

CERTAIN CHARACTERISTICS OF SOCIAL DIALOGUE IN THE PUBLIC SECTOR

Abstract

Social differences and methods of achieving social peace are in the focus of analysis when we talk about social dialogue. Through history, philosophical and political thought have been dealing with the origin and sources of social differences and social conflicts that arise from them legitimately. The outreach has remained limited. Irrespective of an impressive technological development, social differences have remained an important characteristic of the status and relations, cause of social tensions and conflicts with forms of expression and consequences that are difficult to anticipate. *The concept of social market economy and social state* has got significantly different approach. Market economy, when it is successful, has to take care not only of economic efficiency but also of the basic elements of social balance. The interests of social classes, groups, and layers are different but they do not need to be and they are not necessarily conflicting. From that point of view, there are objective conditions for different interests to get mutually harmonised, *and to set up the principle of permanent negotiating instead of permanent conflict*. Social dialogue, as the principle, as a new significantly different method of regulating social relations formulates and puts in practice its main objectives through the process of collective bargaining, through harmonising of attitudes and concluding of collective agreements. Collective bargaining, when it emerged, used to be understood in its basic meaning as establishing and developing of relations between the capital and work, between private entrepreneurs and workers. Public sector used to remain outside the process in whole. When it comes to organising, great changes have happened in all contemporary societies that are characterised by *fast development of the public sector*. In the conditions when social dialogue and collective bargaining have become general characteristic of the status and relations, objectively speaking, public sector could not remain beyond that process. Based on the ILO documents (Convention no. 151) all public officials, employees and other persons employed in the public sector have been introduced in the process of social dialogue and collective bargaining. When it comes to public sector, it is the matter of functioning of the state in its most significant segments. All areas of work include public

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interest that does not allow being neglected due to its significance. Hence, these specific characteristics of the public sector have to be included in the methodology of bargaining, whereby it is very important for the state emporium not to bring into question the freedom of bargaining and equality of social partners. It is necessary to ensure for the organisation of public employees to enjoy full independence from public authorities in the bargaining process. In Serbia, out of the total number of employed persons (around 1,750,000) the state appears as the employer for more than 1,300,000 of them (public services, public companies, companies in restructuring, and companies in which the state has the majority capital). Therefore, the state is emphasised as the largest employer. Considering the scope of the public sector and the fact that public sector covers a larger part of economy, it comes out that the largest problems of the overall reform are connected with the public sector. It is not the question whether but rather how to enter the public sector reform. Basically, the following options are possible: passing and implementing of imperative legislation; implementing the mechanisms of social dialogue at all levels, and the third option (which is in-between the two previous ones) is to introduce administrative measures in the very approach aimed at eliminating obvious disproportions, and after that commence with persistent and systematic enhancing of a social dialogue in the public sector, in all its significant segments. In all that, opening of a new investment cycle, creating of an ambience with recognisable conditions and high level of legal security could contribute the most to favourable course of the reform process in the public sector.

Key words: Social dialogue, collective bargaining, public sector, public administration, employer, employee.

Introductory remarks

In a contemporary society, on a global scale, a seemingly contradictory process is in progress. On the one hand, the development of science and technology in all fields continuously strengthens the production forces and the ability of the society to continuously increase the production of material goods thanks to their implementation. At the same time, in a very complex social structure, the differences in the material status of certain social classes, groups and layers also increase. In this way, large social differences, almost regardless of the overall technological progress, remain the main cause and source of social tensions, with forms of manifestation and consequences that are difficult to predict.

Through history, philosophical and political thought have been dealing with the origin and sources of social differences, social conflicts that arise from them legitimately and methods of their resolving.

a) Civil state is based on the idea of freedom and equality for all people in all the fields, including the field of economic relations. The state does not intervene in these relations; it is only an external and impartial observer in free establishment and development of relations between labour and capital, in free competition at the free labour market. The establishment and termination of employment as a whole is in the hands of the employer, the one who defines the working conditions, wages, work organisation, working hours and all other conditions arising from the relationship between the employer and the employee. Labour is the commodity that is bought and sold on the market, according to market laws, equally as any other commodity. The state does not intervene in these relations. It is only an external and impartial observer in free establishment and development of relations between labour and capital, in free competition at the free labour market. In such circumstances, there are no elementary conditions for conducting of any organised contacts between the employers and workers. After all, in the first phase of development of the civil society, trade unions do not exist at all, or their organising is at the very beginning, and does not represent the factor that should be taken into account.

Such relationships are typical for the first, liberal phase of the development of civil society based on free competition at a free market that is not limited by anything. The attitudes about capitalism as a society of free entrepreneurship, based on private property, namely the society of free competition at a free market, have long been considered outdated theories. Not only that these attitudes have no support in reality but they "are not even approved by economists, except for certain minority showing nostalgic and romantic mood".²

b) Contrary to the presented attitudes, but along with them, primarily as an expression of growing and increasing of social differences, other, quite different concepts have been also developing. According to these attitudes, private property is the basis of antagonistic, irreconcilable, class structure of society. It is the cause and source of permanent social contradictions, conflicts, wars, and revolutions.³ Ways of achieving human freedom,

² John Kenneth Galbraith: "The New Industrial State", Stvarnost, Zagreb 1979

³ Rousseau, Discourse on the Origin and the Foundations of Inequality Among Men: "How many crimes, how many wars, how many murders, how many misfortunes and horrors, would that man have saved the human species, who pulling up the stakes or filling up the ditches should have cried to his fellows: Be sure not to listen to this imposter; you are lost, if you forget that the fruits of the earth belong equally to us all, and the earth itself to nobody!"

necessarily lead through an intricate maze of property relations, whereby the repeal or substantially limiting of private property appears as an unavoidable condition for achieving the set goals. This theoretical approach, when it set off into practical implementation, left huge traces in the recent history. State administrative apparatus became the decisive factor that affects all economic trends, manages resources and distributes and redistributes, without limitations, all material goods and financial resources. In such conditions, the scope for the operation of the markets is significantly narrowed, market principles are suppressed, and success at the market has ceased to be the primary criterion of success in the operation of business entities.

The realisation of the above-mentioned concept has not yielded the expected results. The consequence of all this was economic failure, lagging behind instead of prosperity, sharpening of contradictions instead of overcoming them. The conditions have been created for the concentration of power, for emerging and fulfilment of certain forms of oligarchic rule, at different levels. Social inequality, absence of freedom, repression of rights and legal uncertainty, are merely the consequences of such situation. It is obvious that the complete supremacy of the state and the state emporium in the field of economic relations does not provide even the basic conditions for the establishment of any forms of social dialogue. It would be confronted with serious ideological and political obstacles.

c) Neoliberalism is trying to preserve, as much as possible, the basic concept, and, at the same time, to appreciate the necessity for the state, to affect regulating of economic relations up to a certain extent, via its powers, meaning, via appropriate law. This impact regularly includes the measures which, by their economic nature, have social character aimed at affecting the reduction of social tensions. In this way, trying not to deviate from its basic concept, gradually but convincingly, neoliberalism accepts the elements typical for the concept of social market economy up to a certain extent. This convergence, looking over a longer period, is of great importance because it allows the gradual elimination of ideological obstacles for the establishment and development of legal institutions aimed at permanent establishing of dialogue between labour and capital.

Social state and social market economy

Theories of social market economy and social state recognize the reality. According to this concept, market economy, when it is successful, has to take into account not only the economic efficiency, but also the basic elements of social balance.

Starting from such a state of affairs, a concept (theory) had to be (was necessary to be) built and to establish a system that would simultaneously achieve two fundamental objectives: a) Ensure economic prosperity that is irreplaceable, absolute condition for the achievement of all, including social goals by leaving a wide space for the operation of market laws on the basis of private property; b) Build relationships and establish legal instruments that will allow favourable economic effects to be more evenly distributed among all social groups or classes via changes in the organization of the society. Societies that are capable of producing an abundance of objects for use by applying knowledge and technological advances also have to be able to provide to all their members, not only the basic conditions for subsistence but also an acceptable living. It's not the matter only of a humanitarian approach, but of an imperative based on the principle of equitability, which is the basis and prerequisite for achieving a stable social peace.

The basis of such theories reveals a different approach, a different analysis of relationships. The interests of social groups are different, but need not be, and are not necessarily conflicting. It is beyond doubt that holders of evidently different interests, however, have certain common goals on which they agree. The employers and employees alike have the interest to generating a positive business result if both parties benefit from it. Starting from that point, there are objectively the conditions for different interests to get harmonised one with another, in other words, to establish the principle of permanent negotiations rather than constant conflict.

The previous statement brings us closer to the essence of the topic. According to the concept described above, different sides, employers and employees, have a common interest for the business to be successful, and therefore they may be involved together in implementation of the same project. On the other hand, legal instruments need to be established that will ensure a business success to have positive effects not only for the owners of capital (employers) but also for employees in various forms, for most members of the society. This would, to some degree, enable the accomplishing of both objectives:

- a) Optimisation of economic performance on the basis of private property and market economy, and
- b) The required level of social security for the majority of members of the society. The key feature is reflected in massive adjustment of social relations. Instead of classical and basically unequal relations, the concept sets the basis for partnership, in which each side, in addition to efforts to optimally fulfil its own goals, expresses understanding for diversity and for the necessity of fulfilment of interests of the other side. At the same time, it establishes the legitimacy for necessary degree of public intervention in the field of economic relations, which creates conditions to affect, either directly or indirectly, the social status of individuals and social groups. One of the significant features of such a concept is its apparent depoliticisation. Up to the extent to which this concept could be successfully implemented, ideological differences, which were discussed, would lose in significance.

From the very beginning of European integrations, in particular after the 80s, the social dimension is one of the pillars of the European economic and social model. The entire project of European integrations, in its basic concept, is based on the balance between the economic development and achieving the necessary level of social security. This is how a social dialogue rises to the level of institutions at the European, national, branch and the enterprise level. Hence, social dialogue, despite all the economic and political motives, appears as one of the most important factors of integration.

Freedom of association is built into the very foundations of the system. It is equally guaranteed for employees and employers. Social dialogue based on freedom of association is contained in the European Social Charter, i.e. in the Charter on Fundamental Social Rights, which was adopted at the European Union level and, in some ways, incorporated in the highest legal documents of the EU Member States. All EU Member States have ratified the most important conventions of the International Labour Confederation on freedom of association and bargaining. The European Commission, before the accession of new countries to membership of the Union, takes into account in particular whether the candidate countries have taken over and incorporated in their legal systems the most important standards relating to freedom of association and social dialogue.

About the notion of collective bargaining

In all contemporary states that characterise their state and social organisation as democratic, social dialogue has become an important feature of the overall status and relations.

Social dialogue as the principle, as a new and significantly different method of regulation of social relations, is formulated and concretized its basic aims through the process of collective bargaining via harmonisation of attitudes and concluding of collective agreements. "In the developed world, collective agreements have long become an irreplaceable item of social dialogue that provides a balance of different interests in the work process. From that starting point, collective bargaining has got a clearly set objective: accomplishing of agreement between social partners and concluding of collective agreements that, upon mutual agreement, regulate the rights, obligations and responsibilities of the employees and employers, as well as mutual relations between trade unions of the employees and associations, namely other representatives of employers, as social partners".⁴ This is the way and method of realisation of a social dialogue, or, social dialogue is carried out and fulfilled primarily through different forms of collective bargaining. Collective bargaining can be seen and analysed only as a process. Different, opposed interests of employers and employees require to be harmonised in order to reduce the possibility to grow into conflicts of a higher degree or intensity. Thus, the sense of collective bargaining is to provide protection of interests of social partners in market economy conditions and, in such a way, to reduce the possibility of emerging of conflicting situations with unfavourable impact on economic and overall social trends. The basic approach set in such a way indicates the necessity of collective bargaining. Simply speaking, all other alternatives are incomparably less favourable. The undisturbed conducting of business activities, maintaining of the GDP level, and, if possible, its continuous growth, regular payment of salaries and increase of the purchase power of population, are the conditions for stability and progress of each social community. In contemporary conditions this cannot be achieved in the environment of growing social tensions threatening with social unrests and temporary or permanent disturbances in economic flows. In the conditions characterised by a high level of organisation of the employees and employers, mutual dialogue of social partners has got much more chances to be successful than unilateral setting of relations with application of the state emporium. That is why the collective bargaining occurs as irreplaceable mechanism via which the social partners regulate their mutual relations starting from their own interests, but with observing of interests of the other party. Hence, the main objective and sense of collective bargaining is to achieve a necessary level of social stability in the field of social-economic relations and necessary social peace.

Collective bargaining in the public sector

⁴ Zoran Ivošević, Radno pravo (Labour Law), Official Gazette, Belgrade, 2009

In its basic meaning, collective bargaining is understood as establishing and developing of relations between the capital and labour, between private employers and employees. Due to the above-mentioned characteristics, within a long period of time, all the issues related to the work of the public sector have been resolved with imperative standards, and social dialogue and right to collective bargaining have been excluded from public administration and public services sector up to the highest extent. In such a way, a large number of employees have remained outside that process. The ILO Convention no. 98 on the Right to Organise and Collective Bargaining also contributed to that. After general provisions affirming the right to organise and collective bargaining of employees, this Convention, in its Article 6, disassociates itself from the employees in the public sector: "This Convention does not regulate the position of public employees working in public administration, nor should it be interpreted as affecting their rights and status in any way."

The significance of this issue arises from changes that have happened in economically developed countries. The development of a modern society is characterised by fast development of the public sector, in its scope, activities, and the number of employees. In the conditions when social dialogue and collective bargaining have become a general characteristic of the status and relations in all contemporary states, the question whether all public sector activities and all the employees in these fields should remain outside this process has arisen as inevitable.

The state has the possibility to limit, or completely exclude (prohibit) certain forms of organisation of employees in public services. However, the statement remains that social dialogue as a whole, in all its forms and methods of realisation, has remained directly connected with the freedom of association. Therefore, the prohibition or significant limiting of the right to organise of employees in public services would, in parallel, have the character of forced limiting of this principle. In the largest number of democratically organised states it is directly opposed to most important standards of their internal law and, at the same time, to international legal standards contained in conventions or other international documents they have joined.

Public sector has got some very important characteristics compared to other forms of work:

- a) In these public sector fields the state occurs either as direct or indirect employer. Direct in the case of all public administration bodies, and indirect in other public sector fields where the state assumes primary responsibility for their functioning, such as health care, education, infrastructure and other activities of public significance.

- b) It covers vast fields of work that refer to, or that often indefinite number of people depends on.
- c) As a rule, the beneficiaries of public services have nothing in common with the very process of work in a certain field (electricity distribution, water supply, health care, etc.), but they fully sustain unfavourable consequences of potential disturbances;
- d) The consequences of disputes, halts or interruptions of work in these fields, even if it is the matter of a very small number of people, may cause large unfavourable consequences;
- e) When it comes to public sector we talk about functioning of the state in its most vital segments. All fields of work imply public interest that does not allow being neglected due to its significance, meaning that it can hardly stand even temporary terminations of work. More precisely, even a temporary termination of work (sometimes even a few hours are sufficient) has the capacity – property to cause emergency situations. As a rule, the instability, poor functioning and failure to execute tasks in the public sector are connected with evaluations on general stability status, with functioning of the state as a whole.
- f) The holders of functions in the public sector are often the holders of public authorisations so that the actions that would have been taken by the employees are often (as a rule) opposed to their rights and obligations in public administration or other sectors of work they are employed in.

A large number of disputes or conflicts between the employers and employees have occurred in those fields of work. However, if the right to freedom of association in the relevant sphere of work is limited or denied to the employees in such situations, the passing and implementation of imperative standards occurs, practically, as the only way of resolving problems in relations between the employer (state) and employees. Such an approach is in contradiction with a general notion of social dialogue and collective bargaining in a contemporary society. That is why important changes in this field could and were bound to happen.

The largest change was made when the General Assembly of the International Labour Organization adopted the Convention no. 151 on Labour Relations (Public Service) Convention concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service at its 64th session that was held on July 7th, 1978. "This Convention applies to all persons employed by public authorities, to the extent

that more favourable provisions in other international labour Conventions are not applicable to them"... (Part 1, Article 1 of the Convention).

In order to express the importance of the Convention from this point of view, we will give concise data on the number of employees in certain European Union Member States⁵.

Austria: population of 8.3 million inhabitants; GDP: 258 billion Euros; Number of employees in the public sector: 347,000 (38% work for the federal Government, 48% for provinces and 22% for municipalities). Trade union organizations: Austrian Trade Union Federation (ATUF), Public Service Union (PSU) and Trade Union of Municipal Public employees; large percentage of employees are members of in trade unions. Employers are represented by the Federal Minister in the Federal Office which is responsible for the federal public administration. The right to strike is not explicitly regulated, but is considered to be a part of the rights guaranteed by the Constitution.

Belgium: population of 10.5 million inhabitants; GDP: 332 billion Euros; number of employees in the public sector: 840,000 (23% at the federal level). Only the representative trade union organizations may participate in negotiations with the authorities; membership in trade unions ranges from 40 and 55%. The employer is represented by the relevant political authorities; the agreement arising from negotiations is a political commitment but is not legally binding.

Bulgaria: population of 7.7 million inhabitants; number of employees in the public sector: 83,943 (41% are public employees). Organised trade union of public employees; negotiations are held within the National Council (two representatives of the Council of Ministers, two employee representatives and two representatives of employers). The results are shaped into a political agreement or legal text, which is binding.

Czech Republic: population of 10.3 million inhabitants; number of employees in public administration: 96,207 (19,000 at the central level); organised in the in the Czech-Moravian Confederation of Trade Unions and the Association of Independent Trade Unions. The state is represented by the Economic and Social Council. The results of negotiations can be in the form of legally binding agreement or merely a political statement.

Estonia: the population of 1.34 million inhabitants; number of public sector employees: 28,000 (70% in public administration, 14% in the professional army and 16% in local government); the employees are members of the Confederation of Estonian Trade Unions; the membership rate in trade unions is around 15%; the employer is represented by the Inter-ministerial Committee headed by the Minister of Social Affairs.

⁵ Source: Material prepared during the French presidency of the EU in 2008 titled "Administration and public service in 27 EU Member States", 2008

Finland: population of 5.3 million inhabitants; number of employees in the public sector: 562,000 (including 430,000 in local government and 8,000 in state-owned enterprises); the negotiations involve the Government Office as an employer, Ministry of Finance and representative trade unions. From 80 to 90% of employees are trade union members. The volume of local negotiations has increased. Government agencies and trade unions conclude collective agreements at the level of the agency.

France: population of 65 million inhabitants; GDP 2,000 billion Euros; number of employees in the public sector: 5.2 million. Three branches of public service: central government/authorities (about 50% of employees), local government (31% of employees) and public hospitals (20% of employees). Trade unions cannot initiate collective bargaining. In practice, bargaining has developed over the last 10 years. The Government is represented by the Ministry of Public Service, Ministry of Health and Ministry of Local Government. The employees are members of 8 (eight) big trade unions. Even when they are reached, the agreements are not binding, but the political weight that they have is undeniable.

Greece: population of 11.2 million inhabitants; GDP: 208 billion Euros; number of employees in the public sector: 369,800 (25% in central authorities, 23% in local government and 52% in state enterprises). The Government is represented in negotiations by the Minister of Interior, and if necessary the representatives of other Ministries are also included. The employees are members of the Trade Union of Greek Public employees. The agreements on salaries, pensions and job description are not binding on the government bodies.

The Netherlands: population of 16.4 million inhabitants; GDP: 529 billion Euros; number of employees in the public sector: 1 million (12% in public administration). In the negotiations, the Government, as an employer, is represented by the Ministry of Internal Affairs and employees by four major trade unions. Around 30% of employees are members of the Trade Union. The legislative bibliography does not recognize the right of public employees to strike, although this right arises from the European Social Charter, which is directly applicable to the Netherlands and jurisprudence.

Ireland: population of 4.2 million inhabitants; GDP: 191 billion Euros; number of employees in public services: 316,000. There is a long tradition of social dialogue. The Government is represented by the Ministry of Finance and the employees by 4 main public sector trade unions. From 60 to 80% of employees are members of trade unions.

Italy: population of 58.9 million inhabitants; number of employees in the public sector: 3.4 million (15% of public employees); the state is represented in bargaining by the Agency for Public Authorities (APA) established specifically for that purpose, which acts on behalf of the

employer. Membership in APA is mandatory for all public authorities. Approximately 40 to 55% of employees are members of trade union. Negotiations are conducted in 11 different sectors at the national and local level.

Cyprus: population of 792,000 inhabitants; GDP: 17 billion Euros; number of employees in the public sector: 63,384. The Pancyprian Public Employees Trade Union (PASYDY) gathers around 80% of employees and 10% of employees belong to other trade unions. Social dialogue takes place at the sessions of the Joint Committee of employees, and conclusions of the Committee are submitted to the Council of Ministers, which makes the final decision.

Latvia: population of 2.3 million inhabitants; number of employees in the public sector: 241,500 (52% in public administration, 48% in local government). Negotiations are held between the Agency and the Ministries as employers and the Confederation of Free Trade Unions of Latvia. Around 15% of employees are members of trade unions. The results of the negotiations can be political declarations and agreements that are legally binding.

Lithuania: Population of 3,376,000 inhabitants; GDP: 98,139 million Lt; number of public employees: around 52,000. Collective negotiations take place within the tripartite Council of the Republic of Lithuania, which consists of permanent members, representatives of three main trade unions and representatives of relevant Ministries. Less than 15% of employees are members of trade unions.

Luxembourg: population of 476,000 inhabitants; GDP: 33 billion Euros; number of public sector employees: 22,089 (67.4% are public employees). The negotiations are carried out between the State as the employer, represented by the Minister for Public Service and Administrative Reform and representative trade unions. The agreements are binding on the administration, and the agreed provisions remain in force for 3 years.

Hungary: population: 10 million inhabitants; GDP: 94 billion Euros; number of public sector employees: 760,000. Social dialogue is organised at two levels: the Council of Public Service for Harmonisation of National Interests and at the sectoral level where sectoral agreements with trade unions are concluded. The parties to the negotiations may decide that the provisions of the agreement are legally binding; otherwise, the results of the negotiations shall be considered recommendations.

Malta: population: 400,000 inhabitants; GDP: 4.5 billion Euros; number of public sector employees: 41,000. The employees are members of trade unions that are gathered within the Confederation of Malta Trade Unions (CMTU); the employer is represented by the Ministry of Finance and the Prime Minister's Office.

Germany: Population: 82.17 million inhabitants; GDP: 2,412 billion Euros; number of employees in the public sector: 4.5 million. The administration has three categories of

employees: public employees, appointed persons and employees. Public employees have no right to participate in collective bargaining. The Ministry of Interior (BM) includes two major trade unions in the preparation and adoption of the regulation: Confederation of German Trade Unions (DGB) and German Civil Service Federation (DBB), when these are the regulations concerning working conditions, equal opportunities, training and public sector reform. Trade unions gather from 40 to 55% of public employees.

Poland: population: 38.2 million inhabitants; GDP: 306 billion Euros; number of employees in the public sector: 3.5 million (of which 120,000 in the corps of civil service). There are two major trade unions: National Convention of Trade Unions and Solidarity. Public employees have no right to conclude collective agreements. Informal meetings of trade unions and representatives of the Office of the Prime Minister are held several times a year. In this way, the Government consult trade unions on drafts of legal acts, but the results of these discussions are not binding.

Portugal: population: 10.4 million inhabitants; GDP: 162.9 billion Euros; number of employees in the public sector: 747,880 (75.5% at the central level and 17.5% at the local level). In Portugal, there are two forms of social dialogue: the first form is collective bargaining, and the second is the system of collective agreements. Collective bargaining is mandatory and is carried out at an annual basis. Signing the agreement upon completion of negotiations is optional and depends on the willingness of the Government, which makes the final decision. The Government is represented by the Ministry of Finance and the member of the Government responsible for public administration. When there is a possibility of signing collective agreements, the state acts as an employer and at the same level as the associations of trade unions, with which it signs the agreements. There are three trade unions representing the employees in public administration, which were consolidated into a confederation of trade unions at the national level.

Romania: population: 21.7 million inhabitants; GDP: 97.7 billion Euros; number of public employees: 170,000. Every year the administrative institutions and authorities conclude the agreements with representative trade unions on different issues. From 55 to 70% of public employees are members of some trade unions. Public employees have the right to freedom of speech, membership in trade union, strike, and right to permanent education.

Slovakia: population: 5 million inhabitants; GDP: 61 billion Euros; number of employees in the public sector: 37,000. Social dialogue is organised at two levels: central public administration and the "Company" (Ministries, bodies of local authorities, etc.). When it comes to central administration, the representatives of the Government bargain with trade unions, primarily with the Slovak public administration trade union. The results of

negotiations apply to all public employees at the central level. When it comes to "companies", the negotiations can only improve the agreement reached at the central level by means of clarifying the same.

Slovenia: population: 2 million inhabitants; GDP: 30.5 billion Euros; number of employees in the public sector: 153,000 (40,000 in public administration and 4,400 in local self-government). Social dialogue is centralised. The Government bargains with representative trade unions. The Government, as the employer, is represented by the relevant Ministries and Agencies, Assembly and associations of municipalities. The results of negotiations are legally binding for all sides, irrespective if they are in the form of legal texts or collective agreements.

Sweden: population: 9.1 million inhabitants; GDP: 302 billion Euros; number of employees in the public sector: 1,125 million. The size and number of Ministries is traditionally small. The Ministries employ around 4,500 people, while 24,000 people are employed in agencies. The conditions for employment in public services are regulated by collective agreements that are concluded between the Swedish Agency for Employees at the Central Level, on the one hand, and trade union organisations, on the other hand. Swedish Agency for Employees at the Central Level (SAGE), whose members are all the agencies and Government institutions, participates in negotiations on other issues (work conditions, salaries, job security, etc.). All parties concerned are involved in agreements that are usually signed with 3 years validity. Around 80% of employees in the public sector are members of some trade unions.

United Kingdom: population: 60.7 million inhabitants; GDP: 2,025 billion Euros; number of employees in the public sector: 2.75 million (20% at the central level). Only those working in the Ministries or in their executive agencies are public employees and they make around 9% of employee in the public sector. Most employees are public employees hired based on the contract and they are subject to general labour related legislation. The rate of membership in trade unions is much higher in the public sector than in private sector. Four main trade unions that represent public employees (trade union of public and commercial services, association of penitentiary administration service, and association of public employees of the first rank) claim they have from 260,000 to 270,000 members in public service. Unison is the main trade union of public employees (with 1.3 million members). The Government, which is represented by the Cabinet Office and Ministry of Finance, consult trade unions of public employees regarding the issues having wide implications on public administration. The result is a national agreement, which is being implemented.

Applying simple addition to the available data we find that **the number of employees in the public sector in the EU countries** makes around 25 million employees. It is important to point out that the source is credible⁶, but that it is evident from the above-mentioned data that the EU Member States did not have the same criteria for including certain fields or parts of work in the public service sector. More precisely, it is evident that some countries have limited themselves exclusively to public employees in public authorities without including other sectors of public interest. This could lead us to conclude that the total number of employees in the public sector is significantly higher than the one mentioned above. We should definitely add to that a significant number of employees in the EU administration (Council of Europe, European Parliament, European Commission and its bodies and accompanying services). In any case, it is obvious that it is the matter of a large corps of employees who cannot be left outside a social dialogue according to the highest EU legal documents (Social Charter⁷). All the EU Member States have ratified the ILO Convention no. 151 dated July 7th, 1978.

Based on this Convention, all public employees, appointed persons, and other persons employed in the public sector have been introduced in the process of social dialogue and collective bargaining. The Convention sets the principles that are the basis for freedom to organise and protection of the right to organise of the employees (Article 5 of the Convention):

- a) "Public employees' organisations shall enjoy complete independence from public authorities". This principle implies that hierarchical system of relations is one of the main characteristics in all public services. Organising of public employees would not be free if it would not be free from hierarchical relations as much as possible. This is the only way it can be free and fulfil its purpose.
- b) "Public employees' organisations shall enjoy adequate protection against any acts of interference by a public authority in their establishment, functioning or administration". This principle requires all the Members States that ratify the Convention to provide appropriate protection of freedom to organise of public employees.
- c) "In particular, acts which are designed to promote the establishment of public employees' organisations under the domination of a public authority, or to support

⁶ Source: Material prepared during the French presidency of the EU in 2008 titled "Administration and public service in 27 EU Member States", 2008

⁷ Revised European Social Charter, Strasbourg, 03.05.1996, Article 5 – Right to organise: "With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom."

public employees' organisations by financial or other means, with the object of placing such organisations under the control of a public authority, shall be deemed to constitute acts of interference within the meaning of this Article". This is an exceptional guarantee when it is implemented in practice. Its intention is to exclude the possibility for the authorities to promote and favour the organisations under their own control, or to deploy different favourable circumstances and use financing of already existing public employees' organisations to place them under their control, which would certainly disturb their independence that is the condition of their free participation in the process of collective bargaining. Hence, the primary significance of the Convention stems first all from the scope and number of people it refers to. It refers to all the employees in public services (with the exception of a small number of people at high positions) and it can also be applied to the employees in public companies and other companies where the state has its share in the fixed capital. The ILO Convention no. 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service and its implementation have achieved the universal, meaning a new important quality in the process of social dialogue and collective bargaining.

All the EU Member States continue working on public sector reform. Basically, the main directions of this reform could be defined as follows:

1. Increase of efficiency and enhancing of quality of services, primarily via constant raising of competences of employees and improvement of organisation of functioning of public services at all levels of government. In that sense, a special attention is paid to human resources recruiting and professional training. There is an obvious effort to improve the quality of services, in particular the relationship towards the citizens – beneficiaries of services through a "one service counter system" at the level of administrative districts. This is the system where it is sufficient for citizens to address only one body at one place (one counter) with their application in order to exercise the rights they believe they are entitled to. This is how he/she ends his/her part of a job. It is not his/her obligation to distinguish between often complicated relations between the administration bodies and their responsibilities. Everything else, after the submission of application, is done by the administration according to their own initiative, mutual linking and consultations while the citizens-persons requiring the service will receive a written notice about the way in which his/her application has been resolved, with potential further instructions, if they are necessary.

2. Reduction of the number of public employees is a general trend in the EU countries, which is being done by certain countries in different ways in accordance with their conditions and programmes:

a) Via involving external agencies or companies. Sometimes that means complete or partial privatisation; transfer of responsibility and control from the Ministries onto the hired agency. Such a procedure fits otherwise into a general trend of widely present practice that introduces the elements of corporate management in the method of functioning of management authorities typical for private and public-private sector;

b) Establishing of new organisation and new methods of work. Via introducing the updated equipment, significant improving of the flow of data and information between the management bodies and also very often with introducing an online approach to administrative documents. This increases the flow of information and significantly creates conditions for rationalisation of the number of employees, with simultaneous improvement of the quality of services.

Reducing of the number of employees very often has not got the character of dismissing, i.e. termination of employment contracts. Simply speaking, when the work process allows it, instead of the employees who leave from whatever reason (retirement, leaving to other jobs, death, etc.) no new employees are recruited and no new contracts are concluded but jobs are rather incorporated and distributed through the process of work rationalisation.

c) Transfer onto contractual relationship, with the exception of some jobs-functions (diplomats, judges, etc.). Once they enter the public service, public employees sign a private contract, the validity of which is, as a rule, 4 (four) years. The objective is to facilitate necessary replacement within the services and to reduce the number of employees along with budget spending for those purposes.

Looking on the whole, the main objective of the public sector is to stop the growth of administration, to bring its operation within economic criteria and, at the same time, to make the work of administration more efficient and improve the quality of services.

In all the EU Member States, the public sector employees have the right to organise freely, with certain specific characteristics. They become trade union members and participate in social dialogue and collective bargaining. Furthermore, practically all EU Member States, i.e. their Governments participate in the European intersectoral social dialogue as members of the European Centre of Employers and Enterprises Providing Public Services (CEEP).

Methodology of bargaining in the public sector

Bargaining is always the communication directed towards the accomplishing of agreement between the parties having certain interests that are different as a rule. Collective bargaining is the process that precedes the passing of collective decisions based on agreement of social partners at the level of a company, local or state community, as well as in international frames.

Methodology of collective bargaining implies different ways, namely methods leading to harmonisation of positions and concluding of collective agreements. Bargaining methodology can be truly diverse, but it can be basically divided into two large groups: a) bargaining with the previously prepared positions, and b) bargaining based on the model of mutual benefit.

Bargaining model with preset positions where each side enters into negotiations with a concept prepared in advance and with the aim not to deviate, or to deviate as little as possible from previously prepared positions. The space for reaching of an agreement within such negotiations is narrowed in advance. Bargaining with positions prepared in advance largely loses from its sight the existence of shared favourable characteristics or interests that cannot be found in a previously prepared concept. That is "hard" (hostile) bargaining where jointly acceptable results are difficult to achieve.

This bargaining method is not favourable for the public sector since it is regularly expressed as imposing of positions. The state occurs as an employer, in the most general sense. Hence, if the negotiator appears with previously prepared "hard" position such an approach is interpreted as the approach from the position of power, from the position implying the use of the state emporium. This is contrary to the basic principle of collective bargaining where partners in negotiations have full freedom to take sides in the process and consideration and taking of positions. In such conditions, collective agreements, once they are concluded after all, encounter, as a rule, the difficulties in the implementation procedure because one of the sides in negotiations feels them as imposed and does not accept them as its own. With such an approach, collective bargaining loses in significance; the interest of parties to participate in the bargaining procedure is reduced while the possibility to replace collective bargaining in this public sector field with a simple regulating via passing of legal norms by the competent public authorities is enhanced.

The mutual gains model is far more elastic, acceptable for partners in negotiations and has more chances to be successful. It is more favourable for implementation in the public sector since the implementation of this method eliminates largely in advance the possibilities that would bring the negotiations closer to unequal relations and imposing of positions by the side having a better position (state representatives, public sector representatives).

The main approach is changed. The model does not place different, mutually opposed interests to the forefront, although it is certain that such interests do exist as well. Namely, the parties in negotiations have shared interests that are placed to the forefront according to this bargaining model and later on they serve as the basis for accomplishing of an agreement under all other issues.

Such an approach implies the accepting of certain principles as the basis for negotiating:

- a) Expressing and substantiating one's own, and appreciation of the other party's goals and interests. There are no preset positions. It is the matter of the method where parties in negotiations show sufficient to listen carefully the arguments of the other party once they state their arguments;
- b) A high level of mutual exchange of information and establishing of necessary extent of trust. The best way for establishing trust is truthfulness and confidentiality of information that are being exchanged. When appropriate and necessary level of trust is reached based on such an approach, further negotiations are conducted with less difficulties and they have more chances to succeed;
- c) The effort to bring closer the position *on most important issues* through negotiations. Each party states and emphasises its own interests and goals, justifies them with arguments without losing from sight equally justified interests of the other party, in particular when they are justified in a convincing manner.

Mutual understanding prevails. The interests of parties in negotiations are mutually linked so that a mutual bond is established, but in the way that the interests of one party exclude the interests of the other party, but vice versa: the accomplishing of agreement on fulfilment of one party's certain interests is the basis for accomplishing of agreement on other party's interests.

When it comes to this model, the decisions are made based on compromise, but with mutual acceptance. This means that once the contract is concluded its implementation could be expected with a higher level of certainty. More precisely, the issues that have been agreed shall be mutually implemented because none of the parties considers the accomplished solutions imposed.

Collective bargaining in the public sector will most certainly show better results with the application of mutual gains model. However, the situation is not as simple as that. The mutual gains model may be limited with the objectively existing circumstances that occur as the limit, the line across which it is not possible to meet the other party's interests. Such a limit is reflected most frequently in objectively existing circumstances, economic and financial

potentials that cannot be exceeded. This is the way to turn this model into a bargaining model with preset positions that has been described above, or into a blended model.

Blended model does not have any specific characteristics of its own since it appears as the combination of two previous methods. Parties in negotiations have their preset positions but they single out the interests and issues on which they could accomplish the agreement by applying the mutual gains method. In such a situation it is important to single out the largest possible number of issues that could be the subject of the second method trying to create a favourable basis for resolving of the issues in connection with which the parties in negotiations were directly opposed, i.e. had "hard" positions in the initial stage of negotiations.

When it comes to the public sector, the state is the negotiator in the most general form and independent from some special characteristics. Once the specific negotiations are opened, collective bargaining branches within a voluminous public sector per certain departments or fields of work. At the same time, collective bargaining in the public sector is carried out, as a rule, at different levels, from local community up to the state level. The features we explained above talk about the necessity to harmonise the bargaining process and accomplished solutions at different public sector levels. Special care has to be taken to avoid coming up with such differences that could jeopardize the functioning of public services and undisturbed fulfilment of public interests. Furthermore, the practice has shown it is not favourable for the holders of functions at different levels to appear in collective bargaining procedure since it is very difficult to distinguish between the emporium and participation in the bargaining procedure.

Different countries deal with this problem in different ways. The method according to which the state has empowered special bodies or institutions established exclusively for that purpose to negotiate is prevailing more and more as the way to exclude the holders of functions from the bargaining process. For example, in Italy, the Agency for the Representation of Public Administrations in Collective Bargaining (ARAN) was introduced. This Agency is empowered by the state to participate in all stages of collective bargaining. The Agency is decentralised and it has its negotiating units all over the country. It basically acts as a service sector providing services to the state and its bodies in the field of collective bargaining. The Agency is completely independent in negotiations, but it has to submit the contracts to the competent authorities for approval prior to their final conclusion. In general, the trend to apply and develop a collective bargaining system that is similar to the one developed in the private sector, in the entire public sector, wherever possible, is getting stronger and stronger.

In our system, the same problem of equalising the process of bargaining and collective agreements at different levels has been resolved in a different way, via legislation. The Labour Law (Article 246) has the provision according to which a Special collective agreement for the territory of the Republic *for public companies and public services founded by the autonomous province or local self-government unit can be concluded by the Government and representative trade union if there is a justified interest and aiming at providing equal conditions for work.* Such an approach excludes from the bargaining process the bodies and trade union organisations at lower levels. In these conditions we can say that public legal component of "general interest" and internal hierarchical relations based on it prevail over the second contractual component.

Public sector in Serbia

Public sector in Serbia is highly voluminous.

According to insufficiently proven data, the public sector, not counting in the public companies, employs 550,000 people in total, which makes 1/3 of all employed people. In other words, the public sector (public administration and social insurance; education; health; army and police; Government and its Ministries, Departments and Directorates; National Employment Service; Fund for Pension and Disability Insurance) employs **around 550,000** people.

Taking into account the method of organising and operating of public companies there are grounds to include the number of employees in these companies into the total number of employees in the public sector. According to the method of establishing and functioning, public companies often function more as an extended arm of administration that is their founder (Republic, autonomous province or local governments) than as companies established on economic principles. There is an obvious absence of professional, managerial, corporate management at all the levels. Public companies do not participate in market competition since majority of these companies have the monopoly in the field they are established for; the majority of public companies operate with losses. Public companies contribute to the "budget filling" but they are spending the budget resources much more because their mainly regular losses are covered from the budget, while the number of employees, regardless proclamations, is increasing year in year out so that, according to estimates, it currently makes **around 680,000** people.

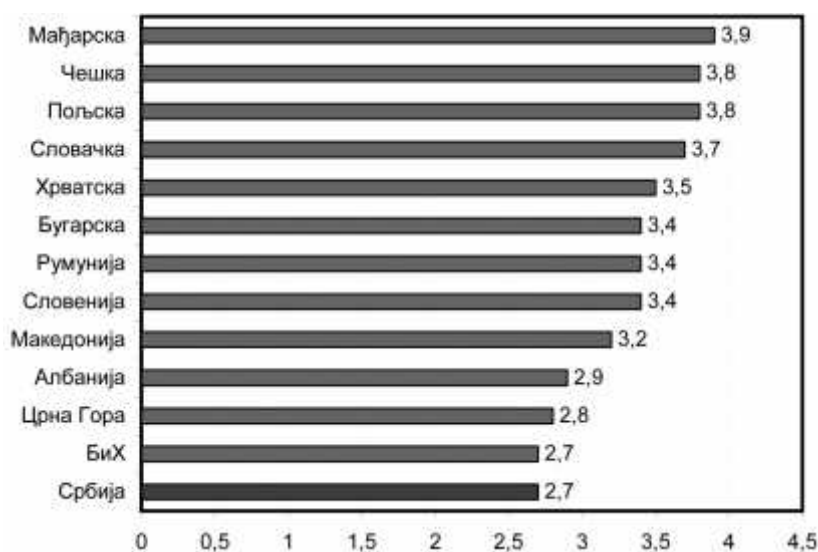
For companies in restructuring it could be said that they are our speciality in a certain way and that we could hardly find such a form of economic organisation anywhere else in other

countries. There are elements according to which these companies could or have to be also included in the public sector. The public, administrative component is stronger than business one, if the latter exists at all. Based on the state measures, meaning imperative norms, these companies have been excluded from the legal regime, in particular from the part referring to the responsibility of economic entities. The usual, legally regulated routes of primarily economic responsibility cannot be applied to them. Looking from the aspect of functioning, they appear as large spenders of budget resources, or more precisely the budget resources are used to ensure their existence, including the salaries of employees up to the extent that they could be paid at all. According to the data of the Ministry of Economy ("Blic", July 20th, 2014) more than 26,000 workers are employed in 159 companies undergoing the restructuring process. That situation has been lasting for unjustified long period. This has been conditioned primarily by multi-annual absence of the concept designed to exit such an unfavourable situation. The main question is the one of economic sustainability of such a status, but this is beyond the framework of the subject of this paper. Our interest refers to the scope and possible forms of their participation in collective bargaining since in the case of companies in restructuring, if we take into account all the circumstances, the state appears actually as the employer. There are different ways of regulating the relations, but none of them reduces the decisive role of the state in the relevant field of work.

For the sake of wholesomeness, the overview of the public sector could also include the companies where the state has the majority share in capital and/or decisive impact in the Managing Board.

The overview of the public sector that has been presented, irrespective of potential but not large imprecision, points to the fact that in our conditions the state is far largest employer. Namely, if we start from the described criteria, the state appears as the employer for around 1,300,000 out of the total number of employed people that, according to estimates, makes around 1,750,000 people. This is certainly an unfavourable structure of employers that speaks about the failure of transition process, which has been lasting in our country for more than 20 years already. Despite such a long duration of the transition process, the rate of accomplishing of transition objectives is very low, and it belongs among the lowest compared to other countries in transition. This can be seen from the following data:

Overview of the success rate in accomplishing of transition objectives



Hungary

Czech Republic

Poland

Slovakia

Croatia

Bulgaria

Romania

Slovenia

Macedonia

Albania

Montenegro

BiH

Serbia

Source: European Bank for Reconstruction and Development (EBRD) – Transition Report

We can compare the scope, size and number of employees in the public sector with the overall, primarily economic characteristics of the situation and relations as a whole according to different parameters. One of the important parameters is certainly the comparison of the public sector with the economic strength of the society, through the gross domestic product (GDP). In this regard, in relation to all the EU countries (for which we have given the data in the previous section of this topic), we have significantly less favourable ratio. The GDP in Serbia has been mainly stagnating in the last few years, ranging from 37 to 40 billion USD. The disproportion is evident. Simply speaking, our GDP cannot withstand such a large and

inefficient administrative apparatus. It is certain that public sector is oversized, regardless of what parameters or criteria we apply. The ratio of public sector employees far exceeds the number of employees in all other fields of work. Looking from the aspect of the structure of business entities, especially from the aspect of economic efficiency, such a ratio is simply not sustainable.⁸

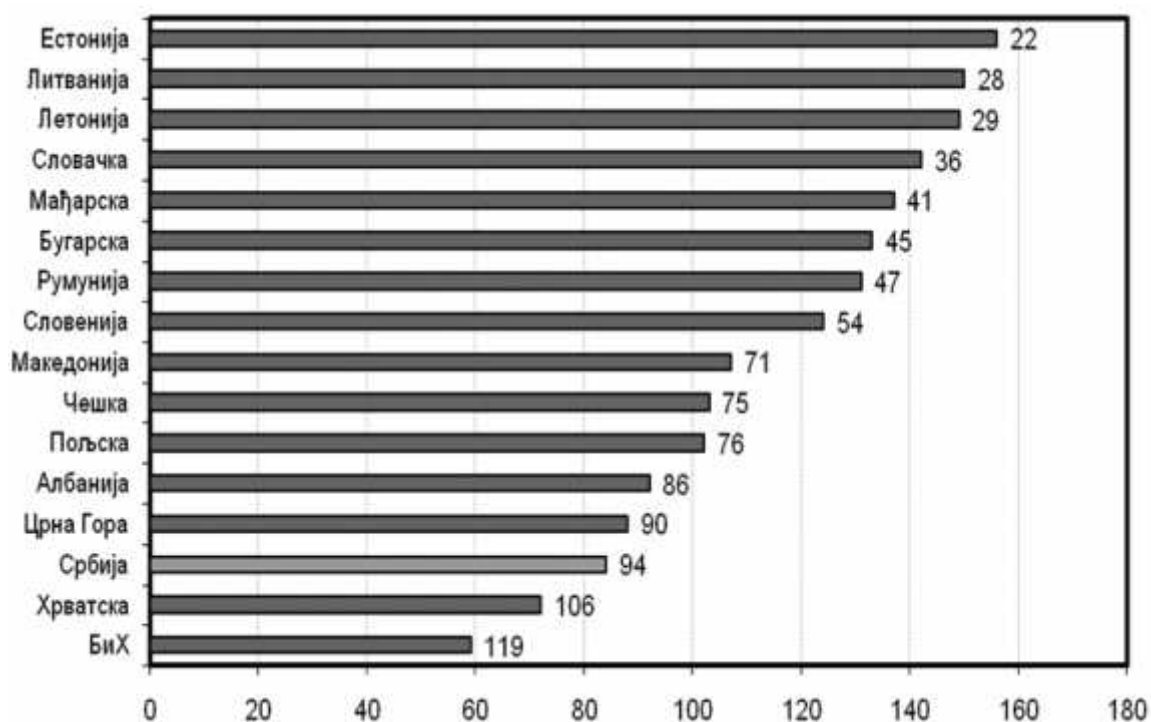
Considering the size of the public sector, the fact that the public sector also covers a large part of economy, it could be concluded that the most difficult problems related to the overall reform of the public sector include public administration (state, province, local governments), public enterprises, companies in restructuring and other companies in which the state has a significant stake in the fixed capital and the decisive role in management, health care system, education, culture and other fields that could be, according to their activities, organisation and financing reasonably included in the public sector.

The presented estimates contain the requirement to immediately commence with reducing of the scope of the public sector, particularly the number of employees in the public sector. This measure must certainly be combined with various other measures, in order to avoid further increasing of social problems.

Already at the beginning it should be noted that, in this respect, there are limiting factors. Realistic environment is extremely unfavourable. The level of economic activity is very low, and the general conditions for commencement of a new investment cycle, are still very unfavourable. This follows from the following Table:

Conditions for doing business – comparative overview

⁸ Based on the presented data we could start thinking whether the reform process has taken the opposite direction. In addition to its classical functions, the state has become, at the same time, the largest employer, work process organiser, and decisive factor in distribution. Successful fulfilment of these functions requires a voluminous apparatus of employees that is being created as such. At the same time, its power and impact on all the field of work is growing, which in turn, inter alia, aggravates the public sector reform.



Estonia

Lithuania

Latvia

Slovakia

Hungary

Bulgaria

Romania

Slovenia

Macedonia

Czech Republic

Poland

Albania

Montenegro

Serbia

Croatia

BiH

Source: World Bank, *Doing Business Report*

The presented data indicate the inability of the real sector to "soften the blow", namely to accept a part of obvious redundancies in the public sector. Hence, in the conditions of already high unemployment rate (there is the difference between formally expressed status and real assessments) the indispensable, almost inevitable, more significant reduction in the public

sector employment shall appear as an evident social problem, which is the area where, under the given circumstances, it is possible to organise, open and manage the process of social dialogue and collective bargaining with more or less success.

Another option would be to retain at this point the majority of employees in the public sector with a linear reduction in earnings. Notwithstanding a very high expenditure side for our conditions, individual public sector wages are low. The level of wages in the public sector under the condition that these earnings continue to decline, brings to a number of employees not only a significant reduction of standard, but it approaches them to the very border of existence. For now, it looks like job security still makes a convincing outweigh in the struggle to sustain the level of earnings or for their increase, but it does not have to stay that way, especially if the feeling of job security, due to well-known circumstances, is going to be seriously questioned. In such conditions, when existential problems are in the forefront, social dialogue, as a rule, is difficult to establish and maintain with the expectation of a favourable outcome. Simply speaking, increased social problems lead to the exclusiveness of one of the parties in the negotiations, and such position, as a rule, is not likely to ensure the accomplishing of results⁹.

Working conditions and wages of job holders in the part of the public sector can induce negative selection in relation to major professional tasks, and practically in the most important fields. There are no credible data, but we can conclude beyond any doubts that affirmed experts from the public sector seek their further engagement out of the public sector (health, education, information services, etc.) in the country, and increasingly abroad. This fact should be attributed the importance it deserves. You do not need to come to terms with the statement that such a brain drain from the public sector is conditioned by circumstances and there is no way to change the situation significantly. In relation to the total number of employees in public services, the number of people who leave may not be impressive. However, according to the structure and to the importance, the things are different: those who leave are those who could contribute most to the successful development of the process of introducing changes in the public sector due to their expertise, and affirmation at a scientific level in the country and abroad.

⁹ In the poor country, and among the poorly paid, labour relations will, in general, be harsh and angry. The compulsion associated with low compensation alienates the worker from the employer... In the richer country and among the well-to-do, everything is more benign. Compulsion has receded. In consequence, there is little or no alienation; the way is open for the worker to accept the goals of the organization. (Galbraith, John Kenneth: The New Industrial State, Stvarnost, Zagreb, 1978)

The above-mentioned characteristics suggest that the time has been spent and that we should commence with major changes in the organization and functioning of the public sector without any further delay. It is the matter of coerced actions for which can already say that they are seriously delayed. Therefore, if we conclude, as indisputable fact, that such undertaking is necessary, the question of approaches, and methods that are going to be applied remains. In this context, the question arises, what about our social dialogue, and in particular, whether the activation of social dialogue and collective bargaining mechanisms may lead to a successful implementation and fulfilment of positive results in the public sector reform.

Public sector reform, regardless the way it is carried out, is a mandatory complex and very contradictory process that, especially in our conditions, must take several years. However, when this problem is approached from the position of an exigent demand, the question is no longer whether, but how, namely it is the question of a path, and the ways in which the solutions should be found for complex issues related to the public sector complex. Basically, two approaches are possible:

First, through legislation, which means by applying administrative measures, i.e. imperative regulations passed by the state. In this way, the state (not as an employer) assumes the responsibility to reform the public sector through the enactment and enforcement of legislation. The adoption and vigorous enforcing of mandatory regulations at the first glance has the best chance to yield with (relatively) favourable results within a short time. In this segment, the state does not act as an employer, but exclusively as a holder and protector of the public interest according to the contents, or as the holder of public emporium according to the method. It should be noted that this method has already been applied in the area of public administration. In December 2009, passed the Law on Defining the Maximum Number of Public Administration Employees¹⁰. The aim of the Law was not to allow further increase in the number of employees in public administration¹¹. According to the explicit provision of the Law (Article 2, Paragraph 2): "The total maximum number of permanently employed people in the Republic administration cannot exceed 28,400", providing that for each public authority, public agency and organisation for mandatory social insurance, the number of employees is determined by the Government.

The Law also contains the limitations to the number of persons who are allowed to be hired in public administration based on contracts for provision of services or contract on temporary

¹⁰ Law on Defining the Maximum Number of Public Administration Employees, Official Gazette of the Republic of Serbia no. 104/2009.

¹¹ The Law refers to all public authorities. The exceptions include: Ministry of Internal Affairs, Ministry of Defence, Security Intelligence Agency, and Penitentiary Executive Directorate for which the number of employees shall be regulated with special regulations.

and occasional jobs due to the increased scope of work, with the conclusion that the number of employees on such basis "cannot exceed 10% of the number of permanently employed persons in the Republic administration".¹²

It is obvious that the basic idea was to deploy imperative norms to suppress the proven capacity of administration to always justify or prove the need for the increase of number of employees. Although we do not dispose with authentic data, when it comes to the effects of implementation of this Law we can say that it has yielded certain results and that today, in 2014, the number of employees in administration ranges around legally set maximum level. However, in relation to the entire public sector, the Law has had only a limited reach. Without special analyses it can be concluded that the number of employees in the public sector has been increasing in disproportion with the number of employees in the real sector and other fields of work.

Second, through the implementation of social dialogue mechanisms at all the levels, from local government unit to state administration. Such an approach requires a concise overview of some basic characteristics of the status of Social dialogue and collective bargaining in the public sector in Serbia.

Judging by legislation, which is voluminous and largely harmonised with the ILO Conventions and EU legislation¹³, social dialogue and collective bargaining in the public sector in Serbia is an important property of the entire voluminous public sector system:

Freedom to organise in trade union organisation has been widely given, with truly insignificant limitations (defence, special services). The right of an employee to get included in different forms of trade union organisations in the public sector has been by no means brought into question. The latest changes and amendments to the Labour Law have eliminated the difference between the employees in the public and real sector at terminological level as well. Simply speaking, the use of the term "worker, official appointed person" has been eliminated and a shared attribute is applied to all of them, namely they all belong to the group of employees. All legal documents regulating social dialogue and collective bargaining refer accordingly and up to the same extent to the employees in all fields of work.

¹² The following are excluded from this limitation: Ministry of Finance – Treasury Department, Republic Hydrometeorological Service of Serbia, Statistical Office of the Republic of Serbia, and Republic Geodetic Authority of Serbia, as well as persons hired "for the needs of translating of Acquis Communautaire of the EU by the European Integration Office".

¹³ ILO Convention no. 151 on Labour Relations (Public Service) concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, 1978; ILO Convention no. 154 on Collective Bargaining, 1981; Revised European Social Charter

There are independent trade union organisation of employees in all the fields of work which, according to legal documents, have the possibility to participate in a social dialogue or more precisely in the collective bargaining and procedure of concluding of collective agreements.

The state, province and local government units appear as an employer in different fields via their bodies or representatives, as a rule with the evident interest to reach the agreement.¹⁴

Special collective agreements have been concluded in most important fields of work.¹⁵

Starting from the above-mentioned statements, it could be concluded that the obstacles to successful establishing and conducting of social dialogue and collective bargaining in the public sector have been eliminated.

However, the actual situation is different. Once again it is shown that legal regulating of a certain field, irrespective of its significance, is not and cannot be sufficient. In this region, the problems of functioning of the legal system are also expressed not within the area of passing but primarily within the area of implementation of legislation that has been passed. The overall social environment caused this process to be carried out with serious lagging behind and without the expected results.

In the conditions when the state appears either directly or indirectly as exceptionally largest employer, the basic principle of a social dialogue, i.e. the principle of tripartism has been brought in question. The International Labour Organization defines tripartism as: "An organised system of relations within which the representatives of the state, employers' and workers' organisations decide together, but independently on most important issues of joint concern. The bargaining process is collective, with an emphasised autonomous/independent position of each participant. This avoids the supremacy of the state, provides for full freedom in negotiations and taking positions, which is of particular significance for representatives of employees' organisations". The above-mentioned statement on the overall situation and relations in the public sector in our country raises the question whether such relationship is possible to achieve. General interest of the state is to preserve social peace, whereby one can

¹⁴ Labour Law from 2014, Article 246: "A special collective agreement for public enterprises and public services is concluded between the **founder** or body authorized by the founder and the representative trade union.";

"A special collective agreement for the territory of the Republic, for public enterprises and public services established by the Autonomous province or local self-government can be concluded by the **Government and representative trade union** if there is a justified interest aimed at providing equal work conditions."

"A special collective agreement for public enterprises and associations of capital founded by a public enterprise is concluded by the **public enterprise founder**, namely the body authorised by it and representative trade union."

"Special collective agreement for the territory of the Republic of Serbia

¹⁵ Special collective agreements: For the employees in secondary schools and pupils' campuses; for university education; for public authorities; for employees in bodies of local self-government and territorial autonomy; for employees in students' standard institutions; for employees in the fields of social protection; for the employees in health care institutions; and a special collective agreement for police department employees.

always count with the implementation of the emporium. At the same time, in the conditions when the state is far largest employer during the negotiations these two elements: authorisations arising from public authorisation and the state as an employer can be expressed as a unique interest. The equality in the process of social dialogue conducting would be objectively replaced with supremacy of the state in most vital issues, while the contribution of social dialogue and collective bargaining to the overall process of public sector reform would be largely marginalised.

With respect to that, there is an evident absence of actual interest, on both sides. An employer, in any form, has a political will to commence negotiations and finalise them with an agreement. Trade unions have similar goals. However, a high level of uncertainty and particularly material basis that is limited in advance, preset the negotiating position of participants in negotiations, especially the one of the employer, and hence narrows significantly the space for promoting of goals, which would make the bargaining process more attractive for both sides. That is why, often in limited possibilities and with preset limits, only utterly insignificant changes in wages, or work conditions are being negotiated for which no conditions for quality enhancing objectively exist. In such conditions both sides feel a limited outreach of an agreement, once it is achieved, which reduces the interest additionally. A large number of employees lose the interest to join trade unions and remain outside union organisations. The number of employees who are members of trade union ranges around 30%, which means that more than 2/3 of employees remain outside trade union organisations¹⁶. Along with that, the problems related to determining the representativeness are often present on the side of trade unions in the procedure of establishing of a social dialogue and collective bargaining.

Taking into account the scope of the public sector, as well as the fact that public sector covers also a large portion of economy, it can be concluded that most difficult problems of the overall reform are related to the public sector: administration (state, autonomous province and local government units); public enterprises; companies in restructuring and other companies where the state has a significant share in the fixed capital; as well as in the fields of health care, education, culture and other fields that could be connected with the public sector according to certain criteria.

General conclusion is that, at this point, social dialogue and collective bargaining in our country have no capacity to get included in resolving of the key problems in the public sector field.

¹⁶ For the sake of comparison, the number of employees in Finland who are members of trade union organisations makes 80-90%, in Belgium it makes 45-50%, in Ireland 60-80%, and in Italy it makes 45-50%.

Third option is somewhere between two previous alternatives. In the very approach it may be necessary to make administrative actions aimed at eliminating evident disproportions and accomplishing of initial results in harmonising of the public sector with realistic possibilities. After that, commence persistently and systematically with reconsideration and enhancing of social dialogue in the public sector, namely in all its important segments. **Brining of social dialogue to the level when it can yield with effective, concrete results, in the entire public sector and/or per certain segments, may be the route with good prospects, the concept that shall have the capacity to harmonise permanently and with a high success rate the interests of employers and employees in this voluminous and important sector.**

Independently from the selected approach, which is most probably going to be the combination of different measures of the state and enhancing, and later on putting into function of certain institutes of social dialogue and collective bargaining, the success of the public sector reform will depend on the success of the overall reform actions, from changing the state of affairs in economy in the given economic environment.

At this point, there is a large misbalance at the labour market between the supply and demand. The number of unemployed is large and it is not getting lower. A new investment wave, which has been waited for quite a long time, has not commenced yet. The supply of jobs, expect for some exceptions, is very small or it does not exist at all.

Changes in the current status are objectively possible only in a new, quite intensive investment cycle that will open up the space to the increase of economic activity and demand for labour. This process is not and it cannot be simple and it cannot include different structures of employees with a similar intensity. However, serious and voluminous demand for labour in one field opens up and activates the demand in other fields, and problems related to re-training of a part of labour are always smaller than problems arising from almost complete absence of demand.

The conditions for doing business may the decisive factor. Therefore, the creating of an ambience with recognisable conditions and a higher level of legal security can contribute the most to creating of conditions for commencement and favourable progress of the process of reforms as a whole and in particular in the public sector.

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