Making the System Work:

Ensuring Decent Work and Quality Jobs in the Western Balkans

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Foreword

The European Enlargement process demands the harmonisation of labour and social laws in the Western Balkans with the EU Social Acquis. This is a challenging process, even more so nowadays with the financial and economic crisis making the already difficult social and economic conditions in many of the candidate and pre-candidate countries even worse. This publication underlines the urgent need to use the accession process as a catalyser for promoting social inclusion, social cohesion, decent work and quality jobs in the region.

To support the implementation of reforms and socio-economic development, SOLIDAR and its members are advocating for the EU Civil Society Facility (under the Instrument for Pre-Accession - IPA) to be modelled to promote long-term partnerships between NGOs, think tanks and social partners to monitor the application of policies and the EU integration process.

In 2011, SOLIDAR (Belgium), the Olof Palme International Center (Sweden), AGENDA Institute (Albania), Center for Democracy Foundation (Serbia), CLARD (Kosovo), the Progress Institute for Social Democracy (Macedonia), STBIH (Bosnia and Herzegovina) and Progetto Sviluppo CGIL (Italy) launched, with the support of the Pan-European Regional Council (PERC) of the International Trade Union Confederation, the Decent Work Balkan Network. The aim of the Network is to strengthen joint capacities over the long-term and to build effective partnerships stretching across national borders.

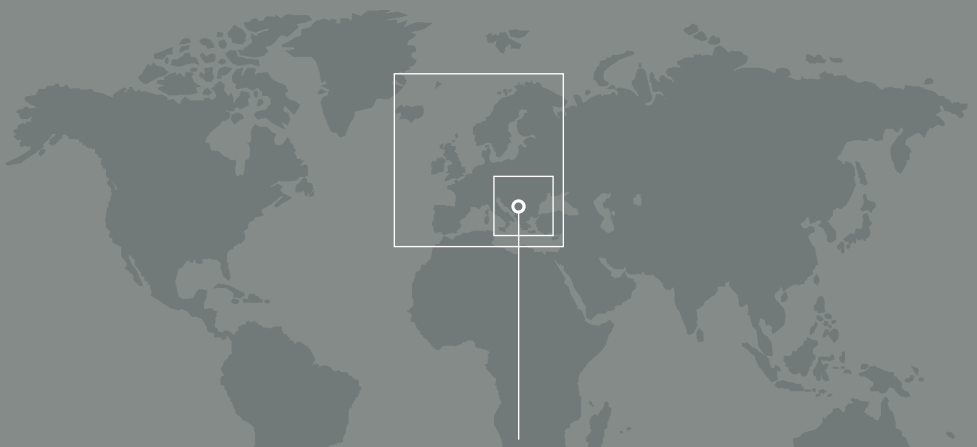
The Network's findings - gathered in this booklet - confirm that countries are still far from being able to guarantee, protect and fulfill socio-economic rights in the Western Balkans. It is therefore crucial that, in this worsening economic tide, the EU firmly insists on the full implementation of adopted labour and employment legislation and ensures that legal control mechanisms for the promotion of workers' and labour rights are guaranteed.

Furthermore, the Enlargement Strategy needs to continue supporting partnerships between social partners, relevant civil society organisations and all levels of authorities to monitor the implementation and enforcement of ratified legislation and develop joint strategies and programmes aimed to support those people who find themselves in informal labour employment and precarious working conditions.



Conny Reuter
SOLIDAR Secretary General

Introduction



Collectively addressing labour and socio-economic rights in the **Western Balkans** countries is an important pre-condition for continued social consolidation and social convergence on the path to EU integration. Unfortunately, the current financial and economic crisis has adversely affected the social agenda in **Serbia, Macedonia, Kosovo*, Albania** and **Bosnia and Herzegovina**, and aggravated their struggle against:

* Under UN resolution 1244

- An informal sector that represents more than 30% of the total economy.
- Unemployment rates above 20%.
- Politicised State institutions.
- Lacking political endurance to reinforce the implementation of reforms.
- Weak capacities to enforce legislation and control mechanisms.

This has led to a very precarious position of workers vis-a-vis employers across different sectors in the region and resulted in the inadequate protection of workers, as States are not able to guarantee, protect and fulfil socio-economic rights. The deliberate marginalisation of the role of trade unions by the State and the common negative public perception of their work has prevented unions from being a central actor in enforcing workers' rights and in decision-making processes on the path to EU integration.

This situation combined with the low representativity level of employers' associations means that social partners' institutions, such as the Socio-Economic Council, have a weak role to play in policy making in the Western Balkans. Civil society organisations - partners in reinforcing social dialogue and awareness-raising - remain largely absent while they are key players in building stronger socio-economic partnerships that benefit all.

This booklet[1] puts forwards a set of recommendations for the region, which have been identified by members of the **Decent Work Balkan Network** as a solid basis for long-term joint advocacy work in the region. In addition, information will be provided about the existing shortcomings with regard to the protection of labour and socio-economic rights in each country. In this context, the most urgent implementation problems will be showcased, followed by country specific recommendations for Serbia, Macedonia, Kosovo, Albania and Bosnia and Herzegovina.

[1] This booklet is compiled based on 5 case studies put together by the Decent Work Balkans Network, one from each of the before-mentioned countries. The full list of case studies can be found: www.solidar.org

Regional recommendations

1



To the European Union:

- To continue to address the issues of a growing informal sector and unemployment in Enlargement countries, through specially targeted programmes for marginalised and excluded people, such as precarious workers.
- To continue insisting on the full implementation of the adopted labour and employment legislation and strengthening of control mechanisms in the field of workers' rights.
- To ensure that administrative, technical, financial and programme capacities are strengthened through the Civil Society Facility (under the Instrument for Pre-Accession - IPA) by supporting socio-economic partnerships in the region that can monitor the application of international policies and the EU integration process.

To National Authorities:

- To strengthen institutions and control mechanisms and better implement labour legislation. Concretely, national authorities need to, without further delay:
  - Address the identified weaknesses in the Labour Laws and adopt relevant By-Laws
  - Establish labour courts and provide free legal assistance to precarious workers
  - Ensure the proper functioning and increase the impact of the Socio-Economic Councils
  - Increase the number of labour inspectors to match inspection needs
- To ensure that trade unions are not subject to various abuses but are an accepted partner both in social dialogue and the process of EU integration, while social partners need to strengthen their watchdog and ombudsman role.
- To ensure that transnational enterprises treat their workers in the Western Balkans the same as those in the EU. The inappropriate behaviour where workers face different standards needs to be sanctioned, especially in the cases where both countries are International Labour Organisation (ILO) members.
- To prevent any further cancellation of collective agreements. With the ongoing crisis the cancellation of collective agreement will become the easiest solution; that needs to be prevented in order to avoid an even more chaotic situation in the labour market.
- To develop support mechanisms for social partners to promote joint coalitions involving a broader set of actors such as NGOs and the media in efforts to protect workers' rights and to campaign together for positive change. These actors could help increase the legitimacy of social partners by raising awareness among the general public about socio-economic rights, decent work and quality jobs.
- To consider the shared realities in the region. Networks stretching across national borders should continue to be strengthened to reduce labour right violations by exchanging positive practices and through joint advocacy campaigns.

Decent Work Balkan Network

"Decent Work Balkan Network" is a two-year programme launched in 2011. The key aim of the Network is to strengthen the capacity of trade unions, NGOs and think tanks to work together in promoting Decent Work and Quality Jobs in the Balkans by developing national and regional networks, joint advocacy actions and public campaigns, formulating policy proposals and monitoring the implementation of the European socio-economic acquis.

To read more see **www.solidar.org**



Challenges to decent work in the Western Balkans

2



[2] http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm

Decent work requires the existence of productive work, an employer's fair and consistent relationship with his/her employees, a safe and healthy working environment, the protection of workers' and their families' social rights, the best possible conditions for an employee's personal development and social integration, workers' freedom to express their needs, organise themselves and actively take part in decision-making processes (when decisions directly influence their work, life and gender equality, i.e. equality between men and women). Decent work sums up the aspirations of people in their working lives and has four strategic objectives to achieve it: creating Jobs, guaranteeing rights at work, extending social protection and promoting social dialogue.[2] Major challenges can be indentified for all four of these strategic International Labour Organization (ILO) objectives in the Western Balkans.

Serbia

The overall situation in the Serbian labour market shows that only 1,795,775 out of 4,953,512 people of working age are employed. The unemployment rate is at 22.2%[3] without showing signs of improving. The labour market is characterised by a high percentage of long-term unemployed and those with 'unfavourable' qualifications, a high number of unemployed women, young people and those belonging to marginalised groups (disabled people, Roma, refugees and internally displaced persons etc.)[4] as well as large regional differences. Estimates of the number of people working in the informal economy vary, with figures suggesting that there are between 300,000 and 1,000,000 people who work informally. The majority of them work in retail, hotels and restaurants, crafts, industry/production plants and construction. There are a worrying number of problems related to the fulfillment of social and economic rights which, if overlooked, could jeopardise the acquired level of political and civil rights.[5]

Macedonia

The unemployment rate is not only one of the highest in Europe (32%)[6] but also the most long–term, with more than 80% of those who are unemployed being out of work for more than one year. Statistics show that the majority of those (63.8%) have been out of work for more than 4 years[7]. This has resulted in diminished human capital as people gradually lose their acquired skills and capabilities while waiting to find a new job. Further, 51.1% of households with one or more employees live below the poverty line[8], while the percentage of the population living in poverty amounted to 30.9% in 2010.[9]

It is estimated that the size of the informal economy represents between 40-45% of the total gross domestic product (GDP) and employs at least 100,000 people[10]. It mostly affects seasonal workers and poorly qualified workers in construction, transport, the textile industry, trade, agriculture and domestic services.

Kosovo

The level of total employment in Kosovo remains at the very low level of roughly 26%[11]. Another challenge is the high level of unemployment which continues to fluctuate at around 40% of the total labour force[12]. This percentage, without doubt one of the highest in the region and in Europe, is mostly affecting under 25 year olds who make up 49% of the population[13]. Again, a large share of employees in the private sector (about 30% out of the roughly 400,000 employees) are part of the informal economy[14].

Albania

Although economic progress since 2000 has partly reduced poverty and led to improved living conditions, it did not translate into more jobs - leaving Albania as one of the poorest countries in the region with a per capita income of €2,661[15]. The data on key labour market indicators is still uncertain but the employment rate was estimated to be around 53.4% in 2009, 64.3% for men and 43.6% for women[16]. The present rate of unregistered workers in the outward processing industry (which makes up a major share of total exports and employs about 100,000 workers[17]) is estimated at around 40%. In general, the pension system coverage is very low in comparison with EU benchmarks, which further discourages people from having regular jobs. In addition, the real value of benefits received is low due to devaluation fueled by high inflation. If the situation is not improved by increasing pensions in proportion with contributions and needs, informality will remain high.

Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) shares the same fate as other countries in the Western Balkans in terms of undergoing a lengthy and difficult process of economic transition, but unlike them, it is also coping with the consequences of the war: a destroyed economic infrastructure and an extremely divided population. The ethno-national division - owing to the political leadership - still takes precedence over all other social issues, and thus significantly affects the socio-economic situation in the country. The consequences of such politics on citizens and workers have been disastrous. Statistics show that 41.5% of the population is poor, meaning that half of the overall population faces some form of social exclusion, and almost one quarter of the population is on the verge of poverty[18] predominantly due to a high level of unemployment. About 43.1% or 526,616 persons of the working age population do not have a job[19] while every third citizen works as an undeclared worker.[20] Unfortunately, the social policies implemented in BiH do not work in favour of the poor: about 20% of the poor population accounts for only 7.2% of total expenditure, while the richest 20% of the population accounts for more than 39% of total expenditure.



[3] Labour Force Survey for 2010 (Institute for Statistics)

[4] National Employment Service Report for 2010

[5] Ombudsman Report for 2010

[6] Labour Force Survey for 2010

[7] World Development Indicators for 2010 (World Bank)

[8] Relative poverty in 2010 (State Statistical Office)

[9] The percentage of poor in 1998 stood at 20.7%. The highest growth was in the period from 1999 to 2002. In 2002 the percentage of poor people amounted to 30.2%. The highest percentage was recorded in 2009 – 31.1%.

[10] Assesing handicraft shadow economy in Macedonia (Risteski, 2009)

[11] Statistical Office of Kosovo

[12] Kosovo Labour Market Statistics for 2008

[13] Labour Force Survey 2009 (Statistical Office)

[14] Kosovo Ministry of labour and employment

[15] Candidate and Potential Candidate Countries: Population and Social Conditions (Eurostat, 2011)

[16] Women and men in Albania (INSTAT, 2009)

[17] Out of these 91.7% are women and girls mostly between 20-34 years (National Employment Service)

[18] Human Development Report 2007: Social inclusion in BiH and Social Inclusion Strategy for Bosnia and Herzegovina, Council of Ministers of BiH, 2010 (UNDP)

[19] Labour market statistics - monthly report for May 2011 (Labour and Employment Agency)

[20] Grey economy in Bosnia and Herzegovina (Federal Institute for Development Programming)

What is common to the entire region is that high unemployment rates have led to a degradation of workers' rights and their violations by employers, both in the private and public sectors, as workers are forced to put up with miserable working conditions to live. The growing informal market "favours" some employers since there is no written evidence which guarantees the legal protection of a worker. It is common practice that employers do not register these workers and if they do, they often make fraudulent registrations with the Employment Agency, notifying the latter that the employee resigned, when in fact the employee continues to work for them even after the initial contract has expired. Consequently, workers are not paid regular wages, some wait months and years to get any kind of compensation, nor pensions and social and health insurance contributions. This means that their access to social protection and employability measures is very limited.

Employers often breach the provisions of the Labour Law pertaining to the duration and compensation of overtime work and daily, weekly or annual leave. For example, a recently conducted analysis of working conditions in the commerce sector in BiH shows that 29% of surveyed workers claimed to work 10 hours a day, and 12% of them 12 hours or longer every day. The Union of Trade Unions of Albanian Workers (BSPSH) and the Confederation of Trade Unions of Albania (KSSH) confirmed that workers face harsh working conditions as only a few factories in the outward processing industry respect and fulfill the obligations set out in the Labour Code. Employers also try to avoid collective agreements as the latter guarantee better compliance with legal obligations than individual contracts. For instance, the number of factories that have a collective agreement is around 100 (out of the total of 540) which means that the level of unionisation is very low. Examples of violations of rights to union organising can be found almost daily – either there is considerable resistance by employers towards letting unions meet the workers or the prepared materials are simply never delivered to workers.[21]

Many employers abuse various legal labour instruments, such as probation work, professional training, seasonal work etc. to employ workers for years. The most vulnerable groups are young people without previous work experience; unqualified workers with a secondary education degree at the most; employees without regular wages; unemployed persons older than the age of 40; recipients of monetary benefits and social aid; marginalised groups etc. In addition, employers are reluctant to provide adequate training and personal protective equipment at work which in the case of highly hazardous occupations may result in accidents with devastating consequences.

Another issue is that the right to sick and maternity leave are not respected, making female workers especially vulnerable. Frequently their contracts are unlawfully terminated because of pregnancy. Moreover, gender discrimination takes the form of dismissal or non-prolongation of employment contracts as well as the non-payment of benefits and discriminatory behaviour when the woman returns from her maternity and parenthood leave. Gender gaps are reflected in the higher unemployment rates among women and a low share of women in managerial positions and well-paid jobs for highly skilled workers.

[21] Transcript of the interview with Đenan Harmandić, the president of Youth Section of CTUBiH. Sarajevo, 03.08.2011.

Identified weaknesses in enforcement-monitoring mechanisms

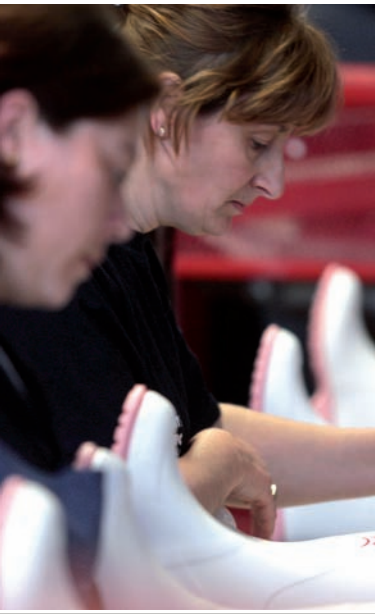
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Interestingly, although a plethora of international regulations and instruments regulating the area of economic, labour and social rights, conventions regulating international labour law (apart from Kosovo), national laws and bylaws, the Constitution, collective agreements, internal regulations and a mix of basic legal institutions such as the labour inspectorate, courts and Ombudsman have been put in place in the countries, the level of decent work protection is still far from sufficient.

The real issue is the inadequate implementation of existing legislative frameworks due to weak enforcement and monitoring mechanisms. Numerous problems with enforcement stem in particular from many open questions concerning the functioning of the inspection system as a whole and its ability to control informal work. Further, the inconsistent, inefficient and slow enforcement of regulations is closely linked to the considerable influence of political parties and political interests on the functioning of different institutions, for example State bodies, public institutions, public companies and finally, trade unions. The difficult position of workers also partly results from a sometimes unfavourable social status of trade unions due to their bad public image, their weak influence in decision-making processes and their lacking capacity to exercise power.

Serbia



In **Serbia**, the inspection system is not legally regulated in a thorough manner; instead it is regulated by a handful of legal substantive provisions of the annulled Law on State Administration, passed in 1992. The existing problems are also related to the unsatisfactory qualifications for assigned duties, overlaps and lack of coordination between different inspection services in interrelated areas of work. Thus, calls for organisational unification of certain inspection branches into one body should be discussed as part of the inspection system reform.[22] It is also necessary to continue the reforms that have started in certain inspection services – first and foremost, the reform of the Labour Inspectorate for integrated inspection surveillance that has shown good initial results. Inspection bodies need to be strengthened when it comes to human, financial and technical resources, securing better salaries for inspectors whose work is undervalued and whose engagement often falls victim to negative employment selection and corruption.

In addition, according to the positive legal norms stipulated by the existing Law, an employer is able to present employment contracts at a later date – within 8 days of the inspection – even if at the time of the inspection these contracts did not exist. In such situations, employees are forced to collaborate with the employer by signing the employment contracts retroactively. Another particular problem is that employers do not have a legal obligation to keep records of their employees' presence at the workplace, so in practice, inspection or any other sort of control is often inefficient.

Research highlights that political parties are dominant players in Serbian public companies, while the institutions, laws and regulations that should protect public interest remain weak and organised in a way that allows political parties to take decisions at whim. These vulnerable institutions are unable to stop their politicisation and establish a system where the institutions are responsible for their results and accountable to the public.[23] Hence, it is necessary to also amend numerous laws and reduce the interests of political parties and their ability to appoint leading management in public companies and institutions, as well as State bodies.

As has happened in many transitional countries, Serbian unions have become weaker in relation to employers and the State due to marginalised social dialogue and collective negotiations, and in relation to their own dwindling membership.[24] So-called union bureaucratisation and the loss of leadership being in touch with the interests of its membership is another significant problem. Although unions should strive to protect members' rights and interests, they tend to become political actors with a political agenda drifting away from their true function. Unions should instead have a more dominant role in the implementation of different regulations in the area of labour and workers' rights.

22 Dr Dobrosav Milovanovic: Inspection system reform, Legal Life no.22,2009

23 How to Stop Politicization of Public Companies in Serbia (Center for Applied European Studies, 2011)

24 Prof.dr Predrag Jovanović: Right to social association of employees and employers in Serbia, Labour and Social Law, no.1/2009

Recommendations

- To draft a separate Law on Inspection and thoroughly regulate organisational issues, inspector's mandate and status, mandatory exam on professional expertise, training etc.

- To amend laws regulating the work sphere (especially in the Labour Law and Law on Employment Records) to ensure that:
  - the signing of an employment agreement between an employer and an employee takes place as soon as the employee starts working
  - labour agreements are registered in a timely manner at the corresponding public institution
  - every employer must keep all legal documents concerning his/her employees on their official premises.
  - employers' are obliged to keep a log book with the presence of workers at the workplace which would lead to a more efficient control of over-time.

- To pass or amend laws to enable the automatic payment of contributions for pension and social security for workers, with clearly defined sanctions for those who breach legal stipulations.

- To amend the Law on Occupational Safety and Health at work, especially the sections regarding risk assessment at the workplace, the role of labour medicine, the role of security and health personnel and unified methodological listings of work-related injuries.

- To clarify the role and competencies of State institutions dealing with security and health at work.

- To shorten and make more timely court proceedings regarding labour disputes by training professional legal teams and providing them with the necessary technical equipment. Courts should also be held responsible for long-running court proceedings.

- To ensure all necessary conditions for the efficient enforcement of court decisions and unencumbered functioning of independent regulatory bodies – most importantly, the Ombudsman – and the necessary organisational, human, and technical resources and facilities.

- To amend and supplement legal regulations and define the legal responsibility for employers who make illegal decisions after the final disposition of labour cases.

- To amend laws and regulations to secure professional leadership in specific sectors of ministries, state bodies, public institutions, agencies and public companies, with provisions stipulating mandatory public competitions for leading and other positions and eliminate political leadership or that based on party affiliation from these entities.

- To ensure that all labour-related decisions are taken with the full participation of unions' and employers' associations and have the Socio-economic Council become a true and key factor in the negotiation process concerning labour issues.

Macedonia



In **Macedonia**, modifications to the Law on Labour Inspectorates strengthened the rights of workers and the competences of inspectors. For instance, an important regulation which was added is that the labour inspector should respond to every request from a worker to carry out an inspection in the company. Therefore the unsatisfactory functioning of the labour inspection is not due to weaknesses in the Law, but due to non-functioning labour inspectorates. As in the case of other countries in the region, the main problem is the small number of labour inspectors. Another important problem is the political influence on the body which distorts its impartial and proper functioning.

In recent years, a massive politicisation of governmental institutions has taken place. Institutions, standards and regulations intended to protect public interests have been controlled in a way which enables the ruling political parties to take decisions based on their own interests. Employment prospects and promotion in the public administration are not based on know-how and results achieved, but on party political affiliation – as confirmed by several yearly progress reports published by the European Commission. Furthermore, the increased mistrust in the judicial system is a direct consequence of institutional politicisation. It is difficult to exercise the provisions concerning workers' rights as the latter are not equal before the law.

A clear marginalisation of trade unions has taken place recently. Trade unions have lost a significant number of their members and due to the marginalisation of social dialogue, their influence vis-a-vis employers and the government has been declining. For instance, some articles in the Law on Employment concerning the activity of trade unions were changed in 2009 without any social dialogue taking place and certain regulations were adopted having negative effects on trade union rights.[25] Also, governmental control over trade unions increased due to a modification of the representativeness criteria. The competent authority deciding on the representativeness of trade unions is the Minister of Labour and Social Policy based on a proposal of the Commission for Establishing Representativeness. The Commission consists of nine members appointed by the government and suggested by the Ministry of Labour and Social Policy, whereby three come from the Ministry of Labour and Social Policy, Ministry of Justice and Ministry of Economy. Registered trade unions and employers' associations do not have members on the Commission.[26]

The collective bargaining process is absent. Furthermore, the right to strike is limited because trade unions have to determine in advance the length of the strike, and participants in the strike can be fired or sued for damages if the court decides that the strike is illegal. In addition, employers may suspend up to 2% of participants during the strike if they are violent or show non-democratic behaviour.[27] These legal provisions may be misused. Even though the law forbids the discrimination of trade unions, in practice there has been a breaking up of trade union organisations by employers, and these cases usually take two to three years to be resolved in the courts. There have also been cases where employers have tried to influence trade union elections.[28]

Finally, in October 2011 the government agreed with the social partners to introduce a net minimum wage amounting to 8,050 mkd (€130) starting from January 2012. The issue is that the announced law will not be implemented in the textile, clothing and leather manufacturing sectors until January 2015. Since these three sectors employ more than 80% of those with a net salary lower than 8,050 mkd[29], it means that the majority of workers who will benefit from this increase will have to wait until 2015.

25 International Trade Union Confederation, 2011

26 Underestimation of labour: analysis of labour-legal legislation in the period of transition (Saveski, Apasiev, Kovachevski & Vasilev, 2010)

27 International Trade Union Confederation, 2011

28 International Trade Union Confederation, 2011

29 The number of employees in these sectors is as follows: - 1967 (textile), 6573 (leather and leather related products) and 39140 (clothing) or a total of 47,680 persons.

Recommendations

- To increase the number of labour inspectors.

- To modify and amend the Law on Employment in a way which reverses the changes that currently curtail workers' rights such as:
  - the reduction of the legally allowed annual vacation.
  - employment period prolongation for contracts with a definite time.
  - the cancelation of the priority right to employ persons declared as redundant workers.
  - the introduction of the possibility to give notice to certain workers due to business reasons and to hire others the very next day in the same position with the same professional background.
  - the abrogation of the imposed ban for employees to work more than one week on a night shift.
  - the abolition of the right to less working hours for disabled persons.

- To legally govern the types of jobs that due to their character and dynamics are not considered as having a working relationship. This applies to seasonal work and work on fixed term contracts that does not exceed 14 hours per week. Mechanisms need to be foreseen that will enable these workers to be covered by social funds and entitle them to basic social insurance.

- To determine the representativeness of trade unions by an independent commission which should be established by the Parliament.

- To change the ambiguous provisions concerning the length of the strike and court measures taken against participants to avoid potential misuse by employers.

- To adopt the Law on Minimum Wage without postponing its applicability for the textile, clothing and leather manufacturing sectors to 2015, as currently envisaged.

- To adopt the Law on Mobbing through social dialogue which would stipulate preventive steps and provide appropriate legal protection to victims of mobbing.

Kosovo



In **Kosovo** specific legislation governing socio-economic rights, including labour rights, poses serious problems due to its current complexity and collision of norms[30]. While none of the key International Labour Organisation (ILO) conventions have been adopted, neither the United Nations Interim Administration Mission in Kosovo (UNMIK) Framework Constitution[31] nor the Constitution of the Republic of Kosovo include any provision from the two main legal mechanisms for the protection of labour rights and freedoms; International Covenant for Economic and Social Rights[32] and the European Social Charter[33]. The Law on Labour adopted in 2010 is thus seen as a strong impetus towards providing more security and advancing the situation of workers. Its supervision and strict implementation remain, however, a real challenge for national institutions and trade unions, and civil society as a whole.

Some of the main obstacles for the overall implementation are the current UNMIK Regulations, which in most of their provisions need to be amended to reflect changes in the field of labour rights, and the subsidiary acts which have to be drafted in order to make acts operational and functional. Public and private companies need to draft their respective rules of procedure to guarantee respect and protection of rights in practice. Courts lack the capacity to oversee the implementation of applicable laws and to perform their duties due to problems with staffing, financial support and adequate equipment. Out of the total number of 217,758 unresolved cases in the courts of Kosovo, 204,119 or 93.7% are still waiting to be dealt with by municipal courts[34]. Clearly the lack of courts dealing exclusively with labour contests has a negative impact on proper enforcement. The Independent Oversight Board (IOB) for civil servants[33] has not received back up by the authorities, thus out of 192 complaints approved during 2010, employers implemented only 91, whereas 61 of them remained unimplemented[34].

Since the beginning, the Inspectorate has faced many difficulties in fully performing its assigned competences and function since proper support from the central authorities has not been extended through the provision of adequate working conditions and optimal logistical support. It has therefore not been able to fulfill its obligations and functions as foreseen under domestic legislation as well as by ILO standards, namely ILO Convention No. 81 and its Protocol from 1995[35]. After the process of decentralisation which created 37 municipalities, labour inspectors have still not been assigned to new municipalities or some of the municipalities founded earlier, such as Fushë Kosova, Istogu, Suhareka, Shtërpca, and Novo Bërda[36]. Even the largest municipalities, such as Ferizaj and Lipjan, are covered by only one inspector. The municipality of Pristina has the highest number of labour inspectors totaling 6[37]. Moreover, the low number of inspectors decreased even further from 58 to 49 after 9 inspectors left work due to low pay[38].

Further, the Union of Independent Trade Unions of Kosovo (UITK) has been lacking organisational capabilities and efficiency - structural, organisational and functional - and has thus not been able to effectively protect workers' rights. These weaknesses became particularly evident with rising job uncertainty caused by the privatisation process during which many new owners did not comply with norms and legal provisions. In addition, the newly created Kosovo Trade Union Confederation, a division of UITK, does not seem to be fully active.

30 At the moment, the legislative framework consists of:
- Former-Yugoslav legislation;
- United Nations Mission in Kosovo (UNMIK) regulations;
- Kosovo laws promulgated by UNMIK; and
- Kosovo laws following the country's independence.

31 An act parallel to the Constitution in normal situation/State.

32 An act adopted by the UN General Assembly in 1966 that entered into force upon the limit of signatories in 1976.

33 A body in charge of resolving disputes of civil servants only.

34 IOB report 2010

35 ILO Convention Nr. 81 and its Protocol from 1995 on optimal working conditions for Labour Inspectors.

36 Policy Brief. Regulating Employment in Kosovo. Labour law and its implementation.

37 Ibid.

38 Ibid.

Recommendations

- The government and parliament need to organise legal capacities and draft subsidiary acts foreseen by the relevant laws in the field. Wider attention must be paid to ensure the required expertise, mainly with legal staff, to draft the needed legislation and supervise its implementation.
- Government needs to ensure that the provisions in the Collective Contract are implemented in full.
- The Laws on Health Insurance and the establishment of the Fund for Disability and Pensions should be adopted as no form of social insurance has been included in any law dealing with employment relationships.
- National authorities should ensure coherence and compliance with international norms and standards, such as EU legislation, the European Social Charter, UN and ILO conventions. Thus a debate and negotiations to adopt the international mechanisms needs to be initiated.
- Central and local authorities need to offer full support to the institutions in charge of implementing and supervising legislation, such as the Labour Inspectorate and Independent Oversight Board (IOB), by creating adequate working conditions and optimal logistical support. In particular, the number of inspectors needs to be increased as soon as possible. In addition, the government and parliament must be more active in enforcing IOB decisions.
- The Ministry of Labour and Social Welfare and the Labour Inspectorate must draft and implement their respective rules of procedure to ensure the organisation and full respect of workers' rights whereas private companies must fully comply during implementation.
- At the court level, a chamber should be created to deal with labour issues only, thereby decreasing the existing backlog and the costs of lengthy processes. The new Law on Courts should thus be amended to take this into account.
- Kosovo Privatisation Agency[39] needs to become more efficient and timely in checking the implementation of provisions deriving from the privatisation contracts of State-owned enterprises. It also has to be more determined in taking measures against those who breach the contracts.
- The UITK, as a social partner, should contribute by taking part in working groups during the drafting and amending processes of legislation (e.g. the Law on Labour) and be involved in the supervision of the implementation of legal provisions, especially the Law on Labour.
- Kosovo Chamber of Commerce and Kosovo Alliance of Businesses, as social partners, must continue to play their role, not only in the business sphere, but also when it comes to the protection of workers' rights. Apart from their fundamental role, they should insist on the strict implementation and full respect of the legal provisions relating to labour rights (e.g. the Collective Contract).

[39] A successor of Kosovo Trust Agency under the United Nations Administration.

Albania



In **Albania**, the Labour Code needs to be revised in order to approximate it with EU legislation and to accommodate the requests proposed by the unions to remove restrictions concerning the future implementation of the European Social Charter, to change articles allowing dismissal without any reason or motive by observing a notice period, to remove court fees for labour rights cases in order to facilitate protection of labour rights, to remove ambiguity in the law on general strikes and to reformulate the legal terms on freedom of association. The existing legal instruments available to workers in case of violations of their rights are limited as it may take up to three years to receive a verdict on a violation case since the civil courts are overloaded.

Very few enterprises are inspected and checked by inspectors, despite numerous denunciations of trade unions to relevant State bodies such as the Labour Inspectorate. In addition, reports are not made public, even in the case of well known breaches of the law on social protection, nor are sanctions frequently imposed. This is mainly due to the lack of capacity of the Labour Inspectorate and ambiguous legislation governing the functioning of the latter. For instance, the Inspectorate's structure is based on 12 directorates in the regions but they all lack the necessary equipment. Furthermore, up until now only one out of the 24 planned local offices has been fully established. According to unions, the number of inspectors is very low considering the size of the area they cover and the number of factories that they need to supervise. In 2008, the total number of inspectors was 90 which is insufficient to adequately perform tasks in the 540 outward processing factories, even in comparison with other countries in the region. This shows that there is an urgent need to increase the human, physical and financial resources of the State Labour Inspectorate.

Another issue that has been raised by unions is the lack of transparency in the work of the State Labour Inspectorate. Despite frequent requests to be part of and to monitor the inspection process, the Inspectorate has not been willing to involve unions in this activity. In addition, Article 12[40] of the Law on the Labour Inspectorate still lacks a by-law required for regulating cooperation between all interested groups which has created confusion on how trade unions should be involved in the consultative body[41], if it continues to exist at all.

Social dialogue at enterprise level is less developed since both the employers' and employees' organisations are not well organised yet. This is especially true in the apparel and footwear industry where there are 5 employers' organisations and it is very difficult to bring all partners together. At national level, social dialogue is regulated by the National Labour Council but trade unions have made many complaints concerning its meetings, agenda items and its fictitious decision-making process. This shows a total disregard for unions and has led to a very limited tripartite social dialogue. Freedom of association and the right to collective bargaining are stipulated in ILO conventions 87 and 98 ratified by Albania and also affirmed in the Labour Code. Despite this legal basis, due to the threat of dismissal and actual dismissals, efforts to increase membership in the textile and footwear sector have produced few results. To counter this, trade unions tried to draw up a so called "preliminary agreement" with the owners using mediators. Unfortunately, this approach backfired since the dependency relationship which arose between unions and employers only worsened the public perception of unions as corrupt and consequently reduced their credibility.

[40] Law no. 9634, "On inspection of Labour and State Labour Inspectorate"

[41] The body is a forum where the inspectorate, ministry and union representatives meet.

It has also been noted that political parties have had a very strong impact on trade unions where the main political parties formed a dependency-like relationship with them. As a result of a polarisation of the political situation in Albania, the relationship between the confederation and federation has deteriorated and their disputes are seriously endangering trade unionism as a whole by fragmenting and weakening trade unions, and by obstructing social partnership and cooperation not only between confederations, but also between branch organisations. This additionally worsened the social dialogue both at the enterprise and national level. Also, observed "clan behaviour" within trade unions where the narrow interests of a few are represented has fueled a bad public image. Surveys confirmed that the public does not perceive trade unions as actors capable of generating social benefits. In fact, there is a complete rejection of their role and mission (even violent anti-union behaviour in some private sectors) in the political arena and in industrial relations.

Recommendations

- To revise the Labour Code in a way which prevents unfair dismissals. The burden of proof should not be on the victim but should be the responsibility of the employer. Furthermore, a provision which would make rehiring of a formal employee mandatory, in the case of unfair dismissal, should be introduced. Also, Articles 141 and 143 should include an additional provision which would ensure that the employer is obliged to provide a justified explanation for dismissal – even when the notice period is respected.
- Trade unions should demand the implementation of the special provision for the establishment of Labour Courts as stipulated in the Labour Code from 2003. Also, efficient functioning of the special arbitration tribunals dealing with trade union rights violations should be ensured.
- State inspectorates should be strengthened by ensuring satisfactory working conditions, increasing cooperation with other authorities, securing adequate training, and creating effective management and organisational structures. To counteract constant information leaks, a working method needs to be defined. In addition, the Council of Ministers should issue, as soon as possible, by-laws regulating the implementation of the Law on State Inspectorates and the Law on Safety and Health at Work.
- To urgently establish a Social and Economic Council, an independent consultative body and a forum to promote civil society participation in economic and social life and civil dialogue.
- The government should not pass any legislation affecting workers' rights without first consulting the National Labour Council. In addition, the government should not amend or prepare laws without having discussed the draft with all relevant stakeholders, especially with trade unions as legal representatives of employees.
- To change the voting power in the National Labour Council by conferring the power of veto to the two trade union confederations. This would prevent decisions directly affecting workers' rights being taken without their possibility of to intervene.
- The government should reduce the minimum number of workers required to form a union-based organisation within a company to below 20 by amending the Labour Code. This would increase employees' representation in small companies.
- To no longer collect union subscription fees only via the employer but the trade unions should also be involved in this process.
- Unions should enable workers to take part in activities at all organisational levels in order to increase their internal level of democracy. Special activities such as offering legal opinion to workers should be carried out in enterprises where contact with the workers is denied. It is also important to strengthen all forms of association, in particular by targeting young people and women through tailored programmes.
- The focus of social dialogue and collective bargaining should not only be on remuneration but also on working time reduction, on the improvement of working conditions and issues relevant to the broader public (e.g. women's rights) to demonstrate unions' added value.

Bosnia and Herzegovina



What is particular about **Bosnia and Herzegovina (BiH)** is that there are four different jurisdictions (State level, the two entities - Republika Srpska and Federation of BiH - and the Brcko District), which regulate their own labour relations. This makes any sort of coordination and implementation extremely difficult. Violations of rights deriving from labour relations in BiH are frequent because the protection mechanisms do not function properly.

Internal security - which includes a procedure in the workplace initiated by employers in the form of issuing individual legal acts governing the rights and obligations concerning labour relations and procedures to protect workers within the working environment - is underdeveloped due to the lack of application of the Workers' Councils Act. Furthermore, workers` councils have not been used in practice, especially in the private sector due to workers` poor awareness of this institute and employers` unwillingness to support the operation thereof. This affects the poor implementation of workers` rights as employers often adopt Rules of Procedure that do not comply with Labour Law and illegally conclude contracts with employees following these Rules, without the mandatory consultations with the workers` council or trade union. Given that they often prohibit the organisation of workers` councils, employers can violate the law and workers` rights with impunity.

External forms of protection of labour relations - which include proceedings before impartial third institutions - are also characterised by a number of shortcomings. Judicial protection, because of the way the labour relations system is established, is often the first instance which protects workers` rights but at the same time it is the most complicated, expensive and longest lasting process. A large backlog of cases (a recent poll shows that there are currently at least 22,887 cases[42] in the field of labour relations being processed), lengthy and expensive court procedures, widespread corruption and problematic execution of court decisions are just some of the factors that characterise the judicial resolution of disputes in labour relations. The extrajudicial protection of rights, which includes alternative dispute resolution[43] methods, is still in an early stage, with no institutional support for the development of these mechanisms - although mediation was introduced into the legal system in BiH in 2004, the authorities have not yet allocated funds for the planned promotion and application of this mechanism. The application of arbitration is also in an early phase and is applied only in Republika Srpska. Last year the Agency for Peaceful Settlement of Labour Disputes was established in this entity.

The protection of rights through administrative procedures conducted by inspections is also weak and insufficient. Labour inspections do not have sufficient human resources, are faced with a lack of funding and the necessary equipment, have limited responsibilities and the penalty policy that they apply is minor.

Unfortunately, trade union organising is characterised by numerous problems. The most prominent problem in the implementation of the right to union organising is its weak and insufficient use in practice, particularly in the private sector. For instance, in the Brcko District, the International Labour Organisation (ILO) already stressed the problem of a lack of sanctions for employers in cases

[42] This number is based on the submitted answers to a survey conducted in 54 courts out of the existing 70.

[43] Alternative dispute resolution includes methods of extrajudicial dispute resolution and methods of conciliation, mediation and arbitration initiated by the mediator or arbitrator. Mediation is a procedure in which a third party assists in reaching an agreement between two or more people in dispute, and arbitration involves a similar process but in which a third party makes a binding decision.

of discrimination based on union affiliation. It is important to emphasise that an official record of violations of the law is not kept. Workers, if faced with problems when organising, often give up under the pressure exerted by employers for fear of losing their job. Initiating court proceedings is rare and it is difficult to find records of these cases.

There is also a lack of harmonisation of labour legislation with the adopted international conventions and EU standards when it comes to union representativeness and layoffs of union shop stewards. The issue of representativeness, which is usually directly related to the registration or establishment of trade unions, has not been addressed, thus negatively affecting the development of social dialogue at the national level. Specifically, "the lack of clarity concerning the recognition of trade unions has blocked further progress in instituting collective bargaining"[44] at the State level. The problem arose when the social partners (trade unions and employers) from various entities started to contradict each other`s representativeness and informally prevent the registration of trade union Federations and Confederations. Due to these problems, the establishment of the Economic and Social Council at the State level has been blocked for several years. These circumstances have prevented the use of tripartite social dialogue at the national level, and the harmonisation of socio-economic policies between the entities. This also weakens the role of trade unions and thus the workers.

In its request to BiH regarding the implementation of ILO Convention No. 78, the ILO also pointed out the obligation of BiH and its bodies to maintain a registry of trade union organisations. So far, only Republika Srpska has adopted a Rulebook on Registration of Trade Unions in the Registry. The ILO has sought amendments to the Rulebook to allow trade unions to form federations and confederations and to join international organisations. Although the Republika Srpska has adopted the requested amendments, not much has changed in practice[45]. At the level of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Brcko District, no special registers of trade unions are kept, but records are made in accordance with applicable laws on associations and foundations.

It is important to note that the previously mentioned poor trade union organising is closely linked to their status as well as with their capacities. Having no 'base' in companies and taking quite a passive role in public policy making, it is not surprising that they rarely succeed in protecting their members' and other workers' interests."[46] Moreover, the authorities have neglected trade unions for years, not involving them in the decision-making process in accordance with the existing legislation, while on the other hand, using unions for political purposes, and to this end, organised on ethno-national divisions that exist in BiH. There are roughly 37 branch unions and trade unions, which rarely work together. As such they do not actually function in favour of the workers. It is therefore not surprising that workers have little confidence in unions and rarely join. A recent survey of citizens` confidence in different institutions shows that trust in trade unions is low. 31.1% of the people surveyed stated that citizens generally do not trust unions, while 20.2% do not trust unions at all. Citizens have more confidence in religious organisations, the military, police, judicial institutions, international organisations, media and NGOs.

[44] Friedrich Ebert Stiftung, 2009

[45] Centre for human rights of University of Sarajevo and Heinrich Boll Foundation, 2010

[46] Protection of rights in Bosnia and Herzegovina: Two legal studies to evaluate the level of compliance of the domestic legislations and practices with the applicable international standards (Obradovic, 2010)

Recommendations

- To develop the administrative, judicial and other mechanisms for a more efficient protection of the right to union organising, particularly in the private sector.

- To modify the provisions of Labour Laws of the entities, the Brcko District and complementary legislation at the State level concerning the prohibition of trade union shop stewards' layoffs to prevent the reported abuse of the applicable provisions.

- To urgently adopt the General Collective Agreement in Brcko District.

- To modify the Labour Laws in the Federation of BiH and Brcko District and complementary laws at the State level by:
  - establishing and maintaining a register of trade union organisations in the jurisdictions
  - defining trade union representativeness, as well as developing measures and regulations that will clearly define the representativeness of trade unions and associations of employers.

- To establish an Economic and Social Council at State level.

- To adopt the Rulebook on the Register of trade union organisations in BiH, the Federation of BiH and Brcko District. In addition, a service responsible for keeping the register in BiH, Federation of BiH and Brcko District should be established within the executive bodies responsible for labour affairs.

- To channel efforts towards uniting the unions, especially across entities through the Confederation of Independent Trade Unions of BiH, as well as the integration of entity branch unions into single branch unions, to increase membership and create greater leverage through a joint approach towards employers and government institutions. Increased funds resulting from a larger membership base could be invested in the education and specialisation of permanent staff and other members.

Conclusions

The failure to implement existing legislation prevents the adequate treatment of the rights of employees and normal working conditions, and does little to advance democracy and economic development. To deal with the difficulties arising from violations of labour norms and provisions, there is a need for governments to coordinate their activities together with employers and employees, as tripartite constituents, to jointly shape policies and programmes promoting decent work for all.

Further efforts are needed to strengthen cooperation between trade unions and employers' organisations in order to consolidate the bipartite social dialogue. Despite the fact that some employers' organisation have better capacities, they are often fragmented and some fail to cooperate with each other as well as with trade unions. However, a fruitful cooperation between these actors would improve the situation for both enterprises and workers in the sector and potentially lead to the development of industrial relations.

In a region with high unemployment, where the informal economy is a predominant issue, where the State administration controls the conduct of economic and social dialogue, and labour inspectorates are not able to properly monitor implementation and enforce sanctions, civil society and trade unions should position themselves as central actors in matters directly or indirectly affecting workers. The underdeveloped relationship with the media could be improved by developing joint civil society organisation - trade unions partnerships and advocacy strategies. In fact, only a genuine cooperation between all stakeholders (public institutions, trade unions, employers' organisations, NGOs, media) can help create socio-economic progress and fulfill the interests of workers and employers.

The long-term goal is that the countries' laws and legal systems are not only made compatible with the provisions of relevant international instruments that regulate labour and socio-economic rights but that actors across the board employ an appropriate and comprehensive approach that would create more favourable conditions for these rights to be respected. Lastly, unless the high unemployment levels and widespread poverty are addressed when designing policies in and for the region, not even the best laws or implementation mechanisms will be able to promote decent work and quality jobs.

"Decent Work Balkan Network" is a two-year programme launched in 2011. The key aim of the Network is to strengthen the capacity of trade unions, NGOs and think tanks to work together in promoting Decent Work and Quality Jobs in the Balkans by developing national and regional networks, joint advocacy actions and public campaigns, formulating policy proposals and monitoring the implementation of the European socio-economic acquis.

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