

THE IMPACT OF THE COVID-19 EPIDEMIC ON THE POSITION AND RIGHTS OF WORKERS IN SERBIA

WITH PARTICULAR REFERENCE TO FRONTLINE
AND INFORMAL ECONOMY WORKERS AND MULTIPLY
AFFECTED WORKER CATEGORIES



This Analysis of the impact of the COVID-19 epidemic on Human Rights in the Republic of Serbia has been carried out within the "Surge II" initiative of the United Nations Office for Human Rights (OHCHR)



THE IMPACT OF THE COVID-19 EPIDEMIC ON THE POSITION AND RIGHTS OF WORKERS IN SERBIA

WITH PARTICULAR REFERENCE TO FRONTLINE
AND INFORMAL ECONOMY WORKERS
AND MULTIPLY
AFFECTED WORKER CATEGORIES

Sarita Bradaš
Mario Reljanović
Ivan Sekulović

Belgrade, June/July 2020

THE IMPACT OF THE COVID-19 EPIDEMIC ON THE POSITION AND
RIGHTS OF WORKERS IN SERBIA WITH PARTICULAR REFERENCE
TO FRONTLINE AND INFORMAL ECONOMY WORKERS AND MULTIPLY
AFFECTED WORKER CATEGORIES

Authors:

Sarita Bradaš, Mario Reljanović, Ivan Sekulović

Publisher:

Center for Democracy Foundation (CDF)

For the publisher:

Nataša Vučković

Cover illustration:

Nebojša Petrović

Design:

MaxNova doo Belgrade

Printing house:

MaxNova doo Belgrade

Circulation:

100 copies

ISBN-978-86-83675-31-9

CONTENTS

LIST OF ABBREVIATIONS	4
SUMMARY	5
PART ONE OVERVIEW OF THE STATE OF EMERGENCY AND ITS IMPACT ON LABOR RIGHTS..	8
PART TWO POSITION OF CERTAIN CATEGORIES OF WORKERS IN THE REPUBLIC OF SERBIA DURING THE STATE OF ERGENCY	12
I. Situation in the labor market before the declaration of the epidemic	12
II. Workers whose occupation required their working at their employers' premises	20
1. Frontline workers	21
2. Other workers unable to work from home due to the importance or nature of their occupation	32
III. Workers who switched to working from home	34
IV. Persons in precarious forms of labor	38
V. Persons engaged for work in the informal economy	39
VI. Persons engaged for work over the age of 65	44
PART THREE ABSENCE OF EFFICIENT PROTECTION OF WORKERS' RIGHTS.....	46
PART FOUR RECOMMENDATIONS	54
1. Emergency measures	54
2. Other short-term and medium-term measures	56
BIBLIOGRAPHY	58
ANNEXES.....	62
ANNEX 1: Regulations adopted during the state of emergency of special importance for the regulation of labor rights.....	62
ANNEX 2: The employed (15-64 years) at risk by activity sector and gender	63
ANNEX 3: The employed (15-64 years) in 2019 by activity sector and European socio-economic groups (in thousands)	64
ANNEX 4: The employed in 2019 aged 15-64 who usually work from home according to professional status....	65
ANNEX 5: The employed in 2019 aged 15-64 who usually work from home by gender	65
ANNEX 6: The employed in 2019 aged 15-64 who usually work from home according to professional status and gender (in%)	66
ANNEX 7: Organizations which participated in the survey on the position of certain groups of the population during the state of emergency.....	66

LIST OF ABBREVIATIONS

ILO	The International Labour Organization
ICRSCR	International Covenant on Economic, Social, and Cultural Rights
MLEVSA	The Ministry of Labor, Employment, and Veterans' and Social Affairs
SMEs	Small and medium-sized enterprises
NES	The National Employment Service
SCC	The Serbian Chamber of Commerce
RESP	The Revised European Social Charter
SEC	The Socio-Economic Council
UDPS	The Union of Doctors and Pharmacists of Serbia
LOSH	The Law on Occupational Safety and Health
LCCS	The Law on Contributions for Compulsory Social Insurance
LD	The Law on Defense
LL	The Labor Law
LMCCRMO	The Law on Military Conscription, Civil Requisition, and Material Obligation
LHI	The Law on Health Insurance
LPPID	The Law on the Protection of the Population from Infectious Diseases

SUMMARY

In early 2020, the world found itself confronted by a crisis unprecedented since World War II: the COVID-19 infectious disease pandemic brought the greater part of the world's economy to a halt and thus led to an unprecedented disruption in the operation of the labor sector. A state of emergency due to the COVID-19 pandemic was initiated in the Republic of Serbia on March 15, 2020 with the Decision on Declaring a State of Emergency. During a state of emergency, the prescribing of measures which deviate from constitutionally guaranteed human and minority rights is allowed to be carried out by the National Assembly, or, in cases when it is unable to convene, by the Government, through a decree, countersigned by the President of the Republic.

With regard to the domestic legal framework applying to labor rights and their protection, it should first be noted that it is to be applied in a state of emergency in the same way as it is in regular circumstances. Differences arise, however, in situations in which the National Assembly is unable to convene. In such cases, the Government of the Republic of Serbia has the power, through its acts, to adapt the existing legal framework, altering the conditions of its application by limiting, expanding, or amending the content and scope of regulations, that is, interpreting in a specific way their provisions with regard to specific circumstances related to the protection of the population in the situation of a pandemic.

The situation in the labor market in Serbia before the onset of the pandemic was characterized by several simultaneous processes. Based on the findings and reports of the UN Human Rights Mechanisms and the European Commission's 2019 Progress Report on Serbia, the labor market had generally slightly improved through a reduction in the unemployment rate, but obstacles remained in the implementation of employment policies, especially in relation to the hard-to-employ categories of the population, primarily members of the Roma population and persons with disabilities, but also women, young people, redundant workers, and the long-term unemployed. Workers in the

informal economy were recognized as the category at the highest risk in the labor market even before the onset of the coronavirus crisis. Workers in this category were most commonly engaged in labor-intensive jobs with low wages and in conditions that did not guarantee occupational safety and health or provide the right to social security, paid leave from work, and annual leave.

Workers required to work at their employers' premises due to the nature of their occupation can be divided into two categories. The first one comprises workers who are called "frontline workers"(frontline responders), who were at a constant risk of infection during the state of emergency due to both the type of work they performed and their exposure to and contact with a large number of other persons (service users). One subset of these workers fell under the civil requisition regime, while the other subset worked according to regular labor conditions, but under special protocols concerning working hours and occupational safety. The second category comprises workers engaged in activities that by their nature cannot be performed from home. These are workers engaged in manufacturing activities, as well as other activities which are performed exclusively at employers' premises.

The legal nature of civil requisition is specific and cannot be regarded as employment, or as any other type of working engagement defined by regular circumstances. Civil requisition is regulated by the Law on Defense and the Law on Military Conscription, Civil Requisition, and Material Obligation, which addresses matters indicated by its nomenclature. Civil requisition appears to be regulated in an insufficient manner, not only due to its lack of recognition of some of the most fundamental labor rights (such as the right to limited working hours) in regard to its obligors, but also because in a state of emergency introduced due to a pandemic scenario, a number of its normative solutions are practically unfeasible. Furthermore, the right to work guaranteed by the Constitution, which includes the right to limited working hours and daily, weekly, and annual leave, must also be respected during a state of emergency, which has

its basis in international standards. The civil requisition initiated in response to the COVID-19 pandemic was primarily implemented on healthcare professionals. One of the key risks which workers have been exposed to during the pandemic is the risk of infection itself, largely due to a lack of, or non-compliance with, uniform protocols on behavior in the conditions of a pandemic, as well as to a lack of protective equipment at the outset of the pandemic.

Since women make up the majority of those employed and engaged in the areas of health care and social protection, they appear to be the ones most affected by the crisis, especially those with lesser professional qualifications working lower paid jobs. The most vulnerable are certainly single mothers, especially those who take care of small children and children with disabilities, women who provide necessary care to close family members, and those engaged for work who are not employed according to the Labor Law, for whom it can be assumed in most cases that, due to their likely socio-economic vulnerability, did not dare refuse the orders of their respective institutions' directors related to any alterations in the movement and organization of operations.

Those frontline workers working outside the non-civil requisition regime, such as those employed in supermarkets, banks, and pharmacies, in sanitation, or as postal workers and couriers, labored in considerably aggravated conditions. In relation to this category of workers, there were numerous instances of problems arising in the exercising of labor rights, and of their endangerment or violation. A lack of public transport directly and negatively impacted the exercising of the right to work. In this case, women workers were again more particularly affected by the measures introduced; women use public transport more than men do, while at the same time, they make up the majority in key occupations (e.g., shop assistants) which required their going to work during the time the pandemic measures were in effect. Furthermore, during the state of emergency, the right of workers to a safe and healthy working environment was threatened. Employers were unable to fully meet the standards requiring the introduction of special protection measures in the case of a pandemic. In the initial stages, not enough protective

equipment was made available to employers. In the later stages, employers generally had purchasing access to sufficient quantities of protective supplies and equipment, but some of them still chose not to do so. Supervisory mechanisms failed to provide an appropriate response and did not enable workers to adequately exercise the right to a safe and healthy work environment.

The second group of workers who worked at their respective employers' premises due to the nature of the work they performed includes workers who worked in factories and other manufacturing or service facilities who, due to the work process, as well as to issues of transportation to and from the work they performed, were exposed to an increased risk of infection. These workers faced to a similar degree those difficulties encountered by "frontline workers."

In relation to workers who switched to working remotely from home, the main shortcomings of the measures enacted during the state of emergency are reflected in their failure to include provisions contained in the Labor Law relating to: equipment for performing tasks which the employer is obliged to procure, install, and maintain; the use and utilization of the employee's own equipment and the reimbursement of costs for its use; the reimbursement of other labor costs incurred and the manner of their determination (such as the costs of using the Internet, telecommunications equipment, computer equipment, etc.).

Persons engaged in precarious (insecure) forms of work found themselves in a particularly difficult position, because persons engaged for work who are not employed by the employer according to the Labor Law have almost no employment rights enjoyed by those engaged as employees, while in cases of their rights being violated, they are not provided with efficient protection mechanisms.

Many persons engaged for work in the informal economy were in the first group of workers whose engagement was terminated, as they had no legal protection. All workers in the informal economy, without exception, were deprived of the opportunity to use public transport during the state of emergency. Many of those self-employed in the informal sector were left without income,

including street vendors of new and second-hand goods, various craftsmen and craftswomen, home repair technicians, mechanics, market vendors, home support staff, musicians, all workers informally engaged in hospitality and other similar branches, seasonal workers, and workers engaged in activities whose realization was either prohibited or for which there was no demand during the state of emergency.

The already difficult financial situation faced by collectors of secondary raw materials further deteriorated during the state of emergency, as most of them stopped working or were left with reduced workloads. Due to the nature of their work, which involves direct contact with the waste disposed of by citizens and the relatively exorbitant price of the necessary protective equipment, the risks to the health of secondary raw materials collectors increased considerably, i.e., they worked at a very high risk of infection. Most of the secondary raw materials collectors who worked during the state of emergency procured protective equipment themselves, while close to a quarter of them did not use gloves and masks. Secondary raw materials collectors are largely residents of informal settlements, many of them living below recognized levels of human dignity and without access to basic infrastructure - clean water, electricity, and sewerage, which further prevented the realization of the basic personal hygiene measures recommended to combat infection. A lack of access to sources of electricity and to electronic, print, and other media and sources of information made it impossible for some in this category of workers to be timely and fully informed about the risks to which they were being exposed. Since the poorest of the secondary raw materials collectors often live in overcrowded and multigenerational households, older members of their family households found themselves at particular risk, as it was not likely possible in such conditions to maintain physical separation and distancing.

The complete ban on the movement of persons over the age of 65 or 70, introduced by the Decree on Measures during the State of Emergency, resulted in their complete exclusion from the work process and the de facto denial of the right to work (especially bearing in mind that many of the jobs that retirees do cannot be done from home). Persons older than 65 who had not

yet exercised their right to an age based pension, or other similar form of support, i.e., persons in this age group who, before the ban on movement, had earned all their income through their work alone, were certainly the most affected by such measures.

Based on the performed analysis, it is urged that two types of recommendations be implemented immediately, including: changes in the legal regulation of civil requisitions in a state of emergency; improvement of the normative framework for work outside employers' premises, especially teleworking (from home); focusing a number of measures on providing direct financial support to materially deprived workers, especially those affected by novel circumstances in the labor market resulting from a state of emergency, both during and after its application; focusing support measures on all workers in the informal economy and socially disadvantaged workers; providing secondary raw materials collectors with elementary living and hygienic conditions and occupational safety equipment during an epidemic; ensuring protections for the right to a safe working environment and occupational safety resources for all workers.

PART ONE

OVERVIEW OF THE STATE OF EMERGENCY AND ITS IMPACT ON LABOR RIGHTS

In early 2020, the world found itself faced with a crisis unprecedented since World War II: the COVID-19 infectious disease pandemic brought the greater part of the world's economy to a halt, leading to an unprecedented disruption in the operation of the labor sector.

As the International Labour Organization assessed at the beginning of the pandemic, the impact of the pandemic would affect the labor market through: a reduction in the number of jobs (both through an increase in the unemployment rate and a decrease in labor intensity), a decline in the quality of work (observed, for example, through reduced wages and access to social protection), and the consequences for groups that are more vulnerable to negative trends in the labor market.¹

1 International Labor Organization, "COVID-19 and the world of work: Impact and policy responses", 18 March 2020, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_738753.pdf.

The state of emergency in response to the COVID-19 pandemic was enacted in the Republic of Serbia on March 15, 2020 with the Decision on Declaring a State of Emergency.² This decision was signed by the President of the Republic, the Prime Minister, and the President of the National Assembly. According to the Constitution, a state of emergency may be declared by the National Assembly (i.e., by the President of the Republic, the Speaker of the National Assembly, and the Prime Minister when the National Assembly is unable to convene), in a situation in which "a public threat threatens the survival of the state or the citizens."³ As the President of the Republic, Aleksandar Vučić explained in his address to the public that the decision was made "due to the situation with the coronavirus."⁴ The state of emergency was lifted on May 6, 2020 by a decision of the National Assembly,⁵ on which occasion the Law on the Validity of Decrees Adopted by the Government during the State of Emergency and Confirmed by the National Assembly⁶ was adopted. Since the democratic changes of 2000, a state of emergency in the Republic of Serbia has been invoked two other times: in March 2003, due to the assassination of the then Prime Minister, Zoran Đinđić, and in May 2014, due to floods that affected a large portion of the country's territory.

During a state of emergency, it is allowed that measures derogating from the human and minority rights guaranteed by the Constitution be enacted by the National Assembly, or, when it is not able to convene, by the Government, through the means of a decree, countersigned by the President of the Republic.⁷ Measures derogating from the standard human and minority rights may be adopted only to the extent necessary and must not be discriminatory on the grounds of race, sex, language, religion, nationality, or social origin.⁸ The Constitution also stipulates that the above measures are not permitted in any case with regard to the following rights guaranteed by the Constitution: dignity and the free development of the individual; the right to life; the inviolability of physical and mental integrity; treatment of a person deprived of liberty; the right to a fair trial; legal certainty under criminal law; the right to a legal personality; the right to citizenship; freedom of thought, conscience, and religion; conscientious objection; freedom of expression; the right to marry and the equality of spouses; freedom to decide on giving birth; child rights and prohibition of violent assimilation,

2 RS Official Gazette," No. 29/2020.

3 The Constitution of the Republic of Serbia, "RS Official Gazette," No. 98/2006, Article 200, para.1.

4 Vlada Republike Srbije, „Proglašeno vanredno stanje na teritoriji čitave Srbije," (Government of the Republic of Serbia, "State of emergency declared on the entire territory of Serbia"), <https://www.srbija.gov.rs/vest/451323/proglaseno-vanredno-stanje-na-teritoriji-citave-srbije.php.srbije.php>. According to available data, out of 50 countries in Europe, 22 declared a state of emergency: <https://www.istinomer.rs/izjava/vanredno-stanje-proglasilo-27-evropskih-drzava/>.

5 Decision on Lifting the State of Emergency, "RS Official Gazette," No. 65/2020.

6 "RS Official Gazette," No. 65/2020.

7 The Constitution of the Republic of Serbia, Article 200, paragraphs 5 and 6.

8 Ibid., Article 202, paragraphs 1 and 2.

nor can such measures affect the prohibition on inciting racial, national, and religious hatred.⁹

These constitutional guarantees and restrictions of human and minority rights must be viewed within the framework of the international obligations assumed by the Republic of Serbia. Namely, during a state of emergency, all ratified international instruments for the protection of human rights are applied without amendments. This primarily refers to the conventions of the United Nations and the Council of Europe. In doing so, the abolition or restriction of human rights must be carried out within the permissible exceptions provided by these documents, which have been ratified by the Republic of Serbia. In this sense, the only exceptions are the following instruments:

- The International Covenant on Civil and Political Rights: Art 4 of this instrument establishes the Right of State Parties, in cases in which a state of emergency may be declared, to take any measures derogating from their obligations under the present Covenant “strictly required by the exigencies of the situation” and provided that they comply with “their other obligations under international law and do not involve discrimination solely on the grounds of race, color, sex, language, religion, or social origin.”¹⁰ The same article prohibits any derogation from the rights to: life; protection from torture; protection from slavery and servitude; protection from imprisonment for inability to fulfill a contractual obligation; protection from being held guilty of an offence on account of any act or omission which did not constitute a criminal offence under applicable law at the time when committed; recognition of legal subjectivity; and freedom of thought, conscience, and religion.
- The European Convention for the Protection of Human Rights and Fundamental Freedoms: Art 15 of this instrument allows the High Contracting Parties, in cases in which a state of emergency may be declared, to take measures derogating from their obligations under this Convention “to the extent strictly required by the exigencies of the situation” and provided that they are not inconsistent with “its other obliga-

tions under international law.”¹¹ The same article prohibits derogations from: the right to life, the prohibition of torture, the prohibition of slavery and forced labor, and the prohibition of punishment without law.

- The Revised European Social Charter (hereinafter: RESP): Part V Article F of this instrument allows any Party, in cases in which a state of emergency may be declared, to take measures derogating from its obligations under the Charter “to the extent strictly required by the exigencies of the situation” and provided that they “are not inconsistent with its other obligations under international law.”¹²

In addition, the Republic of Serbia has an obligation to notify the authorities responsible for their application of the possible revoking or restricting of the rights set out in the provisions of these instruments. Thus Art 4 of The International Covenant on Civil and Political Rights establishes the obligation of States Parties to immediately inform other States Parties, through the intermediary of the Secretary-General of the United Nations, of the provisions of that instrument from which they have derogated, as well as the reasons for which this was actuated.¹³ Art 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms also establishes the obligation of the High Contracting Parties to keep the Secretary General of the Council of Europe fully informed about the measures derogating from its provisions and the reasons therefore. Finally, Article F, Part V of the RESP sets out the obligation of the Parties to keep the Secretary General fully informed of the measures taken and the reasons therefore when derogating from its obligations under the Charter, within a reasonable period of time.

9 Ibid, paragraph 4.

10 The Act on the Ratification of the International Covenant on Civil and Political Rights, “SFRY Official Gazette,” No. 7/71.

11 The Act on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms amended in accordance with Protocol No. 11 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for certain rights and freedoms not included in the Convention and its first protocol, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty in all circumstances. (“SMNG Official Gazette” - International Agreements,” No. 9/2003, 5/2005 and 7/2005 - corrigendum and “RS Official Gazette” - International Agreements,” No. 12/2010 and 10/2015)

12 The Law on the Ratification of the Revised European Social Charter, “RS Official Gazette - International Agreements,” No. 42/09.

13 The data on the States Parties of the Covenant which have so far sent a notification to the UN Secretary General are not yet available. However, according to the UN Human Rights Committee, although several States Parties have submitted such a notification in recent weeks, a number of States Parties have resorted to limiting their obligations under the Covenant without notifying the Committee. Source: United Nations - Human Rights Committee, Statement on derogations from the Covenant in connection with the COVID-19 pandemic <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementen.pdf>

According to available data, thus far ten of the Council of Europe member states have notified the Secretary General of this organization in accordance with the procedure provided by the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the Republic of Serbia.¹⁴ The Republic of Serbia submitted this notification on April 6, 2020, three weeks after the declaration of a state of emergency.¹⁵ However, as assessed by the academic community, it is the only state which did not indicate in its notification the duration of the derogation from the rights established by the Convention and also the only one, besides the Republic of San Marino, which did not indicate which rights established by the Convention it was derogating from.¹⁶

Regarding the domestic legal framework relevant to the protection of labor rights, it should first be noted that it is applied in a state of emergency in the same way as in regular circumstances. Differences arise in conditions when the National Assembly is not in a position to convene, in which cases the Government of the Republic of Serbia can adapt the existing legal framework through altering conditions of its application by limiting, expanding, or amending the content and scope of regulations, or interpreting their provisions in a specific way with regard to the specific circumstances related to the protection of the population in the situation of a pandemic. During the state of emergency, two sets of regulations were applied to the position of persons engaged in work, as before. The first set includes: the Labor Law¹⁷ (hereinafter: LL) (which applies to the general regime of labor relations), the Law on Occupational Safety and Health¹⁸ (hereinafter: LOSH), and laws applied in special labor relations regimes: the Health Insurance Law¹⁹ (hereinafter: LHI), the Police Law,²⁰ the Social Protection Law,²¹ the Civil Servants

Law,²² and others. The Labor Law does not include provisions related to the state of emergency - this is not unusual, since the subject of regulation is not emergency but regular working circumstances. In this sense, the rights, obligations, and responsibilities of employees and other persons engaged for work remain unchanged. The same applies to special laws that regulate certain types of work or aspects of labor rights, obligations, and responsibilities.

However, the LL certainly includes provisions that could be of particularly relevance to any altered circumstances, such as those pertaining to working from home, rest and leave from work, and temporary incapacity for work. The same applies to laws governing special labor relation regimes. The LOSH is also applied in its unaltered form, but is supplemented by Government decisions during a state of emergency, especially those related to special protection measures enacted in response to a pandemic situation. The second group of regulations includes those that do not apply to persons engaged for work in regular circumstances, such as: the Law on the Protection of the Population from Infectious Diseases,²³ (hereinafter: LPPID), the Law on Defense,²⁴ and the Law on Military Conscription, Civil Requisition, and Material Obligation²⁵ (hereinafter: LMCCRM). In a state of emergency in response to a pandemic, they can be of great importance for understanding the normative and factual position of persons in the process of work. Thus, the LPPID is implemented with additional obligations on the employer and employees related to compliance with special safety and health protection measures of all persons participating in the work process. Non-compliance with the prescribed health protection measures by the employee may lead to the termination of his/her employment contract. On the other hand, failure to take prescribed protection measures by the employer can lead to a lawful refusal of an employee to work.²⁶ The LD and the LMCCRM contain provisions on civil requisition, which will be analyzed in more detail in the section on perceived problems.

Civil requisition is a specific model of work which is not equal to employment and in which specific rules contrary to the established standards of working conditions can be applied in accordance with the solutions provided in the referenced laws. Finally, the LHI contains provisions on compensation for wages during

14 The Council of Europe, "Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), "Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic," <https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354>

15 The Council of Europe - Directorate of Legal Advice and Public International Law, Note verbale, <https://rm.coe.int/16809e1d98>

16 Dr. Kushtrim Istrefi, "To Notify or Not to Notify: Derogations from Human Rights Treaties" <https://opiniojuris.org/2020/04/18/to-notify-or-not-to-notify-derogations-from-human-rights-treaties>

17 "RS Official Gazette," No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - CC decision, 113/2017 and 95/2018 - authentic interpretation.

18 "RS Official Gazette," No. 101/2005, 91/2015 and 113/2017 - other law.

19 "RS Official Gazette," No. 25/2019.

20 "RS Official Gazette," No. 6/2016, 24/2018 and 87/2018.

21 "RS Official Gazette," No. 24/2011.

22 "RS Official Gazette," No. 79/2005, 81/2005 - corr., 83/2005 - corr., 64/2007, 67/2007 - corr., 116/2008, 104/2009, 99/2014, 94/2017 and 95/2018.

23 "RS Official Gazette," No. 15/2016.

24 "RS Official Gazette," No. 116/2007, 88/2009, 88/2009 - other law, 104/2009 - other law, 10/2015 and 36/2018.

25 "RS Official Gazette," No. 88/2009, 95/2010 and 36/2018.

26 LOSH, Article 33.

quarantine and isolation, which are relevant for the situation of a pandemic. It is important to note that the regimes of work and inspection supervision provided for in both sets of regulations are applied in a state of emergency in a complementary manner, i.e., in concurrence with the existing regulations. In addition to the described legal framework, and in accordance with constitutional competencies allowed during a state of emergency, the Government of the Republic of Serbia and its relevant ministries adopted numerous acts affecting the scope and exercising of labor rights, the most important being the Decree on Measures during the State of Emergency²⁷ and the Decree on Organizing the Operation of Employers During the State of Emergency²⁸ (for a list of all relevant regulations see Annex 1).

The Act on the Validity of Decrees Passed by the Government, with a counter-signature of the President of the Republic during the state of emergency and confirmed by the National Assembly, abolished the validity of all temporarily applied acts relevant to the enjoyment of labor rights.

The introduction of the state of emergency in March 2020 has had the greatest impact of any such declaration of emergency enacted thus far on labor rights in the Republic of Serbia, with impacts felt across its entire territory. In the case of the state of emergency declared in 2003, there were no major disruptions in the labor sector, while in the state of emergency of 2014 a number of employees and persons engaged for work were forced to be absent from work due to the threat to their housing facilities.²⁹

As will be explained in the text of the analysis, however, in this most recent state of emergency, almost all categories of persons engaged for work experienced a negative impact on their labor rights, due both to the pandemic itself and the measures adopted during the state of emergency. All the shortcomings of the labor regulation system and the mechanisms for their imple-

mentation rose to the forefront as a consequence of a long-term trend of the erosion of labor rights, which can be said to have decisively influenced the legal order in the field of labor, resulting in its impacts being so intensely negative. This primarily refers to the Labor Law, which contains numerous legal gaps and incomplete legal norms that have in many situations proved to be very threatening to the rights and interests of persons engaged for work and, sometimes, also to employers. In addition, other systemic problems of this law were exposed, like an insufficient level of protection provided to certain categories of persons engaged for work and its inability to comprehensively regulate flexible working conditions, which can be crucial for preserving workers' rights in times of social and economic crises such as the still ongoing pandemic. Therefore, the impact of the state of emergency was detrimental to the constitutionally guaranteed right to work³⁰ of all categories of persons hired for work in Serbia (which will be a subject further elaborated upon later in this analysis), and especially on:

- persons working in the health care and social protection sectors (in terms of the right to a free choice of work, respect for the dignity of one's personality at work, safe and healthy working conditions, necessary protection at work, limited working hours, and daily and weekly rest);
- persons in the private sector who had to continue working at employers' premises (in terms of safe and healthy working conditions, necessary protection at work, fair compensation for work, and legal protection in case of termination of employment);
- persons in the public and private sector who either switched to, or continued, working remotely or from home and who had family duties (in terms of limited working hours and daily and weekly rest);
- persons in the informal economy, who remained fundamentally uncovered by the labor regulations and thus were left without the possibility of exercising all work-related rights (including the right to free choice of work, which was restricted due to limits on the freedom of movement).

The impact of these measures on achieving the goals of the 2030 Agenda for Sustainable Development and particularly those aimed at ending poverty (SDG 1), ensuring healthy lives and well-being (SDG 3), and reducing inequalities (SDG 10), and the related goals for the exercise of the right to decent work and inclusive economic growth (SDG 8) and the effective operation of institutions at all levels (SDG 16).³¹

27 "RS Official Gazette," No. 31/2020, 36/2020, 38/2020, 39/2020, 3/2020, 47/2020, 49/2020, 53/2020, 56/2020, 57/2020, 58/2020, 60/2020.

28 "RS Official Gazette," No. 31/2020.

29 The position of this category of persons engaged for work was pointed out by the Committee of Lawyers for Human Rights - YUCOM, after which the Government of the Republic of Serbia adopted a recommendation for the employers to compensate these persons for lost wages. Source: "Dani posle, priručnik o vanrednoj situaciji u slučaju poplava-pravna pitanja" (Days After: Flood Emergency Handbook - Legal Issues), <http://www.yucom.org.rs/wp-content/uploads/2015/06/DanI-pOSLe-prirucnik-WeB.pdf>.

30 The Constitution of the Republic of Serbia, Article 60

31 Policy Brief: The World of Work and COVID-19, June 2020, available at: <https://unsdg.un.org/resources/policy-brief-world-work-and-covid-19>

PART TWO

POSITION OF CERTAIN CATEGORIES OF WORKERS IN THE REPUBLIC OF SERBIA DURING THE STATE OF EMERGENCY

I. Situation in the labor market before the declaration of the epidemic

The situation in the labor market in Serbia prior to the outbreak of the pandemic was characterized by several concurrent processes. Based on the findings and reports of the UN Human Rights Mechanisms and the European Commission's 2019 Serbia Progress Report, the labor market as a whole had improved slightly with a reduction of the unemployment rate, yet serious obstacles remained in the implementation of employment policies, especially in relation to the harder to employ categories of the population, primarily members of the Roma population and persons with disabilities, but also women, youth, redundant workers, and the long-term unemployed.³²

With the outbreak of the coronavirus, the position of these categories of the population in the labor market was additionally aggravated, especially in relation to workers in the informal economy,³³ but also to all categories of persons engaged for work. At the same time, as will be presented later, the employment rate fell during the state of emergency and this trend would continue in the coming months, which would lead to increased competitiveness in the labor market, in turn resulting in lower quality working conditions and the further marginalization of hard-to-employ groups.

The employment rate and the unemployment rate, as the two key indicators of the labor market in Serbia in the period from 2014 to 2019, indicate an improvement in the labor market - the employment

32 The Committee for Economic, Social and Cultural Rights, in its 2014 Concluding Observations (Concluding Observations on the Second Periodic Report of Serbia, adopted at the 55th Session, 28 April-23 May 2014) expressed its concern about the high unemployment rate in the State Party, which disproportionately affected women, persons with disabilities, Roma, internally displaced persons, and persons living in rural areas. The Committee on the Elimination of Discrimination against Women (Concluding Observations on the Fourth Periodic Report of Serbia, adopted at the 72nd Session 18 February-8 March 2019) expressed concern, inter alia, over vertical and horizontal segregation in the labor market, unequal pay for work of equal value for women and men, high unemployment rates of Roma women, women with disabilities, and women from rural areas, and higher unemployment rates for younger women compared to younger men. The European Commission's 2019 Serbia Progress Report ((COM (2019) 260 final)) lists high unemployment rates for the Roma population (36% for men and 45% for women) (p. 30), the long-term unemployed, redundant workers, women, and young people, all who faced a number of obstacles in the labor market. Access to the labor market has remained particularly difficult for people with disabilities and Roma. At the same time, the budget funds allocated for employment policies remain too small and only one in four registered unemployed persons can benefit from their implementation (p. 78)

33 International Labour Organization, ILO Monitor: COVID-19 and the world of work. Second edition, Updated estimates and analysis ,https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf.

rate increased from 45.8% to 53.6%, while the unemployment rate decreased from 19.4% to 10.5%.³⁴ When assessing future trends which may emerge due to the unfolding economic recession, it should be stressed that labor market indicators in Serbia, as well as the sectoral structure of employment, are significantly less favorable than those in most EU countries.

The reasons for the improvement of these two indicators are the same reasons for the deterioration of the position of certain categories in the labor market during the epidemic, and it is likely that after the end of the pandemic there will be a further disruption of their social and economic rights due to both the economic recession and the absence of sufficient social protections. Namely, the increase in employment and the consequent decline in unemployment was primarily due to the increase in precarious employment³⁵ and vulnerable employment³⁶ – in this period the number of the self-employed without other employees increased by 11.2%, while the number of temporary workers increased by 45%.³⁷ The self-employed without employees, contributing family members, and temporary employees are three categories which are exposed to the highest economic risk in normal circumstances and in 2019 they accounted for 40% of the total number of employees.

Employees in the informal economy are recognized as a category which, even before the onset of the coronavirus crisis, was at the highest risk in the labor market. This category of employees is mainly engaged in labor-intensive jobs with low wages and in conditions that do not guarantee occupational safety and health, or the exercising of the right to social insurance, paid leave, and annual leave.

In Serbia, in 2019, one fifth of the total number of employees worked in the informal economy sector (236,900 in the service sector, 219,300 in agriculture, 44,500 in construction, and 28,500 in industry). Of the total number of employees in the agricultural sector, almost half (48.4%) were informally employed, while in the construction sector one in three employees was informally employed. Distinguishing by age groups, the largest share of employees in the informal economy is among employees aged 65 and over (60%) and young people aged 15-24 (24.3%). Out of a total of 567,900 self-employed people without employees, 46.6% worked in the informal sector.³⁸

Contemporary research conducted by the Ipsos Strategic Marketing agency³⁹ shows that more than two thirds of respondents have been working informally for more than three years: 33.3% have been working informally for between three and six years, and 34.9% for seven or more years. Most of the informally employed people do not have paid sick leave, paid annual leave, or pension insurance (Figure 1). Among the respondents who have pension insurance, most of them pay for private or state insurance themselves. One in five respondents also indicated having an additional job on the basis of which he/she was earning a living, with the majority of respondents (72%) performing additional work without a contract.

34 Employment and unemployment rate for the population aged 15-74. Data source: Eurostat, available at: https://ec.europa.eu/eurostat/web/lfs/data/database?p_p_id=NavTreeportletprod_WAR_NavTreeportletprod_INSTANCE_IFjhoVbmPFHt&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1

35 The ILO defines precarious work based on the manner of employment and working conditions. Precarious work is characterized by contracts with limited (or uncertain) duration (fixed-term, short-term, temporary, seasonal, day-labor) and in terms of the nature of the employment, the existence of several employers, subcontracting, agency contracting, etc. Precarious work in terms of conditions is characterized by: low wages, non-existent (or weak) protection in case of termination of employment, and limited access to social protection and employment rights, including the right to organize. Source: From precarious work to decent work: outcome document to the workers' symposium on policies and regulations to combat precarious employment; International Labour Organization, Geneva, 2012, available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/meetingdocument/wcms_179787.pdf

36 According to the ILO definition, it includes self-employed and contributing family members. Vulnerable employment is characterized by low incomes, difficult working conditions, low productivity and as such undermines the core labor rights. Source: Global employment trends: January 2010/International Labour Office. - Geneva: ILO, 2010, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_elm/---trends/documents/publication/wcms_120471.pdf

37 Author's calculation according to Eurostat data, available at: https://ec.europa.eu/eurostat/web/lfs/data/database?p_p_id=NavTreeportletprod_WAR_NavTreeportletprod_INSTANCE_IFjhoVbmPFHt&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1

38 Statistical Office of the Republic of Serbia; Labor Force Survey in the Republic of Serbia, 2019; author's calculation.

39 COVID-19 I rad u neformalno jekonomiji: uticaj na neformalno zaposlenei sakupljače sekundarnih sirovina, Ipsos Strategic Marketing na zahtev Tima Ujedinjenih nacija za ljudska prava (COVID-19 and work in the informal economy: the impact on informal employment and secondary raw materials collectors), Ipsos Strategic Marketing at the request of the United Nations Human Rights Team, June/July, 2020.

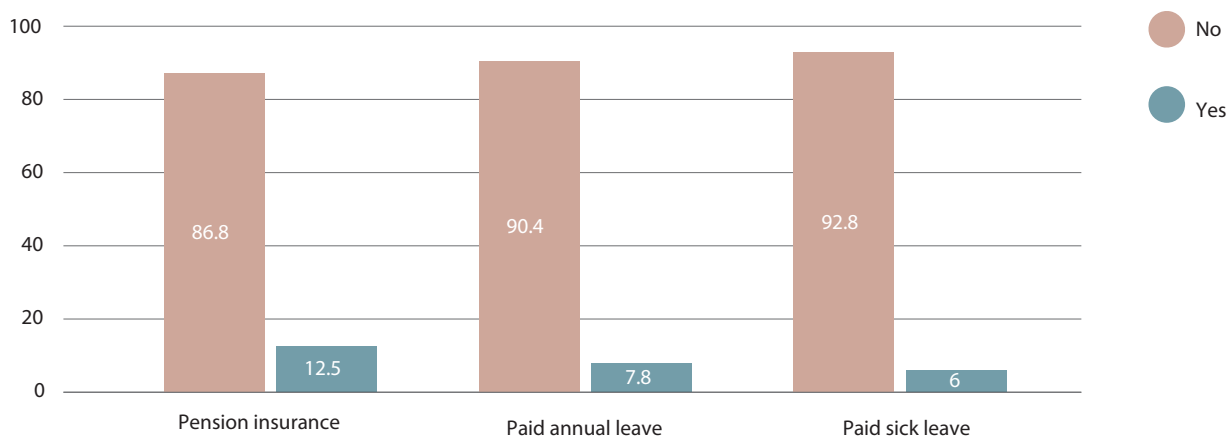


Figure 1. Exercising of labor rights by the informally employed (%)

Source: COVID-19 i rad u neformalnoj ekonomiji (COVID-19 and work in the informal economy),⁴⁰ Ipsos, author's chart

The most endangered among workers without qualifications or lower qualifications⁴¹ are collectors of secondary raw materials, not only in terms of income but also in terms of working conditions, and especially in terms of exercising occupational safety and health rights. As no recent official data could be found, according to the estimates of some organizations,⁴² between six and ten thousand families in Serbia are engaged in the collection of secondary raw materials, i.e., between 35,000 and 55,000 people. In Belgrade alone, for 2,350 families or for more than 12,000 people, the collection of secondary raw materials is their only source of income. For another hundred thousand people in Serbia, the collection of secondary raw materials is an additional source of income. The vast majority of informal secondary raw materials collectors belong to the Roma population (80%),

among whom they are predominantly men between the ages of 16 and 45 who did not complete primary school.

The main risks to which secondary raw materials collectors are exposed can be divided into several categories:

- extremely physically demanding jobs which entail, on average, close to 20 kilometers covered (over about 11 hours), which is how much is typically required to collect the amount of waste for which a maximum of two thousand dinars can be earned.⁴³ Such difficult working conditions carry serious consequences for the health of the collectors - the average life expectancy of this category of workers is 46 years.⁴⁴
- They often lack even minimally adequate collection equipment, including a complete absence of occupational safety equipment, nor do they possess adequate means of transport (the raw materials collected are transported mainly by bicycles, carriages, motor-cultivators, and, in a very small number of cases, by cars, tractors, and smaller trucks).

40 The research was conducted in the period from June 26 to July 9, 2020 on an indicative sample of 258 respondents aged 18-65 who were engaged for work in the form of informal economy in the previous 6 months. 64% of respondents indicated working for an employer and 36% were self-employed.

41 According to the classification of European socio-economic groups (EseG), lower-skilled occupations include personal service professions (ISCO 51), sales (ISCO 52), elementary agricultural, forestry and fishery occupations (ISCO 92), elementary occupations in mining, construction, and processing industries, and transport (ISCO 93), elementary occupations in food preparation (ISCO 94), occupations in waste disposal and other simple occupations (ISCO 96), cleaners and support staff (ISCO 91), elementary trade and service occupations performed on the street (ISCO 95), and agricultural workers (ISCO 6). Available at https://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=LST_CLS_DLD&StrNom=ESEG_2014&StrLanguageCode=EN&StrLayoutCode=HIERARCHIC In this regard, workers in occupations with lower qualifications are in the most difficult economic and social position in the labour market of whom, in 2019 there were 512,900 in the age group 15-64 (Annex 3). Most of them worked in the trade sector (188,100), accommodation and food (73,200) and in the manufacturing industry (66,000).

42 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Inclusion of Informal Collectors into the Evolving Waste Management System in Serbia - A Roadmap for Integration.

43 Drmaku, J., "Sakupljači sekundarnih sirovina – progon umesto inkluzije," Romi između multikulturalizma i politike štednje, (Secondary raw materials collectors-persecution instead of inclusion), Roma in between multiculturalism and austerity policies), Forum Roma Srbije, Belgrade 2018.

44 Ibid.

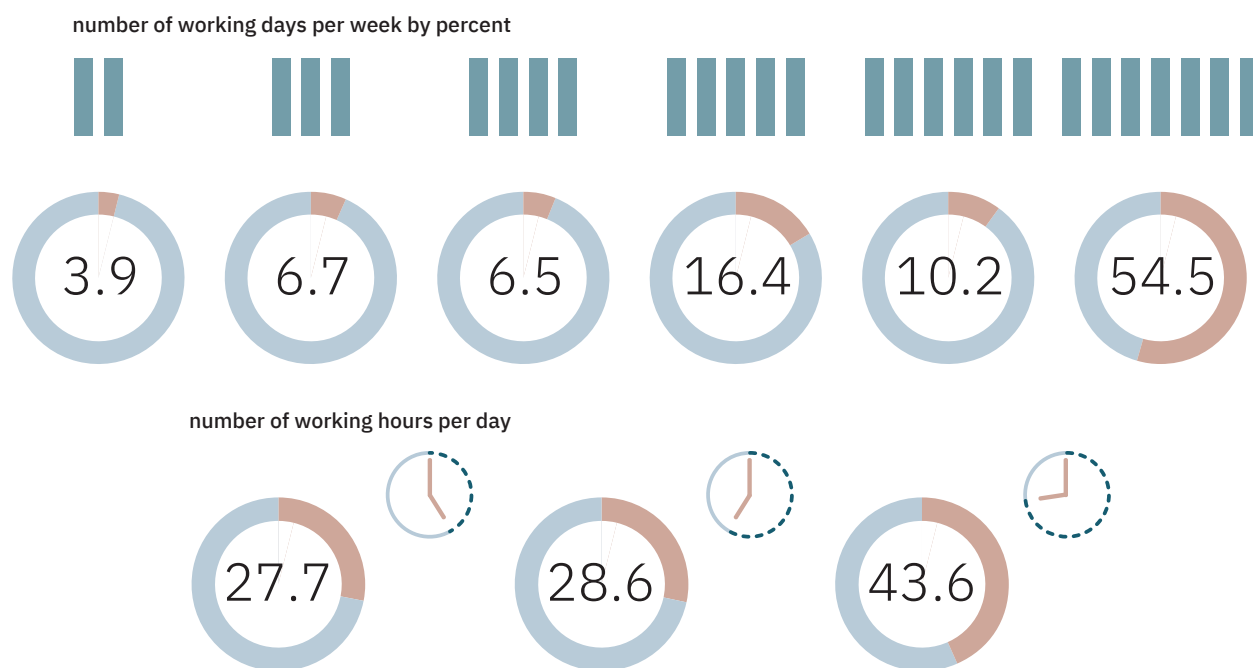


Figure 2. Weekly and daily working hours of secondary raw materials collectors (% of respondents)

Source: COVID-19 i rad u neformalnoj ekonomiji (COVID-19 and work in the informal economy)⁴⁵, Ipsos, author's chart

The following additional risks have been identified:

- absence of personal documents;
- housing in settlements where the living conditions are well below the accepted levels of human dignity - without access to clean drinking water, electricity, sewerage, and other basic services.

The difficult working conditions of the secondary raw materials collectors are also indicated by the results of the latest research by the Ipsos agency⁴⁶ conducted in the period June/July 2020. More than half of the respondents (54.5%) indicated working every day of the week, and two out of five indicated spending eight or more hours a day at work (Figure 2).

⁴⁵ The research was conducted in the period from June 26 to July 9, 2020 on a sample of 100 respondents aged 18-65.

⁴⁶ Ibid.

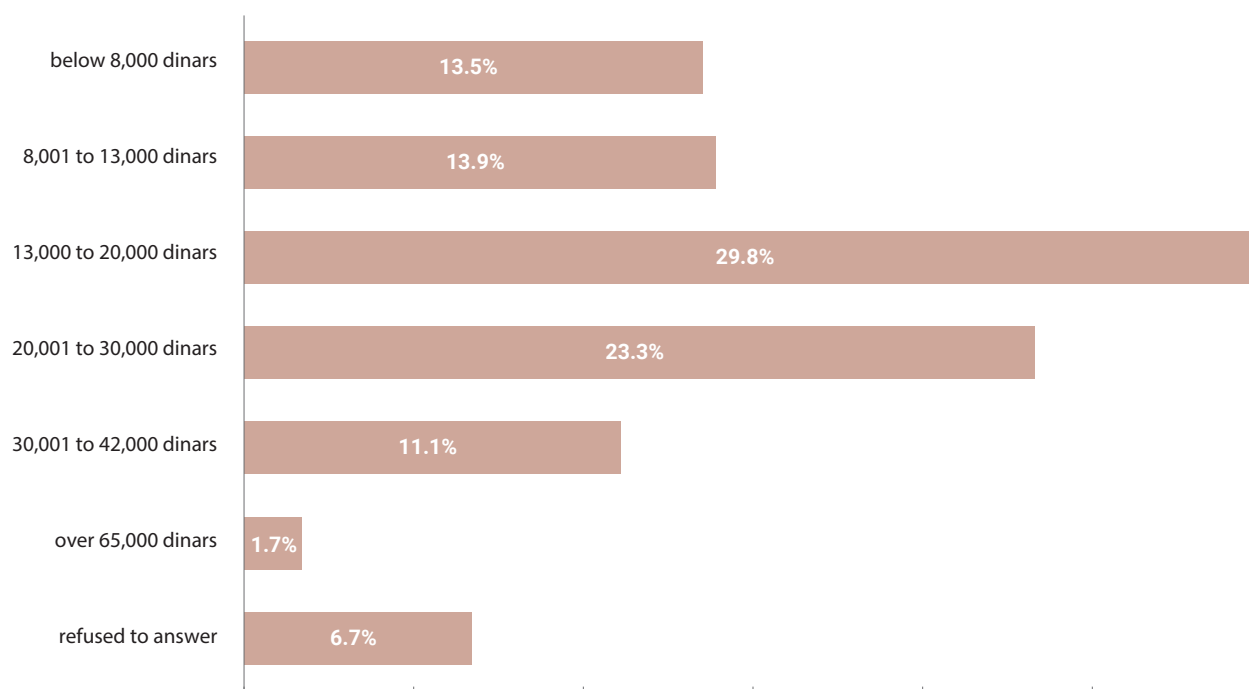


Figure 3. Average household income in dinars of raw materials collectors

Source: COVID-19 i rad u neformalnoj ekonomiji (COVID-19 and work in the informal economy) Ipsos, author's chart

The household income of 80% of respondents was indicated as being below 30,000 dinars per month (Figure 3), with the largest number of households reporting an income between 13 and 17 thousand dinars.

In such occupations, other members of the household usually participate in the collection of secondary raw materials, but this is not enough to provide income that can meet basic subsistence needs: close to two in three respondents reported not earning enough for food, while only 5% reported being able to provide clothes, shoes, and pay bills in addition to being able to provide food (Figure 4).

As already pointed out, the UN Human Rights Mechanisms' reports and the European Commission's Serbia Progress Report identify young people, women, people with disabilities, and Roma as the most vulnerable groups in the labor market. These categories also appear as hard-to-employ persons in employment policies⁴⁷.

Compared to the population aged 25-64, among young people aged 15-24⁴⁸ in 2019 the employment rate was three times lower (21.5%) and the unemployment rate was 2.8 times higher (27.5%), with these indicators being significantly less favorable for young women.⁴⁹ What makes young people further vulnerable is the high share of young workers reported as having limited contract durations (55%), who are often among the first to lose their jobs, as well as young people in low-status occupations (33%): shop assistants, cooks, waiters, and auxiliary and manual workers. Youth employment was also characterized by strong sectoral segregation: more than half of the total number of employees in Serbia under the age of 25 was reported as working in one of three sectors: manufacturing (26% men and 27.5% women), wholesale and retail trade (18.5% of men and 15.2% of women), and accommodation and food services (11.1% of men and 10.3% of women).⁵⁰

⁴⁸ Division into the age categories of 15-24 years (youth) and 25-64 years (others) was performed on the basis of age categorization of the population in the Eurostat database.

⁴⁹ The employment rate of young women (15.9%) was 10.9 percentage points lower than the employment rate of young men, while the unemployment rate of women in this age group (29.9%) was 3.8 percentage points higher than the unemployment rate of men.

⁵⁰ Author's calculation according to Eurostat data, available at: https://ec.europa.eu/eurostat/web/lfs/data/database?p_p_id=NavTreeportletprod_WAR_NavTreeportletprod_INSTANCE_1FjhoVbmPFHt&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1.

⁴⁷ National employment strategy for the period 2011-2020, pp. 2-3; National Employment Action Plan for 2020, p. 26.

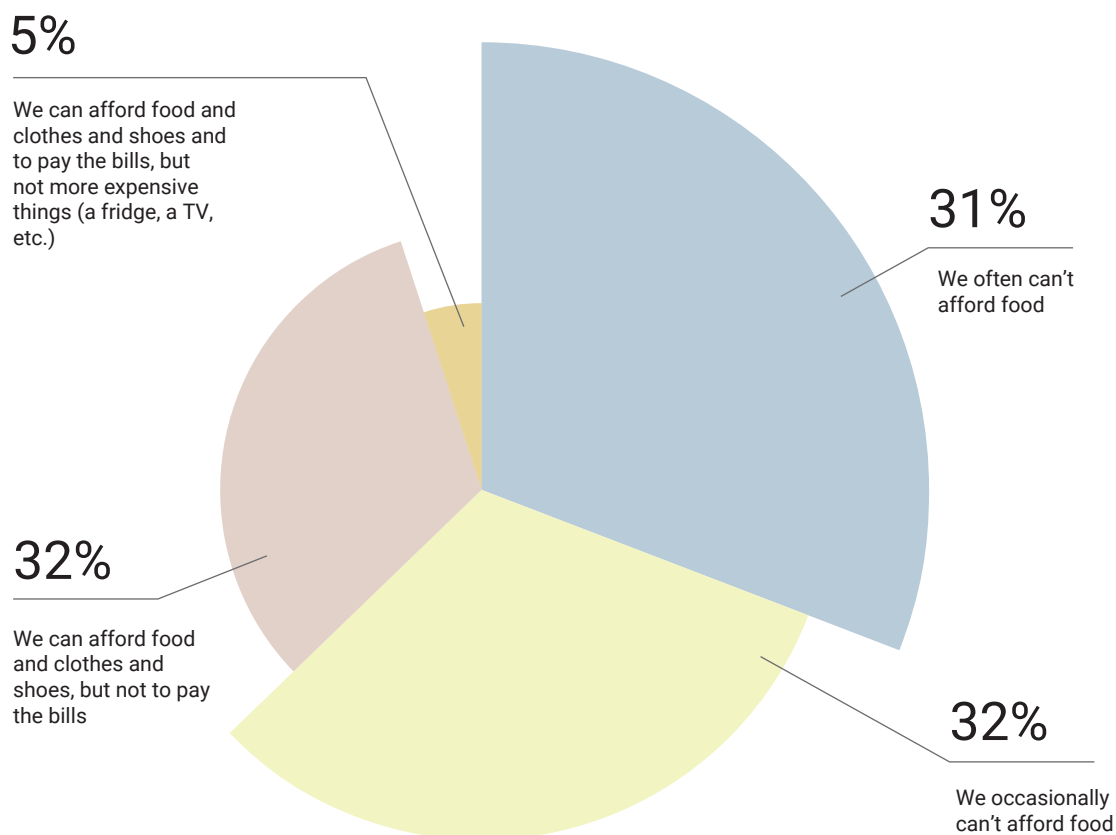
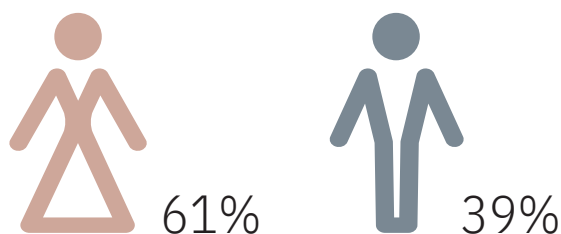


Figure 4. Subjective assessment of financial situation

Source: COVID-19 i rad u neformalnoj ekonomiji (COVID-19 and work in the informal economy), Ipsos, author's chart

Women are a group in the labor market which is in a much more unfavorable status than men - the gender gap among the working age population is present in employment rates (12.9%), unemployment rates (1.5%), and inactivity rates (13.7%). Most women work in the services sector (68.6% of total employed women) and significantly less in industry and construction (19.9%) and agriculture (11.5%). Within the services sector, the largest number of women are employed in trade (212,000), education (134,700), and health care and social protection (119,200). In the health care and social protection sectors, women make up 75% of the total number of employees in this sector, with their share in the occupations of health associates and technicians at 81.4% and in those of health professionals at 73%. Women also make up the majority in lower status occupations (61%), which are characterized by poor working conditions and low wages, where they are most strongly represented in the categories of shop assistants personal service occupations (69%), and among cleaners and support staff (83%).⁵¹

LOWER STATUS OCCUPATIONS



⁵¹ Ibid., author's calculation.

Members of the Roma national minority represent the part of the population that faces the biggest obstacles in entering the labor market, which is confirmed by their significantly lower activity and employment rates and significantly higher unemployment rates (33%, 21%, and 37%, respectively) compared to non-Roma populations in the same areas (49%, 40%, and 19%, respectively). It should be emphasized that labor market indicators are even significantly less favorable for Roma women, whose employment rate is three times lower in relation to both the male Roma population and the non-Roma female population. The extremely high rate of their informal work indicates the extreme vulnerability of Roma men and women - 71% of employed members of the Roma population work in the informal economy, which is almost five times higher than the rate of engagement in informal work in the rest of the population. The quality of jobs available to members of the Roma population is lower than the quality of jobs available to the rest of the population, which results in lower incomes and poorer access to the social protection system.⁵² Among the few Roma men and women who have formal employment, most work in heavy manual labor: in utilities, most often in the jobs of street duster and street cleaners (with contracts for temporary and periodical jobs or fixed-term employment contracts), and in construction companies where they are employed as manual workers. Among those working in the informal economy, the largest percentage are those engaged in the collection of secondary raw materials, market and street trade, heavy physical work, home assistance, seasonal work in agriculture, or unskilled construction work.⁵³

Unemployed people with disabilities are characterized by an unfavorable educational and age structure and high share of long-term unemployed:

39.0%	persons with no or low qualifications
44.9%	50 or older
74.5%	unemployed persons with disabilities looking for work for more than 12 months
62.5%	looking for work for more than 2 years

Data on the position of persons with disabilities in the labor market do not provide a complete and clear picture of one of the most vulnerable groups. Although employers are obliged to submit data on the number of employed persons with disabilities on a monthly basis,⁵⁴ these data are not publicly available, so the most recent available data on the employment of persons with disabilities date from the 2011 Census.⁵⁵ Of the total number of persons with disabilities in the Republic of Serbia, the economically active population accounted for 12.4% (71,107 persons) of their total number, 9.0% (51,714) were employed at the time of the census, and 19,303 persons with disabilities were unemployed.⁵⁶

Persons with disabilities were shown to be in a much more unfavorable situation compared to the general population in terms of economic activity. In the most economically active age group (from 30 to 49 years), the share of economically active persons with disabilities (40%) was only half of the percentage of economically active persons in the entire population (80%). Among young people aged 20 to 29, 59% were economically active in the general population, while only 31.3% among people with disabilities. As opposed to their absence from the data on employed persons, the data on persons with disabilities on the NES records for unemployed persons were available in recent national employment action plans.⁵⁷ At the end of September 2019, there were 12,309 documented persons with disabilities on the NES records actively looking for work, yet this group of the unemployed is characterized by unfavorable educational and age structure and high participation in long-term unemployment: 39% were regarded as persons without qualifications and with low qualifications, 44.9% were 50 or older, 74.5% of the unemployed people with disability had been looking for work for longer than 12 months, and 62.5% had been looking for work for longer than 2 years.⁵⁸

52 UNDP, The Position of Roma Women and Men in the Labor Markets of the Western Balkans, <https://www.eurasia.undp.org/content/rbec/en/home/library/roma/the-position-of-roma-women-and-men-in-the-labour-markets-of-west.html>

53 Praxis, Analiza glavnih problema i prepreka u pristupu Roma pravima na rad i zapošljavanje (Analysis of the main problems and obstacles to Roma access to labor and employment rights), 2013

54 Ordinance on the manner of monitoring the fulfilment of the obligation to employ persons with disabilities and the manner of proving the fulfilment of that obligation ("Official Gazette of the RS," No. 101/2016), Article 11

55 Markovic, M: Osobe sa invaliditetom u Srbiji (People with disabilities in Serbia); Republički zavod za statistiku, Belgrade, 2014, pp. 73-77, <https://publikacije.stat.gov.rs/G2014/Pdf/G20144013.pdf>

56 Ibid. The data on the economic characteristics of the population in the 2011 census were derived from responses on activities in the week preceding the census. The economically active population includes persons who perform an occupation and unemployed persons (persons who have worked and no longer work and persons who have never worked, but are looking for their first job through the NES or independently).

57 Ibid.

58 National Employment Action Plan for 2020 ("RS Official Gazette," No. 94 of 27 December 2019)

The unemployed are the group most at risk of poverty and social exclusion.⁵⁹ Although the number of surveyed and registered unemployed is decreasing from year to year, both data sources referenced indicate that the largest share among the unemployed is made up of those unemployed who have work experience, i.e., those whose cause of unemployment was the expiration of temporary employment or who were fired - among the surveyed unemployed the share of unemployed with work experience in 2019 was 73%⁶⁰, and among the registered unemployed in 2018 it was 67%.⁶¹

According to SORS⁶² data, in 2016, the employment of 104,784 employees was terminated, in 2017 this figure was 98,914, and in 2018 it was 88,810, which as percentages of the annual averages of registered employees represents shares of 1.9%, 1.7%, and 1.6%, respectively.⁶³ Official data on how many employees lost their jobs during the state of emergency are not available, in contrast to some countries in the region.⁶⁴

Initial assessments of the consequences of the epidemic

Based on financial and economic data, the ILO's⁶⁵ assessment is that the crisis caused by the global pandemic has resulted in the greatest declines in the business sectors of accommodation and food services, manufacturing, trade, real estate brokerage, administrative and business activities, and other service activities, which signifies that 38% of the workforce is likely at risk, as workers in these sectors are consequently faced with reduced working hours, reduced wages, or redundancies. In 2019, 1,297,400 people were employed in these sectors in Serbia (47.5% of the total number of employees), while 201,400 people were employed in sectors for which the decline was estimated to be moderately high (Annex 2).

The ILO further estimates⁶⁶ that due to the coronavirus pandemic in the labor market, workers in the informal economy are the most vulnerable, as they are considerably affected by total travel bans and/or work in the sectors most affected by the pandemic crisis, with half of the global total number of these employees in these sectors. The ILO points out that secondary raw materials collectors, street vendors, construction workers, transport workers, and domestic and support staff are particularly at risk in urban areas. In Serbia, the measures introduced during the state of emergency had a special impact on 309,900 people in the informal sector, outside of agriculture.

59 44.3% of the unemployed are at risk of poverty and social exclusion.

Source: Eurostat, available at: <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

60 Statistical Office of the Republic of Serbia Labor Force Survey in the Republic of Serbia, 2019, p. 51, author's calculation.

61 Statistical Office of the Republic of Serbia, Statistical Yearbook of the Republic Of Serbia, 2019, p. 81, author's calculation.

62 Ibid., p. 74 and 81, author's calculation.

63 The data from the annual reports of the NES give a completely different picture of the number of employees whose employment has been terminated. According to this source, in 2016, 2017, and 2018, there were over a million terminations of employment. If the most frequent basis for termination of employment is omitted, the expiration of the term on which the employment is based (employees whose employment was terminated due to the expiration of a fixed-term contract or termination of temporary and periodical employment), then, on all other grounds in 2016, 2017, and 2018, were terminated 366,732, 595,002 and 649,798 cases, respectively. Reports are available at: http://www.nsz.gov.rs/live/dokumenti/izve_taj_i_program_rada_nsz.cid4040.

64 According to the data from the BH trade unions, about 30,000 workers lost their jobs during the pandemic (source: "Radnici u BiH bez posla i prava 'zbog koronavirusa'" (Workers in BH without a job or rights due to the coronavirus," <https://www.dw.com/bs/radnici-u-bih-bez-posla-i-prava-zbog-korona-virusa/a-53182831>), while in Croatia, according to the Croatian Employment Service, 39,467 people lost their jobs in the first two months of the epidemic (source: "U dva mjeseca koronakrize otpušteno 40.000 ljudi, a lavina otkaza tek slijedi" (40,000 people fired in the two months of the coronavirus crisis, and an avalanche of dismissals is yet to come," <https://www.index.hr/vijesti/clanak/u-dva-mjeseca-koronakrize-otpusteno-40000-ljudi-a-lavina-otkaza-tek-slijedi/2183882.asp>)).

65 International Labour Organization, ILO Monitor: COVID-19 and the world of work. Second edition, Updated estimates and analysis, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf

66 Ibid.

According to the OECD,⁶⁷ the coronavirus pandemic in Serbia is expected to lead to a slowdown in the economy, as it relies heavily on trade and investment from the EU, especially Germany and Italy. In addition, it is estimated that small and medium-sized enterprises (SMEs), transport, and tourism will be the most affected in the domestic market. This is confirmed by the data from the research conducted by the Serbian Chamber of Commerce.⁶⁸ A drastic drop in business has occurred in 94.9% of companies in the tourism and hospitality sector, 68.5% of companies in transport and storage, 65.6% of companies in trade, and 64% of companies manufacturing food and beverages. However, in addition to the sector characterized by labor-intensive activities and in which employees have lower wages, those sectors with above-average wages before the crisis were also negatively affected: 83.6% of companies in the creative industry, 44.8% of companies involved in professional, scientific, innovation, and technical activities, and 36.4% of companies in the IT sector. Entrepreneurs and micro-enterprises have been most greatly exposed to the consequences of the crisis, with 70% experiencing drastic reduction in business regardless of industry orientation.

During the state of emergency, the unemployed could only register with the National Employment Service (NES) electronically, so the data available to the NES were limited: in March, 7,892 employed persons registered with the Service as unemployed, while in April 3,431 registered, a figure just above half of that in March, or 3.6 times less than in April last year.

A different picture of job loss is given by research conducted during the state of emergency. The findings of the research⁶⁹ conducted during April show that 8% of respondents who worked in February lost their jobs, half of whom lost their jobs due to the suspension of the company's operations, one in five of whom saw their contracts expire, while many other employees resigned because of an inability to come to work, due to either a shutdown of public transport or the need to care for children and other family members.

According to a survey by the Serbian Chamber of Commerce (SCC),⁷⁰ 5.5% of companies have drastically reduced the number of employees, with 13.2% of companies doing so in tourism and hospitality sector, 10.1% of companies engaged in professional, scientific, innovative, and technical and administrative activities, 7.5% of companies in trade, and 7.7% in construction. The reduction in the number of employees is a consequence of the drastic reduction in the scale of business (60.5% of companies) that was documented in the seventh week of the crisis, when the survey was conducted (ranging from 36.4% of companies in the IT sector to 94.9% in the trade and hospitality sector). The second wave of redundancies is likely to follow in November, when the obligation to keep workers on employers who used subsidies for minimum wages expires, with 90% of business having done so or having indicated the intention to do so (63.4% registered in April, and another 26.8% indicated plans to register). Unemployment, primarily long-term unemployment, will also surely contribute to a decline in labor market demand, a trend already evident in March and April: reported demand decreased by 48% in March and by 90% in April compared to the same period last year.⁷¹

II. Workers whose occupation required their working at their employers' premises

A considerable number of workers faced a situation in which their employers could not practically apply the recommendation that their employees work from home. They can be divided into two categories. In the first are those workers who are called "frontline responders," who were in constant risk of infection during the state of emergency due to the type of work they performed and/or due to contact with a large number of other persons (service users). One subset of these workers was in the civil requisition regime, in keeping with LD and LMCCRM0, while the other subset worked according to regular labor conditions, but under special protocols concerning working hours and occupational safety. The second category comprises workers engaged in activities that by their nature cannot be performed from home. These are workers engaged in manufacturing activities, as well as other activities which are performed exclusively at employers' premises.

67 OECD: The Covid-19 Crisis in Serbia, May 2020.

68 Serbian Chamber of Commerce, "Zajedno kroz krizu," uticaj COVID-19 krizena privredu i poslovanje - Faza II, ("Together through the crisis," the impact of the COVID-19 crisis on the economy and business - Phase II), May 2020, pp. 43-44.

69 Source: "Istraživanje o efektima pandemije i vanrednog stanja na zaposlenost, uslove rada i brigu o domainstvu" ("Research on the effects of the pandemic and the state of emergency on employment, conditions of work, and household care"), <https://www.secons.net/article.php?a=131>.

70 Serbian Chamber of Commerce, Zajedno kroz krizu, "uticaj COVID-19 krize na privredu i poslovanje-Faza II, ("Together through the crisis," the impact of the COVID-19 crisis on the economy and business-Phase II), May 2020, pp. 43-44.

71 National Employment Service, Monthly Statistical Bulletin, March 2020, p.24. and Monthly Statistical Bulletin, April 2020, p. 24, http://www.nsz.gov.rs/live/dokumenti/statisti_ki_bilteni_nsz_-_2020_godina.cid63336.

1. Frontline workers

1.1. Workers who were explicitly or implicitly subject to civil requisition

Health professionals

Two categories of workers were subject to civil requisition during the state of emergency. The first were health professionals, for whom this obligation was explicitly instituted, while the second were employees and persons engaged for work in social protection in accommodation, for whom this obligation was implicitly introduced. In this part of the analysis, issues related to their employment status and rights will be considered, but before this, it is necessary to present the legal framework that regulates civil requisitions, as a duty of citizens during a state of war and emergency.

The legal nature of civil requisition is specific and cannot be regarded as employment, or as any other type of working engagement defined by regular circumstances. The civil requisition is regulated by the LD and LMCCRMO, which addresses matters indicated by its nomenclature. The proponent of both relevant laws was, in line with its competencies, the Ministry of Defense. Hence, it is not surprising that both civil requisitions and material obligations are linked primarily to the state of war, while more detailed regulation on their application in a state of emergency is lacking, even in relation to issues that should certainly be resolved in a different manner. According to the LD, civil requisition is designated for performing the tasks and duties of defense, in accordance with the Defense Plan of the Republic of Serbia.⁷² In the event of a declaration of war or a state of emergency, relevant employees are obliged to continue performing their duties at their place of work, unless they have been called up for service in the Serbian Army or assigned to other jobs and tasks; if they are assigned other tasks and duties or assigned to other legal entities, they are obliged to act according to the provided schedule. All of those requisitioned are entitled to compensation on the basis of employment, in accordance with the law and other regulations governing employment.⁷³ There are rules establishing when it is not possible to impose civil requisition on a person,⁷⁴ as well as the provision that an employee

not acting according to the decision on secondment in a state authority and a legal entity in an activity of special importance for the defense can have their employment terminated⁷⁵. **It would appear that civil requisition is not regulated in a sufficiently high quality manner, not only because some of the most fundamental labor rights of the obligors are left unrecognized (such as the right to limited working hours), but also because, as part of the state of emergency enacted due to the COVID-19 pandemic, some normative solutions were simply inapplicable.**

For example, it is unclear how a country's war schedule or defense plan may relate to the imposition of a state of emergency. The provision of Article 89, paragraph 1 of the LMCCRMO, which seems inapplicable in a state of emergency enacted in response to an epidemic of an infectious disease, is also very disputable: "From among the conscripts who do not have a specific war schedule, the territorial authority shall form civil requisition units to perform urgent works for the defense, for The Serbian Army, for civil protection, and for the execution of tasks in the territorial authorities in a state of war and emergency."

The Government of the Republic of Serbia prescribed, by means of the Decree on Measures during the State of Emergency (hereinafter: the Decree), the option to conscript health professionals, health care associates, and other persons employed in public health care institutions (i.e., institutions from the Health Care Institutions Network Plan, military health care institutions, state authorities, and legal entities established with funds in public ownership for which a special law stipulates that they also perform health care activities) and second them (assign them) to any public health institution or a temporary hospital that lacks the required number of staff.⁷⁶ In the case of this category of workers during the state of emergency, various difficulties were observed in the application of the institution of civil requisition,⁷⁷ which potentially led to a violation not only of some labor rights (such as the right to limited working hours), but also of some basic legal principles, such as the principle of legal certainty. In this regard, the solution presented in the provision of the Decree which provides for a verbal work order being issued to a health professional who is partaking in the civil requisition work regime is particularly problematic. Doing so creates not only legal uncertainty, but also an unusual hybrid employment status of the seconded person:

⁷² LD, Article 50, paragraph 2 and Article 51, paragraph 1.

⁷³ LD, Article 52.

⁷⁴ According to LD Article 55, civil requisition cannot be exercised upon a single parent of a child up to the age of 15, or a minor child with developmental disabilities and an adult child over whom parental rights have been extended for only one parent, i.e., the parent of the child who belongs to the stated categories, if they are engaged in defense activities. In addition, civil requisition cannot be exercised upon either: a woman during pregnancy, a person whose spouse or extramarital partner is a beneficiary of someone else's care and assistance, or a person incapable of work.

⁷⁵ LMCCRMO, Article 87, paragraph 1.

⁷⁶ Decree on measures during a state of emergency, Article 3a.

⁷⁷ Which occurred, among other things, because of the identification of the state of emergency due to an epidemic of an infectious disease with the state of war, although there are no points of contact between these situations, as previously explained.

“Persons referred to in paragraph 2 of this Article shall perform their tasks and duties in a public health institution or temporary hospital to which they have been seconded, while they exercise their rights stemming from the employment in the organization in which they are employed (from which they were seconded), without concluding special contracts or annexes to employment contracts.”⁷⁸ There can be no surety of the legal certainty of persons sent to work without a written trace of this referral. On the other hand, if they reject the verbal order on secondment, these persons may be issued a written order by their employer and, if they refuse this order, their employment may be terminated.⁷⁹ Such a solution is illogical, because it comes down to the employer issuing a verbal order because of not being able to issue a written order, yet they may still issue a written order only if necessary as a precondition for terminating the employment contract of the employee.

Strict control of temporary incapacity for work during the state of emergency

We have information that there were recommendations not to take “fake” sick leave, that all such leave would be inspected, as well as that the sick leave taken by health professionals would be checked separately. One doctor was warned not to open sick leave for health professionals or else she would bear the damages and be held liable for it.

Sick leave of employees of the Home for Children and Youth with Developmental Disabilities in Sremčica is being checked, and they are forbidden to take sick leave.

Union representative

Source: Survey conducted in May 2020 with representatives of trade unions and non-governmental organizations (hereinafter TU-NGO Survey)⁸⁰

The constitutionally guaranteed right to work, which includes the right to limited working hours and to daily, weekly, and annual leave, must also be respected during a state of emergency, which has its basis in international standards.⁸¹

Thus the Committee on Economic, Social, and Cultural Rights, interpreting the provisions of the International Covenant on Economic, Social, and Cultural Rights (hereinafter: ICESCR), stated that temporary exemptions from the right to weekly leave may be allowed in a state of emergency, but that workers must in turn receive compensatory weekly leave for as long as possible, at least 24 hours, and that these exceptions must be determined based agreements between workers and employers.⁸²

However, such consultations were absent during the state of emergency in Serbia, including those with health professionals' unions.

This category of workers faced a marked deterioration in working conditions during the pandemic. In such contexts, working at night is especially harmful, as it has a particularly negative effect on the workers' health and family life.

As stated by the ILO, according to a study on the working conditions of nurses, it has been established that those who have worked night shifts for several years have a higher risk of mortality, including due to cardiovascular diseases and lung cancer.⁸³ The European Agency for Safety and Health at Work has issued recommendations to employers on how to act in order to protect workers in the workplace from infection and illness during the COVID-19 epidemic, which include how to justify absence from work due to illness. Namely, employers were advised, among other things, to not require workers with flu-like symptoms to submit sick-leave certificates to justify their absence from work, due to the excessive workload for health facilities to issue such certificates.

⁷⁸ Regulation on measures during a state of emergency, Article 3a, paragraph 3.

⁷⁹ Ibid., paragraph 4.

⁸⁰ The survey created by the authors for the purposes of this analysis was aimed at examining the impact of measures and regulations adopted during the state of emergency on the exercise of labor rights and related human rights and assessing the degree of impact of measures on various, primarily vulnerable groups in the labor market. The survey was anonymous and consisted of five open-ended questions, which were tailored to the target group relative to the respective trade union and NGO. The survey was sent by e-mail to the addresses of 14 organizations (6 trade unions and 8 non-governmental organizations), and 10 organizations responded (3 trade unions and 7 non-governmental organizations). A list of participating organizations can be found in Annex 7.

⁸¹ Certain countries in the region have adopted measures that went above international standards, such as Bulgaria, where employers have been obliged to grant paid or unpaid leave to vulnerable categories of workers, such as those suffering from tuberculosis, diabetes, ischemic disease, cancer, or mental or occupational diseases. Source: “COVID-19 and the world of work: Country policy responses,” International Labour Organization, <https://www.ilo.org/global/topics/coronavirus/regional-country-responses/lang-en/index.htm>.

⁸² Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favorable conditions of work.

⁸³ International Labour Office, Ensuring decent working time for the future, Geneva 2018, [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2018-107-B\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2018-107-B).pdf).

For cases of workers hired through employment agencies, it was recommended that these agencies allow workers to stay at home and adopt policies for absence from work without consequences for the workers' rights.⁸⁴

Restricting the right of health professionals to annual leave

According to the unions, in some health care institutions a ban was instituted on the use of annual leave, while in others employees were forced to take annual leave.

The first example is likely less controversial because of the state of emergency. The second example is more so given the increased workload and a lack in the influx of new staff. This was probably an attempt to justify the subsequent prevention of taking annual leave or of any request for financial compensation for unused days of annual leave. In some institutions, employees who were ordered to self-isolation were registered as being on annual leave.

Union representative

Source: TU-NGO survey

One of the key risks faced by health professionals during the pandemic has been risk from infection, which is primarily a consequence of the non-existence or non-compliance with uniform protocols for pandemic conditions, as well as of the lack of protective equipment at the very beginning of the epidemic.

In this sense, the prescribed occupational safety and health measures have clearly not always been fully respected, which has led to a number of undesired consequences.

An obvious example of non-compliance with the prescribed measures is the hospital in Čuprija, which at one point became the hotbed of the pandemic. According to doctor Predrag Drenovaković, the hospital's employee, who gave a statement on April 2, 2020, during the week when the condition in the hospital was at its critical peak,⁸⁵ a mass infection that resulted in the death

of one of the doctors occurred due to non-compliance with the recommendations of the Government of the Republic of Serbia and safety medical protocols: "From Jagodina they bring us a patient in spacesuits, while our workers from the admission and triage service were, not to say naked, but with only disposable masks and gloves, while the others were fully equipped."⁸⁶

Such situations were characteristic of the first weeks of the epidemic; with the appointment of COVID-hospitals and the stabilization of the supply of protective equipment, oversights of this kind became considerably rarer.

The President of the Union of Doctors and Pharmacists of Serbia (UDPS), Rade Panić, stated on May 5, 2020 that there were no official data on how many health professionals had died during the pandemic, but that, according to data obtained by the union, 14 health professionals had died of coronavirus in Serbia.⁸⁷ In the same statement, he said that about 450 health professionals were infected with the coronavirus and that this was primarily a consequence of the lack of equipment at the very beginning of the epidemic.

Healthcare professionals without the right to safe and healthy working conditions

The largest occupational safety problems were in the health sector. According to the union's findings, some of the directors of health institutions did not provide accurate data on the necessary protective equipment, nor on the number of infected health professionals. There were also cases of verbal and written orders prohibiting the wearing of protective equipment, as well as the punishing of employees through percentage deductions from their salary if employees were found with protective equipment. At the beginning of the epidemic, and later, there was no uniform approach to the organization of work that would ensure safe working conditions for employees.

84 European Agency for Safety and Health at Work, "COVID-19: guidance for the Workplace," https://oshwiki.eu/wiki/COVID-19:_guidance_for_the_workplace#See

85 By April 8, 42 doctors were registered as positive with the virus in the Čuprija hospital, and 110 were in self-isolation. Source: "Život u žarištu epidemije korone" ("Life in the hotbed of the corona epidemic"), <http://balkans.aljazeera.net/vijesti/zivot-u-zaristu-epidemije-korone>.

86 "Doktor iz Čuprije: Bolnica u haosu, nisu poštovane instrukcije Vlade" (Doctor from Čuprija: Hospital in chaos, Government instructions were not followed), <http://rs.n1info.com/Vesti/a584940/Lekar-iz-Cuprije-o-stanju-u-bolnici.html>.

87 "Panić: Od koronavirusa umrlo 14 medicinara, posledica nedostatka opreme" (Panic: 14 doctors died of coronavirus as a result of lack of equipment), <http://rs.n1info.com/Vesti/a596199/panic-Od-koronavirusa-umrlo-14-medicinara-posledica-nedostatka-opreme.html>.

In the majority of cases, much depended on the “good will” of the director: whether the work would take place in shifts; whether healthcare workers who fall under critical categories would be protected in their absence or their secondment to isolated tasks; if working from home; if a parent would be granted leave from work, etc. Our conclusion is that virtually no account was taken of the at-risk groups of employed health professionals and that doctors who belonged to high risk groups were seconded to positions in direct contact (with the virus), such as COVID 19 centers.

Many doctors fended for themselves, organized the purchase of personal protective equipment (some had friends making their visors, others procured spacesuits from bee-keeping and painting shops, masks were vastly sewn by patients, by health professionals themselves, by their neighbours; they also procured protective eye-glasses - when available – or visors and other items at their own expense and by various means), they organized donations (Visionaries of Serbia)... Also, it cannot be said that the protective equipment is satisfactory if only one surgical mask has been provided to an employee per shift, or one pair of gloves for 24 hours... There are many examples. We continue to receive daily pleas and requests to provide equipment. So the need for equipment still exists.

Union representative



Source: TU-NGO survey

United Nations

The UN Committee on Economic, Social, and Cultural Rights asserted that all workers must be protected from infection at work and called on the ICESCR Parties to take appropriate regulatory measures to ensure that employers reduce the risk of infection to a minimum. The Committee also stated that “until such measures are adopted,” workers cannot be obliged to work and should be protected from disciplinary and other sanctions if they refuse to work without adequate protection.”⁸⁸ This assessment is in line with the provision of the ICESCR, according to which Member States must provide workers with fair and favourable working conditions, including hygienic and technical protection at work.⁸⁹

In this regard, it is important to note that the European Agency for Safety and Health at Work has made timely recommendations to employers on how to protect the occupational safety and health of workers, which include the development of a contingency plan and the implementation of measures to prevent the spread of infection (including how to use face masks).⁹⁰ This is especially important concerning health professionals in Serbia, considering that on the basis of trade union data, as well as on media sources and anecdotal data, numerous cases of failure to provide protective equipment, as well as the imposition of civil requisitions on health professionals operating in high risk categories (those with chronic diseases) have been recorded. The UDPS, in addressing the problems of at-risk health professionals (persons who have diseases and conditions such as: diabetes, asthma, chronic obstructive pulmonary disease, cancer, immunosuppressive therapy, cardiovascular problems), suggested that such workers be sent to work from home or, if this was not

88 Committee on Economic, Social, and Cultural Rights, Statement on the coronavirus disease (COVID-19) pandemic and economic, social, and cultural rights, <https://undocs.org/E/C.12/2020/1>.

89 The Law on the Ratification of the International Covenant on Economic, Social, and Cultural Rights, “SFRY Official Gazette,” No. 7/71, International Covenant on Economic, Social, and Cultural Rights, Article 7, paragraph 1, item b).

90 European Agency for Safety and Health at Work, “COVID-19: guidance for the workplace,” https://oshwiki.eu/wiki/COVID-19:_guidance_for_the_workplace#See. In this sense, some good practices in Europe should be mentioned, such as the measures introduced in Italy, which granted employers subsidies for the purchase of protective equipment, i.e., exemption from taxes for the purchase of equipment and disinfectants. Source: “COVID-19 and the world of work: Country policy responses”, International Labour Organization, <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang-en/index.htm>

possible, be seconded to places where there is no contact with the infected.⁹¹

Union appeals for testing of health professionals

Immediately following the declaration of the state of emergency and the pandemic, the union issued a recommendation that healthcare professionals who were directly or indirectly exposed to a colleague or patient positive with COVID-19, as well as healthcare professionals at risk, be tested without delay. This was disregarded, there were not enough tests, although it was claimed differently at the time.

In the first two weeks of the first confirmed case of COVID-19, we have data that health professionals with symptoms were mostly not tested, and that they were returned to work; we believe that this is one of the reasons for the large number of infected health professionals.

Union representative

Source: TU-NGO survey

Some government measures taken as an expression of solidarity with other countries, such as the delivery of medical equipment to Italy, contradict health professionals' assessments of the lack of protective and medical equipment for the local population.⁹² The government also adopted some measures aimed at improving the position of health professionals during the pandemic, such as the decision to grant health care employees a supplement of 10% of their basic salary.⁹³

Yet health professionals faced other, less direct, problems, including a lack of public transport. The suspension of public transport in Belgrade and other cities on March 21, 2020 may have had a smaller impact on health professionals than on workers in the general population, but they were in a very similar sit-

uation, largely left to their own transport, or to use the rare forms of public transport remaining.⁹⁴ The UDPS highlighted these transportation issues in a letter⁹⁵ sent to the Crisis Headquarters on March 23, 2020, demanding that health professionals be provided with transportation to and from work in compliance with all protective measures. This letter also indicated the issue of accommodation and transportation for those health professionals on COVID-19 teams in remote accommodation facilities for the sick. There are no reliable data on how many health institutions or local governments organized special transportation for health professionals. It can certainly be concluded that there was no public planning, nor any assessment of how the suspension of public transport would affect the commute of health professionals to and from work. This problem is further elaborated upon in the section addressing the position of other categories of workers obliged to work on employers' premises.

131,300 workers were employed in the health sector in 2019 (100,700 women). Among the employees in this sector, the most numerous were health associates and technicians (81,600, 66,400 of whom were women). As kindergartens and schools were closed during the state of emergency, single parents and families with both parents as health professionals or employees were faced with the problem of reconciling civil requisitions and parenthood. Despite the demands of the trade union⁹⁶ for the competent ministry to solve this problem, it was left unresolved.

91 "Hitni zahtevi i preporuke za Krizni štab za suzbijanje zarazne bolesti," COVID-19 (Urgent requests and recommendations for the COVID-19 Infectious Disease Crisis Headquarters), <http://www.sindikatsfs.rs/hitni-zahtevi-i-preporuke-za-krizni-stab-za-suzbijanje-zarazne-bolesti-covid-19/>

92 "Srbija poslala medicinsku pomoć Italiji u četiri aviona, leteće još četiri," ("Serbia sends medical aid to Italy in four planes, four more to fly,"), <http://rs.n1info.com/Vesti/a592850/Srbija-poslala-medicinsku-pomoc-Italiji-u-cetiri-aviona.html>.

93 The Decree on the Bonus to the Basic Salary of Employees in Health Care Institutions and Certain Employees Who Perform Activities in the Field of Health, that is, the Health Care of the Population of the Republic of Serbia, the Treatment and Prevention of the Spread of the Epidemic of the COVID-19 Disease Caused by the SARS-CoV-2 virus, "RS Official Gazette," No. 48/2020.

94 The Committee of Experts on the Implementation of ILO Conventions and Recommendations, interpreting the provisions of Convention No. 111 on Discrimination in Respect to Employment and Occupation, requested of states that had ratified this Convention (including the Republic of Serbia) to provide adequate transport services necessary for women to have equal employment opportunities as men. Source: Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Lebanon (Ratification: 1977), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4018421,103147,Lebanon,2019

95 "Hitni zahtevi i preporuke za Krizni štab za suzbijanje zarazne bolesti COVID-19" (Urgent requests and recommendations for the COVID-19 Infectious Disease Crisis Headquarters), <http://www.sindikatsfs.rs/hitni-zahtevi-i-preporuke-za-krizni-stab-za-suzbijanje-zarazne-bolesti-covid-19/>

96 "Obaveštenje o problemu u praksi sa zahtevom za rešavanje i predlogom mera" (Notice on the problem in practice with the request for resolution and proposal of measures), <http://www.sindikatsfs.rs/obavestenje-o-problemu-u-praksi-sa-zahtevom-za-resavanje-i-predlogom-mera/>

Risks to the rights of health professionals

The union was contacted by members whose managers had verbally demanded that they state whether they wanted to be on sick leave or on annual leave when they were in self-isolation. Two weeks after the declaration of the state of emergency, in some institutions for health professionals on whom isolation had been imposed due to contact with an infected patient, the calculation of salary according to the rules on temporary incapacity for work in the amount of 65% of salary was proclaimed.

Union representative

Source: TU-NGO survey

Employees in residential-type social protection institutions

Regarding employees in the social protection system for accommodation, the government excessively restricted their freedom of movement and their rights to protection from forced labor and to fair working conditions. According to the Constitution of the Republic of Serbia, everyone has the right to move freely in the Republic of Serbia,⁹⁷ and this freedom may be restricted by law, inter alia, if necessary, to prevent the spread of infectious diseases.⁹⁸ Furthermore, the Constitution prescribes the prohibition of forced labor, whereby forced labor is not considered to be work or service during a state of emergency “in accordance with the measures prescribed when declaring a state of war or emergency.”⁹⁹ The Constitution also stipulates that measures which derogate from the human rights guaranteed by Art 23 (human dignity) and Art 25 (inviolability of mental integrity) are not allowed in any case.¹⁰⁰

Serbia adopted the Decree on the Organization of the Work of Social Protection Institutions for Accommodation of Beneficiaries and Organizations of Social Protection for the Provision of Residential Accommodation Services during the State of Emergency¹⁰¹ (hereinafter: the Decree), which regulates the particular method and organization of the operation of social protection institutions for accommodation of beneficiaries and organiza-

tions for the provision of residential accommodation services on the territory of the Republic of Serbia in the event of an outbreak of COVID-19.

The Decree applies to all public and private institutions of this type in Serbia and prescribes that an infected beneficiary or employee, i.e., person engaged for work in such an institution, be immediately referred for treatment to a health institution, while in such cases other beneficiaries, employees, and persons engaged for work are to remain in isolation in the respective institution for 14 days. The Decree stipulates that the period of isolation for these persons be extended by 14 days upon each new case of illness within the institution. It also stipulates that directors of institutions are obliged to post the schedule of working hours and to ensure the following conditions for the employees and persons engaged for work: respect for working hours and for daily and weekly rest during the period of isolation; three free daily meals and accommodation in the institution; that rest periods be spent separately from the beneficiaries. The Decree also stipulates that employees and persons engaged for work spend the time of rest within the institution. Following the adoption of the Decree, the Minister of Labor, Employment, and Veterans' and Social Affairs issued a recommendation to social protection institutions for the accommodation of beneficiaries and social protection organizations for the provision of residential accommodation services¹⁰² (hereinafter: the Recommendation), calling for the introduction of a 15-day shift of work, “to instill the operational organizational model which has proven to be in the best interest of users of accommodation services, the families of the employees, and the employees themselves.” Directors were urged to discuss the organization of this “voluntary 15-day work shift” with all employees, which was intended to deliver the benefits of such isolation for beneficiaries, employees, and the families of employees. In addition, the Minister of Labor, Employment, and Veterans' and Social Affairs issued an urgent order to the directors of social protection institutions for the accommodation of beneficiaries and social protection organizations for the provision of residential accommodation services (hereinafter: the Order), mandating that all employees in these institutions and organizations “reduce their movement to exclusively going from their families to the workplace.”¹⁰³

According to Art 13 of the Universal Declaration of Human Rights, everyone has the right to freedom of movement; the

97 The Constitution of the Republic of Serbia, “RS Official Gazette,” No. 98/2006, Art 39, paragraph 1

98 Ibid., paragraph 2.

99 Ibid., Art 26, paragraph 4

100 Ibid., Art 202, paragraph 4

101 “RS Official Gazette,” No. 54/2020.

102 Source: The Ministry of Labor, Employment, and Veterans' and Social Affairs, <https://www.minrzs.gov.rs/sites/default/files/vanrednostanje/2020.04.13.%20Preporuka%20001.pdf>.

103 Source: The Ministry of Labor, Employment, and Veterans' and Social Affairs, <https://www.minrzs.gov.rs/sites/default/files/vanrednostanje/2020.04.10.%20Nalog%20004.pdf>.

same right is established in Art 12 of the International Covenant on Civil and Political Rights. Article 23 of the Universal Declaration stipulates that everyone has the right to free choice of employment. According to Art 6 of the ICESCR,¹⁰⁴ every person has the right to work, which includes the possibility of earning through freely chosen or accepted work. The Forced Labor Convention No. 29 of the International Labor Organization (hereinafter: the ILO Convention) defines “forced or compulsory labor” as “work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”¹⁰⁵ In addition, exceptions are provided so that the term “forced or compulsory labor” does not refer to work or service required in the event of an emergency, such as a large-scale epidemic.¹⁰⁶ The European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits slavery and forced labor in Article 4, with the exception of work required in the event of a crisis or disaster threatening the survival or well-being of the community.¹⁰⁷ The Charter of Fundamental Rights of the European Union prohibits forced labor by stipulating that no one be required to perform forced or compulsory labor.¹⁰⁸

In regard to respecting international standards related to the right to freedom of movement and the right to freely elected or accepted work, the acts of the government and the line minister adopted during the state of emergency are inconsistent with international standards.

The right to freedom of movement was violated by the government’s actions during the state of emergency, as employees and persons engaged for work in this type of institutions and organi-

104 The Law on the Ratification of the International Covenant on Economic, Social, and Cultural Rights, “SFRY Official Gazette,” No. 7/71.

105 Forced Labor Convention (No. 29), International Labor Organization, 1930, Art 2, Para.1.

106 Ibid., Article 2, paragraph 2. item e).

107 The Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, amended in accordance with Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for certain rights and freedoms not included in the Convention and its first Protocol, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty in all circumstances (“SMNG Official Gazette” - international agreements, no. 9/2003, 5/2005 and 7/2005 - corrigendum and “RS Official Gazette - International Agreements,” No. 12/2010 and 10/2015).

108 Charter of Fundamental Rights of the European Union, Art 5, paragraph 2.

zations represented the only category of employees and persons engaged for work in Serbia that were targeted by the measures of mandatory isolation in the workplace in case of infection, and who were ordered to restrict their movement, even in the case of working remotely, i.e., working from home, which is not prescribed by the government decrees.¹⁰⁹

The decisions of the Government also violated the right to freely elected or accepted work through the Decree’s mandating that employees and persons engaged for work not only be isolated in case of infectious disease, but also be obliged to perform continuous work for its duration, which was de facto introduced through the prescribing of the obligation of directors of such social protection accommodation institutions to post the schedule of working hours and provisions on respecting working hours and daily and weekly rest.

Similarly, the Recommendation does not meet the criteria of a non-binding legal act in its recommending the introduction of 15-day work shift on a voluntary basis, because Art 23, paragraph 2 of the State Administration Law was listed as its legal basis.¹¹⁰ It stipulates, among other things, that the Minister decides on other issues within the missives of the Ministry. Therefore, the meaning of this legal provision is to entrust the Minister with the power to decide on specific issues, which, in fact, makes the Recommendation a binding legal act ordering employees to perform their work in the stated manner, i.e., their civil requisition was implicitly introduced. Although the ILO Convention excludes work and services during a state of emergency as a form of forced or compulsory labor, it should be noted that this exemption is not absolute.

The work and services required of a person must also meet conditions such as being “limited in duration, scope, and purpose to what is expressly necessary under the urgent requirements of the situation.”¹¹¹ In addition, the concept of a state of emergency within the meaning of the ILO Convention includes cases of force majeure, i.e. “a sudden and unforeseen event requiring immediate countermeasures.”¹¹²

109 The illegality of the Order is reflected not only in its not being adopted on the basis of Government decrees, but also in that the legal basis for its issuance is Article 47, paragraph 1, item 4) of the State Administration Law, which prescribes the powers of state administration authorities in carrying out the supervision of work, specifically to order the undertaking of work that it deems necessary. This legal basis is not adequate because the Minister (as the issuer of the Order) is not a state administration authority, nor is it in this case a matter of supervision, but of the organization of operations.

110 “RS Official Gazette,” No. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 and 30/2018 - other law.

111 General Survey on Forced Labor, International Labor Organization, 2007, p.32. The publication is available via the link: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_089199.pdf.

112 Ibid.

In light of these interpretations of the ILO Convention, the measures of the government violated the prohibition of forced or compulsory labor, given that neither the Regulation nor the Recommendation is limited in terms of duration, scope, or purpose in the required manner (they do not contain the deadline for their application, they apply to all institutions and organizations of social protection for the accommodation of beneficiaries without any prior risk assessment of each individual institution or each individual category of beneficiaries, and, finally, they do not take into account that the measure of isolation of beneficiaries and employees, in accordance with the Protection of the Population from Infectious Diseases Law, should be implemented primarily in facilities such as hospitals, not in such institutions as social protection organizations, in which employees, due to the nature of their work, which requires the provision of necessary care and assistance to beneficiaries, and the emergency situation itself, would be exposed to pressure from superiors and be pressured to perform their professional duties with increased intensity¹¹³). Moreover, the Decree was adopted on April 10, 2020, and the Recommendation on April 13, almost a month after the introduction of the state of emergency on March 15, so it cannot be said that they were prescribed as “immediate countermeasures.” The above mentioned acts of the government also establish an alarming precedent in the domestic legal order by sentencing employees and persons engaged for work to physical enclosure in their workplaces, which is an unconstitutional measure that derogates from human dignity and the right to mental integrity, as human rights which, according to the Constitution, cannot be restricted even in the event of a state of emergency. Namely, Article 202 of the Constitution establishes that measures derogating from human and minority rights guaranteed by it are in no case permitted with regard to the rights guaranteed, inter alia, by Article 23 (dignity and the free development of personality) - “Human dignity is inviolable and everyone has a duty to respect and protect it”¹¹⁴ - and Article 25 (the inviolability of physical and mental integrity) - “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹¹⁵

In the social protection residential accommodation sector, in 2019, there were 10,245 registered employees (27% less than in 2014).¹¹⁶ However, survey data on employment indicated

16,800 employees in this same year,¹¹⁷ reflecting a significant number of informal employees were active in this area in the private sector. Data on the structure of employees by sex and age indicate a dominantly female workforce (78%) and a significant share of workers over the age of 50 (30%).¹¹⁸ According to independent data, during the state of emergency, 149 infected persons in the social protection system were documented, one of whom died.¹¹⁹ The situation in the institutions and organizations resulting from the measures of the government led to numerous protests by employees and persons engaged for work in them.¹²⁰ The measures of the Government mostly affected employees and other persons engaged for work within the social protection accommodation sector, which employs about ten thousand people.¹²¹ Among them, the greatest infringement on the right to free movement and the prohibition of forced labor was felt by those employed or engaged in work dealing directly with the provision of care (nurses and technicians), i.e., those whose work was essential for “continuous and uninterrupted work process of the institution”¹²² (work in the hospital, kitchen, laundry, etc.). Along gender lines, as women make up the great majority of workers in these categories, women were the ones most affected by the government’s restrictive measures, especially those with lower professional qualifications working in lower paid jobs. That mostly women are employed in auxiliary, lower paid jobs in the social protection system is also shown in the disproportionately large gap in pay between men and women in the health care and social protection sector, one of the largest in any sector.¹²³ The most vulnerable among them are certainly single mothers, especially those who take care of small children and children with disabilities, as well as women who provide necessary care to close family members, especially those who are engaged to work on the basis of contracts not qualifying as

117 Eurostat, Labor Force Survey, <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

118 Eurostat, Labor Force Survey, <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

119 “Nevidljivi heroji iz socijalne zaštite” (Invisible heroes of social protection), Trade Union of Social Protection Employees of the Republic of Serbia, <https://www.sindikatsz.org.rs/nevidljivi-heroji-iz-socijalne-zastite/>

120 “Radnici niškog Gerontološkog: Izgleda da je jedini način da izađemo odavde da se zarazimo,” (Workers of the Nis Gerontology: It seems that the only way to get out of here is to get infected.) <https://www.juznevesti.com/Drushtvo/Radnici-niskog-Gerontoloskog-Izgleda-da-je-da-jedini-nacin-da-izadjemo-odavde-da-se-zarazimo.sr.html>, “Teške optužbe: Hoće da nas zatvore 15 dana na poslu,” (Serious Accusations: They want to lock us up for 15 days at work), <https://mondo.rs/Info/Drustvo/a1311424/Dom-za-ometene-u-razvoju-u-Sremcici-zaposteni-se-zale-na-uslove.html>

121 Statistical Office of the Republic of Serbia, Statistical Yearbook of the Republic of Serbia, 2019. p.75

122 Ministry of Labor, Employment, Veterans’ and Social Affairs, Instruction for performing work outside the employer’s premises, <https://www.minrzs.gov.rs/sites/default/files/vanredno-stanje/2020.03.19.%20Instrukcija%20007.pdf>

123 Statistical Office of the Republic of Serbia, Women and Men in the Republic of Serbia, 2017, p. 83, <https://publikacije.stat.gov.rs/G2017/Pdf/G20176008.pdf>

113 In the event of an outbreak of a large-scale infectious disease, persons suffering from that disease shall be isolated and treated in “facilities where conditions can be provided for treatment, i.e., in isolation and for the particular treatment of patients with infectious diseases.” Protection of the Population from Infectious Diseases Law, “RS Official Gazette,” No. 15/2016 and 68/2020, Art 29 paragraph 1.

114 Constitution of the Republic of Serbia, Art 23, paragraph 1.

115 Ibid., Art 25, paragraph 2.

116 Statistical Office of the Republic of Serbia, <https://data.stat.gov.rs/Home/Result/240203?languageCode=sr-Cyrl>.

employment, for whom it can be assumed that, due to the prevalence of socio-economic vulnerability in such cases, were not able to refuse the orders of the directors of the institutions relating to the movement and organization of operations.¹²⁴

1.2 Frontline workers in the civil requisition working regime

Workers who worked in their workplaces during the state of emergency due to the vital nature of the work they perform labored in considerably more difficult conditions. They are named “frontline workers,” a term that includes employees in supermarkets, banks, pharmacies, and city maintenance, and postal workers and couriers,¹²⁵ occupations that put such workers in contact with a large number of people or with materials and objects which may have been contaminated.

Examples of violations of the right to fair and favourable working conditions

Some shop assistants received lower wages (65%) despite working full time. These were most often workers in warehouses who worked full time, but since shop assistants worked fewer hours due to the curfew, the employers, under the pretext that they did not want to make a difference between employees, reduced the wages of the warehouse workers also.

Women working in building maintenance did not receive pay for overtime hours, although they were obligated to work longer to disinfect the hallways.

Assistants in some smaller shops and service industries never received masks from their employers but were told (i.e., ordered) they must provide masks themselves.

It is women who are most at risk during this emergency, because they make up the clear majority of workers in the service sector (in trade, in health care institutions, etc.). One of the greatest problems for those working in this sector was the lack of adequate protective equipment, while many employers blackmailed their workers, demanding that they work despite not having any protective equipment, or face losing their jobs. Many factories also reduced work loads, leading to many women being let go.

Representatives of NGOs

Source: TU-NGO survey

Many workers in this category encountered difficulties in exercising labor rights, threats to their labor rights, or their violation.

The lack of public transport directly affected exercising the right to work. Employers are identified by the Labor Law as the bearers of duty to provide employees with conditions for coming to work and returning from work in a state of emergency. After the temporary suspension of city, intracity, and intercity public transport, they had difficulty fulfilling their obligations to employees, or did not fulfil them at all. Public transport in Belgrade and other cities was suspended on March 21, 2020, through amendments to the Decree on Measures during a State of Emergency.¹²⁶ Instead of standard public transport lines, special lines were introduced in Belgrade,¹²⁷ which, based on the routes, the number of vehicles, and the traffic schedule, could not have been sufficient for the safe transport of passengers, i.e., workers who were under civil requisition that could thereby not work from home and had to be present at the employer’s premises during working hours. When employees were left without the possibility of transportation, and in situations when the employer could not, or chose not to, organize their work from home, a problem arose which the Labor Law does not provide for. Namely, according to the provision of Article 118, the employee has the right to reimbursement of costs for arrival and departure from work, in the amount of the price of a transport ticket in public transport, if the employer has not provided its own transport. The indirect result of this is the obligation of the employer to enable the employee in one of the two prescribed forms to come to work on time, as well as

124 According to the expert for Human Rights, Meskerem Geset Tecane, women are at higher risk of suffering damage due to social and economic shocks related to pandemic measures because they are disproportionately represented in precarious, informal, low-paid jobs, including domestic work, and do not have adequate social protection. Source: United Nations, High Commissioner for Human Rights, “Responses to the Covid-19 could exacerbate pre-existing and deeply entrenched discrimination against women and girls, say UN experts,” <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25809&LangID=E>

125 In 2019, 22,100 people were employed in the field of postal and courier activities. Source: Ibid.

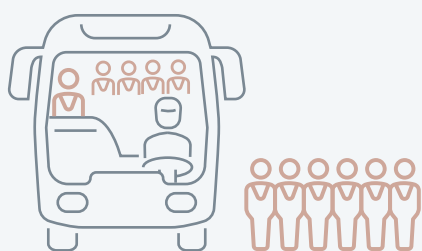
126 Article 4b.of the Decree.

127 Nikodijević: “Kreću posebne linije gradskog prevoza za one sa radnim dozvolama,” (Nikodijević: Special lines of public transport are starting for those with work permits), <https://rs.n1info.com/Vesti/a580573/nikodijevic-Kreću-posebne-linije-gradskog-prevoza-za-one-sa-radnim-dozvolama.html>.

to leave work after the end of working hours. What then, if public transport does not exist? The employer must either provide means of transportation or agree with the employee on the most applicable way to get to work. Many employers, faced with the additional costs that would ensue in either case,¹²⁸ ignored the newly arisen circumstances. This effectively made it impossible for some employees, especially those living in suburbs or simply too far from their place of work, to come to work and thereby to exercise their right to work.

Even those employees who were able to use the newly introduced emergency transport lines serving exclusively for the transport of workers with a valid civil requisition order for the day, found themselves in situations that directly threatened their health.

The small number of vehicles and the large number of passengers was directly contrary to the purpose of suspending public transport, because the risk of infection during transport was almost equal to that which would have existed in standard public transport operations, if not higher.¹²⁹



Since transportation to and from work is functionally related to work and can be considered an aspect of the work conditions which the employer is obliged to provide under Article 9 of the Health Insurance Law (“The employer is obliged to provide the employee with work at the workplace and in a working environment in which occupational safety and health measures are implemented”), it can be argued that certain employers did not take all the appropriate measures to solve this problem. It can also be claimed that the state implemented measures to restrict public transport without prior analysis of how such measures would affect the employees’ commute to work, which further increased the financial burden on employers or caused logistical problems, i.e., situations in which employees’ health was endangered. Without objective justification, employers who shifted the burden of organizing transportation to employees without adequate compensation for their additional costs, violated, in addition to the above provisions of the Labor Law, Article 10 of the LOSH: “The employer is obliged to ensure that the implementation of occupational safety and health measures does not incur financial liabilities for the employee and the employee’s representation and does not affect their material and social position acquired at work and in connection with work.”

40% of women and 26% of men use public transport to go to work, while 70% of men and 37% of women use a car.¹³⁰¹²⁹ This data suggest that the measures to suspend public transport affected women more greatly on three fronts: women use public transport more than men, women drive cars to work less than men, and women make up the majority in occupations which were deemed essential at the time of the pandemic and which thereby required them to be physically present at their employer’s premises (e.g., health professionals, stewards, and shop assistants). Bearing in mind that the average distance to work is 8.5 kilometers in one direction, the suspension of public transport affected those workers who use this type of transport to commute to work most severely.

A special category of vulnerable employees in this sense are employees with disabilities, for whom there was no adequate support during the implementation of the temporary suspension of public transport, nor any measure that could be considered an adequate substitute for public transport. Consequently, they were completely prevented from working at their employers’ premises, unless they or their employer organized transport. Equal treatment of all citizens in this case produced an unequal

128 “Privredna komora Srbije ponudila je poslodavcima usluge prevoznika isključivo po tržišnim cenama,” (The Serbian Chamber of Commerce offered to employers the services of carriers exclusively at market prices), <https://pks.rs/vesti/prevoz-zaposlenih-od-kuce-do-posla-2457>.

129 According to the news published in the electronic media, there were much fewer vehicles than before the introduction of the state of emergency, as well as fewer public transport lines. The union’s allegations and data from civil society organizations based on the workers’ requests for information and advice show that such a situation led to significant congestion in public transport and the de facto inability to transport workers to and from work without compromising their health.

130 SeConS Development Initiative Group and Dornier Consulting International GmbH, Gender Equality in Transport in Serbia - Final report, p. 39, <https://www.rodunaravnopravnost.gov.rs/sites/default/files/2020-02/GETS%20MS2%20izve%C5%A1taj%20FINAL%2011.02.2020..pdf>

effect. In other words, the decision to suspend public transport had a disproportionate impact on one category of citizens, persons with disabilities, which could constitute indirect discrimination of these persons.¹³¹ Any measure adopted in a state of emergency in connection with an epidemic of an infectious disease, except when it is aimed at protecting the population, must contain the lowest possible degree of restriction of the rights of all citizens, and in particular it must take into account the special circumstances and effects of its application on certain categories of the population.

Violation of the right of persons with disabilities to special protection and accessibility

During the state of emergency, a non-governmental organization that participated in the survey and provided legal advice stated that a number of questions addressed to them were related to public transport, including whether persons with disabilities could use the public transport company's corridor lines. Generally, the lack of public transport made the mobility of persons with disabilities even more difficult.

One particular employee with a disability posed the following question: "What are my rights as a worker during the state of emergency? Because I work full time, I had two tumors operated and I am directly exposed to a large number of people."

A non-government organization representative

Source: TU-NGO survey

As of May 4, regular public transport was partially restored in Belgrade and other cities. However, in the first phase, it was intended only for employees who had a monthly transport ticket for employees. Thus, a significant number of those who did not have the status of an employee, primarily workers in the informal economy, but also other persons who did not qualify for this category (the informally self-employed - street vendors, craftsmen, occasionally engaged persons) were denied this service. The solution found by the Belgrade city government for this situation was that people who did not have a monthly ticket as employees had to show a daily work order, as well as had to pay for more

expensive transport tickets.¹³² This kind of treatment not only failed to solve the problem of the informally employed, but also drastically increased the cost of commute for those who were not employed but still engaged to work and had to use transportation - a particularly poor solution given that many of people were working low pay jobs in difficult working conditions. Although the measure of transporting only those persons who could prove that they were employed (by a subscription card or work order) was introduced primarily to reduce the burden on public transport, it led to the unjustified differentiation of employees from other workers who had working duties, despite not having this employment status and who had a real need to use public transport to fulfill their obligations, i.e., to go to work and return from work. Starting on May 8, public transport returned to operating according to pre-state-of-emergency principles.

During the state of emergency, workers' rights to a safe and healthy work environment were under threat.

The right to safe work is one of the fundamental rights of all participants in the work process, regulated by a number of international instruments¹³³ and domestic regulations¹³⁴ and the failure to take special protection measures constitutes a substantial violation of the law, threatening the health and lives of workers, their families, and third parties who come into contact with them, which is incriminated by the Criminal Code.¹³⁵ Employers who do not adhere to the prescribed measures violate a number of regulations: the LL, the LOSH, the Law on the Protection of the Population from Infectious Diseases, and the Decree on Organizing the Work of Employers During a State of Emergency. Violations of such work conditions can result in suspension of the employer by order of the competent inspections, but no such actions were taken.

132 "Vožnja bez Bus plusa za zaposlene skuplja, uz obavezan nalog," (Driving without Bus Plus for employees is more expensive with a mandatory work order), <https://nova.rs/vesti/drustvo/voznja-bez-bus-plusa-za-zaposlene-skuplja-uz-obavezan-nalog/>

133 This right is mentioned in the Constitution of the International Labor Organization from 1919 and in the International Covenant on Economic, Social, and Cultural Rights, while it is regulated in detail by ILO Conventions 155 (on occupational health and safety), 161 (on occupational health services), and 187 (on the promotional framework for occupational safety and health). The right to safe and healthy working conditions is also established by the Revised European Social Charter (Part I, Article 3).

134 The right to safe work is regulated by Article 60, paragraph 4 of the Constitution of the Republic of Serbia, and the provisions of the LL, LOSH, and LPPID.

135 Criminal offense "Failure to take protective measures at work" from Article 169 of the Criminal Code" ("RS Official Gazette," No. 85/2005, 88/2005 -corr., 107/2005 -corr., 72/2009, 111/2009, 121/2012, 104 / 2013, 108/2014, 94/2016 and 35/2019).

131 The UN Committee for Economic, Social, and Cultural Rights warned in its General Comment No. 5: Persons with Disabilities (1994) that "the failure of governments to ensure that modes of transport are accessible to persons with disabilities greatly reduces the chances of such persons finding suitable, integrated jobs." Source: United Nations - Committee for Economic, Social and Cultural Rights, General comment No. 5: Persons with disabilities, 1994, p. 6

Employers, including the state as an employer, have not met these regulations by failing to introduce special protection measures in case of an infectious disease epidemic.¹³⁶ In the first stage, not enough protective equipment was provided to employers. In the later stages, employers had purchasing access to sufficient quantities of protective equipment, but some chose not to act. State oversight mechanisms did not respond adequately and did not allow workers to adequately enjoy the right to a safe and secure healthy working environment.¹³⁷

The Decree on the Organization of Work of Employers during the State of Emergency mandated that all employers in the Republic of Serbia introduce emergency measures of protection at work in relation to all persons participating in the work process: “The employer is obliged to provide all general, special, and emergency measures related to the hygienic safety of facilities and persons in accordance with the Law on the Protection of the Population from Infectious Diseases in order to ensure the protection and health of employees, persons engaged for work, and customers. For employees and persons engaged for work who are in direct contact with customers or share work space with several people, it is necessary to provide sufficient quantities of protective equipment in accordance with special regulations.”¹³⁸ Based on the recommendations of epidemiologists and other health professionals, emergency (special) measures established in this way consisted of the obligations of employers to provide physical distancing for workers indoors (i.e., to reduce the number of employees per square meter), to regularly disinfect the premises in which they work, and to provide all employees with, and control workers’ wearing of, appropriate protective equipment (primarily masks and gloves). However, these obligations were not always respected and many examples of employers ignoring the new measures, or not applying them in full, were documented.

136 According to the ILO interpretation, COVID-19 can be considered an occupational disease if the infection was caused by exposure to the virus in the workplace. Source: International Labour Organization, ILO Standards and COVID-19 (coronavirus), 23 March 2020, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_739937.pdf, p. 14.

137 Some countries introduced special measures to protect occupational safety and health during the epidemic. For example, new fines were introduced in Albania for employers who did not adhere to the measures and protocols determined by the Law on Preventing and Fighting against Infections and Infectious Diseases. In Bosnia and Herzegovina, an obligation was introduced for employers to revise the act on workplace risk assessment and implement measures to prevent, eliminate, or reduce instances of heart disease to a minimum. Source: “COVID-19 and the world of work: Country policy responses”, International Labour Organization, <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm>

138 Article 4. of the Decree.

2. Other workers unable to work from home due to the importance or nature of their occupation

The second group of workers whose work required their physical presence at their employer’s premises included factory workers and all those working in production or service areas and who, due to the type of their work and to the necessity of commuting to and from work, have been exposed to a higher level of risk of infection.

According to the SCC,¹³⁹ around 80,000 workers who worked in companies that had partially or completely ceased their operations, had gone back to work by the beginning of the second week of May and 400 large factories never suspended their operations during the state of emergency. Given that only a smaller number of workers were able to work from home due to the nature of their work, it appears that the majority of employees continued going to work during the state of emergency.

These workers faced problems similar to those faced by “front-line workers.” This mainly refers to commuting by public transport, which often either did not exist or was organized in an inadequate fashion.

The second set of problems refers to health and safety measures in the workplace. The case study of the Jura company, (see text box) shows that not all employers were prepared to adhere to new protective measures and preferred to resort to their economic position on the market in order to place themselves above the decisions of the state and local authorities. One example of drastic infringement of these measures is that of an employer who, under threat of dismissal, insisted that those workers who had returned from abroad and who had been ordered to self-isolate (a 14-day isolation period at the time), should immediately return to their post at the production facilities, where they came into contact with other workers.¹⁴⁰ Other examples show that a number of employers faced difficulties in acquiring sufficient protective equipment immediately after the implementation of the state of emergency and other protective measures. Some of them, however, did not implement these measures even after

139 “Čadež: Na posao se vratilo 80.000 ljudi, oko godinu dana za oporavak privrede,” (80,000 people returned to work, one year for the economy to recover) <http://rs.n1info.com/Biznis/a597287/Cadez-na-posao-se-vratilo-80.000-ljudi-oko-godinu-dana-za-oporavak-privrede.html>

140 Information based on direct contact between workers and author.

the supplies of protective masks and gloves became available in sufficient quantities.¹⁴¹

While all workers have been affected by the lack of observance of health and safety measures, certain groups have clearly been more affected, perhaps most flagrantly people with underlying medical conditions, those with chronic diseases, and older persons (younger than 65 and still working). Examples of good practices were also documented, such as employees being sent on paid leave or asked to use their annual holiday entitlement, yet¹⁴² this was not the case for the majority of workers in these categories. No measure has been introduced with the aim of addressing these groups in a form that would be binding on the employers.

Case study: South Korean company Jura¹⁴³

Factories belonging to the Jura company in Serbia worked at full capacity throughout the state of emergency. Due to absence of protective equipment in the workplace after the declaration of the pandemic and the introduction of the state of emergency, the workers initiated protests and warning strikes. While the warning strike at the factory in Niš proved inconsequential, the workers at the factory in Rača organized a protest outside the factory. The workers refused to enter the factory until they were provided with protective equipment. An inspection was conducted at Jura factories, but only several days after the protests. No information is available on whether misdemeanour or criminal proceedings were initiated against the persons responsible. However, criminal charges were brought against one of the workers at Jura, who was arrested by the police and charged with causing panic and danger. In spite of the recommendations from health workers that production levels at Jura be reduced or stopped after it was confirmed that one of the workers had been infected, the factory management decided to “stimulate” the workers to come to work by offering them financial bonuses. The local Crisis headquarters in Niš instructed the Public Health Institute to investigate the situation at the factory and announced that the conclusions would be binding upon the employer.

141 For example, the news on April 9, 2020. “Deo radnika ‘Olimpiasa’ u Nišu ne želi da uđe u fabriku, strahuju za zdravlje,” (Some of the workers at Olimpias factory in Niš refuse to enter premises fearing for their health) <https://www.juznevesti.com/Ekonomija/Deo-radnika-Olimpiasa-u-Nisu-ne-zeli-da-udje-u-fabriku-strahuju-za-zdravlje.sr.html>.

142 Pursuant to the Regulation on the Organization of Work During the State of Emergency adopted by the Government of the Republic of Serbia, the Ministry of the Interior introduced measures which permitted workers older than 60 years of age with health problems to be released from their work obligation while retaining the right to be remunerated at the amount established by the general enactment and the employment contract during the interruption of work caused by the decision of the competent state authorities or those of the employer. This was due to the lack of health and safety provisions in the workplace, which is a condition for further performance of work related activities, which must not endanger the life and health of employees and other persons, as well as to other situations, in accordance with the law. <https://nsp-policija.org.rs/mere-ministarstva-unutrasnjih-poslova-u-skladu-sa-uredbom-vlade-republike-srbije-organizovanju-rada-za-vreme-vandredne-situacije/>

143 Sources: “Protest radnika u Juri, kažu – rade a nemaju nikakvu zaštitu od koronavirusa,” (“Workers protest at Jura, workers say they are working without any protection from coronavirus”) <https://rs.n1info.com/Vesti/a579325/protest-radnika-u-Juri-kazu-rade-a-nemaju-nikakvu-zastitu-od-koronavirusa.html>; “Branilac uhapšenog radnika ‘Jure’: Nema elemenata krivične odgovornosti” (Defence counsel for the arrested worker at ‘Jura’: no grounds for criminal charges) <https://rs.n1info.com/Vesti/a587551/Uhapseni-radnik-Jure-pred-tuziocem.html>; “Epidemiolozi leskovačkoj ‘Juri’ preporučili obustavu ili redukciju rada, niški pogon zove radnike na posao,” <https://www.juznevesti.com/Ekonomija/Epidemiolozi-leskovačkoj-Juri-preporučili-obustavu-ili-redukciju-rada-niski-pogon-zove-radnike-na-posao.sr.html>; “Radnicima ‘Jure’ ponuđen bonus za rad u toku pandemije,” <https://www.juznevesti.com/Ekonomija/Radnicima-Jure-ponudjen-bonus-za-rad-u-toku-pandemije.sr.html>; “Jura preti radnicima koji su odbili da rade?,” <https://www.danas.rs/ekonomija/jura-preti-radnicima-koji-su-odbili-da-rade/>; “U ‘Juri’ obezbedeni svi uslovi rada u skladu sa propisima,” <https://www.srbija.gov.rs/vest/458573/u-juri-obezbedeni-svi-uslovi-rada-u-skladu-sa-propisima.php>; “Inspekcija kontrolisala niške fabrike, zatečen veći broj radnika od dozvoljenog,” <https://www.juznevesti.com/Ekonomija/Inspekcija-kontrolisala-niske-fabrike-zatecen-veci-broj-radnika-od-dozvoljenog.sr.html>; “‘Jura’ preti otkazom zbog nenošenja maske, u sindikatu kažu obračun sa štrajkačima,” <https://www.juznevesti.com/Ekonomija/Jura-preti-otkazom-zbog-nenošenja-maske-u-sindikatu-kazu-obracun-sa-strajkacima.sr.html>; “Inspekcija obolelo od korone,” [http://rs.n1info.com/Vesti/a600398/Povecava-se-broj-zarazenih-u-Leskovcu-stizu-rezultati-testiranja-iz-Jure.html](https://www.juznevesti.com/Drushtvo/U-leskovackoj-Juri-57-radnika-obolelo-od-korone.sr.html?fbclid=IwAR1g8jjUVMRv9_AsgP9yIhp5281ALnMvFsOe9RAWEGnHnA_jG877Y_-4mUg; “Povećava se broj zaraženih u Leskovcu, stižu rezultati testiranja iz Jure,” <a href=)

Simultaneously, the management decided to proceed with the minimum amount of work. The Crisis Headquarters issued its opinion, of which the employer was informed, and the number of workers working was instantaneously limited. After the investigation was completed, the Minister of Labor issued a statement saying that the work process at Jura had been harmonized with worker protection measures. The management of Jura decided to ignore these recommendations just two weeks after they had been issued and asked all the workers to go back to work. Another inspection was conducted citing an aggravated breach of health and safety measures, yet it failed to disclose the nature of preventive measures that would be implemented. A new statement by the labor inspector published in the media offered an entirely different assessment than that of the inspection process, stating that Jura had observed all the regulations upon an employer, and as far as regulations relating to the number of workers and social distancing during the work process were concerned, they did not come under the remit of the labor inspection. Yet only a few days after the inspection there was an outbreak of COVID-19 at one of the Jura factories in Leskovac as a result of the absence of health and safety measures in the workplace. In the meantime, the employer had tried to fire the union trustee working at the company.

III. Workers who switched to working from home

The Decree adopted by the Serbian Government introducing the possibility of work from home did not provide a sufficient normative framework to employers or employees for the implementation of this option. Various practical problems arose during the implementation phase which directly or indirectly resulted in further reductions of the legal minimum of labor rights.

The Labor Law offers a possibility for the employment relationship to be established for work outside the employer's premises¹⁴⁴ (Article 42). In this case, the employment contract, besides containing the mandatory articles in the contract pursuant to the Law, must also contain information pertaining to:

duration of working hours according to work standards, (i.e., it is necessary to stipulate the amount of time an employee needs to spend on producing one unit of work); the manner of supervision of work and work quality of the employee (for example, by submitting daily or weekly reports on work and products of their work); work equipment which the employer is obliged to procure, install, and maintain (such as computers and internet cards); usage of the employee's work equipment, and compensation for such usage (for example, the use of private mobile phones for work related matters); compensation for other work related costs and the method of their determination (such as communication costs).

During the state of emergency, Serbia adopted two legislative acts relating to remote work and work from home: The Decree on the Organization of Operation of Employers During the State of Emergency¹⁴⁵ (hereafter: Decree) and the Decision on the Suspension of the Work of Institutions for Pupils and Student Standards Founded by the Republic of Serbia¹⁴⁶ (hereafter: Decision). The Decree establishes an obligation on the part of the employer to provide the employee with a possibility of work away from company premises through remote work and work from home. This obligation refers to all positions where such work can be organized in accordance with the general enactment and employment contract. In case this is not possible, the employer may issue a decision to provide for such a possibility, if his operational regime so permits, which derogates from the provision of the Labor Law, which stipulates that remote work or work from home be regulated through a mutual agreement between the employer and the employee by means of an employment contract or its annex.¹⁴⁷ Nevertheless, the aforementioned possibility in the Decree is not unconstitutional as it is in accordance with the emergency powers of the government during the state of emergency, which permit a limiting of human rights, including the right to work, to the extent to which is strictly necessary. The Decree also stipulates the mandatory elements in an employer's decision on remote work or work from home as follows: the duration of working hours and manner of supervision of work performance of the employee. Additionally, it establishes the obligation on the part of the employer to maintain records of employees working away from the employer's premises. As for the Decision, it instructs the heads of these institutions to publish a work plan of their institution during the cessation of work, according to which the employees will per-

144 The LL, "RS Official Gazette," No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - CC decision, 113/2017 and 95/2018 - authentic interpretation), Article 42.

145 Decree on the Organization of the Operation of Employers During the State of Emergency, ("RS Official Gazette," No. 31/2020

146 Decision on the suspension of work of institutions for pupils and student standard founded by the Republic of Serbia "RS Official Gazette," No. 32/2020.

147 LL, Article 42, Paragraph 3

form the majority of their tasks from home. In addition, the Minister of State Administration and Local Self-Government issued a Recommendation for organizing work in public administrations and state institutions¹⁴⁸ (hereafter: Recommendation) stating that work from home should be a priority for persons suffering from chronic illnesses, for persons over the age of 60, and for parents of children younger than 12 years of age, especially if they are single parents or the other parent has been conscripted for civil requisition. Additionally the Recommendation also lists that this type of work should be conducted in accordance with the work plan established by the employer, i.e., the manager, and which stipulates the obligations of employees regarding work distribution. Also, it is recommended that work plans be prepared weekly. The Recommendation indicates that employees, if working remotely, must: be contactable by phone or via electronic or other immediate communication by their immediate superior; submit their work for information or approval purposes; act in accordance with the established civil requisition. The Ministry of Labor, Employment, Veterans' and Social Affairs (hereafter: MoLEVSA) stated that the Recommendation should also be applicable to employers in the private sector, provided the activities of the company allow it.¹⁴⁹

Pursuant to Article 7 of the ICESCR, the States Parties recognize the right of everyone to the enjoyment of just and favorable conditions of work which, among others, include the right to rest and reasonable limitation of working hours.¹⁵⁰ In addition, Article 2 of the RESC establishes an obligation of the States Parties to ensure the effective exercise of the right to just conditions of work, which includes a provision of reasonable daily and weekly working hours.¹⁵¹ Pursuant to the Framework Agreement on Telework,¹⁵² concluded in 2001 between European social partners, the following employer's obligations are established: ensuring the access to technical support as well as covering of costs stemming directly from the work, such as those related to communication; the occupational health and safety of the teleworker (including informing the teleworkers on the aspects of work with display screen equipment); preventing the tele-

worker from being isolated from the rest of the working community in the company (for example, by ensuring regular meetings between teleworkers and their colleagues); ensuring training for the use of technical equipment and for familiarizing teleworkers with protection of data used and processed by the teleworker (by informing the teleworker of any relevant rules and regulations of the employer); respecting the teleworker's privacy (if their work is part of any kind of monitoring system, it needs to be proportionate to the objective, of which the teleworker must be informed); providing the equipment necessary for work (including the provision, installation, and maintenance of equipment); and maintaining the conditions of remote work. This agreement also establishes an equivalence between the workload and performance of an employee working remotely comparable to that of an employee working at the employer's premises.

In light of the aforementioned international standards concerning the right to just and favorable working conditions and the European standards for telework, the main drawback of the legislative acts adopted by the government during the state of emergency is that they do not contain provisions contained in the LA¹⁵³ concerning: work equipment which the employer is obliged to procure, install, and maintain; the usage of employee's work equipment and compensation for such usage; and compensation for other costs of work and the method of their determination (such as costs relating to the use of internet, communication, and IT equipment, etc.). These legislative acts issued by the Serbian Government also lack the minimum requirements that employers are obliged to meet according to the Ordinance on preventative measures for safe and healthy work with display screen equipment.¹⁵⁴

Furthermore, the government failed to regulate the additional protection of employees, the need for which could have been expected to arise, in order to preserve just and favorable working conditions in what, for the majority of employers and employees, would have been changed circumstances. Besides failing to stipulate instructions regarding methods for monitoring the work of employees, also lacking was a ban on conducting business com-

148 Government of the Republic of Serbia, https://www.media.srbija.gov.rs/medsrp/dokumenti/preporuka227_cyr.pdf

149 The Ministry of Labor, Employment, and Veterans' and Social Affairs, "Detaljno objašnjenje prava i obaveza radnika i poslodavaca u toku vanrednog stanja," (Detailed explanation of the rights and obligations of employers and employees during a state of emergency), <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/detaljno-objasnjenje-prava-i-obaveza-radnika-i-poslodavaca-u-toku-vanrednog-stanja>

150 The Law on the Ratification of the International Covenant on Economic, Social, and Cultural Rights, "SFRY Official Gazette," No. 7/71

151 The Law on the Ratification of the Revised European Social Charter, "RS Official Gazette – International Agreements," No. 42/09.

152 Framework Agreement on Telework, ETUC, UNICE/UEAPME and CEEP, 2001.

153 LL, Article 42, Paragraph 3, Item 3)-5).

154 "RS Official Gazette," No. 106/2009, 93/2013 i 86/2019. The demands from this Ordinance, among other things refer to: display screen, keyboard, work desk, work surface, and work chair.

munication with the employees outside their working hours,¹⁵⁵ which could have been accomplished through the clear stipulation of periods (for example, before the beginning and after the end of working hours, during weekends and national holidays) - and means of communication (for example, by telephone, mobile phone applications such as Viber and WhatsApp, computer programs for electronic mail and remote communication such as Skype, etc.). The government, or rather the line ministry, opted for a reactionary approach to these negative trends in work relations. This is why it was only after the confusion regarding the modalities of work from home had arisen, following the introduction of the state of emergency, that the Ministry rejected the possibility of paying out salaries lower than stipulated in the work contract in cases of working from home.¹⁵⁶

How many employees worked from home during the epidemic?

According to official data, in 2019 in Serbia 133,927 employees (i.e., persons engaged for work) worked from home. The largest number of them were regular employees (41,582) or self-employed individuals without employees (70,587).¹⁵⁷ The percentage of people normally working from home was highest among the self-employed (15.7%), contributing family workers (12.7%), and employers (8.6%). The smallest percentage was made up by employees working from home (2%) (Annex 4). There is still no official data regarding the number of persons engaged for work in the public and private sector who, due to the epidemic, were asked to work away from their employer's premises. Employee data analysis on sectors of work and socio-economic professional clusters (Annex 3) shows that for the majority of professions and in the majority of sectors work from home was impossible to organize, either due to the nature of the profession or the nature of the work.

In the public sector, work from home during the pandemic was organized in the areas of education, public administration, defense, and social security, but not for all 333,500 workers, as this was not possible for all profiles (for example, military staff, civil servants dealing with the general public, and technical support staff).

It appears that during the state of emergency due to the pandemic, less than 15% of the entire number of workers could do their work from home (i.e., around 400,000 people).

In case of particularly sensitive groups of employees who worked remotely or from home during the state of emergency, the rights that suffered most, due to failings in measures taken by the government, were those to just and favorable working conditions, particularly regarding employees living in overcrowded housing,¹⁵⁸ employees who did not possess a computer or access to the internet,¹⁵⁹ and employees with family duties such as parents of small children, working single parents, and employees who were caregivers for their immediate family members¹⁶⁰ (for example, those who required special assistance which could not be provided due to the imposed movement restrictions). In addition, in case of the latter, it is important to mention the gender aspect, as women are still inclined to spend far longer than men in performing their family and household tasks, including caring and housework.

155 This is especially true in view of research findings that show that work from home leads to extended working hours, the overlapping of paid work and private lives, and work intensification. Source: Working anytime, anywhere: The effects on the world of work, Joint ILO-Eurofound report, 2017. Suitable legal solutions were introduced in a number of countries, for example, Germany and France. In 2018, Spain enacted the Law on the Protection of Personal Data and the Guarantee of Digital Rights, which recognizes the right to digital disconnection in the workplace, which has to be observed in case of remote work and work from home. Source: Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales, <https://www.boe.es/eli/es/lo/2018/12/05/3/con>.

156 "Đorđević: Apelujem na savest poslodavaca da ne otpuštaju radnike" (Đorđević: I appeal to the conscience of employers not to fire their worker), <http://rs.n1info.com/Vesti/a578845/Ministarstvo-Nema-obojelelih-u-ustanovama-socijalne-zastite.html>

157 Statistical Office of the Republic of Serbia, Workforce in the Republic of Serbia Survey, 2019.

158 According to data for 2016, Serbia has the highest overcrowding rate in Europe – 53,3%. According to household type, the overcrowding rate is highest in households with parents with three or more children – 87,3%, single parents – 77,2%, parents with one child – 63%, and parents with two children – 62,7%. Source: Eurostat, <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tessi170&plugin=1>

159 The latest data shows that in Serbia over one quarter of households do not own a computer (one third of households in rural areas do not own a computer) and one in five households do not have access to the internet (in rural areas nearly one third of households do not have internet access). Source: Statistical Office of the Republic of Serbia, Upotreba informaciono- komunikacionih tehnologija u Republici Srbiji (Use of information and communication technologies in the Republic of Serbia), 2019, <http://publikacije.stat.gov.rs/G2019/Pdf/G201916014.pdf>

160 More favorable measures were introduced in neighboring countries. Bosnia and Herzegovina (the Federation of Bosnia and Herzegovina) enacted a recommendation that parents of children younger than 10 years of age work from home. In Hungary temporary measures were introduced to work legislation relating to remote work, work from home and flexible working hours. Source: "COVID-19 and the world of work: Country policy responses," International Labor Organization, <https://www.ilo.org/global/topics/coronavirus/regional-country-country-responses/lang--en/index.htm>

Protection of female victims of violence

The measures adopted during the state of emergency through changes in the organization of work (cessation or reduction of operations, work from home) affected family relations within most working families, especially those with victims of domestic violence. After the declaration of the state of emergency, the Ministry of Labor used its website to instruct female victims of violence to contact non-governmental organizations that specialize in providing this type of support to women.

After an initial drop in the number of phone calls and messages upon the declaration of the state of emergency, women soon started contacting the Autonomous Women's Center, primarily because the competent state institutions were either not available or provided contradictory or sparse information. Data shows that during this one month the number of women seeking help was three times the normal number. In the majority of cases, women reported various forms of psychological abuse while economic violence became increasingly prominent, especially in the form of withdrawal of support, or threats of it. The number of reported cases of physical violence has been comparatively small, though this number seems to be growing. This suggests that women who live with violent partners/family members have been either unable, or too afraid, to report on incidences of violence during the crisis.

Cases have been documented of women on their way to an institution to report violence being fined for breaking curfew.

A number of women older than 65 contacted us claiming they had reported cases of violence committed by their husbands/partners who were , but that they were only cautioned by police officers, who stated they were unable to institute temporary emergency measures due to the state of emergency. One woman reported a violation of temporary emergency measures, an act sufficient for filing misdemeanor charges and imposing a prison sentence against the perpetrator, yet the police informed the woman that charges would not be filed due to the state of emergency.

Many women and their children, especially those exposed to economic violence, have been facing increasing difficulties in ensuring basic survival and everyday existence. Women in these types of situations also sought support for obtaining material means of subsistence.

Unfortunately, these requests are currently not a priority in the work of social welfare centers. There was a lack of concrete guidelines as to how beneficiaries could access their right to material support during the state of emergency, how they could collect the necessary documents, and if the right to material support could be accessed without a home visit from a social worker. We received various answers to these questions from the social welfare centers, further complicating the provision of material support to women in extremely vulnerable situations.

NGO Representative

Source: TU-NGO Survey

The rights of employees with disabilities whose workplaces had not been adapted to their needs have also been violated. This also applied to persons suffering from health problems such as chronic spine disorders, cardiovascular issues, and eye disorders.¹⁶¹ Another vulnerable group were people who work outside the standard employment relationship based on the labor contract, seeing as such contracts, pursuant to the Labor Law, do not contain mandatory elements referring to work from home. The most vulnerable category among people whose right to just and favorable working conditions has been violated in the case of remote work and work from home must include persons exposed to multiple forms of discrimination, such as people with disabilities working on service contracts or temporary and periodical work contracts and who also live in overcrowded households. This category also includes persons who lost the right to state benefits during the state of emergency. As stated previously, the measures imposed by the government too often provided contradictory, sporadic, and belated solutions to issues of individual vulnerable groups of persons engaged for work. This was particularly evident in the case of rights of employees with family obligations. For example, the **Recommendation for organization of work in public administrations and state institutions implies that ensuring a possibility of work from home should be a priority for parents of children younger than 12**

¹⁶¹ The Government of the Kingdom of Spain offered workers working from home an option of temporary self-assessment regarding health and safety risks in the workplace. Source: "COVID-19 and the world of work: Country policy responses," International Labour Organization, <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm>.

years of age, especially in cases of single parents or if the other parent has a work obligation. However, this recommendation was non-binding, even though the government had grounds in the Constitution to issue an imperative legislative act in this particular case.¹⁶² This situation made it impossible for many employees to enjoy their right to just and favorable work conditions, especially given that all schools and kindergartens ceased functioning immediately upon the declaration of the state of emergency. The rights of employees who live with family members who require special assistance were particularly affected, as social services providers had great difficulties obtaining movement permits during the state of emergency curfew imposed by the government. It was three weeks before the line ministry issued a statement giving clear instructions regarding this matter¹⁶³ and nearly a month before accelerated procedures for issuing movement permits to social services providers were introduced.¹⁶⁴

Difficult position of single parents

In 2019, there were 49,200 single parents (9,400 men and 39,800 women) living in Serbia, of whom 34,900¹⁶⁵ were employed. In the opinion of non-governmental organisations, this group had to face numerous difficulties during the state of emergency: due to the suspension of work of kindergartens, parents could not go to work because they had no one to take care of their children and many of those with no or with temporary contracts were left without work. Single parents of children with special needs were particularly affected, as they needed to acquire provisions for their home while risking illness themselves. In addition, spending time at home during curfew also became a problem because the everyday dynamics of children's lives had changed and they had difficulties adjusting.

Single mothers often inquired about their right to be absent from work due to having no one to babysit while they were at work. Some were working in the private sector and some in the public, but neither group received information pertaining to whether single mothers had the right to be absent from work without threat of dismissal.

NGO representative

Source: TU-NGO Survey

IV. Persons in precarious forms of labor

According to the LL, working people without employment contracts have almost no rights compared to other employees. Among other things, and essential to understanding their predicament during the state of emergency, they have no right to paid leave and could not be covered by measures instituted by employers pursuant to Articles 116 and 117 of the LL, described in the previous section. In addition, when terminating certain labor agreements (temporary and periodical work contracts, contracts for the supply of services, as well as other forms of contracts which appear comparatively rarely), the employer is not obliged to give reasons for dismissal nor institute any dismissal procedure. These workers do not have the right to severance pay if let go, are not covered by redundancy provisions, and do not have the right to a notice period. Furthermore, they do not have the right to unemployment benefits (with the exception of workers on temporary and periodical work contracts). This makes them particularly vulnerable and easy to dismiss, which is why, together with undeclared workers, they were dismissed at a much higher rate during the first week of the state of emergency and, in the case of certain employers, in advance of it. The same applies to seasonal workers and workers hired via youth and student cooperatives, who, pursuant to current legislation, work exclusively on temporary and periodical work contracts.

In 2019, 71,826¹⁶⁶ persons belonged to this category of workers. Besides having no protection under normal circumstances or during the state of emergency, they have not been included in the state aid measures for ordinary citizens or for the econ-

162 Some neighboring countries introduced more favorable measures for this category of employees. The Government of Montenegro allowed for one working parent of a child younger than 11 years of age (with the exception of health workers and civil servants in specific state institutions) to go on paid leave for the period during which the work of kindergartens and schools was suspended. Source: "COVID-19 and the world of work: Country policy responses," International Labour Organization, <https://www.ilo.org/global/topics/coronavirus/country-responses/lang--en/index.htm>.

163 The Ministry of Labor, Employment, and Veterans' and Social Affairs, "Izdavanje dozvola za kretanje tokom policijskog časa" (Issuing of movement permits during curfew), <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/izdavanje-dozvola-za-kretanje-tokom-policijskog-casa>

164 "Elektronski zahtevi za dozvole za kretanje onima koji brinu o korisnicima socijalne zaštite," (Online requests for movement permits for carers of users of social services), <https://www.danas.rs/drustvo/elektronski-zahtevi-za-dozvole-za-kretanje-onima-koji-brinu-o-korisnicima-socijalne-zastite/>.

165 Source: Eurostat, Labor Force Survey Database.

166 Statistical Office of the Republic of Serbia, registered employment database, <https://data.stat.gov.rs/?caller=SDDB>.

omy. Employers are free to dismiss them without repercussions, as they do not qualify as employer dismissals (employers may dismiss a maximum 10% of workers and still qualify for state aid). They also do not count in the calculation for state aid that an employer receives; the amount of one minimum salary per employee (and not per persons “engaged for work”). Given that their position is also not regulated by the LL, they are not covered (either under normal circumstances or in the case of a state of emergency) by the provisions regulating work away from employers’ premises (remote work and work from home). This means that the obligations of the employer regarding work from home (such as the obligation of determining working hours) are not applicable to this category of worker. Consequently, this has, in all likelihood, led to an increase of their workload, thus violating their right to just and favorable working conditions and upsetting the balance between their private and work life. They were likely further stressed by the inability to have breaks from work or enjoy daily rest during the time when movement outside the home was permitted, etc. Contrastingly, during the state of emergency, the government did allow recipients of public funds to, without prior consent from the Commission for Granting Consent for New Employment and Additional Work Engagement with the Beneficiaries of Public Funds, maintain a number of persons working on contracts for the supply of services, as well as temporary and periodical work contracts, hired through youth and student cooperatives and similar level engagements, in the same manner as before the declaration of the state of emergency.¹⁶⁷

Many of the most vulnerable workers were certainly those who had no other source of income and had remained without work from the beginning of the state of emergency. Such workers do not enjoy judicial protection in labor disputes and have to resolve their disputes with the employer through regular litigation processes, thus making judicial protection fairly inefficient. Seeing as abuse of position in extending hours of work outside the employment relationship has become the norm, it was only natural that during the state of emergency the persons most affected were those workers who (contrary to the law) worked for longer periods for the same employer on one of the above mentioned contracts and who lost their work without a possibility of recourse to work inspection or the courts.

¹⁶⁷ Decree on the Procedure for Granting Consent for New Employment and Additional Work Engagement with the Beneficiary of Public Funds. “RS Official Gazette,” No. 113/2013, 21/2014, 66/2014, 118/2014, 22/2015, 59/2015, 62/2019 i 50/2020, Article 8 Paragraph 6.

V. Persons engaged for work in the informal economy

The ILO defines persons engaged for work in the informal economy as persons doing paid work (either self-employed or with an employer) which is not registered, regulated, or protected by extant laws or other regulations, as well as unpaid work in a company generating some level of income. They can also be identified by not having an employment contract or work engagement, individual or collective work rights, and having no social security coverage.¹⁶⁸

Serbian legislation does not recognize the legal status of persons engaged for work in the informal economy. The only legal provision that refers to this category is Article 32, Paragraph 2 of the LL, which states that if an employee fails to conclude the employment contract with an employer in conformity with the law, it is deemed that the employee has established the employment relationship for an indefinite period of time.¹⁶⁹ Apart from having the right to social protection (such as financial support), these workers’ rights are not guaranteed nor are they in any way recognized by the legal system of the Republic of Serbia.

“Most people enter the informal economy not by choice, but as a consequence of a lack of opportunities in the formal economy and in the absence of other means of livelihood. One in five employees in Serbia works in the informal sector.”¹⁷⁰ In 2017, 579,200 workers were reported as working in the informal economy, of whom around 50% were informally self-employed.¹⁷¹

¹⁶⁸ Guidelines concerning a statistical definition of informal employment, https://www.ilo.org/global/statistics-and-databases/standards-and-guidelines/guidelines-adopted-by-international-conferences-of-labour-statisticians/WCMS_087622/lang--en/index.htm

¹⁶⁹ This legal fiction is an attempt to ensure minimum legal protection for those workers who have been unlawfully engaged (and are colloquially known as undeclared workers or informal workers).

¹⁷⁰ Data provided by the Statistical Office of the Republic of Serbia (ARS) and ILOSTAT databases, quoted according to: Sarita Bradaš, Mario Reljanović, *Indikatori dostojanstvenog rada u Srbiji* (Indicators of Dignified Work in Serbia), Belgrade, 2019 (hereafter: Bradaš, Reljanović), p.6.

¹⁷¹ Bradaš, Reljanović, p. 6.

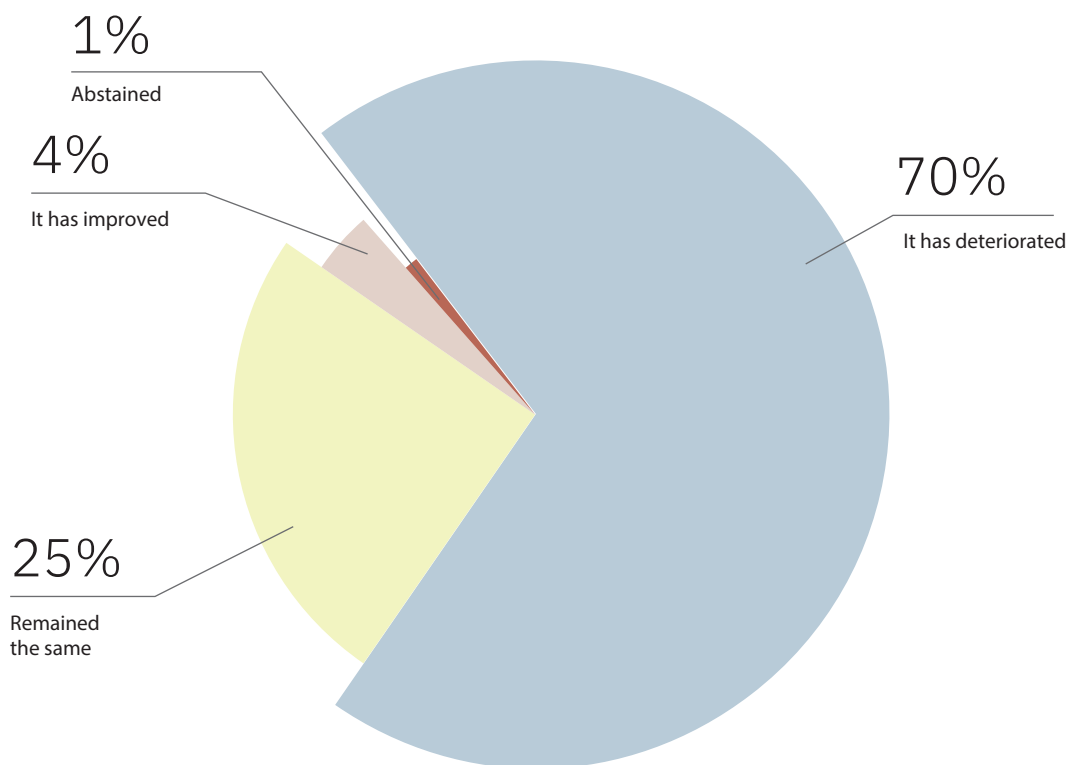


Image 5. Assessment of the financial situation compared to period before the epidemic

Source: Ipsos, COVID-19 i rad u neformalnoj ekonomiji (COVID-19 and work in the informal economy), author's chart

Workers in the informal economy belong to a particularly affected category for a number of reasons and as a consequence of multiple exclusions:

1. their work status in the eyes of the law is precarious because there is no formal legal basis for hiring them;
2. no protective equipment is required in the workplace - this does not only refer to the self-employed, where the equipment is largely unaffordable due to high costs, but also to workers informally hired by employers who wish to cut costs;
3. the informal work they do is often their only source of income;
4. they do not have access to social security coverage, as they are unregistered workers and do not pay contributions.

All these vulnerability factors became particularly prominent after the onset of the COVID-19 pandemic, which further exacerbated their negative effects.

Informal workers found themselves among the first who were left without work, as they enjoyed no legal protection. For those whose only source of income derived from the informal economy, the risk of poverty only increased, both for them and for their family members.

All informal workers, without exception, were prevented from using public transport during the state of emergency, as they could only obtain the necessary permits with a work order form the employer. This category of worker was unable to meet this formal requirement, with neither the standing of being employers themselves or of having an employer.

The self-employed in the informal sector, including street vendors of new and second hand goods, various craftsmen and home repair technicians, market vendors, home help, musicians, all informal workers in the hospitality industry and similar sectors, and seasonal workers who could not offer their services because it was either not permitted or was not required during the state of emergency were left with no income. Not all

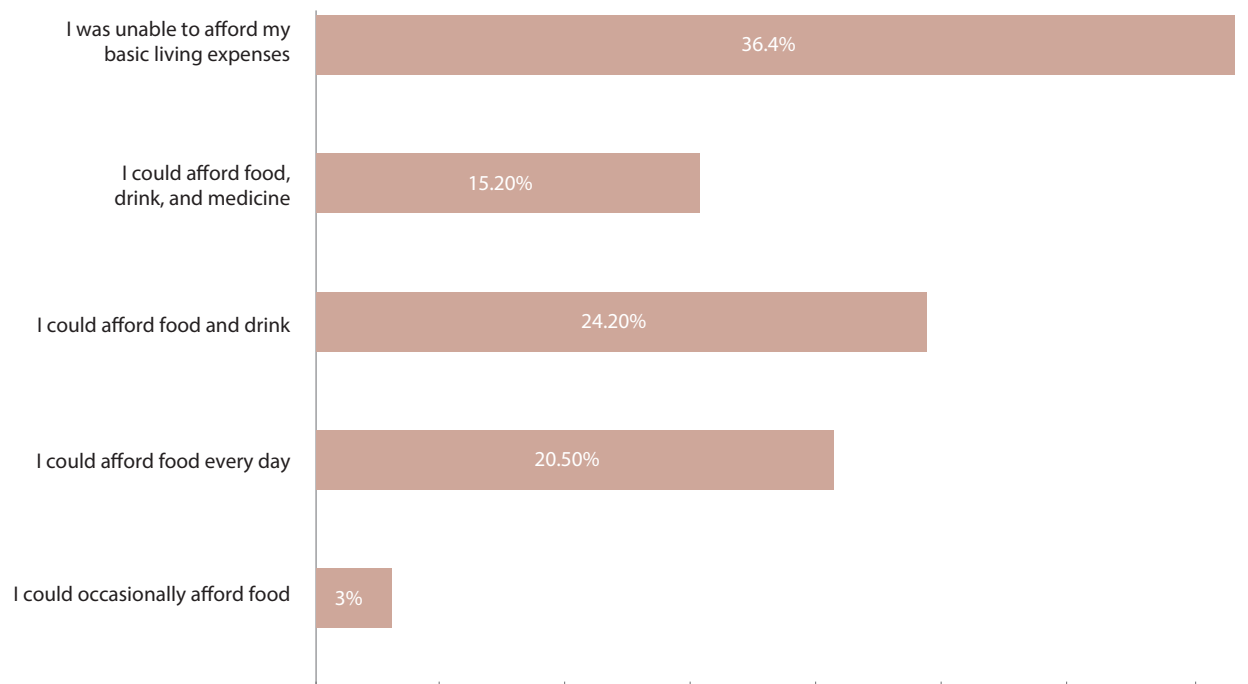


Image 6. Assessment of ability to afford basic living expenses

Source: Ipsos, COVID-19 i rad u neformalnoj ekonomiji (COVID-19 and work in the informal economy), author's chart

the workers in this category were exposed to the same level of risk – the most vulnerable were those categories for whom this type of work represented the only source of income both for them and their family members, but also the elderly who, due to movement restrictions, were left with no possibility of doing any kind of work.¹⁷² A complete lack of income over a period of several weeks caused the poorest members of this category to go without food for several days. This is corroborated by a number of appeals by individuals and non-governmental organizations, especially those concerned with the position of the Roma population.¹⁷³

¹⁷² As a rule, these people were not beneficiaries of an old-age pension or any other type of pension, or the pension they did receive was not sufficient for them to afford even the basic living expenses.

¹⁷³ A11, <https://www.a11initiative.org/en/european-court-of-human-rights-has-initiated-procedure-against-serbia-for-lack-of-support-for-the-most-vulnerable-in-the-fight-against-coronavirus/>; Praxis, <https://www.praxis.org.rs/index.php/sr/praxis-in-action/status-and-socioeconomic-rights/item/1556-appeal-to-the-government-of-the-republic-of-serbia-assistance-in-food-for-the-most-vulnerable-urgently-needed>; FRS, <http://www.frs.org.rs/neophodno-je-hitno-preduzimanje-mera-za-zastitu-najugrozenijih-tokom-borbe-protiv-virusa-sars-cov-2/>, <http://www.frs.org.rs/krov-nad-glavom-zahteva-od-drzave-da-pomogne-najugrozenijima/>

The research COVID-19 and work in informal economy¹⁷⁴ shows that the majority of those working for an employer in the informal economy were left with no income due to being either furloughed (45.2%), or having become unemployed (17.5%). Among the self-employed, over half (54.3%) worked periodically and 30.4% had no work whatsoever during the state of emergency. A lack of income and reduction in the quantity of work resulted in a deterioration of the financial situation of 70% of the participants in the survey (Image 5).

More than one third of the workers in the informal economy were left with no income because they had either lost their work, were furloughed, or were self-employed without any work and therefore could not afford their basic living expenses. Only one fifth could afford food every day (Image 6).

The lack of protective equipment became increasingly obvious among those working in the informal economy, whether self-employed or working for an employer. This is because their extremely vulnerable position and lack of legal protection prevented them from asking employers for adequate protection in the workplace.¹⁷⁵ The absence of protective equipment also must have had an extremely negative effect on workers in the informal economy whose activities either involved direct contact

¹⁷⁴ Ibid

¹⁷⁵ "Zbog rada na crno ne smeju da se žale na maske," (They do not dare complain about face masks because they are unregistered), <https://www.danas.rs/ekonomija/zbog-rada-na-crno-ne-smeju-da-se-zale-na-maske/>

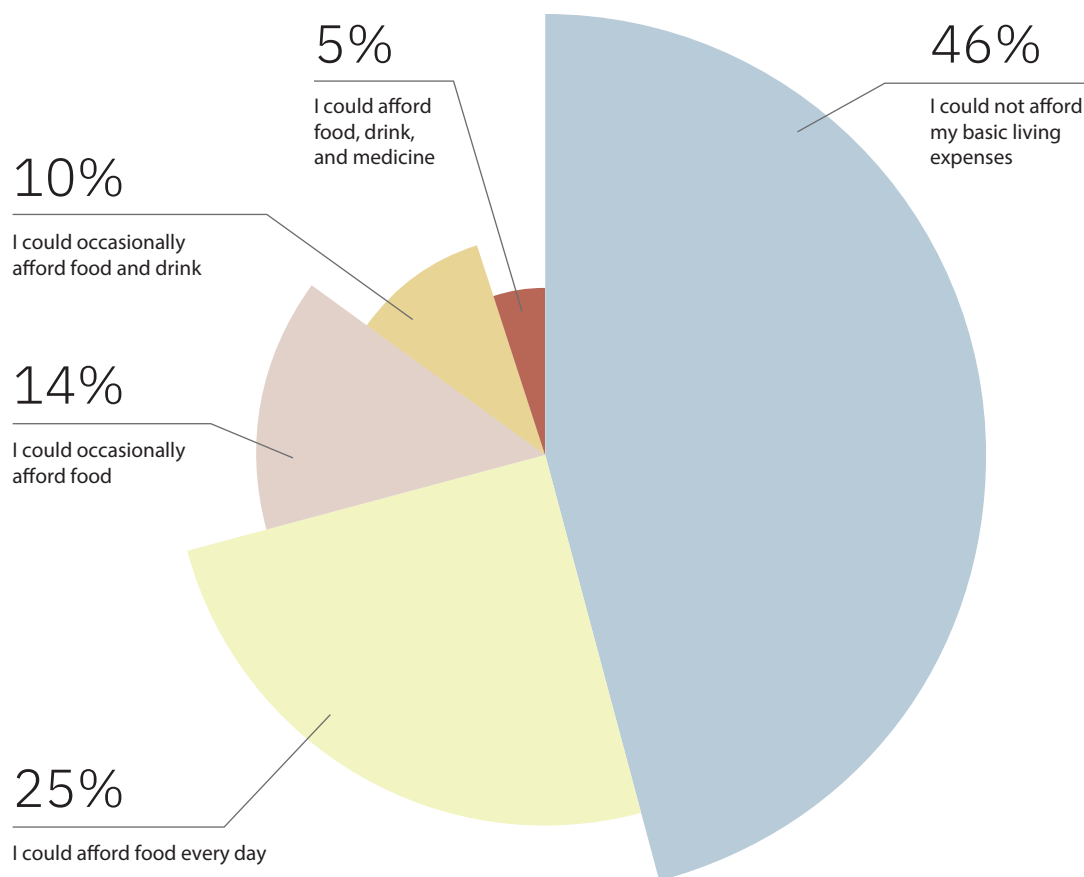


Image 7. Ability of collectors of secondary raw materials to afford basic living expenses

Source: Ipsos, COVID-19 i rad u neformalnoj ekonomiji (COVID-19 and work in the informal economy, author's chart)¹⁷⁸

with people or direct contact with communal waste. Here we are mainly referring to collectors of secondary raw materials. Protective equipment collected during the epidemic and distributed with the help of a number of donors, civil society organizations, and units of local self-government were far from sufficient to satisfy the needs of this section of the population. One of the risks that became especially prominent during the epidemic and increased the risk of contagion was the (lack of) hygiene in the households of informal workers from the poorest strata of society. They were particularly vulnerable in often not having access to basic infrastructure, while at the same time coming in direct contact with a wider number of people or objects potentially contaminated with the virus. According to latest official data, around 500 Roma families do not have access to clean water, of whom 70% rely on the collection of secondary raw materials as their only source of income.

According to data published by non-governmental organizations, this number is even higher.

Due to their multi-level vulnerability and increased risk of poverty, the ILO has called on all countries to expand their social protection programs to include workers in the informal sector in their food assistance programs and also to adopt guidelines whose primary aim would be to protect this category of workers from the virus.

In this respect, the ILO lists street vendors, house help, food delivery workers, collectors of secondary raw materials, and taxi drivers.¹⁷⁶ Unlike some countries in the region,¹⁷⁷ none of the measures adopted by Serbia during the state of emergency

¹⁷⁶ International Labour Organization, COVID-19 crisis and the informal economy, pp. 4-5.

¹⁷⁷ Some countries in the region implemented measures with the aim of assisting this category of workers in surviving their loss of income due to the epidemic. For example, Montenegro approved one-time payments to the amount of 57USD to all officially registered unemployed persons who did not have the right to financial or material benefits. Source: "COVID-19 and the world of work: Country policy responses," International Labour Organization, <https://www.ilo.org/global/topics/coronavirus/country-responses/lang--en/index>.

¹⁷⁸ The research was conducted during the period between June 26 and July 9, 2020, on a sample of 100 participants between the ages of 18-65.

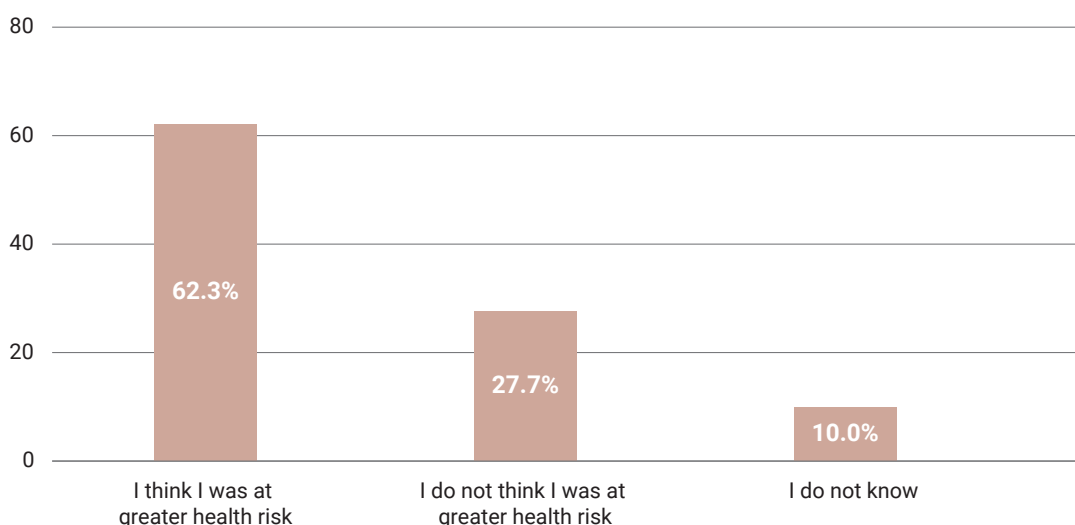


Image 8. Assessment of health risks during the state of emergency

Source: Ipsos, COVID-19 i rad u neformalnoj ekonomiji, (COVID-19 and work in the informal economy), author's chart

were directly concerned with workers in the informal economy, nor was there any indication that these workers would be recognized in future regulations or strategic documents as a category that requires systemic help and support.

Within the category of workers in the informal economy, collectors of secondary raw materials have been recognized as a particularly vulnerable group who, even before the coronavirus outbreak, were exposed to multiple poverty risks which only increased after the outbreak of the pandemic.

Collectors of secondary raw materials

According to estimates,¹⁷⁹ there are around 150,000 collectors of secondary raw materials in Serbia. For around 10,000 families, i.e., 55,000 individuals, this activity represents their only source of income. For the remaining 100,000 individuals, the collection of secondary raw materials represents an additional source of income. According to data from non-official sources, the largest number of secondary raw materials collectors belong to the poorest strata of the Roma population (internally displaced Roma / inhabitants living in informal (substandard) settlements).

Results of a study conducted by the Ipsos Strategic Marketing¹⁸⁰ agency show that the already difficult financial situation that the collectors of secondary raw materials found themselves in deteriorated even further during the state of emergency, as was indicated by 85.6% of participants, since most of them had either stopped working (41.4%) or worked to a much lesser extent (39.1%). This resulted in an inability to afford basic living expenses for nearly half the participants (46%), while one quarter had enough resources to afford food every day, and one person in ten could occasionally afford food (Image 7).

The majority of collectors of secondary raw materials working during the state of emergency had to acquire their own protective equipment (57.9%) and nearly one quarter (23.8%) did not use gloves or face masks. When asked to estimate the risks to their health during the state of emergency, the majority of the participants believed they were exposed to a much higher health risk compared to the majority of the population of Serbia (Image 8).

Most of the ensuing problems fit into several categories:

- After the declaration of the state of emergency and introduction of curfews, which on several occasions lasted up to 84 hours, collectors of secondary raw materials faced the loss of all or most of their income and became unable to afford basic living expenses for them and their families.

¹⁷⁹ Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Inclusion of Informal Collectors into the Evolving Waste Management System in Serbia - A Roadmap for Integration.

¹⁸⁰ Ibid.

- Owing to the nature of their work, which involves direct contact with the waste disposed by other citizens and given the relatively high price levels of necessary protective equipment, the health risks that collectors of secondary raw materials have been exposed to has increased exponentially during the COVID-19 pandemic since their work involves an extremely high risk of infection.
- The majority of collectors of secondary raw materials live in informal settlements, most of which are beneath typical definitions of human dignity and have no access to basic infrastructure such as drinking water, electricity, and sewage. This situation makes it impossible to maintain the basic level of hygiene necessary to ward off infection. Persons performing this high risk activity during their working hours have therefore been exposed to a large number of potentially high-risk materials which they collected with no protective equipment whatsoever (because they could not afford it), after which they returned to their homes where they were likely to come into contact with members of their family and the community without having the means to use recommended disinfectants.
- Having no source of electricity or access to electronic, printed, or other media outlets and sources of information prevented many of these workers from becoming fully acquainted with, and in a timely fashion, all the risks to which they were exposed.
- Seeing as the poorest of the collectors of secondary raw materials mainly live in overcrowded and multi-generation households, the elderly members of these households found themselves in a particularly risky situation since social distancing and isolation were likely impossible.

Collectors of secondary raw materials have not been specifically recognized as a category of workers within the informal economy who run a higher risk of infection and poverty. Systemic measures did not yield satisfactory results and though aid from the donor community and civil society organizations was present, it was far from sufficient.

It is also important to mention the difficult position of agricultural producers not working on registered farms, who according to data from 2017 numbered 231,500, the majority being women.¹⁸¹

Farmers found themselves in a difficult situation due to movement restrictions and a complete movement ban for persons over the age of 70 coupled with extended curfews. Farmers over

the age of 70 found themselves entirely unable to work. Younger farmers were allowed to work, but in aberrant conditions which likely could not ensure necessary yields.¹⁸²

Farmers did receive some state aid,¹⁸³ but only upon meeting certain conditions – of particular importance were; being registered as commercial farms or farming certain crops and animals.¹⁸⁴ This means that farmers working in the informal economy were not covered by these measures. The same applied to farmers who were not registered in the Registry of Farms (with an active status), as well as those who produced agricultural produce not covered by the support measures. Certain farmers who were prevented from working, as well as from taking care of their farms and equipment (bee-keepers, for example), have expressed the belief that the compensation they received from the state for damages suffered due to the imposed restrictions on work and movement were insufficient and could not make up for the damages inflicted by the measures introduced by the authorities.¹⁸⁵

VI. Persons engaged for work over the age of 65

The total ban on movement for persons over the age of 65 and 70 respectively, introduced in the Decree on Emergency State Measures, resulted in their total exclusion from work and directly violated the right to work (especially given that the work of many pensioners cannot be done from home). According to available data, the percentage of pensioners engaged for work was not negligible. In 2019 there were 167,500 people over the age of 65 who were engaged for work, 44% of whom were over the age of 70. Data show that the majority were engaged in the informal sector (60%) and that the majority were working in agriculture

¹⁸² According to data published by the Red Cross of Serbia, the crisis particularly affected older people in rural areas due to their inability to sell their produce, which meant many became dependent on social assistance who previously had not required it. Source: "Održana online konferencija 'Siromaštvo u periodu pandemije Covid-19 virusa i u post-kriznom periodu u Republici Srbiji,'" (Online conference on 'Poverty during the COVID-19 virus pandemic in the post-crisis period in the Republic of Serbia), <http://socijalnoukljucivanje.gov.rs/rs/odrzana-online-konferencija-siromastvo-u-periodu-pandemije-covid-19-virusa-i-u-post-kriznom-periodu-u-republici-srbiji/>.

¹⁸³ Decree on Financial Support to Agricultural Holdings Aimed at Mitigating the Consequences of the COVID-19 Disease Caused by SARS-CoV-2 Virus. "RS Official Gazette," No. 57/2020.

¹⁸⁴ Even the farmers growing crops that qualified for social assistance were unable to apply for it if they had not registered this change in the Registry. Source: "Agrosavetnik, April 26, 2020," <http://www.dzenarika.net/agrosavetnik-19-april-2020-2/>.

¹⁸⁵ "Poljoprivrednici nezadovoljni najavljenom pomoći države," (Farmers dissatisfied with the announced social assistance measures), <https://direktno.rs/vesti/drustvo-i-ekonomija/267940/poljoprivrednici-nezadovoljni-najavljenom-pomoci-drzave.html>.

(52%), with many engaged in home help and producing goods and services for personal consumption (30%). Regarding professional status, persons over the age of 65 were; self-employed without employees (71%), contributing family workers (18%), or workers (11%). The data concerning the type of employment among the elderly indicate that the reasons for their employment were existential in nature - agriculture and production for personal consumption represent survival strategies in rural areas where poverty is more accentuated (the average income of persons over the age of 65 in rural areas is one third lower than that of their peers in urban areas).

A similar movement ban for persons younger than 18 and older than 65 years of age introduced in Bosnia and Herzegovina soon after the breakout of the pandemic was met with a decision by the Constitutional Court of Bosnia and Herzegovina stating that this measure violated the human rights of these age groups and that it stood contrary to the practices of the European Court of Human Rights in view of the fact that: no arguments were provided as to why certain age groups ran a greater risk of being infected, that the possibility of introducing lighter measures had not been considered, and that the measures were not strictly limited in time in order to ensure their duration was no longer than was strictly necessary pursuant to Article 2 of Protocol 4 and the European Convention for the Protection of Human Rights and Fundamental Freedoms (which describes the freedom of movement as a human right), i.e., to ensure they can be alleviated or lifted as soon as circumstances allow.¹⁸⁶ All of these objections could also be applied to the movement bans in Serbia, especially targeting persons over the age of 65, who were only later allowed movement in public areas. Therefore, the solution contained in the Decree on Emergency State Measures violates the European Convention for the Protection of Human Rights and Fundamental Freedoms.

These measures certainly had the greatest impact on those persons over the age of 65 who did not have the right to a pension, i.e., persons whose only income before the movement ban was generated through work. Additionally, all persons who were unemployed, i.e., were not engaged for work at the moment the movement ban was imposed, were unable to exercise their right to find employment – they were legally and practically deprived of the possibility to exercise their right to work (excluding rare exceptions able to find work that could be done from home). Persons over the age of 65 and who were engaged for work at the time the movement ban was imposed did not enjoy any

special protection from loss of employment – employers could dismiss them just like any other employee, following standard procedures.

Measures adopted by the state in order to help this category were neither properly defined nor efficient - they did not focus on elderly persons who were left without income due to the measures introduced during the state of emergency nor did they solve their lack of income necessary to survive for the period of nearly three months of the measures' duration. Pensioners received a one-off payment of four thousand dinars (about 35 Euros); in addition, they were granted the possibility of receiving the equivalent of one hundred additional Euros without further administrative procedures. Persons older than 65 registered as entrepreneurs could apply for one of the state aid measures for businesses, under the same conditions as all other employers.¹⁸⁷

Violation of pensioners' right to work

The adoption of the movement ban made it impossible for pensioners engaged for work to leave their homes and, therefore, to go to work. According to the Pensioners' Association of Stari Grad, the majority of pensioners work in selling crafts, in building materials, or in grocery shops due to their pensions being too low to live on. For formal reasons, employers were unable to obtain movement permits for these pensioners. Company owners over the age of 65 were unable to work, with the exception of those able to work from home. Informal caregivers attending to the elderly who were themselves older than 65 were unable to do their work, leaving their clients without caregivers. Due to the lack of public transport, younger caregivers were unable to reach the elderly people they had looked after.

NGO representative

Source: TU-NGO Survey

¹⁸⁶ Nakon oduke Ustavnog suda: Izmjene naredbe o zabrani kretanja u Federaciji BiH," (Results of the decision of the Constitutional Court: Amendments to the Decree on Movement Restrictions in Bosnia and Herzegovina), <https://www.slobodnaevropa.org/a/ustavni-sud-naredba-zabanra-kretanja-federacija-bih/30570547.html>.

¹⁸⁷ Albania introduced measures to assist pensioners through support delivered to their home address in the form of financial aid, task support, and food. Bulgaria approved the use of resources from European Structural and Investment Funds for assisting persons over the age of 65 who were partially or entirely unable to take care of themselves. The Government of Montenegro approved one-time pension payments of 65.41 Euros for around 3,500 beneficiaries. Source: "COVID-19 and the world of work: Country policy responses," International Labour Organization, <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm>.

PART THREE

ABSENCE OF EFFICIENT PROTECTION OF WORKERS' RIGHTS

In addition to labor inspectors who, according to the LL and LOSH, were responsible for inspecting health and safety measures at work during the state of emergency, this same responsibility fell under the duties of sanitary inspectors pursuant to the PPIDA.¹⁸⁸ Sanitary inspectors were put in charge of verifying whether all worker protection measures had been put in place and of ordering their implementation, i.e., introducing additional measures depending on the circumstances. According to available information, it appears that the capacity of sanitary inspectors was not used to its full advantage in the case of employers' obligation to introduce appropriate protective measures in the workplace.

188 LPPID, Article 73

The insufficient quantities of basic work equipment as well as human resources in labor inspectorates¹⁸⁹ is a problem that has existed for some time. In a situation when their work became essential in fighting the epidemic and when there was real risk of mass spreading of the virus in the workplace, the state needed to ensure higher efficiency and assistance in the work of these instruments of monitoring employers' compliance. The ILO Convention No. 81 on Labor Inspection and Trade¹⁹⁰ stipulates that labor inspection needs "to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work."¹⁹¹ The Convention clearly states that: "The number of labor inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate."¹⁹² In other words, it is important to ensure an efficient supervision of employers; the formal existence of an inspectorate is far from sufficient if that organ is not discharging its primary duties or if it does not possess sufficient capacities to discharge its duties in accordance with standards that ensure the factual realization of ongoing and prompt control of employers.¹⁹³

Even though the Ministry of Labor, Employment, and Veterans' and Social Affairs claims that "the priority in the work of the Labor Inspectorate was to oversee the implementation of the provisions in Article 4 of the Decree on the Organization of the Operation of Employers During the State of Emergency," during which 1,572 inspections were conducted,¹⁹⁴ it became quickly evident that these standards were not being met in Serbia, a fact further exacerbated during critical moments, when it became necessary to organize, coordinate,

189 In 2018, the work inspectorate employed 246 inspectors, 20% fewer than in 2010. In addition to an insufficient number of inspectors, their age is also a detriment to their work (average age is 53). In 2017, 263 inspectors conducted 53,424 inspections. Source: Balkan Center for Regulatory Reform, National Alliance for Local Economic Development, Funkcionalna analiza republičkih inspekcija sa analizom kapaciteta (Functional analysis of state inspectorates with capacity analysis), 2019, <http://mduls.gov.rs/obavestjenja/funkcionalna-analiza-republičkih-inspekcija/?script=lat>.

190 "FPRY Official Gazette – International Agreements," No.5/56.

191 Article 3, Paragraph 1, subparagraph a) of the Convention 81

192 Article 10 of the Convention 81

193 In their interpretation of the provisions in Convention 81 on the work of labor, inspectorates, and the obligations of states who have ratified it (Republic of Serbia is among them), the Committee of Experts on the Application of Conventions and Recommendations of the ILO requests that they ensure the necessary transport facilities for inspection duties to be performed in case there is no adequate public transport, and to communicate information pertaining to measures taken to reimburse labor inspectors for all travelling and incidental expenses necessary for the performance of their duties. Source: Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020) Labor Inspection Convention, 1947 (No.81) – Angola (Ratification: 1976), https://www.ilo.org/dyn/normlex/en/f?p=NO_RMLXEXPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4020253,102999,Angola,2019.

194 Labor inspectors most often took action in cases of absence of preventive equipment, non-enforcement of other preventive health and safety measures in the workplace and other violations of rights in the area of employment relations (unpaid salaries, compensation of salary, not ensuring transport for employees to their workplace). Source: Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja, "Analiza i rezultati rada Ministarstva za rad, zapošljavanje, boračka i socijalna pitanja," (The Ministry of Labor, Employment, and Veterans' and Social Affairs, "Analysis of the Work of the Ministry of Labor, Employment, Veterans' and Social Affairs"), <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/analiza-i-rezultati-rada-ministarstva-za-rad-zaposljavanje-boracka-i-socijalna-pitanja>.

and implement ongoing activities to demonstrate to employers who had been disregarding health and safety measures in the workplace that their deficiencies would not be tolerated. Isolated and belated reactions were noted that could easily have led to the further spread of the pandemic, i.e., a higher number of infected workers, especially given the lack of adequate public transport, mentioned previously, which further increased the risk of infection among workers and its further spread in the work environment.

The Ministry of Labor, Employment, and Veterans' and Social Affairs launched the E-Guide on the application of Workers' Rights on May 13, 2020, only after the lifting of the state of emergency.¹⁹⁵

These circumstances particularly affected those workers who belonging to groups with a risk for infection, along with front-line workers in contact with persons infected or with the general population (for example, medical workers, grocery workers, pharmacists, etc.).

The rules in force regulating redundancy contained in the LL offer a minimum level of protection for employees hired for an indefinite period of time, while the remaining groups of employees enjoy no protection whatsoever. This fact, coupled with no obligation to provide a notice period in the case of redundancy, represents a violation of the right to reasonable period of notice pursuant to Article 11 of ILO Convention No. 158 on the Termination of Employment at the initiative of the employer.¹⁹⁶ In addition, the state adopted an insufficiently active position in the face of a wave of redundancies and indications that certain employers were violating the LL, issuing a statement explaining that it could not interfere in the work of employers in the private

sector.¹⁹⁷ This is neither in accordance with Serbia's Constitution nor with current labor legislation.

The Decree on Deadlines in Court Proceedings During the State of Emergency, adopted on March 15, 2020,¹⁹⁸ implied that certain deadlines for court proceedings shall cease for the duration of the state of emergency.

This solution is not uncommon and cannot be said to infringe on the right to effective legal remedies, i.e., the right to access to justice. However, due to an insufficient legal framework and the inactivity of labor inspectorates, the temporary absence of judicial protection during the state of emergency meant that certain employees had no means whatsoever of protecting their rights. For example, in cases of illegal dismissals or workplace harassment, the unlawful sending of workers on unpaid leave, and many other similar cases, there was not even a theoretical possibility for an employee to contact an institution that could provide effective protection - they could not count on temporary court injunctions which, in certain cases, could prove efficient.¹⁹⁹ Therefore, if these unlawful decisions placed an employee in a situation where they were denied their right to work, they could not count on any legal mechanisms to which they could resort during the state of emergency. This situation was particularly harmful to the survival of those who, due to the unlawful decision on the part of the employer, were left with no income whatsoever during the state of emergency or whose income was so severely reduced they could not afford basic living expenses.

Redundancies began even before the declaration of the state of emergency. Pursuant to the LL, an employer facing a worker surplus can make redundant those workers whose work are no longer needed. These redundancies are considered individual unless the number of redundancies exceeds certain limits established by law.²⁰⁰ If these limits are exceeded, the employer is required to implement a solution-finding program for employee

195 The Ministry of Labor, Employment, and Veterans' and Social Affairs, "Pokrenut 'E-vodič o pravima zaposlenih'" (Launching of E-Guide on Workers' Rights) zarad, zapošljavanje, boračka i socijalna pitanja, "Pokrenut 'E-vodič o pravima zaposlenih,'" <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/pokrenut-e-vodic-o-pravima-zaposlenih>.

196 "SFRY- Official Gazette - International Agreements," No. 4/84, 7/91. Redundancy pay in these cases cannot be a substitute for a notice period (payment in lieu of a required notice period as described in the Convention), because it does not correspond to the type of notice period (certainty of existence of employment relationship and protection against its sudden cessation; the continuation of professional activities without breaks between two employments), nor can the amount of redundancy pay be considered satisfactory as a means available to an employee whose employment contract has been terminated (the law establishes a minimum of one salary for every three years of work for the employer, except that employees who have worked less than one whole year and have no right to redundancy pay whatsoever).

197 "Vučić o 'Juri': Socijalizam neće da se vrati" ("Vučić on Jura: Socialism is not making a comeback), <https://jugmedia.rs/vucic-o-juri-socijalizam-neece-da-se-vrati/>; "Đorđević zamolio da se ne daju otkaz iroditelj I madeže s posebnim potrebama" (Đorđević against dismissals of parents of children with special needs), <http://rs.n1info.com/Biznis/a582279/Djordjevic-zamolio-da-se-ne-daju-otkazi-roditeljima-dece-s-posebnim-potrebama.html>; "Đorđević: Apelujem nasavestposlodavacadaneotpuštajuradnike" (Đorđević: I appeal to the conscience of employers not to fire their workers), <http://rs.n1info.com/Vesti/a578845/Ministarstvo-Nema-oboletih-u-ustanovama-socijalne-zastite.html>.

198 "RS Official Gazette," No.38/2020.

199 Pursuant to recommendations of the United Nations High Commissioner for Human Rights, it is a priority of any legal system during a pandemic to prevent social exclusion and protect human rights by focusing primarily on cases of violation of constitutional rights. Source: United Nations, Office of the High Commissioner for Human Rights, Coronavirus emergency: challenges for the justice system, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25810&LangID=E>.

200 LL, Article 153.

redundancy. Workers outside the employment relationship enjoy no protection whatsoever and their engagement for work can cease at any point, without any clear basis for the dismissal nor any dismissal process. During the state of emergency, the state did not implement sufficient measures to address this problem in a remotely satisfactory manner and which would likely have prevented mass redundancies. The unions' warnings that this was bound to happen were dismissed and no attempt was made to prevent the impoverishment of the majority of workers who lost their jobs during the state of emergency.

The collective redundancy of workers whose work is no longer required is a legitimate reason for redundancy, but in many cases there is a presence of doubt as to whether the procedure for solution-finding programs for employee redundancy pursuant to the LL has been observed, which would render such redundancies unlawful.²⁰¹ According to field evidence, and in light of relevant legal provisions, in certain cases of collective redundancies, the employers were required to implement solution-finding programs for employee redundancy and failed to do so.²⁰² This resulted in situations where employees were made redundant with immediate effect instead of at the end of a complicated procedure where the solution-finding program is implemented and comments are given by the local union as well as the National Employment Service. It also remains unclear whether the provisions in the LL concerning redundancy pay were observed in cases of employees who were made redundant in this way, seeing as their employment could not be terminated without redundancy pay.²⁰³

It is difficult to calculate the exact number of people who were made redundant during this period, mainly due to the majority of them not being registered with the National Employment Service (an electronic registry was introduced during the state of emergency but many employees were not aware of this, further complicating attempts). Moreover, no reliable data regarding withdrawals from the Central Registry of Compulsory Social Insurance currently exists, which should be more reliable than those from the NES, as they include information on withdrawal

of workers in all forms of labor (not just employees), irrespective of whether they had officially registered as unemployed with NES. The assessment produced by the online employment portal Poslovi Infostud,²⁰⁴ based on research conducted in early April 2020, shows that in the first three waves of redundancies 12% of employees and persons engaged for work lost their jobs in the Serbia, a higher percentage than that published by the NES. Another wave of redundancies and rise in unemployment is expected to hit when the employers who kept their workers on paid leaves or minimum salaries during the state of emergency and continuing crisis will be deciding whether to continue with their operations or declare bankruptcy or liquidation.

For precise figures and measures to be established, all individual and collective redundancies need to be verified by the labor inspectorates.

Following a request made by the organization TUC Nezavisnost, the Social and Economic Council took into consideration an initiative that all collective redundancies be made difficult to put into practice during the state of emergency, but that initiative was rejected.²⁰⁵

There is also no data regarding the number of employers who resorted to alternative solutions for resolving the problem of surplus employees at a time of reduced business, such as: pairing off of employees; switching to part-time work; reducing salaries temporarily; introducing minimum salaries or temporary assignments of work with another employer.

The conditions for receiving unemployment benefits in the Law on Employment and Unemployment Insurance²⁰⁶ left many workers without the right to these types of benefits (all those who did not have an employment contract and all those who have worked for an uninterrupted period of less than 12 months). In addition, the benefit levels that this minority of redundant workers receive is not even remotely sufficient to guarantee the necessary support for families who have lost their income (in the majority of cases it is half the minimum salary, and the majority of redundant workers receive it for a period of only three months). Such low benefit levels are likely to make those

201 Some examples of reports of potentially unlawful dismissals: "Masovna otpuštanja u kompaniji Hačinson u Rumi" (Mass redundancies at Hutchinson in Ruma), <https://sremskevesti.rs/300-ljudi-preko-noći-dobilo-otkaz-u-rumskom-hacisonu-oko-3000-ljudi-radilo-bez-zastite/>, "300 ljudi preko noći dobilo otkaz u rumskom Hačisonu: hiljade ljudi radilo bez zaštite?" (300 redundancies at Hutchinson in Ruma: thousands of people worked without protection), "Otkazi u Norma grupi u Subotici: Radnici nezadovoljni načinom otpuštanja" (Redundancies at Norma Group in Subotica: Workers complain about redundancy procedures), <https://www.maglocistac.rs/otkazi-u-norma-grupi-u-subotici-radnici-nezadovoljni-nacinom-otpuštanja/>. Available data is insufficient to determine whether these collective redundancies were lawful or unlawful.

202 Collective redundancy procedures are regulated by Articles 153 – 160 of the LL

203 LL, Article 158, Paragraph 1

204 "Uticađ pandemije virusa Covid19 na tržište rada u Srbiji" (Impact of Covid 19 virus pandemic on the labor market in Serbia), <https://poslovi.infostud.com/vesti/Uticađ-pandemije-virusa-Covid19-na-trziste-rada-u-Srbiji/54601>.

205 "Đorđević: Apelujem na savest poslodavaca da ne otpuštaju radnike" (Đorđević: I appeal to the conscience of employers not to fire their workers) <http://rs.n1info.com/Vesti/a578845/Ministarstvo-Nema-obolelih-u-ustanovama-socijalne-zastite.html>.

206 "RS Official Gazette," No. 36/2009, 88/2010, 38/2015, 113/2017 and 113/2017 – other law

already vulnerable more so, potentially pushing them below the poverty threshold.

Given the insufficient level of attention in the pre-crisis period for citizens in social need, the situation is expected to remain unchanged in the coming period: Budget rebalancing²⁰⁷ has reduced the funds earmarked for social protection by 408.7 million dinars, mainly in the allocations for non-governmental organizations.

In addition to redundancies and due to the cessation or reduction of company activities, surplus workers have been sent on various types of leave. Pursuant to the LL, employees have the right to several types of paid leave as well as a right to unpaid leave. Many employers faced with reduced levels or the complete cessation of operations (due to general acts adopted by state authorities or decisions of individual employers) took advantage of these possibilities.

Though the LL provides a high level of discretionary rights on the part of the employer for sending an employee on paid leave, the misuse of this regime, as well as of salaries during paid leave, could represent a violation of work rights. Systemic errors also exist that allow the right of certain categories of employees on paid leave to receive the full amount of their salary to go unrecognized.²⁰⁸ One of these is found in the LHI. This Law implies that persons who are absent from work due to compulsory isolation measures for germ carriers or due to contagious diseases in his/her environment have the right to 65% of the salary benefit base.²⁰⁹ This provision has led to interpretations that employees who are believed to be infected and are in compulsory isolation have the right to 65% of the salary benefit base even in situations when they got infected at work or during work related activities (commuting to work). The solutions prescribed by the

LL and HIA,²¹⁰ which designate that full salary be paid out in case of work related illness or injury, have been ignored. These provisions continued to be ignored until the lifting of the state of emergency, but due to the reactions of the general population, especially in response to cases of medical workers who had either become infected or were potentially infected while performing their duties, a rather unusual solution was implemented (from the normative and technical point of view). The Conclusion of the Government²¹¹ recommended that employers pay their employees their full salary, yet as this recommendation was non-binding employers were not required to do so. In the public sector, however, the salaries of medical workers were increased to 100% through amendments to the special collective agreement.²¹²

Unpaid leave is not an adequate reaction of employers to a reduced level of business operations. The right to unpaid leave rests exclusively with the employee if one wishes to take unpaid leave from work for reasons that need not be previously determined either by law or by the employer. Employers do not have the power to enact unpaid leave for their employees or to send an employee on an unpaid leave if he/she has not requested it.

Laying off employees during the state of emergency and then rehiring the same workers after it was lifted represents an abuse of employers' rights to unilaterally rescind contracts of employment and represents the unlawful sending of employees on unpaid leave.

Attention should also be drawn to unpaid work - a situation that occurs more frequently during a state of emergency than under normal conditions. Non-payment of salaries of employees who continue working (regardless of whether they are working from home or on employer's premises) has become far more frequent than ever before. This includes employers whose businesses not only maintained their operations and did not cease work but sometimes far exceeded normal operations (food shops and pharmacies). Using the poor economic situation of the pandemic as an excuse, many such employers committed multiple violations of the LL by not paying their employees' salaries or by paying out only the minimum wage despite having sufficient funds

207 The Decree on Amendments to General Revenues and Receipts, Expenditures, and Expenses of the Budget of the Republic of Serbia for 2020 in order to eliminate harmful consequences due to Covid-19 disease caused by SARS-CoV-2 virus, "RS Official Gazette," No. 60/2020

208 During the course of traditional paid leave or annual leave, employees are paid their full salaries. In case of the unprovoked cessation of work or a reduction in the level of business activities, 60% compensation is paid. The law determines the minimum salary as the absolute minimum. In case of absence pursuant to Article 117, the situation is far more unfavorable to employees and amendments to this solution ought to be considered due to the existence of realistic arguments against why this compensation of salary should be lower than in the cases referred to in Article 116 of the LL. In this case, however, compensation of salary is not determined by law, nor is there a required minimum. Compensation of salary will be paid at the amount determined by the general enactment (collective agreement or ordinance), or employment contract. As this matter is almost never regulated by collective agreements (where these exist) or by employment contracts, in the majority of cases it is the employer who will determine the level of compensation. Available data show that these amounts are far from sufficient - registered examples mainly determined compensation levels at 10-20% of salary.

209 LHI, Article 73, Paragraph 1, Item 4) and Article 95 Paragraph 1

210 LHI, Article 73, Paragraph 1, Item 2) and Article 95, Paragraph 2; LL, Article 115, Item 2

211 The Conclusion of the Government recommendation to employers regarding the provision of the right to salary compensation in the amount of 100% of the salary basis to employees during leave time due to confirmed COVID-19 illness or due to imposed isolation or self-isolation measures due to this illness), "RS Official Gazette," No. 50/2020-10

212 Annex to the Special Collective Agreement for Healthcare Institutions founded by the Republic of Serbia, Autonomous Regions, and Local Self-Government Units, "RS Official Gazette," No.58/2020

to pay regular salaries as determined in the employment contract. Precisely here there is an absence of any mechanism for rectifying these irregularities; the inspectorate can only institute misdemeanor proceedings against the employer, leaving the courts as the only institutions who can determine whether an employer, when paying out the minimum salary or not paying out the full amount, had sufficient means to pay salaries as determined in the employment contract. This is an inefficient way of protecting the basic right of employees to receive salary, which unscrupulous employers have used to undermine legal norms and exploit their employees.

The unpaid leave regime and potential unlawful behavior by many employers has especially affected those employees who were left without most or all of their income in this way. As no comprehensive supervision of the respect for employee rights exists in this regard, many have been placed in the extremely difficult position of being unable to afford basic living expenses.

The measures introduced by the Serbia to support the economy were set down in a number of decrees. The one common element in all these measures, except the one-time payout to all adult citizens of one hundred Euros, is a focus on the employers. This has undermined the social function of the state. Vulnerable citizens have been left with no financial support in situations where they, through no fault of their own, were left without a source of income or with an income that had been severely reduced. Simultaneously, the solutions contained in the measures to support the economy have promoted equality of all entities, yet this has resulted in practical inequality on the market. Therefore, these measures can be interpreted as indirectly discriminatory.

The criteria that a company has to meet in order to take advantage of these support measures have been structured in such a way that the employers' success in business during the state of emergency has had no impact on the decision-making process. The uniformly linear distribution of funds to all employers applying for support, despite vast differences in financial standing, will likely lead to the distribution of funds to many employers with no actual need of it and whose businesses have been operating quite successfully or even more so during the pandemic and the state of emergency, owing to the nature of their activity (production or trade in foodstuffs and medical supplies, logistics, etc.). This view is further supported by the findings of research conducted by the Serbian Chamber of Commerce.²¹³ Business operations are on the same level or better than before the crisis in; 25.8% of IT companies, 20.5% of agricultural enterprises,

and 16.3% of food and drink producers. Yet the percentage of companies in these sectors who did not intend to ask for state aid is 15.4%, 11.4%, and 7%, respectively. Employers in especially vulnerable sectors, such as tourism and the hospitality industry, have also not been taken into particular account. Many companies saw their work essentially cease during the state of emergency and it is neither likely to recover in the short term, nor realistic that over the next year they will manage to return to the same level of business as before the pandemic.

Insufficient support for SMEs in job preservation

The results of a study conducted by the Union of Employers of Vojvodina show that a significant number of employers were uncertain whether they would survive the economic crisis, as the length of the crisis remains uncertain while many companies lack substantial financial reserves, with projections often indicating an ability to maintain financial obligations for two more months, at the longest. The greatest problem that SMEs are facing is the regular honoring of financial obligations - utility bills, rent, and various parafiscal levies which, for the majority of those currently with no or very limited income, is impossible.

Companies are aware that job preservation is a priority and many have taken out loans in order to pay out salaries and contributions for workers on leave. By holding on to their employees, employers are preserving their company's potential to continue working once the crisis is over. According to surveys we've conducted, the measures enacted by the Serbian Government have not been sufficient for small companies, who run a great risk in continuing their operations given their financial obligations.

NGO representative

Source: TU-NGO Survey

At the same time, one of the criteria that an employer must meet is not having made any of their employees redundant. The result of this criterion is direct and unjustified differentiation between different types of workers. The decrees set a maximum limit of 10% of redundancies in the period from March 15, 2020 to three months from the end date of state aid. However, this limit only considers employees hired indefinitely - in other words, only those persons who had signed a contract of work for an indefinite period of time with the employer. An employment relation

²¹³ Serbian Chamber of Commerce, Istraživanje "Zajedno kroz krizu," uticaj COVID-19 krize na privredu i poslovanje - Faza II ("Together in a Crisis," impact of the COVID-19 crisis on the economy and businesses - Phase II), May, 2020, pp. 43-44

for a defined period, to cease upon the contract's expiration, is not included in the maximum number. A cessation of any other type of contract of engagement for work outside the employment relationship defined above also does not qualify.

Employees hired by the employer through temporary work agencies also do not qualify, as they are seen as not employed by the employer but by the agency. That their engagement for work with the agency can cease upon the cessation of the contract between the user and the agency once their work is no longer required has not been taken into consideration.²¹⁴ Finally, persons hired through student and youth cooperatives do not qualify towards the maximum number since that they are hired on periodical and temporary work contracts. Overall, this signifies insufficient protection of the right to work and of employment, given the actual percentage of those who can lose their engagement for work with an employer is far higher than the 10% limit, while the latter can still qualify for different types of state aid. This dilutes the level of encouragement for the employer to not lay off workers, which was one of the primary reasons for the introduction of this criterion.

Another indicator that these measures are misdirected, i.e., decidedly focused on the employer, is the process of determining these measures, which did not consider different groups of citizens engaged for work and which make up a significant portion of the general population. Among them are; workers outside the employment relationship, seasonal workers, illegal workers, the unemployed, pensioners, socially disadvantaged individuals, contributing family members, the self-employed, and collectors of secondary raw materials.

A particular problem of the untargeted support measures is the complete lack of any form of assistance for civil society and humanitarian organizations, which had previously launched and developed a whole range of activities to provide direct assistance to disadvantaged individuals. In addition to the reduced allocations for social protection, the budget rebalance for 2020 has significantly reduced the allocations within the remit of the Ministry of Labor, Employment, and Veterans' and Social Affairs intended for non-governmental organizations engaged in disabled veteran's rights (by 48%), equal opportunities (by 30%), and protecting the rights of persons with disabilities (by 22%).²¹⁵

²¹⁴ Article 23 of the Agency Employment Law ("RS Official Gazette," No. 86/2019)

²¹⁵ Data source: the Republic of Serbia 2020 Budget Law ("RS Official Gazette," No. 84/2019) and The Decree on Amendments to General Revenues and Receipts, Expenditures, and Expenses of the Budget of the Republic of Serbia for 2020 in order to eliminate harmful consequences due to the COVID-19 disease caused by SARS-CoV-2 virus ("RS Official Gazette," No. 60/2020); author's calculation

Future limitations to the right to work for persons with disabilities

As the employment program consists of a number of segments, various effects are to be expected. Informal training programs and preparation of beneficiaries for the world of work and career development is likely to suffer most, since training sessions, until now, were organised in the form of workshops. After the lifting of the state of emergency, it will remain impossible to bring beneficiaries together and work directly with them for at least some time. Other problems will be the additional lack of motivation among the beneficiaries, fear, and inactivity, which even in normal circumstances represent obstacles to finding employment.

In the area of employment, we do not expect there to be many changes - employers will only start hiring persons with disabilities once the management accepts that they should hire people rather than pay penalties, or once they employ sufficiently informed persons in their HR departments.

NGO representative

Source: TU-NGO Survey

Furthermore, the wrongful interpretation of a segment of state measures enacted to help the economy has led to gross violations of employees' basic right to salary. The Decree on Fiscal Benefits and Direct Aid to Companies in the Private Sector and Monetary Aid to Citizens Aimed at Reducing Economic Consequences due to COVID 19 states that all companies shall receive financial aid equivalent to three minimum salaries per employee (Article 9 of the Decree). However, the actual wording of the Decree concerning these payouts is insufficiently clear. This article says that the payments will begin in May 2020, based on the citizens' income tax return forms for March. June will see the payment based on the tax return form for April and July based on the form for May. In addition, the last paragraph in Article 13 of the Decree states that the grants representing financial aid for employers will have to be paid into an assigned account set up especially for this purpose and payments to employees will be made from that account as part of their earnings. The amount that remains in the account and has not been paid out in salaries will have to be returned to the state by the employers before the closure of the assigned accounts (after the date limit for payment of financial aid).

This solution has led to an interpretation among many employers that they *must not* pay out their employees' entire salaries even if they actually have had sufficient funds to do it. By this interpretation, if a salary is paid out before the funds are paid into the assigned account by the state, the employer will not be able to use this money as intended - for employees' salaries for March. This is why many employers only paid out the difference between the minimum and contracted amount (for example, if an employee has the right to a salary of thirty thousand dinars, they would only get ten thousand from the employer seeing as the minimum salary for March was just over thirty thousand dinars). The remaining part of their March salary would be paid out only in May, from the assigned account.²¹⁶

This interpretation of the payment of state grants resulted in a refusal by a number of employers to pay out full amounts of their employees' salaries. They informed their employees, in spoken or written form, that this was not possible, claiming that if they were to pay out the salaries, they would not qualify for state aid. Albeit illogical and against the purpose of these measures - that employers should receive help in order to be able to continue regularly paying their employees' salaries - the practice spread very quickly and became a matter of course even among those employers whose businesses operated without hindrance during the state of emergency or with even higher turnovers than under normal circumstances.

On April 21, 2020, in replying to a direct question from a journalist, the Ministry of Finance said that this practice was unlawful and that those employers with the means to pay their workers' salaries are expected to make regular payments and that the state aid should be used for April, May, and June salaries (which was the prime purpose of this measure). The Ministry, however, failed to publish this explanation in the media, which would have made it accessible to a larger number of employers.²¹⁷ In an answer to employer inquiries, the Serbian Chamber of Commerce published the same explanation on their web

page.²¹⁸ Unfortunately, this made little impact on the continuation of these negative practices which resulted in a violation of employees' fundamental labor right to receive a salary as per employment contract.

The ICESCR recognizes the right to fair wages and equal remuneration for work of equal value without distinction of any kind (Article 7).

The ILO Minimum Wage Fixing Convention (No. 131) promotes the fundamental principle that a worker cannot be paid less than a minimum wage for their work. Among its basic principles, the RESC affirms that all workers have the right to fair remuneration, sufficient for a decent standard of living for themselves and their families. This principle is further elaborated in Article 4 of Part II of the RESC, where signatory states undertake to ensure the right of workers to a remuneration such as will give them and their families a decent standard of living as well as to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The LL stipulates that employers are required to pay their employees' salaries at the latest by the end of the current month, for the preceding month.²¹⁹ This means that employers need to pay employees' salaries for March by the end of April. Many, however, did not do so until having received the state aid and were thereby late in paying their employees' salaries. Such a policy indicates a worrying trajectory; that they might become permanently late in paying salaries, with the May salary paid in July leading to obligations in August, once the state aid has stopped, to pay both June and July salaries. Such an obligation could prove too big a financial burden and likely undermine the effect of state aid. In cases of employers continuing with late salary payments, the inspectorate should step in and initiate misdemeanor proceedings.²²⁰

The above mentioned explanation, a result of insufficiently clear regulation governing the right to direct aid, has violated the employee's right to remuneration within time limits, determined by law and the amount previously agreed upon with the employer.

216 Information based on workers' demands for legal aid from civil society organizations. For more information regarding problems created by non-payment of salaries, see: M. Reljanović, B. Urdarević, Uredba o direktnim davanjima (i oduzimanjima) (Decree on direct aid (and repossession)), <https://pescanik.net/uredba-o-direktnim-davanjima-i-oduzimanjima/>.

217 In a reply to a question from a journalist representing the Center for Investigative Journalism of Serbia, the Ministry of Finance said that salaries must be paid regularly and that employers who have paid March salaries also qualify for three months of state aid (document in the possession of the authors)

218 The Serbian Chamber of Commerce reacted by issuing a clarification statement that all employers must continue to pay regular salaries in accordance with the law and that this will not have a negative impact on their rights from the set of state measures (Instructions on the Implementation of the Decree on Fiscal Benefits and Direct Benefits to Private Sector Companies, frequently asked questions - part two, starting from page 6), available at <https://api.pks.rs/storage/assets/Q&A%20WEB%201542020.pdf>

219 LL, Article 110, Paragraph 1.

220 Article 273, Paragraph 1, Item 2) of the LL considers the failure to pay employee salaries a misdemeanor on the part of the employer.

These developments have caused great harm to low salaried employees who, if on minimum salaries or those slightly above, have been paid symbolic amounts, which, in some cases, are less than the amount of the unemployment benefit, putting many families in a precarious position.

Social dialogue in the Republic of Serbia is conducted through collective bargaining, the work of the Social and Economic Council, and the work of other tripartite bodies. The LL and the Law on the Social and Economic Council²²¹ form the legal framework for social dialogue involving unions as employee representatives, employers, and the state (personified by the Government of the Republic of Serbia). The LL and the Strike Law²²² regulate other collective rights of employees. However, the implementation of these laws was not adequate during the state of emergency, rendering them meaningless, and the social dialogue mechanisms were either blocked or misused. At the Social and Economic Council (hereafter: SES) session on March 17, TUC Nezavisnost proposed measures to prevent collective dismissals,²²³ which were rejected when the line minister opposed the motion.²²⁴ Later, unions were not consulted during the drafting of state aid measures - a striking difference compared to consultations being held with employers (the presentation of measures was even held in the presence of the president of the Serbian Chamber of Commerce).

During the state of emergency, amendments to four special collective agreements²²⁵ were adopted with the aim of adapting work conditions to the new circumstances (so that employees would have the right to a salary equal to 100% of the average salary over the 12 months previous to the month when the temporary inability to perform job duties began, in cases of confirmed infection with COVID-19 virus or of isolation or self-isolation measures due to the same illness having been contracted

221 "RS Official Gazette," No. 125/2004

222 "FRY Official Gazette," No. 29/96 and "RS Official Gazette," No. 101/2005 - other law and 103/2012 - CC decision

223 "Stojiljković: Uvesti moratorijum na radni status bar na 90 dana," (Introduce a minimum of 90 day moratorium on employment status), <http://rs.n1info.com/Biznis/a578899/Stojiljkovic-Uvesti-moratorijum-na-radni-status-bar-na-90-dana.html>.

224 "Đorđević: Apelujem na savest poslodavaca da ne otpuštaju radnike," (Đorđević: I appeal to the conscience of employers not to fire their workers), <http://rs.n1info.com/Vesti/a578845/Ministarstvo-Nema-obojelelih-u-ustanovama-socijalne-zastite.html>.

225 These are: the Special Collective Agreement for Civil Service ("RS Official Gazette," No. 55/2020), the Special Collective Agreement for Civil Servants in Local Self-Government Units ("RS Official Gazette," No. 55/2020), the Special Collective Agreement for Social Protection in the Republic of Serbia ("RS Official Gazette," No. 60/2020) and the Special Collective Agreement for Healthcare Institutions founded by the Republic of Serbia, Autonomous Regions, and Local Self-Government Units ("RS Official Gazette," No. 58/2020)

as a consequence of the risk of direct exposure during the performance of work duties, or from contact with persons who tested positive for COVID-19, or in cases of imposed isolation or self-isolation measures). However, none of these collective agreements addresses employees in the private sector, where collective bargaining in the period concerned did not exist. The rights to association and collective action of employees were also violated. An example of this violation is the arrest of an employee (or a union member) at the Jura factory in Niš during the workers' protest against their employer's disregard for protective measures in the workplace. This person was charged with the criminal offence of "inciting panic and disorder,"²²⁶ which can result in a prison sentence of up to five years. Given this was a legitimate and peaceful protest of employees due to violations of law by their employer, such a reaction on the part of the Prosecutor's Office would seem excessive, while not even misdemeanor charges were brought against the employer despite the labor inspectorate finding faults during the course of extraordinary inspection.

Additional reduction in space for union activities during the state of emergency

The limited space for union activities under normal circumstances in view of drafting policies, decisions, and measures relating to the economic and social position of workers was further reduced during the state of emergency. Union initiatives warnings of specific situations and of problems with certain practices, for which they suggested solutions, were ignored, as a rule, by the line ministries and the Government and Crisis Headquarters.

We had problems with general managers (particularly with acting general managers) who, in order to protect their positions, did not join this "fight" as a fight for the betterment of all, but rather for their own, selfish, interests and to defend their own positions. These positions became their priority and they often went along with the decisions of local Crisis Headquarters, mayors, and governments without rational and reasonable care for the needs of a specific institution, employees, and patients.

Union representative

Source: TU-NGO Survey

226 Article 343 of the Criminal Code ("RS Official Gazette," No. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019)

PART FOUR

RECOMMENDATIONS

In accordance with the accompanying analysis, recommendations are here proposed to eliminate the consequences of rights violations during the state of emergency and to ensure that the same irregularities or other violations of workers' rights do not recur in similar circumstances in the future.

1. Emergency measures

Recommendation 1:

Amend the legislation regulating civil requisition during a state of emergency.

Amendments to the legislation could be made in the following ways:

- The preparation of a draft of a special law that would regulate civil requisition during an epidemic – the ministry responsible for health;
- The preparation of draft amendments to the Disaster Risk Reduction and Emergency Management Law ("The RS Official Gazette," No. 87/2018) in cases of civil requisition being invoked in response to emergency situations – the ministry responsible for internal affairs;
- The ministry responsible for labor should develop solutions in an appropriately normative framework concerning the exercising of labor rights of civil requisition conscripts.

Recommendation 2:

Improve the normative framework for work outside the employer's premises, especially for working remotely (work from home).

The ministry responsible for labor should further and more precisely regulate work outside the employer's premises in the Labor Law, particularly respecting the fundamental rights of employees and the need to regulate specific obligations and expenses incurred when working from home.

In the event of an emergency situation or a state of emergency due to an epidemic, binding instructions on organizing work from home should be issued to all employers (public and private).

Employers should cover the costs of reasonable adjustment for people with disabilities to work from home if adjustments of the workspace are necessary to meet the needs of an employee with a disability.

Recommendation 3:

A number of measures of direct financial support should focus on workers in a state of material deprivation, particularly those affected by new circumstances in the labor market during and after the state of emergency.

The Government's fiscal packages of measures from March and July should be assessed for adequacy and inclusion, particularly of those workers in greatest need, i.e., who found themselves at the highest risk of poverty, in line with recommendation 4.

The definition and implementation of these measures are the responsibility of the ministry in charge of labor and the Ministry of Finance.

**Recommendation 4:
Focus support measures to all workers in the informal economy and socially disadvantaged workers.**

Emergency short-term support measures must be provided for workers who did not earn any income during the epidemic due to the protection measures introduced, or who have been unable to generate income from activities which they performed before the epidemic for other reasons, as well as for workers not earning any wages, earning reduced wages, or who were made redundant during the epidemic. To this end, funds must be provided from the assistance received by the Republic of Serbia and the budget rebalance for the implementation of measures to mitigate the consequences of COVID-19, which should be focused not only on sectors of the economy, but also on meeting the needs of the categories of workers mentioned above.

First, it is necessary to develop and adopt support plans based on available records; plans must also include criteria for obtaining assistance in prescribed conditions, such as the loss of a source of income which workers had been earning prior to the change in conditions.

These measures should be proposed and implemented by the ministry in charge of social protection and the Ministry of Finance.

**Recommendation 5:
Provide secondary raw materials collectors with elementary living and hygienic conditions during an epidemic.**

The ministry responsible for social protection should apply emergency short-term measures and distribute sufficient quantities of hygiene and food packages to secondary raw materials collectors from commodity reserves.

Local self-governments, through local utility companies, should develop and implement plans to provide sufficient quantities of drinking water to settlements which do not have access to clean water.

**Recommendation 6:
Provide protective equipment to secondary raw materials collectors.**

The ministry responsible for social protection, as well as the ministry responsible for healthcare, should apply emergency short-term measures and distribute sufficient quantities of basic protective equipment to secondary raw materials collectors for the work they perform (masks, gloves, disinfectants).

**Recommendation 7:
Ensure respect for the right to a safe working environment and occupational safety means for all workers.**

The ministries responsible for health, the economy, and finance should establish a special fund of commodity reserves of medical and protective materials and equipment.

The ministry responsible for health should develop a plan for the distribution of occupational safety equipment and materials to health professionals, civil servants, and frontline workers, as well as to all state and private employers in case of inadequate market supply.

The ministry responsible for labor should initiate legal interventions in the LOSH and the Strike Law to enable and monitor the exercising of the right of every worker to immediately refuse work in situations when protection measures have not been implemented at the workplace and the right of workers to react to an existing problem of this kind by collectively refusing to work (spontaneous unannounced strike), without legal or other consequences.

2. Other short-term and medium-term measures

Recommendation 1: Provide secondary raw materials collectors with alternative ways of working in formal employment.

The ministry responsible for finance and the ministry responsible for the economy should develop and implement medium-term strategies for integrating the activities of secondary raw materials collectors into institutional frameworks by which they will act as self-employed persons who will enjoy social security and social protection rights.

The Waste Management Law should be amended to make it easier for self-employed secondary raw materials collectors to obtain necessary permits.

To encourage the organization and registration of secondary raw materials collectors in the existing normative forms and frameworks, the ministry responsible for the economy and the ministry responsible for finance should introduce special tax and other deductions for such entrepreneurs.

Recommendation 2: Develop a strategy for regulating public transport during a declared epidemic.

The ministry responsible for the economy and the ministry responsible for transport, as well as local self-government authorities, should develop a strategy for regulating public transport during a declared epidemic, one that offers employers and employees a more efficient temporary solution. The strategy should especially include non-commercial allocation of resources of public utility companies, a different organization of transport, and the provision of benefits to employers who independently organize transport for their employees.

Recommendation 3: Protect the rights of workers working in the field of social protection.

The employment status of employees in social protection institutions should be regulated and improved. Investments should be made in the training of employees and other workers engaged for work on hygienic, medical, and other measures of epidemiological importance;

A collective agreement for decision-making, and its extended effect, on all employees in the social protection system should be reached;

The capacity of the Department for Inspection Supervision within the Family Care and Social Protection Sector of the ministry responsible for social protection should be enhanced.

Recommendation 4: Improve the normative framework of the right of an employee to salary compensation during an emergency that affects the scope of work of an employer.

The ministry responsible for labor should propose amendments to the LHI and the LL that would expand the scope of the occupational disease concept, by introducing a new scheme incorporating cases of infection at work and work-related infection and provide these employees with full salary compensation.

The ministry responsible for labor should propose amendments to the LL by expanding the rights of employees to salary compensation in Articles 116 and 117.

Recommendation 5: Establish effective mechanisms for the protection of labor rights during a state of emergency.

The ministry responsible for labor should improve the quality of labor inspection by increasing the workforce and the working conditions of the inspectors, so that the standards from ILO Convention No. 81 are respected and the inspection logistically and technically corresponds to the scope of work assigned to inspectors.

Recommendation 6: Make it more difficult to terminate all employment contracts during a state of emergency.

The ministry responsible for labor should propose amendments to the LL that would make it more difficult for employers to terminate employment contracts due to redundancy during a state of emergency. Also, during a state of emergency, bylaws should be adopted that would provide direct assistance to employees affected by deductions in salary, its irregular payment, or its complete suspension due to the decision of the employer.

BIBLIOGRAPHY

1. Annex to the Special Collective Agreement for Health Care Institutions founded by the Republic of Serbia, the Autonomous Province, and Local Self-Government, "RS Official Gazette," No. 58/2020.
2. Balkan Center for Regulatory Reform, the National Alliance for Local Economic Development, Functional Analysis of the National Inspections with Capacity Analysis, 2019, <http://mduls.gov.rs/obavestjenja/funkcionalna-analiza-republickih-inspekcija/?script=lat>.
3. *The Charter of Fundamental Rights of the European Union*.
4. The Committee for Economic, Social, and Cultural Rights, *General Comment No. 5: Persons with disabilities*, 1994.
5. The Committee on Economic, Social, and Cultural Rights, *General comment No. 20: Non-discrimination in economic, social, and cultural rights*, 2009.
6. The Committee on Economic, Social, and Cultural Rights, *General comment No. 23 on the right to just and favorable conditions of work*.
7. The Committee on Economic, Social, and Cultural Rights, *Statement on the coronavirus disease (COVID-19) pandemic and economic, social, and cultural rights*, <https://undocs.org/E/C.12/2020/1>.
8. The Council of Europe - Directorate of Legal Advice and Public International Law, *Note verbale*, <https://rm.coe.int/16809e1d98>.
9. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), *Inclusion of Informal Collectors into the Evolving Waste Management System in Serbia - A Roadmap for Integration*.
10. Drmaku, J., "Sakupljači sekundarnih sirovina – progon umesto inkluzije," Romi između multikulturalizma i politike štednje ("Secondary raw materials collectors - persecution instead inclusions," Roma between multiculturalism and austerity policy), Forum Roma Srbije, Belgrade 2018.
11. *The Forced Labor Convention (No. 29)*, International Labour Organization, 1930.

12. *Framework Agreement on Telework*, ETUC, UNICE/UEAPME and CEEP, 2001.
13. *General Survey on Forced Labour*, International Labour Organization, 2007, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_089199.pdf.
14. The International Labour Office, *Ensuring decent working time for the future*, Geneva 2018, [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2018-107-B\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2018-107-B).pdf).
15. The International Labour Organization, *COVID-19 crisis and the informal economy*, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/briefingnote/wcms_743623.pdf.
16. The International Labour Organization, *ILO Monitor: COVID-19 and the world of work. Second edition, Updated estimates and analysis*, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf.
17. Criminal Code, "RS Official Gazette," No. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.
18. The Ministry of Labor, Employment, and Veterans and Social issues, *Instruction for performing work outside the employer's premises*, <https://www.minrzs.gov.rs/sites/default/files/vanredno-stanje/2020.03.19.%20Instrukcija%20007.pdf>.
19. National Employment Service, *Monthly Statistical Newsletter*, March 2020
20. National Employment Service, *Monthly Statistical Newsletter*, April 2020
21. Decision on declaring a state of emergency, "Official RS Gazette," No. 29/2020.
22. Decision on the Suspension of Work of Institutions for Pupils and Student Standards Founded by the Republic of Serbia, "RS Official Gazette," number 32/2020.
23. Decision on Lifting the State of Emergency, "RS Official Gazette," No. 65/2020.
24. OECD, *The Covid-19 Crisis in Serbia*, May 2020.
25. The Special Collective Agreement for Civil Service, "RS Official Gazette," No. 55/2020.
26. The Special Collective Agreement for Social Protection in the Republic Serbia, "RS Official Gazette," No. 60/2020.
27. The Special Collective Agreement for Employees in Local Self-Governments, "RS Official Gazette," No. 55/2020.
28. The Special Collective Agreement for Health Care Institutions Founded by the Republic of Serbia, the Autonomous Province and Local Self-Government," RS Official Gazette," No.58/2020.
29. Ordinance on preventive measures for safe and healthy work when using screen equipment, "RS Official Gazette," No. 106/2009, 93/2013 and 86/2019.
30. Praxis, *Analiza glavnih problema i prepreka u pristupu Roma pravima na rad i zapošljavanje* (Analysis of the main problems and obstacles to Roma access to labor and employment rights), 2013.
31. Recommendation for organizing work in public administrations and state institutions issued by the Minister of State Administration and Local Self-Government, https://www.media.srbija.gov.rs/medsrp/dokumenti/preporuka227_cyr.pdf.
32. Recommendation to social protection institutions for the accommodation of beneficiaries and social protection organizations for the provision of residential accommodation services issued by the Minister of Labor, Employment, and Veterans' and Social Affairs, The Ministry of Labor, Employment, and Veterans and Social Affairs, <https://www.minrzs.gov.rs/sites/default/files/vanredno-stanje/2020.04.13.%20Preporuka%20001.pdf>.

33. Serbian Chamber of Commerce, Research *Istraživanje "Zajedno kroz krizu," uticaj COVID-19 krize na privredu i poslovanje- Faza II "Together through the crisis" - the impact of the COVID-19 crisis on the economy and business - Phase II, May 2020.*
34. Statistical Office of the Republic of Serbia, *Women and Men in the Republic of Serbia*, 2017.
35. Statistical Office of the Republic of Serbia, *Labor Force Survey in the Republic of Serbia*, 2019.
36. Statistical Office of the Republic of Serbia, *Statistical Yearbook of the Republic of Serbia*, 2019.
37. Statistical Office of the Republic of Serbia *The use of communication technologies in the Republic of Serbia*, 2019, <http://publikacije.stat.gov.rs/G2019/Pdf/G201916014.pdf>.
38. SeConS Development Initiative Group and Dornier Consulting International GmbH, Gender Equality in Transport in Serbia - Final report, p. 39, <https://www.rodnaravnopravnost.gov.rs/sites/default/files/2020-02/GETS%20MS2%20izve%C5%A1taj%20FINAL%2011.02.2020..pdf>.
39. UNDP, *The Position of Roma Women and Men in the Labour Markets of the Western Balkans*, <https://www.eurasia.undp.org/content/rbec/en/home/library/roma/the-position-of-roma-women-and-men-in-the-labour-markets-of-west.html>.
40. United Nations - Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*, <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>.
41. Decree on the Ratification of the Convention on Labor Inspection in Industry and Trade, "FPRY Official Gazette - International Agreements," No. 5/56.
42. Decree on Measures During a State of Emergency, "RS Official Gazette," No. 31/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020, 53/2020, 56/2020, 57/2020, 58/2020, 60/2020.
43. Decree on Organizing the Operation of Employers During the State of Emergency, "RS Official Gazette," No. 31/2020.
44. Decree on Deadlines in Court Proceedings during the State of Emergency declared on March 15, 2020,"RS Official Gazette," No. 38/2020.
45. Decree on the Bonus to the Basic Salary of Employees in Health Care Institutions and Certain Employees Who Perform Activities in the Field of Health, that is, the Health Care of the Population of the Republic of Serbia, that is the Treatment and Prevention of the Spread of the Epidemic of COVID-19 Disease Caused by SARS-CoV-2 virus, "RS Official Gazette," No. 48/2020.
46. Decree on the Procedure for Obtaining Consent for New Employment and Additional Employment with Public Funds Users, "RS Official Gazette," No. 113 / 2013-8, 21 / 2014-5, 66 / 2014-4, 118 / 2014-3, 22 / 2015-12,59 / 2015-3, 62 / 2019-21, 50 / 2020-3.
47. Decree on the Organization of the Work of Social Protection Institutions for the Accommodation of Beneficiaries and the Organization of Social Protection for the Provision of Residential Accommodation Services during the State of Emergency, "RS Official Gazette" No. 54/2020.
48. Decree on Fiscal Benefits and Direct Payments to Companies in the Private Sector and Financial Assistance to Citizens in Order to Mitigate the Economic Consequences Caused by the COVID-19 Disease, "RS Official Gazette," No. 54/2020 and 60/2020.
49. Decree on Financial Support to Agricultural Holdings Aimed at Mitigating the Consequences Due to the COVID-19 Disease Caused by the SARS-COV-2 virus, "RS Official Gazette," No. 57/2020.
50. Decree on Amendments to General Revenues and Receipts, Expenditures, and Expenses of the Budget of the Republic of Serbia for 2020 in Order to Eliminate Harmful consequences Due to the Covid-19 Disease Caused by the SARS-CoV-2 virus, "RS Official Gazette," No. 60/2020.
51. The Constitution of the Republic of Serbia, "RS Official Gazette," No. 98/2006.
52. The Law on the Ratification of the International Covenant on Civil and Political Rights, "SFRY Official Gazette," No. 7/71.

53. The Law on the Ratification of the Convention of the International Labour Organization No. 158 on the Termination of Employment at the Initiative of the Employer, "SFRY Official Gazette - International Agreements," No.4/84, 7/91.
54. The Strike Law, "FRY Official Gazette," No. 29/96 and "RS Official Gazette," No. 101/2005 –other law and 103/2012 - CC decision.
55. The Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms amended in accordance with Protocol No. 11, of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for certain rights and freedoms not included in the Convention and its first protocol, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in all Circumstances ("SMNG Official Gazette - International Agreements," No. 9/2003, 5/2005 and 7/2005 - corr. and "RS Official Gazette - International Agreements," No. 12/2010 and 10/2015).
56. The Law on the Social and Economic Council, "RS Official Gazette," No. 125/2004.
57. The Labor Law, "RS Official Gazette," No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - US decision, 113/2017 and 95/2018 - authentic interpretation.
58. The Public Administration Law, "RS Official Gazette," No. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 and 30/2018 – others law.
59. The Civil Servants Law, "RS Official Gazette," No.79/2005, 81/2005 –corr., 83/2005 –corr., 64/2007, 67/2007 –corr., 116/2008, 104/2009, 99/2014, 94/2017 and 95/2018.
60. The Occupational Safety and Health Law, "RS Official Gazette," No. 101/2005, 91/2015 and 113/2017 - other law.
61. The Defense Law, "RS Official Gazette," No. 116/2007,88/2009, 88/2009 –other law, 104/2009 - other law, 10/2015 and 36/2018.
62. The Law on Employment and Unemployment Insurance, "RS Official Gazette," No. 36/2009, 88/2010, 38/2015, 113/2017 and 113/2017 – other law.
63. The Law on the Ratification of the Revised European Social Charter, "RS Official Gazette - International Agreements," No. 42/09.
64. The Military Conscription, Civil Requisition. and Material Obligation Law, "RS Official Gazette," No. 88/2009, 95/2010 and 36/2018.
65. The Social Protection Law, "RS Official Gazette," No. 24/2011.
66. The Protection of the Population from Infectious Diseases Law, "RS Official Gazette," No. 15/2016.
67. The Police Law, "RS Official Gazette," No. 6/2016, 24/2018 and 87/2018.
68. The Health Insurance Law, "RS Official Gazette," No. 25/2019.
69. The Republic of Serbia 2020 Budget Law, "RS Official Gazette," No. 84/2019.
70. The Agency Employment Law, "RS Official Gazette," No. 86/2019.
71. The Law Confirming Decrees Passed by the Government with the Counter-signature by the President of the Republic During the State of Emergency, "RS Official Gazette," number 62/2020.
72. Conclusion on the recommendation to employers regarding the provision of the right to salary compensation in the amount of 100% of the salary basis to employees who are temporarily absent from work due to confirmed infections of the COVID-19 disease or due to isolation or self-isolation imposed due to this illness, "RS Official Gazette," No. 50/2020-10.
73. *Working anytime, anywhere: The effects on the world of work*, Joint ILO-Eurofound report, 2017.

ANNEXES

ANNEX 1: Regulations adopted during the state of emergency of special importance for the regulation of labor rights

1. Decree on Measures During a State of Emergency²²⁷
2. Decree on Organizing the Operation of Employers During the State of Emergency²²⁸
3. Decree on the Organization of the Work of Social Protection Institutions for the Accommodation of Beneficiaries and the Organization of Social Protection for the Provision of Residential Accommodation Services during the State of Emergency²²⁹
4. Decree on the Bonus to the Basic Salary of Employees in Health Care Institutions and Certain Employees Who Perform Activities in the Field of Health, that is, the Health Care of the Population of the Republic of Serbia, that is, the Treatment and Prevention of the Spread of the Epidemic of the COVID-19 Disease Caused by the SARS-CoV-2 Virus, "RS Official Gazette"²³⁰
5. Decree on the Procedure for Obtaining Consent for New Employment and Additional Employment with Public Funds Users²³¹
6. Decree on Fiscal Benefits and Direct Payments to Companies in the Private Sector and Financial Assistance to Citizens in Order to Mitigate the Economic Consequences Caused by the COVID-19 Disease²³²
7. Decision on Consent to the Continuation of the Operation of Employers in the Field of Construction, the Provision of Certain Services and Retail Trade, as well as Green Markets, with the Application of Preventive Measures²³³
8. Decision recommending that employers allow the use of part of the annual leave for 2019, ending on December 31, 2020, to employees who have the obligation to regularly perform work tasks in the conditions of a state of emergency²³⁴

²²⁷ RS Official Gazette," No. 31/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020, 53/2020, 56/2020, 57/2020, 58/2020, 60/2020.

²²⁸ "RS Official Gazette," No. 31/2020.

²²⁹ "RS Official Gazette," No. 54/2020.

²³⁰ "RS Official Gazette," No. 48/2020.

²³¹ "RS Official Gazette," No. 113 / 2013-8, 21 / 2014-5, 66 / 2014-4, 118 / 2014-3, 22 / 2015-12, 59 / 2015-3, 62 / 2019-21, 50 / 2020-3.

²³² "RS Official Gazette," No. 54/2020 and 60/2020.

²³³ "RS Official Gazette," No. 58/2020.

²³⁴ "RS Official Gazette," No. 52/2020.

9. The Conclusion of the Government recommendation to employers regarding the provision of the right to salary compensation in the amount of 100% of the salary basis to employees during leave time due to confirmed COVID-19 illness or due to imposed isolation or self-isolation measures due to this illness²³⁵
10. Decision on the suspension of work in direct contact with clients²³⁶
11. Recommendation for organizing work in public administrations and state institutions issued by the Minister of State Administration and Local Self-Government²³⁷
12. Recommendation to social protection institutions for the accommodation of beneficiaries and social protection organizations for the provision of residential accommodation services issued by the Minister of Labor, Employment, and Veterans' and Social Affairs²³⁸

ANNEX 2: The employed (15-64 years) at risk by activity sector and gender

Sector of activity	Impact of the crisis	Total employees (in thousands)	Share in total employment (%)	Women's share in sectoral employment (%)	Share of workers with lower status occupations in sectoral employment (%)
Manufacturing industry	High	536.8	19.6	39.0	12.3
Wholesale and retail trade; repair of motor vehicles and motorcycles	High	381.9	14.0	55.5	49.3
Accommodation and catering services	High	104.4	3.8	49.6	70.1
Real estate, administrative, and business activities	High	225.5	8.3	44.9	19
Other service activities	High	48.8	1.8	53.5	23.6
Art; entertainment and recreation	Medium High	46.8	1.7	39.1	7.7
Traffic and storage	Medium High	154.6	5.7	20.4	6.3

Data source: Eurostat, Labor Force Survey Database; author's calculation and presentation

²³⁵ "RS Official Gazette," No. 50/2020.

²³⁶ "RS Official Gazette," No. 35/2020 and 37/2020.

²³⁷ https://www.media.srbija.gov.rs/medsrp/dokumenti/preporuka227_cyr.pdf

²³⁸ The Ministry of Labor, Employment, and Veterans' and Social Affairs, <https://www.minrzs.gov.rs/sites/default/files/vanredno-stanje/2020.04.13.%20Preporuka%20001.pdf>.

²³⁹ Ibid.

ANNEX 3: The employed (15-64 years) in 2019 by activity sector and European socio-economic groups (in thousands)

	In total	Executives	Experts	Technicians and associates	Small entrepreneurs	Officers	Industrial workers	Lower status workers
All sectors	2,733.2	83.9	391.1	310.6	569.7	315.5	549.4	512.9
Agriculture, forestry, and fishing	366	3.2	1.6	4	306	3.4	11.7	36.2
Mining	30.9	-	2.1	5	-	3.9	15.5	3.5
Manufacturing industry	536.8	17	28.9	48	29.9	40.2	306.9	66
Electricity, gas, steam and air conditioning supply	38.2	1.7	5.2	7.4	-	6.1	14.4	3.1
Water supply; wastewater management	45.6	1.6	2.8	8.3	2.6	6.8	12.2	11.4
Construction	136.2	5.5	9.7	9	32.8	7.8	51.6	19.9
Wholesale and retail trade; repair of motor vehicles and motorcycles	381.9	11.8	17	36.9	59.8	33.6	34.8	188.1
Traffic and storage	154.6	4.6	5.7	14.3	16.9	38.8	64.7	9.7
Accommodation and catering services	104.4	8.1	2.9	2.9	6.6	6.4	4.2	73.2
Information and communication	77.5	3.6	37.8	13	3.7	9.6	7.7	2.2
Financial and insurance activities	45.9	2.2	13.6	11.6	-	17	-	-
Real estate business	4.8	-	-	1.4	1.1	1.2	-	-
Professional, scientific, innovative, and technical activities	91.1	5.2	42.6	17.4	8.2	11.4	2.9	3.3
Administrative and support service activities	52.1	1.4	4.2	2.4	5	19.3	5.3	14.5
Public administration and defense; Compulsory social insurance	151.3	7	28.2	37.9	-	67.2	3.6	7.4
Education	182.2	4.7	126.7	7.7	-	5.4	2.3	34.8
Health care and social protection	155.7	1.8	43.7	69.6	-	15.4	6.2	18.4
Art; Entertainment and recreation	46.8	2.5	13.2	11.3	3.6	12.1	-	3.6
Other service activities	48.8	1.3	4.2	2.5	21.1	4.2	4	11.5
Household activity	81.2	-	-	-	70.2	5.5	-	4.9

Data source: Eurostat, Labor Force Survey; author's calculation

ANNEX 4: The employed in 2019 aged 15-64 who usually work from home according to professional status

		2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
Employed	%	5.2	6.4	6.8	6.5	5.5	4.2	3.8	3.1	3.3	4.9
	in thousands	118.2	138.4	145.2	142.2	134.4	103.7	98.0	82.1	88.6	133.9
Employees	%	1.4	1.9	2.3	2.6	2.5	1.8	1.6	1.4	1.6	2
	in thousands	22.6	29.7	35.5	40.2	43.5	32.2	29.6	27.0	32.3	41.6
Employers	%	10.9	12	13.8	11.8	10.1	8.5	8	6.4	6	8.6
	in thousands	9.7	10.4	11.9	10.0	9.1	8.2	7.2	5.8	6.0	8.1
Self-employed without employees	%	14.9	19.1	19.1	16.7	14.6	11.6	9.3	8.1	9.6	15.7
	in thousands	61.6	68.4	69.7	68.4	63.5	46.5	42.5	39.8	41.8	70.6
Contributing family Members	%	16.2	19.2	20.3	15.7	10.8	10.2	10.2	6.4	7.3	12.2
	in thousands	25.3	29.1	28.9	22.9	19.1	18.5	18.7	8.8	9.6	13.4

Data source: Eurostat, Labor Force Survey; author's calculation and graphic presentation

ANNEX 5: The employed in 2019 aged 15-64 who usually work from home by gender

		2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.
Men	%	5.3	6.5	6.8	6.2	5.3	4	3.4	2.4	2.9	4.3
	in thousands	69.0	81.3	84.2	78.0	73.4	56.0	49.1	35.3	43.4	64.9
Women	%	5.2	6.2	6.8	6.9	5.9	4.5	4.3	4	3.8	5.7
	in thousands	50.5	56.5	61.0	64.2	62.4	48.1	48.8	47.1	45.2	69.7

Data source: Eurostat, Labor Force Survey author's calculation and graphic presentation

ANNEX 6: The employed in 2019 aged 15-64 who usually work from home according to professional status and gender (in%)

Workers	Men	1.1	1.7	2.3	2.4	2.3	1.6	1.4	1	1.3	1.5
	Women	1.7	2.2	2.2	2.9	2.7	1.9	1.9	1.9	1.9	2.6
Employers	Men	11.2	11.6	13.9	12.8	10	7.2	8.3	6	6.2	8.7
	Women	-	13	13.6	9.3	10.3	12.1	7	7.5	5.5	8.6
Self-employed without employees	Men	14.8	19.2	17.7	14.4	12.6	10	7.9	5.8	7.8	12.8
	Women	15.1	18.7	23.1	23.2	20.8	16.9	13.1	13.3	14	22.2
Contributing family members	Men	14.2	17.3	15.6	12.8	7.4	7.3	6.9	3.6	3.3	7.5
	Women	17.2	20.1	22.8	16.9	12.4	11.5	11.7	7.5	9	14

Data source: Eurostat, Labor Force Survey; author's calculation

ANNEX 7: Organizations which participated in the survey on the position of certain groups of the population during the state of emergency

- The Autonomous Women's Center
- The Ana and Vlade Divac Foundation
- The Forum of Young People with Disabilities
- The Association of Construction Workers and IGM Serbia
- The Association of Independent Trade Unions of Serbia
- The Union of Doctors and Pharmacists of Serbia
- The Association of Pensioners of the Stari Grad Municipality
- The Association of Employers of Vojvodina
- Roza Women's Labor Rights Association
- The Zrenjanin Social Forum

