

Union Organising: A Prerequisite for Decent Work in Bosnia and Herzegovina



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Author: Elma Demir

The Commerce Trade Union Bosnia and Herzegovina is a democratic, politically and financially independent branch trade union representing more than 9000 workers in the commerce and service sectors, both notorious for having some of the poorest working conditions. The Union focuses on promoting decent work agenda in the sector and capacity building of workers. For more information see <http://www.stbih.ba>

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In February 2011, a two year programme called "**Decent Work Balkan Network - Putting Equality and Solidarity at the heart of EU integration**" was launched by Olof Palme International Center (Sweden), SOLIDAR (Belgium), AGENDA Institute (Albania), Center for Democracy Foundation (Serbia), CLARD (Kosovo), STBIH (Commerce Trade Union in Bosnia Herzegovina), Progress Institute for Social-Democracy (Macedonia) and Progetto Sviluppo CGIL (Italy). The project is additionally supported by national associates and by the International Trade Union Confederation/Pan-European Regional Council (PERC). The key aim is to strengthen the capacity of trade unions, think tanks and NGOs to promote Decent Work and Quality Jobs in the Balkans together by developing national and regional networks, joint advocacy actions and public campaigns, formulating policy proposals and monitoring the implementation of the European socio-economic acquis. To read more see <http://www.solidar.org>



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Introduction

Considering the key role that trade unions play in social dialogue and economic development, this paper will comprehensively address this issue, i.e. the implementation of the law on union organising in practice in Bosnia and Herzegovina (BiH). Solving the various problems in the field of labour and struggle against the massive violations of workers' rights in BiH will require first and foremost an active and effective involvement of trade unions.

Trade unions indeed should play a role in the strengthening of all other forms of protection of workers' rights: they should be the leading actors who demand greater efficiency of the judiciary to resolve legal disputes, a strengthened role of labour inspection, and the stronger implementation of alternative dispute resolution methods and the Workers' Councils Act.

In short, the role of trade unions is crucial in finding the socio-economic arrangements that will lead BiH towards economic stabilisation and prosperity, while at the same time guaranteeing social justice for all its workers. Union organising in this respect is a first but crucial step on that path. The paper will present the normative aspect of the right to union organising and of its application in practice, with recommendations to decision makers.

Current situation and legislative framework

Bosnia and Herzegovina (BiH) shares the same fate as other countries in the Western Balkans because it is also undergoing a lengthy and difficult process of economic transition, but unlike them, it is also coping with the consequences of the war: a destroyed economic infrastructure and an extremely divided population. BiH is not only in post-socialist transition, but also in a post-war period which should lead to the normalisation of ethno-national relations and a political consensus. Unfortunately, even after the signing of the Dayton Peace Accord sixteen years ago, we cannot say that the situation in BiH has stabilised. Moreover, the ethno-national division - owing to the political leadership - still takes precedence over all other social issues, and thus significantly affects the socio-economic situation in the country. Economic development has been taken hostage by politics that has embraced a kind of asymmetric liberalisation supporting crime and corruption, using ethno-nationalism as its shield and spreading the sentiment of fear among citizens.¹

The consequences of such politics on citizens and workers have been disastrous. Statistics show that 41.5% of BiH's population is poor, meaning that half of the overall population face some form of social exclusion, and almost one quarter of the population is on the verge of poverty.² Unfortunately, the social policies implemented in BiH do not work in favour of the poor: about 20% of BiH's poor population accounts for only 7.2% of total expenditure, while the richest 20% of the population accounts for more than 39% of total expenditure. It is generally recognised that one of the main

causes of poverty is a high unemployment rate. About 43.1% or 526,616 persons of the working age population do not have a job³, an unemployment rate which is four times higher than in Croatia and the European Union (EU) which in the same month had unemployment rates of 14.3% and 9.3% respectively.⁴

High unemployment rate threatens workers' rights

Under these labour market conditions, it is difficult to talk about decent work for workers. Many union activists describe the state of the labour market in BiH not as a struggle to earn more or have better working conditions, but simply as a struggle to save the mere right to work. Specifically, the high unemployment rate has led to a degradation of workers' rights and massive violations of these rights by employers, both in the private and public sectors. As employers can easily find new workers, they blackmail their workers so they are forced to put up with miserable working conditions. Workers are not paid regular wages, some wait months and years to get any kind of compensation. Pensions and social and health insurance contributions are often not paid by employers, thereby forcing workers to work without a contract or in the «black market». Unfortunately, these cases are not the exception but the rule: every third citizen in BiH works as an undeclared worker.⁵

In addition, the right to sick and maternity leave is not respected, making female workers especially vulnerable. Frequently their contracts are unlawfully terminated because of pregnancy. Even when they manage to exercise their right to maternity leave, mothers do not receive the same remunerations, which depends on their place of residence since this law is not

¹ Transparency International reported that in 2007 Bosnia and Herzegovina lost about 250 million EUR due to corruption and illegalities in the privatisation process. Because courts are ignoring this, according to Transparency International this is a case of "organised crime under political patronage". Source: *Zbog korupcije BiH oštećena za 250 milijuna eura*. www.dalje.com

² UNDP Mission to BiH. *Human Development Report 2007: Social inclusion in BiH and Social Inclusion Strategy for Bosnia and Herzegovina*, Council of Ministers of BiH, 2010.

³ Labour and Employment Agency of BiH, *Labour market statistics, monthly report for May 2011*.

⁴ Eurostat. *Harmonised unemployment rate*

⁵ Federal Institute for Development Programming. *Siva ekonomija u Bosni i Hercegovini*

harmonised between the 14 different jurisdictions or in line with international and EU standards and conventions.

Working hours are extended and workers are not paid compensation for overtime work. For example, a recently conducted analysis of working conditions in the commerce sector in BiH shows that 29% of surveyed workers claimed to work 10 hours a day, and 12% of them 12 hours or longer every day. The right to rest is also violated, as well as the right to healthy working conditions. The consequences of mismanagement by an employer are usually borne by workers whose wages are reduced or eventually they get laid off. In short, as formulated by Fikret Verdić, President of the Trade Union of Coal Mine Workers of BiH: «the overall dignity of workers is at risk because they have no rights. They only have the right to work and they are given a pittance instead of what they rightfully earn.»⁶

Inefficient mechanisms for protecting workers` rights

The fact is that the alleged violations of workers` rights are exercised en masse. A recent poll in BiH law courts shows that there are currently at least 22,887 cases⁷ in the field of labour relations being processed in courts. The Municipal Court in Tuzla is currently conducting 1413 proceedings, the Municipal Court in Sarajevo 3981 proceedings, the Primary Court in Banja Luka 1067 cases, while the Municipal Court in Mostar is conducting 4088 cases this year.⁸ At the same time, workers` rights violations are rarely or inadequately sanctioned. To illustrate this, the penalty for employing workers illegally is BAM 1000 [approx. €510] regardless of whether the employer is illegally employing 30 or 300 workers. However, it is not only workers that are losing out, the International Labour Organization (ILO) estimates that BiH is

⁶ Bjelica-Čabrilo, Vanja. *Radnici bez plaća, staža, osiguranja i bez slobodnih dana*

⁷ This number is based on the submitted answers to a survey conducted in 54 courts out of the existing 70.

⁸ Demir, Elma. *Sudska zaštita prava iz radnih odnosa u Bosni i Hercegovini*

losing around BAM 38.4 million [approx. €20 million] annually due to the poor application of labour legislation.⁹

Violations of rights deriving from labour relations are frequent because the protection mechanisms do not function properly. Internal security - which includes a procedure in the workplace initiated by employers in the form of issuing individual legal acts governing the rights and obligations concerning labour relations and procedures to protect workers within the working environment - is underdeveloped due to the lack of application of the Workers` Councils Act. External forms of protection of labour relations - which include proceedings before impartial third institutions - are also characterised by a number of shortcomings. Judicial protection, because of the way the labour relations system is established, is often the first instance which protects workers` rights but at the same time it is the most complicated, expensive and longest lasting process. A large backlog of cases, lengthy and expensive court procedures, widespread corruption and problematic execution of court decisions are just some of the factors that characterise the judicial resolution of disputes in labour relations.

The extrajudicial protection of rights, which includes alternative dispute resolution¹⁰ methods, is still in an early stage, with no institutional support for the development of these mechanisms - although mediation was introduced into the legal system in BiH in 2004, the authorities have not yet allocated funds for the planned promotion and application of this mechanism. The application of arbitration is also in an early phase and is applied only in Republika Srpska. Last year the Agency for

⁹ Initiative and Civil Action (ICVA). *Primjena Evropske socijalne povelje kroz zakone i praksu u BiH*

¹⁰ Alternative dispute resolution includes methods of extrajudicial dispute resolution and methods of conciliation, mediation and arbitration initiated by the mediator or arbitrator. *Mediation* is a process through which a third party has a role to assist in the mutual communication between the feuding parties. *Mediation* is a procedure in which a third party assists in reaching an agreement between two or more people in dispute, and *arbitration* involves a similar process but in which a third party makes a binding decision.

Peaceful Settlement of Labour Disputes was established in this entity. The protection of rights through administrative procedures conducted by inspections is also weak and insufficient. Labour inspections do not have sufficient human resources, are faced with a lack of funding and the necessary equipment, have limited responsibilities and the penalty policy that they apply is minor.

Weakened position of workers due to weakened role of trade unions

In addition to these forms of protection of rights deriving from labour relations, collective action has a special role which, among other rights, involves trade union organising. Numerous studies have shown that trade union organising has resulted in the improvement of working conditions and thereby in increased productivity, income and profit for all involved in the production chain. Moreover, union organising is a part of the rights deriving from industrial democracy or the obligation of governments to maintain active social dialogue with representatives of all stakeholders in labour relations, and trade unions and employers' associations in the process of public policy making and implementation. Unfortunately, like other forms of protection, trade union organising in BiH is characterised by numerous problems. Moreover, many experts and practitioners report that the difficult position that BiH workers are facing today as well as the overall economic situation, are a result of the insufficiently used role and social status of trade unions and the weak influence of trade unions in decision-making processes.

Complex legal framework for protection of rights deriving from labour relations

Industrial development around the world is characterised by the tendency of employers to exhaust the labour force in the process of generating economic value in order to maximise profits. Ensuring material benefit has led to a distortion of the conditions in which workers work. It is through trade unions that workers

began fighting for their rights and their implementation. As the weaker party in labour relations, workers still depend on this instrument in laying down regulations that guarantee a legal and material protection and effective implementation in practice. Although trade unions existed in the previous socialist system, their role and activities were run by the state, which is in contradiction with current international standards. After the war and the beginning of the transition process, Bosnia and Herzegovina has committed to, inter alia, regulate the issue of union organising in accordance with the international conventions in the field of labour.

To this end, the right to union organising, as well as other collective rights¹¹, in Bosnia and Herzegovina are guaranteed by the highest legal acts. The BiH Constitution (or Annex IV of the Dayton Peace Accord) in Article 2, as well as the Constitution of the Federation of Bosnia and Herzegovina (Article 2) and Republika Srpska (Articles 1 and 10) guarantee the right to freedom of association. These laws also prohibit unequal treatment or discrimination, inter alia, on the basis of union affiliation.

In addition to the Constitutions, legal sources in the area of labour include labour laws, international conventions, collective agreements, internal regulations and general employers' acts, as well as other laws that directly or indirectly affect the state of labour relations. Labour laws are the basis on which labour relations between employers and workers are regulated. What is particular about BiH is that there are four different jurisdictions (state level, the two entities

¹¹ Organising and participation in union work falls into the category of collective labour rights. Specifically, the rights deriving from labour relations are divided into Individual and collective. Individual rights involve the rights pertaining to the individual worker, such as the matter of wages, working hours, leisure and rest, occupational safety, job security, non-discrimination at work, taking care of redundancies, protection of motherhood, etc. The collective rights refer to union organising, collective bargaining, participation in decision-making, resolving disputes, strikes, and the right to participate in the adoption of autonomous acts of employers (rulebooks, labour contracts). This paper focuses on collective rights, primarily the right to union organising, and other rights will not be discussed in this paper.

- Republika Srpska and Federation of BiH - and the Brcko District), which regulate their own labour relations. For example, the entities and Brcko District have adopted labour laws, while at State level, labour relations are defined by the Law on Labour in the Institutions of BiH and the Law on Civil Service in the Institutions of BiH¹².

Table 1: Current labour legislation in BiH

Jurisdiction	International conventions	Constitutions	Laws	General Collective Agreements
State level	ILO conventions (no. 87 concerning Freedom of Association; no. 98 on Right to Organise and Collective Bargaining; no. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives; and priority Convention no. 144 on Tripartite Consultations) EU Agreements (Stabilisation and Association Agreement and European Partnership Agreement)	Article 2 of the BiH Constitution	Law on Labour in the Institutions of BiH; Law on Civil Service in the Institutions of BiH; Law on Prohibition of Discrimination in BiH; Law on Gender Equality in BiH.	
Federation of BiH		Article 2 of the FBiH Constitution	Labour Law of FBiH; Law on Civil Service of the FBiH; Employment of Foreign Nationals Act (Official Gazette FBiH 8/99); Strike Act (Official Gazette FBiH 14/00); Workers' Council Act (Official Gazette BiH 39/04); Law on Mediation in Employment and Social Security of Unemployed Persons; Occupational Safety Act; Health Insurance Act; Health Care Act; Law on Pension and Disability Insurance; Law on the Rights of Veterans and Their Family Members.	General Collective Agreement for FBiH
Republika Srpska		Articles 1 and 10 of the RS Constitution	Labour Law of RS; Law on Administrative Service in the RS Administration; Workers' Councils Act; Employment Act; Law on Employment of Foreign Nationals and Stateless Persons; Labour Inspection Law; Law on Pension and Disability Insurance; Law on Professional Rehabilitation and Employment of Disabled Persons; Strikes Act; Occupational Safety Act.	General Collective Agreement for RS
Brcko District		Article 14 of the Brcko District Statute	Labour Law of BD; Law on Civil Servants and Employees of BD; Law on Employment and Rights During the Unemployment Period; Law on Employment of Foreign Nationals.	

¹² Law on Labour in the Institutions of BiH (Official Gazette BiH 26/04 and 7/05); Law on Civil Service in the Institutions of BiH (Official Gazette BiH 12/02, 19/02, 8/03, 35/03, 4/04, 17/04, 26/04 and 37/04); Labour Law of FBiH (Official Gazette FBiH 43/99, 32/00 and 29/03); Labour Law of RS (Official Gazette RS 38/00, 40/00, 47/02, 38/03 and 66/03); Labour Law of BD (Official Gazette BDBiH 7/00, 8/03, 33/04 and 29/05).

Labour laws regulate the issue of union organising in a similar way. According to Article 9 of the Federation of BiH's Labour Law, workers may at their own discretion organise a union or join it without the consent of their employers or the government, and on the basis of Article 10a, it is prohibited that employers or employers' associations interfere in the establishment, functioning or administration of unions, or advocate or provide assistance to trade unions with the purpose of controlling the unions. Article 10 of the same Law further states that an employee «shall not be put at a disadvantage because of membership or non-membership in the union». Articles 6 and 9 of the Labour Law of the Republika Srpska, as well as Articles 5 to 8 of Labour Law of the Brcko District regulate the subject of union organisation in much the same way. Article 9 of Republika Srpska's Labour Law regulates the matter of keeping the registers of trade unions and the provision reads: «Trade union organisations shall be entered in the Register of Trade Union Organisations, which is prescribed and administered by the Ministry responsible for Labour Affairs.»¹³

In addition to these articles, other relevant articles are Article 93 of the Federation of BiH's Labour Law and Article 131 of Republika Srpska's Labour Law, under which it is prohibited for employers to fire a union steward while performing his/her duties or for a period of six months after performing these duties in the Federation of BiH, this goes up to one year in Republika Srpska, without the prior consent of the competent Ministries of Labour. In the Brcko District, for the same provision, the period during which it is prohibited to fire a union steward is three months (Article 78 of Brcko District's Labour Law).¹⁴

The Republika Srpska's Labour Law regulates the issue of representativeness of trade unions

¹³ Labour Law of RS (Official Gazette RS 38/00, 40/00, 47/02, 38/03 and 66/03).

¹⁴ In addition, Article 139 of the Labour Law of FBiH provides a possibility for a union representative that at his/her request his/her obligations deriving from labour relation shall be suspended no longer than four years following the date of election or appointment.

in Articles 142 to 157 under which the union is representative if it a) is established and operates on the principles of union organising and action independent of state authorities and employers, b) is financed mainly from membership fees and other own resources, c) gathers in its membership at least 20% of the total workers employed at an employer, or if it is a branch union, at least 20% of workers in that specific branch or industry, i.e. 20% of total workers in the Republika Srpska¹⁵. The representativeness of a trade union is determined by the employer in the presence of the concerned trade union representatives or the competent Minister, on the proposal of the Representativeness Committee¹⁶, if their representativeness has not been determined within 15 days of application or if they find that union representation is not determined in accordance with the Law. The Representativeness Committee consists of three representatives of the Republika Srpska Government, trade unions and employers' association.

Moreover, Labour Law provides for the organisation of workers into workers' councils, in addition to unions, through which they can seek protection of their workers' rights. Councils may be established by employers who have at least 15 employees, at the request of at least 20% of the employees (or the union in the case of employers in the Federation of BiH), or at least a third of workers or the union which has at least 20% of workers employed by employers in the Republic of Srpska.¹⁷ According to Federation of BiH's Labour Law, if employees of an employer do not establish a Council, the union may assume the legal responsibilities and powers of a Workers' Council. The Workers' Council Act of FBiH and Republika Srpska detail the manner and procedure of governing and operating of Workers' Councils. It is important to add that employers, in accordance with the applicable regulations, must consult the Councils when

¹⁵ According to the data of the Republican Institute for Statistics.

¹⁶ Committee for determination of representativeness of Trade Unions and Associations of Employers.

¹⁷ Mlinarević, Gorana and Lalović, Anđela. *Ekonomska i socijalna prava u Bosni i Hercegovini*

adopting the Rules of Procedure. Workers' Councils may not be organised in administrative bodies, the police or the army.

Union organising in a public administration, the police or the army is regulated separately. According to the Law on Civil Service of FBiH, Law on Administrative Service in the Republika Srpska Administration and Law on Civil Service in Administrative Bodies of Brcko District¹⁸, employees in the public administration have the right to form or join a union or professional association in accordance with laws. However, these provisions are quite general and since laws on internal affairs, as well as any other legislation, do not define the organisation and operation of trade unions in public administration, Labour Law applies in the case of these workers. According to Article 26 of the Law on Service in the Armed Forces of Bosnia and Herzegovina, professional military personnel are prohibited from joining a trade union and political organising.

In the Law on Employment in the Institutions of BiH and the Law on Civil Service in the Institutions of BiH, it is also provided that civil servants may organise in unions in accordance with the law. The Law on Employment in the Institutions of BiH regulates this matter in much the same way as the entity labour laws. This Law regulates the issue of union representation at the state level, and in Article 92 it reads that «a representative union», which means a trade union registered in Bosnia and Herzegovina, or two or more unions acting jointly whose members consist of a majority of workers employed at a single employer at the employer's head office". Additionally, the Law states that a representative trade union may represent employees of one or more employers, and that the Council of Ministers verifies the representative union on the proposal of the Ministry of Justice of BiH, and appeals against

¹⁸ Law on Civil Service of the FBiH (Official Gazette FBiH 29/03, 23/04, 39/04, 54/04, 67/05 and 12/06); Law on Administrative Service in the RS Administration (Official Gazette RS 16/02 and 62/02); Law on Civil Servants and Employees of BDBiH (Official Gazette BDBiH 41/04).

the verification or denial of verification of a representative trade union are filed with the Court of BiH.

In addition to Labour Laws, there are a number of laws that directly¹⁹ or indirectly refer to individual and collective workers' rights. In particular, it is important to emphasise that regulations in the fields of health, education, privatisation, governance and anti-corruption measures and macroeconomic policies significantly affect the application of the law on labour relations and thus on union organising. It is important to mention the Anti-discrimination Law that prohibits discrimination on the basis of union membership in public and private sectors and the Law on Gender Equality emphasises the importance of unions to protect women's labour rights and protect them from any form of discrimination at work.

Collective agreements are also a source of rights in the field of labour. General collective agreements for Republika Srpska and the Federation of BiH²⁰ provide that in the Rules of Procedure, employers should provide and

¹⁹ *Federation of BiH*: Employment of Foreign Nationals Act (Official Gazette FBiH 8/99); Strikes Act (Official Gazette FBiH 14/00); Workers' Council Act (Official Gazette BiH 39/04); Law on Mediation in Employment and Social Security of Unemployed Persons (Official Gazette FBiH 41/01 and 24/05); Occupational Safety Act (Official Gazette SRBiH 22/90); Health Insurance Act (Official Gazette FBiH 30/97 and 32/00); Health Care Act (Official Gazette FBiH 29/97); Law on Pension and Disability Insurance (Official Gazette FBiH 29/98 and 49/00); Law on the Rights of Veterans and Their Family Members (Official Gazette FBiH 41/04). *Republic of Srpska*: Workers' Council Act (Official Gazette RS 26/01); Employment Act (Official Gazette RS 38/00, 85/03 and 42/05); Law on Employment of Foreign Nationals and Stateless Persons (Official Gazette RS 97/04); Labour Inspection Law (Official Gazette RS 32/01); Law on Pension and Disability Insurance (Official Gazette RS 32/00, 40/00, 37/01, 32/02, 40/02, 47/02, 11/03 and 67/05); Law on Professional Rehabilitation and Employment of Disabled Persons (Official Gazette RS 98/04); Strikes Act (Official Gazette RS 26/93); Occupational Safety Act (Official Gazette RS 26/93, 14/94, 21/96 and 10/98). *Brcko District BiH*: Law on Employment and Rights during the Unemployment Period (Official Gazette BDBiH 33/04); Law on Employment of Foreign Nationals (Official Gazette BDBiH 17/02). Source: Gradašćević-Sijerčić, Jasminka and others. *Modul 2 – Radno zakonodavstvo u Bosni i Hercegovini: Radni odnosi u praksi*

²⁰ General Collective Agreement for FBiH (Official Gazette FBiH 54/05); General Collective Agreement (Official Gazette RS13/98, 39/99, 26/00 and 21/01).

ensure adequate conditions for work and trade union activity, and that they may only fire a union steward with prior consent from the competent Ministry. The Brcko District, even since the Labour Law was enacted 11 years ago, has not adopted the General Collective Agreement, which is a direct violation of BiH's international commitments.

Finally, it is important to add that international conventions are an important source of labour rights in BiH. Particularly important ones are the Conventions of the International Labour Organization (ILO) and the agreements signed with the European Union (EU). BiH has ratified about 81 ILO conventions, out of which 77 are in force and 4 refer directly to the right of trade union organising (No. 87 on the Freedom of Association, no. 98 on the Right to Organise and Collective Bargaining; no. 135 on the Protection of Trade Union Representatives, and the most important Convention no. 144 on Tripartite Consultations). The ILO has so far brought about 17 complaints/ observations by ILO experts and 3 observations from the International Labour Conference concerning BiH, which pinpointed the poor application of the International Conventions in BiH (this aspect will be further discussed in the section on union organising). The harmonisation of domestic legislation and obligations that BiH has towards the EU in the field of labour can be divided into two groups: 1) short-term obligations deriving from the Stabilisation and Association Agreement and European Partnership, and 2) long-term obligations which are defined under the European non-Community Labour Law which is based on the European Convention on Human Rights and Fundamental Freedoms, the European Social Charter, European Code of Social Security, the European Convention on Social Security, the European Convention on the Legal Status of Migrant Workers, and the European Employment Strategy. Unfortunately, BiH regulations are not fully compatible with any EU standards.

Insufficient implementation of legislation in practice

The most prominent problem in the implementation of the right to union organising is its **weak and insufficient use in practice, particularly in the private sector**. Experts and practitioners have been pointing out this problem for years, urging the authorities to do something about it. Examples of violations of rights to union organising can be found almost daily. For example, the Youth Section of BiH's Commerce Trade Union, operating since 2007, has launched a series of initiatives aimed at establishing a trade union or involving workers in existing unions in the retail sector. Attempting to access the workers in commercial shopping centres *Bingo*, *Mercator* and *Cash&Carry*, activists have met with considerable resistance by employers. The workers informed the union activists that their employers did not allow the activists to even talk to them. During a visit to *Bingo*, union activists were actually expelled from the premises. After several years, the situation has slightly improved. The management of the aforementioned shopping centres agreed to have a meeting with the union activists, but the information and materials prepared by the unionists have never been delivered to workers, and permits for the entry of unions in these centres have not yet been given.

²¹

Right to union organising violated

The International Labour Organization (ILO) expressed its opinions concerning the problems in BiH in the comments submitted by its Committee of Experts, pointing out the problematic application of Convention No. 98 on the Right to Organise and Bargain Collectively. This was identified by the ILO on the basis of complaints filed by the Confederation of Independent Trade Unions of Bosnia and Herzegovina and the Confederation of Trade Unions of the Republika Srpska concerning

²¹ Transcript of the interview with Đenan Harmandić, the president of Youth Section of CTUBiH . Sarajevo, 03.08.2011.

various types of pressure and intimidation they have been subjected to in newly established private companies with the aim of preventing workers to organise or participate in unions. In response, BiH authorities claim that they are not able to influence the organisation of trade unions in the private sector. The ILO in this regard requests the authorities to work towards the promotion and encouragement of union organising and collective bargaining and seeks a response from the BiH authorities on what has been done in this regard. A response has yet to be submitted.²²

The issue of **representativeness of trade unions**, which is usually directly related to the registration or establishment of trade unions, has also not been addressed, thus negatively affecting the development of social dialogue at the national level. Specifically, «the lack of clarity concerning the recognition of trade unions has blocked further progress in instituting collective bargaining»²³ at the State level.

The problem arose when the social partners (trade unions and employers) from various entities started to contradict each other's representativeness and informally prevent the registration of trade union Federations and Confederations. Due to these problems, the establishment of the Economic and Social Council at the State level has been blocked for several years. The authorities must be involved in solving this problem in order to reach a solution acceptable to all parties. The Confederation of Independent Trade Unions launched a lawsuit in the Court of BiH against the Ministry of Justice which refused to register them. Unfortunately, the Court issued a verdict of release in 2009. The Federation sent a complaint to the International Labour Organization (ILO), which now requires modifications of laws to empower the Ministry of Justice to accept or reject the request for the registration of trade unions. The Ministry of

Justice of BiH amended the Law on Associations and Foundations in Bosnia and Herzegovina, but the authorities in BiH have not yet resolved this problem.

No tripartite dialogue at the national level

These circumstances have prevented the use of tripartite social dialogue at the national level, and the harmonisation of socio-economic policies between the entities. This also weakens the role of trade unions and thus the workers. At the same time, the establishment of the Economic and Social Council at the State level was an ILO recommendation and a requirement that BiH must fulfil on its path to the EU²⁴, the latest Bosnia and Herzegovina 2010 Progress Report highlights the task of BiH: «Basic steps were taken to establish a country-wide Economic and Social Council. However, no agreement has been reached on the membership criteria for the social partners. The non-recognition of trade unions at State-level remains an outstanding issue.»²⁵

The representativeness of trade unions is not defined by labour laws in the Federation of BiH and the Brcko District, and it is necessary to amend the laws in order to define this important issue and prevent fraud in these jurisdictions. When it comes to the Republika Srpska, in analysing the implementation of economic and social rights in BiH, Mlinarević and Lalović report that the representativeness of both trade unions and employers' associations who act as representatives of the said Representativeness Committee is questionable. Specifically, the question is how these representatives in the Committee gained their representativeness. Although Article 9 minimises possible manipulations, the authors suggest that this

²² Mlinarević, Gorana and Lalović, Anđela. *Ekonomska i socijalna prava u Bosni i Hercegovini*.

²³ Brozek, Borislav. *Socijalna isključenost u Bosni i Hercegovini iz pogleda zaposlenih i sindikata*.

²⁴ This measure was included in the Social Inclusion Strategy for Bosnia and Herzegovina adopted by the Council of Ministers in 2010: "Measure 3. Establish an institutional framework for promoting economic and social dialogue in Bosnia and Herzegovina in accordance with the EU principles." Also, BiH has committed itself to implementing these measures by signing the Decent Work Country Programme Document for BiH (2008-2010).

²⁵ European Commission. *Bosnia and Herzegovina 2010 Progress Report*. 2010.

method of determining representativeness is not free from manipulation.

In its request to Bosnia and Herzegovina regarding the implementation of ILO Convention no. 78, the ILO also pointed out the obligation of Bosnia and Herzegovina and its bodies to maintain a **registry of trade union organisations**. So far, only Republika Srpska has regulated this issue in the already mentioned Article 9 of the Labour Law, under which a Rulebook on Registration of Trade Unions in the Registry was adopted. This Rulebook recognises only the union associations organised at the level of Republika Srpska. The ILO has sought amendments to the Rulebook to allow trade unions to form federations and confederations and to join international organisations. Although the Republika Srpska has adopted the requested amendments, not much has changed in practice.²⁶ At the level of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Brcko District, no special registers of trade unions are kept, but records are made in accordance with applicable laws on associations and foundations.

Frequent firing of union stewards

Regarding Article 93 of the Labour Law of the Federation of BiH, Article 131 of the Republika Srpska Labour Law, and Article 78 of the Labour Law of Brcko District, the International Labour Organization (ILO) has expressed its concern regarding the application of these provisions which do allow **layoffs of shop stewards**, and that could be misused, which suggests that these laws are not harmonised with the Convention on the Right to Organise and Collective Bargaining. Specifically, in the Federation there has been a problem of the lack of adequate sanctions «in relation to influence that associations of employers and workers have on each other in the context of the establishment, functioning or administration.” The ILO also received the complaints concerning layoffs of shop stewards in the FBiH

²⁶ Mlinarević, Gorana and Lalović, Anđela. *Ekonomska i socijalna prava u Bosni i Hercegovini*.

without the authorisation of the competent Ministry. The ILO also demands a solution to the problem concerning the impossibility to prove violations of the provisions prohibiting discrimination on the basis of belonging to the union in court, because discrimination is often covert and difficult to prove. Under the Republika Srpska's Labour Law, it is allowed although with the consent of the competent Ministry, to cancel employment contracts with union stewards or workers' representatives while performing their functions and one year after the function. In the Brcko District, the ILO stresses the problem of lack of sanctions for employers in cases of discrimination based on union affiliation.

Furthermore, the institute of **workers' councils** has not been significantly present in practice. Workers rarely use this institute, especially in the private sector due to workers' poor awareness of this institute and employers' unwillingness to support the operation thereof. The ILO expressed concern in relation to BiH and workers' councils stating that under the current regulations in the Federation of BiH it is possible to privilege workers' councils in relation to the union.²⁷ The NGO *Initiative and Civil Action* (ICVA) points out in its analysis that workers' councils and trade unions perform different functions and that there is no parallelism in the actions of each other²⁸, and it is in the interest of

²⁷ ILO seeks amendment of Article 98 of the FBiH Labour Law, which reads: “An employer who employs more than 15 employees, and who in the following three months intends to, for economic, technical or organisational reasons, terminate from work more than 10% of employees, and at least five employees, shall consult with the workers' council, and if there is no workers' council established they shall consult with the union that represents at least 10% of employees.”

²⁸ ICVA highlights the following differences between the workers' councils and trade unions: a) the appointment of representatives to councils is done by workers through free and direct elections by secret ballot while a trade union is an organisation in which employees share interest and in which they join at their own discretion, in accordance with the statute or the rules of procedure of that union, b) the status of the council is that it is a representative body of employees, it does not have a legal entity status, there is no statute, employees do not pay membership fees, and their operative costs are borne by the employer, while the unions have the status of legal entities with their own statutes, they must register, and union members pay membership fees, which constitute the union funds, and the costs of its work and activities are covered from the membership fees; c)

workers to use both of the institutes. Lack of workers' councils affects the poor implementation of workers' rights. Specifically, employers adopt Rules of Procedure that do not comply with Labour Law, and they illegally conclude contracts with employees following these Rules of Procedure, without the mandatory consultations with the workers' council or trade union. Given that they often prohibit the organisation of workers' councils, employers can violate the law and workers' rights with impunity.

Records of violations of the right to union organising are not kept

It is important to emphasise that an **official record** of violations of the law pertaining to the right to union organising is not kept in BiH. Workers, if faced with problems when organising, often give up under the pressure exerted by employers for fear of losing their job. Initiating court proceedings regarding violations of the right to union organising is rare and it is difficult to find records of these cases. However, individual positive examples do exist. In order to effectively protect workers' rights, the Center for Civic Cooperation in Livno and the Grahovo Association of Citizens in Grahovo, initiated a project through which they founded the Coalition for More Effective Protection of Workers' Rights, bringing together four non-governmental organisations and 16 trade unions. They quickly began publicly exposing cases of discrimination on the basis of union affiliation. Recently, they have exposed to a violation of this right in Drvar where a group of 110 workers were prevented

representation of workers in workers' councils is based on protection of economic and social rights and interests of all employees with an employer while union represents and protects the rights and interests of all its members; d) *the principle of consultation at the conclusion of a collective agreement* applies to the union, while the councils may not participate in it, e) unions have the right to organise and conduct strikes while councils do not; and f) employer's obligation to inform, consult and obtain the previous approval for certain decisions only applies to workers' councils, while it is not the case with unions. Source: *Primjena Evropske socijalne povelje kroz zakone i praksu u BiH i standardi za donošenje Zakona o finansijskoj socijalnoj pomoći*. Initiative and Civil Action (ICVA) and Rights for All.

by private employer «*Finvest*» in their attempt to organise.²⁹

Ethno-nationalist divisions in trade unions undermine their position

It is important to note that poor trade union organising is associated with the status that trade unions currently have in BiH's social system, as well as with their capacities. In fact, according to Obradovic, «the main common features of trade union organisations in the country is their bureaucratism and lack of active membership ... These organisations have no 'base' in companies so it is not surprising that they rarely succeed in protecting their members' and other workers' interests.»³⁰ Trade unions in Bosnia and Herzegovina inherited their «professional memory» from the old Socialist system, taking quite a passive role in public policies except for when it comes to strikes. Unfortunately, unions do not currently have the necessary capacity for more effective action. Because of the low interest of workers to join unions, their funds are limited when it comes to investing in the education and specialisation of their permanent staff as well as its other members and workers.

The authorities have neglected trade unions for years, not involving them in the decision-making process in accordance with the existing legislation, while on the other hand, using unions for political purposes, and to this end, organised on ethno-national divisions that exist in BiH. In BiH there are roughly 37 branch unions and trade unions, which rarely work together. Nerzuk Ćurak argues that «the union organised in BiH, such as it is, does not actually function in favour of the workers. It is *a priori* non-functional due to its organisation because it... works in favour of the ethno-national elites», and stresses that «... the mission of trade unions in BiH today should

²⁹ *Strah zbog sindikalnog organizovanja*. Capital.ba. 24.05.2011. Available from: <http://www.capital.ba/strah-zbog-sindikalnog-organizovanja/>

³⁰ Obradović, Nikolina. *Protection of rights in Bosnia and Herzegovina: Two legal studies to evaluate the level of compliance of the domestic legislations and practices with the applicable international standards*

be to overcome the organising along entity lines.”³¹ The current weak position that the unions have could be overcome if the existing entity and branch unions were integrated into a single trade union which would result in an increase in membership and a greater impact could be achieved through a joint approach to employers and government institutions.

It is therefore not surprising that workers have little confidence in unions and rarely join. Trade union leadership structures are perceived as corrupted by the authorities. A recent survey of BiH citizens' confidence in different institutions³² shows that trust in trade unions is low. 31.1% of surveyed stated that citizens generally do not trust unions, while 20.2% do not trust unions at all. Citizens have more confidence in religious organisations, the military, police, judicial institutions, international organisations, media and NGOs than in unions. Citizens showed more trust in unions only in comparison with trust in government institutions and the private sector.

³¹ Ćurak, Nerzuk and others. *Sistematsko ugnjetavanje i marginalizacija radnika i radnica Bosne i Hercegovine*

³² USAID Justice Sector Development Project. *Public Perception of Judiciary in BiH*.

Conclusions and recommendations

Although BiH nominally guarantees the right to union organising, for years it has been a neglected form of social action, often faced with the problems of the politicisation of trade unions, fragmentation, and low citizens' confidence in the effectiveness of collective action. In addition, there is a lack of harmonisation of BiH labour legislation with the adopted international conventions and EU standards when it comes to union representativeness and layoffs of union shop stewards. Registration procedure and keeping the register of trade union organisations, as well as the application of the Workers' Councils Act are also problematic.

Recommendations for the European Union

- Require the BiH government to modify the provisions of the Labour Laws of the entities, the Brcko District and complementary legislation at the state level, concerning the prohibition of layoffs of trade union shop stewards in order to prevent the reported abuse of the applicable provisions
- Require the BiH authorities to modify the Labour Laws of the FBiH and BD, and complementary laws at the state level, in order to
 - a) Establish and maintain a register of trade union organisations in the said jurisdictions
 - b) Define the trade union representativeness
- Require the BiH authorities to adopt the Rulebook on the Register of trade union organisations in BiH, FBiH and BD
- Require the BiH authorities to establish a service responsible for keeping the register of trade union organisations in BiH, FBiH and BD within the executive bodies responsible for labour affairs

- Require the BiH authorities to adopt the General Collective Agreement in the Brcko District
- Require the BiH authorities to establish the Economic and Social Council at the state level.

Recommendations for national authorities

- Recognise the unions as partners in the creation, implementation and monitoring of labour policies and include them in that respect in all decision-making processes
- Develop programmes for promotion and encouragement of union organising and action
- Establish the Economic and Social Council at the state level
- Develop measures and regulations that will define clearly the representativeness of trade unions and associations of employers
- Modify the provisions of Labour Laws of the entities, the Brcko District and complementary legislation at the state level, concerning the prohibition of layoffs of trade union shop stewards in order to prevent the reported abuse of the applicable provisions
- Modify the Labour Laws of the FBiH and BD and complementary laws at the state level, in order to
 - a) Establish and maintain a register of trade union organisations in the said jurisdictions
 - b) Define the trade union representativeness
- Adopt the Rulebook on the Register of trade union organisations in BiH, FBiH and BD
- Establish a service responsible for keeping the register of trade union organisations in

BiH, FBiH and BD within the executive bodies responsible for labour affairs

- Examine ILO`s indications of the potential legal privileging of worker`s councils in comparison to the union in FBiH and submit an opinion/response to the ILO
- Adopt the General Collective Agreement in the Brcko District
- Develop the administrative, judicial and other mechanisms for a more efficient protection of the right to union organising, particularly in the private sector
- Timely and continuously respond to all requests and correspondence of the ILO towards BiH, and submit the requested information, particularly the information on the number and content of collective agreements in BiH

Recommendations to trade unions and NGOs

- Work to unite the unions, especially concerning the integration of the entity unions with the Confederation of Independent Trade Unions of BiH as well as the integration of entity branch unions in single branch unions in BiH
- Develop programmes for promotion and encouragement of union organising and action
- Advocate modifications of the provisions of the Labour Laws of the entities, the Brcko District and complementary legislation at the state level, concerning the prohibition of layoffs of trade union shop stewards in order to prevent the reported abuse of the applicable provisions
- Advocate modifications of the Labour Laws of the FBiH and BD, and complementary laws at the state level, in order to
 - a) Establish and maintain a register of trade union organisations in the said jurisdictions

b) Define the trade union representativeness

- Advocate the adoption of the Rulebook on the Register of trade unions in BiH, FBiH and BD
- Advocate the establishment of a service responsible for keeping the register of trade union organisations in BiH, FBiH and BD within the executive bodies responsible for labour affairs
- Advocate the adoption of the General Collective Agreement in the Brcko District
- Keep daily and comprehensive records on violations of the right to union organising
- Initiate labour disputes, using the ADR and the judiciary, in cases of violations of the right to union organising
- Provide continuous and comprehensive education and training for workers in order to familiarise them with their rights and instruments of protection
- Promote the capacities and knowledge of permanently employed workers
- Develop projects aiming to increase citizens` confidence in unions
- Work on uniting the unions, and develop joint actions and projects among unions with complementary objectives
- Strengthen the solidarity among unions by means of organising joint events, projects and activities
- Strengthen the solidarity and cooperation among unions and other NGOs engaged in labour and employment issues by means of organising and implementation of joint events, projects and activities
- Develop a joint work programme and action platform for all trade unions in BiH

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