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Filling a gap in labour rights protection or trade union competition?

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▶ Introduction

The role of workers' representatives in Serbia generally is regarded as small, especially if employee representatives who act within trade unions are excluded. The provisions on this in Serbia's legislation are rudimentary, and so is the practice.

In Serbian legislation and practice the following types of workers' representatives are recognized: in companies (in works councils or in committees on occupational safety and health (OSH), as union representatives or in social, economic and other councils outside the company (at municipal, provincial or republic level). Serbia's trade unions perceive every other form of employee participation as competition and a means of reducing their power. They oppose all forms of worker representation in companies outside the trade union, especially works councils.[1]

The role of representatives of employees in Serbia manifests directly or indirectly within the framework of the following mechanisms: social dialogue outside the company (through works councils) (Mihailović and Stojiljković 2006, 3; Jovanović 2007, 19), workers' participation in companies (participation of employees in information and consultation), collective bargaining (employee representatives in negotiations), participation of employee representatives in dispute resolution (strikes and arbitration) (Jovanović 1998, 33).

To learn more, this report delves into the overall state of industrial relations in the country, its socio-economic environment, the development of the trade union movement and the history of workers' participation in Serbia. At present, the conditions are unfavourable for the creation of an extra layer of worker representation: a prolonged economic crisis, an underdeveloped private sector and market economy, little belief in tolerance and economic democracy , an overly formalized social dialogue, divided trade unions unaccustomed to the conditions of action in a market economy.

Today's concept of workers' representatives is heavily influenced by Serbia's past.

Before the Second World War in the former Yugoslavia (in which Serbia configured as a constituent part, until its dissolution),[2] a system of workers' representatives – so-called workers' trustees – was introduced by the Workers' Protection Act of 14 June 1922. The law regulated all important issues related to the functioning of this institution (selection procedure, functioning, competence, dismissal, protection) (chapter 5, articles 108–119). Employees had the right to choose "workers' trustees" in all enterprises. Their tasks were numerous: to protect the economic, social and cultural interests of workers; to maintain good relations between workers and employers; to prepare collective agreements; to ensure that both employers and employees adhere to collective agreements and work contracts; to mediate disputes between workers and employers; to mediate in determining "tariffs" (wage levels); to strive to apply the prescribed working conditions (on working hours, vacations and so on), as well as standards of safety at work; to give workers advice in case of disputes and dismissals; and to make suggestions to employers for improving working conditions (article 109). Workers' trustees enjoyed protection in connection with the performance of their functions. It was stipulated that the employer must not dismiss or persecute a worker's trustee for the lawful exercise of their function (article 119).

The system of workers' trustees overlapped with the first years of socialism after 1945. However, with the abolition of private enterprises, that is, the nationalization of the economy, their role lost its meaning and they disappeared from Serbian legislation (Radelić 1989, 129–157).[3] Instead, workers' representatives were recruited from the ranks of trade unions and whose role was reduced to an "extended arm" of the Socialist Party. As a result, trust in workers' representatives among employees in Serbia declined over time and continues to do so today.

During socialism Yugoslavia conducted an experiment in this area that became known globally as "workers' self-management" (Singh and Bartkiw 2007, 280–297). In this scheme, workers allegedly managed the factories and the entire society through their representatives, but the general assessment of social dialogue between employees and employers has been negative. Workers'

1 Marinkovic, for example, mentions the union's extremely repulsive attitude towards works councils. In the text from a conference on co-determination that was held in Belgrade, it is stated that the union leaders in Serbia believe that the works councils, the formation of which is provided for by the current legal solutions in Serbia, should in no way be opposed to the unions, that is, they should never be allowed and they serve to divide workers and obstruct the work of trade unions in companies (Marinković 2015; see also Vlaović 2012).

2 The Republic of Serbia became an independent state after the dissolution of the state union called "Serbia and Montenegro" (SM) in 2006. That union, considered to be the legal successor to the Federal Republic of Yugoslavia (FRY) was formed in 1992 after the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY).

3 Radelić goes on to write: "That is why the workers' trustees were passive due to party and trade union inactivity and performed only those tasks that could be in the function of increasing productivity and production, which, after all, was also the task of the trade union. In such circumstances, nationalization was carried out and thus the basic reason for their existence was abolished. After that, it was no longer possible to defend the institution of commissioners, who did not justify their existence anyway" (1989, 156).

participation was reduced to a mere formality, gradually diminishing over time. Self-management in Yugoslav (Serbian) firms increased the alienation from work and caused disappointment in the idea of participation (Ravlić 2000, 94). The rejection of ideas to refresh workers' participation in today's companies in Serbia can be attributed to the breakdown of workers' self-management.

With the collapse of socialism, workers' participation became very unpopular in Serbia. However, since 2000, Serbia has focused on joining the European Union,[4] such that its various regulations have begun to promote social dialogue modelled after the EU. This phase began in 2004 with the enactment of the Act on Social and Economic Councils (*Official Herald of the Republic of Serbia*, No. 125/2004), whereby socioeconomic councils were introduced in Serbia at various territorial levels. This has increased slightly the role of workers' representatives outside the company, but realistically the role of socio-economic councils is tiny (except for the National Socioeconomic Council). It is apparent that the social dialogue outside the company is only formally more developed than within enterpises.

4 Serbia signed a Stabilization and Association Agreement with the EU in 2008 and in March 2012 acquired the status of an EU membership candidate.

▶ 1. Participation of elected workers' representatives

One important channel through which workers ensure their influence is worker participation. According to Arrigo and Casale (2005), workers' participation consists of: "A principle as well as informal and formal processes, established in an enterprise, whereby workers or their representatives participate with management, on a cooperative basis, in resolving issues of common concern. Workers' participation can take various forms, for example, informal discussion between managers and workers; information sharing; consultation; collective bargaining; joint decision making in workplace committees, works councils or similar bodies; worker/trade union membership in management bodies; self-managed work groups; and financial participation" (Arrigo and Casale 2005, 264; see also Witt, Andrews and Kacmar 2000, 341–358; Poutsma, Hendrickx and Huijgen 2003, 45–76; ETUI 2023). Similar processes exist today outside the enterprise, with workers' representatives participating in various bodies at the local, regional, national and supranational levels, and thus having the opportunity to express their opinions on important issues concerning employees (so-called economic democracy).

How do these processes take place in Serbia? The basis for legal regulation of this field is article 82 of the Constitution of Serbia of 2006 (*Official Herald*, Nos. 98/2006 and 15/2021). It anticipates that the impact of the market economy on the social and economic position of employees shall be shaped through social dialogue between unions and employers. In addition, Serbia has ratified the amended European Social Charter of the Council of Europe of 1996, in which three articles provide for introduction of workers' participation (article 21 – the right to information and consultation, article 22 – the right to take part in the determination and improvement of the working conditions and working environment, article 29 – the right to information and consultation in collective redundancy procedures) (*Official Herald* [International Agreements], No. 42/2000). Serbia has thus formally undertaken as its obligation to regulate and to introduce these issues.

Workers' participation through workers' representatives in companies is regulated by the Labour Act of 2005 (LA) (*Official Herald*, Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017, 95/2018). According to article 13, one of the rights of employees is the right to consultation, information and expressing views on important issues – either directly or through their representatives. According to the same article, an employee, that is, an employee representative, cannot be punished for such activities, nor put in a disadvantageous position in terms of working conditions, if they act in accordance with the law and the collective agreement.

Article 205 of the Labour Act stipulates that workers employed by the employer with more than 50 employees may establish a *works council*. The jurisdiction of these bodies is only roughly regulated, and other more important issues are not regulated (for example, the election of council members). According to article 205 of the Labour Act, the works council provides opinions, participates in decision-making on economic and social rights of the employees in accordance with the law or "general rules of the company" (such as collective agreements or work rules brought by the employer) (see also article 8). The law does not contain details referring to the election or position of the council members among employees. It only provides for their protection, along with other representatives of the employees in the company.

Article 183 of the Labour Act provides that a valid reason for termination of an employment contract shall not be considered, *inter alia*, "activity in the capacity of representative of employees, pursuant to this law". Also, according to article 188 of the Labour Act, the employer is not entitled to dismiss or in any other way disadvantage any employee representative during the exercise of their functions. It is proscribed: "The employer can neither cancel the employment contract, nor in any other way put the employee in a disadvantageous position because of his status or activity as an employee representative, trade union member, or because of his participation in trade union activities." This protection exactly applies for: (1) members of works council and employee representatives in administrative and supervisory boards of the employer, (2) the president of the union and other appointed or elected trade union representatives in the company, (3) trade union members at the company (or institution).

Before its amendment in 2014, the Labour Act from 2005 provided that an employer can dismiss employee representatives only with the approval of the Ministry of Labour, if they deny any right to be offered in order to resolve their status (article 188, paragraph 4). This solution was deleted in 2014, which we consider a step backwards. Now, in addition to the principled protection of the above representatives, it is provided that: "The burden of proving that the termination of the employment contract or put the employee in a disadvantageous position is not a consequence of the status or activities referred to in paragraph 1 of this article is on the employer." This is a useful solution in the event of litigation yet a weaker form of protection for workers' representatives than what existed in the original – the earlier solution made it possible to both

avoid dismissal of workers' representative and be placed in an unfavourable position.

In addition, in several situations, the Labour Act provides for consultation of workers' representatives – that is, representatives of representative trade unions. According to article 16 of the Act (duties of employers), any employer shall: "Ask for advice of trade union in cases stipulated under the law; in case the trade union has not been set up with that employer, of a representative designated by employees."

Trade union representatives who operate in the company are elected in accordance with the rules (statutes) of those organizations. According to the *Rulebook* on registration of trade union organizations in the register, in order for a trade union to register, it must have its own statute (or general act) and a person authorized to represent (the president) (article 6 in *Official Herald*, Nos 50/2005 and 10/2010; see also Savić 2006).

There are other forms of participation in companies, in the form of *informing or consulting workers'* (trade union) representatives.

Article 111, paragraph 4 of the Labour Act, which regulates the "minimum wage", provides for the obligation to inform employee representatives in the following way: "After the expiration of six months from the date of decision on introduction of minimum wage, the employer shall be obliged to inform the representative trade union on the reasons for the continued payment of the minimum wage."

The obligation to inform employees, through a representative trade union, is also provided in the case of transfer of undertaking (article 151). In that case:

> (1) The preceding employer and succeeding employer shall, 15 days before the change of employer at the latest, notify the representative trade union of the employer about: 1) date or proposed date of change of employer; 2) reasons for such change of employer; 3) legal, economic and social consequences of change of employer and measures to mitigate them.
>
> (2) The preceding employer and succeeding employer shall, 15 days before the change of employer at the latest, undertake measures for mitigation of social and economic consequences on the position of the employees, in collaboration with the representative trade union. (3) Should there be no representative trade union with the employer, the employees have the right to be directly informed about the circumstances referred to in para. 1 of this Article.

When determining "redundant employees", there is an obligation to consult employee representatives. According to article 154 of the LC, an employer, before enacting widespread redundancies, should prepare or train those affected employees for new employment in collaboration with the representative trade union at the said employer and relevant national employment agency. Also, it is foreseen that an employer will submit the redundancy proposal to the representative trade union and the national agency for employment eight days after the redundancy proposal has been set at the latest, inviting their opinion (within 15 days) (article 155, paragraph 2). An employer will consider and take into account proposals of the national employment agency and trade union and inform them about its position within eight days (article 156, paragraph 3).

According to article 44 of the Act on Protection of Health and Safety at Work from 2005 (*Official Herald of the RS*, Nos. 101/2005, 91/2015, 113/2017), employees are entitled to elect one or more representatives for safety and health at work. A minimum of three members may form a Committee for Safety and Health at Work. The committee has an advisory role in protecting the health and safety of employees. An employer with 50 or more employees has an obligation to appoint at least one representative to the committee so that employer representatives are not in the majority. The election and operation of these bodies, as well as their relationship with the union, should be regulated by collective agreement.[5]

In addition, based on the remnants of an old practice from the 1990s (on the basis of the Act on Enterprises on 1996, valid at that time) (*Official Herald of the FRY*, Nos. 29/1996, 33/1996, 29/1997, 59/1998, 74/1999, 9/2001, 36/2002), employees are represented in management and supervisory boards of companies. Also, the laws governing the operation of public enterprises and public institutions established by the state (utilities, water supply, power utility, schools, hospitals and medical facilities and so forth) provide for the participation of employees (one person) in the supervisory or management boards of these companies or institutions. According to article 17 of the Act on Public Enterprises: "The president and members of the supervisory board of a public company founded by the Republic of Serbia shall be appointed by the Government, for a period of four years, one of whom is a member of the supervisory board from among the employees" (*Official Herald*, Nos. 15/2016 and 88/2019). According to article 22, paragraph

5 The new Law on Health and Safety at Work will probably be adopted by Parliament by the time this report is published. Like the previous law, the new law foresees the existence of employee representatives and the Committee for Safety and Health at Work (article 56). The mandatory content of information, consultation with employees, employee representatives and the Committee for Safety and Health at Work by the employer is also regulated in articles 57–59. Available online at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/13_saziv/295-23.pdf

2 of the Act on Public Services: "Members from among the employees of the institution shall also be appointed to the management board." And: "Members from among the employees of the institution shall also be appointed to the supervisory board" (*Official Herald*, Nos. 42/1991, 71/1994, 79/2005 and 83/2014).

Also, today, according to Serbian legislation, there is an opportunity for workers to participate in social dialogue outside the company through their representatives. Employees participation through their representatives outside the company is generally reserved for "representative unions".[6] Social dialogue outside the company (exclusive of collective bargaining) is regulated by the Act on Social and Economic Council from 2004, which provides for a tripartite social and economic councils at local, provincial and state-wide levels.

The National Social and Economic Council consists of six representatives of the Government, six union representatives and six representatives of the employers, established for the territory of the Republic of Serbia (article 5. 2 of the Act). Local and Provincial Councils have the same structure. The National Social and Economic Council discusses issues such as: development and promotion of collective bargaining, the impact of economic policy on social development and stability, employment policy, wages and price policies, competition and productivity, privatization and other issues related to structural adjustment of the economy, labour environment protection, education and vocational training, health and social protection and social security, demographic trends and other issues (article 9 of the Act).[7]

The Social and Economic Council of the Republic of Serbia was first established in August 2001 under the Agreement on the Establishment and Scope and Mode of Operation of the Social and Economic Council of the Republic of Serbia, concluded among the Serbian Government, the Confederation of Autonomous Trade Unions of Serbia, Trade Union Confederation "Nezavisnost", the Association of Free and Independent Trade Unions and the Serbian Association of Employers. The Agreement on the Promotion of Operation of the Social and Economic Council was signed as soon as in April 2002. The Council operates today and it can be said that it is in practice the most important body of this type in Serbia (*Official Herald of the RS*, Nos. 36/2009, 88/2010, 38/2015, 113/2017, 113/2017, 49/2021).

According to article 28 of the Act on Employment and Unemployment Insurance of 2009, there is a possibility of establishing "employment councils" at three levels – national, provincial and local (*Official Herald of the RS*, Nos. 36/2009, 88/2010, 38/2015, 113/2017, 113/2017, 49/2021). These councils provide opinions and recommendations to the Government, provincial or municipal authorities on important issues related to employment (programs, regulations, measures of active employment policy, among others). Unlike the aforementioned socioeconomic councils, these bodies have a complex composition, and they include employee representatives. For example, the National Employment Council consists of representatives of the founders (the state), the representative trade unions and employers' associations, the National Employment Agency (employee representatives) and private employment agencies, relevant associations and experts (article 30 of the Act).

In addition to this, there are other possibilities for employee representatives to appear in a certain role in situations that affect employees. This is the situation during a strike when a "strike committee" composed of representatives of employees (or trade union) is formed, in accordance with the Strike Act of 1996 (*Official Herald of the FRJ*, No. 29/96; *Official Herald of the RS,* Nos. 101/2005, 103/2012). According to its article 6., the strike committee and the representatives of the bodies to which the strike was announced are obliged, from the day of the announcement of the strike and during the strike, to try to resolve the dispute by mutual agreement. At the invitation of the parties to the dispute, trade union representatives may be involved in a negotiated settlement of the dispute if the union is not the organizer of the strike.

Also, in accordance with the Act on Peaceful Settlement of Labour Disputes of 2004, workers' representatives participate in the peaceful settlement of labour disputes before the Agency for Peaceful Settlement of Labour Disputes (*Official Herald of the RS*, Nos. 125/2004, 104/2009, 50/2018). According to article 2, paragraph 2, a party to a collective dispute are considered to be an employer, trade union, authorized employee representative, employee or strike committee. They, together with the conciliator, participate in the mediation process within the conciliation committee (article 155, paragraph 2).

6 According to articles 218–220 of the Labour Act, the union is considered to be representative if: (1) it was founded and operates on the principle of freedom of trade union organization and activity, and (2) it is independent from government authorities and employers, and (3) is funded mainly through membership fees and other own sources, (4) if it gathers sufficient number of members (15 per cent of the employees of the employer and 10 per cent when the union organized outside the company), and (5) if it is entered in the register in accordance with the law and other regulations.

7 Other social and economic councils have similar competences, at the levels at which they operate.

▶ 2. Workers' representatives in collective bargaining

Workers' representatives also participate in collective bargaining, as a rule within representative trade unions. In order to present this process, we will briefly present the essential rules from the Labour Act on collective bargaining, from the point of view of the role of workers' representatives.

The LA specifies the following types of collective agreements: (1) general, (2) special, (3) concluded with the employer. A general collective agreement is concluded for the entire territory of the country. A special collective agreement is concluded for a certain branch, group, subgroup or activity, and can be concluded for the territory of the whole of Serbia, as well as for the territory of a unit of territorial autonomy (province) or local self-government (municipality) (articles 241–250). A collective agreement can also be concluded with the employer.

The participants in the negotiations and formation of a collective agreement are a representative association of employers and a representative trade union of employees. The LA also governs the situation when no association can be considered representative. Then the unions or the employers' associations can conclude an association agreement, in order to satisfy the condition of representativeness (article 249).

Also, the Labor Act contains an interesting solution when an employer fails to conclude a collective agreement. According to article 250, if a trade union has not been established in a company, the wages, salaries and other employee benefits may be regulated by an "agreement" (on wages). Such an agreement is deemed to be concluded if signed by the managing director, that is, the employer, and the representative of works council or the employee empowered to do so by at least 50 per cent of the total number of company employees. This was probably meant to encourage other forms of social dialogue in companies, other than those existing between the union and the employer. The agreement ceases to be valid on the day the collective agreement enters into force.

The representatives participating in the negotiations must have the authorization of their bodies (article 253). Ideally, representatives must respect the interest of their "base" in the negotiations and not to negotiate in their own name and interest (which did happen in practice in order to obtain certain privileges).

The participants in the formation of a collective agreement have a duty to negotiate but have no obligation to reach an agreement. If no agreement can be reached, they can initiate arbitration within 45 days in order to resolve contentious issues (article 254). The next step is mediation before the Agency for Peaceful Settlement of Labour Disputes.

The collective agreement is binding to all employees, including those who are not members of the union which signed the collective agreement (article 262). The Government may extend the effect of a collective agreement by prescribing that the collective agreement as a whole or its individual provisions also applies to employers who are not members of the association that signed the agreement. The legislature prescribed this procedure in detail in articles 257 and 258.

▶ 3. Trade union(s), workers' representatives and works councils

Despite rules set by aforementioned legislation, the role of workers' representatives in Serbia is modest. The only exception is the somewhat larger role of union representatives. The number of work councils in companies across the country probably does not exceed the figure of five (Bosis 2023). Also, there are no known cases where a works council, empowered by the aforementioned Labour Act, concluded an "agreement on wages" as the replacement for collective agreement. The socioeconomic councils do not have much influence in practice, except to some extent the Republic's Socioeconomic Council. Also, the impact of employees in the decision-making bodies in companies and institutions is diminishing.

As previously mentioned, Serbia's trade unions see works councils as rivals who would undermine their own role in companies and openly oppose their establishment. They consider them as direct competitors, calling the works councils "yellow unions".[8] Moreover, even open conflicts between unions and works councils have been recorded (*Kurir* 2011). Works councils are seen as an instrument of the "manipulative participation" that aims to create an illusion that employees participate in corporate governance (Mojić 2008, 242).

In the author's view, there is a general feeling among employees that the social dialogue in companies is nothing but a pseudo "economic democracy", but, in fact, the employers make decisions unilaterally.

Participation of employees in companies is far from favoured by Serbia's employers who traditionally lack a democratic predisposition and management skills. The idea of works councils and participation of employees in the company is more likely to be accepted in companies owned by foreign employers.

The state shows no interest in this form of social dialogue at the company level. However, the state occasionally encourages social dialogue at other levels (municipality, province and state), especially in times of intense social tensions.

The social dialogue outside the company is formally more developed. Socioeconomic councils and employment councils were established at all levels (local, provincial, national). However, their work generally is evaluated as poor, with almost no impact on the rights of employees and their working conditions

One of the biggest obstacles to any development in this area is the competitive relationship between trade unions and works councils, leaving policymakers asking how to make unions and works councils allies not competitors (Marinković 2013). One popular suggestion is to define their responsibilities clearly and precisely (Vlaović 2013). Also, it would be sound to define by law that the members of works councils primarily may be elected to this body as the representative of trade union. Regardless, to observe fully democratic principles, a proportional number of non-organized employees must participate in works council as well. Employee representatives to be elected for the works councils on the referendum in the company are to be elected exclusively by secret ballot. In companies where a trade union is not established, it should be mandatory that work councils are established (Jašarević 2011, 379–375).

In addition, the state should strongly support social dialogue outside the enterprise. *Inter alia*, it should be specified that legislation or measures that have an effect on the social status of the employees cannot be adopted without the opinion of relevant social and economic councils (local, regional, republic). The state should encourage social dialogue not only through mere norms but practical measures such as tax incentives or rewarding employers with successful works councils programs with quick access to loans.

8 In the opinion of the former president of the Association of Free and Independent Trade Unions of Serbia (the third-largest trade union in the country): "The concept of the council is designed to take employees away from the union as the authentic representatives of the workers in the struggle for workers' rights. Councils are bodies that are controlled by the management and the management of the foundation of which has a major impact, so councils can never be a substitute for unions, that can not possibly be effective in protecting the rights of an employee." Zeljko Veselinovic, president of United Trade Unions of Serbia "Unity", said that Serbia was not mature enough for the introduction of works councils in companies, and that even at this moment, these councils would have retrograde role and would serve as a tool to fight union organizing (see Vlaović 2013).

▶ 4. Elected workers' representatives and digital platforms

The status and protection of digital workers is high on the agenda of international labour law. These include persons working together with the help of digital technology and through platforms (platform workers) (Biagi et al. 2018, 52). In order to adequately protect these workers, the possibility of their organization (trade union and others) is considered, that is, effective and adequate representation of collective interests of this category.

However, this group of heterogenous workers tends not to work in one location but frequently is scattered around the world. "Digital labour platforms typically rely on a workforce of independent contractors whose conditions of employment, representation and social protection are at best unclear, at worst clearly unfavourable" (Biagi et al. 2018, 5). People who work through platforms or digitally usually do not enjoy any employment protection and arewithout the status of employees. Platforms try to avoid declaring themselves as employers, although in most cases they are. Persons who work are registered as freelancers, self-employed or conclude modified (non-standard) civil law contracts are almost never treated as employees.

Although platforms avoid presenting themselves as employers, they, in fact, do control and subordinate their workforce – which is the basic prerogative of the employer. There is a "covert subordination", which is sometimes more intense than the subordination performed by regular employers (see Engels 2014, 361–384; OECD 2020).

Digital, that is, platform workers, are difficult to systematize, but it is considered that these are the following forms of work: casual work, dependent self-employment, informal work, piecework, work from home and crowd work. The type of work can be: digital or manual, in-house or outsourced; high-skilled or low-skilled, on-site or off-site, large or small scale, permanent or temporary (Biagi et al. 2018, 3).

Around the world, the number of these workers is constantly increasing. In Serbia, it is estimated that there are between 74,000 and 100,000 digital and platform workers (021 2017; Lj. Radonjić 2020). Furthermore, Serbia has one of the highest percentages of workers working through international platforms (programming, translation, language classes, dispatch).[9] At the moment, local platforms are more dominant in Serbia, and they are mostly engaged in food delivery, while transport and other services also developing.

To more effectively protect digital and platform workers, in addition to being awarded the status of employment or its equivalent, unions also started to think about representing and organizing this group of workers. This would be a major step towards their organized protection and recognition.

Since the state is not responding to this problem, digital and platform workers have begun to organize themselves. Also, trade unions, whose influence due to the "digitalization of labour" and "platformization of labour" is declining, have begun to include these groups of workers in their ranks. Despite legal barriers, there is almost no union in the EU that has not opened its doors to freelancers and the self-employed (digital workers). There are four forms of organization – (1) specialist unions, (2) special unions of invisible non-standard workers, (3) special organizations of self-employed and (4) large unions – that have opened up their membership to self-employed workers, platform workers and the like.

Vanadeale mentions that in some countries these workers are organized into platform cooperatives (for example, Britain and the Netherlands) (2021, 218, 222). The goal is to provide platform workers with some rights and to be permanently employed in the future.[10] He also states that the first forms of organized collective actions of these workers are taking place. The first strikes and protests of platform workers (for example, Denmark, England, Italy and Spain) were recorded (Kučinac 2019; Eurofound 2021). Regional unions of platform workers also are being formed, advocating a "community of resistance" to achieve a breakthrough. For example, Germany has both the Free Workers Union and the Independent Workers Union, while Great Britain has the International Workers of the World. These unions also litigate and have the support of a transnational network for the revitalization of trade unions (Vanadeale 2021, 223). They also enjoy the support of "activist groups" – Alter summit i ReAct.

Activist groups of digital workers are considered to be in the pre-phase of trade union organization.[11] In fact, in the

9 In the analysis of the World Bank (Kuek et al. 2015), Ukraine, Romania and Serbia were for the first time identified as key suppliers of labour on global digital platforms, per capita. (See also Lj. Radonjić 2020.)

10 "Platform cooperatives are designed and owned by their members, who usually pay a small contribution from their earnings towards the maintenance and development of the platform... There are currently various platform cooperatives operating in a number of sectors, from taxi (such as Green Taxi Cooperative and ATX co-op Taxi, in the United States and Eva in Canada) and delivery (such as Coopcycle2) services, to house-cleaning (such as Up&Go, New York City) and e-commerce (such as Fairmondo, Germany)" (ILO 2021, 88).

11 Thus, for example, an activist group of Foodora couriers in Vienna turned into VIDA, the Austrian trade union that organizes transport and services, established in 2017. Thanks to this, bicycle couriers are for the first time in employment and are covered by a collective agreement – 2020. A similar example of organizing is also mentioned in Germany – where the organization FAU has grown in 2020 into the Food, Beverages and Catering Union - which should help workers get employee advice (Vanadeale 2021, 224).

absence of funding and infrastructure, activist groups are turning to Serbia's main unions for aid.

Also, the first works councils of platform and digital workers are being constitutionalized (for example, in Cologne – Foodora 2017, Deliveroo and in many other cities of Germany).

By 2019, eight formal collective agreements between platforms and platform workers were identified (for example, in Denmark and Sweden),[12] with more pending (Kilhoffer et al. 2020, 10). Somewhere they were helped by trade unions, and somewhere workers were independently organized – into joint cooperatives or collectives.

In 2019 academics, policymakers and trade unions jointly defined the Fairwork Framework – five principles for fair platform work: (1) fair pay, (2) fair conditions, (3) fair contracts, (4) fair management and (5) fair representation (Graham et al. 2019). "Fair representation requires that workers have a voice on the platform. Workers should have the right to be heard by a platform representative and there should be a clear process by which workers can lodge complaints, receive a response and access a dispute resolution process. The platform observes the ILO right to free association, not linked to worker status but as a universal right. Similarly, the platform accepts collective representation of workers and collective bargaining" (ILO 2016, 316).

And lawmakers are gradually starting to recognize representatives of digital and non-standard workers. Kilhoffer states that Irish[13] and French[14] legislation allows collective bargaining for some self-employed workers, including certain platform workers (Kilhoffer et al. 2020, 119). Collective agreements mostly were found for on-location platform workers, and specifically for food delivery couriers.

Several countries established committees or panels on platform work. Governments (Czechia, Germany, Norway and so forth) and social partners commissioned research or organized conferences on the platform economy as well. For the time-being, social dialogue for digital workers has been given far less attention (Lenaerts et al. 2017).

All these examples provide the basis for a clear general conclusion – that it is necessary to allow all workers in non-standard forms of work to form trade union organizations and to elect representatives to represent them in all relevant processes. The representatives of this group of workers should exist from the level of individual companies or platforms to the highest state level (for example, to have representatives in state socioeconomic councils).

This also applies to Serbia. The problems related to platform work and other new forms of work in Serbia are similar worldwide, but trade unions and the state are almost completely unaware of the problems in this area. Unions have not tried to unionize workers in non-standard forms of work, and collective bargaining in this area is still far from reality.

Some initiatives have been taken by digital workers, for example, when a retroactive tax was applied to their wages (since 2017). After numerous protests organized by self-organized digital workers (who have since formed the Association of Internet Workers),15 an agreement was reached on their taxation (Digitalna zajednica 2023). However, workers were again dissatisfied with the way the agreement was implemented and protested again in early 2023.16

All this indicates that organizing online workers is necessary. Certain steps in this direction could and should be taken by trade unions, including representatives of non-standard workers in their ranks, in addition to establishing special trade unions for digital and platform workers.

In order for this to happen, the state should remove the obstacle currently contained in the Labour Act.

According to article 55 of the Constitution of the Republic of Serbia: "(1) The freedom of political, trade union and any other association and the right to remain outside any association are guaranteed." Thus, the right to union organization is not limited by the Constitution only to employees. Therefore, this right could be used by all workers working in non-standard forms of work.

However, the legislature limited this freedom in the Labour Law. Namely, under article 6, it follows that this is only the right of "employees". In accordance with this article: "A trade union, pursuant to this law, shall be an independent, democratic and self-supporting organization of employees that they join voluntarily for

12 In Denmark, a collective bargaining agreement between a trade union and a cleaning platform has allowed some platform workers to transition to employee status (ILO 2021, 26).

13 Irish Competition (Amendment) Act 2017 (act 12 of 2017), part 2B.

14 *Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels* [Law on work, modernising social dialogue and securing career paths] (2016-1088, 8.08.2016).

15 There is also a "Digital Community". "The Digital Community is an independent umbrella organization of the Serbian digital ecosystem, which gathers individuals, entrepreneurs, startup founders, companies, organizations, enthusiasts and activists... The reason for establishing the Digital Community is the fight for people's rights in the digital sector in order to create a stimulating atmosphere for everyone who wants to engage in IT activities." Available online: https://www.digitalnazajednica.org/o-nama/

16 At a protest organized by the Association of Internet Workers, digital workers demanded a reduction in their tax obligations, the introduction of compensation for leave during pregnancy and maternity leave. One of their demands is that freelancers should not be charged tax for the period from 2017 to 2020, which the state wants to charge them retroactively (see: RTS 2021; RTS 2023; Radio Slobodna Evropa 2023).

advocacy, representation, promotion and protection of their professional, labour, economic, social, cultural and other individual and collective interests." Something similar is foreseen in article 206 on employee trade unions: "Freedom to organize trade unions and pursue trade union activity shall be granted to employees, with pertinent entry into a register."

Therefore, the Law foresees only union organization of employees and not other working persons. The Labour Act should be harmonized with the Constitution, so that both workers in non-standard forms of work and digital workers get the right to organize a trade union. This would allow them to obtain their legal representatives who will represent them in essential processes concerning their rights at work. Their representatives could also participate in social dialogue outside the enterprise, thus influencing regulations that would provide them with adequate rights and protection.

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