



The project is supported
by the European Union



**LABOUR EXPLOITATION
IS REAL**

**Working group
recommendation for preventing
labour exploitation of youth**

**LABOUR EXPLOITATION
IS REAL**

**Working group recommendation
for preventing labour exploitation
of youth**

LABOUR EXPLOITATION IS REAL

Working group recommendation for preventing labour exploitation of youth

Authors:

Mario Reljanović
Dragan Gajić
Miloš Vučković
Jovana Misailović
Mila Petrović
Bojan Urdarević
Ivana Keranović
Jovan Protić

Design: Darko Kolesar

Printed by: PrintShop, Belgrade

Print run: 80

Publisher:

ASTRA – Anti Trafficking Action
Belgrade, Serbia
©ASTRA 2019



ISBN: 978-86-84889-26-5

Disclaimer:

This publication has been produced with support of the Delegation of the European Union to Serbia through EIDHR Program within the project “Make It Work for Youth – MyWaY”. All rights are reserved. The content of this publication may be freely used and copied for non-commercial purposes provided that any such reproduction identifies ASTRA – Anti Trafficking Action as the source.



The project is supported
by the European Union

Table of Contents

WORKING GROUP RECOMMENDATIONS FOR PREVENTING LABOUR EXPLOITATION OF YOUTH	5
1. POSSIBILITIES FOR THE IMPROVEMENT OF PROTECTION OF WORKERS TEMPORARILY POSTED TO A FOREIGN COUNTRY	7
2. POSSIBILITIES FOR THE IMPROVEMENT OF THE SYSTEM FOR COMBATING UNLAWFUL WORK.....	9
3. RESPONSIBILITY OF EMPLOYMENT INTERMEDIARIES FOR THE TRUTHFULNESS OF ADVERTISED CONDITIONS OF WORK AND FOR MONITORING THE PROCESS OF EMPLOYMENT	11
4. PRECOMMENDATIONS FOR SUPPRESSING ABUSES RELATING TO THE SYSTEM OF YOUTH AND STUDENT COOPERATIVE SOCIETIES.....	13
1. Normative framework for regulating student and youth cooperative societies.....	13
1.1 <i>The General Rules of the system of youth and student cooperative societies have been found unconstitutional and unlawful</i>	13
1.2 <i>Cooperative Societies Act</i>	14
1.3 <i>Amendments to the Labour Act</i>	15
1.4 <i>Personal Income Tax Act</i>	15
1.5 <i>Higher Education Act</i>	16
2. Proposals for improving the system of work engagement of youth	16
2.1 <i>Version 1</i>	16
2.2 <i>Version 2</i>	16
5. RECOMMENDED AMENDMENTS TO THE REGIME OF PERFORMING TEMPORARY AND OCCASIONAL JOBS	17
6. RECOMMENDATIONS FOR AMENDMENTS TO THE CRIMINAL LEGISLATION.....	19

Working Group Recommendations for Preventing Labour Exploitation of Youth

The Working Group:

- Having regard to the fact that youth unemployment is particularly conspicuous, that situation on the labour market is unfavourable and that there is a poor demand and large supply of labour force relating to jobs of interest to younger population;
- Having regard to the shortcomings of the normative framework and practice of its implementation resulting in labour exploitation of the broadest circles of persons;
- Having regard to the fact that young people are particularly vulnerable category either for their material status and lack of experience or rather narrow choice for starting their career;
- Having regard to the presence of traditional mechanisms of abuse of the current labour market situation and recognised forms of fraudulent and other unlawful behaviours that are traditionally difficult to perceive and punish,

has defined basic problems relating to potential labour exploitation of youth and formulated general and specific recommendations to overcome them within the announced normative interventions and changes, in particular by the adoption of the new Labour Act and by taking a broader look at the specific solutions in a range of discussed regulations.

The Working Group has formulated the proposals by consensus of its members, who have given their contribution to the discussion on each individual issue and to the formulation of proposed solutions. All recommendations, although different regarding the manner of their final formulation, have the same objective: improving the quality of the position of young people engaged for work and their easier and more secure engagement under conditions of decent work.

In Belgrade, 15 April 2019

1. Possibilities for the Improvement of Protection of Workers Temporarily Posted to a Foreign Country

Taking account of a broad spectrum of potential abuses and the experiences of competent inspection authorities, the Working Group recommends the following measures:

1. An obligation of labour inspection shall be introduced to **conduct extraordinary inspection oversight** upon receiving the information from the Central Registry of Mandatory Social Insurance **when more than one economic entity registered on the same address post their workers abroad** for the reason of potential abuse. Such abuses are most frequent when two or more economic entities registered on the same address post their workers abroad to the same foreign employer. In that respect, the Rulebook of the Central Registry of Mandatory Social Insurance shall be amended so as to introduce an obligation to notify the labour inspection when suspicious applications of this sort are observed, as well as to sign a Protocol on cooperation between the Ministry of Labour, Employment, Veteran and Social Issues and the Central Registry of Mandatory Social Insurance which would regulate in more detail those and similar situations where the Central Registry may provide the labour inspection with information of significance for an extraordinary inspection of employers.

2. **To return the obligation of an employer who posts workers abroad to notify the Ministry of Labour, Employment, Veteran and Social Issues of the posting of workers in the Act on Requirements for Temporary Assigning Employees to a Foreign Country and their Protection.** The Ministry of Labour should also resume publicising the said notifications on their website.

3. **To make public a list of employers where irregularities or undeclared posted workers have been found on the website of the Ministry of Labour,** following the example of the List of Employers where undeclared workers have been found.

4. **To introduce an obligation for employers,** before posting a worker abroad, to **provide such worker with a proof of registration for mandatory social insurance** in accordance with the annex to the employment contract that shall be signed pursuant to the Act on Requirements for Temporary Assigning Employees to a Foreign Country and their Protection.

5. **To calculate the period spent on work in a foreign country into the restriction of fixed-term employment period,** that is, to erase or regulate differently the matter addressed by the provisions of Article 8, Paragraphs 2 and 3 of the Act on Requirements for Temporary Assigning Employees to a Foreign Country and their Protection.

2. Possibilities for the Improvement of the System for Combating Unlawful Work

Having regard to the fact that factual work is widespread in all age categories of economically active population and to the particular vulnerability of young people in such position, as well as to a limited scope of jobs they may be engaged for and the lack of work experience and familiarity with their labour rights, the Working Group recommends the following potential improvements of the legal framework for combating work that has no legal grounds ('undeclared work').

1. A labour inspector may order the employer to employ a worker who does not have an employment contract or other contract on the engagement for work whom the inspector found at work. This authority shall be extended and regulated in detail in the Labour Act by adding a possibility for the worker who has not concluded the contract with the employer to be allowed to contract the labour inspector autonomously, outside his or her place of work, when the labour inspector may determine the existence of factual labour on the basis of provided documents. This is significant, first of all because it is not possible for labour inspectors to find undeclared workers on the employer's premises (the inspectors announce their visitation and the employer removes such workers or workers run away upon the arrival of the inspector or feign some other reason to justify their presence on employer's premises and the like), as well as because of the fact that undeclared workers often do not want to speak out of their status in the course of inspection oversight, in fear of employer's retaliation, while the employer uses various excuses to justify non-compliance with the obligation to keep the employment contracts at the place of work. At the same time, these workers often have quite substantial documentation that proves their regular presence at work and participation in the work process (registration lists on the coming to and leaving work, the work performance sheets, other documents signed, such as receipt forms and the like; it happens that workers working without contract for the same employer are ready to make statements to one another with regard to their employment status) and therefore such way of suppressing factual work shall be enabled as it should certainly be useful for both the labour inspectors and the workers involved.

2. To introduce a special misdemeanour penalty for the employer who fails to fulfil labour inspector's order to employ the undeclared worker. Such penalty would be regulated in the penalty provisions of the Labour Act and would be calculated per undeclared worker, regardless of whether the labour inspector has filed one or several misdemeanour reports relating to that case. Misdemeanour penalties for the employer for not declaring workers should be regulated without a possibility of reduction below legal minimum, in particular for repeated offences.

3. To introduce a possibility for a labour inspector to order the undeclared worker with whom the employer terminated factual relation to be returned to work (alongside the signing of permanent employment contract); to expressly regulate a possibility for a worker who claims to have worked unlawfully to initiate, within the period of 60 days from the day of termination of factual work, a labour dispute in order to establish the status of an employee and return to work due to unlawful termination (the procedural position of such person would be the same as that of the persons referred to in Article 191 of the Labour Act). This moment is also significant, because in practice neither the labour inspection nor courts are benevolent to the undeclared worker who seeks his or her employment status to be determined after being 'terminated' by the employer, that is, after the factual relation was put to an end.

4. **To introduce the right to damages in the amount of 12 average wages at the level of the Republic or 12 average wages that the employee would have earned if she or he had worked** (whatever is more favourable for the worker) **if the employer, after labour inspector's order, fails to conclude contract with the employee but terminate their factual relation instead.** This right would belong to the worker whose factual work was terminated after the labour inspector ordered the employer to conclude permanent employment contract with him or her and should serve as a compensation of damages (alternative: if worker's right to institute labour dispute were introduced, this compensation could be observed as a right to the substitution of reintegration in the sense of Article 191 of the Labour Act).

5. Unannounced controls by labour inspectors should be a rule when undeclared work is suspected. Any announcement makes such controls pointless. Also, the Inspection Oversight Act should be reconsidered in the section introducing announced controls as a rule – this certainly applies to regular inspection oversight, but in no way shall it apply to extraordinary inspection oversight.

3. Responsibility of Employment Intermediaries for the Truthfulness of Advertised Conditions of Work and for Monitoring the Process of Employment

Having regard to a large number of employers' abuses in advertising job openings, both when the National Employment Service acts as an intermediary and in direct advertising or job matching by other employment agencies, as well as to systemic shortcomings which do not envisage more responsible behaviour of employment intermediaries, the Working Group has adopted recommendations aimed at necessary amendments to the regulations and practice in order to shift negative trend of deceptive advertising which results in the labour exploitation of persons.

In regards to the issue of determining the responsibility of the National Employment Service for the lawfulness of advertisements it publicizes, the Working Group proposes the following measures:

- Mandatory checks of lawfulness of advertisements (the employers shall not post the advertisement on the website of the National Employment Service automatically nor advertise openings in other manners). There is a form of advertisement regulated by the Ministry of Labour, Employment, Veteran and Social Issues;
- Employment intermediary's obligation to warn the employer of the unlawfulness of advertised conditions of work;
- Termination of cooperation with the employers (for up to one year) who fail to comply with the warning of the employment intermediary, continually publicize (or attempt to publicize) the advertisements of unlawful content or in some other manner violate the obligation of compete and true advertising of working conditions;
- Notification of unlawful advertising to the market inspection.

With regard to the problem of determining the responsibility of the employer and the National Employment Service for the truthfulness of advertised working conditions, the Working Group proposes the following measures:

- The employer and the NES would have to conclude a job matching contract;
- A job seeker and the NES would have to conclude a job matching contract;
- Where working conditions are unlawful, a disciplinary proceedings pursuant to the Labour Act shall be instituted against the employment intermediary or other person which facilitated such advertising;
- The employer would have to be prosecuted for misdemeanour if it offers to the employee working conditions different from those advertised. To link in the Advertising Act the obligations under Article 6 (at the moment, a decision may be issued requesting the employer to correct actual working conditions to correspond to those advertised). For Article 11 of the same Act, misdemeanour responsibility is already envisaged there, but it is not clear whether this may apply to this situation. Proposal: to link the two situations (6 and 11) and provide for misdemeanour responsibility for Article 6 by means of phrasing Article 78, Paragraph 1, Point 2) of the Misdemeanours Act so as to read: '2) acts contrary to Articles 6 and 11 of this Act'.

In regards to the issue of exercising oversight of intermediaries offering employment abroad, the Working Group proposes the following measures:

- A job matching contract as a mandatory element for the employment agencies; the contract would have to lay down the working conditions which would be ensured to a person seeking employment abroad;
- Agency's obligation to notify the NES of job matching in a foreign country and to provide the job matching contract concluded with a job seeker and the contract the job seeker has concluded with a foreign employer through agency's matching activity.

The Act on Employment and on Employment Insurance shall be amended so that the employer whose accounts are blocked for more than 30 days, which may be checked in the appropriate records of the National Bank of Serbia, may not advertise through the NES since account blockage indicates that such employer cannot fulfil its obligations relating to the payment of wages and contributions. The same measures shall apply to the employment agencies.

Youth and student cooperative societies should be prohibited to register as employment agencies. At the moment, two youth cooperative societies have job matching licenses and this number tends to increase. Also, persons who have lost their job matching license should be prohibited from participating in the establishment of student and youth cooperative societies.

Youth and student cooperative societies should be expressly prohibited to post their members abroad. This is already prohibited having in mind that the law only allows the posting of employees whereas persons engaged via cooperative societies are not in employment relation, but the prohibition should be expressly emphasized in the law in view of observed negative practice.

Plea agreements must have the force of enforceable document – in the Enforcement and Security Act, Article 41 should be supplemented insofar that plea agreement relating to misdemeanours is considered to be an enforceable document in accordance with the Misdemeanours Act. In that respect, it is proposed to add Point 8) to Article 41 of the Act on Enforcement and Security that would read: '8) plea agreement in accordance with the law regulating misdemeanours'.

4. Recommendations for Suppressing Abuses Relating to the System of Youth and Student Cooperative Societies

In the area of operation of student and youth cooperative societies, numerous irregularities have been observed affecting the position of persons engaged through cooperative societies and inevitably leading to labour exploitation by means of permanent violation of laws and regulations and circumventing the principles of cooperative societies system. Having regard to such context, the Working Group has elaborated in short the existing normative and factual situation and produced certain conclusions and recommendations.

1. Normative framework for regulating student and youth cooperative societies

1.1. The General Rules of the system of youth and student cooperative societies have been found unconstitutional and unlawful

Following the adoption of the Cooperative Societies Act (Official gazette of RS, no. 112/2015), the General Rules of the system of youth and student cooperative societies (Official Journal of FRY, no. 20/98 and 7/2000 – Decision of the Federal Constitutional Court, Official Journal of SCG, no. 1/2003 – Constitutional Charter and Official Gazette of RS, no. 47/2010) lost their legal grounds. The Cooperative Societies Act does not provide for General Rules which regulate legal area of the system of cooperative societies. This is logical, as the General Rules had been developed for previous legislation, when one union of cooperative societies existed; now, the Cooperative Societies Act permits more of them and each cooperative societies union may adopt its own rules.

Also, there are no grounds to regulate issues by the General Rules, as it had been adopted on the basis of public prerogatives of the union of cooperative societies which do not exist under the current Cooperative Societies Act. Article 2 of the General Rules envisages: ‘General rules are an act adopted for the implementation of public prerogatives provided by the law’. The Cooperative Societies Act, however, does not set out public prerogatives of this sort.

By the decision of the Constitutional Court IUo 1231/2010 of 20 February 2018 (Official Gazette of RS, no. 15/2018), it has been determined that the General Rules of the system of youth and student cooperative societies are not in compliance with the Constitution and the Act and they ceased to be valid. It is rather disturbing that the text of the General Rules is nevertheless contained in the databases of valid regulations and that student and youth cooperative societies apply them in their daily work.

Having in mind all the above, the area of operation of student and youth cooperative societies should be regulated by another document. This is particularly important having in mind that the operation of these cooperative societies is at the moment regulated only by several provisions of the Cooperative Societies Act which are far from sufficient to ensure the realisation of cooperative societies system in the manner that corresponds to the spirit of the law and the idea of the system, that is, cooperative property.

1.2. *Cooperative Societies Act*

The Cooperative Societies Act should undergo several amendments that are necessary to protect members of the cooperative societies from abuses and to stop their labour exploitation contrary to the law and the idea of the system of cooperative societies.

Article 11, Paragraph 8 of the Cooperative Societies Act reads: ‘Student and youth cooperative societies shall provide their members, in an organised manner, with temporary and occasional jobs in economic entities in accordance with regulations governing labour area, with a view to obtaining additional resources for their education and meeting their basic social, cultural and other personal and common needs.’

Article 23, Paragraphs 5 and 6 of the Cooperative Societies Act reads:

‘The status of a member of a student and youth cooperative society may be acquired by a person who is not younger than 15 or older than 30 years of age’.

‘Member of a student and youth cooperative society under 18 years of age may perform temporary and occasional jobs under conditions envisaged by provisions regulating the rights, obligations and responsibilities relating to employment relation, that is, on the basis of labour’.

A review of the current situation, by interpreting Art. 23, Para. 5 of the Cooperative Societies Act, shows that there are three legal situations:

- Work of children between 15 and 18 years of age;
- Work of students between 18 and 26 years of age;
- Work of other persons between 26 and 30 years of age.

The first two categories are exempted from taxes and social insurance contributions under our law and, in that respect, they represent the most interesting groups for labour exploitation. For the sake of comparison, a student of 25 years of age is by far cheaper for a cooperative society, that is, the beneficiary of labour, than a student of 27 years of age, because the latter is subject to all contributions and in that respect there is no difference, in terms of contributions, between the work of such student and an employment relation. If two students were performing the same job, one who is 25 and the other who is 27, they would not be paid equally, because the one who is 27 would have to pay taxes and contributions of which the one of 25 years of age is exempted, and in the final calculation of wages, such student would receive less money. This issue is particularly interesting from the point of view of usefulness of such contributions, that is, whether it is ‘profitable’ for a person to ‘write in’ contributions for three days spent on work. It is rather certain that many students would accept not to pay contributions for a job which lasts that short, and receive more money instead. For that very reason, in order not to make difference which may also be understood as discriminatory, the proposal is to reduce the age limit from 30 to 26, which is the duration of regular education. This is also in accordance with regulations on social insurance and the Personal Income Tax Act (Article 13, Paragraph 2: ‘For the purposes of this Law, wages/salary shall also be understood to mean the remunerations and other receipts earned on the basis of temporary and occasional work done on the basis of a contract concluded with an employer directly and on the basis of a contract concluded through youth or student cooperative societies, with the exception of those persons up to 26 of age who are attending secondary, college or university establishments’).

Regular education implies regular and continuous fulfilment of obligations envisaged by the study programme and curriculum aimed at professional development of students in the course of regular studies irrespective of whether the student is enrolled on part of the list covered from the budget or as self-financed, at private faculty or the faculty founded by the government, and of the level and type of studies. It is important that a person attends school continuously, that he or she fulfils school obligations in specified time periods

(irrespective of whether the average score is 6 or 10).

Also, a proposal is that Article 23, Paragraph 7 of the Cooperative Societies Act should read: 'A member of student or youth cooperative society engaged for temporary and occasional work which bears the characteristics of employment relation shall have all rights and obligations arising from employment relation'.

The participation of student and youth cooperative societies in tenders should be expressly prohibited, as they cannot, by their nature, engage workers for jobs of permanent character and also having in mind that tax reliefs provided to cooperative societies automatically put them in a more favourable position compared to other potential bidders. Additionally, tenders should be prohibited – and such practice has already been well documented and frequent – where only student and youth cooperative societies may appear as bidders. In that respect, the advertising of jobs that exceed maximum duration of the contract on temporary and occasional work should be prohibited – this is obviously unlawful advertising.

In the end, a proposal is to prohibit student and youth cooperative societies to post their members abroad. Although this is currently prohibited by the very nature of the contracts on temporary and occasional work, there is also an opposite unlawful practice of student and youth cooperative societies. This prohibition should be maintained even in the event that temporary and occasional work is considered to be a form of fixed-term employment relation in future.

1.3. Amendments to the Labour Act

The following articles of the Labour Act shall be amended:

Article 197 reads: 'For performing jobs whose nature is such that they not exceed 90 workdays in a calendar year, an employer may...' The temporariness of engagement may not be of such nature as to extend to a time period longer than several months. For this reason, the extension of potential duration of the contract on temporary and occasional work to 120 days and even longer according some proposals that could be heard in public, cannot correspond to the nature and character of this contract, that is, to the nature of jobs for which they are concluded. Any duration of jobs exceeding three or four weeks requires the conclusion of an employment contract.

Attention should be paid to Article 198, as well: 'An employer may conclude a contract with a person - member of youth or student cooperative society in accordance with the regulations on cooperative societies, for the performance of temporary and occasional jobs'. Here, a room has been rationally left to regulate the operation of youth and student cooperative societies by another law or bylaw. However, it cannot be regulated by general rules any longer for reasons elaborated above and therefore it may not be interpreted as a legal basis for adopting some new general rules that would apply to all unions of cooperative societies (as the Cooperative Societies Act itself provides for a possibility to establish several unions of cooperative societies).

1.4. Personal Income Tax Act

The control of operations of cooperative societies shall begin from the Tax Administration according to the Tax Procedure and Tax Administration Act, because it is where the work of persons older than 30 through cooperative societies can be efficiently prevented. Through citizens' personal identification number (JMBG), the Tax Administration may learn, in the process of control, whether a person working through youth and student cooperative societies is older than 30 years of age or not, and institute misdemeanour proceedings accordingly.

In that respect, internal *Instruction for acting relating to the issuance of misdemeanour orders, filing of a request for instituting misdemeanour proceedings and in the proceedings before the misdemeanour court* has been adopted and authorised tax authorities to impose mandatory penalties to cooperative societies as economic entities if their founders or members are older than 30 (or 26, according to the working group's proposal).

1.5. Higher Education Act

The Higher Education Act is not familiar with the area of student and youth cooperative societies. At the same time, it does not envisage any reliefs for students who work and study at the same time. The problem is topical taking into account that many science students often use their final year of studies or master studies to find full-time employment. The Bologna process, mandatory presence at lectures and practical exercises often do not allow flexibilisation as this area is not regulated.

2. Proposals for improving the system of work engagement of youth

2.1. Version 1

This version starts from the idea to maintain the term and concept of 'youth and student cooperative societies' where cooperative societies keep performing these activities as they do at the moment with possible corrections of the existing legislation. Some of them are mentioned in the previous text. The emphasis is on the implementation of regulations and on the control of such implementation.

2.2. Version 2

This version advocates for separate treatment of the work of pupils and the work of students. Common concept of youth and student cooperative societies does not exist any longer.

Pupils' work could be named 'a contract of temporary work of pupils'. Matching and employment activities in such situation would be conducted by secondary schools for their pupils. The Ministry of Labour and the Ministry of Education would pass a Regulation on job matching in the employment of pupils on the basis of the Act on Employment and on Unemployment Insurance (which should be amended). The contract would be signed by a minor with a co-sign of his or her legal representative and the beneficiary. The contract would contain mandatory elements: the amount of wages, limited working hours, holidays and leaves, oversight etc. Important: a pupil could be engaged only during winter, spring and summer holidays which duration is prescribed by the Education Minister for every calendar year.

The work of students between 18 and 26 years of age would be under the auspices of student centres. It is necessary to amend the Higher Education Act, specifically Article 69, in so far that every university would have its student centre. The procedure would be governed by the Regulation on job matching in the employment of students, according to which a contract on temporary and occasional work would be concluded (it is necessary to amend the Labour Act to envisage a new type of employment relation that would apply to students). Employed students would be protected by the norms of labour legislation with regard to leaves, working hours etc., but the wages they earn would not be considered taxable income.

5. Recommended Amendments to the Regime of Performing Temporary and Occasional Jobs

Having regard to the existing massive abuse of the contracts on temporary and occasional work, the fact that this regime of work outside employment relation is abused both in the private and public sector and that it is an outdated concept, unique in comparative sense, which leads to the ruin of rights of engaged persons, the Working Group has proposed – in accordance with the Draft of the Action Plan for Chapter 19 and the process of harmonisation of labour law with EU *acquis* – to understand the contract on temporary and occasional work as a form of fixed-term employment relation in future legislation, whereby its specific characteristic would reflect in very short duration of such engagement. The Working Group has not considered necessary amendments to other legislation (Mandatory Social Contributions Act, the Act on Simplified Work Engagement on Seasonal Jobs in Certain Activities and others) whose amendment, or potential revocation, should be implied if proposed amendments to the Labour Act were adopted. The Working Group also recommends to consider the erasure, that is, different regulation of other forms of work engagement outside employment relation envisaged by the Labour Act and other laws for the purpose of harmonisation with the Directive 1999/70/EC, as envisaged in the Draft Action Plan for Chapter 19.

In the Labour Act, Article 37, Paragraphs 1 to 3 are amended to read:

An employment contract may be concluded for a definite period of time for establishing the employment whose duration is predetermined by objective reasons that are justified by the time period or the execution of a specific work or the occurrence of specific event, during the existence of those reasons.

For performing temporary and occasional jobs whose duration does not exceed 90 days in the course of a calendar year, an employer may conclude a fixed-term contract on temporary and occasional work.

The employer may conclude at most two employment contracts referred to in Paragraph 1 of this Article on the basis of which employment relation with the same employee is concluded for the period that with or without interruptions may not be longer than 24 months.

2. Article 197 and 198 of the Labour Act shall be erased.

6. Recommendations for Amendments to the Criminal Legislation

The Working Group has established that, according to the experience of inspection authorities and ASTRA, and taking into account that criminal penalisation for violation of labour and social legislation is not used in practice any more, amendments which would imply at least two interventions in the Criminal Code are necessary.

The criminal offence under Article 163 of the Criminal Code should be amended in so far as to specify a special form of violation of rights relating to employment and to social insurance by means of non-payment of wages.

Violation of Labour Rights and Social Security Rights

Article 163.

Whoever deliberately fails to comply with law or other regulations, collective agreement and other general acts on labour rights and on special protection of youth, women and persons with disabilities at work, or on social insurance rights, and thereby deprives or restricts another's guaranteed right, shall be punished by a fine or imprisonment of up to two years.

The penalty referred to in Paragraph 1 of this Article shall be imposed on a person who deliberately fails to pay out three or more wages over the period of six months.

The offence referred to in Paragraph 2 of this Article shall not exist when the non-payment of wages results from the bankruptcy of the employer.

The penalty referred to in Paragraph 1 of this Article shall be imposed on a person who provides incorrect data in the calculation of wages.

The proposal for amendment to this criminal offence reads:

The Labour Act shall regulate the payment of wages solely through a bank account.

A new criminal offence shall be introduced which would recognize, criminalise and punish unlawful practice of the employers which lead to the labour exploitation of persons.

Trafficking in labour force

Article XXXX.

Whoever, by deceptive advertising, false presentation, concealing of facts, deception or maintaining deception regarding working conditions, abuse of authority, trust, dependency relationship, retaining identity documents or abuse of difficult circumstances of another, with intention to acquire unlawful material gain

for themselves or for others, exploits the labour of another person, shall be punished by imprisonment of 2 to 11 years.

For the offence referred to in Paragraph 1 of this Article, whoever knows or should have known to participate in the commission of the offence referred to in Paragraph 1 of this Article, shall be punished by imprisonment of 1 to 10 years.

Where the offence referred to in Paragraph 1 and Paragraph 2 of this Article is committed against a minor, the perpetrator shall be punished by imprisonment of minimum four years.

Where the offence referred to in Paragraphs 1 to 3 of this Article resulted in severe bodily injury of a person, the perpetrator shall be punished by imprisonment from 5 to 10 years, and where the offence referred to in Paragraph 3 of this Article resulted in severe bodily injury of a minor, the perpetrator shall be punished by imprisonment of minimum seven years.

Where the offence referred to in paragraphs 1 to 3 of this Article resulted in death of one or more persons, the perpetrator shall be punished by imprisonment of minimum 10 years.

Whoever habitually engages in the offences referred to in Paragraphs 1 and 2 of this Article, or if the offence was committed by a group, shall be punished by imprisonment of minimum 5 years.

Where the offence referred to in Paragraphs 1 and 3 of this Article was committed by an organised criminal group, the perpetrator shall be punished by imprisonment of minimum 9 years.

Person's consent to labour exploitation shall have no prejudice to the offence referred to in Paragraphs 1 and 3 of this Article.

Note: the term 'labour exploitation' used in this article is not defined by the Criminal Code and in assessing what labour exploitation is, the experiences of implementation and interpretation of the provisions of the Criminal Code relating to the criminal offence of trafficking in human beings shall be used.

CIP - Каталогизација у публикацији - Народна библиотека Србије, Београд

349.22-053.2

LABOUR Exploitation is Real : working group recommendation for preventing labour exploitation of youth / [Mario Reljanović ... et al.]. - Belgrade : ASTRA - Anti Trafficking Action, 2019 (Belgrade : PrintShop). - 20 str. ; 30 cm

Podatak o autorima preuzet iz kolofona. - Izv. stv. nasl.: Radna eksploatacija je stvarna. - Tiraž 80.

ISBN 978-86-84889-26-5

1. Reljanović, Mario, 1977- [аутор]

а) Радни односи -- Млади -- Правна заштита

COBISS.SR-ID 277107212

