



Conclusions and comments on the proposal of the Labour Law of the Republic of Srpska

**• A workplace shall become completely flexible, and therefore instable. Employment contract for definite time shall become a role model for conclusion of employment contracts, there shall be no limitation in the number of concluded employment contracts for indefinite time.**

COMMENT: Consequences are worrying since the employer will be given right to indefinitely conclude contracts for definite period of time with no obligation to conclude employment contract for indefinite time. The employees „will agree to everything“ just to have their employment contracts extended.

**• There shall be no opportunity to terminate the employment once the employee reached 40 years of work service, which means that all employees shall work until they are 65 years old.**

COMMENT: This is particularly disputable solution since, on one hand, it prevents the employment of young people, while on the other hand, it prevents employees who reached 40 years of work service to go into well-deserved retirement. For example, generations of our parents started working at the age of 18 and after 40 years of work they were retired at the age of 58, which is 7 years less than the proposal being discussed. This provision is introduced so to reduce the number of pension beneficiaries.

• **The overtime work shall be increased from 3 hours to 4 hours on daily basis, or from 150 to 180 hours annually. There shall also be an increase in the minimum of days for the annual leave from 18 to 20 days. However, the increase of the annual leave due to the length of the work service shall be reduced, i.e. according to the applicable provision the annual leave is increased for 1 day on each three years of work service, but the new Law proposes the increase after each four years of work service.**

COMMENT: Employees who have more years of service will have reduced annual leave which is not fair solution, having in mind tha fact that the need for longer annual leave is increased with years.

• **Due to the reduction in the scope of work, a concept of „layoff“ shall be introduced. The employees with the layoff status shall have the right to 50% of salary compensation, but the Law has not determined the length of the layoff status.**

COMMENT: This is the concept that the employers might use a lot for different abuses.

• **There shall also be introduced a concept of „on-call duty“ which shall not be considered as working hours, but during which the employee shall be obliged to respond to the employer's call to come to work if necessary. The status of on-call duty shall not be paid, i.e. shall not be considered working time, unless the employee responds to the employer's call and conducts all the tasks imposed by the employer, in which case the employee shall be paid and the time the employee spends performing on-call duty shall be considered working hours.**

COMMENT: This is an example of rough interference into the human rights since this means that the employee will have to be always prepared for on-call duty and available. In addition, the Law does not prescribe the amount of compensation for on-call duty but it leaves this to the employer to define it by its regulation or employment contract, which means that the employer will have the right to determine a symbolic compensation (or even to avoid the payment of the same).

• **Employer shall be able to terminate the employment contract in over 20 cases, some of which include: when the employee does not achieve expected results or when the employee does not have necessary knowledge and skills to perform duties designated under the employment contract (this will be abused a lot), if the employee refuses the conclusion of the annex to the employment contract, if the employee's behaviour may be characterized as the criminal offense conducted at work or in relation to work, regardless of the fact whether the criminal investigation has been initiated against the employee**.

COMMENT: So, the employee may be innocent and the employer may only suspect that the employee is guilty and on the basis of that dismiss the employee, regardless of the investigation being initiated or not.

• **The employer shall have the right to send the employee to have the necessary examinations in the relevant medical institution designated by the employer, at his own expense, in order to have determined the circumstances of the absence from work due to temporary inability to work and due to arriving to work under the influence of alcohol and narcotics.**

COMMENT: Due to punctuation marks, it is not clear at whose expense the employee will be sent for examination and this could be interpreted differently. Besides, the possibility of the employer to send the employee to have the examinations, especially in case of temporary inability to work, is questionable.

- **The possibility of the amendments to the content of the employment contract, the annex to the contract.**

COMMENT: A concept which was not planned in the applicable legal solution, and which will contribute to the flexibility of job positions and instability of the employees' positions. Specifically, this concept allows the employer to offer the change of the content of the employment contract to the employee (annex to the contract), and considering the importance of the given changes (for sending the employee to the appropriate job position with another employer, if there were some changes in the salary, monetary and other compensation due to the employee's work...) the concept itself is not precise and clear enough since it does not develop/provide the option for the employee to refuse the given change of the content of the employment contract/annex which supports one of the thesis presented by the trade union according to which this Law is incomplete.

- **Completely new, unclear and incomplete way of determining salaries. There is no definition of the term basic salary and work performance. A complete freedom shall be given to the employer to determine the salary on its own. The compensation for the years of service shall be reduced. The possibility of the Government of the Republic of Srpska to determine the minimum salary, and other compensation due to the work and help of employees, are just listed separately, with no minimum amount defined.**

COMMENT: Perhaps the most disputable provisions of the new Law refer to the chapter Salaries, wages and other salary compensation. Only one example that illustrates well how harmful the proposed solutions are for the employees refers to the legal regulation of the minimum salary. A new solution prescribes that the minimum salary is determined by the Government of the Republic of Srpska upon the proposal of the Economic and Social Council, and in case the Council does not submit its proposal, the RS Government shall decide on the minimum salary on its own, „taking into account the salaries movement, increase of production and living standards in the Republic of Srpska“, in which way the RS Government, with no social partners and precise legal definition, shall be given very broad jurisdiction over determining the minimum salary.

- **The new Law prescribes the possibility of concluding a collective agreement, but it also provides a lot of freedom to the employer if the collective agreement is not concluded to independently regulate all the rights and obligations arising from the employment on the basis of the regulations and the Rules of Procedure the employer established.**

COMMENT: The given solution practically deprived of meaning and reduced the importance of the Collective agreement. For example, the reduction of its importance can also be seen in the case of determining the lowest salary which is now determined by the RS Government, while in the past the lowest salary was determined by the Collective agreement of the social partners.

- **Reduction of contracts for filing complaints to the court and the labour inspectorate.**

COMMENT: Provisions of the chapter Protection of employees also reduced the acquired rights of the employees in this way. The objective and subjective deadline (six months) are now the same and significantly reduced compared to the previous deadlines (subjective deadline was one year, and objective three years), and extremely controversial is a new provision according to which the employees in public institutions (public administration bodies, local self-government bodies, public companies and institutions...) may file a complaint only if they first tried to resolve the dispute through the peaceful settlement with the competent authority. As this is a significant means of legal protection, the proposed requirement is of a discriminatory nature for the employees in public institutions, against whom a certain difference is determined compared to the employees in other sectors.

- **General determination of serious and less serious breaches of working obligations.**

COMMENT: Unlike the previous solution under which the general provision on the serious breach of the working obligation was followed by the list of serious breach of the working obligation (11 of them in total, along with the one which is of generalized content and encompasses all other possible situations), the current proposal includes only a general definition for a serious breach of the working obligation which implies the possibility of different interpretations, and the legislator does not specify, nor provide defining criteria through the defined provisions on, which breaches are considered serious ones, which again provides the possibility to interpret in more liberal way the serious breaches of the working obligations. If an objection would be made that the current solution also contained a general definition for a serious breach, then it should insist on the fact that the listed serious breaches provided the best explanation on which breaches were to be considered the serious breaches. Now this interpretation is based on the remaining definition according to which a serious breach is „a behaviour of the employee at work or related to work which seriously damages the interests of the employer, as well as such behaviour of the employee on the basis of which it can be easily concluded that the further employment with the employer is not possible any more“.

Organizations signatories of Conclusions and Comments:

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