agree to working conditions that are below the legislative minimum.

The first issue to which attention should be brought is the status of the Labour Inspectorate - the main body that monitors the implementation of labour regulations. The number of labour inspectors is insufficient to inspect all companies. According to available data, one inspector is in charge of 1336 companies. In addition, the labour inspectorate is not independent in its work, since, pursuant to the Public Administration Act, the director of the inspectorate is appointed by the Government (in accordance with the process prescribed in the Civil Servants Act), and the director is accountable to the minister of labour - it is under the auspices of the ministry of labour that the

labour inspectorate operates. Hence, the inspectorate director is subordinate to the Minister (and therefore a politically active person), whilst the inspectorate itself is independent in performing its competences, but is not independent in its work; clearly, in cases when it should intervene within the public administration abuse may and does occur.

The Criminal Code of the Republic of Serbia prescribes a number of offences related to the deprivation of rights from a labour relation, such as "Violation of Labour Rights and Social Security Rights" and " Violation of the Right to Employment and during Unemployment ". However, criminal proceedings have not been instituted even against those employers who have systematically, over the course of years deprived a number of employees of their main rights, such as the right to pay and social security.

Unemployment rate in Serbia is very high. The Statistical Office of the Republic of Serbia had established the unemployment rate of 20.3% in October 2013; trade unions and some media, however, claim that the rate is in fact 29%. Regardless of which of the two figures is correct, it is worth knowing that the rate is calculated based on the data of the National Employment Service, which means that only those who are unemployed and are actively seeking employment are in fact taken into account in the calculation. The "dark figure" of this calculation is the population of working age, which work illegally (without any legal grounds and without any right based on work), and those engaged in the so-called "shadow economy". The 2011-2020 National Employment Strategy states that unemployment rate continuously grows. What constitutes a particular disadvantage is the permanent character of the state of being unemployed - once a person loses a job, as a rule, such person remains unemployed for a considerable period.

This becomes particularly alarming when one takes into account the fact that the public sector is the dominant employer in Serbia. A byzantine and inefficient state administration, unprofitable publicly owned companies led by managers appointed based on political affiliation, education, health-care, judiciary, army and the police, render the state the largest employer. The public sector, however, systematically disregards and/or openly violates a number of provisions related to the rights of the employees. Employment is almost exclusively based on political criteria or is a result of corruption, and when labour rights are effected or denied, undue political influence exerted by political parties through their strategically appointed staff is evident.

All of this constitutes grounds for various violations of the rights of employee in all spheres, public and private alike. Owing to the inefficient judiciary and de facto non-functioning internal monitoring mechanisms, they most often remain unsanctioned.

QUESTIONS: Why doesn't the state apply penal provisions and the option to sanction employers who deprive employees of their rights? How and when will the labour inspectorate be reformed? Will the amendments of the law ensure more independence in its operation and increase efficiency by increasing the number of inspectors? What measures does the state take in order to reduce the corruptive potential of the existing provisions concerning oversight?

1.2. Discrimination in the public sector

Discrimination in the public sector primarily relates to employment and promotion, both in the state administration and in publicly owned companies, education and healthcare systems. This is enabled through a series of legislative solutions which favour politicization of state structures, as well as political revanchism when the ruling party changes.

Primarily, each employer (public and private employers alike) should be bound by law to forward to each job application who was not employed a written reasoning stating the grounds for non-employment. It is common practice on the part of the employers to fail to inform the

candidates of the outcome of the public announcement or to state the reasons for not employing the candidate other than in an occasional oral conversation directly after the job interview.

In addition, some of the valid legislative provisions need to be amended or deleted. The Ministries' Act provides for a considerable margin of discretion in assessing the quality of work of the civil servants at the ministry. The Minister has a discretionary right to propose to the Government to dismiss a civil servant within 45 days from the day the law enters into force, provided that the civil servant has failed to effect results in his/her work. It is questionable what are the criteria the minister uses in assessing that the given civil servant had failed to make results in his/her work, since these criteria are not set out in the law. In the absence of such criteria, one can only conclude that the main issue is the political affiliation of the person being dismissed.

Moreover, it is necessary to change the procedure for the employment following a public announcement. Pursuant to the Civil Servants Act, the commission for the employment by way of a public announcement is formed by the head of the state authority; in forming it, the head is limited only by the requirement that one of the commission members be an official of the Human Resource Management Service. Once the commission draws up a list for the selection of candidates, assessing the professional qualifications, knowledge and skills of each candidate, the head of the state authority has a discretionary right to select one person. The statute does not set a single criterion for making such a selection nor the obligation for the selection to be reasoned. It is therefore necessary to change the relevant Act and oblige the head of the state authority to apply objective criteria for employment, coupled with an obligation to reason such a decision and serve it to all who have participated in the selection process. In addition, the grounds for appealing against a ruling on employment made by the head of the state authority are too restrictive. A candidate who took part in the selection process has the right to appeal if he/she finds that the selected candidate does not meet the conditions for employment in that particular post, or if such irregularities have taken place in the selection process that may affect the impartiality of outcome. If the head of the state authority is bound by law to serve a reasoned decision on the selection of candidate, including all visible parameters on which the decision is grounded, the candidate who was not selected but who wishes to file an appeal may only do so by challenging the procedure for establishing the facts on which the decision was made, or their validity. Therefore, a separate secondary act must prescribe the form of the decision adopted by the head of the state administration, in terms of prescribing all the elements it must include so that each of the candidates may learn all the necessary facts. The Labour Relations in State Authorities Act regulates this matter in an even worse manner, given that it prescribes that the entire process is conducted by the "official managing the body", where no criteria are set and, hence, the head of the state authority has discretionary powers. The situation is similar in publicly owned companies. Even though the appointment of the director of a publicly owned company is done through a public announcement, as a rule, political party officials are selected to such positions; the situation is the same when it comes to the selection of the members of the supervisory board. This thoroughly undermines the internal oversight mechanism, and the mechanism of employment and dismissal, opening doors to discrimination and corruption.

QUESTIONS: How does the state plan to carry out the announced departization of state administration and publicly owned companies and thus end the practice of discrimination according to political affiliation? Shall the provisions that have discriminative and corruptive potential concerning employment and promotion in the public sector be abolished?

1.3. Inapplicability of the Prevention of Harassment at the Workplace Act

The Prevention of Harassment at the Workplace Act had entered into force in 2010. Some of the solution, as prescribed by the Act, render it difficult to apply or quite ineffective at times. The employer may be found guilty for some of the offences envisaged by the Prevention of Harassment

at the Workplace Act in a separate petty offence procedure. The verdict may constitute a number of obligations on the part of the employer, including the publication of the verdict and termination of unlawful behaviour, if it is still undergoing, and compensation of material and immaterial damages to the victim of harassment. Pursuant to the provision of Article 163, paragraph 7 of the Labour Act, the employer has the right to recourse with respect to the employee who is responsible for causing the damage intentionally or in gross negligence. Harassment is exclusively linked to the intention of the harasser and if the judgment establishes the existence of harassment, the intention of the perpetrator is thus also established; the employer need not prove anything beyond that, but may use the judgment concerning the existence of harassment at the workplace to pay the damages and demand recourse from the employee responsible for the abuse. The employer thus suffers no direct consequences for failing to protect his employees from harassment, even in cases when harassment is repeated.

Such inadequate regulatory framework, coupled with extremely inefficient judiciary, has resulted in the protection from harassment at the workplace being only a formal category. Harassment at the workplace is widespread, while a considerable number of harassment cases are still pending before courts. The state additionally fails to give attention to this issue - unlike with regards to discrimination, major campaigns or programmes of outreach and raising awareness in both employers and employees do not exist.

QUESTIONS: Are there plans to amend the Prevention of Harassment at the Workplace Act and make it more efficient? What are the plans of the Republic of Serbia with regards to promoting dignified work and informing the employees of their rights and mechanisms for effecting them?

1.4. Safety at work

According to the Safety and Health Work Strategy of the Republic of Serbia 2013-2017, in the 2009-2012 period the Labour inspectorate had carried out a total of 66.147 inspections in the field of safety and health at work, passed a total of 22.209 rulings related to the elimination of dangers that may compromise health and safety of the employees and a total of 1872 rulings on the prohibition of work at the workplace due to dangers that may compromise the health and safety of employees. During the same period a total 4933 inspections was carried out as a consequence of violations being reported, 196 of which had fatal outcome. In addition, 28.232 integrated inspections were carried out in the same period and an additional 11.365 rulings ordering the elimination of deficiencies with regards to the health and safety at work were issued.

The main problem in this field, in addition to the inefficient oversight system of the labour inspectorate that we indicated earlier, is the fact that a considerable number of companies have failed to pass any of the documents related to safety at work, including the fundamental risk assessment act. Lack of preventive oversight is particularly important, for, ex post inspections, once injuries or death at the workplace do take place, may only be used to establish that an injury had taken place and that the employer is accountable; however, the main objective should be to prevent such incidents. Even though the Development and Promotion of Socially Responsible Business Operation Strategy in the Republic of Serbia for the 2010-2015 period indicates this problem, the Action plan for its implementation in the 2011-2013 period fails to mention health and safety at work - none of the envisaged measures and activities deals exclusively with this issue. The Safety and Health at Work Strategy in the Republic of Serbia for the 2013-2017 period, adopted by the Government of the Republic of Serbia, does refer to conclusions made by the labour inspectorate that the fluctuation of employees in certain jobs is notable, and that in some positions overtime is increased - both of which result in lack of concentration, lack of information concerning the work process and safety measures and ignoring the risks. In addition, many employers are understaffed

when it comes to persons who are licenced for implementation and internal control of health and safety at work measures.

QUESTIONS: Since the capacities of the labour inspectorate are insufficient, why isn't preventive oversight entrusted to a different body? Does the Government of the Republic of Serbia plan to amend the Health and Safety at the Workplace Act so as to protect those who are engaged to work without legal grounds? What steps have been taken in order to implement the health and safety at work regulations and to make the employers adopt relevant internal acts?

2.1. General overview

Even though the freedom of association is ensured, the regulations that would address a number of practical issues are lacking. It is therefore unsurprising that Serbia has a substantial number of trade union organisations (some 26000) but no developed consciousness of collective rights, their realisation and protection. The Labour Act does regulate some of the issues related to trade unions, such as their founding, establishing and reconsidering their recognition as being sufficiently representative, and participation in collective bargaining. However, a separate Associations Act, the provisions of which are not suited to the nature of trade unions, governs other aspects of work of the trade unions. A particular problem lies in the fact that the state authorities do not apply these provisions in practice (e.g. in cases when a trade union ceases to exist, the state allows for it to be simply struck off the relevant register regardless of the fact that the Associations Act envisages special procedures for the cessation of work of an association; the former leaves the property issues concerning the trade unions unresolved), without sanctions for such unlawful action.

QUESTIONS: Will the new Labour Act or other separate statute regulate the functioning of trade unions and associations of employers in more detail or will, as an alternative, the implementation of provisions of the Associations Act be reinforced by direct reference to this statute in the Labour Act?

2.2. Recognizing that trade unions are sufficiently representative as a separate problem

Recognition that a trade union is sufficiently representative at the national level is a major issue of concern. A sufficiently representative trade union, in addition to being recognised such capacity, is granted the right to participate in national tripartite bodies, and the right to negotiate in the conclusion of the general collective agreement. However, this procedure in Serbia is blocked, due to inadequate regulations.

The procedure for recognizing that a trade union is sufficiently representative is governed by the Labour Act. The Committee for recognizing that a trade union and/or an employers' association is sufficiently representative (hereinafter: the Committee) receives the request for such capacity to be recognized, considers them and gives a proposal to the Minister of labour, who then passes the final decision. The Committee is comprised of three representatives of Government, trade unions and employer's associations each, who are appointed for a term of four years. The representatives of the Government are appointed by the Government, at the proposal of the minister, whilst the representatives of the trade unions and employer's associations are appointed by trade unions and employer's association - members of the Social and Economic Committee.

The problem lies in the fact that the Social and Economic Committee is comprised of representatives of the sufficiently representative trade unions, employer's associations and the Government of the Republic of Serbia. They pass decisions by consensus and, as a rule, appoint to the Committee the members of the sufficiently representative trade union and employers' associations. In practice, the representatives of the trade unions and of employers' associations are in the position to decide, in their capacity as Committee members, on whether a different trade union or employer's association will be recognised as sufficiently representative and thus directly diminish their influence in the tripartite bodies, including the Committee. It is therefore that the Committee remains "silent" and fails to decide on the requests for representativeness to be established; without a Committee decision the Minister cannot pass a decision confirming that sufficient representativeness is recognized. The Labour Act sets a time limit for the adoption of the decision by the Committee and the Minister to 15 days, but fails to envisage the consequences of failure to observe this time limit, which is a particularly serious drawback in the procedure. In time, this has resulted in some of the trade unions, which claim to be sufficiently representative being unable to realise their rights stemming from representativeness, because the procedure is blocked, whilst the Committee members and the trade unions, which have nominated them, are claimed to no longer be sufficiently representative. Given that the loss of sufficient representativeness is decided on by those who would thus deprive themselves of this capacity, it is unrealistic to expect that this situation will be resolved in the near future, and it is quite clear that the provisions governing this procedure need to be amended soon.

QUESTIONS: What are the plans for establishing the exact number of trade unions and employer's associations, as a precondition for establishing sufficient representativeness? How will the procedure for establishing sufficient representativeness be changed in order to unblock this process?

2.3. Lack of social dialogue and collective agreements

There is no social dialogue in Serbia. This is evident from the fact that the work of the Social and Economic Committee as a tripartite body is blocked, and that this body was unable to reach consensus on minimum wage ever since it was first established. In addition, the above-mentioned Committee for recognizing sufficient representativeness is blocked - in this case this is a reflection of the poor mechanism but also of the position of the trade unions, which solely defend their political positions, regardless of the consequences that such actions have on the employees. The general collective agreement is not adopted, nor are there any indications as to when the collective bargaining process may start (even if the process was to start, it would most probably cause revolt and face resistance from the trade unions which claim to be representative but this capacity was not established with regards to them). Collective agreements with an employer are limited to the public sector alone, with rare exceptions. There is not a single social dialogue mechanism that works; nor is there any culture of social communication or the feeling of the need for it to exist.

On the other hand, in order to preserve social peace and for the purpose of short-term populist policy, the state nourishes the policy of occasionally taking the side of one or other social partner, without showing readiness to move social dialogue forward - this was evident in the process of drafting of the Labour Act, which was later withdrawn by a political decision, and in the process of drafting the Strike Act, the provisions of which were unsatisfactory to both sides, even though, formally, both the representative employers' association and the representative trade union have participated in its drafting.

QUESTION: What mechanisms does the state plan for in order to promote social dialogue and develop the culture of communication between social partners?

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