

BALKAN YEARBOOK OF HUMAN RIGHTS

2008

*Legislative Preconditions for the Development
of the Corporate Social Responsibility in the
Countries of the Western Balkans*

BALKAN HUMAN RIGHTS NETWORK
Knowledge and respect for human rights in all spheres of society



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Sarajevo, 2008

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Dear readers,

This edition of the Balkans Human Rights Network Yearbook is dedicated to our dear colleague and friend Ranko Helebrant, who passed away during the production of this publication and left us all in sorrow for his early death.

As the founder of the Balkans Human Rights Network, he made a tremendous contribution in the field of human rights education, minority protection, democracy development and respect for human rights in the region. In the period from 2003 to 2005, Ranko Helebrant was the Chairman of the BHRN Steering Committee, and from 2005 to 2008, he was Deputy Chairman. He is the author of numerous publications and expert articles on human rights. Among our friends, he is known as the coordinator of the BHRN project „Human Rights School for Future Decision-Makers in Dubrovnik“.

This publication and Ranko's unfinished article will be one of the reminders of Ranko Helebrant's goodness and greatness.

Snježana Ivandić and Aida Vežić
BHRN Secretariat

In Commemoration of A Good Man, Ranko Helebrant

The news on the death of Ranko Helebrant surprised and aggrieved many of his friends and acquaintances Ranko had met through working on human rights protection and helping people in distress.

I met Ranko some fifteen years ago, through his cousin don Luka Vincetić, a man exceptional for his mild nature and moral strength, who had also passed away too soon. The mildness and tolerance, combined with persistence and consistency when protection of the vulnerable and help to the victimised were at stake, were also the main features of Ranko's character. His departure is only a short news in the paper.

There is no flag swaying, no fervent speech. A common fellow has departed, killed by no one, who planted no bombs, burnt no villages, who only helped the aged and distressed, without getting neither the records of his years of experience nor pension from the state. However, if there is patriotism a tolerant, open-minded and pro-European Croatia needs, which all honest men can be proud of, then it is the patriotism testified by Ranko Helebrant with his life and work.

The existence of people like Ranko Helebrant, and, moreover, their rarity, show that benevolence is a gift of nature, like talent for music or math; some of it can be found with many individuals, but much of it with few.

Human life is short, and iniquities surrounding us and early departures saddening us always bring up repeated questions on our sense and purpose. However, if there is a divine reason for our existence, something that gives this short life sense and purpose, it is the fact that we are here for people we were intimate with and who we share joy with, and for people whose suffering we can relieve and whose adversities we can alleviate.

Zagreb, 27th September 2008

Zoran Pusić, Chairman
Civil Human Rights Committee

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PREFACE TO THE BHRN YEARBOOK 2008

The Balkan Human Rights Network (BHRN) Yearbook of 2008 follows the structure of seven previous issues and it includes eight articles, one from each of the following countries of the region: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro and Serbia. The topic of this year's publication is legislative preconditions for the development of the corporate social responsibility in countries of the Western Balkans.

These articles are a result of desk research by an individual author or a group of authors. The purpose of this desk research was to analyze the legislation of respective countries against international human rights law, international labour law, environmental law, consumer law, anti-corruption law and other standards relevant to the development of the corporate social responsibility (CSR). These standards can be found either in hard law (conventions) or soft law (declarations, guidelines, resolutions), such as: the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, European Convention on Human Rights, European Social Charter, OECD Guidelines, ILO Conventions and Declarations; as well as initiatives like the UN Global Compact, Global Reporting Initiative, Social Accountability 8000.

The Balkan Quick Check (BQC), the self-assessment tool for businesses developed by the Danish Institute for Human Rights and Balkan Human Rights Network under the project Human Rights and Business, was used as a reference list for issues to be addressed in the articles. These issues included: (1) employment practices – discrimination, forced labour, child labour, health and safety at work, collective bargaining, freedom of association, harassment, and (2) the community impact – the protection of

the environment, of the intellectual property, land management practices, products liability and corruption.

The scope and complexity of these issues resulted in hours of research, comparative analysis and interviews with professionals. It also required prioritization and focus on few rather than all trends in these countries. Hence, one article may focus more on the issue of child labour (Albania), another on corruption (Bosnia and Herzegovina), collective bargaining (Croatia), product liability (Macedonia), land management (Montenegro), or the protection of the environment (Serbia).

All authors concluded that while much effort was invested in bringing the legislation in compliance with international standards relevant to the CSR much more remains to be done to ensure the effective implementation of legislation. Processes such as the European Union integration were found to be one of the main driving forces of reform, while the role of the non-governmental organizations and other non-state actors such as businesses is recognized as increasingly important to making the reform meaningful.

There is a general agreement that no business, no matter how influential, can be asked to replace governments in their primary responsibility for the protection of human rights. However, as Mary Robinson well notes *with power should come responsibility*. Today there are some 70,000 transnational firms, together with roughly 700,000 subsidiaries and millions of suppliers. These firms are extremely powerful and in fledgling countries many appear as primary human rights abusers. Therefore, there are legitimate arguments in support of the proposition that it may be desirable in some circumstances for businesses to become direct bearers of international human rights obligations.

We hope that this publication will provide the necessary knowledge to push forward the reform relevant to the development of the CSR in the Western Balkans.

Contributors to the issue (short biographies)

Aida Vežić

Aida Vežić is employed in nongovernmental organization "Association for Democratic Initiative Sarajevo" which serves as the Secretariat of the Balkan Human Rights Network since 2000. She finished Faculty of Economics at the University of Sarajevo and a number of specialized trainings and courses in the areas of project management, logical framework approach, strategic planning, preparation of the financial strategy, human resources management and development, facilitation of the meetings and many other related areas. She teaches module Project Management as a part of "Publikum - PR Development" school of Media Centre Sarajevo. She is member of the „Committee for Civil Society in Bosnia and Herzegovina“.

Albert Musliu

Albert Musliu is the Executive Director of the Association for Democratic Initiatives (ADI) in Gostivar, Macedonia. He is a Chairman of the Balkan Human Rights Network (BHRN) Steering Committee and represents the network in front of other institutions, partners and donors. He also serves as the sub-regional coordinator for the UN-NGO IRENE Network for South East Europe (SEE), Member of the Remarque Forum of the New York University – New York and the Director of the South East European University Centre for Human Rights in Macedonia. He has testified experience in organizational development in the areas of human rights, minority rights, policy, administration, and research in South East Europe. Also he facilitates the process of cooperation of civil society organizations from SEE with the UN agencies and specialized institutions, and promoting their involvement and interaction with the UN. Albert Musliu has testified as an expert, a teacher and activist in the field of human rights throughout his career and has provided a valuable international dimension to the work of ADI.

Anđela Lalović

Anđela Lalović (1984), BA Economics, graduated at the Faculty of Economics, University of East Sarajevo. She is currently working as Research Projects Officer at the Human Rights Centre of the University

of Sarajevo. She is administrator of two FP6 projects at HRC Sarajevo. Her engagement is predominantly dedicated to research of economic, social and cultural rights. Research focus / field of research are: women in economy, corporate social responsibility, as well as rights of persons with disabilities. She is also editor of weekly electronic newsletter "Constitutional Changes Monitor" published by HRC Sarajevo.

Darka Kisjelica

Darka Kisjelica was born in H.-Novi Montenegro. She has graduated the Faculty of Law in the University Belgrade, Serbia in 1988. From 1992 had been elected to a position of the judge in Municipal Court in Herceg-Novi. In 2006 she switches to private practice and joins Montenegrin Bar Association. She works as the attorney at law in Herceg-Novi. From 2002 is included in the training of the Council of Europe on the ECHR. Since 2006 joins Human Right Action. She has been participated in many international projects: European Space of Justice, Workshop of HRA about the Constitution, former lecturer on right for fair trial in the Judicial Training Centre of Montenegro.

Eralda Cani

Eralda (Methasani) Cani, PhD, is a lecturer of Administrative Law and a co-lecturer of Human Rights at the European Studies Post Graduate School, Tirana University. She is a PhD graduate of Tirana Law School, Tirana University, received an LL.M in Comparative Constitutional Law from CEU, Budapest, Hungary, and studied law at the University of Leyden, Holland. She has previously served as a lawyer at the Ministry of Labor and Social Affairs, Albania; worked for the OSCE Presence in Albania as a National Legal Officer; and for an international law firm as an Associate Attorney. She has been constantly committed to the development of the civil society in Albania and has been part of different Albanian non-for-profit organizations such as Albanian Helsinki Committee, Albanian Constitutional Lawyers, and recently Children Today Center. She is the co-author of the first Albanian - English human rights glossary (in 2000) and author of several articles and publications.

Elma Tërshana (Shehu), MSW

Elma Tërshana (Shehu) is graduated at Social Science Faculty in Tirana, with high score, she has finalized BA and Master in Social Work (MSW). Since 2001, she is human rights expert. Her passion for being part of

education system has been finalized by developing 'Knowing Human rights' subject in National Faculty of Social Science in Tirana (with students of third grade). Her recent work in publication include: assistance in developing of University subject 'Human Rights Education curricula for University', manual 'Knowing human rights', expert (co-author) in preparing the alternative report about "The Convention on the Right of the Child" for Albania. In regional level she is co-author in the publication of the 'Balkan Human Rights Yearbook – 2006'. Her persistent and full time engagement is her professional commitment in NGOs, as part of civil society with focus human rights and human dignity. During the course of 10 years, she has been committed in: Child Development Center (CDC), Albanian Center for Human Rights (ACHR), Albanian Center for Trauma and Torture (ARCT), and recently Center Children Today (QFS).

Jelena Mičić

Jelena Mičić is assistant to project manager at Secretariat of BHRN and Association for Democratic Initiatives Sarajevo. She has graduate at Faculty of Economic, University of East Sarajevo with highest marks. At summer 2007, she has been elected for one of 20 the best students in Bosnia and Hercegovina, by Center for Civil Initiatives selection. She is scholar of President Republic of Srpska Foundation and attending master studies at Business Financing and Banking at Faculty of Economic, University of East Sarajevo.

Jovana Zorić

Jovana Zorić is the final year student at Commercial Law Department at the University of Belgrade Law School. She has attended many seminars and conferences in human rights and humanitarian law in Serbia and abroad. Since 2006, she works as the Legal Researcher to Belgrade Centre for Human Rights and does research for Professor Dr. Dr. hc Vojin Dimitrijević. She co-authored several human rights reports and published several articles. Also she assisted in drafting of the strategy of the Liberal Democratic Party. She gave lectures on seminars on human rights in Serbia and abroad. She was involved in writing of the Human Rights and Business Quick Check for Balkans.

Krassimira Sredkova

Prof. Dr. Krassimira Sredkova is chief of the Department for Labor Law and Social Security in Sofia University "St. Kliment Ochridski". Legal adviser to the President of the Republic of Bulgaria. President of the

Legislative Consultative Council in the National Assembly. Legal adviser to the Bulgarian Chamber for Industry and Commerce. President of the Supervising Board of the National Institute for Conciliation and Arbitration. Author of about 200 books, articles and oth. In the field of Labor Law and Social Security Law. National expert in tress, ELLN and other EU-research projects, as well as of the ILO.

Mike Baab

Mike Baab is an analyst in the Human Rights & Business Project. He consults with companies on country risk and organizes Project publicity activities. Baab holds masters degrees from Aarhus University and University College London.

Marie Busck

Marie Busck has been an adviser at the Human Rights & Business Project since 2004. She has extensive experience in advising multinationals on human rights standards and integrating processes for human rights compliance and risk management into business practice. She has contributed to the development of the Human Rights Compliance Assessment, and has been responsible for the Project's work on the Country Risk Assessment. She is currently leading work on capacity building in developing countries. Busck holds an MA in Sociology of Religion from the University of Copenhagen.

Nasire Bala Rizaj

Country Director of Association for Democratic Initiatives Kosovo. Nasire Bala Rizaj was born in Peja. She has graduated the Faculty of Philology/ Department of English Language and Literature in the University of Prishtina. She has served as professor of English Language and Court interpreter. After the war in Kosovo she has gained extensive experience in working with international Governmental and Non Governmental sector aiming at strengthening civil society and promoting Human Rights in Kosovo. She has translated Universal Declaration of Human Rights, Free and Fair Elections, European Concept on Accessibility, etc. She was member of the reviewing committee of first Albanian English Human Rights Glossary, published many articles, and provided trainings on Human Rights, Good governance, Anti Corruption, Conflict Resolution and Gender Equality. Her research interests are minority rights, legislation in Kosovo and Gender Equality.

Nevena Dičić

Nevena Dičić is final year student LL.B. (Bachelor of Laws), The Faculty of Law, International Law Department, University of Belgrade. She works as Legal Researcher in Belgrade Centre for Human Rights. She researched on domestic and international legal standards related to the human rights and jurisprudence of the international judicial and quasi – judicial bodies; monitored and reported on trials, wrote articles, essays and project proposals and reports; researched and wrote reports on national legislation regarding the particular human rights; participated in writing of the Human Rights and Business Quick Check for Balkans; lectured at seminars organized by the Belgrade Centre for Human Rights for young people (main issues: EU Integrations, Introduction to Human Rights, Freedom of Expression, Social and Economic Rights); Assisted in drafting of the strategy of the Liberal Democratic Party (issue: Consumer rights).

Ranko Helebrant

Ranko Helebrant was born in Zagreb, Croatia in 1962. He finished elementary and high school in Zagreb. From 1982-1986 he finished 3 years of Law Faculty, University of Zagreb, but never completed his studies. From March 1998 he is working for Croatian Helsinki Committee for Human Rights (CHC), Zagreb based NGO working in protection and promotion of human rights. In the beginning he started in direct protection (working with individual victims of HR violations), and very soon became Head of the Department for Direct Protection. In that period he was also involved in project of investigation of the war crimes committed by Croatian army and police during the operations “Flash” and “Storm”. For the last part of the project – sector “West” he was leading the project. In early 1998 he was among funding fathers of Balkan Human Rights Network, and member of its Steering Committee up to day. From 2003 – 2006 he was also Chairperson of the network.

Snježana Ivandić

Snježana Ivandić is director of the NGO Association for Democratic Initiative Sarajevo hosting organisation of the Secretariat of the Balkan Human Rights Network and Executive Director of the Balkan Human Rights Network since 2003. Her social science degrees have proven a good combination for work in multi-disciplinary teams, in which she is often the team leader. She has experience working in the international

organisation system and the private sector, as well as in non-governmental organisations. Her international experience record goes back to 2000 and includes work in over 8 countries in human rights development & research, as well as policy advice to governmental institutions and NGOs. A part of her regular duties includes work as a trainer and consultant to the member organisation (Strategic Planning, Project Cycle Management, Financial Planning, Networking and Lobbying and Advocacy). She has specialisation in preparation, management and evaluation of development projects and programmes, with emphasis on human resource development, and support to community-based initiatives. Currently she is the member of the educational working group within Euro-Mediterranean Human Rights Network, consultant in the process of establishing Turkish Human Rights Network. Snjezana has long term cooperation with the Danish Institute for Human Rights .Currently; she is working on a joint project between Balkan Human Rights Network and Danish Institute for Human Rights “Human Rights and Business”.

Zemri Elezi

Zemri Elezi, PhD Of Law Sciences, Specialisations/Trainings on Administrative-constitutional and parliamentary and is a lecturer of Administrative-constitutional at SEE University in Tetovo. Professor Elezi is author of of number of academic books “ Manual of the law-administrative terminology (macedonian-albanian-english); “constitutional system of the Republic of Macedonia”; and “parliamentary control of the governmnet”. He has participated in different conferences and working groups related to local selfgovernmnet, policy development and democracy. He also has been involved in consultant activities at the proffesional service of the Assembly of Macedonia; consultant at the proffesional comissions of the Governmnet of Republic of Macedonia; law consultant of the Tutunska Banka, and Stopanska Banka in Gostivar.

Elmerina Ahmetaj Hrelja, thematic editor of BHRN Yearbook 2008

Elmerina Ahmetaj Hrelja currently serves as the Ministry of Justice Advisor for the USAID Justice Sector Development Project, where she is responsible for overall management and technical implementation of JSDP’s institutional strengthening support to the MOJ. Prior to joining JSDP, Elmerina Ahmetaj Hrelja served as a legal expert for the European Union Police Mission, a Judicial Reform Officer for the

Independent Judicial Commission, a legal officer for the Commission for Real Property Claims of Displaced Persons and Refugees and a legal assistant for the Human Rights Department of the OSCE Mission to BiH. She holds a Master of Studies in International Human Rights Law from Oxford University and a law degree from the University of Sarajevo and the University of Pristina. At Oxford University she also studied human rights and business, the class taught by Prof. David Weissbrodt, under whose leadership the UN Commission on Human Rights developed *2003 Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights*.

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CSR in the Western Balkans: Opportunities and Challenges

by Mike Baab and Marie Busck of the Human Rights & Business Project, the Danish Institute for Human Rights

Abstract

The introduction to the Balkan Human Rights Network's annual report 2007, "CSR in the Western Balkans: Opportunities and Challenges" provides an account of the concept of Corporate Social Responsibility (CSR), its background and history, and the current challenges and controversies of CSR. From then on, the article gives a brief overview of CSR in the Western Balkans and the present initiatives and actors. The article argues that while CSR remains a new and marginal phenomenon in the region, there are signs of change and increasing awareness about CSR. The last section in the article presents the cooperation between the Balkan Human Rights Network and the Danish Institute for Human Rights on CSR and human rights & business, and the development of the Balkan Quick Check—a human rights self-assessment tool for Balkan companies.

Keywords: Corporate social responsibility (CSR), Human rights & business, The human rights responsibilities of companies, Corporate Social Responsibility in the Western Balkans

The Balkan Human Rights Network (BHRN) Yearbook of 2008 focuses on the concept of Corporate Social Responsibility and presents eight case studies on the legislative preconditions for the development of CSR in eight Western Balkan countries. Working with CSR has been a priority for the BHRN during 2007 and 2008 and has been reflected in the cooperation with the Human Rights & Business Project of the Danish Institute for Human Rights. The cooperation has resulted in the development of a business human rights tool that specifically addresses CSR and human rights in the Western Balkans. The tool is designed as a self-assessment for companies to measure their adherence to international human rights and

labour laws, as well as specific CSR principles, such as the 10 Global Compact principles or the labour and human rights standards of the upcoming ISO 26000.

CSR as it is known today has gained momentum from the 1970s onwards, where increasing scrutiny on the negative effects of company operations in developing countries has gone hand in hand with an increasing acknowledgment of the positive role that companies can play in the promotion of human rights and socio-economic development. As a result, a growing number of companies are making a commitment to environmentally and socially responsible behaviours in the Western Balkans and elsewhere.¹ Nonetheless, CSR remains a new and marginal concept in much of the Western Balkans, and the capacity and resources remain limited within governments, NGOs, businesses and the media. Corporate engagement in social issues is largely confined to philanthropic activities—where companies support cultural events and community development, and only a few companies have started to work with CSR as a strategic tool and incorporated it as part of their business strategy.

Against this background, the cooperation between the BHRN and The Human Rights & Business Project has been a pioneering project. Cooperation has involved training and capacity building in a number of Balkan NGOs to address CSR and human rights and & business issues, as well as engaging constructively with businesses on CSR. This process has yielded the Balkan Quick Check, a comprehensive and easy-to-use human rights tool for Balkan companies. This process has involved close cooperation with a number of businesses that have tested the tool on their operations and provided input. During the development of the Balkan Quick Check, it has become clear that more awareness-raising is needed and that the major future challenge will be to engage with more companies on further testing and implementation. It is also important for NGOs to investigate the legislative frameworks of individual Western Balkan countries, so as to determine their ability to comply with Balkan Quick Check standards and the possibilities for further development of CSR in the region.

¹ See for instance UNIDO Issue Paper: “*On the State of Corporate Social Responsibility in Central and Eastern Europe (CEE)*”, 2005 and UNDP study: “*Baseline study on CSR practices in the new EU member states and candidate countries*”, 2007.

As a preface to the upcoming case studies, the present introduction will present some background information on the concept of Corporate Social Responsibility, its history and current challenges. This will be followed by brief overview of CSR in the Balkans and, finally, a description of the cooperation between BHRN and The Human Rights & Business Project, including the Balkan Quick Check.

What is Corporate Social Responsibility?

Corporate social responsibility (CSR) has operated under a number of names and definitions through its rapid development in the last four decades—incorporating concepts like responsiveness, capacity and performance as management trends change.² Various conceptions of the term still proliferate. The European Commission defines CSR as ‘A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.’³

Most CSR definitions share the core idea of companies protecting human rights, the environment and other local communities in the course of their normal business operations. The battle between CSR as a negative obligation (company operations should not cause any harm to stakeholders) and a positive one (companies should alleviate poverty and other social problems where they operate) continues to be waged, though most of the mainstream business literature and corporate codes of conduct evince the negative conception, preventing human rights violations and environmental damage—as well as consumer boycotts and NGO attention—before they occur.

The European Commission’s specification that CSR is ‘on a voluntary basis’ represents another controversy surrounding human rights and business initiatives. Most campaigning organisations, such as Amnesty International and Human Rights Watch, argue that binding government legislation is the most effective way to safeguard human rights in business operations. Others, such as the UN Global Compact, take a ‘work within

² Steven L. Wartick & Philip L. Cochran, ‘The Evolution of the Corporate Social Performance Model’, *The Academy of Management Review*, Vol. 10, No. 4, Oct. 1985, pp. 758-769.

³ EC CSR webpage: <http://ec.europa.eu/enterprise/csr/index.htm>, accessed on February 19, 2008.

the system' approach, focusing on education, tools and capacity building within companies themselves.

Historical background

Though the history of CSR can be traced back to the first consumer boycott in 1790⁴ or the first socially conscious business models of the 19th century, CSR as it is known today is largely a product of the recent past. The 'hard commerce' model, in which companies earn profit at the expense of all other concerns, was generally accepted by Western society throughout the Industrial Revolution. Whatever harmful effects a business operation had, their scope was limited to employees and the surrounding area. Globalization had not yet widened the dichotomy of haves vs. have-nots to the global level. Wealth disparity between factory workers and consumers was seen as a responsibility of government or simply as one of the vulgarities of the capitalist system, not the responsibility of the companies themselves. Muckraking accounts such as Upton Sinclair's 'The Jungle' or Ida Tarbell's 'The History of the Standard Oil Company' spurred calls for government action, not voluntary standard-setting by employers or industries. In Europe, the labour battles of the 20th century were similarly marked by policy and institutional advances, entrenching concepts, such as: the 40-hour workweek, paid holidays, maternity leave and employer health coverage, were opposed by large employers until written and enforced by law.

Beginning in 1960s, issues such as labour practices, product safety and bribery wriggled into popular press, activist literature and political speeches.⁵ Multinational corporations, not governments, were cast as the agents of such violations. Accounts of environmental damage and Third World poverty added to the growing realization among Western citizens that company operations no longer affected only one area or one caste of employees. This widening of scope resulted in 'a perception that the growth of giant international companies posed a threat to the sovereignty of small, poor states and represented an attempt to redress the balance between the growing power of TNCs [trans-national corporations] and the vulnerable

⁴ John Micklethwait, *The Company : A Short History of a Revolutionary Idea*.

⁵ Geoffrey P. Lantos, 'The Boundaries of Strategic Corporate Social Responsibility'.

nation-state, particularly in the South.⁶ Corporations began to emphasize philanthropy as a way of demonstrating their societal worth outside the constraints of law.

The Reagan and Thatcher-era deregulation increased capital mobility, and industry consolidation saw the increasing use of offshore labour for Western goods. For the first time, companies were able to ‘shop’ for developing countries—threatening to pull capital if factories were not given Export Processing Zone tax breaks and minimum wage waivers. Asian and African countries responded to this new flexibility by competing to provide the cheapest and most efficient low-skilled labour.

The 1990s witnessed an unprecedented level of scrutiny on company operations in developing countries, and reports of poor labour and environmental practices proliferated. The term ‘sweatshop’, coined during the assembly-line era of the Industrial Revolution, made a comeback in profiles of Nike, The Gap and Kathie Lee Gifford. The trend toward heavy branding, which had become exponentially more visible and sophisticated in the decades since the department-store era, further increased the size of the bull’s-eye floating over Western companies. Industry leaders such as McDonald’s and Nike were repeatedly attacked, and violations three or four degrees of separation away from the company itself were reported with the language of direct complicity.

One of the major developments to emerge from the recent era of corporate CSR scandals is the creation of codes of conduct. Driven, as they were, by NGO campaigns and public ‘busts’ of companies in poor countries, such codes emphasized the negative, ‘thou shalt not’ obligations for companies. Policies of monitoring, auditing and factory rules set a baseline of human rights, labour standards and environmental protection below which companies could not fall. ‘Sexy’ issues, such as child labour, were a fixture of these efforts, both in codes of conduct and in public relations rollouts that followed. This conception among companies continues today: “Labour codes of practice are far more likely to outlaw slavery and child labour (practices where there is little direct financial motivation to continue, especially compared to the potential consequences of a consumer backlash) than to recognise the right to a living wage or freedom of association (both

⁶ Rhys Jenkins, ‘Globalization, Corporate Social Responsibility and Poverty’, *International Affairs*, 81, 3 (2005), 525-540.

of which many companies fear might work to their commercial disadvantage)...Crucial economic issues are always excluded from the contents of CSR standards.”⁷

The Human Rights Approach to CSR

As codes of conduct have become a common corporate practice in the past 20 years, there has been a growing realization that CSR performance should be measured against a baseline of good behaviour. A company’s environmental, labour and community practices need a standard against which to be judged as they commence operations and report performance.

The Universal Declaration of Human Rights states that “every individual and every organ of society” has an obligation to enact the 30 articles protecting life, dignity, non-discrimination and just employment. Though the document does not state an explicit obligation upon companies, its deeply entrenched and supported principles provide ideal guidelines for company CSR performance, and allow companies to define standards of practice and community impacts for just operations.

Though human rights can define a baseline against which negative human rights obligations can be judged, the rights entrenched within the UDHR also provides an *approach* toward employees and communities that places the individual at the centre of business impacts and behaviours. This bottom-up approach informs CSR research, practices and programs as companies investigate and measure their performance on their constituents.⁸

The bottom-up approach provided by human rights has had a number of impacts on CSR, most notable the development of the so-called ‘stakeholder approach’. Originally developed by R.E. Freeman, stakeholder theory offers a systematic CSR that acknowledges the various groups affected by companies in various contexts and upholds each of their

⁷ Michael Blowfield and Jędrzej George Frynas, ‘Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World’, *International Affairs*, 81, 3 (2005) 499-513.

⁸ Chris Avery, ‘The Difference Between CSR and Human Rights’ Corporate Citizenship Briefing 89, August/September 2006.

individual rights and needs.⁹ The theory states that all individuals upon whom the company depends—employees, local communities and shareholders, among others—should be taken into account when commencing operations or making business decisions. This view incorporates the effects of bad governments, non-functional markets, company lobbying and other elements that can profoundly affect the rights of individuals but are often not confronted under more top-down CSR approaches. Stakeholder theory ties company behaviour not to laws or existing structures in a given local context but directly to the consequences on individuals under the umbrella of company policies and practices. The term ‘stakeholders’, as well as this emphasis on mutualism and long-term growth, is a fixture in company human rights policies and codes of business conduct.

Though human rights standards of CSR have been justified by the legal statutes of the UN and the International Labour Organization, another justification of human rights as CSR is the ‘business case’: Human rights are good for long-term profitability. The business case emphasises employee morale, customer satisfaction and a 'social license to operate' in difficult countries. The World Bank’s definition of CSR, for example, emphasizes this 'win-win' aspect:

‘the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life, in ways that are both good for business and good for development’¹⁰

The business case argues that respecting the rights of employees results in lower turnover and protecting local communities reduces unrest and work stoppages. Non-discrimination policies and environmental protection foster creativity that can yield dividends in new products and/or methods.

Current Controversies in CSR

Though CSR practices and institutions have grown exponentially in recent decades, the field does not enjoy unanimous support, and both academic

⁹ Freeman, R.E. (1984). *Strategic Management: A Stakeholder Approach*. Boston: Pitman/Ballinger

¹⁰ Worldbank.org

and business constituents continue to point out major gaps and weaknesses that will affect the direction of CSR in the future.

One of the most fundamental criticisms of current CSR efforts is simply that they do not do what they set out to do and that business should not take a front seat role in development. “There are a number of reasons for doubting the claim that adopting CSR will make growth more inclusive and more equitable, and thereby reduce poverty ... The centrality of stakeholders within CSR also limits its usefulness in approaching poverty. Almost by definition, the poor are those who do not have a stake.”¹¹ Under current CSR practices, company activities such as recruitment, tax payment and land placement are not specifically designed to benefit vulnerable groups. Much of the 'responsible practice' by companies consists of developing a monitoring and auditing infrastructure in developing countries, which is a system that favours industrial consolidation and is more likely to exclude the poor. Additionally, CSR literature and practice is almost entirely silent on company avoidance of taxes in developing countries. Contributing to governments in the form of tax payments, critics claim, is more likely to benefit the poor and improve opportunities for education, health and transportation than company initiatives. Yet, it is considered fair play for companies to negotiate tax breaks or Export Processing Zones when doing business with poor governments.

Another controversy within CSR attacks the focus upon the 'business case'. Recent CSR discourse has been characterised by its willingness and eagerness to adopt the language and stance of the business community. The business case can be seen as a way of replacing genuine social responsibility with simple profit calculation or 'adding social responsibility and stirring.'¹² The emphasis on CSR as a 'win-win' scenario encourages managers to focus only on those areas where social initiatives are likely to yield tangible, bottom-line returns. Apple, for example, has a Labour Code of Conduct for China that limits working hours to 12 per day and 6 days per week. Amending such a code to Western standards (40 hours per week) would be unlikely to benefit profitability, and Apple has not received any

¹¹ Rhys Jenkins, 'Globalization, Corporate Social Responsibility and Poverty', *International Affairs*, 81, 3 (2005), 525-540.

¹² R. Edward Freeman, Jeanne Liedtka, 'Corporate social responsibility: a critical approach - corporate social responsibility no longer a useful concept', *Business Horizons*, July-August, 1991.

public criticism on this Code. In other words, there are a number of social responsibility measures that are unlikely to benefit long-term profitability.

Corporate Social Responsibility in the Western Balkans

Since the 1990s, the Western Balkans have developed from post-conflict societies to new democracies and transitional economies. A process of social and economic change is now taking place and is being pushed forward by EU integration. The development in the post-socialist states has seen a shift from centrally planned economies towards privatisation and market-based economies, and most Western Balkan countries are experiencing growth and macroeconomic stability. Nevertheless, while this transition has brought new economic and social opportunities, the region remains plagued by a number of challenges, not least high levels of corruption, organised crime and an expanding grey economy. Socio-economic problems, such as a weakening social welfare system, poor access to health care and social services and an alarmingly high unemployment have also emerged as negative side-effects of the transition process.

Against this background, CSR remains a new and somewhat marginal concept among business in the Western Balkans. While the communist past did involve a perception of a businesses' responsibility to support the needs of society, the transition to capitalism and competition almost immediately reduced involvement in community development and discarded activities not seen as critical for economic performance. Even though some businesses before the 1990s collapse were involved in social projects and community development, using CSR as a competitive advantage is new to many Balkan businesses. Therefore, CSR in the Western Balkans has largely been characterised by philanthropy—corporate donations and sponsorships of community projects, cultural events and vulnerable groups—and not as a responsibility towards stakeholders. A recent study by the UNDP concludes that in most Western Balkan countries, systematic governmental incentives and initiatives for CSR are lacking. The study also argues that NGOs and the media often lack the awareness, ability and

organisational power to effectively put pressure on businesses and hold them accountable.¹³

There are, however, signs of change, and while the above study concludes that there generally is a low level of awareness about CSR in the Western Balkans; it also argues that awareness is increasing. An important indication of this has been the establishment of national Global Compact networks in the region. As of today, Global Compact has been launched in Bulgaria (2003), Macedonia (2004), Bosnia-Herzegovina (2005), Serbia (2007) and Croatia (2007), and The UNDP has been the main driver for the launch of the Global Compact, and outreach activities have been the top priority to attract members and create awareness about the initiative. However, in some cases the local Global Networks have gone further. The Bulgarian Global Compact Network has, for example, brought together more than 120 members and in 2006 established an Advisory Board and a Secretariat to strengthen the network.

In addition to the Global Compact, a number of other business and NGO initiatives bear mentioning. The Bulgarian Business Leaders Forum (BBLF), for example, was established in 1998 with the aim of promoting socially responsible business practices and has about 220 Bulgarian and international members. In Serbia, the national CSR programme—the Responsible Business Initiative—was launched in 2004 and coordinated by the Fund for an Open Society, the Serbian Chamber of Commerce and the Smart Kolektiv. The aim of the initiative is to introduce the concept of CSR in Serbia and to stimulate multi-sector cooperation with the purpose of creating the potential for sustainable development of communities. The first part of the project has been engaging in public opinion research on the concept of CSR, as well as creating a database with examples of CSR practice in Serbia. The aim is to develop a national CSR strategy and CSR network. Similarly, the International Rescue Committee in Bosnia-Herzegovina launched a CSR initiative in 2004 with the purpose of promoting CSR as framework for partnerships between the CSOs, governmental businesses and private businesses.

The EU has initiated and supported a number of CSR programmes in the region, including *‘CSR and Competitiveness – European SMEs good*

¹³ UNDP study: “*Baseline study on CSR practices in the new EU member states and candidate countries*”, 2007.

Practice’; ‘*CEASAR: CSR relays in Chambers of Commerce*’ and *Responsible Entrepreneurship in SMEs*’.

These are just few examples of a growing number of CSR activities in the Western Balkan, and there is no doubt that while recognising that CSR is a new phenomenon in the region, it is emerging and will continue to grow over the next few decades.

The remaining part of this introduction will focus on the cooperation between BHRN and DIHR on CSR and human rights & business.

The Balkan Human Rights & Business Project

The Human Rights & Business Project was established in 1999 as a form of cooperation between the Danish Institute for Human Rights (DIHR), the Danish Industrialisation Fund for Developing Countries and (IFU) the Danish Confederation of Industries (DI). The Project strives to combine the expertise of the human rights research community with the experience of the business community to develop concrete, achievable standards for companies and to help companies to live up to those standards in practice. One of the main activities of the Project is the development of operational human rights compliance and guidance tools for use in a business context. These tools include the Human Rights Compliance Assessment (HRCA)—a self-assessment tool designed to help companies assess the compliance of their business operations with international human rights. The HRCA is based on the Universal Declaration of Human Rights and references more than 80 human rights and rights-related instruments. The tool was developed over a period of 6 years (1999-2005) and involved active input from more than 70 companies, 70 human rights/CSR organisations and 35 human rights experts.

The Quick Check is a condensed version of the full HRCA and addresses the most essential human rights issues for companies. The Quick Check is endorsed by the Global Compact and used by hundreds of companies in 59 countries. The tool can be applied to companies of all sizes, sectors and regions.

In 2006, the Balkan Human Rights Network and the Human Rights & Business Project initiated a joint project on human rights and business in

the Balkans. The cooperation entailed the establishment of a Balkan Human Rights & Business Focal Group in 2007, representing the following organisations: the Albania Centre for Human Rights (Albania), the Association for Democratic Initiative (Macedonia), the Association for Democratic Initiative (Kosovo), the Belgrade Centre for Human Rights (Serbia), the Rule of Law Institute (Bulgaria) and the Secretariat for the Balkan Human Rights Network (Bosnia-Herzegovina). The objective of the cooperation was promoting the respect for human rights by companies in the Balkan region through cooperation and capacity building of participating organisations to work with CSR and engage with business on human rights.

The Balkan Human Rights & Business Focal Group concentrates on two activities: First, CSR and human rights training and second, the development of the Balkan Quick Check. The objective was to develop a tool that would provide an effective assessment of Balkan companies' human rights performance, while at the same time being time-limited, user-friendly and easy to incorporate into a business setting.

The Balkan Quick Check

The development of the Balkan Quick Check has involved close cooperation between representatives from the Human Rights & Business Project and the Balkan Human Rights & Business Focal Group and includes three sequential steps.

1. Identification of main CSR / human rights & business issues in the Western Balkans
2. Development of draft version of Balkan Quick Check
3. Company testing of draft version of Balkan Quick Check and completion of tool

A central element in the localisation process of the Quick Check to the Balkans was to ensure that the Balkan Quick Check adequately addresses prevalent CSR and human rights & business issues in the region. For that purpose, the first step in the localisation process was to conduct individual country risk briefings. The briefings were based on information from international human rights groups, as well as the expertise of local organisations of the Balkan Human Rights & Business Focal Group. Each briefing identified corporate human rights risk areas in a Western Balkan country. The briefings revealed that in spite of some national differences,

many human rights and business issues are shared by the countries in the region, justifying the development of a regional tool. Collectively, the briefings indicated that the tool should place particular emphasis on the following issues: Discrimination and exclusion of vulnerable groups (i.e. ethnic and religious minorities including the Roma and the disabled); forced labour and trafficking; property revocation and environmental damage; corruption and bribery; general terms of employment; working conditions; and trade union rights.

The second step in the localisation process was the assessment of each question from the generic Quick Check against the findings of country risk briefings and identified human rights and business issues. Non-applicable questions were removed and applicable questions were reformulated to apply to the Balkan context.

The third and final step in the development of the Balkan Quick Check was company testing of the tool's draft version. Close interaction with companies through testing and consultation formed an intrinsic part of the development process of the full HRCA tool, and the same process was applied to the Balkan project. Overall, the testing and consultation on the Balkan Quick Check serves two main purposes. First, it ensures that the final tool responds to the needs of companies and becomes an operational and user-friendly tool that can easily be incorporated into a business setting. Secondly, it acts as awareness-raising, allowing companies to build their human rights capacity and establish ownership through testing and consultation. Two companies from each participating country have tested and consulted on the Balkan Quick Check. The testing has taken place in cooperation with individual organisations from the Balkan Human Rights & Business Focal Group, and comments from the companies and experiences from the testing have subsequently been incorporated into the final tool.

The Balkan Quick Check in its final version contains a total of 32 self-guiding questions and indicators, covering company policy, procedure and performance. The questions are organised in three sections:

1. Employment Practices
2. Community Impact
3. Supply Chain Management

The Employment Practices section addresses the rights of employees and looks into areas such as forced labour and trafficking; child labour and young workers; non-discrimination; freedom of association; workplace health and safety and conditions of employment and work (hours, wages, leave, privacy, dismissals, etc). The Community Impact section addresses the rights of local communities affected by company operations and looks into areas such as security arrangements, land acquisition, environmental health and safety, corruption and bribery and company products. Finally, the Supply Chain Management section addresses how the company manages its suppliers, contractors and other business partners.

Each question is accompanied by a narrative description that explains the purpose of the question and references the international law upon which the question is based. For each question, a number of indicators act as guidelines to help users determine how to answer to the main question. The tool operates with three types of indicators for each question—policy, procedure and performance. Policy indicators determine whether the company has policies or guidelines in place to address the human rights issue of concern in the main question. Procedural indicators determine whether the company has appropriate and sufficient procedures in place to implement the policies, and performance indicators provide rubrics for verification of the company's performance on an issue.

Developed as a self-assessment tool for companies, the Balkan Quick Check fulfils a number of functions. First, the tool clarifies human rights implications in a business context and actualizes how companies can work with human rights. It therefore serves as a risk-management tool for detecting potential human rights violations and monitoring overall human rights performance. Second, the tool can be used as framework to improve identified human rights weaknesses. The questions and the indicators constitute a wealth of information on human rights responsibilities of companies and which policies and procedures companies should have in place. Third, the tool can be used as basis for internal and external stakeholder dialogue, for instance, as a framework for how a company is working with the Global Compact Principles.

The Balkan Quick Check is now ready for use, and the challenge for the future will be its wider application throughout the Western Balkans.

Conclusions and prospects for the future

CSR is a new, albeit emerging, phenomenon in the Balkan region, and the authors of this article firmly believe that the coming years will demonstrate a sharpening focus on CSR and the positive role that companies can play in the socio-economic development of the region. A number of challenges remain, however, and need to be taken seriously and confronted. The first is the challenge of generating greater awareness among companies, as well as governments, NGOs, labour organisations, consumer organisations, the media and other stakeholders about the importance of CSR. This expanded awareness will increase the pressure on companies to work with CSR strategically. The second challenge is to get more engagement from small and medium-sized enterprises (SMEs). Though the main drivers of CSR in the Balkans so far have been multinational companies, SMEs are essential conduits for economic development, and it is an important task to widen the Balkan CSR effort to include such actors. The third challenge is convincing national governments to create systematic CSR incentives. Though some national government ministries have begun to address CSR, these efforts have not been systematic. A clear, strong signal from governments would represent a major step forward for CSR in the Western Balkans. While these challenges are indeed significant, they are surmountable and should be deliberately confronted. The initiative and work of the Balkan Human Rights Network in the area of CSR and human rights & business constitutes an inspiring example of how this can be done.

Articles

Legislative Preconditions for the Development of Corporate Social Responsibility in Albania

by Eralda Cani and Elma Tershana¹

Abstract

The question of responsibility to respect human rights is becoming more and more a matter of concern to companies, investors and consumers just like governmental, intergovernmental and non-governmental organizations. The respect for human rights by companies is a legal duty rather than an act of voluntarism.

In Albania, “Global Compact”², has been introduced since 2003 as part of a UNDP program. Albanian companies have voluntarily agreed to adhere to the 10 GC principles. A *National Research Institute* has been established in Albania to make research on *ethics & business* in Albania. Different actors, including the UNDP, national civil society actors, as well as Albanian government have worked and adopted *guidelines to introduce ethics in the business sector*. Today, *Ethics in Business* and *Social Corporate Responsibility (CSR)* are introduced as a compulsory subject in the curricula of the public Economic School at the Tirana University.

Another initiative in respect of “human rights and business” has been introduced in Albania by the “Danish Institute for Human Rights” and the “Balkans Human Rights Network” under the project “Human Rights and Business”. This project was implemented in Albania by the “Albanian Centre for Human Rights”. The Balkans Quick Check (BQC),

¹ Thematic editor: Elmerina Ahmetaj Hrelja,
Proofreading by Emel Karaman

² Companies are asked to embrace, support and enact voluntarily, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment and anti-corruption

as an instrument, output of this project, is the most professional tool that the Albanian companies and businesses could use, compared with other instruments piloted by other organs. The BQC, with detailed questions and remarks, gives a proper level of respect and guarantee of human rights in a work environment. However, the project did not continue due to time constraints.

The Albanian legislation protects employees' rights. It is based on international law and reflects the latter by and large. Also, several international human rights instruments ratified by the country form a part of the domestic legislation. These instruments provide for rights such as: the right to form and join trade unions and free function of trade unions (introduced since 1992), prohibition of discrimination at work, prohibition of slavery or servitude and forced labour and the right to free choice of employment, protection of children from exploitation (including prohibition of harmful work and definition of the minimum age for employment), the right to just and favourable conditions at work (including equal pay, decent living wages and safe and healthy working conditions), and the right to rest, leisure and reasonable limitations of working hours. The Albanian legislation, by regulating employment relations, introduces the obligation to respect human rights and freedoms. Copyright is also protected by a specific law as well as property rights.

Even though the national legislation meets the European norms and international standards, there is still a huge need for professional work, commitment and regular monitoring process (control) by responsible state institutions for proper legislation implementation. Even though the state approved the legislation that makes it responsible for guaranteeing its citizens' rights, the latter is not implemented in many cases. That is why today the government is facing a lot of protests, strikes, hunger-strikes, such as that from the "Minatory Trade Union" who are seeking a safe work environment and life insurance, or that of the "Petrol Trade Union" who seek better payment, medical staff union for assuring safety work environment. Also, another strike currently ongoing is that of the Gërdec (village in Albania) workers who suffered from the explosions of

military weapons depot (which resulted in demolition of the whole village).

Keywords: Corporate Social Responsibility, global compact, the Labour Code, the Constitution, worker’s rights, property rights, land management, corruption, environment, child labour, case study, business and human rights, standard, domestic legislation, European norms and standards.

*“We believe that our employees are one of our strongest assets and by giving **them the opportunity to do what they do best everyday** our employees feel engaged and fulfilled in their roles. Our vision is to create an environment where great people can do their best work and realize their potential”*

Stephen Harvey Director of People and Culture Microsoft Ltd.

i. Introduction

The companies that embrace Corporate Responsibility recognize that their social and environmental impacts have to be managed in exactly the same way as their economic or commercial performance. However, putting Corporate Responsibility principles into practice can be difficult and many companies struggle to justify the management of social and environmental affairs in terms of tangible business benefit.

In recent years, much has been written about the subject and the business imperatives. There are six commonly recognized benefits that can be gained from an effective business-led approach:

- Reputation management
- Risk management
- Employee satisfaction
- Innovation and learning
- Access to capital
- Financial performance³

³ “The Business Case for Corporate Responsibility”, by Arthur D Little; published by “World Economic Forum’s Global Corporate Citizenship Initiative (GCCII)”, Dec. 2003.

Businesses are run by people for people. Business is dependent on its employees in its operations, on its relationships with other stakeholders and on the delivery and creation of value. It is not possible to separate employees from a business, they are the business. Understanding and aligning their values with that of the business is critical for the business success.

“The enterprises in Albania are headed to the right direction, not only regarding the production of high-quality products and services but also in the field of Corporate Social Responsibility”

- says Ilir Rembeci, Director of National Research Institute, during the CSR Award 2007 Ceremony, held on March 6h, 2008 in Tirana, Albania.

In Albania, “Global Compact” (GC) was introduced in 2003 as part of a UNDP program. The UNDP staff, who were interviewed for the purpose of this article, found that Albanian companies showed great interest in being part of the “Global Compact”. Albanian companies have voluntarily agreed to adhere to the 10 GC principles. The UNDP staff expressed that – “There is a lot of interest on the part of the business company to be part of this initiative, but strong leadership on local (national) level is needed; not only international partners as the UNDP should stress the importance of incorporation of the GC principles in the business work standards. GC has future in Albania, based on business community commitment.”⁴

Key messages

- 44% of the British public believe it is very important that a company shows a high degree of social responsibility when they buy the company’s product.
- 58% of the general public across Europe feel that industry and commerce do not currently pay enough attention to their social and environmental responsibilities.
- Corporate Responsibility offers a means by which companies can manage and influence the attitudes and perceptions of their stakeholders.

⁴ Interview with Ms. Marina J. Kaneti and Mr. Paul Cohn of UNDP office in Tirana, on 12th May 2008.

The UNDP staff stated that “In the beginning, it was needed that every initiative was started by us as a program, for companies to be part of the “Global Compact” (GC), but today there are companies that find us on their own and are looking for being part of GC procedures. Today, the Global Compact is made of **33 Albanian Companies**. Actually, on tvoluntary basis, they are part of the program and a report “*Communication on the Progress*”. Albania companies have done a lot of work in respect of 10 principles of GC, but the problem is about the information dissemination and publication of work reports.

Recent evidence suggests that companies’ embracing Corporate Responsibility stimulates creativity and learning. 80% of European business leaders believed that responsible business practice allowed companies to invigorate creativity and learn about the marketplace.⁵

Corporate Responsibility stimulates learning and innovation within organizations helping to identify new market opportunities, establish more efficient business processes and maintain competitiveness.

ii. Contextual Information on Albania

The Republic of Albania is situated in the South East region of Europe, South-West of the Balkan Peninsula, along the Adriatic and the Ionian Seas. The territory of Albania is 28 748 km² and there are 3.1 million inhabitants (Albanian INSTAT, April 2001). The administrative division of the country consists of 12 regions, 65 municipalities and 309 communes.

European and Euro-Atlantic integration, along with rapid and sustainable growth, remain overarching goals for Albania. Therefore, socio-economic development, strategic planning, sound public finance and external assistance management, anti-corruption, powered by an increased use of Information and Communication Technology (ICT) for development, represent major national priorities.

⁵ BITC (2003) Responsibility: Driving Innovation, Inspiring Employees. Fast Forward Research 2003, Business in the Community

Albania is a parliamentary republic, a unitary state, where the distribution of power, as well as the decentralization of local power, is the main principle of the state organization.⁶ Governance is based on free, equal, general and periodic elections. The last elections took place in July 3, 2005, which also brought an alternation in power. The Democratic Party and its allies won the majority in the Assembly after eight years in opposition.

The country applies a monistic principle, and international agreements ratified even supersede the laws of the country.⁷ Any ratified international agreement related to human rights form part of the Albanian law. A relevant list of international conventions, both of the Council of Europe and of the UN, ratified by Albania, is presented in Annex 2 herein.

In 1994 there was a decrease in the unemployment rate, when compared to 1990. However an increase of unemployment rate followed in 1997 and thereafter, when the country was hit by a huge economic crisis (due to the pyramidal scheme applied during that period). Regarding employment by gender it has been higher for males. However, in 2000 there was an increase of the employment level for females from 42.3 to 44.1 compared to the previous year. At the end of 2006, the total employment rate grew by about 3 thousand employed persons compared with the previous year, 2005.⁸

I - Employment Practices in Albania

1.1. Laws that regulate employment practices in Albania with regards to forced labour, debt bondage, compelled overtime and retention of deposits and wages

As already mentioned, in Albania, the international law, as ratified by the parliament, forms part of the national legislation and even supersedes it.⁹

⁶ Articles 1, 7 and 13 of the Constitution.

⁷ Art. 116 of the Constitution.

⁸ Reference from: <http://www.instat.gov.al/>

⁹ Art. 116 and 122 of the Constitution.

Thus, any ratified international agreement related to corporate responsibility is part of the Albanian legislation. Albania is an ILO member from 1920 to 1967 and since 1991 till now. The Country has ratified *49 ILO Conventions*, 42 of which are in force and binding for the country. Also, the Council of Europe Revised Social Charter was ratified by the country.

Free market, constrained by human right standards only, is the key principle of the Constitution of Albania. The Constitution specifically refers to issues related to forced labour and debt bondage from the perspective of human rights. Thus Art. 26 of the Constitution¹⁰ prohibits forced labour, but under exceptional circumstances as part of serving a sentence, performing a military service, or in a state of emergency. Also, Art. 26 of the Constitution, guarantees that no one can be deprived of liberty for being unable to fulfil a contractual obligation.

The Constitution provides that everyone is free to choose its own profession and freely develop as needed professionally.¹¹ The Constitution provides for several other kinds of protection related to employment, such as the right of all employed persons to join freely in trade unions for the purpose of protection of their employment interests,¹² or the right to enter a strike,¹³ except for cases when it is prohibited by law; the right to social security, specifically for pensions or in case of inability to work,¹⁴ as well as health security, as established by law¹⁵. Social protection is offered to all employed persons.¹⁶ The Constitution provides for economic support of unemployed persons, or even protection of children specifically from exploitation or use for work especially under the minimum age for employment.¹⁷

¹⁰ 1998 Constitution of the Republic of Albania, approved by referendum on 22 November 1998 and promulgated on 28 November 1998.

¹¹ Art. 49 of the Constitution reads:

Everyone has the right to earn the means of living by lawful work they choose or accept themselves. They are free to choose their profession, place of work, and their own system of professional qualification.

Employees have the right to social protection in their work.

¹² Art. 50 of the Constitution.

¹³ Art. 51 of the Constitution.

¹⁴ Art. 52 of the Constitution.

¹⁵ Art. 55 of the Constitution.

¹⁶ Art. 49 of the Constitution.

¹⁷ Art. 52 of the Constitution.

The legislative framework includes several laws which regulate further related issues. There is no criminalization of debt bondage in the Criminal Code of the Republic of Albania. The labour legislation includes several principles regulating employment relations as well as consequences due to commercial relations. The Albanian Labour Code (LC) specifies that the international conventions regulations and international customary norms regulating employment relations are respected in the country.¹⁸ Specifically, Art. 8 of the Labour Code prohibits forced labour in any form. An important aspect included in the same Labour Code is the non-discrimination clause. Also, the employer is obliged to create a safe working place, and to offer to the employee minimum protection and working conditions at work. The LC provides that the employer remains responsible when damage is caused due to the lack of a safe working place.

The Labour Code provides that working time is 8 hours a day, that is 6 hours a day for persons under 18 years of age, The minimum break between two different working days is 11 hours. Overtime work is compensated more than regular work, and it can be either paid in cash or it can result in compensatory time off. The LC specifies that if the employer works 50 hours a week, he/she can not be required to work further.¹⁹

The Labour Code provides for equal pay for equal work. Also, the code prohibits lower salaries than the approved minimum salary. The minimum salary is approved by the Council of Ministers, and it amounts to 12.000 leke (100 Euro) per month. The salary is payable either every two weeks or every month based on agreement between parties. The only deductions from the salary the Code refers to are the ones the legislation imposes, such as income tax, social and health security deductions, or when determined by the court under a law, such as for example in the case of a punishment for misdemeanour.

The Code stipulates that in addition to the salary, the employer can receive other remunerations as well. The Code regulates that if the parties agree, the employer will be given a monetary award on the basis of the quality of performance. There is no criterion other than the quality

¹⁸ Art. 2 of the Albanian Labor Code.
See art. 90 of the LC.

of work mentioned in the Code for such an award. It is also stipulates that the award is provided at the end of the year. In general, specific regulations for the award on the performance basis are entered in the contract while for specific areas of work, in specific legislation approved by the parliament. Thus, the legislation provides that the civil servants or public administration employees receive such remuneration at the end of the year based on performance appraisals carried out by a direct superior of each civil servant, as regulated under regulation on appraisal.

Surveys indicate that even though the legislation defines equal pay for equal jobs in Albania, there is a difference in monthly income between men and women. A study of the Council of Europe notes that the average monthly wage for women is 6685 lekë (equal to 54.8 Euro) compared to 9697 lekë (equal to 97.5 Euro) for men.²⁰ The same study indicates that the gap widens considerably for particular occupations, such as that of plant and machinery operators, where women earn 59% of men's wages. However, the study shows that female and male earnings in the public sector are mostly equal.²¹

The Labour Code regulates in detail employment relations in the country, although other special laws can regulate such relations in specific sectors. Such laws are the Civil Service Law, as of 1999, or other legislation such as the Law on Police, or the Law on Military Services which provide for specific regulations in respective institutions, or even the law on non-profit organizations.

Social and health security is regulated in several separate laws which have improved over time. Although, the country had adopted a law on social protection as of 1993, during 2005 a new law was adopted repealing the previous legislation. The Law no. 9355, as of 10.03.2005, on social Support and Services aims to reduce the level of poverty, by offering social help to individuals or groups that cannot secure basic living means by their work. The state also aims to provide as many programs and possibilities as possible to improve the living conditions of such groups.²² Some of these programs and support are now

²⁰ *Exchange rate Euro/Leke* 121.99, as of 13 May 2008, See <http://www.bankofalbania.org/>

²¹ See http://www.coe.int/t/dg3/socialpolicies/socialrights/source/EPRAlbania_en.pdf

²² Art. 1 of the Law no.9355, as of 10.03.2005, on Social Support and Services. Published in the Official Gazette no. 22, as of 13.04.2005.

decentralized; however, providing for jobs is primarily a duty of the central government.

In addition, specific laws are approved to advance employment in the country, such as the Law no. 7995, as of 20.09.1995 on Employment Advancement and the Law no. 8872, as of 29.03.2002, on Professional Education and Formation in the Republic of Albania.

The government has already approved a national strategy on migration in November 2004 with the aim of regulating this issue, and the related action plan was approved in May 2005. In March 2005, Albania ratified the ILO Migration for Employment Convention. Albania did not join the European Convention on the Legal Status of Migrant Workers.

The Ministry of Labour, Social Affairs and Equal Opportunities is the main institution responsible for employment-related issues in the country. A National Labour Council develops employment policies in the country, and the Labour Inspectorate controls the respect for employment rules and employees rights by all employers in the country. The National Social Issues Council²³ deals with social issues, such as offering financial and social support to vulnerable social groups. The Albanian Government has set up a number of programs for capacity development of un-employed people (registered at the National Labour Office). The Labour Inspectorate is also the responsible body for assisting and facilitating the process of Albanian people's employment abroad, mainly in Italy and England. A specific website, <http://www.punesimi.info/>, was created by the government in cooperation with international donors, to inform every interested individual on vacancies in the country.

A specific law was approved a few years ago for employment relations of public employees in the country. The law aims at creating professional, apolitical, and sustainable public administration. It provides a specific employment status to civil servants and offers the possibility of career development in public administration. A Civil Service Commission was established for reviewing any employment-related conflicts of civil servants in the country. Just like with any other employment conflict, the decisions of the latter may be reviewed by the court.

²³ Decision of the Council of Ministers no. 459, as of 23.9.199 on Approval of the National Employment Service, published in Official Gazette Ekstra VI, as of 10.09.2002.

1.2. The minimum age requirements in employment practices

Legally, the minimum employment age accepted by the Labour Code is related to the concept of the ability to act. The ability to act is regulated in the Civil Code. The Civil Code provides that the age to enjoy the ability to act is 18 years old. This age is related to the marriage age for women if they get married before 18 years of age, but never under 16. Regardless of this regulation by the Civil Code, the Labour Code, in art. 98 - Minimum Age provides that employment of minors under 16 is prohibited except in the period of school holidays and only for easy jobs that do not damage their health. Minors between 16 and 18 years of age can work only in easy jobs and that do not damage their health and personality.

1.3. Youth workers and child labour practices in Albania.

The ILO estimates that at least 250 million children between the age of five and 14 work in conditions that flout international standards²⁴. While elimination of child labour is the ultimate objective of the relevant international human rights instruments²⁵, it is recognized that child labour will not be abolished overnight because its incidence is linked closely to poverty and underdevelopment²⁶. Certain forms of child labour, nevertheless, are considered intolerable, regardless of a country's level of development or economic situation. These worst forms of child labour include all forms of slavery and practices similar to slavery; child prostitution or child pornography; the use, procurement or offer of children for illicit activities; and work which, by its nature or circumstances in which it is performed, "is likely to harm the health, safety or morals of children"²⁷.

²⁴ "Statistics: Revealing a Hidden Tragedy", ILO, accessed at www.ilo.org/public/english/standards/ipecc/simpoc/stats/4stt.htm on 3 December 2001.

²⁵ See for example Art. 1 of the ILO C38 Minimum Age Convention, 1973, which provides that "each Member ...undertakes to pursue a national policy designed to ensure the effective abolition of child labour..."

²⁶ International Programme on the Elimination of Child Labour, ILO accessed at www.ilo.ch/public/english/standards/ipecc/index.htm on 3 December 2001.

²⁷ ILO Convention C182 Art. 3, Worst Forms of Child Labour Convention, 1999. For the purposes of the Convention, the term child applies to all persons under the age of 18.

"The social commitment of enterprises will increasingly determine their competitiveness and market performance", highlights Dr. Thomas Helle, CEO of ILTIS from the German consulting company ILTIS. Only those who focus on both – economic success and social commitment - will be able to cope with the international competition in the global market. In Germany, the consumers do not want to buy products which are the result of child labour or environmental damage. Thus, CSR is an important competitive factor for Albania and a good chance to distinguish from low labour cost countries in Asia", underlines Helle.²⁸

- Children raised in poverty are forced to work in jobs harmful to their health

For children living in poverty going to school is a possibility only in the short-term, generally from only four to eight years. While other children learn, many children from poor families have to work. The risk of dropping out from school for work is even higher among children from female-headed households.

The exact number of children working in Albania is unknown. In 2003, the data provided by the Ministry of Labour, Social Affairs and Equal Opportunities indicated that about 2.000 poor children aged up to 17 years were beggars, washed car windows, were travelling vendors or collected tin cans at waste disposal sites. A still greater number of children from rural areas dropped out of school and busied themselves with household chores, or helped increase the family income or means of living.²⁹

The National Labour Inspectorate presented the following data regarding the employees under 18 years old³⁰:

- in 2005 there were **80.100** employees in **7.209** business companies, out of which **387** employees were under 18.
- in 2007, there were **111.792** employees in **8.905** business companies, out of which **737** employees were under 18.³¹

²⁸ Information from Ilir Rrembeci, Ex. Director of "Regional Development Agency", Tirana, Albania.

²⁹ "Women and Children in Albania" – Double dividend of Gender Equality; The state of Albanian's Children 2007; Produced by UNICEF and "Social Research Center (INSTAT)" 2007, page 21.

³⁰ All these data are made present on newspaper "Shekulli (Century)", Friday, 13 May 2008, page 13.

Based on the data published by the National Labour Inspectorate, there are:

- **40%** of employees under 18 working in *fish manufacture*;
- **30%** of employees under 18 working in *shoes manufacture*;
- **23 %** of employees under 18 working in *tailoring manufacture*;
- **7 %** of employees under 18 working in *construction manufacture*.

Regarding gender data of employees under 18th, there are more girls than boys:

- **89.2 %** are females
- **10.8 %** are males.

Data that 90% of female employees are under 18 could be for several reasons, such as:

- There are more girls than boys that could work in the country, because boys could work abroad, legally and illegally;
- According to the national birth rate, there are more girls than boys;
- Considering the above-mentioned data, the majority of employees in fish, shoes and tailoring manufacture (93% in total), are tailors where women are considered to serve better.

Children who work are mostly within the 9th level of the education system, so:

- **96.7 %** are of an age within the elementary school level;
- **3.3 %** are of an age within the high school level.

1.4. Legal Regulation of hazardous and harmful work

Chapter VIII (art. 39 through 76) of the Labour Code regulates security and protection at work. Several articles consider different aspects of a safe and secure work place as well as of non-detrimental activity.

³¹ In the statistic data of 737 employed children are included also the group age 16 - 18 of children, whom is legal and within the national legislation regulation.

It is prohibited that persons under 18 be employed in dangerous work or at workplaces that bear a risk for their personality or health. The same prohibition is included in the Labour Code for pregnant women as well as women who are breastfeeding.³²

There are specific laws approved to regulate employment relations in specific working sectors, such as mines. Examples of such laws include the Law no. 8685, as of 9.11.2000 on Special Treatment of Underground Mine Workers, or the Law no. 9179, as of 29.1.2004 on Special Treatment of Employees in Military Industry Enterprises”, the Law no. 8661, as of 18.9.2000 on a Supplementary Social Security of the State Police Employees. Such examples of legislation include benefits for such categories of employees due to harm or risk of their work sector.

The way in which companies affect the rights of employees for safety at work, having the proper capacity and knowledge for the work assigned (and other inner regulation of companies), could influence directly or indirectly the National Policy of Employment. For example, on March 15 2008, a series of explosions at a weapons depot set up in *Gerdec* village, near the capital city (Tirana) killed 27 people and injured nearly 300 others.³³ This explosion happened because safety regulations were not respected and staff was not qualified for the work to destroy the ammunition. This catastrophic explosion caused the death of 27 persons, hundreds of houses were destroyed, thousands of persons were displaced, and land contamination and air pollution is still today and will be a long standing issue for health safety of Gerdec village habitants.

Many allegations of business complicity in abuses of the right to life and physical integrity arise from such situations. Criminal charges were filed against the administrator of the private company working in Gerdec and a similar one has been filed against the minister of defense (his immunity as a minister and member of parliament was lifted by the parliament).

Improvement of the legal status and social services provided for workers under harsh conditions, as Bulqiza miners, the Elbasani metal workers, petroleum workers as well as many other groups, is a very important issue. During the last months there were many fatal accidents when

³² Art. 104 of the Labor Code.

³³ See http://www.business-humanrights.org/Links/Repository/997171/link_page_view

thirteen Bulqiza miners died (at different instances during a 12-month period). The last case is the tragic death of miner the Njazi Alliu, preceded by his brother's death a few months ago, who left two families without any financial resources. The first thing that needs to change is the improvement of the law on miners' status. A draft law on miners' status was prepared in 1998³⁴, but has not been adopted so far.

According to the current law, the pension age for all workers who risk their lives on daily basis such as miners, metal workers, oil workers and chemical industry workers, *is 65 years*, which has to change in accordance with the European legislation. The average lifespan for a miner, oil worker, or metal worker is *58 years and two months* (according to the INSTAT's data), thus, on average, they will not be able to collect their pensions. Another issue is that a clinic for professional illnesses needs to reopen as soon as possible. It was closed some years ago. The reason was an un-sufficient number of professionally sick people, an insufficient number of medical staff, which resulted in a lack of proper attention to the patients. All the aforementioned workers need specific medical attention in order to improve their quality of life.

1.5. Discrimination in hiring, firing, promotional, advancement and training opportunities

Discrimination issues might arise in decisions on who is employed, and in the application of a whole range of standard workplace policies (rates of pay, conditions of work, promotion, etc.). Discrimination issues might also arise in relations with consumers, or in the manner in which products are marketed.

The legislation is clear in prohibiting discrimination in hiring, promoting, advancing and training employees. The Labour Code stipulates that race, colour, sex, age, religion, political affiliation, national and social origin, family relation, or physical and mental disabilities cannot be grounds for limiting the right of everyone to be employed and treated equally in employment relations. The Code carefully considers though that any specific requirement, exclusion, or preference of a specific workplace,

³⁴ See http://www.mjajt.org/news_en.php?faqe=news&newsid=1332

respecting the non-discrimination clause, are allowed and not considered as discrimination.³⁵ Other legislation regulating labour relations also prohibits discrimination in hiring firing, training and advancement. Such can be the law on civil services for all civil service employees or the specific legislation for specific work positions, such as those related to the police. Regardless of the legislation, after elections in 2005 and change of majority, several dismissals happened due to reforms in the civil service, many of which claimed to be firing employees for political reasons.

- Women's rights

A substantial body of international human rights law is devoted to addressing the needs of women. As a group, women have suffered and still suffer from unequal power relationships in society. Discrimination against women is often associated with discrimination on other grounds, such as race, colour, language, religion, property or another status.

Given the history and consequences of gender inequality, it is not surprising that the main effort to address human rights concerns of women focused on discrimination. All major human rights instruments contain prohibitions on discrimination on the basis of gender. In addition, a specific treaty (CEDAW) aims at elimination of discrimination against women, and defines "discrimination against women" as:

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Furthermore, many of the anti-discrimination provisions in these treaties require states to ensure that gender discrimination is not practiced by private actors, including companies (this point is discussed again in

³⁵ Art. 9 of the Labour Code.

Chapter 4). As already explained, such international agreements are part of the Albanian legislation. Article 18 of the Constitution prohibits unjust discrimination ‘for reasons such as gender . . .’, while allowing in Paragraph 2 of the same Article ‘reasonable and objective’ justified discrimination. In addition, Article 54 of the Constitution provides for the right to ‘special protection by the state’ to children, the young, pregnant women and new mothers. With regard to special protection, the country is currently trying to introduce the quota system for women in decision-making. A draft law is currently being discussed in the Assembly which proposes that at least 30% of women in the Assembly be women.

Regardless of the legislation in force in Albania, discrimination continues. The ILO, in a document on “Discrimination at Work in Europe” considers that in countries such as Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Romania and Serbia unemployment among Roma people, and especially Roma women, ranges between 50 and 90%.³⁶

1.6. Laws that regulate the freedom of association of workers including collective bargaining in Albania

Since 1990 Albania has made big steps forward in moving from one country of a completely centralized economy towards a country with a market economy. Before the beginning of the 90s, in Albania there were certain organizations called “professional unions”. These organizations were made of workers’ representatives and state administration representatives, who were at the same time representatives of the state-party. The aim of establishment of these organizations was mainly to embody party directives at work and make such directives known by all workers. Such organizations did not perform their function of protecting the rights of workers, but rather served as a tool in the hands of the socialist party. The first trade unions in the real meaning of the word

³⁶

See

http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=6816

were created after the 90s. The activity of such trade unions was very quickly used by political parties for their own interests. Therefore, the first period after their establishment was characterized by strong strikes, the hidden goal of which was political. Strikes were mainly organized in the public sector until recently, while in the private sector, the country is recently witnessing several cases. Now, it can be said that even though trade unions exist, their performance is not active.³⁷

The freedom of association was first regulated in 1991, by the Law no. 7516, on Trade Unions in the Republic of Albania, and then by the Law no. 7673 on Union Labour Contracts. These laws were passed quickly to fill in the huge gap created by changes. These laws were, after some years, repealed by more comprehensive legislation. Currently, the freedom of association is regulated by several laws, including the Constitution of the Republic of Albania (1998) the Labor Code of the Republic of Albania (1995), the Law on Civil Service (1999), the Law on the State Labor Inspectorate (1995), and the Decree on the Right to Strike (1992).

Article 50 of the Constitution of the Republic of Albania guarantees the right of employees to freely organize in trade unions. The next Article 51 provides for the right to strike and its limitations. In a more detailed manner, labour relations are regulated by the Labour Code. The legal provisions regulating trade unions are Articles 176 through 197, without including here the decree concerning the right to strike, which is a separate law.

The definition of a trade union is provided in Article 176 of the Labour Code. Trade unions are considered “social independent organizations created by voluntary union of workers, the aim of which is to represent and protect the economic, professional and social rights of their members. It is made clear by Paragraph 2 of the same Article that such organizations can be established by both employers and employees. In addition, the Article provides that unemployed and retired persons can also join employees’ trade unions.

³⁷ See also: *Albania Progress Report, 2007*, by the Commission of the European Communities, in http://64.233.183.104/search?q=cache:iN2ote6EeSQJ:ec.europa.eu/enlargement/pdf/key_documents/2007/nov/albania_progress_reports_en.pdf+Albania+progress+report+2007&hl=en&ct=clnk&cd=1

According to Article 177 of the Labour Code, trade unions must have a charter, which must be signed by not less than 20 founding members. These future members have to deposit the charter of the union at the District Court of Tirana.³⁸ A trade union gains its juridical personality 60 days after depositing its charter in the Court of Tirana, unless the Court rejects it for non-compliance with the requirements of the law.³⁹ As it can be understood by these articles, in order for a trade union to be established, a union of 20 persons is needed, and a charter of its own in compliance with the Labour Code.

The activity of trade unions must be in compliance with the legislation in force.⁴⁰ Trade unions in the Republic of Albania are permitted to perform economic, social and cultural activity, which, together with the donation and quotas of their members, constitute the financial sources of the trade unions. Trade unions are exempt from a few financial deductions, details of which are provided in the respective laws.⁴¹ This is a facility provided by the State to trade unions in order to become economically stronger, serving thus the interests of trade unions in the country.

Furthermore, the Code protects the formation, operation and administration of unions against the state or employers intervention by giving unions the right to seek legal protection by courts, which are independent in Albania.⁴² There have been no cases of the attacks against or obstructions of the work of labour unions so far. Also, any type of discrimination toward trade union members is prohibited.

The level of organization of the trade unions in Albania is not defined by law. Therefore, employees are entitled to organize in trade unions either on the level of an enterprise or branch of economy. Trade unions can be organized in federations or confederations and each such organization can join an international organization.

³⁸ Paragraph 1 of Article 178 of the Labour Code of the Republic of Albania.

³⁹ Paragraph 2 of Article 178 of the Labour Code of the Republic of Albania.

⁴⁰ Article 181 of the Labour Code.

⁴¹ Article 183 of the Labour Code.

⁴² Article 184 through 186 of the Labour Code.

- Civic freedoms

This cluster of rights protects freedom of expression and opinion⁴³, freedom of peaceful assembly and association⁴⁴, freedom to adopt and practice a religion and hold other beliefs⁴⁵, the right to privacy, and freedom from arbitrary interference with family, home or correspondence⁴⁶. Company policies cannot prevent free expression of political or other views at work, or otherwise obstruct the expression of religious and cultural beliefs. Bans on union activity are an obvious example. (Trade unions as examples of freedom of association are already analyzed) Yet, many seemingly innocuous policies at work — the dress code, working hours — can have negative impact on religious and cultural beliefs and practices.

1.7. What are the laws that regulate the safety of workers which provide minimum health standards including training and protective gear?

Albanian legislators approved the Law no. 7995, as of 20.9.1995 on Providing Incentives to Advance Employment as amended with the Law no. 8444, as of 21.0.1.1999, the Law no. 8862, as of 7.03.2002, and Law no. 9570 as of 3.7.2006. *This Law aims at establishing a state provided professional formation and thus opportunities and employment in the country.* Specific labour offices were established in the country to offer both information and coordination related to employment relations. The same law also provides for training related to professions in the country, the so-called professional formation courses.

Meanwhile, the legislation foresees that civil servants specifically benefit from trainings. The Law no. 8549, as of 11.11.1999, on the Status of Civil Servants stipulates that civil servants receive trainings to develop their professional capabilities. A specific training institute is established

⁴³ UDHR Art. 19; ICCPR Art. 19, subject to prohibition in Art. 20 of hate speech.

⁴⁴ UDHR Art. 20; ICCPR Arts. 21 and 22.

⁴⁵ UDHR Art. 18; ICCPR Art. 18, reinforced by UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

⁴⁶ UDHR Art. 12; ICCPR Art. 17.

to offer trainings to civil servants in the country.⁴⁷

Meanwhile, the Labour Code stipulates that the employer has to inform the employee about the risks associated with the work and train employees on health-, security- and hygiene-related issues. This is an initial as well as an ongoing training for the employees.

1.8. What are the conditions of employment in relation to the domestic legislation (sick leave, holiday, rest periods and breaks, layoffs, dismissals and employment privacy)?

The Labour Code provides for the rules with regard to sick leave, holidays, rest periods, breaks, and dismissals, and also refers to privacy issues at work.

The length of annual holidays is not less than 4 calendar weeks, i.e. 21 calendar days. Annual leave is proportional to the length of the working period of the employee. Employees are entitled to sick leave which is paid with 80% of the normal salary, up to a period of 14 days, by the employer. A sick leave longer than 14 days is further paid by the Social Security Institution of Albania, based on the Law. 7703, as of 11.5.1993, on Social Security of the Republic of Albania.

The Labour Code regulates that the employer must respect the employee's dignity. Art. 33 of the same Code provides that the employer cannot collect personal information of the employee except when such data are related to the employee's professional capabilities. A data protection law is in force in Albania which refers to the protection of individual data from public administration as well.

Dismissal is regulated by the Labour Code in general or specific laws in cases of specific employment relations. Thus, the Labour Code defines several measures aiming at protecting the employee, which includes

⁴⁷ Established with the Decision of the Council of Ministers no. 315, as of 23.06.2000, on Establishment and Functioning of the Training Institute of the Public Administration and Training of Civil Servants.

justification for dismissal notification, possibility of the employee to defend herself/himself, as well as time periods to be respected in dismissal cases. Art. 107 of the Labour Code guarantees that dismissal of pregnant women is not allowed, that is, in case of dismissal of a pregnant woman or a woman just returned from maternity leave, the employer must prove that the cause of dismissal is not pregnancy or child birth.

- Slavery, forced and bonded labour

The right not to be held in slavery or servitude is well established⁴⁸. The ILO adopted a convention in 1930 which aimed at suppressing the use of forced or compulsory labour in all its forms⁴⁹. “Forced or compulsory labour” was defined in that convention as “any work or service which is appointed (exacted) from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”⁵⁰. Article 5 specifically provided that no concession granted to private individuals or companies should involve any form of forced or compulsory labour for the production or collection of products⁵¹. Bonded labour (also referred to as debt bondage) is defined as a practice similar to slavery⁵². The Universal Declaration on Human Rights states unequivocally that no one shall be held in slavery or servitude, and that slavery and slave trade are prohibited in all their forms⁵³. The prohibition was also given a legally binding status in the ICCPR, which contains an absolute prohibition of slavery, slave trading, servitude and forced labour⁵⁴.

Although slavery was historically defined rather narrowly, it is now defined to include “all contemporary manifestations of this practice”,

⁴⁸ This right was already established in the 1926 Slavery Convention, which obliged States Parties to prevent and suppress slave trade, and bring about complete abolition of slavery in all its forms. The Convention defined slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” (Art. 1).

⁴⁹ Art. 1, ILO Convention (29) Concerning Forced Labour.

⁵⁰ Art. 2, ILO Convention (29) Concerning Forced Labour.

⁵¹ Another ILO Convention later reiterated the obligation of States Parties to suppress forced or compulsory labour as a means, *inter alia*, of political coercion or education, of labour discipline or as punishment for having participated in strikes.

⁵² Art. 1(a) of the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. The same Supplementary Convention prohibits bonded labour.

⁵³ UDHR Art. 4.

⁵⁴ ICCPR Art. 8.

including forced labour⁵⁵. Slavery is also an international crime for which private actors can be held responsible⁵⁶. Despite some significant progress against bonded labour in the last 25 years, it is estimated that some 20 million people are still held in this form of slavery.⁵⁷ Albania, despite increased and, to some extent, successful measures to counter trafficking, continued to be a source country for women trafficking, often minors, for sexual exploitation. Children, many of them Roma, continued to be trafficked, to be exploited as beggars, for cheap labour, crime or for adoption. According to official statistics, in the first six months of the year, 119 criminal proceedings were registered with the Serious Crimes Prosecutor's Office relating to charges of trafficking women for prostitution, and five to charges of trafficking children.⁵⁸ Prosecution of traffickers is the weakest link in the system: only a small fraction of those arrested by the police were successfully prosecuted and tried. Even when traffickers are found guilty, they receive prison sentences that are generally much lower than the new statutory minimum of seven years. Police corruption and the absence of a witness protection system also hinder investigations.⁵⁹

1.9. Does any law regulate the rights of workers in relation to violence at work, including assault, harassment and threats?

The “Sexual Harassment” concept is a new concept introduced for the first time by the “Labour Code” which entered into force in 1995.⁶⁰ According to the Labour Code, sexual harassment is considered an infringement on the employee’s dignity: any harassment that obviously damages the physiological state of the employer for reasons related to sexual implications is considered sexual harassment. Art. 32⁶¹ of the Labour Code provides that it is the employer’s duty to respect and

⁵⁵ “Forced Labour in Myanmar (Burma): Report of the Commission of Inquiry Appointed Under Article 26 of the Constitution of the International Labor Organization to Examine the Observance by Myanmar of the Forced Labor Convention, 1930 (No. 29)”, ILO, Part IV.9.A.P 198 (1998).

⁵⁶ *Kadic v. Karadzic*, 70 F.3d 232, 239 (2nd Cir. 1995).

⁵⁷ The Working Group on Contemporary Forms of Slavery, 24th Session, E.CN.4/Sub.2/1999/17.

⁵⁸ *Amnesty International Report 2007*

⁵⁹ *Human Rights Watch Report for Albania*

⁶⁰ “Labor Code” entered into force with the Law no. 7851, as of 12.07.1995; published in the Official Gazette no.16, 1995.

⁶¹ The Article protects both women and men. It is the first Article in the General Obligation of the Employer Chapter of the Labor Code.

protect/defend the employee during employment.⁶² The employer is required to actively take measures prohibiting sexual harassment at work, both by the employer him/herself or other employees.⁶³ The Article reads that: *the employer must prevent any behaviour that infringes on employer's dignity. The employer is prohibited from performing any action against an employee that would constitute sexual harassment and has the obligation to prevent such an action by an employee against another employee.*"

II - Community Impact - A Case Study from Albania

Corporate Social Responsibility is part of our contribution to the dynamic Albanian society of the 21st century - writes AMC⁶⁴ in its 2006 Annual Report. The AMC has undertaken brave initiatives to the benefit of the society as a whole and the environment. By offering financial support to people in need, by taking tangible and intangible initiatives in culture, education, health and social welfare, care of the environment and by supporting the most talented athletes and artists, the AMC is continuously expanding its role in improving the lives of Albanian citizens.

The 2006 AMC Annual Report emphasises that:

In developing our social responsibility strategy in 2006, we wanted more than ever to embrace this undertaking, this mission, into the heart of our everyday activities. To achieve this, we are developing a superior quality network combined with improving products and services in our portfolio. This requires placing responsibility and ethics on the basis of our commercial activities for collective benefit. At AMC we believe that such initiatives pave the way for further and

⁶² See Article 32, Paragraph 1, Labor Code .

⁶³ See Article 32, Paragraph 3, Labor Code.

⁶⁴ AMC is a private mobile company operating in Albania.

more in-depth participation in the Albanian society, a participation which goes hand in hand with our commitment to excellence.

2.1. Regarding the environment:

Though primarily concerned with the obligations of states, international human rights law provides a clear basis for extending international legal obligations to companies. Such obligations can arise in two ways:

- States have a duty to protect human rights and must consequently make sure that private actors, including companies, do not abuse them. This duty on states gives rise to indirect obligations of companies.
- International law can place direct legal obligations on companies, which might be enforced internationally when states are unable or unwilling to take action themselves.⁶⁵

The government, with the Decision of the Council of Ministers no. 847, as of 29.11.2007, adopted a national environment inter-sector strategy⁶⁶, which includes several obligations for both the public and private sector. It is clear by the strategy that there is a lack of environment statistics related to the private sector. The strategy follows a number of laws, including the Law no. 8934, as of 5.09.2002, on the Protection of Environment, the Law no. 9379, as of 28.04.2005 on Electric Energy Efficiency, the Law no. 8906, as of 6.6.2002 on Protected Zones, the Law no. 9103, as of 10.7.2003 on the Protection of Cross-Border Lakes, the Law no. 9244, as of 17.6.2004 on the Protection of Agricultural Land, the Law no. 9362, as of 24.3.2005 on the Plants Protection Service, and the Law no. 9587, as of 20.7.2006 on the Protection of Biodiversity. A State Environment Inspectorate⁶⁷ exists to control activities that have an impact on the environment so that environment protection is secured. This institution identifies the subjects that cause damage and pollution to the environment and cooperates with central and local state institutions to take concrete legal measures against subjects that violate the law.

⁶⁵ **Beyond Voluntarism**, Human rights and Development of International Legal Obligations of Companies; International Council on Human Rights Policy - February 2002, page 41.

⁶⁶ See <http://www.qpz.gov.al/doc.jsp?doc=docs/Vendim%20Nr%20847%20Dat%2029-11-2007.htm>

⁶⁷ See <http://www.moe.gov.al/>

It is common knowledge that some business practices have environmental implications. Mining, logging, oil drilling, chemical production and waste disposal projects all have potential to disrupt or harm ecosystems and the natural environment. Indirect obligations are firmly established. Though less strong, there is some basis for extending direct legal obligations to companies and, significantly, a trend towards doing so is emerging. Thus, environmental issues can be placed in the human rights context, either as a free standing right to the environment or as a prerequisite for the enjoyment of other rights. Business activities that harm the environment can be subject to human rights complaints that are grounded in general human rights provisions, rather than provisions specifically regulating the protection of the environment.

AMC, just as any other responsible company, strives to conduct business in an environment-friendly way, minimizing any effects that its activities may have on the environment. The company seeks to develop an Environmental Management System, while increasing awareness among its customers and employees for responsible behaviour towards our ecosystem. Fully operating in a healthy environment is part of the AMC's visionary plan for the future.

AMC has committed itself in:⁶⁸

- creating an environment of equality for all
- providing excellent working conditions
- employee Incentives
- providing education and development opportunities
- creating a common culture and identity.

Participating as Part of Genuine Corporate Social Responsibility

In the AMC, the last Annual Report of 2006, there are financial figures which consider its (the AMC's) social responsibility by being directly involved in charitable activities and community projects.

Contributions (in €)

2001	2002	2003	2004	2005	2006
148,973	539,689	666,320	911,891	962,542	1,181,424

⁶⁸ "Corporate Social Responsibility Report" AMC publication 2006, page 10.

Environment

As part of the AMC's commitment to the community, the company has chosen to contribute to the environment through several projects. Investments in parks, green lands and playgrounds are necessary for maintaining and improving green spaces in Albania. These spaces enhance the quality of life of Albanian citizens as well as create a healthy environment for future generations.

In March 2008, the CSR Award Ceremony for year 2007 took place. This was a joint initiative of the Regional Development Agency (RDA) in cooperation with the InWent GmbH - Capacity Building International, Bonn and ILTIS GmbH, Rottenburg and German Ministry for Economic Development and Cooperation.

70 enterprises from all over the country participated in this competition. Ten companies in Albania were awarded for their outstanding performance in the field of Corporate Social Responsibility for the year 2007 in Albania; five of them were nominated in the category of small and medium-size enterprises, another five competed in the category for large-scale enterprises.

2.2. Does good practice in relation to land management exist (verifying legal and customary owners of the land, land reallocation and disruption/damage)?

The laws related to restitution and compensation must be read in the context of constitutional provisions concerning the right to private property.⁶⁹ In providing for legislation aimed at protecting property rights, since 1991 the country has gone through a massive reform to privatize property. The massive privatization was needed considering the fact that the 1976 Constitution regarded all property the state property. Different laws were passed, such as the Law on Protection of Free

⁶⁹ Article 41 states: "1. The right to private property is guaranteed 2. Property may be acquired by gift, inheritance, purchase, or any other classic means stipulated by the Civil Code 3. The law may provide for expropriations or limitations in the exercise of the property right only in the public interest 4. Expropriations or limitations of a property right that amount to expropriation are permitted only against fair compensation.

Initiative and Private Property,⁷⁰ the Law on Land,⁷¹ the Law on Privatization of State Buildings,⁷² or the Law on Selling and Buying Building Sites.⁷³ The country also adopted a law in 1993 to return or compensate the property to former owners.⁷⁴ In 2005, a Law on Legalization of Informal Zones, i.e., zones illegally occupied and where illegal construction was undertaken, was adopted, aimed not only at legalizing, but also urbanizing and integrating these zones and other irregular property.

Property titles are registered in the electronic real property registers. The country initiated this process several years ago, but it has not been finalized yet. This makes it difficult for easy land related transactions to take place, as well as for a land market to exist.

2.3. Do corruption and bribery exist, especially bribing of government officials?

The government has undertaken several reforms regarding the employment relations aiming at fighting corruption. A Law on Anti-Corruption, adopted in 2005, aims to avoid any employment relations which might bring corruptive practices in daily work. Furthermore, during January 2006, the government approved two decisions aiming to fight the nepotism in the public administration and specifically the tax administration, which were highly debated as not respecting human rights and constitutional principles.⁷⁵ Based on a decision of the Constitutional Court these decisions are currently being repealed as they limited the freedom to choose the profession freely, not through a law as the

⁷⁰ Law no. 7512, as of 10 August 1991 on Sanctioning and Protecting Private Property and Free Initiative, Private Independent Activities and Privatization

⁷¹ Law no. 7501, as of 13 July 1991, on Land, and Law no. 8053, as of 21 December 1995, on Granting Ownership of Agricultural Land Without Compensation

⁷² Law no. 7652, as of 23 December 1992, on Privatization of State Housing

⁷³ Law no. 7980, as of 27 July 1995, on Buying and Selling Building Sites

⁷⁴ Law no. 7698, as of 15 April 1993, on Restitution and Compensation of Property to Former Owners

⁷⁵ Decision no. 43, as of 27.1.2006, on Avoidance of Nepotism and Influence of Power in the Recruitment and Carrier of Tax Administration, published in the Official Gazette no. 5, as of 7.02.2006 and Decision no. 44, as of 27.1.2006, on Avoidance of Nepotism in the Public Administration, published in the Official Gazette no. 5, as of 7.02.2006.

constitution requires, but through a sub-legal act.⁷⁶ It is a crime according to the Albanian Criminal Law both to give and receive bribes.

A 2008 USAID-funded survey on corruption in Albania conducted by IDRA (an independent non-for-profit organization), which tracks both the perception and experience of corruption by ordinary citizens, shows that **92%** of Albanians say corruption is widespread among public officials and the country has declined by 8 points starting from a year ago. The report shows no progress in bribery indicators. Nearly **70%** of people surveyed report paying a bribe for medical treatment. Nearly **60%** have little or no trust in the judicial system. By a **3 to 1 margin**, Albanians do not think the judges are impartial when conducting trials.⁷⁷ Thus, the surveys indicate that the corruption continues to be highly present in the country.

2.4. What are the laws that regulate intellectual and property rights?

The right to property is guaranteed under the Constitution. Article 11 of the Constitution guarantees equal protection of private and public property. Private property is listed among the fundamentals of the country's economic system. The right to property is further regulated under Art. 41 of the Constitution, which refers to ways property is gained or how one's right to property can be limited, or that the property can be expropriated only for the purposes of public interests and only through fair remuneration. It is also guaranteed that property rights cannot be limited without a due legal process. The Albanian Constitution recognizes unjust seizure of property by the communist regime and considers it the state's obligation to solve this issue in a just manner. Intellectual property is also guaranteed under the Constitution. Art. 58 guarantees that copyright is protected by law and that the freedom of artistic creation and scientific research, as well as profit from their results, are guaranteed for all.

⁷⁶ Civil Society organizations supported by the People's Advocate required this institution to repeal such decisions as unconstitutional.

⁷⁷ See <http://tirana.usembassy.gov/>, Remarks By U.S. Ambassador John L. Withers II at the Launch of the 2008 Corruption Perception and Experience Survey Conducted by IDRA and Funded by USAID (May 7, 2008)

The country has ratified a number of international conventions aiming to protect property rights. Apart from the European Convention on Human Rights a number of agreements on intellectual property rights are worth mentioning, such as the Convention the World Intellectual Property Organization, the Paris Convention on Protection of Industrial Property, the Bern Convention on Literary and Artistic Works, the Patent Cooperation Treaty and the European Patent Convention, or Budapest Treaty on Biodiversity.

There are a number of laws passed by the Albanian parliament protecting property rights, including the Civil Code, the Law on Registration of Real Property, or the Law on Restitution and Compensation of Property. The Civil Code is the main law that regulates the right to property and all related issues, such as acquiring, being deprived of, registering, or expropriating property. It clearly defines that ownership is the right to enjoy and possess property freely within legal limits. The Criminal Code includes several articles aiming at property protection, regarding the criminal act of property destruction, be it private or public. Illegal occupation of one's property is a criminal act.

While providing for legislation aiming to protect property rights, since 1991, the country has gone through a massive reform to privatize property. Massive privatization was needed considering that the 1976 Constitution considered all property the state's property. Different laws were passed, such as the Law on Protection of Free Initiative and Private Property, the Law on Distributing Land Based on the Principle of Equality and Agricultural Land to the Families in Rural Zones, i.e. former state farms, or Granting Ownership of Agricultural Land for Free, the Law on State Building Privatization, or the Law on Sale/Purchase of Building Sites. The country also adopted laws to return or compensate the property to former owners, a legislation which continues causing a lot of debates among different political parties and former owners themselves. The restitution/compensation process has been slow, and considering the fact that the country accepted market value compensation, it is foreseen that the compensation process will be a huge burden for the Albanian population and will require several years to be completed.

In 1994, the country has adopted a system of property registration⁷⁸ which both reflects the ownership title and the location of the property, a system which aims at improved protection of property rights. The Law on Registration of Real Estate requires that any real estate is registered, which means that the ownership title can be freely used.

Also, it is worth mentioning that, in 2005, the Law on Legalization of Informal Zones, *i.e.* zones illegally occupied and where illegal constructions were constructed, was adopted, which was recently substituted by another law aiming not only to legalize, but also to urbanize and integrate these zones. This Law aims at establishing property rights in highly contested zones where persons acquired property illegally.

There are laws adopted that protect copyrights, patents, trademarks, stamps, marks of origin, and industrial designs. The Law on Industrial Property was approved in 1994.⁷⁹ Based on this Law the Department on Patents and Trademarks⁸⁰ was established as a central state institution to guarantee the protection of ‘inventions and models of use’, industrial designs, commercial and service marks, geographic indicators and origin denominations, topographies and integrated circles. Since 2004, the Department has published the Bulletin on Industrial Property⁸¹ periodically, where information and cases related to industrial property are discussed and orientations given.

Intellectual property rights are recognized and guaranteed by law. The Law no. 9380, as of 28.4.2005 on Copyright and Other Related Rights allows room for private administration of authors’ rights through collective non-for-profit agencies licensed by the Ministry of Culture, Youth and Sports, upon the proposal of the Albanian Copyright Office.⁸²

⁷⁸ Law no. 7843, as of 13.7.1994 on Registration of Real Estate (amended);

⁷⁹ Law no 7819, as of 27.4.1994, on Industrial Property, (amended) Official Gazette no. 6, as of 23-06-1994.

⁸⁰ Established by the Decision of the Council of Ministers no. 313, as of 13.6.2000, “On the functioning of the patents and marks department”. Website: <http://www.alpto.gov.al/rubrika.asp?id=6>

⁸¹ Bulletins can be found in <http://www.alpto.gov.al/rubrika.asp?id=22&idv=9>

⁸² An example is that of the Agency for Copyright in Cinematography and Other Audiovisual Works

The latter is a central juridical entity, subordinate to the Ministry of Culture, established to monitor the implementation and functioning of the copyright law in the country.

The country has also worked on the international level to protect intellectual property. Several agreements have been signed, bilateral and multilateral. Such are the Agreement on Free Trade between the Republic of Albania and the Republic of Bulgaria, ratified with the Law no. 9077, as of 9.06.2003,⁸³ or a similar one with Serbia and Montenegro, ratified with the Law no. 9195, as of 26.2.2004,⁸⁴ as well as the Stabilization Association Agreement with the European Communities and their Member States, Annex II (B), ratified with the Law no. 9590, as of 27.7.2006.⁸⁵ (Please reorganize this whole chapter in order to distinguish between property rights in general and the intellectual property so that its reading is made easier!)

2.5. What are the laws that regulate products liability?

A new Law No. 9902, as of 17.4.2008, on Consumer Protection⁸⁶ is in force with the purpose of protecting consumers' interests in the market and defining the rules and establishing respective institutions to protect consumers' rights.⁸⁷ A National Consumers Protection Committee was established to decide on cases of violation of the Law. Consumers can appeal their cases with this Committee as well as the People's Advocate, and can also make use of the arbitrary court, judicial bodies, consumers' association, and all mechanisms referred to in the Law.

The Albanian Civil Code also regulates product liability issues. Article 628 of the Civil Code provides that a 'manufacturer is liable for the

"FMAA" licensed by the Order of the Minister of Culture, Youth, Sports and Tourism, no. 301, as of 1.4.2008.

⁸³ Published in the Official Journal no. 55, as of 4.07.2003.

⁸⁴ Published in the Official Journal no. 17, as of 29.3.2004.

⁸⁵ Published in the Official Journal no. 87, as of 14.08.2006.

⁸⁶ Published in the Official Gazette no. 61, as of 7.05.2008:

⁸⁷ The Law 9135, as of 11.9.2003 on Consumer Protections was in force until recently, to defend consumers from damage of their health, environment, and safety of life regarding the production of goods.

damage caused by the defects of its products”, with the exception of certain cases specifically provided for in the same Article. The damaged person, based on the Code as well as the Law 9135, can require compensation for damages caused by products produced. The Law on Consumer Protection in the country aiming at incorporating some elements of the EU *acquis communautaire* in this field has not yet entered into force. A clear distinction still has to be made between market surveillance and consumer protection (can you please elaborate on this matter!). Further improvements are needed in the handling consumer complaints and in the development of systems for the settlement of consumer disputes. Progress was made in the area of **market surveillance**. The Market Surveillance Directorate of the Ministry of Economy, Trade and Energy (METE) is the coordinating authority in the field of market surveillance and is also responsible for drafting technical regulations in the sectors under its competence and for consumer protection. The Directorate was restructured and strengthened with additional personnel⁸⁸.

III. Conclusion

Companies that embrace Corporate Responsibility can open doors to new markets, new opportunities and new relationships, set the scene for long-term profitability and increase the competitiveness of the communities in which they operate. Conversely, companies that fail to manage their responsibilities to the society as a whole, risk losing their so-called License to Operate – unwritten authorisation to do business that is granted by the company’s stakeholders at large.

Stakeholders’ views, and their expectations from corporate behaviour, are shaped by what they see happening in the world around them, and with the today’s communication networks, the world has extended from the local neighbourhood to the planet as a whole.

States must take reasonable steps to prevent or sanction abuses by private actors. They are obliged to provide victims with effective legal remedies

⁸⁸ “Albanian 2007 Progress Report” - [http://mie.gov.al/skedaret/1194876378-Progr.raport%202007%20\(english\)](http://mie.gov.al/skedaret/1194876378-Progr.raport%202007%20(english))

through courts and other bodies. The primary responsibility for protecting human rights must remain with the states. The debate on human rights and business has moved rapidly in recent years. Though discussion still concentrates around voluntarism, increasing attention is being given to the potential role of national and international regulations. International standard-setting initiatives are underway in numerous places, and a number of such initiatives have official Government's endorsement.

The UN structure established in Albania can continue facilitating the process, providing further experience, but it has to have a strong will and leadership, both on the part of the business community and the Government. The legislation process is on the right way to be standardized within European norms, but the Government has a mandatory role to enforce the law within the nation (please redraft this sentence!).

The following is needed in order to proceed further in Albania:

- consumer awareness of companies, production, ethics in business, the GC and 10 principles, CSR, etc.
- continued efforts and commitment for professionalizing and standardizing business practice, which, for the moment (in general terms), are not so good and transparent.
- the number of companies which are actually part of the GC programme has to be increased more; compare this with the number of companies that actually operate in Albania, which is (approx.) **56.000 companies**.

In this process of Globalization, an important role is played by the Chambers of Commerce existing in Albania, who are interested and involved in making the Albanian business community aware of the "Global Compact".

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BiH Fairytale on CSR Legislation and Practice¹

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Abstract

The article analyzes the incorporation of human rights standards in business practices in Bosnia and Herzegovina, as well as existing legislative framework for imposing the respect of human rights in business practices. Human rights and business represents an umbrella concept of **corporate social responsibility**² (CSR, also called corporate responsibility, corporate citizenship, and responsible business).

The article analyzes national legislation in regard to the protection of human rights and particularly rights of workers. Also, the intention of this paper is to identify employment practices with respect to already existing legislation and human rights standards in BiH. Another issue being examined in this paper is the community impact of business in BiH. Hereby, community impact is being represented mainly by existing legislation in environment protection, anticorruption and product liability. The paper puts in light examples of business practices with respect or disrespect of human rights standards while relying on reports of NGOs, Ombudsman, Transparency International and, also, media reporting in Bosnia and Herzegovina.

Keywords: Bosnia and Herzegovina; corporate social responsibility; worker's rights; environment protection;

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² CSR is a concept whereby organizations consider the interests of society by taking responsibility for the impact of their activities on customers, suppliers, employees, shareholders, communities and other stakeholders, as well as the environment. This obligation is seen to extend beyond the statutory obligation to comply with legislation and sees organizations voluntarily taking further steps to improve the quality of life for employees and their families as well as for the local community and society at large. (http://en.wikipedia.org/wiki/Corporate_social_responsibility) (Accessed on 21 March 2008)

Introduction

The concept of corporate social responsibility (CSR) is building its place in the transition economy of Bosnia and Herzegovina. Post-war reconstruction and rebuilding of the fallen economy in B&H has created a vivid opportunity for introducing the elements of a corporate social economy from its very basis. Donations, as one of the oldest forms of CRS, have been significantly employed in service of reconstructing the country destroyed by war activities during the nineties. However, as the B&H economy started to shift from one model to another (the so called „transition process“), so did the CSR concept start to develop in a wider form. Companies are more and more taking the position as promoters of CSR in Bosnian society, though sometimes unconsciously. However new trends in the economy are moving towards the acceptance of neo-classical theory postulates, which diminish the involvement of the state in economic issues. Still, it seems like the state is asked to increasingly intervene by setting up rules of the game, that is passing laws and monitoring the work of economic practitioners (companies, managers etc.). **State intervention** with regard to ensuring, at the very basis, respect of basic human rights, including the workers rights, is necessary in order to have clear rules of the game when it comes to employment practices and which actions are allowed and which are not in relations between employers and employees. Sometimes, the state will have the role of a “good king”, bringing new laws and standards for the sake of the improvement of the business environment and at the same time protecting its citizens from “bad princes” – companies, which have the common practice of violating the ethics of business and human rights. On the other hand, sometimes the roles are switched, depending on the case, and companies take responsibility to act as protectors and keepers of human rights standards and values by introducing positive practices of respect for workers rights, ecologically enlightened actions and other good practices that improve the business environment in the country. The only question that remains in this fairytale, on the role of the state and its governing bodies and companies in BiH, is: who will be the fairy? Who will correct wrongs and turn them into rights?

Employment practices in Bosnia and Herzegovina

Legislative framework

The governmental structure of Bosnia and Herzegovina with a state, two entities (FBiH and RS), the Brčko District, and ten cantons within FBiH is complex. This complexity of governmental structure and decision-making bodies results, therefore, in the complex legislative framework of BiH.

The supreme law of the country is the Constitution of Bosnia and Herzegovina. The Constitution is actually set in Annex IV of the Dayton Peace Agreement and together with Annex I to the Constitution (“Additional Human Rights Agreements to be applied in Bosnia and Herzegovina”) containing the list of international conventions³, which are incorporated in BiH legal system, represents a supreme act in BiH. Citizens and institutions of BiH are obliged to respect provisions of the Constitution of Bosnia and Herzegovina but, also, provisions of all listed international conventions. Regarding the development of the CSR practice, the most important conventions are the International Convention on Elimination of All Forms of Racial Discrimination; the Covenant on Economic, Social and Cultural Rights; and the Convention on the Elimination of All Forms of Discrimination against Women. Also, Bosnia and Herzegovina signed more than 66 conventions in the area of labour rights (ILO Conventions).

The constitution does provide a general framework for legal protection of human rights. However, it does not specifically address the issues of corporate social responsibility regarding the employment practices in B&H.

³ The Human Rights Agreements to be Applied in Bosnia and Herzegovina are: Convention on the Prevention and Punishment of the Crime of Genocide (1948), Geneva Conventions I-IV on the Protection of the victims of War (1949) and the Geneva Protocols I-II thereto (1977), Convention Relating to the Status of Refugees (1951) and the Protocol (1966) thereto, Convention on the Nationality of Married Women (1957), Convention on the Reduction of Statelessness (1961), International Convention on the Elimination of All Forms of Racial Discrimination (1965), International Covenant on Civil and Political Rights (1966) and Optional Protocols (1966 and 1989) thereto, Covenant on Economic, Social and Cultural Rights (1966), Convention on Elimination of All Forms of Discrimination against Women (1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), European Charter for Regional or Minority Languages (1992) and Framework Convention for the Protection of National Minorities (1994).

Laws regulating the right to work and other related rights (i.e. regulating employment practices in Bosnia and Herzegovina) are mainly adopted on entity level. Each entity (both Republika Srpska and Federation of BiH) has their own legislation regarding these issues. The overall legislation regarding this topic in both entities is presented through the following legal documents, which are currently in force in the territories of Federation of BiH and Republika Srpska:

- Law on Labour of Federation of BiH⁴
- Law on Labour of Republika Srpska⁵
- General Collective Agreement for Territory of Federation of BiH⁶
- General Collective Agreement of Republika Srpska⁷
- Law on Council of Employees of Federation of BiH⁸
- Law on Professional Rehabilitation and Employment of Persons with Disabilities⁹

Protective measures

Due attention should be paid to provisions of Law on Labour of both entities. Both Laws thoroughly regulate labour rights, starting from minimum age requirements through the right to freedom of association of workers and the protection of workers in case of workplace violence and similar situations.

Both Law on Labour of FBiH and RS contain provisions regarding the minimum age requirement, saying that only person aged at least 15 can obtain a contract for work, under the condition that the person of age between 15 and 18 supply a doctor's certificate testifying that he/she is medically capable to work, as well as authorisation from his/her legal representative¹⁰. So far, there were no reported violations of this provision in either of entities. However, even though there is no official hiring of minors, there is widespread practice of exploitation of children, especially

⁴ Official Gazette of FBiH no. 43/99, 22/00 and 29/03

⁵ Official Gazette of Republika Srpska no. 38/00, 40/00, 47/02, 38/03, 66/03 and 20/07

⁶ Official Gazette of FBiH no. 54/05

⁷ Official Gazette of Republika Srpska no. 27/06 and 31/06

⁸ Official Gazette of FBiH no. 38/04

⁹ Official Gazette of Republika Srpska no. 98/04 and 91/06

¹⁰ Article 14 of Law on Labour of RS and Article 15 of Law on Labour of FBiH

Roma. This illegal practice is mainly performed through either forced labour (such as forcing children to beg for money on the streets or to work on the streets as car-window cleaners for pocket money) or sexual exploitation (victims of human trafficking and related activities).

With regard to the protection of workers from hazardous and harmful work, the entity Laws on Labour contain several related provisions. The Law on Labour of FBiH in Article 7 mentions that women enjoy special protection during pregnancy, childbirth and motherhood period, and that employees aged between 15 and 18 enjoy special protection. However, this provision relates to the protection of specific groups, that is it does not regulate special working conditions with harmful influence on employees in general. Also, part of the Law on Labour of FBiH contains protective provisions with regard to night work of women and minors—prohibiting night work to women employed in industry (unless she is employed in management structures or in health or social service) and to minors.¹¹ Section 6 – “Protection of Employees” of the mentioned law refers to safety standards each employer must ensure in order to protect workers from possible accidents and work that might cause harm to the health of workers. The employer must ensure that employees are acquainted with safety procedures at work and to introduce them to protective measures during work, which ensures the protection of both life and health of employees and prevents accidents.¹² Other provisions within this section pay special attention to protection of women, especially pregnant ones, with regard to safety at work and, also, to protect minors with regard to work under hazardous working conditions. Yet, none of mentioned provisions within this law refer specifically to special forms of hazardous or harmful work, nor do they mention what is considered to be work of such kind.

Similar to the Law on Labour of FBiH, the Law on Labour of RS, in its provisions, prohibits night work for employees under 18 years as well as to pregnant women and women who have given birth.¹³ Section 5 – “Protection of Employees” of the Law on Labour of RS contains provisions relating to employees safety at work. Unlike the Law on Labour of FBiH, which leaves some safety issues unaddressed, the Law on Labour of RS has

¹¹ Articles 35 and 36 of Law on Labour of FBiH

¹² Article 48 and 49 of Law on Labour of FBiH

¹³ Articles 51 and 52 of Law on Labour of RS

a set of articles referring specifically to the responsibility of the employer with regard to the protection of workers and additional measures to be taken by both employer and employee in order to prevent accidents at work and accidents that might harm somebody's health and life. The employer has to ensure that the worker receives relevant training to prevent damage to the health and life of people, as well as the environment.¹⁴ Also, the employer is to be considered responsible for any accidents at work caused by irregularities at work facilities, equipment and similar working tools.¹⁵ Drafters of the law have left the possibility for the worker to refuse to work under unsafe conditions and to react to abovementioned irregularities by notifying the employer and labour inspector.¹⁶ The legislature left the detailed regulation of these matters to regulations. Also, this section of the Law takes into account the necessity for special protection of women, prohibiting women to work in underground parts of mines unless she is employed in a managing position.

Antidiscrimination framework

The question of discrimination at work is regulated under several laws both at state and entity level. The Constitution of BiH and ratified conventions provide a general legal framework. Also, regarding the issue of discrimination against women, BiH is a signatory of CEDAW convention and, also, BiH Parliament has passed the Law on Gender Equality in BiH. This law regulates issues of equality of men and women in all aspects of social life, including their economic position. It defines discrimination of any kind and prohibits any form of gender discrimination especially with regard to hiring, promotion, ensuring equal pay for equal work and. Even though provisions of this law are very clear and strict, there is still a lot of work to be done on their implementation¹⁷.

Besides the state law regulating discrimination (but only in regard to gender equality) entities have provided in their Laws on Labour provisions prohibiting discrimination against workers and persons looking for

¹⁴ Article 70 of Law on Labour of RS

¹⁵ Article 71 of Law on Labour of RS

¹⁶ Article 72 of Law on Labour of RS

¹⁷ See: Committee on Elimination of All Forms of Discrimination against Women "Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined initial, second and third periodic reports of States parties - Bosnia and Herzegovina"

employment on any basis, either by race, ethnicity, skin colour, gender, language, religion, political or any other opinion or belief, social background, status, membership or non-membership in union or political organisation, physical feature or psychological health and any other characteristic not in direct link to the very nature of work.¹⁸ Also, the Law on Labour of RS recognizes the principle of equal pay for equal work, which if violated can lead to requests for compensation of damages.¹⁹ Besides this principle, the Law on Labour of RS introduces an entire section dedicated to the prohibition of discrimination, which, among other things, defines discrimination on various bases (from gender based to any other discrimination).

In past couple of years there have been tendencies of several governmental and non-governmental bodies to enact the Antidiscrimination Law in BiH, but, for the time being, this remains only an initiative. This Law would encompass all forms of discrimination, not just gender discrimination and provide legal framework to fight any form of discrimination that might exist in society.²⁰ This has probably been the result of detected discrimination, which is rooted deep in the ground of B&H society for years now. The reports of the Helsinki Committee for Human Rights in Bosnia and Herzegovina in the past couple of years persistently point out to the existence of discrimination on the basis of gender and ethnicity.²¹ Also, reports on human rights coming from the institution of Ombudsmen of RS warn public and all relevant government actors that the majority of the working population meets with discrimination on national/ethnic, religious and gender bases during their search for employment.²²

Workers' organisations

Workers have the right to organise themselves into a union and be members of a union, as provided by Laws on Labour of RS and FBiH.²³ Employers cannot interfere in union activities of their employees or control them in

¹⁸ Article 5 of Law on Labour of RS and Article 5 of Law on Labour of FBiH

¹⁹ Article 90 of Law on Labour of RS

²⁰ Recommendations of Helsinki Committee for Human Rights in Bosnia and Herzegovina in regard to the Draft of Antidiscrimination Law in BiH can be found at <http://www.bh-hchr.org/>

²¹ See Helsinki Committee's annual reports on human rights in Bosnia and Herzegovina at <http://www.bh-hchr.org/>

²² "Discrimination Still Present" ("Diskriminacija i dalje prisutna") <http://www.nezavisne.com/vijesti.php?meni=5&vijest=3190> (accessed on March 18, 2008)

²³ Article 6 of Law on Labour of RS and Article 9 of Law on Labour of FBiH

any way. However, even though unions are envisaged as a mechanism for the protection of rights of workers, in Bosnia and Herzegovina there is still an evident lack of respect for the rights of workers and unions by employees, and unions are still quite weak in ensuring the realisation of the rights of their members. So, it is not rare to see that more and more workers in B&H companies are deciding to take the ultimate step in the fight for realisation of their rights and enter a strike because the employers are failing to respect agreements with unions regarding the respect of workers' rights.²⁴

Besides provisions in the Law on Labour of both entities, which provide the general framework for ensuring the respect of the right of workers to organise themselves into unions, in Federation of Bosnia and Herzegovina there is a Law on Council of Employees which pays more attention to the right of freedom of association of workers and the right to fulfil their rights through such type of organisation. This Law provides a legal basis for workers employed in companies that have more than 15 employees to participate in decision making within the company with regard to economic and social rights and interests of employees. According to provisions of this law, the employer has an obligation to consult with the council of employees whenever he/she makes decisions of high relevance to the realisation of the rights of workers such as:

- Bringing the Rulebook on Work;
- Intention of an employer to cancel the employment contract of at least 5 employees for economic, technical or organisational reasons;
- Plan for hiring, relocation or dismissal;
- Measures related to protection of health and safety at work;
- Night work and
- Other issues relevant for workers.²⁵

The council of employees represents a kind of internal monitoring mechanism, for it has legal authorization set in this law to monitor the implementation of laws, collective agreements and any other legal documents relating to rights and interests of workers. The Council is not entitled to participate in the preparation of strike or any activity leading to

²⁴ See for example „Rights of Workers in Bosnia and Herzegovina“ at <http://ssla.oneworld.net/article/view/149500/1/> (accessed on March 15, 2008)

²⁵ Article 23 of Law on Council of Employees of FBiH

it, exclusion of employee from work, but it can cooperate with the union on issues related to protection and realisation of workers' rights.²⁶

Workers bargain on all the issues of their interest in relation to working conditions, salaries, holidays and other relevant questions regarding their position—mainly through their unions. Laws on Labour as well as the General Collective Agreements regulate this in both entities. The law on Labour of RS provides that all issues of rights of workers, their scope and ways and procedures of their realisation are regulated by collective agreement, rulebook on work and contract on work.²⁷ Both Laws on Labour have a special section, “Collective Agreements”, which refers to the collective agreement; specifies what is to be regulated by the collective agreement and who the parties to the agreement are and what the procedure on disputes deriving from the collective agreement is.²⁸

The latest General Collective Agreement signed for the territory of Republika Srpska dates from year 2006, while in Federation of BiH it dates from year 2005. Both Collective Agreements regulate the rights of workers that should be respected by their employers with regard to minimum wage²⁹, working time, salary payments, holiday time, pension, other benefits, etc.

Safety at work

Complementary to provisions of the Law on Labour regarding the safety at work, both entities have a Law on Safety at Work, which provides a detailed framework for preventive action as well as protection of health of workers.³⁰ The Law on Safety at Work of RS regulates safety conditions at work, preventing injuries at work, professional and other illness caused by specific work conditions, as well as health protection and safety training for workers. In Part III – “Duties and Responsibilities of Employer” this Law specifies the obligation of employers to ensure that all employees are

²⁶ See Articles 29 and 31 of Law on Council of Employees of FBiH

²⁷ Article 10 of Law on Labour of RS

²⁸ See section „XIII – Collective Agreements“ of Law on Labour of RS and section „XV – Collective Agreements“ of Law on Labour of FBiH

²⁹ Minimum wage is the lowest hourly, daily or monthly wage that employers may legally pay to employees. (http://en.wikipedia.org/wiki/Minimum_wage)

³⁰ Law on Safety at Work of RS, Official Gazette of RS no. 01/08 and Law on Safety at Work SRBiH, Official Gazette of SRBiH no. 22/90

provided with minimum health standards through general and special measures of protection and safety at work. The general obligations of an employer regarding the safety at work are described as obligations to:

- Employ a worker whose duty is to ensure safety and health at work is provided,
- Assign a worker only to those jobs which comply with measures of safety and health at work,
- Inform employees and their representative in cases of the introduction of new technologies and means of work, as well as on injuries and health damages which might be provoked and to bring directions for safe work under those circumstances,
- Educate workers on safety and health at work,
- Provide workers with protective gear,
- Enable the maintenance of protective gear to ensure it is in proper condition,
- Engage a special and licensed organisation to perform preventive and periodic inspections and testing of working equipment,
- Prevent any work which represents direct danger for the life or health of worker,
- Etc.³¹

Within this section, special attention is paid to educating workers on health and safety at work. The employer is obligated to provide both theoretical and practical training for workers regarding their health and safety at work from the very start of their employment within company. Also, in case of demanding technological processes being established in the company, the employer has a special obligation to introduce the worker to all specificities of those processes by providing detailed information, directions and written instructions on how to handle the processes safely.³²

Working conditions

According to provisions of both entities' Law on Labour, the maximum of full time working hours per week is 40 hours, while that number is reduced by 10 hours at working places with special work conditions harmful to

³¹ Article 15 of Law on Safety at Work of RS

³² Article 30 of Law on Safety at Work of RS

workers' health.³³ Both Laws on Labour ensure that no employee can work overtime for more than 10 weeks in total per calendar year and must inform the labour inspector in charge (or labour inspectorate) about prolongation of overtime work³⁴.

Minimum wage requirements are provided by general collective agreements as result of collective bargaining. The situation in FBiH regarding the minimum wage is resolved in the General Collective Agreement for FBiH saying that the minimum wage will be set for each industry individually and by specific collective agreements for that industry, keeping in mind that minimum net wage expressed per hour can't be less than 1,75 BAM/hour.³⁵ As far as RS is concerned, the General Collective Agreement provided that the minimum wage is to be determined by parties in the agreement in the fourth quarter of the current year for the upcoming year.³⁶ For example, in 2006 the minimum wage in Republika Srpska was set at the level of BAM 205 per month.

According to the Law on Labour of FBiH, the employee has the right to seven days of paid sick leave within one calendar year³⁷, and according to Law on Labour of RS the number of paid sick leave days is five³⁸. At the same time, the entire section 5 of the Law on Labour of FBiH and section 4 of the Law on Labour of RS – "Holidays and leaves" regulates issues of holidays, rest periods and breaks to which employees have the right. Both Laws provide the same assurance of worker's right to 30 minutes of daily break during work. Also, employees have the right to at least one day off between two working weeks and the right to at least 18 days of holidays within one calendar year.³⁹

The employer can terminate the contract on labour of an employee for technical, economic or organizational reasons or if the employee is unable to fulfil his/her working tasks successfully (having in mind qualifications of the person concerned).⁴⁰ An employer can also dismiss an employee if

³³ Articles 40 and 41 of Law on Labour of RS and Articles 29 and 31 of Law on Labour of FBiH

³⁴ Article 45 of Law on Labour of RS and Article 32 of Law on Labour of FBiH

³⁵ Article 8 of General Collective Agreement for FBiH

³⁶ Article 31 of General Collective Agreement for RS

³⁷ Article 46 of Law on Labour of FBiH

³⁸ Article 66 of Law on Labour of RS

³⁹ Articles 37 – 41 of Law on Labour of FBiH and Articles 54 – 57 of Law on Labour of RS

⁴⁰ Article 88 of Law on Labour of FBiH and Article 126 of Law on Labour of RS

he/she violates his/her working obligations, but the law does not specify the nature of the violation, hence leaving it to the free interpretation of the employer. Both Laws on Labour regulate, thoroughly, the issues of termination of contract on labour (by both employer and employee) within special section of the Law – “Termination of Employment Relation”. It is important to mention that Law on Labour of RS provides that the termination period cannot be less than 30 days (if the cancellation is made by employer) and the Law on Labour of FBiH says that this period cannot be less than 14 days.

However, even though provisions of both Laws on Labour are quite specific and more or less protective towards employees, in Bosnia and Herzegovina the position of employees is still unfavourable. There are many reported violations of rights of workers in entire Bosnia and Herzegovina. The Ombudsman of RS report for 2006⁴¹ indicates that workers complain that: 1) they were not offered to sign an employment contract, 2) they work overtime (including on Sundays and holidays) without appropriate compensation, 3) the salary payments are delayed for months and even years, 4) legal provisions on the termination of employment are not respected.

Media reports on violations of workers’ rights mainly focus on the issues of the consequences of privatisation of public companies and (ill)treatment of workers by new owners of those companies. For example, the media in Republika Srpska reported on the case of harsh violation of the rights to salary, right to due termination period and, in general, workers rights, in “Kameni agregati” AD Banja Luka Company.⁴² After the privatisation of this company, new owners did not pay salaries to workers for six months, after which workers started a strike (all according to the law). As a response to the strike, the employer fired workers (breaking the Law on Labour of RS) stating that they violated the working discipline, but without conducting a disciplinary procedure, that is giving no possibility to workers to have their say in the case. Furthermore, workers who were fired were given no payment and their right to due notice was not respected. The Labour Inspectorate Office of RS has confirmed that this was violation of

⁴¹ Annual Report of Ombudsman of RS for the year 2006

<http://www.ombudsmen.rs.ba/izvjestaji/godisnji2006.html> (accessed on 13 March 2008)

⁴² “Who Asks for Salary Gets Fired” (“Ko traži platu, dobije otkaz”)

<http://www.patriotmagazin.com/arhiva/0178/media/006.htm> (Accessed on March 02, 2008)

workers rights, and the case is still pending at the Municipal Court in Banja Luka—due to Court being overcrowded with cases⁴³.

Community impact

Ecological issues

The consequences of the actions of a company extend beyond the company itself. Actions of any company, especially those with material outputs and products, such as the chemical industry or building companies affect the environment and the quality of life⁴⁴. In accordance with modern trends of setting basic standards for the protection of the environment and the reduction of the negative impact of the work of companies, factories and various industries, Bosnia and Herzegovina has adopted several laws which together create a legal framework for the environment protection in BiH. Before listing the set of laws regulating environmental issues in the country, there is one law that should be mentioned as complementary to those laws – the Law on Freedom of Access to Information⁴⁵. This law provides open access to information to each citizen who requests such information from public authorities. This means, for example, that a citizen can request information on the waste that a factory drops and whether it respects the standards for protection of the environment and, if not, what is done by relevant bodies to investigate or prevent such action of the factory. Besides this Law, which provides the bases to ensure authorities are transparent, BiH and its entities have established a legal framework for the environment protection. This is ensured by following laws:

- Set of laws in RS: Law on the Protection of Environment, Law on the Protection of Air, Law on the Protection of Waters, Law on

⁴³ This was the case in the end of 2006. Unfortunately, there is no follow up to the resolution of this case so it is not known whether it has been resolved in favour of workers or not.

⁴⁴ “Quality of life” is considered to be degree of well-being felt by an individual or group of people which has two aspects: physical aspect which includes such things as health, diet, as well as protection against pain and disease and psychological aspect that includes such things as stress, worry, pleasure and other positive or negative emotional states. (http://en.wikipedia.org/wiki/Quality_of_life) (Accessed on March 30, 2008)

⁴⁵ Published in Official Gazette of BiH no.28/00 (also the same law has been passed on entities' level – in RS published in Official Gazette of RS no 21/00 and in FBiH in Official Gazette no. 32/01)

Waste Management, Law on the Fund for the Protection of Environment⁴⁶;

- Set of laws in FBiH: Law on the Protection of Nature, Law on the Protection of Environment, Law on the Protection of Air, Law on Waste Management, Law on the Fund for Protection of Environment⁴⁷;
- Brčko District of BiH – Law on the Protection of Environment⁴⁸.

BiH companies follow two standards relevant to the development of a system of environment management: ISO 14001 and EMAS (European Eco-management and Audit Scheme). The question remains, how good are companies in BiH at actually fulfilling these standards and respecting provisions of environmental laws that currently exist in the country.

All these laws, especially Law on the Protection of Environment in both entities, provide a detailed overview of approved and prohibited actions relevant to achieving ecological standards for the sake of the preservation of a healthy environment in Bosnia and Herzegovina. Each of these laws specifies what has to be done in the prevention of any actions that may cause damage to the environment and, therefore, to the health of people. Provisions regulate measures to be undertaken by governmental institutions (such as: the establishment of special bodies for monitoring ecological issues within the entity concerned, issuance of by-laws, rulebooks, inspections etc.) and by businesses (for example: taking care of the negative influence their plants might have to nature and their surroundings, better waste management, pollution filters etc.).

Both entities' Law on the Protection of Environment have a special section that addresses the issues of prevention of industrial accidents and the responsibility for causing the same. The section "Issuing Ecological Permits and Prevention of Larger Scale Accidents" in these Laws specify the minimum standards each enterprise has to fulfil with regard to ensuring their factories won't cause any damage to the environment and/or health. Only by fulfilling these requirements can a company be issued an ecological permit, which is necessary in order to begin regular activities of

⁴⁶ Official Gazette of RS no. 53/02

⁴⁷ Official Gazette of FBiH no. 33/03

⁴⁸ Official Gazette of Brčko District no. 24/04 and 01/05

the company. For example, the operating company must have developed internal and external plans for intervention in case of larger scale industrial accidents, which aim at controlling accidents in such a manner that their negative impact to the environment is minimized by providing information to relevant government bodies and ministries, as well as ensuring revitalisation and cleaning of the environment after such accidents⁴⁹.

The section on “Responsibility for Damages of Environment” of both entities’ Law on Protection of Environment determines the responsibility of actors for activities that are harmful to the environment, reparation for damage caused and other issues related to settling the responsibility of issues in case of endangering the environment. The remedy for violation of these provisions can be sought before competent courts.⁵⁰

“Bosnalijek d.o.o.” company is one example of good practices with regard to respect of environmental standards. This pharmaceutical company holds certificates for ISO standards 9001, 14000 and 18000. These are certificates refer to quality management, environment management and health and safety at work management. The company is one of the rare ones in BiH fulfilling these standards of corporate management and has been winner of the contest for corporate responsible company organised by the NGO “Mozaik” in 2007⁵¹. This example gives some hope that more and more companies in BiH will start acting as ecologically conscious subjects and respect legal provisions on protection of the environment as well as incorporate international standards of corporate management and responsibility in their everyday work.

Corruption as Obstacle for Good Practice of Companies

Bosnia and Herzegovina has a post-war legacy of high level of corruption. According to Transparency International BiH (TI BIH), the situation in the country is getting worse over time and is well illustrated through the Corruption Perception Index (CPI) for BiH, which in 2003 has ranked BiH

⁴⁹ Article 83 of Law on Protection of Environment of FBiH and Article 82 of Law on Protection of Environment of RS

⁵⁰ Article 39 § 2 of Law on Protection of Environment of FBiH and Article 38 § 2 of Law on Protection of Environment of RS

⁵¹ More information on this contest at www.mozaik.ba

on 70th place among 163 countries for which CPI was measured, whereas in 2005 BiH has fallen to 96th place and then in 2006 to 98th place.⁵² According to TI BiH, this is an indicator that the corruption in the country is at a high level and that BiH is on the list with underdeveloped countries where reform processes are difficult to be implemented and where anticorruption measures are either low or absent.

The legislative framework covering issues of corruption in Bosnia and Herzegovina is provided through several laws and international instruments ratified by BiH. The most important law that regards corruption as a severe violation and criminal act is the Criminal Code of BiH⁵³. It has to be mentioned that the first version of the Criminal Code of BiH was imposed by the High Representative in BiH at that time, Mr Paddy Ashdown. However, even though there is law at the state level, both entities have their own Criminal Codes: the Criminal Code of FBiH⁵⁴ and the Criminal Code of RS⁵⁵, and so does Brcko District. Chapter nineteen of the Criminal Code of BiH “Criminal Offences of Corruption and Criminal Offences against Official Duty or Other Responsible Duty” is entirely dedicated to the establishment of penalties for acts of corruption made either by government officials, public servants or any other person trying to bribe and/or gain some advantage by illegal means of corruption and/or bribery. Also, Bosnia and Herzegovina has ratified international instruments relevant to combating corruption, such as: the UN Convention against Corruption⁵⁶, the Council of Europe Criminal Law Convention on Corruption and the Council of Europe Civil Law Convention on Corruption.

According to Transparency International BiH, cases of violation of Criminal Code by public servants in Republika Srpska, for example, violations dealt by Ministry of Interior of RS in 2005 are as follows: “there have been 117 filed criminal applications against 174 persons for suspicion of the criminal act of the abuse of an office or official authority.”⁵⁷ Also, there are examples of the violation of official authority, such as in the case

⁵² Transparency International BiH “Studija sistema nacionalnog integriteta Bosna i Hercegovina 2007”, Transparency International, Banja Luka, 2006

⁵³ Official Gazette of BiH no. 3/03, 37/03 and 30/05

⁵⁴ Official Gazette of FBiH no. 36/03

⁵⁵ Official Gazette of RS no. 49/03

⁵⁶ Signed on 16 September 2005 and ratified on 26 October 2006 by BiH Parliamentary Assembly

⁵⁷ Transparency International BiH “Studija sistema nacionalnog integriteta Bosna i Hercegovina 2007”, Transparency International, Banja Luka, 2006, page 134

of “Čović Dragan and Others” indictment X-K-05/02 filed at Court of BiH. Indictment states that the accused, Dragan Čović, has been receiving a bribe while being minister of finance at Government of FBiH from brothers Ivanković-Lijanović and their company “Mesna industrija Lijanovići d.o.o.” and “Lijanovići d.o.o.”. The accused, Dragan Čović, has been receiving a bribe in exchange for illegal conduct of official duties (i.e. issuing illegal decisions related to special tariffs and fees for the import of goods), which ensured illegal material gain and advantage for the companies of Ivanković-Lijanović.⁵⁸ On 17 November 2006, the Court found Dragan Čović guilty of the abuse of office or official authority and sentenced him to five years of imprisonment. The Court acquitted Dragan Čović, Jozo Ivanković – Lijanović, Slavo Ivanković – Lijanović, Mladen Ivanković – Lijanović, Jerko Ivanković – Lijanović, Mato Tadić and Zdravko Lučić of the other criminal offences listed in the indictment. The Appellate Panel of the Court issued a decision on 11 September 2007 on appeals against the Trial Panel’s verdict rendered as of 17 November 2006 in the case of “Dragan Čović and Others.” The decision upholds the appeals filed by the Prosecutor’s Office of BiH, and the defence counsel for Dragan Čović revokes the Trial Panel’s verdict and ordered a retrial before the Appellate Panel. On 21 November 2007 the re-trial started before the Appellate Panel.⁵⁹ The case is still under appeal procedure.

The BiH media report on the corruption in country, but mainly in relation to the public sector and rarely in relation to the private sector. However, many of those cases still remain covered and hidden—either because of lack of efficiency and transparency of investigating bodies in BiH or because such cases remain unreported. It is well known that since corruption has taken on such a large scale in the country, citizens are more and more likely to view it as a regular and inevitable part of their everyday lives. It is doubtful whether citizens of BiH have trust both in the public and private sectors of the country. The public sector can deal with this issue by being more transparent and acting in accordance with all laws that are passed in this field, as well as complying with established ethical codex and rulebooks. The question of incorporating the anticorruption standards in a corporate social responsible strategy of action of companies remains an issue of the coordination of state bodies’ action with the private sector to engage more actively in combat against corruption (as prescribed by UN

⁵⁸ Ibid. page 232

⁵⁹ Information taken at: <http://www.sudbih.gov.ba/?opcija=predmeti&id=11&jezik=e>

Convention against Corruption⁶⁰). Even though there are no anticorruption initiatives coming from private sector, many companies in BiH are trying to harmonise their operation and action with the ISO 9001:2000 standards, where taking a bribe or being part of corrupt action is considered a non-fulfilment of ISO standards. That said, the introduction of ISO standards alone will not guarantee compliance.

There are some positive actions made by governments and ministries in the country in order to control and prevent corruption. These actions are mainly expressed as Strategies for Combat against Corruption, action plans and similar strategic documents. However, there is still no visible outcome or sign of realisation of these strategies and plans. For example, positive action was made by the Government of Republika Srpska in introducing the draft of Law on Verification of Manner of Obtaining Property, which is to be adopted by the National Assembly of RS⁶¹. This Law ensures that there will be a verification of property valued higher than half of million BAM and the manner in which it was gained by its owner (no matter if it is a physical or legal person in question). Although this is positive step forward for anticorruption action, still there is the question of why is the minimum limit for verification set at half of million BAM and whether it will really help in revealing the corruption of high officials or not.

Protection of Intellectual and Property Rights

Intellectual and property rights in Bosnia and Herzegovina are still, in practice, unprotected. We are witnesses of everyday violations of these rights, especially in the music industry. Pirated CDs can often be seen in music stores and in markets throughout BiH. This doesn't mean that intellectual and property rights are not regulated; however, their implementation remains an issue in BiH.

Legislation that covers the area of protection and regulation of intellectual and property rights, as well as product liability issues, is set up in the Law

⁶⁰ Article 12 of UN Convention against Corruption

⁶¹ „Property Larger Than Half of Million BAM to Verification“ („Imovina veća od pola miliona KM na provjeru“ <http://www.capital.ba/imovina-veca-od-pola-miliona-km-na-provjeru/>) (Accessed on April 14, 2008)

on Industrial Property in BiH⁶², the Law on Copyright and Related Rights in BiH⁶³, and many international conventions regulating these rights in which BiH is party. Also, in order to have better coverage in this area, in practice, and better implementation of passed laws and conventions, BiH has founded the Institute for Standards, Measuring and Intellectual Property in BiH. The Law on Founding of Institute regulates the work of the Institute for Standards, Measuring and Intellectual Property in BiH.⁶⁴

In the area of the protection of industrial property the Institute is mainly working on administrative procedures regulating the right to patent, trademark, and the industrial design. As far as copyright and related rights are concerned the Institute provides their protection through administrative procedures. The Institute also does information-documentation work as set by standards suggested by World Intellectual Property Organisation and in accordance with provisions of relevant laws and by-laws regulating the issues of intellectual property in Bosnia and Herzegovina.⁶⁵

The most common case of violation of intellectual property rights and copyright in Bosnia and Herzegovina is the case of Sarajevo copying shops which ignore the Law on Copyright and Related Rights in BiH and continue with the practice of severe violation of this Law. The case of Sarajevo copying shops was revealed in daily newspaper “SAN” in November 2007. The issue is the as follows: students are more and more coming to copying shops and buying copies of books which are their core literature for exam preparation. The problem is that by buying these copies students and copying shops by making ones are breaking the relevant Law for which there are provided penalties. The Law on Copyright and Related Rights in BiH stipulates the possibility of copying portions of books without permission of the author and compensation for using his/her copyrights only for non-commercial reasons⁶⁶. This includes using copyrights for the purpose of personal advancement without gaining any other (material) benefits. Specifically, the Law says that one can copy “entire book, magazine or newspaper for private purposes only in hand or by typing machine, or photocopy it in a maximum three times in case the

⁶² Official Gazette of BiH no. 3/02 and 29/02

⁶³ Official Gazette of BiH no. 7/02

⁶⁴ Official Gazette of BiH no. 29/00 and 19/01

⁶⁵ More about the Institute at <http://www.ipr.gov.ba/iv/index.htm>

⁶⁶ Article 51 of Law on Copyright and Related Rights in BiH

work has been sold out for more than two years”⁶⁷. It is up to relevant state bodies to react to this violation of law and conduct the necessary investigation. The “University Press” publishing house is preparing a law suit against copying shops “Start” and “HSK” and another one in Sarajevo, says director of this publishing house for “SAN”⁶⁸. There is no media coverage of this case and whether relevant government bodies have conducted a proper investigation into these allegations of a violation of intellectual property rights.

Regulation of Product Liability

Product liability⁶⁹ in BiH legislation is mainly regulated by provisions of the Law on Obligations⁷⁰, the Law on Protection of Consumers in BiH⁷¹, the Law on Food⁷² and the Law on General Products Safety⁷³.

The Law on Obligations in its General Part - Head 2, Section 2, Part IV (Products Liability) regulates the responsibility of the manufacturer for damage caused by his/her products. Here the legislator determines that manufacturer is responsible (if proven) for damage causing death or body injury and damage or destruction of another thing except the very product⁷⁴. The Law on Protection of Consumers in BiH determines that the product liability issues will be regulated in accordance with the Law on Contracts and Torts. ***Conclusion***

As can be seen above, Bosnia and Herzegovina is, more or less, a country with developed legislation relevant to ensuring the full respect of human rights. Having in mind that BiH is signatory to almost all relevant international instruments protecting human rights

⁶⁷ Ibid.

⁶⁸ „SIPA Still Hasn't Come to Copying Shops“ („SIPA još nije obišla kopimice“) <http://www.san.ba/index.php?id=834> (Accessed on March 17, 2008)

⁶⁹ Product liability is the area of law in which manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause. (http://en.wikipedia.org/wiki/Product_liability) (Accessed on April 02, 2008)

⁷⁰ Official Gazette of SFRJ no. 45/89 and 57/89

⁷¹ Official Gazette of BiH no. 25/06

⁷² Official Gazette of BiH no. 50/04

⁷³ Official Gazette of BiH no. 45/05

⁷⁴ Article 232 of Law on Obligations SFRJ

and regulating standards of doing business, one would say that it has a strong legislative basis, almost a perfect one. Indeed, almost all cited laws are in accordance with a high level of international standards for protection of basic human and related rights. However, practice itself is discouraging. Reports of non-governmental organizations as well as governmental institutions are constantly pointing at the burning issues of the grey economy, disrespect for workers rights and cases of corruption and bribery, which have spread widely in BiH. There are some positive cases though; some 25 BiH companies are joining the UN Global Compact, which brings light to the development of the corporate social responsibility in BiH. In this fairytale everything is possible; the actors keep changing places crossing from one side to another, and the only question that remains now is: who will play the role of a fairy and help the process of the development of corporate social responsibility through the required action of both businesses and the government.

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- Zakon o profesionalnoj rehabilitaciji i zapošljavanju invalida (Službeni glasnik RS br. 98/04 i 91/06)
- Zakon o zaštiti na radu RS (Službeni glasnik RS br. 01/08)
- Zakon o zaštiti na radu SRBiH (Službeni list SRBiH br. 22/90)
- Zakon o zaštiti životne sredine RS (Službeni glasnik RS br. 53/02)
- Zakon o zaštiti vazduha RS (Službeni glasnik RS br, 53/02)
- Zakon o zaštiti voda RS (Službeni glasnik RS br. 53/02)
- Zakon o upravljanju otpadom RS (Službeni glasnik br. 53/02)
- Zakon o fondu za zaštitu životne okoline RS (Službeni glasnik RS br. 53/02)
- Zakon o zaštiti prirode FBiH (Službene novine FBiH br. 33/03)
- Zakon o zaštiti okoliša FBiH (Službene novine FBiH br. 33/03)
- Zakon o zaštiti zraka FBiH (Službene novine FBiH br. 33/03)
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- Zakon o zaštiti voda FBiH (Službene novine FBiH br. 33/03)
- Zakon o fondu za zaštitu okoliša FBiH (Službene novine FBiH br. 33/03)
- Zakon o zaštiti životnog okoliša Brčko Distrikt (Službeni glasnik Brčko Distrikt br. 24/04 i 01/05)
- Krivični zakon BiH (Službeni glasnik BiH br. 3/03, 37/03 i 30/05)

Krivični zakon FBiH (Službene novine FBiH br. 36/03)

Krivični zakon RS (Službeni glasnik RS br. 49/03)

Zakon o industrijskom vlasništvu u BiH (Službeni glasnik BiH br. 3/02 i 29/02)

Zakon o autorskom pravu i srodnim pravima u BiH (Službeni glasnik BiH br. 7/02)

Zakon o osnivanju Instituta za standarde, mjeriteljstvo i intelektualno vlasništvo BiH (Službeni glasnik BiH br. 29/00 i 19/01)

Zakon o zaštiti potrošača BiH (Službeni glasnik BiH 25/06)

Zakon o hrani BiH (Službeni glasnik BiH br. 50/04)

Zakon o opštoj sigurnosti proizvoda BiH (Službeni glasnik BiH br. 45/05)

Zakon o obligacijama (Službeni list SFRJ br. 45/89 i 57/89)

UN Convention against Corruption

(http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf)

Institute for Standards, Measuring and Intellectual Property of BiH

(www.ipr.gov.ba)

Nezavisne novine

(www.nezavisne.com)

SAN

(www.san.ba)

Patriot magazine

(www.patriotmagazin.com)

PBS BiH

(www.pbsbih.ba)

CAPITAL.ba
(www.capital.ba)

Helsinki Committee for Human Rights in Bosnia and Herzegovina
(www.bh-hchr.org)

Oneworld SEE
(<http://ssla.oneworld.net>)

MOZAIK
(www.mozaik.ba)

Bosnalijek d.o.o.
(www.bosnalijek.ba)

UN Global Compact
(www.unglobalcompact.org)

Global Compact in BiH
(www.globalcompact.org.ba)

Legislative Preconditions for Development of the Corporate Social Responsibility in Bulgaria¹

by Prof. Dr. Krassimira Sredkova

Abstract

This article deals with the main characteristics of Bulgarian employment practices and community impact after entering the EU on January 1st, 2007. The legal framework of forced labor, debt bondage, overtime, retention of wages and deposits, minimum age, youth workers labor practices etc. are treated. Bulgaria has good experiences in this field. Concerning the Community impact, the minimum of the safety for environment, land management, corruption and bribery etc. are presented. In this field there is not enough experience and a lot of work is necessary.

Keywords: collective bargaining, corruption, debt bondage, discrimination, employment privacy, employment relationship, environment, forced labor, freedom of association, hazardous and harmful work, holidays, land management, leave, products, property, rest, safety and health at work, youth workers, minimum age, minimum wage, overtime, wages, working hours, workplace.

Introduction

Bulgaria is represented in the Western Balkans Yearbook for the first time. That is why our presentation has to be informative – to show a clear picture of the legal framework of the employment practices and community impact nowadays.

One must know that we are a parliamentary republic where the law is a basic instrument for the implementation of a state policy. International obligations of Bulgaria derive from its membership in the United Nations (UN) and International Labor Organization (ILO) as well as the European Union. A very important task of our state and our society is to strengthen the democratic principles of the modern society based on a

¹ Proofreading by Emel Karaman

market-oriented economy. There are a lot of difficulties. We have some achievements and also some shortages in this process. They will be described below.

Bulgaria is a **rule of law** (Art. 4, Para 1 of the Const.). It is governed by the *Constitution* and *the laws of the state*. Also *any international instruments* ratified by the constitutionally established procedure, promulgated and put into force with respect to the Republic of Bulgaria, are considered part of the domestic legislation and supersede any national legislation stipulating otherwise (Art. 5, Para. 4 of the Const.). Bulgaria is a party of the International Covenant for Economic, Social and Cultural Rights, the Convention on Protection of Human Rights and Fundamental Freedoms, the European Social Charter (revised), as well as many conventions of the International Labor Organization and other international instruments. According to the official opinions of the international supervisory bodies, our legislation and practice are in compliance with the provisions of correspondent international instruments in the areas examined in this presentation.

The case law is not a source of law – court decisions are obligatory only for the parties of a dispute. Only the Interpreting decisions of the Supreme Court of Cassation and of the Supreme Administrative Court have to be used as guidelines of the courts. That is why case law is not used in this presentation – as there are no interpretive decisions of the supreme courts on the problems in question.

Since the 1st of January 2007, Bulgaria has been a member of the European Union. One of the basic requirements for this membership was the harmonization of Bulgarian legislation with *the EC law*. There are no remarks by the EU bodies in the areas examined now. The implementation of the new legislation is making its first steps.

Some of the issues of this presentation (as employment practices) are **traditional** for our country. We have good legislation and a lot of experience. That is why they are presented in more detail. Others (as) are **new**. We have some legislation, but not enough experience. There are also none or not enough theoretical studies. That is why they will only be pointed out, but more details might be presented in future studies.

Employment practices

1. a. Forced labor² in Bulgaria is prohibited in *Art. 48, Para. 3–4 of the Const.* and *Art. 2 of the International Covenant on Civil and Political Rights*. Bulgaria is also a party to the *Convention 105 on Obligatory or Forced Labor*, 1930 and *Convention 105 on Abolition of Forced Labor*, 1957 of the ILO.

Article. 1, Para. 3 of the Labor Code (LC) stipulates that the freedom of labor (Do you mean the right to work? – According to the international instruments and Bulgarian legislation freedom of labor is not right to work but only a part of this right!) is a basic principle of Bulgarian Labor Law.

the European (the official name of this convention does not contain the word “European”!)?)

b. Debt bondage is also impossible. We derive its prohibition from the prohibition of the forced labor. Debts are not considered a crime, only instruments of civil and financial responsibility are applicable. According to Art. 33, Para. 1, Line. 1 of the *Obligations and Contracts Act* “a contract entered into because of financial duress under clearly unfavorable terms shall be subject to invalidation. ... The invalidation is not admissible if the other party proposes to repair the damage.” When a contract is invalidated the party must give back to the other party everything it has received from it. **c. Overtime work**³ is regulated by *the Labor Code*. A legal definition of overtime work is established by Art. 143, Para. 1 of the LC. This provision states that overtime work is work done upon the order, or with the knowledge of, and with no objection from the employer or the respective superior, by an employee beyond the working time fixed for him or her. Overtime work is generally prohibited (Art. 143, Para. 2 OF THE LC). It is permitted only as an exception under explicitly provided reasons – e.g. for performance of work related to national defense; for the prevention, management and mitigation of the effects of crises, etc. (Art. 144 of the LC). There are qualitative limitations of overtime per year (150 hours), month, week and two consecutive working days. Some categories of employees (e.g. employees who have not reached

² See Василев, Ат. Трудово право. Бургас: БСУ, 1997, 41–43; Мръчков, В. – В: Мръчков, В., Кр. Средкова, Ат. Василев. Коментар на Кодекса на труда. IX изд. С.: Сиби, 2007, с. 32; същия автор. Трудово право. VI изд. С.: Сиби, 2008, 65–66.

³ See Средкова, Кр. Извънреден труд. С.: НИ, 1988; същата авторка. – В: Коментар, 457–472; Василев, Ат. Цит. съч., 226–235; Мръчков, В. Трудово право, 316–321.

18 years of age; pregnant employees, etc.) are under special protection and it is not possible for them to work overtime even if there is a legally recognized reason for such work (Art. 147 OF THE LC). Overtime work is paid more than regular work.

d. Retention of wages and deposits is regulated by the *Labor Code* and *the Civil Procedure Code*.⁴ Pursuant to Art. 272, Para 1 of the LC no deductions can be made from an employee's labor remuneration without the employee's consent, except for advance payments received, amounts overpaid as a result of technical error; taxes deducted from the labor remuneration under special laws; social insurance contributions on the account of the employee; deductions imposed according to the established procedure and deduction for the employee's material liability (damage caused by the employee to the employer). The total amount of monthly deductions may not exceed the amount defined in the Civil Procedure Code – it depends on the financial and family status of the employee (e.g. when the salary is less than the minimum salary – the sum over the guaranteed minimum income, if the employee does not have children, and half of it, if he/she has dependent children, may be deducted). (What is that amount? Is it determined in percentage? Why is it regulated under CPC – because this is general rule!?).

2. The minimum age requirements when it comes to employment practices are established by *the Labor Code*.⁵ Pursuant to Art. 301, Para. 1 of the LC the minimum age for employment is 16 years. As an exception persons between 15 and 16 years of age may be employed in work which is light and not hazardous or harmful to their health and to their proper physical, mental or moral development and whose performance would not be detrimental to their regular attendance at school or to their participation in vocational guidance or training programs (Art. 301, Para. 2 of the LC). As an exception, girls who reached the age of 14 and boys who reached the age of 13 may be employed to apprentice positions at circuses. Also as an exception persons under 15 years of age may be employed for participation in the field of arts (Art. 301, Para. 3 of the LC). Minors may not be employed in works that are hard, hazardous or harmful to their health and to their proper physical, mental and moral development (Art. 303--304 of the LC). Persons under 18 years of age may be employed only after medical examination and by prior permission of the Labor Inspectorate

⁴ See Василев, Ат. – В: *Коментар*, 763—766; Мръчков, В. Трудово право, 387—396.

⁵ More in Средкова, Кр. -- В: *Коментар*, 814—823; Мръчков, В. Трудово право, 173—177.

(Art. 302—303 of the LC). Any employment contract with a minor concluded against these special legal is null and void. The annulment is declared by the Labor Inspectorate.

3. There are **youth workers labor practices** in Bulgaria.

First of all, this is *the special protection of young employees*, provided for in Chapter VI, Division 1 of the LC. This protection includes medical examinations and the permission of the Labor Inspectorate for employment of persons under 18 years of age; prohibition of hazardous or heavy works; reduced working hours; longer paid annual leave; special conditions of work (Art. 305 of the LC) etc.⁶

There are also *special promoting measures for employers* who employ some categories of young persons – disabled, orphans etc. They are regulated in Chapter II, Section III of the Promotion of the Employment Act (PEA).⁷ (Does this mean that such an employer is granted certain privileges or rewarded in some other way? Please clarify what ‘special promoting measures’ means – it is written below in footnote 6!!)

Child labor is prohibited in Bulgaria (Art. 301, Para. 1, sent. 2 OF THE LC).

4. **Hazardous and harmful work** is regulated by *the Labor Code, the Safety and Health at Work Act* and a lot of *by-laws*. There are special rules for performance of such work – obligatory medical examinations before entering into employment relationship and periodically; reduced working hours; additional paid annual leave; briefing and training; special work cloths and personal protective equipment; free meals; limited duration of work in hazardous or harmful environment etc.⁸

5. **Discrimination** in employment in Bulgaria is prohibited.

First of all *Art. 6, Para. 2 Const.* provides for the principle of equality of all citizens and forbids discrimination on the ground of race, nationality, ethnic self-identity, sex, origin (What origin? National, ethnic?-

⁶ See **Василев, Ат.** Цит. съч., 468—470; **Средкова, Кр. В.** *Коментар*, 823--825; **Мръчков, В.** *Трудово право*, 431—432.

⁷ For instance for each opened position, for which an unemployed person up to 29 years of age, directed by the Employment Agency, or long unemployed (more that 12 months) is hired, the employer is entitled to subsidies for the time the person has worked, but for not more than 12 months; the Employment Agency develops and implements programmes and projects for employing in public interest with national and regional characters, etc. About these and other measures cfn. **Младежката безработица. Социални и правни проблеми.** *Под ред. на Кр. Средкова.* С.: Сиела, 2000, 87—106.

⁸ These problems are studied in details in **Средкова, Кр., Н. Гевренова, Ив. Янев.** *Здравословни и безопасни условия на труд.* _II изд. С.: Труд и право, 2005, 521—575; **Средкова, Кр.** – В: *Коментар*, 418—419, 489—493, 779--798; **Мръчков, В.** *Трудово право*, 415—421.

- Every), religion, education, opinion, political affiliation, personal or social status or property status basis. Also Convention 111 on Employment and Professions Discrimination, 1958, Convention 100 on the Equality of Remunerations, 1951 and Convention 156 on the Equality of Treatment of Workers with Family Responsibilities, 1981 of the ILO are in force for Bulgaria. This is the basis for establishment of the discrimination prohibitions in current laws. So **Art. 8, Para. 3 of the LC** states, that in the course of exercise of labor rights and duties no direct or indirect discrimination shall be allowed on grounds of ethnicity, origin, gender, sexual orientation, race, skin color, age, political and religious convictions, affiliation to trade union and other non-governmental organizations and movements, family and property status, existence of mental or physical disabilities, as well as differences in the contract term and the duration of working time (Please redraft! Shouldn't the last part of the sentence be moved to the beginning of the sentence – No, it shouldn't be because this is a text of a legal provision! ?). There is a similar prohibition in **Art. 2 of the PEA**. It must be noted that there is a special antidiscrimination law in Bulgaria – **Protection Against Discrimination Act**. Its Art. 4 explicitly prohibits discrimination in employment. Persons concerned may ask for protection the Commission for Protection Against Discrimination as well as the court.⁹

Of course, we can not say that there are no discriminative acts, but they are not very common and persons who asked for protection against such acts received the necessary protection.¹⁰ Some of the legal remedies are ceasing of discriminatory actions, compensation, administrative punishments of employers, etc. (What are the available legal remedies?)

6. Freedom of Association¹¹ of employers as well as of employees is a basic constitutional right (Please explain the difference between workers and employees? Why do you use two terms?). It is provided for in **Art. 49 of the Const**. The legal framework of establishment and activities of employees' and employers' associations consists of **the**

⁹ For discrimination in employment according to Bulgarian legislation see **Стайков, Ив.** Дискриминация при прекратяване на трудовото правоотношение. – Съвременно право, 2003, № 6, 16—31; **същия автор.** Задължения на работодателя за предотвратяване на дискриминационни актове на работното място. – Юридически свят, 2004, № 1, 117—134; **Мръчков, В.** – В: *Коментар*, 81--88; **същия автор.** Трудово право, 66—72.

¹⁰ The Commission for Protection against Discrimination states in its Annual Report for the Year 2007 that 42 cases had been discussed in 2007 concerning discrimination in employment.

¹¹ More in **Василев, Ат.** Цит. съч., 64—78; **Мръчков, В.** – В: *Коментар*, 112—152; **същия автор.** Трудово право, 710—755.

Labor Code and **the Legal Entities with Non-Profit Aims Act** (Do you mean non-profit organizations? Please clarify!). Trade Union and employers' organizations are entitled, within the legal limitations, to autonomously draw up and adopt their statutes and rules, freely elect their bodies and representatives, organize their leadership, as well as adopt programs of action. They define their functions freely and have to perform them pursuant to their status and the legislation. Their rights are provided for in the Labor Code, **the Settlement of Collective Labor Disputes Act**, **the Social Insurance Code** and other laws. These rights are based on the provisions of Art. 10 of the International Covenant on Economic, Social and Cultural Rights, the European Social Charter and Convention 11 on the Right to Associate (Agriculture), 1921, Convention 87 on Trade Union Freedoms and Protection of the Right to Associate and Convention 98 on the Right to Organize and Collective Bargaining, 1949 of the ILO.

One of the basic functions of the employers' and employees organizations and the main form of social dialogue is **collective bargaining**.¹² It is regulated in **Chapter IV OF THE LC**. Collective agreements may be concluded by enterprise, branch, industry and municipality. They have effect with regard to the employer and to the employees who are members of a trade union organization which is a party to the agreement. Other employees are entitled to accede to a collective labor agreement concluded by their employer by application in writing submitted to the employer and to the leadership of the trade union organization which has concluded the agreement.

There is a rich legislation concerning **safety and health at work** in Bulgaria. **Article 48, Para. 5 of the Const.** states that employees have the right to healthy and non-hazardous working conditions (The 'right to health' and 'healthy and safe work environment' is not one and the same. Please clarify! "Health and safety at work" is internationally accepted expression!). Basic laws in this field are **the Labor Code** and **the Health and Safety at Work Act**. A lot of by-laws for their implementation are promulgated too.

The Health and Safety at Work Act is an organic law on the state policy for health and safety at work. The rights and duties of the parties to the employment relationship are established by **Chapter XIII of the LC**. They include the obligation of the employer to ensure health and safety at

¹² Cnf. **Василев, Ат.** Цит. съч., 92—111; **Мръчков, В.** – В: *Коментар*, 153—208; **същия автор.** Трудово право, 771—817.

work and to elaborate and endorse rules for ensuring health and safety at work at the enterprise; the obligation of executive authorities (Do you mean the executive government? If so is the executive government party to the employment relationship? Please clarify! No, it is not. That is why I do not use the term “government”. In all the countries the state has obligations connected with employment relationships) to issue statutory instruments and rules; briefing and training; obligation for providing sanitary, welfare and medical services at the enterprise; the right of the employee to refuse to perform work assigned where the life or health thereof is exposed to a serious and immediate hazard; special work clothes and personal protective equipment; free meals to be provided by the employer; limited duration of work under harmful or hazardous conditions; free medical examinations, etc. Special rules for protection against different hazards at work are provided for in normative acts of the Council of Ministers or of the Minister for Labor and Social Policy and the Minister of Health.¹³

According to *Art.16 of the Const.* labor (Do you mean the right to work? I mean what I have written and what the Constitution says – “labor”; this does not mean “right to work”, but a process of using of manpower!) shall be guaranteed and protected under law. Legal regulation of conditions of employment is established at three **levels**:

First, legislation. It establishes minimum standards for protection at work (Protection of the right to work or protection at work? Please clarify!).

Second, collective labor agreements. They may regulate issues of employment and social-insurance relations of employees, which are not regulated by imperative provisions of the law. Collective labor agreements may not contain clauses which are less favorable to employees than the provisions of the law or of a collective labor agreement which is binding for the employer (Art. 50 of the LC) (Please clarify! – It is clarified in the following sentences. You mention two types of collective labor agreements, one having a greater legal power than the other.). Such agreements may be concluded at the branch, sub-branch, municipal level and in the enterprise (You may consider redrafting to clarify the different criteria for the categorization – territorial, line of occupation and similar. No – I will not reconstruct, because what You offer is not the same with what I have written! Collective agreement concluded at a higher level

¹³ See Василев, Ат. Цит. съч., 456—467; Средкова, Кр., Н. Гевренова, Ив. Янев. Цит. съч., 521—575; Средкова, Кр. – В: *Коментар*, 403--426; Мръчков, В. Трудово право, 415—421.

(territory, sub-branch or branch) concluded by employers' organization is binding for all members of this organization when they conclude collective agreements at their enterprises.

Third, employment contract. It may establish conditions of employment pertaining to the provision of labor power which are not regulated by mandatory provisions of the law, as well as conditions which are more favorable to the employee than those established by the collective labor agreement (Art. 66, Para. 2 of the LC).

a. Maximum of working hours is provided for by *Art. 136 of the LC*. It is 40 hours weekly and 8 hours during the day. This duration of working time may be extended only in the cases and according to the procedure provided for in the Labor Code. The cases where the maximum working hours may be extended are the extension of working time¹⁴ (Art. 136a of the LC) and overtime work¹⁵ (Art. 143—150 of the LC) (please explain the difference between extended work time and overtime work!). Reduced working time is established for minor employees and for the employees who perform work under specific conditions and where the risks to the life and health thereof cannot be eliminated or reduced regardless of the measures taken (Art. 137 of the LC)¹⁶;

b. Article 48, Para. 5 of the Const. provides for that the employees have the right to a **minimum wage**. This is the wage for the work requiring the lowest qualification (less qualified? Please clarify!) under normal working conditions with normal working hours. *Article 244, item 1 of the LC* delegates to *the Council of Ministers* the right to define the national minimum wage¹⁷;

c. Pursuant to Art. 162 of the LC, the employee has the right to **sick leave** (temporary disability leave).¹⁸ This leave is regulated by *the Labor Code, the Social Insurance Code and the Order for the Medical*

¹⁴ For production reasons the employer may, by an order in writing, extend the working time on some working days and compensate the said working time on other working days by the respective reduction thereof after advance consultation with the trade union organizations' representatives and the employees' representatives and is obliged to notify the labor inspectorate in advance (Art. 136a LC).

¹⁵ For overtime work see above – 1.c).

¹⁶ See in details about the working time **Василев, Ат.** Цит. съч., 215—235; **Средкова, Кр.** Правен режим на работното време. С.: УИ “Св. Кл. Охридски”, 1993; **същата авторка.** – В: *Коментар*, 403--472; **Мръчков, В.** Трудово право, 289—325.

¹⁷ See **Василев, Ат.** – В: *Коментар*, 735--736; **Мръчков, В.** Трудово право, с. 371.

¹⁸ More in **Мингов, Ем.** Обезщетения за временна неработоспособност. С.: Сиби, 2003; **Мръчков, В.** Осигурително право. IV изд. С.: Сиби, 2006, 241--250; **същия автор.** Трудово право, с. 349; **Средкова, Кр.** – В: *Коментар*, 514--516; **същата авторка.** Осигурително право. II изд. С.: Сиби, 2006, 298—504.

Expertise of the Ability to Work. It is granted to the employee who is incapable of work because of a general disease, professional disease or an accident at work. Medical bodies decide on the authorization of such leave. It is paid by the obligatory social insurance if the employee has at least 6 months insurance periods (With the same employer? No – as it is not explicitly said. Insurance periods are not connected with the employers and are a category of social insurance, but not of labor law). Uninterrupted? Please be more precise! I am completely precise in this case – See Conventions 24, 25; Regulation 1408/72!). Such periods are not required if the employee is under 18 years of age or when the temporary disability to work is due to a professional disease or accident at work. The leave may last up to 2 years;

d. Official holidays are proclaimed in Art. 154 of the LC.¹⁹ They are the New Year; the 3rd of March – the Day of the Liberation of Bulgaria from Ottoman Domination; the 1st of May – International Workers' Solidarity Day; the 6th of May – the Day of Valor and the Bulgarian Armed Forces; the 24th of May – the Day of Bulgarian Education and Culture and of the Slavic Letters; the 6th of September – Bulgaria-Rumelia Union Day; 22nd of September – Bulgaria Independence Day; 1st of November – National Awakeners Day; the 24th, 25th and 26th of December – Christmas; Easter – 2 days on which it is celebrated by the Orthodox Religion in the respective year; (Please consider reducing or altogether omitting this section, unless it is more directly relevant to the topic of the paper. If so please explain how it is related! I am astonished – every labor lawyer knows what is connection between “official holidays” and “working time” – this is a time, when all the employees have not to work!).

e. Rest periods and breaks are regulated by *Chapter VIII, Section III OF THE LC* and *the Order for Working Time, Rests Periods and Leaves*.²⁰

The employer must provide the employee with *a rest break for meal* not shorter than 30 minutes (Art. 151 OF THE LC). This break is determined in the Rules for the Internal Work Order in the Enterprise.²¹ Employee is entitled to *an uninterrupted daily rest period* not shorter than 12 hours (Art. 152 OF THE LC). **The uninterrupted weekly rest period** is

¹⁹ See Средкова, Кр. – В: *Коментар*, 479–481; Мръчков, В. Трудово право, 329–330.

²⁰ In details Средкова, Кр. – В: *Коментар*, 472–480; Мръчков, В. Трудово право, 325–329.

²¹ In continuous production processes and at enterprise where work in uninterrupted the employer must provide the employee with time for meal during the working time.

not shorter than 48 consecutive hours. Upon calculation of working time on a weekly or longer basis the weekly rest period must be not less than 36 hours. In cases of changing of shifts upon calculation of working time on a weekly or longer basis it must be not less than 24 hours (Art. 153 OF THE LC). (The section related to weekly rest period is not clear. Please clarify! Please, clarify what You do not understand!)

A special type of rest is *the paid annual leave* (Art. 155—157). Its duration is at least 20 working days. Employees who work under specific conditions and life and health hazards, which cannot be eliminated or reduced regardless of the measures taken, as well as employees who work open-ended working time are entitled to additional paid annual leave in a duration of no less than 5 working days. Employees of less than 18 years of age as well as invalids are entitled to an extended paid annual leave amounting to at least 26 working days;

f. Termination of employment is regulated by *Chapter XVI OF THE LC*.²²

Standard grounds for termination of employment are provided for in Art. 325 of the LC. These are grounds on which each party may terminate their relations without being obliged to give notice to the other party. They are explicitly stated – e.g. mutual consent of the parties, expiry of the agreed employment period, etc.

Both the employee and the employer have the right to terminate employment by a written *notice*.

The period of notice for termination of employment for an indefinite period is 30 days, unless the parties have agreed on a longer period, but not longer than 3 months. The period of notice for termination of a fixed-term employment contract is 3 months, but not more than the remainder of the term of the contract.

The employee may terminate employment by giving a notice without pointing out any reason. The employer may dismiss the employee by giving notice only upon grounds explicitly provided for in Art. 328 of the LC. These grounds are objective. They are related to employee's personality (anything related to one's personality is of subjective nature – please consider using another term or redrafting the sentence altogether!

²² See **Мръчков, В.** Безвиновни основания за уволнение. С.: НИ, 1967; **същия автор.** Правна защита срещу незаконно уволнение. С.: БАН, 1971; **същия автор.** – В: *Коментар*, 853—991; **същия автор.** Трудово право, 536—657; **Милованов, Кр.** Дисциплинарно уволнение. С.: НИ, 1967; **Василев, Ат.** Цит. съч., 474—515; **Мингов, Ем.** Общи основания за прекратяване на трудовия договор. С.: Сиби, 2006.

Please, consider that for the law subjective is connected with guilty! This is not the case. And You must consider also that I am using the official translations of Bulgarian legislation! e.g. grounds for dismissal are either related to the employee (e.g. the lack of the educational or professional background required for the position, failure to perform) or to the employer (e.g. the reduction of its activities, the reduction of its budget).

Both parties may terminate employment also *without notice* but only under specific reasons, provided for in Art. 327 and 330 of the LC. For instance, the employee can terminate the employment relationship without notice if the employer delays the payment of labor remuneration, if the employee starts civil service, etc.). The employer can dismiss the employee without notice in case of disciplinary punishment, if the employee refuses to accept suitable work offered upon occupational rehabilitation, etc.

Some categories of employees are under special protection against dismissal (Art. 333 of the LC). A female-employee who uses maternity leave may be dismissed only on grounds of the enterprise closure. For dismissal of trade union leaders, employees who use their leave, occupational-rehabilitates etc., prior authorization by the Labor Inspectorate or a trade union body is necessary.

g. Law protects employment privacy. Article 126, item 9 of the LC stipulates that the employee has to be loyal to the employer (Is it really the loyalty that is required? Do You mean that I do not give You the exact term of the Law? The explanation consist in the next part of the sentence. Please explain the term loyalty as used in this context!) and may not abuse the employer's trust and disclose any confidential data on the employer. According to **Art. 287, Para. 3 of the LC**, the employer and the officials in the enterprise are obliged to respect the confidentiality of data on the employee's health condition and the information from and on the relevant medical examinations. The employer is obliged to fulfill the provisions of **the Protection of Personal Data Act**.

The rights of employees in relation to **the workplace** are regulated by the **Labor Code** and **the Act on Protection against Discrimination**.

Pursuant to Art. 127, Para. 2 of the LC, the employer is obliged to protect the dignity of the employee in the process of work performance. Any action undertaken under harassment or threat may be declared null and void (Art. 33 of the OCA).

Besides, in announcing a vacancy the employer shall not have the right to place requirements related to discriminative characteristics under

Art. 4, Para 1 PADA and Art. 8, Para. 3 of the LC. Before conclusion of the employment contract, the employer does not have the right to require information on these characteristics from the applicant, except in cases when they are related to job performance, or where it is necessary for the needs of enquiry for obtaining permit for work with classified information under the conditions and by the order of the Law of Protection of Classified Information. The employer may not terminate employment due to pregnancy, child care or child raising. He/she may not refuse to hire a person, or hire him/her under less favorable circumstances on these grounds. The employer has to provide equal labor conditions regardless of these characteristics. If it does not lead to excessive difficulties for the organization and implementation of the production process, and in case where there are possibilities of objective compensation for any unfavorable consequences in the overall production, the employer must provide working conditions with regard to working time and days off, in accordance with the requirements of the religion or belief professed by the employee. The employer is obliged to adapt the working place to the needs of a disabled person during his/her employment or when the disability occurs upon his/her recruitment, except where the expenses thereof are unreasonably high and would seriously burden the employer. Pursuant to 17 PADA, the employer, having received a complaint from an employee who considers himself/herself subject to harassment, including sexual harassment, at work, is obliged to conduct an enquiry immediately, take measures for termination of harassment, as well as for imposing disciplinary liability if the harassment was committed by another employee. In case of failure to fulfill these obligations the employer bears responsibility for acts of discrimination committed at work by his/her employees. This means that harassment perpetrated by an employee against the other on the basis of discrimination, will be deemed discrimination perpetrated by the employer who fails to act upon such harassment. (Could you please expand on this matter for the sake of clarity! Are you saying that harassment perpetrated by one employee against the other on the basis of discrimination, will be deemed discrimination perpetrated by the employer who fails to act upon such harassment?).

Community impact

The work of enterprises with regard to **the minimum safety of environment** in Bulgaria is regulated by a lot of and different laws. The most important law in this field is ***the Preservation of the Environment Act***. It regulates in particular ecological assessment and environmental impact assessment as well as prevention of big industrial accidents.

Pursuant to Art. of the 81 PEnvA, *Ecological Assessment and Environmental Impact Assessment* is implemented for plans, programs and investment proposals on construction, activities and technologies or their changes, upon implementation of which significant impacts on environment are possible. Special attention in this Law is dedicated to the *prevention and restriction of industrial pollution*, the most important part of which is prevention of big accidents.

Article 103 of the PEnvA states that, with objective *prevention of big accidents* with dangerous substances, and restriction of their consequences on human life and health and environment, each operator (a legal entity or a natural person) (Who is an operator? Do you mean the representative of a legal person? Please clarify!) of a new or acting enterprise and/or facility in which dangerous substances are used or preserved shall be obliged to classify it as "enterprise and/or facility with low risk potential" or as "enterprise and/or facility with high risk potential" about which he shall notify the Minister of Environment and Water. The construction and exploitation of a new and the exploitation of an operating enterprise and/or facility classified as an "enterprise and/or facility with a low risk potential" or as an "enterprise and/or facility with a high risk potential" may be implemented after issuing a special permit. The permit or the refusal of issuing the permit may be appealed by the order of the Administrative Procedure Code. The operator of the enterprise and/or facility for which a permit was issued is obliged to undertake all necessary measures for prevention of big accidents with dangerous substances and restriction of their consequences on human life and health and the environment, inform the Minister of Environment and Water about planned essential change in the structure (in what?) of the enterprise and/or the facility. Upon occurrence of a big accident the operator of the enterprise and/or facility, for which a permit was issued, must immediately notify the chairman of the regional council for security and crisis management. The operator of the enterprise and/or facility with a high risk potential shall concede to the public information in question about planned measures for

safety and the ways of behavior and action in case of accident, the report on safety, the list of dangerous substances, and the information on the possibility of the "domino effect" occurrence.

Special rules are provided for also in other laws (Please redraft! Regulations cannot be established in laws. You may consider saying: 'The protection of the environment is regulated under a number of special laws, such as:...'') -- e.g. *the Act on Protection against Disasters, the Act on Crisis Management, the Act on Health, the Act on Safe Use of Nuclear Power, the Act on Protected Territories*, etc.

Natural persons and legal entities violating legal provisions (e.g. an action detrimental to the environment, violation of the regime of protected territories, etc.) shall be fined. The worst violations shall be proclaimed crimes and be a subject of penalties under the Criminal Code.

Land management is regulated by several laws – *the Act on Preservation of Environment, the Act on Protected Territories, the Act on Plant Protection, the Act on Preservation of Agricultural Land, the Act on Ownership and Use of Agricultural Land, the Act on Structure of the Territory* etc.

There is a special section in the Act on Preservation of Environment, regulating the preservation and use of the soil. These regulations aim at sustainable use and restoration of the soil -- prevention of its deterioration, durable preservation of its multifunctional ability, ensuring effective protection of human health, preservation of its qualities as a medium for normal development of soil organisms, plants and animals; implementation of control for prevention of unfavorable changes in the soil and application of good practices in land use; removal and/or reduction of harmful changes in its quality caused by processes damaging to the soil, according to the requirements of the types of land use. The owners, natural persons and legal entities, are obliged not to cause harmful changes in the soil in their own and in the neighboring land. Any person who causes harmful changes in the soil shall be obliged to restore (do you mean at his expense?) its status preceding the established damage at his/her own expense. The owners and the users of underground and over-ground networks and facilities of technical infrastructure shall maintain them in technical fitness and prevent pollution or other harmful change in the soil around them. (Please redraft and use the correct terms! Please tell this to the official interpreters of Bulgarian legislation.)

The Preservation of Agricultural Land settles the preservation from damage, the restoration and improvement of fertility of agricultural land

and defines conditions and order of changing their designation. The owners and users of agricultural land are obliged to prevent them from erosion, pollution, salination, oxidation, swamping and other damage, and maintain and improve their production quality. The change of designation of the agricultural land for other than agricultural needs, requires a special permit. The enacted decisions for changes of land designation, owned by natural persons and legal entities, necessary for state or municipal needs are grounds for expropriation of such land.

There are some territories requiring *special protection* – reserves, national parks, natural landmarks and protected areas. Special rules for their designation, regime of preservation and usage, announcement and management are settled in the Act on Protected Territories.

It would be wrong to say there is no **corruption and bribery**, in particular regarding governmental officials in Bulgaria. There are some cases reported in the mass-media and during the parliamentary control. For such cases, disciplinary, administrative and even criminal responsibility is provided for in *the Labor Code, the Civil Servants Act, the Code of Ethics in Public Administration, the Criminal Code* as well as in special laws. Of course, fighting corruption is one of the political criteria for EU accession. Unfortunately, the fight against corruption is unsuccessful, if assessed from the point of view that no effective sanctions have been imposed at this time. (Please expand! E.g. Provide answers to questions such as: Was fighting corruption one of the political criteria for EU accession? Is the corruption of representatives of legal persons (other than state institutions) sanctioned? What does the law say and how does it work in practice?)

a. The *Bulgarian Constitution* stipulates that artistic, scientific and technological creativity shall be recognized and guaranteed by the law, and that the state shall protect all inventors' rights, the copyright and related rights (Art. 54, Para. 2—3). Therefore, **the rights to intellectual property** are fundamental constitutional rights and they are irrevocable.

There are several current laws in Bulgarian legislation in relation to intellectual property: *the Act on Patents and the Registration of Utility Models; the Act on Copyright and Related Rights, the Industrial Design Act, the Act on Topology of Integrated Circuits, the Act on Trademarks and Geographic Names, the Movie Industry Act, the Act on Obligatory Deposits of Copies of Printed and Other Works, the Radio and Television Act, the Patronage Act, the Act on Protection of New Kinds of Plants and Breeds of Animals, the Act on Protection of Competition*, etc. They regulate the rights, the instruments for their exercise and their guarantees.

b. The right to property is also a fundamental constitutional right. *Article 17 of the Const.* states that the right to property and inheritance shall be guaranteed and protected by law. Property is private and public. Private property is inviolable. Forcible expropriation of property in the name of state or municipal needs may be affected only by virtue of law, provided that these needs can not be otherwise met, and after fair compensation is ensured in advance.

The basic laws related to property are the *Property Act*, the *State Property Act*, the *Municipal Property Act*, the *Family Code*, and the *Structure of the Territory Act*. They regulate the regimes of different kinds of property.

The basic law concerning **products liability** is the *Act on Technical Requirements for the Products*. It defines the order for determining essential requirements for products designated for market placement or commissioning, obligations of the persons who place products on the market, or operations, rights and obligations of producers and persons who carry out the activities of assessment of products compliance with essential requirements or eco-design requirements, the supervision of products placed on the market or commissioned. Articles 50--59a of the Law stipulate the administrative liability for violations of its provisions. The penalty is a fine, the amount of which depends on the type of violation, the persons (natural persons or legal entities), the number of violations and other criteria. Some violations are proclaimed to be crimes and they are regulated by the Criminal Code. Material liability is also possible under the general rules on torts.

Legislative Preconditions for the Development of Corporate Social Responsibility in Croatia

by Ranko Helebrant¹

Abstract

The article on Croatia will mainly follow the agreed structure and content that was proposed by the Secretariat at the opening of the drafting process. The first part will provide an introduction laying down social and economic conditions under which most of the issues discussed take place. Special attention in the introduction will be given to the process of the EU accession that in a great deal determines most of the developments in our country. The second part will provide a legal framework for the respective issues, and the main characteristics of the usual practices in the Croatian society. The third part will provide information on the community impact and some other aspects of CSR.

Introduction

The position of Croatia compared to other countries in the region is a bit different, because we are in the process of accession to the EU. Therefore, we are in the middle of the harmonization process of all legal provisions with the system of EU. From the document recently adopted by the Croatian Parliament (Hrvatski Sabor), we have to adopt or change more than 120 laws and other regulations within the next six months. That creates a lot of problems due to insufficient time for consultation with all stakeholders and civil society. Sometimes it results with incomplete or bad legal provisions that have to be changed very soon. The Governmental Office for Associations (GOA) together with some NGOs wanted to change this practice, and now they are in the process of drafting a code of conduct based on good practice. The document will force all state institutions to follow a strict procedure in adopting laws and other documents (strategies, national plans etc). They will have to include representatives of all stakeholders in working groups that will produce drafts. Then drafts will

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have to undergo a public debate, after which they can be submitted to the government for approval and adoption. Through that procedure we will have better legislation, and all interested parties will be included in the decision making process. In that respect, the role of the civil society will increase in the decision making process, which was the intention of many NGOs working in Croatia for years.

Very often legislation itself was not assessed as problematic in Croatia. However, its implementation was found to be the main problem in many areas of social life. That creates a situation in which for some people the only obvious solution should be judicial protection of their violated rights. That is another major obstacle for the normal functioning of the system. Courts in Croatia have more than 1.000.000 pending cases, and even though labor cases should be resolved in an urgent procedure, very often that is not the case. Another problem is the accessibility of the legal protection for some socially endangered groups due to the high legal fees for attorneys. There is a draft of Legal Aid Law at the moment in the procedure. The drafting working group included representatives of civil society, but most of NGO recommendations were not incorporated in the final draft. The Ministry of Justice that was led the whole process ignored most, or at least the most significant recommendations, from the civil society representatives. The main problems that we see in that proposal, that will be essential for many people to practice their rights, are the following: very complicated and bureaucratic procedures to apply for legal aid that will discourage some of them to even try; the implementation will start only in August 2009, more than a year from adoption and similar.

Speaking of Corporate and Social Responsibility (CSR), Croatia introduced some of the concepts through the Chamber of Commerce and some other institutions. CSR is a requirement of EU integration as well. There is a disparity between proclaimed policies, and laws, and the practice. The intention of this article is to present both sides of the coin, and how civil society organizations contribute to decreasing the disparity.

The most significant part of this article will be dedicated to collective bargaining because that is at the moment a crucial element in securing the protection of human rights in. The state does a lot in securing the sufficient level of cooperation of all three social partners.

For a better understanding of the economic and social situation in Croatia, the following are some statistics data (as of April 2008)☺

GDP for 2006: 250,5 billion kunas (34,2 billion €)

GDP per capita: 7.706 €

GDP growth in 2006: 4,8%

Inflation in 2006: 4,3%

Average gross salary in Croatia for March 2008: 7.404,00 kn

Average net salary in Croatia for March 2008: 5.042,00 kn

Average net salary per hour in March 2008: 29,48 kn

Gross salary growth 2007/2006: 6,2%

Net salary growth 2007/2006: 5,3%

Total of registered unemployed people in April 2008: 245.205 (152.307 women)

Official unemployment rate: 13,9%

Maximum unemployment support: 1.200,00 kn

Minimum unemployment support: 1.026,20 kn

Poverty rate: 11% (data from the World Bank)

16% (data from the State Statistical Office)

Part one – Employment practices

The main legal document that regulates work and rights of the citizens related to the work is the Constitution of Croatia. In Article 54, the following is written:

*“Everybody has the right to work, and the freedom of work.
Everyone freely chooses his/her profession and job, and every job should
be accessible to every person under the same conditions”*

In Article 55 that follows, it is stipulated that:

*“Every employed person has the right to his/her earnings with which
he/she can ensure to him/herself and his/her family a free and decent life.
The longest working hours should be regulated by the law.
Every employed person should have the right to week rest and paid annual
vacation, and no one can renounce that right.*

Employed persons can have, in accordance to the law, their share in the decision-making process in their company”.

In the further text of the Constitution there are provisions regarding social, health and pension insurance, and social welfare system. Here we should also point out the Article 59 that regulates the right to workers assembly in trade unions:

“For the protection of their economic and social interests all employees have the right to organize in trade unions, the membership in which is voluntary.

Trade unions have the right to organize their alliances and to join international trade union organizations.

Organization in trade unions can be limited in the army and the police. Employers can organize in their own associations, the membership in which is voluntary.

An important provision in the Constitution is also Article 14 which prohibits discrimination.

“Everyone in the Republic of Croatia enjoys all rights and freedoms, regardless of his/her race, color of skin, gender, language, religion, political or other belief, nationality or social background, property, birth, education, social position, or any other characteristic.”

These issues are referred to in the Constitution in other provisions as well, but their detailed regulation is provided in the Labor Law (LL), adopted by the Croatian parliament (Hrvatski Sabor) in 1996, and amended three times. The last change was made in July 2003 after a long discussion and a public debate. The Croatian Helsinki Committee (CHC), as a leading human rights organization participated heavily in this process by organizing round tables between representatives of all three parties – state, workers and employers. The main intention of the civil society efforts was to protect the position of workers due to the reduction of their rights which were triggered by actions of the International Monetary Fund (IMF) and the World Bank (WB).

Forced labor and debt bondage are prohibited by the explicit regulation in the Criminal Code (CC) of Croatia. In Article 175 of CC, it is stipulated that a person who detains another person for slavery, forced labor or any

other ground will be sentenced from one to ten years in prison. Very often, that criminal offence is connected with human trafficking and forced prostitution. In the last few years there were more than 50 registered cases of trafficking, and many of the victims that were not in transition, were forced to prostitution. In some of court cases, persons that organized those groups were sentenced to prison in a range of 2-5 years. There was also a case of slavery in Osijek some 5 years ago. A significant fact in that case was that the person who deprived a person of his freedom was the former Head of Osijek Police, Dubravko Jezerčić. He was sentenced to 1,5 year in prison for keeping Branko Markan, his neighbor, detained for several months, forcing him to work. This case was very well presented through the media because it involved a public person. Otherwise, the media are not that supportive of common people fighting for their rights daily.

Ground conditions for work in Croatia

One of the first provisions of the Labor Law (Article 2) prohibits discrimination:

“Any form of direct or indirect discrimination of a person seeking work or a working person (worker) on grounds of race, skin color, gender, sexual orientation, marital status, family obligations, age, language, religion, political or other belief, national or social background, property status, birth, social position, membership or non-membership in a political party or trade union, and physical or mental disability is forbidden.

Direct discrimination, pursuant to this law, means any behavior conditioned by any of the grounds mentioned in paragraph 1 this Article, based on which a person could be treated differently from any other person in a similar situation.

Indirect discrimination, in the sense of this law, exists when a neutral provision, criterion or practice, puts a person under paragraph 1 of this Article in a worse position compared to that of others because of his/her characteristic, status, orientation, belief or system of values, which are grounds for prohibition of discrimination under paragraph 1.”

Even though it is a very detailed provision, prohibiting any form of discrimination, and combined with provisions of the Constitution and Criminal Code gives solid protection, in practice we have many cases of discrimination related to work. First form of discrimination is ageism, a practice of most economic subjects. In most vacancy notices, one of the main preconditions for the job is at least two years of work experience on such or similar jobs. This way young people, just out of school, are not given a chance to gain the work experience required for almost any job. In some cases work experience could be a reasonable precondition because of the nature of the job. But in our practice it is common for almost every job vacancy.

A group of women from Dubrovnik filed a complaint to the Helsinki Committee complaining against an employer who during a job interview would ask that the potential employee signs a statement that she would not become pregnant for a certain period of time from the day of employment. Those who refused were not employed. Unfortunately, such cases are very difficult to prosecute, because employers are very careful not to leave any written trace of such action, Those workers that manage to get the job are afraid to testify against their employer, and very often such cases are left unpunished.

A special form of discrimination that is regulated in the Labor Law in Article 4 is harassment and sexual harassment. Any person that claims he/she was discriminated against in the employment process, can file a lawsuit against the employer, and the employer is to prove that discrimination did not appear.

The main employment elements

The employment of a person should be regulated by a written agreement. Such agreement should be signed as a permanent agreement with unspecified term of validity, as a rule. Only as an exception, the employer can sign a temporary employment contract if specified elements of the work indicate limited time for the completion of the work. Even then, the employer can extend such an agreement only up to 3 years. After that, the employer must conclude a permanent agreement with the worker. The Labor Law also regulates all the necessary elements that both a temporary and permanent employment agreement should have.

The Labor Law regulates that a person younger than 15 can't be employed. There is an exception to that rule in Article 21, paragraph 2. Even a person younger than 15 can be employed, but only with the permission of a working inspector, and for jobs that are related to the production, preparation or performance of certain artistic or similar acts, that do not endanger the child's health, education, development or morals.

It should be noted that a major case of child labor has never been registered in Croatia. There are such cases mainly among traditional Roma people, in those municipalities where they form a significant part of the population. They force their children, even if only 8-10 years old, to work in the field, picking up crops, or similar work. Unfortunately, those cases are very rarely reported to the inspection, social services or the police.

Certain provisions of the Labor Law (Articles 28-30) regulate the protection of workers' health, privacy and dignity. The employer is obliged to fulfil the criteria in keeping premises, equipment, tools and working place in general, in such a manner which will ensure lives and health of workers in accordance with the LL and other special legislation. Moreover, the employer must warn the worker of any possible danger or difficulty in the work he/she will perform, and ensure proper equipment that will protect the worker's life and prevent any accidents. The protection of privacy is regulated by the prohibition of publishing any personal data on any worker, if not otherwise regulated in the LL. The employer is also obliged to protect the dignity of any worker by securing working conditions under which they wouldn't be subject to any form of harassment. In companies with more than 20 employees, there should be a person appointed by the employer, which would be responsible for receiving complaints about harassment. After receiving a complaint, the employer has to start the investigation in 8 days. If the action is not taken, or the procedure and measures taken are not appropriate, the worker can suspend his work, until he/she is provided with protection. But in such cases he/she has to file a lawsuit before the competent court within 8 days.

Under the law, a worker can work maximum 40 hours a week. Due to force majeure circumstances or increased workload etc. the employer can request from a worker to work overtime. Overtime work shouldn't exceed 10 hours a week. If overtime work of a certain worker lasts more than 4 weeks in a row, or more than 12 weeks in a calendar year, or if total overtime of all workers exceeds 10% of total working time in a firm, the employer has to

inform the labour inspectorate. Overtime work of minor workers is forbidden. A pregnant woman, a mother of a child up to 3 years and a single parent of a child up to 6 years can work overtime only with a written statement that they work overtime voluntarily.

If work conditions are harmful for people despite protection measures, working hours could be shortened in proportion with the level of possible damage. A worker who uses the benefit of shortened working hours cannot work overtime or perform additional work with another employer.

These are legal provisions regulating working hours and overtime work. Unfortunately, the practice shows that most employees work overtime not as an exception, but almost as a rule. Especially in commerce, large shopping centers etc. overtime is very frequent and very rarely paid as prescribed. The problem is mainly with the ineffectiveness of the Labour Inspectorate's work. Many complaints end with small financial fines for firms, and for them, it is more profitable to pay few fines, and continue with their practice, than to pay for the overtime work of their employees properly.

Every worker that works for at least 6 hours a day is entitled to daily rest of 30 minutes, if that is not regulated differently by a special law. Daily rest should be included in working hours. Between two working days, a worker should have at least 12 hours of break. Exceptionally, season workers that are over 18 have the right to only 10 hours between two working days, but only up to 60 working days in a year.

During the week, every worker has the right to weekly rest of at least continuous 24 hours, usually on Sunday. If there is a need for work on Sunday, the worker should have another day as weekly rest. This issue raised huge controversy because the Catholic Church requested that a law prohibiting work on Sunday is passed. However this attempt was quashed by the Constitutional Court, because it didn't regulate work on Sunday on the same level for each economic subject. Some NGOs argued that the problem is not that much with work on Sunday itself, but with proper evaluation of such work, and paying increased wages for Sunday work, in accordance with the LL. However, the influence of the Church is too strong, and recently, a new draft of the legislation was submitted to the Parliament, again on restricting work on Sunday only in public services, gas stations and limited stores during the tourist season.

Annual (usually summer) vacation paid by the employer shouldn't be shorter than 18 working days, and for older minors who, as described above, can enter an employment contract under specific conditions, the

vacation amounts to at least 24 days. For those workers with especially hazardous jobs, vacation may not be shorter than 30 days.

Maternity protection is also regulated by LL provisions. The present government especially emphasized the role of mothers in a family, and the significance of their protection in the working process. Women cannot perform hard physical work, underground and underwater work, and any work that could endanger a woman's life or health. The LL prohibits the dismissal of a pregnant woman or transfer to another position due to pregnancy. During pregnancy, women have the right to maternity leave 45 days before expected birth and following the birth of the child up to his or her first birthday. The date of the expected birth should be determined by the responsible doctor. For twins, third or any next child, a mother can use the maternity leave of up to the third birthday of her child. It is mandatory for women to use the maternity leave of 28 days before expected birth and full 6 months of the child's life. After first six months of maternity leave, the father of the child can start using the benefits instead of the mother, if both parents agree. Women who continue breastfeeding their child after their maternity leave, or during shortened working hours, should have two 1-hour breaks daily for that purpose.

Even though those provisions could create the perception of good protection of motherhood, practice shows a bit different picture. The problem is that the state is paying remuneration during the maternity leave and the amounts are so low that, in general, they are not giving the possibility for pregnant women to cover even purely existential expenses. Therefore, every government digs into the issue before elections, and uses it as propaganda together with other social issues for better results. Both the coalition government and HDZ promised to increase maternity leave remuneration significantly, but this remained only a promise.

The employer is obliged by the collective agreement to pay wages in accordance with such an agreement. In companies which do not sign the collective agreement and have more than 20 employees, the wage should be regulated under work regulations. If it's not possible to define wages with those two rules, the employer should determine an adequate wage. The adequate wage is the amount regularly paid for the same or similar job in other companies, or the wage defined by a court decision for an individual case. The employer must pay the same wage to men or women if they are working on the same job. The salary should be paid after finishing the job, in money equivalent, within a period not longer than a month. If not regulated otherwise by the collective agreement, the wage should be paid

by the 15th of the next month. For each payment, the employer should provide a written receipt that shows how the wage was calculated. An increased wage should be paid for overtime work, night work, work on Sunday or holiday.

An employment contract can be terminated for the following reasons:

- the worker's death,
- expiry of the temporary employment contract period,
- if the worker turns 65 years of life or 20 years of work, if not regulated differently between the employer and worker,
- making a valid decision on pension due to incapability of work,
- agreement between the worker and employer,
- termination,
- a decision of a respected court.

There are two ways of termination of an employment contract: ordinary and extraordinary. An employer can terminate an employment contract within a legal or agreed termination period, with a just cause in the following cases:

- If there is no further need for the job due to economic, technical or organizational reasons,
- If the worker is not able to fulfill his/her work duties and obligations,
- If the worker violates regulations and provisions of the employment contract.

The termination of the contract in the first two cases is only allowed if the employer cannot employ the worker in another job position. The worker can terminate the contract within a legal or agreed termination period, without stating the reason. When the employment contract was terminated due to economic, technical or organizational reasons, the employer cannot hire anybody else for the that job for at least six months. If there is a need for an opening of such a position before the expiry of the six-month period, the employer will be obliged to first offer the job to the worker whose employment contract was terminated.

The employer and worker have the right to terminate the employment contract, without a legal or agreed termination period, if due to a very severe employment violation or another relevant circumstance, considering the interest of both parties, the continuation of work is not possible. The

employment contract can be terminated for extraordinary reasons only within the first 15 days of the incident which was the ground for it. The party that terminates the employment contract can ask for compensation from the other party, due to non-fulfilment of the employment contract.

Temporary absence from work due to illness or injury cannot be a cause for termination of an employment contract. Submission of a complaint or lawsuit against the employer or participation in any procedure against him/her cannot be a justified reason for the termination of an employment contract. The worker's instituting any proceedings or the mere expression of his/her suspicion of corruption at the respective state institution cannot be the ground for contract termination.

Before contract termination caused by harmful behavior of the worker, the employer is obliged to send him/her a written warning, specifying the violation of duties and obligations, indicating the possibility of contract termination in case of a repeated violation.

In case of a lawsuit because of termination of an employment contract, the worker can ask for a temporary measure of bringing him/her back to work until the end of the procedure. If court determines that the termination of the employment contract was wrong, it will order immediate re-employment of the worker.

Freedom of association and collective bargaining

The Labor Law defines basic preconditions for workers organization, establishment of or the joining in existing trade unions, and international cooperation of trade unions. In Article 167 it is stipulated that:

“Workers have the right, based on their free will, to organize or join a trade union, only under the conditions regulated by the statute or regulations of that trade union.

Employers have the right, based on their free will, to organize or join employers associations, only under the conditions regulated by the statute or regulations of that association.

Both forms of association can be established without any prior approval.”

The LL further stipulates that a trade union can be established by at least 10 persons with full legal capacity. Then there are provisions of legal documents required for establishment of the trade union. Members of the association can ask for court protection in case of violation of their right to

the freedom of association. There is also the prohibition of discrimination against workers because of their membership in a trade union. The law also defines issues of appointing a trade union representative, membership fee, the protection of the representative and other matters.

Collective agreements, as a common and dominant way of regulating employment relations in the EU countries, do not have that dimension in Croatia. The insufficient number of collective agreements, collective agreements at company level rather than branch/sector collective agreements, the low percentage of workers to which collective agreements apply, speak in favour of the fact that collective agreements in Croatia do not have the place they deserve.

Such situation in Croatia in the field of collective bargaining is caused by a number of problems that frequently occur during the collective bargaining process. Problems primarily occur because of certain gaps in legal provisions and unsuitable institutional framework which would support the promotion of collective bargaining and strengthening of bipartite relations in the Republic of Croatia, and thus, there is an emerging need to prepare a comprehensive overview of a collective bargaining system.

In the Republic of Croatia, according to priorities, the following legal bases provide for collective bargaining:

1. ILO Conventions and other international agreements,
2. the Constitution of the Republic of Croatia,
3. the Labour Law and related regulations and
4. collective agreements and other autonomous legal sources.

While ILO Conventions and the Constitution of the Republic of Croatia stipulate the basic workers' rights such as non-discrimination, the right to strike and the right to information, the Labour Law lays down the minimum framework for employment relations, whereas collective agreements and other autonomous legal sources determine all issues of employment relations in entirety and detail.

a) Parties to a collective agreement

The legal framework for collective bargaining is set forth in the Labour Law, Article 185 (consolidated text) which determines the possible parties to a collective agreement. Therefore, according to the Labour Law, the parties to a collective agreement can be:

- a. on the part of the employer,
 - i. one or more employers,
 - ii. an employers' association
 - iii. an employers' association of a higher level

- b. on the part of the trade union
 - i. a trade union
 - ii. a trade union association of a higher level, which is willing and capable to protect and promote its members' interests

Article 163 of the Labour Law stipulates that an association may be a party to a collective agreement if founded and registered in accordance with the Labour Law.

Example: Determination of the negotiation team structure

Case: when only one trade union is active within a single area

Very often, there is a case where only one trade union is active in the area for which a collective agreement is being concluded, and in that case, the trade union has the freedom to determine the structure and number of members of the bargaining committee.

Case: when several trade unions are active within a single area

However, the problem occurs when several trade unions are active within a single area. In regulating that case, the Labour Law does not consider the principle of representativeness, but rather the **principle of representation**

of all trade unions which satisfy conditions and thus can be parties to a collective agreement. Thus, Article 186 of the Labour Law stipulates that, if there are several trade unions (or trade union associations of a higher level) present in the area for which a collective agreement is being concluded, the employer or more employers, an employers' association or employers' association of a higher level can negotiate the conclusion of a collective agreement only with a negotiation team composed of the trade unions' representatives.

Trade unions have to reach an agreement upon the number and composition of a negotiation team.

Case: if trade unions fail to reach an agreement on the structure of a negotiation team

If trade unions fail to reach an agreement upon the number of members and the structure of negotiation team, than the Economic-Social Council has to reach a decision.

In that case, the number of members and the structure of the negotiation team are determined in a way that the negotiation team has at least three and at the most nine members, taking into account the number of trade union members represented in the area for which a collective agreement is being concluded.

The employer, an employers' association or employers' association of a higher level, depending on the area for which the collective agreement is being concluded, are obliged to deliver a certificate proving the number of trade union members present in that area within 15 days after the receipt of the claim from the Economic and Social Council, based on available information, so that the Economic and Social Council can decide on the composition of the bargaining committee.

Case: civil and public services

A problem might arise in case of establishing a bargaining team for civil and public services where the counterparty in negotiations is the Government of the Republic of Croatia. Since the Government of the Republic of Croatia is not the employer in relation to them (apart from officials and employees employed in the Government of the Republic of

Croatia), nor an employers' association, there is the issue of who is authorized to deliver the information on numerical representation of trade unions to the Economic and Social Council in case of a dispute over the bargaining committee structure.

The bargaining committee determines its manner of functioning and decision-making.

A special problem is the fact that the Labour Law, as well as other regulations does not include provisions concerning conditions for representativeness on all levels.

b) Conclusion and validity of a collective agreement

In practice, there are often cases where some trade unions conclude a collective agreement, while the other, which participated in the negotiations, are dissatisfied with its content so they refuse to sign it. In that case, the validity of such collective agreement is brought into question. Starting from the freedom to conclude a collective agreement, it is evident that the conclusion of such an agreement is a matter of good will for each of the contracting parties.

Croatian legislation does not stipulate representativeness for the conclusion of a collective agreement, and therefore, a collective agreement signed by only one trade union is legally valid, although it might have fewer members than another trade union which participated in negotiations as well but refused to sign the collective agreement.

The decision of the Supreme Court of the Republic of Croatia, in a civil case 13/02 from December 30th 2002, determines that a trade union is regularly represented in negotiations even when representatives of some of the participating trade unions do not take part in the negotiations because they refused it.

One should be careful while assessing whether a collective agreement is to be signed only with some of the trade unions, because a trade union which is not a signatory party has no obligation to preserve social peace and can further demand that conditions which were not accepted in the collective

agreement are met.

Case: if only a union local is established on the level of employer

In case a trade union is not established at the level of the employer and there is only a union local, according to the Law, the union local does not have the authority to conclude a collective agreement because it does not have legal personality, but based on Article 166, paragraph 2 and Article 167, paragraph 2 of the Labour Law, the trade union statutes may stipulate that the union local (or another form of internal organisation) has the authority to conclude a collective agreement. Also, in accordance with the statutes, the body (or a person authorised to conclude collective agreements) may issue the appropriate mandate to the shop steward in a company where a collective agreement is to be signed. The obligation to issue mandates for every situation during the negotiations and the conclusion of a collective agreement is stipulated in Article 193 of the Labour Law, which at the same time partly refers to its issuing in accordance with the Statutes of Association.

c) Representativeness of employers' associations in collective bargaining

Regarding employers' associations, the Labour Law, in respect of collective bargaining, does not stipulate the representativeness of association, or the manner of establishing the bargaining committee in case there are several employers' associations. Therefore, the competent ministry provided the following explanation:

“In relation to the letter in which you ask us for our opinion on the possibility to negotiate and then conclude a collective agreement at the level of a particular county with several employers, where some of them are members of employers' association and some are not, we give you the following opinion:

- 1. It is not necessary that those employers pre-establish their association on the county level,*
- 2. Members of the Croatian Employers' Association as well as those employers which are not members can equally negotiate and conclude such a collective agreement.*

The legal basis for such an opinion is found in the provisions of Article 194 of the Labour Law, which do not offer any limitations related to the employer as a party to the collective agreement.”

(The Ministry of Labour and Social Welfare, *cl: 003-05/98-01/34, Reg. no: 524-02-98-2, May 22nd 1998*).

The association's statutes, according to the Labour Law, must also include provisions on bodies authorized for concluding collective agreements as well as the conditions and the procedure for organising industrial actions, together with the fact that the conclusion of collective agreements may be transferred to an association of a higher level.

d) Conclusion of a collective agreement

The course of the procedure leading to the conclusion of a collective agreement may be divided in several phases:

1. Procedure for initiating collective bargaining

The initiative for collective bargaining, that is, the procedure for amending or renewing already concluded collective agreements is the right of any party authorised to enter collective bargaining. In this procedure it is advisable to define the subject of negotiation so that the other party can appropriately consider the initiative and declare its position.

2. Collective agreement procedure

The Labour Law stipulates that persons who represent parties to a collective agreement need to be authorized to enter collective bargaining and conclude a collective agreement and need to offer proof of such authorization.

If a party to a collective agreement is a legal person, a mandate must be issued in accordance with the regulation of that legal person.

If one of the parties to a collective agreement is an employer's association or an employers' association of a higher level, persons representing it, along with written authorization, have to deliver to the other party a list of employers that are members of the association on whose behalf they are

negotiating or concluding a collective agreement. This is important to determine who the collective agreement applies to.

Trade unions have to agree upon the composition of the bargaining committee because the employer is obliged to negotiate only with a bargaining committee composed in accordance with legal provisions. Before the beginning of negotiations, it is common to agree on **the Protocol on the Course of Negotiations** which states the venue of negotiations, frequency of meetings, duration, keeping minutes or notes on the course of negotiations, time off from work for members of the bargaining committee during negotiations etc. During negotiations there can be termination, initiation of reconciliation procedure or organisation of a strike. Those situations are determined by the Labour Law so that parties taking part in negotiations are obliged to respect the defined procedure and time limits.

3. Procedure for the conclusion of a collective agreement

According to Article 190 of the Labour Law, a collective agreement must be concluded in a written form. The collective agreement does not necessarily have to be concluded by all parties which participated in collective bargaining; one signature on behalf of the employer and one signature on behalf of trade unions are sufficient for the collective agreement to have a legal effect.

4. Procedure for registration, announcement and implementation of a collective agreement

The Labour Law stipulates that the collective agreement needs to be registered with a competent body. The employers' associations also have to submit the list of employers bound by the collective agreement as well as all changes in membership in the association during the duration of the collective agreement. All this is in the function of verifying the validity of the very collective agreement as well as verifying which parties it applies to, whether when evaluating its value to the legal and physical persons, in the court or other proceedings. Consequently, the competent body should make the information from the registry of collective agreements available

upon request.

The Labour Law stipulates the obligation of the parties to a collective agreement, and persons to which it applies to, to fulfil their obligations in good faith. In case of breach of the obligations deriving from the collective agreement, the injured party or a person whom it applies to may demand the compensation of damage.

e) Disputes concerning the interpretation of a collective agreement

Sometimes there is a possibility of dispute over the interpretation of a collective agreement. Although this could be a justified reason for undertaking industrial actions (can you please clarify what industrial actions could be?), as a rule such situation is resolved in a way that a collective agreement foresees a joint body for its interpretation in order to eliminate possible conflicts and sustain social peace.

f) Content of a collective agreement

Article 196 of the Labour Law stipulates that a collective agreement determines rights and obligations of parties to the collective agreement, and it may contain provisions which regulate the content and the conclusion/termination of an employment contract, issues related to labour councils, social insurance and other issues deriving from or related to the employment contract.

g) Scope of a collective agreement

Provisions of the collective agreement directly apply to persons it refers to, in accordance with the provisions of the Labour Law. A collective agreement may regulate the procedure of collective bargaining, as well as the procedure of bodies authorised to facilitate peaceful resolution of labour disputes arising from the collective agreement.

Persons who may be parties to a collective agreement, pursuant to the Labour Law, are obliged to negotiate the conclusion of a collective agreement in good faith.

Contract obligations

Pursuant to Article 199 of the Labour Law, a collective agreement obliges:

- i. all persons that concluded it,
- ii. all persons who were members of signatory parties at the time when a collective agreement was concluded,
- iii. all persons who subsequently became members of the association which concluded the collective agreement,
- iv. all persons who joined the collective agreement subsequently,
- v. all persons over which the Labour Minister expanded the application of the collective agreement.

A collective agreement must note its scope and persons it applies to.

h) Subsequent admission to a collective agreement

Persons who, pursuant to the provisions of the Labour Law, can be parties to a collective agreement may be admitted to it subsequently. The statement on the admission to the collective agreement should be delivered to all parties of the collective agreement. The statement should be delivered to a competent state administrative body.

Persons subsequently admitted to the collective agreement have equal rights and obligations as parties who had concluded it.

i) Expansion of a collective agreement

The Labour Law stipulates expanded application of a collective agreement on an exceptional basis, when in a public interest, based on the proposal of a party to the collective agreement. Prior to issuing the decision on expanded application of a collective agreement, the Labour Minister shall request the opinion of trade unions, employers' associations or representatives of employers' associations which the expanded application refers to.

In case of expanded application of the collective agreement, only the

normative part of the collective agreement applies to persons for whom the application was expanded.

The decision on expansion of a collective agreement should be published in the 'Official Gazette' and may be revoked only in a way defined for its adoption.

j) Extended application of a collective agreement

Extended application of a collective agreement is defined in provision 205 of the Labour Law in a way that in situations when the collective agreement does not provide otherwise, after the expiry of the period for which the collective agreement was concluded, the content and termination of employment relations are still applied until a new collective agreement is concluded, as a part of previously concluded employment contracts.

In practice, this provision annuls *de facto* the effects of the termination of a collective agreement, regardless of new circumstances (*rebus sic stantibus*) for which the collective agreement had to be terminated.

In the Republic of Croatia, one or more employers, employers' associations or employers' associations of a higher level on the employer's part may participate in collective bargaining.

Within certain companies, the employer negotiates autonomously, while on the sectoral level, collective bargaining is undertaken by the following associations of a higher level:

1. Croatian Employers' Association – 23 sectoral associations and 5 associate members
2. Confederation of Croatian Industry and Entrepreneurs – 7 sectoral associations
3. Union of Independent Employers' Associations – 5 sectoral associations

In cases where the State has the role of the employer in a certain sector or in civil or public services, the Government of the Republic of Croatia is the negotiating party.

In the Republic of Croatia there are 700 registered trade unions, out of which 320 are registered on the national level.

In the capacity of workers' representatives and on behalf of trade unions, individual trade unions or trade union associations of a higher level, which are ready and able to promote its members' interests during negotiations on the conclusion of a collective agreement, may participate in collective bargaining, so that in Croatia some 170 registered trade unions which are affiliated to associations of a higher level participate in the collective bargaining process. Sectoral associations are members of associations of a higher level, or trade union confederations.

Six trade union confederations are active in Croatia and they are as follows (according to the number of members):

1. the Union of Autonomous Trade Unions of Croatia – 21 affiliated trade unions,
2. the Independent Croatian Trade Unions – 51 affiliated trade unions,
3. the Association of Workers' Trade Unions of Croatia – 52 affiliated trade unions,
4. the Association of Croatian Public Service Trade Unions – 5 affiliated trade unions,
5. the Croatian Trade Union Association – 115 affiliated trade unions,
6. the Trade Union of Services UNI-Cro – 8 affiliated trade unions.

Trade union confederations jointly discuss all issues and problems of strategic importance for trade unions and trade union movement, and harmonise and determine mutual positions concerning issues on the national level, such as the National wage policy.

Bipartite and tripartite cooperation

In terms of collective bargaining, the legislative framework provides the possibility for realisation of bipartite social dialogue on several levels. Bipartism is present on the level of companies and it serves as a basis for collective bargaining in the Republic of Croatia as well as on the level of

economic branches, according to the number of concluded collective agreements, however its impact on the development of industrial relations in the Republic of Croatia is quite small.

The Government of the Republic of Croatia and trade unions

In the area of bilateral social dialogue, consulting and exchange of information between representatives of trade unions and the Croatian government, that is, specific ministries on the issues within their competence, pursuant to the Conclusion of the Government of the Republic of Croatia as of 7 April 2005, take place.

The Government of the Republic of Croatia and the Croatian Employer's Association

The representatives of the Croatian Employer's Association also have the same possibility to consult representatives of state bodies pursuant to the Conclusion brought by the Government of the Republic of Croatia on 8 December 2005.

Tripartite cooperation

Economic and Social Council, among other things, is involved in conclusion and implementation of collective agreements and their harmonisation with economic, social and development policies and measures. The Commission for Collective Bargaining, within the Economic-Social Council is a permanent working body that monitors and gives its opinion on issues related to conclusion and implementation of collective agreements, as well as follows and analyses their content and scope.

The influence of the state on the collective bargaining system

The state, that is the Ministry of Economy, Labour and Entrepreneurship, is responsible for decision-making in relation to the implementation of expanded collective agreements, with the prior obligation to consult the Economic-Social Council.

The parties involved in a collective agreement have the obligation to submit signed collective agreements to the Ministry of Economy, Labour

and Entrepreneurship or a state administration office in charge of labour for record-keeping. That is, each collective agreement as well as all its modifications, has to be submitted to the Labour Ministry or a county office in charge of labour (state administration offices in counties). If a collective agreement is implemented within the territory of the Republic of Croatia it is necessary to submit it to the Labour Ministry while others are submitted to county offices. A collective agreement is submitted by the party first indicated therein, that is the party cancelling the collective agreement.

By participating in the work of the Economic-Social Council and promoting the conclusion and implementation of collective agreements, the Republic of Croatia contributes to the advancement of the institute of collective bargaining.

The provisions of the Labour Law, that regulate the trade union and the organization of employers and collective bargaining as well as other rights and obligations arising from employment relations, provide the legislative and institutional framework for the efficient functioning of collective bargaining in the Republic of Croatia.

In other words, adequate legislative provisions that enable functioning of employers' and trade union organisations, as well as their participation in the social dialogue on various levels (company level, economic sectors, and national tripartite level), were laid down. According to a review presented by social partners, despite the fact that they are mostly satisfactory certain provisions of the Labour Law regulating collective bargaining need to be further considered. The provisions that require further examination are: the provision on the structure and number of members of shop stewards' committee, provision on extended application of the collective agreement and similar.

Within the institutional framework, the social partners have detected somewhat greater difficulties. Among other things, they noted the absence of a regulated labour statistics system. Furthermore, a relatively small number of Croatian businessmen are members of associations such as employers' organisations on the national level.

Considering the number of recorded collective agreements and the fact that just 8% of them are sectoral collective agreements stresses the need for intensified activity of all social partners on the development of social dialogue on the sectoral level, all in order to regulate minimum labour obligations, rights and rules for relevant sectors.

The current capacities of social partners involved in the collective bargaining process leave plenty of room for development, therefore it is possible to improve the level of information and education of social partners in the process of collective bargaining, define long-term goals and strategies and introduce new issues to collective agreements and make the system of settling collective labour disputes more efficient.

In order to further improve bipartite relations, it would be necessary to continue with intensive professional training of all social partners through continuous joint education and information on advantages of collective agreements and strong bipartism through examination of the domestic economy as well as positive examples from foreign practice.

Also, additional efforts need to be invested in order to make the settlement of labour disputes more efficient, which means that present activities related to reconciliation procedures in collective labour disputes have to be further intensified and that the settlement of labour disputes before courts should be accelerated as well.

The Economic-Social Council should play a crucial role and one of its functions should be the promotion of collective bargaining, especially when bearing in mind that one of its functions prescribed by the law is "informing and presenting its elaborated opinion to the Minister of Labour on all problems related to the conclusion and implementation of collective agreements".

Despite a developed legal framework and advancement in the development of institutional prerequisites for the system of collective bargaining in the Republic of Croatia, there is a lack of essential social partnership. Only joint efforts and properly set aims can lead to prosperity of all Croatian nationals.

The real value of collective bargaining and benefits arising from the cooperation between employers and workers are still not quite recognised by social partners in order for them to become common practice within economic entities. Therefore the process of accession to the European Union, that is, the entering of Croatian social partners into the European social dialogue, is expected to result in an awareness of opportunities and possibilities quality bipartism and tripartism can create on the territory of the Republic of Croatia as well.

Part two – Concept of CRS

It is evident that CRS has grown exponentially in the last decade. More companies than ever before are engaged in serious efforts to define and integrate CRS into all aspects of their business, with their experience being bolstered by a growing body of evidence that CRS has positive impact on business economic performance. CRS and, more broadly, business accountability, have become topics of increased media attention and scrutiny, both in the business press and mainstream media. Media attention has forced companies to examine, and in some cases revise, their policies and practices on the range of CRS issues.

The latest example of an opportunity for business to become engaged collectively in tackling development issues are UNDP's Millennium Development Goals (MDG's) which are part of UN Millennium Declaration focused on major challenges facing the world.

Since the fall of Berlin wall, transition from socialism to capitalism, free markets, and political pluralism, has been complex and contradictory throughout Central and Eastern Europe (CEE) and the former Soviet Union (FSU). The shocks of transition led to unprecedented deterioration in livelihood, health and welfare. In Croatia and throughout former Yugoslavia, transition was affected by war, destruction, rising of ethnic nationalism, and large-scale forced migrations. It is only since 1995 that there has been a degree of territorial "normalcy" in Croatia, and the consolidation of democracy was not completed until the election of central-left, internationally open coalition government in January 2000.

There is a mixed picture of socio-economic development, compounded by inequalities and uneven development before the war, and exacerbated by the war itself that has affected the development of CRS in Croatia. As in many countries in transition, there is still very strong influence of the

government on all social and economic processes, which results in “favouritism” and “clientelism” and has a stifling effect on the country’s overall development.

Through some assessments, a few dominant CRS trends and areas were identified in Croatia, which are all closely related to the prevailing traditions of community embeddedness, sustainable development, quality management as well as impacts of globalization and country’s particular transitory socio-economic and political position.

- Core Business Practices (especially investments in human resources development, training and education; improvement of quality standards of products and processes; care for consumers – all of which are seen as important elements of competitiveness)
- Community Development (investment in the community, mainly donations to civil society organisations (CSO) and NGOs in the area of health, sports, children and youth, socially marginalized groups and others)
- Environment (investments into technology and improvement of the environmental management process)

The issue of environmental management is probably the CRS theme best understood by the Croatian private sector. All large companies, regardless of their industry sector, reported some investments into environmentally responsible management. A number of companies set up environmental management teams (eco-teams) with the task of foreseeing and enhancing company’s overall performance in that respect. The most frequent form of CRS reporting in Croatia is environmental reports. Many companies are producing such reports, including INA, HEP, LURA, Pliva, Coca-Cola Beverages Hrvatska and KRAŠ. In addition, many Croatian companies are perceived as leaders in the area of good environmental management in SEE region. For example Pliva received the Corporate Environmental Protection Award from the European Bank for Reconstruction and Development (EBRD) in 2001, in recognition of its continuous efforts in environmental protection and its practices of sustainable development in all its operations as well as commitment to other aspects of CRS.

Corporate governance in Croatia reflects several important aspects of recent history in Croatian business and its legacy, including: a history of

social ownership and self-management; multiple transition processes i.e. from socialism to market economy, from war to peace, restructuring and on-going legacy of privatisation; and recent economic distress and close political involvement in the economy.

Bribery and corruption are still present issues, but during the last few years, according to Transparency International, Croatia considerably improved its rating on the Corruption Index. According to the Croatian Association of Employers (CAE), however, while the level of corruption and bribery decreased, it has also moved from a higher level of the state apparatus to the local level of counties and municipalities.

Within the State's Prosecutors Office, a special unit was established - Office for Suppression of Corruption and Organized Crime. Among many responsibilities, fighting corruption is one of the leading. There is a special department within the office with the following competences:

1. informing the public of the danger of and damage by corruption, and the methods and means to prevent it,
2. informing the public of the Office's activities based on the competence and directives from the Head of the Office
3. preparing reports and analyses on the form and causes of corruption in public and private sectors, and possibly giving incentives to the Head of the Office for the adoption of new regulations or amendments of regulations in force,
4. performing other duties according to the Office's annual schedule of duties.

Public tenders in Croatia are characterized by the lack of transparency, over-bureaucratic procedures, and related corruption. CAE in cooperation with the "Briefing" agency has recently taken a monitoring and advocacy initiative which aims at a more fair and transparent process of public tenders.

There seems to be a discrepancy between the advocacy for greater transparency of public tenders, the growing public debate on corruption and the Law on Conflict of Interests on one side, and on the other the absence of any real explicit mention of internal anti-corruption policies in businesses themselves. The fact that Croatian Chamber of Commerce has drafted the Code of Business Ethics including specific provision on

companies' transparency to all other stakeholders and prevention of corruption represents a valuable opportunity to frame issues on corruption within the CRS debate.

Croatian NGOs and CRS

When it comes to CRS, Croatia's 20.000 registered NGOs can be grouped into the following two main categories: (I) NGOs that attempt to establish partnership with the business sector for promoting social or community development and (II) NGOs that perform watchdog functions through monitoring companies, or lobbying for legislative changes aimed at regulating businesses.

The most active organizations promoting the notion of CRS through partnership with NGOs currently includes primarily training organizations and NGO support organizations such as: SLAP, SMART, NIT, EOS, ODRAZ, Ri-Center, Association MI and the Center for Peace, Non-violence and Human Rights from Osijek. All of these organizations provide trainings on relations with the business sector and are increasingly engaged in education and brokering community-based cross-sector cooperation to promote local development. There are additionally a number of NGOs with a strong focus on sustainable development that have taken steps towards initiating cross-sector cooperation around specific projects or have worked to build alliances with business representatives or companies.

Few NGOs in Croatia have the capacity of effective monitoring and pressurising businesses regarding their environmental or social performance. There have, however, been a few initiatives by NGOs that have had some effect particularly in the area of environmental protection, women's rights and consumer protection.

Croatian environmental organizations, twenty-three of which are organized in the advocacy network Zeleni forum (Green Forum) founded in 1997, are the most vocal and active segment of civil society serving as a watchdog of corporate behaviour at local, regional and national levels. There are numerous examples of ad-hoc campaigns and protests organized by Zelena akcija (Green Action) and other regional environmentalist groups (such as Zelena Istra, PAN, Sunce, Plavi Planet, Osječki zeleni, EKO Kvarner)

usually driven by citizens' complaints submitted to local branches of the national network of SOS environmental telephones. There have also been several national and regional campaigns, with a strong focus on longer-term monitoring of environmental policies and changes in legislation and high-level political decisions.

Since 1998, B.a.B.e., a women's human rights group, has been monitoring media presentation of gender issue. In an effort to raise awareness of harmful and discriminatory sexist practices in Croatian advertising campaigns, this NGO has used numerous public appearances, self-produced radio shows, publications and films, as well as protests organized in cooperation with Women's Network of Croatia.

Consumer associations have also become active and highly visible over recent years, primarily around advocacy for a Law on consumer protection. Consumer organizations HRID, Potrošač and HZUP have direct interaction with consumers through their SOS hotlines and website, and publish reports on most frequent violations of consumer rights, with ongoing campaigns targeting public services companies Hrvatska Elektroprivreda (Electric Power Supply Company) and Hrvatski Telekom (Croatian Telecommunications Company) and others.

While there are a number of challenges to the development of CRS, as mentioned above, there are also numerous possibilities to overcome these challenges and build opportunities for development of CRS in Croatia. The Croatian context imposes a highly regulated legal system, a low level of trust in the rule of law and various forms of economic crimes and corruption within the public and private sector. Despite these difficulties, however, there are still strong CRS efforts by the Croatian private sector as highlighted above. This provides evidence that CRS is not only possible in Croatia, but that it is occurring on the national and local level. In order to ensure its broader effect and impact on the overall private sector, it needs to be more systematically monitored and more widely visible among the general population in the country.

Legislative Preconditions for the Development of Corporate Social Responsibility in Kosovo¹

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Abstract

This article presents introduction of legislative preconditions of Kosovo in the sphere of corporate social responsibility. Institutional life in Kosovo after June 1999 is based on the UN Resolution 1244 which authorizes international presence in Kosovo. The first part of the paper explains what is the applicable law in Kosovo and how employment practices in Kosovo are regulated after 1999, workers' protection and the right to organization and to collective bargaining. The second part is focused on cadastre and land measurement, corruption and intellectual property right.

Keywords: the applicable law in Kosovo, employment practices, collective bargaining, workers' protection, corruption, cadastre and land management, intellectual property rights, foreign investments.

Background

Institutional life in Kosovo after June 1999 is based on the UN Resolution 1244. The UN Resolution 1244 authorizes international civil and security presence in Kosovo. The resolution requested the Secretary General of the UN to appoint a Special Representative ("Special Representative of the Secretary General" or "SRSG") to control the implementation of international civil presence.

The Resolution authorizes the SRSG to establish civil presence in order to provide interim administration for Kosovo. Interim administration has to provide transitional administration while establishing and overseeing the

¹ Proofreading by Emel Karaman

development of provisional democratic self-governing institutions to ensure condition for peaceful and normal life for all inhabitants of Kosovo.

The Special Representative of the Secretary-General Mr. Hans Haekkerup, pursuant to the authority given to him under the United Nations Security Council Resolution 1244, for the purposes of developing meaningful self-government in Kosovo and establishing provisional institutions of self-government in the legislative, executive and judicial fields has promulgated the Constitutional Framework for Provisional Self-Government on the 15th of May 2001.

The basic provisions of the Kosovo Constitutional Framework for Provisional Self-Government determine Kosovo as an entity under interim international administration which, with its people, has unique historical, legal, cultural and linguistic attributes. The territory of Kosovo is undivided, through which the Provisional Institutions of Self-Government established by Constitutional Framework for Provisional Self-Government exercise their responsibilities. Kosovo consists of municipalities, which are basic territorial units of local self-government with responsibilities as set forth in UNMIK legislation in force on local self-government and municipalities in Kosovo. Kosovo is intended to be governed democratically through legislative, executive, and judicial bodies and institutions in accordance with the Constitutional Framework and UNSCR 1244 (1999).

The Provisional Institutions of Self-Government are:

- (a) Assembly; (b) President of Kosovo; (c) Government; (d) Courts; and
- (e) other bodies and institutions set forth in the Constitutional Framework.

The President of Assembly signs each law adopted by the Assembly and forwards it to the SRSG for promulgation.

The Framework under point 9.1.45 states that: “Laws shall become effective as of the day of their promulgation by the SRSG, unless otherwise specified.”

Exceptionally, during the transition period, the Assembly of Kosovo, in consultation with the **ICR**, may formally approve the necessary legislation which does not require further approval of or promulgation by **UNMIK**.

What is the Applicable Law in Kosovo?

The Special Representative of the Secretary-General, pursuant to the authority given to him under the United Nations Security Council Resolution, promulgated UNMIK Regulation No. 1999/24 as of 12 December 1999 on the Law Applicable in Kosovo.

UNMIK Regulation 2000/59, Amending UNMIK Regulation No.1999/24 on the Applicable Law in Kosovo defining what law is the Applicable Law in Kosovo.

The above-mentioned UNMIK Regulation states that: “The law applicable in Kosovo shall be:

- (a) the regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued there under; and
- (b) the law in force in Kosovo as of 22 March 1989.

In case of a conflict, the regulations and subsidiary instruments as administrative direction take precedence.

If a court of competent jurisdiction or a body or person required to implement a provision of the law, determines that a subject matter or situation is not covered by the regulation promulgated by SRSG and the law in force in Kosovo as of 22 March 1989, the court, body or person shall, as an exception, apply the law adopted as of 22 March 1989 which is not discriminatory.

In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards, as reflected in particular in:

- (a) the Universal Declaration on Human Rights as of 10 December 1948;
- (b) the European Convention for the Protection of Human Rights and Fundamental Freedoms as of 4 November 1950 and the Protocols thereto;
- (c) the International Covenant on Civil and Political Rights as of 16 December 1966 and the Protocols thereto;
- (d) the International Covenant on Economic, Social and Cultural Rights as of 16 December 1966;
- (e) the Convention on the Elimination of All Forms of Racial Discrimination as of 21 December 1965;
- (f) the Convention on Elimination of All Forms of Discrimination Against Women as of 17 December 1979;
- (g) the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment as of 17 December 1984; and
- (h) the International Convention on the Rights of the Child as of 20 December 1989.

No person undertaking public duties or holding public office in Kosovo shall discriminate against any person on any ground such as sex, race, colour, language, religion, political or other opinion, natural, ethnic or social origin, association with a national community, property, birth or other status.²

During exercising their duties the courts in Kosovo may request clarification from the Special Representative of the Secretary-General in connection with the implementation of the regulation. The Special Representative of the Secretary-General shall provide such clarification for the consideration of the courts in exercise of their functions.

² Section 1 of UNMIK Reg 1999/24

POST 1999 Employment practice

The employment situation is controversial. There is no doubt that unemployment rate is very high. Even so, it is extremely difficult, indeed currently nigh-on impossible, to obtain a reliable picture as to its actual dimensions of employment rate as we have no reliable information at our disposal. Kosovo has a population which was estimated to be 1.8-1.9 million in 1999 and 2.3 million in 1997. As a result of an extremely high birth rate, it is predominantly a very young population.³

Kosovo's population of working age was estimated to be 1.33 million in 1997, among whom 469,000 (35.3%) were economically active, while 861,000 (64.7%) were economically inactive – or “unemployed”, as put by local experts. Firstly, in the 1990s the Albanian community developed the so called “parallel” activities – primarily in education and health care – to substitute services from which they had been dismissed. These “parallel” activities provided (paid) employment for an estimated 24,500 people. Secondly, a great number of Kosovo people (estimated to be 400,000) have also been working abroad. Third, Albanian experts refer to the “grey economy” as a “considerable source of income and provisional employment.” If unreported and unregistered activities are covered by this term, one wonders what contribution such economic activities make at present to employment. Fourth, a mushroom growth in small undertakings – primarily in trade and services, but also in manufacturing – has taken place during the past year. Finally, the international presence has also made a considerable contribution to employment.

Workers, facing a very high level of unemployment, were in an extremely vulnerable position. According to several reports, they were employed, hired and fired' in the absence of observance of any legal regulations. In such a context, there was the permanent danger that the observance of basic rights at work was also dependent on the considerations of employers. There was strong evidence of the presence of, for example, child labor, even if not in its worst forms.⁴

³ In 1991, people below the age of 25 already constituted a 57.8% share.

⁴ Source: *SEER SouthEast Europe Review for Labour and Social Affairs Employment and Workers' Protection in Kosovo*

The Special Representative of the Secretary General, for the purpose of setting out the essential labour law in Kosovo, promulgated the

Essential Labour Law in Kosovo (“UNMIK Regulation No. 2001/27”)

The UNMIK Regulation No.2001/27, which is according to UNMIK Regulation 2000/59, Amending UNMIK Regulation No.1999/24 on the Applicable Law in Kosovo, regulates employment in Kosovo including employment relationships under which work or services are performed. Employment relationships within the civil service, UNMIK, KFOR and the offices or missions of foreign governments and international governmental organizations is not be governed by this regulation.

Prohibition of All Kinds of Discrimination

Discrimination in employment and occupation is prohibited. The terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. The term discrimination includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, age, family status, political opinion, nationality or social origin, sexual orientation, language or union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed discriminatory. Discrimination against a disabled person, whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized natural or mental impairment, is prohibited. Discrimination, direct or indirect, against a female employee arising from her pregnancy or childbirth is prohibited. Sexual harassment at the workplace is prohibited.

Prohibition of Forced or Compulsory Labour

Forced or compulsory labour is prohibited. Forced or compulsory labour means all work or services which are exacted from any person under the menace of a penalty and for which such person has not offered himself/herself voluntarily.

Minimum Age

Eighteen (18) years of age shall be the minimum age for employment or work which by its nature, or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of a young person. A person under 18 years of age may only be employed in light work that is not likely to be harmful to his/her health or development, and shall not affect his/her attendance at school. A person under 15 years of age may not be employed.⁵

Although child workers in Kosovo are engaged in a wide variety of work activities, the bulk of child labour concentrates in the three core categories: selling products in streets and markets, housework, and, agriculture. The most common work places for child workers are homes, shops and markets, streets, and, agricultural fields. The age of the child and the number of hours that children spend working per day are key factors to determining the intensity of work. On average, working children in Kosovo start working at the age of 10 years old and some children engage in work activities as early as four years of age. A survey revealed strong seasonal changes in child labour activities with the majority of working children intensifying their work during the summer holidays and only about three quarters of children reported working all year long. On average children work about 6,5 hours per day during the summer and four hours during the school year, six days a week. About 15 per cent of the working children reported health problems, especially those performing harsh physical work like carrying of goods. About 35 per cent of these children is limited due to their work and school commitments. Also, many working children need to commute to and from their workplace due to the greater earning potential in urban centers. Additionally, some of the children surveyed articulated that they often work late at night and are at increased risk to be victims of criminal attacks. Although the majority of working children do not receive any remuneration for their work, those who do get paid earn in average approximately one Euro per working hour. In most cases the interviewed children reported that they give their earnings to their families to supplement the overall family income.

⁵ UNMIK Regulation No. 2001/27

Almost all working children in Kosovo count on existing family units. These rather large families with an average of 7 family members do not necessarily belong to the lowest social segments of society. Almost 45 per cent of heads of households have completed secondary education. The vast majorities of working children families do not get social assistance and seem to use the earnings of their children to stay slightly above poverty and extreme poverty levels. School attendance in Kosovo is relatively high and about 87 per cent of working children go regularly to school and like school. However, great differences among the ethnic communities and identified Roma/Askahlia/Egyptian (RAE) population as the most affected by non-attendance. The main reasons for children's non-attendance are discrimination, high education costs, and, child labour. Additionally, the low value placed on education of girls' plays a significant role when looking at gender specific issues. The data also reveals a correlation between the education levels of the heads of households and lower family incomes, which supports the common belief that a lack of educational opportunity can lead to entrenched poverty.

Generally speaking, child laborers enjoy their work and confirm they like to work and to support their families. The small numbers of children who do not like to work stated that they perceived themselves as too young to have to work. From a gender perspective, some notable characteristics have been observed. While boys predominantly work in the selling and trading of items in public places, girls mostly work at home performing housework chores. Boys on average start work at an earlier age and work more hours per day than girls. This leads to an overall perception of female child labor being both less frequent and less severe. On the other hand, the survey shows that girls get less frequent remuneration for their work but are more likely not to attend school. At the same time, a significant number of girls are engaged in more visible and harsher forms of child labor such as late night work or work in the street.

Some specific characteristics of working children in Kosovo are related to the ethnic background of their community. Child labor activities in the Albanian and Serbian communities show broad similarities. Roma/Ashkalia/Egyptian population appears to be the most at risk to participate in less visible but more risky and harder child labor activities such as can collection or harsh physical work. Additionally, unlike their Serbian and Albanian counterparts, income generated from RAE working children is less likely to be perceived as supplemental income but is more

likely to be viewed as income necessary for the survival of family members. Working children from RAE communities are also more likely to loose connection to formal schooling. On the other hand, child labor among the Serbian community seems to be less dramatic and has no impact on the school attendance of children while the Albanian working children assume a position somewhere between these two extremes. Focus groups discussions with children, parents, teachers and representatives of Governmental Organizations as well as Non-Governmental Organizations reveal a considerable consensus of opinion of possible causes and effects of child labor in Kosovo as well as possible interventions. Based on these discussions, there seems to be very a clear and precise picture of the main characteristics of child labor with regard to sex, social, ethnic and/or geographic indicators. Most focus group participants reported perceptions of child labor as negative for the welfare of children and reported that they perceived a direct correlation between child labor and low school attendance and school success. The majority of participants highlighted a general lack of policies, programmes and social services to support working children and their families. Suggestions for possible interventions included the following:

- a) to increase economic opportunities for families,
- b) to strengthen coordination among the fields of education, social protection and law enforcement, including appropriate government structures, and,
- c) to design and implement assessments and awareness raising campaigns.

On the basis of the data collected, there are several areas of engagement, which should be part of a broader National Policy and Action Plan for Children to effectively ensure, promote and protect children's rights. The key measures include:

First, to gather and compile accurate and appropriate qualitative and quantitative data on child labor in Kosovo in order to provide necessary information for an integrated approach on child labor.

Second, free quality education should be guaranteed and educational institutions must more effectively target those groups that are more at risk to drop out or to not enroll in formal schooling. Furthermore, child labor should be understood as a risk factor for low school attendance and low school success rates especially for girls and RAE children.

Third, child labor has an indisputable link to poverty and requires poverty reduction interventions in form of income replacement and economic incentives. Special attention to the poorest segments of society but also to marginally poor families has to be given.

Fourth, child labor must become a recognized problem in Kosovo and addressed in public awareness campaigns in order to initiate discussions within society and families.

Fifth, official institutions have to perform their roles in law enforcement, especially for worst forms of child labor. Also institutional capacity for appropriate ways to deal with the child labor issue must be increased for labor inspectorates, police, and professionals working in the Centers for Social Work. In addition, coordination and collaboration among relevant governmental institutions should be increased to more effectively protect the rights of child workers in Kosovo.

Finally, partnerships must be created and sustained among various governmental institutions and organizations within the civil and private sectors at all levels to change education systems and structures to increase both individual and societal well-being.⁶

The Special Representative of the Secretary-General, promulgated on the Law on Occupational Safety, Health and Working Environment (Law No. 2003/19) 6th of November 2003. The objective of the Law on Occupational Safety, Health and Working

Environment is to prevent occupational injuries and diseases at workplace and to protect the working environment. The workplace is any place where working activities are taking place. Safety and health protection at work is an integral part of the organization of work and the work process. It shall be carried out through both the employer and the employee [terms: the employer and the employee are as defined in UNMIK].

The right on occupational safety, health and working environment in accordance with

this Law are enjoyed by:

- employees who established employment relationship.
- persons attending vocational training at the employer, who haven't established employment.

⁶ Source: Unicef - *CHILD LABOUR IN KOSOVO*
A STUDY ON WORKING CHILDREN

- persons on vocational retraining and rehabilitation.
- pupils and students on practical work at the employer.
- participants in voluntary work, or other public work organized for general interests.
- persons working during serving time (prisoners).
- persons who happen to be at the workplace (business associates, representatives of state administration, beneficiaries of services.)
- employees in civil service
- excluding: KPC, KPS and Fire Department.

The Government of Kosovo establishes the National Council for Occupational Safety and Health (hereinafter referred to as “the Council”). The Council consists of: representatives of State, employers, employees and eminent experts in the field of occupational safety, health and working environment. Measures taken by the employer for occupational safety, health and working environment shall not impose any financial commitment on employees. The employee: complies with measures necessary to ensure safety and health at work.

He/she takes care of his own health and of other persons affected by his actions at work, makes correct use of safety devices and personal protective equipment, handles them with care and maintains them in working order.⁷

Employer’s responsibilities and obligations

The employer is obliged to create conditions for occupational safety, health and working environment of his/her employees. The employer shall be liable for payment of any expenses associated with treatment of work-related accidents and illnesses. The establishment of the social security scheme, out of the employers’ contributions for all employees shall acquit them from the commitments for expenses transfer. The employer shall be responsible for organizing and undertaking measures necessary for occupational safety, health and working environment, including the prevention of risks at work, offering information, trainings, respective organization and proper measures in order to provide and maintain machinery, instruments, equipment, tools, workplace, access to the workplace.

⁷ UNMIK Reg 2003/33

The employer shall be responsible for organizing and implementing occupational safety, health and working environment measures. The employer shall inspect the efficiency and especially undertake necessary measures for further improvement. An enterprise with 50 or more employees must designate a part-time safety officer. The enterprise with 250 employees or more must designate a full-time safety officer. The employer shall carry out a detailed risk assessment for each workplace. Similar workplaces can be grouped. Risks to be addressed can particularly arise from:

1. design and equipment of a work place
2. physical, chemical and biological influences
3. design, selection and use of tools, material, equipment components, systems and their application
4. design of working and manufacturing systems, work flows and working hours and their interactions
5. qualification and training of employees in accordance with the EU standards.

The employer shall furnish the employee with PPE (personal protective equipment) that is designed to prevent exposure to occupational dangers and risks. The employer shall cover the costs and replace personal protective equipment on a regular basis and whenever necessary. The employer will be obliged to always have essential means for first aid. In case of injury or unforeseen illness of the employee, the Employer is obliged to:

- provide first aid,
- evacuate the injured employee in a manner that is appropriate to the nature of the employer's activity,
- provide and organize contacts with concerned services,
- emergency room,
- emergency medical care,
- fire safety and rescue,
- train a certain number of employees in first aid, rescue and evacuation of employees in case of possible risk.

The employer shall inform the employee of the dangers of the job carried out by the employee. The employer shall inform the employee who is to be exposed to a high risk as soon as possible about the risks and protective measures in order to minimize the risk. In case of immanent risk on his/her

life and of others, the employer is allowed to enforce suitable countermeasures, if the supervisor is not present. Taking into account the received training and technical means on disposal, the employees shall not suffer disadvantages for such acts, except in cases of flagrant negligence or deliberate sabotage.

The employer shall train the employee for work in a way which ensures protection of the life and health of the employee and prevents the occurrence of accidents.

The employer shall inform a competent authority immediately about all the cases of death at work, serious accidents at work or related to work, also about all the phenomena that can endanger the life and health of employees at work or are related to work.

The employer is responsible for the damage caused to the employee in case of injuries and occupational diseases relating to the work, according to the principles of objective responsibility on the obligatory right.⁸

The employee's rights and responsibilities

The employee has the right and obligation for occupational safety, health and working environment. The employee: implements and complies with measures necessary for occupational safety, health and working environment, cares for its safety and health and of other persons affected by his/her work, uses properly the safety equipment and PPE, uses them carefully and maintains them in working order. The employee shall also have the responsibility for ensuring safety and health of all persons affected by their work. Employees' or their organizations have the right to elect and appoint their safety officer. Such person shall supervise the implementation of measures taken by the employer and shall cooperate with the labor inspection in favour of employees in the field of occupational safety, health and working environment at the workplace. The employee shall immediately inform his/her employer of any deficiency, health risk, defect or other occurrence that may endanger his own safety and health at work or those of other employees. The employee has the right to refuse to work if he/she believes that there is an imminent danger to his/her life and health. If the employer considers that the work refusal is ungrounded, he/she shall immediately inform the labour inspector. The employee shall cooperate with the employer and the safety officer to ensure that the working environment and working conditions are safe and that the employer

⁸ UNMIK Reg 2003/33

implements the measures proposed by the labor inspectors. Employees and their organizations have the right to consult with the employer on all aspects of occupational safety, health and working environment associated with their work. Employees shall use all machines, equipment, tools, working material and means of transport as well as safety devices and their PPE in accordance with the specified instructions. The employee has the right to make suggestions to improve the safety and health situation at the workplace. The employee has the right to report deficiencies in PPE and safety measures directly to the labour inspector, provided that they have concrete ground to believe that the safety measures, implemented by the employer, are insufficient and that, additionally, the employer has not remedied the risk. In this case employees shall not be disadvantaged.⁹

Protection of Young Persons, Women and Disabled Persons

Employees under 18 years of age, pregnant women, disabled persons shall not be assigned particularly hard manual work, work beyond working hours and night work.

Rest rooms and changing rooms. The employer shall put at the employees' disposal a sufficient number of rest rooms and changing rooms, separate for men and women and maintain them properly. The employer is obliged to ensure means and conditions for cleaning of working clothes, particularly if employees work with dangerous substances or under very dirty conditions (under ground). The employer shall provide refreshment rooms, dry, clean, sufficiently warm, ventilated and free of harmful atmosphere. Refreshment rooms shall be equipped with suitable furniture.

Special fields of occupational safety, health and working environment
Specific occupational branches and risks shall be regulated separately by secondary legislation on the basis of the Law on Occupational Safety, Health and Working Environment (Law No. 2003/19).¹⁰

⁹ UNMIK Reg 2003/33

¹⁰ UNMIK Reg 2003/33

Air pollution

The level of air pollution from dust and gases shall be measured and controlled by competent authorities. Dust and gases shall be cleaned by ventilation or otherwise so as to prevent concentrations tending to injure health or obstruct one's vision, in conformity with European standards. In an indoor working environment, where more than one person works, smoking shall not be allowed. The employer is obliged to ensure facilities where smoking is allowed; those facilities should be set according to Article 13 of Law on Occupational Safety, Health and Working Environment.

The employer is obliged to ensure necessary amount of drinkable water for employees, according to the nature of the working environment.

Noise, vibration and lights

Noise, vibration and lights should be measured and controlled by competent institutions. The level of noise and vibration shall be regulated and be at the allowed level in accordance with minimum European standards.

Lights

In every working environment necessary light, natural or artificial and protection from overly exposed light.¹¹

Electric hazards

All electric equipment shall have the label on which all their characteristics are marked with a CE symbol. Electrical installations should be provided in accordance with European standards (EN). Measures for occupational safety, health and working environment against electric power shall be defined by secondary legislation on the basis of this law.

¹¹ UNMIK Reg 2003/33

Chemical product

All chemical substances, including pesticides, alkalis, acids and other corrosive substances shall be stored and used in accordance with European standards for Control of Substances Hazardous to Health.

Fire

The workplace shall be equipped with adequate fire fighting equipment in accordance with the emergency response plan. Employees shall be trained for correct usage by the employer in accordance with the emergency response plan and in case of emergency act according to the evacuation plan. In case of emergency, emergency exits shall be clearly marked and equipped with emergency light. Routes to emergency exits shall be free from obstructions and exit doors shall not be locked. In workplaces with more than 20 employees, the employer shall be obliged to have an emergency evacuation plan.

Documentation and Records

The employer shall keep:

- Technical certificates which clearly specify the application of occupational safety, health and working environment regulations for buildings or parts of buildings used as workrooms or facilities for as long as they are in use,
- Instructions on use of all machinery and appliances for as long as they are in use,
- certificates which confirm that installations are in order and clearly show the characteristics of the machine in use, in accordance with European standards.

The employer shall keep records on the following:

- training programs for employees for safe work,
- preliminary and periodical medical check of employees designated to carry out work in special working conditions.
- the dangerous substances it manufactures,

- accidents at work, cases of serious injuries, cases of death at work, occupational diseases
- the results of all risk assessments, measures taken to eliminate such risks and the results of control on efficiency of such measures.
- changes in the technological process which endangered or may entail danger to the occupational safety, health and working environment.

MLSW and other competent authorities in fields of occupational safety, health and working environment, shall issue regulations and other sub-legal acts.

Supervision

The Labor Inspection Authority shall be authorized to control and follow up the implementation of the provisions of the governing Law as well as other provisions in order to ensure compliance with and enforce measures of occupational safety, health and working environment.¹²

In 1998, the International Labor Organization (ILO) adopted a Declaration which obliges Member States to respect and promote principles and rights in four categories, whether or not they ratified the relevant Conventions. These categories are: freedom of association and effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

The aim of the Declaration is to stimulate national efforts to ensure that social progress goes hand in hand with economic progress and the need to respect diversity of circumstances, possibilities and preferences of individual countries that make progress.

The Convention on rights of workers and gender equality with objectives in principal for the countries in transition as Kosovo has shown there is still a problem in it's implementation. In global, Kosovo has started to change the

¹² UNMIK Reg 2003/33

system of Administration with the help of International governmental and non-governmental organizations.

Special Representative of SG in Kosovo approved the Labor Regulation (UNMIK /REG/2001/27), which widely represents the international standards borne in these declarations. The said Regulation is prepared in cooperation with international and local experts, in order to reflect realistically Kosovo's needs in accordance with international principles.

Rights to Organization and Collective Bargaining

According to the UNMIK /REG/2001/27, employees and employers shall be entitled to establish and, subject only to the rules of the organization(s) concerned, join organization(s) of their own choice without previous authorization. Employees' organizations shall include unions. Employees' and employers' organization(s) shall be entitled to establish and join federation(s) and confederation(s). Such organization(s), federation(s) or confederation(s) shall be entitled to affiliate with international organization(s) of employees and employers. Employees' and employers' organization(s), and their respective federation(s) and confederation(s), shall be entitled to draft their constitution and rules, elect their representatives, organize their administration and activities, and formulate their programs. Public authorities shall refrain from any interference that would restrict employees' and employers' rights, and their respective organization(s), federation(s) and confederation(s) rights, employees' and employers' organization(s), and their respective federation(s) and confederation(s), may not be dissolved or suspended by the Administrative Department of Labour and Employment (hereinafter "the Department"), or the authority that succeeds it. The acquisition of a corporation by employees' and employers' organization(s), and their respective federation(s) and confederation(s), shall not be made subject to conditions of such character as to restrict the Rights to Organize and to Collective Bargaining. Unions shall register and submit a copy of their constitution and a list of names, surnames, dates of birth, and addresses of the persons responsible for management and administration of the union, with the Department, or the authority that succeeds it. Employees and employers, and their respective organization(s), federation(s) and confederation(s), shall exercise their rights under this regulation in accordance with the applicable law in Kosovo.

The association of Independent Trade Unions of Kosovo (BSPK) has been formed in order to articulate workers' demands and to express them in an organized manner. BSPK

is the expression of free will of workers, independent of their national, social, political and religious class. BSPK has 16 branches, which have come together voluntarily to articulate their demands, but which remain independent. The trade union has the responsibility to:

- defend workers' freedoms and rights, as guaranteed by international conventions
- treat work and capital from the perspective of development of human wellbeing
- research possibilities for the improvement of wages, working conditions and working time
- defend labour standards and the working environment;
- request the development of democratic institutions and thereafter to support them
- respect the autonomy of each trade union, in and out of the country, according to basic principles of free democratic trade unionism.

Currently Kosovo faces a dangerous situation: unemployment (about 60% are unemployed), low wages, unstable taxes and costs, and other economic and social problems. The engagement of members in trade unions is carried out on a voluntary basis. The member takes his/her duties and rights from the established programme and regulations. The relationships between employers and the trade union can be adjusted by means of collective contracts and other agreements. In all cases of possible disagreement, the trade union can resolve these through dialogue with the other participants.

The trade union works with its own organs, through co-operation, discussion, signing contracts and to struggle for workers' interests that lie within its competence, making use, as it does so, of the different forms of trade union pressure, including public criticism, objections, reactions, boycotts, strikes, protests and other forms of trade union resistance.

BSPK has been actively co-operating, especially in the three years after the war, with the European Trade Union Confederation (ETUC), the International Confederation of Free Trade Unions and American Federation of Labor and Congress of Industrial Organizations (AFL-CIO),

participating in many training seminars on trade union issues, privatization, social dialogue, etc. Mention should also be made here of financial assistance, administrated initially by the ETUC until January 2002 and now in co-operation with partner institutions of the AFL-CIO here in Prishtina.

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Collective Agreement

A Collective Agreement may be concluded between:

- (a) (an) employer(s) or its representative; and
- (b) (a) union(s) or, where no union(s) exists, other employees' representative.

A collective agreement may be concluded at the:

- (a) Kosovo level;
- (b) branch level; or
- (c) enterprise level.

A Collective Agreement shall be concluded in writing and in an official language used in Kosovo.

A Collective Agreement may be for a fixed period of no more than 3 years in duration.

A Collective Agreement shall apply to employers and its employees who agree to be bound by such Collective Agreement.

A Collective Agreement shall not include provisions that limit employees' rights or result in less favorable working conditions than those set out in this regulation.

An employer shall make a copy of the Collective Agreement available to its employees.

A Collective Agreement shall be registered with the Department, or the authority that will succeed it, by the employee, employer, or their respective organization(s). Such registration shall be carried out promptly and without a fee. UNMIK Re 2001/27)

¹³ *The Union of Independent Trade Unions of Kosova*

Source: SEER SouthEastEurope Review for Labour and Social Affairs

The main agreement for the moment is the national agreement, signed in 2004, but it hasn't yet been fully applied. The government claims that its budget will come under too much pressure if it implements the agreement, which establishes an increase in maternity leave from three to six months, automatic annual pay increases, etc. At the company level, there are very few collective bargaining agreements, as the privatisation process is underway and there is still a great deal of uncertainty as regards the future of companies.

Protection against Acts of Anti-Union Discrimination

Employees shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

Acts of anti-union discrimination include:

- (a) making an offer of employment subject to the condition that the prospective employee shall not join a union or, where applicable, relinquish union membership; and
- (b) discharging or otherwise prejudicing an employee because of his/her union membership, or participation in union activities.

Protection against Acts of Interference

Employees' and employers' organization(s) shall enjoy adequate protection against acts of interference by other organization(s), their agents or members in respect of their establishment, functioning and administration. Acts of interference include: promoting the establishment of an employees' organization(s) under the control of an employer or employers' organization(s), or supporting an employees' organization(s) by financial or other means for the purpose of placing such organization(s) under the control of an employer or employers' organization(s).

Employment Relationship

The parties to an employment relationship shall be the employer and the employee. An employer means a natural or legal person who provides an employee with work, and pays him/her a salary/wage for the work or services performed. An employer performs its obligations, and may exercise its rights, in accordance with the applicable law, Employment

Contract, and, where applicable, Collective Agreement. An employee means a natural person employed to perform work or services for an employer, under the latter's authority and control. An employee performs his/her obligations, and may exercise his/her rights, in accordance with the applicable law, Employment Contract, and, where applicable, Collective Agreement. Unless the Employment Contract provides otherwise, the employment relationship shall begin when the employee reports to work.

The following types of work or services shall not be considered employment relationships:

- (a) occasional work based on family solidarity not carried out for profit and for direct financial compensation;
- (b) provision of services or production of goods by an independent party for another on the basis of contracts concluded between such parties; and
- (c) community work not carried out for profit and for direct financial compensation. (UNMIK Re 2001/27)

Employment Contract

An Employment Contract may be concluded for:

- (a) an indefinite period of time; or
- (b) a definite period of time.

A Employment Contract shall be concluded in writing and in an official language used in Kosovo.

A Employment Contract shall be signed and dated by the employer and the employee, and

shall include the following provisions:

- (a) the parties, their place of residence, and for employer's, their headquarters and registration number in the business register;
- (b) the place of work or, if there is no permanent or main place of work, a statement that the work is carried out at various locations;
- (c) the name, nature, type of work or services, or a short description of tasks of work or services;
- (d) working hours and, where appropriate, working hours schedule;

- (e) the date of commencement of work;
 - (f) the duration of the Employment Contract, where applicable; and
 - (g) the basic salary/wage and any additional entitlements and emoluments.
- A Employment Contract shall not include provisions that limit employees' rights or that result in less favourable working conditions than those set out in this regulation and, where applicable, in the Collective Agreement.

Termination of an Employment Contract

An Employment contract shall be terminated:

- (a) upon the death of the employee;
- (b) by a written agreement between the employee and employer;
- (c) on the grounds of serious misconduct by the employee;
- (d) on the grounds of unsatisfactory performance by the employee;
- (e) following the expiry of the term of employment; and
- (f) by operation of law.

A Employment Contract terminated by the employer

A Employment Contract shall be terminated by the employer on grounds of serious misconduct or unsatisfactory performance by the employee.

Serious misconduct shall include the following:

- (a) unjustified refusal to perform the obligations set out in the Employment Contract;
- (b) theft, destruction, damage or unauthorized use of the employer's assets;
- (c) disclosure of business secrets;
- (d) consumption of drugs or alcohol at work; and
- (e) behavior of such a serious nature that it would be unreasonable to expect the employment to continue.

Unsatisfactory performance shall include the following:

- (a) unjustified absence from work; and
- (b) repeated mistakes not sufficient in themselves to justify a dismissal, but which given their frequency and seriousness disrupt the normal course of the employment relationship.

The employer shall notify the employee in writing that he/she intends to terminate the Employment Contract. Such notice shall include grounds for termination; A meeting shall be held between the employer and the employee, and at such meeting the employer shall provide the employee with an oral explanation of the grounds for termination. If the employee is a member of a union, the employee shall be entitled to have a union representative present at such a meeting.

An Employment Contract Termination by Operation of Law

An Employment Contract shall be terminated by operation of law where the employer determines that the employee, due to medical reasons, is no longer able to perform the work or services for which he/she was employed, and where there is no alternative work available that he/she would be able to perform. The employer shall give the employee 1 month's notice of termination. An Employment Contract may be terminated by an employer due to economic, technological or structural changes at the enterprise.

Where an Employment Contract is terminated, the employer, if requested by the employee, shall provide the employee with a certificate indicating:

- ✓ the name of the employee;
- ✓ the nature or type of work or services for which he/she is employed;
- ✓ the period of employment;
- ✓ the basic salary/wage and any additional entitlements and emoluments and
- ✓ evaluation of his/her performance during the period of employment.

Termination of an Employment Contract due to Economic, Technological or Structural Changes at the Enterprise

An Employment Contract may be terminated by an employer due to economic, technological, or structural changes at the enterprise. Such changes occur where the employer introduces major changes in production, programming, organization, structure and technology that require a

reduction in the number of its employees. Where a minimum of 50 employees are discharged within a 6 month period, it shall be considered a large-scale lay off.

In case of a large-scale layoff, the following provisions shall apply:

(a) prior to introducing such changes, the employer shall notify its employees and,

where applicable, the employees' union(s) in writing on the changes planned and their

implications, including the number and type of employees to be discharged; the measures to be taken to alleviate the consequences of such changes; and the rights of its employees as set out in the Employment Contract and, where applicable, the collective agreement;

(b) the employer shall notify its employees in writing on the termination of the

Employment Contract at least 3 months prior to the date of termination;

(c) the employer shall notify the employment office in writing of the employees to

be discharged in order for it to provide such employees with assistance in seeking

alternative employment;

(d) the employer shall take appropriate measures to limit the number of employees

to be discharged by limiting or freezing the hiring of new employees; internal reassignment of employees; limiting overtime work; reducing working hours; providing vocational retraining; and promoting improvement of skills;

(e) in determining the number and type of employees to be discharged, the employer shall take into account the following:

- ✓ an employee's performance;
- ✓ vocational training and skills;
- ✓ work experience;
- ✓ position;
- ✓ category and type of work;
- ✓ years of service;
- ✓ age;
- ✓ and other criteria that may be set out in an Employment Contract and, where applicable,
- ✓ collective agreement.

An employee may not be discharged until the employer provides single severance payment to the employee. Severance payment shall be paid to the employee on

the date of termination at the following scale:

- ✓ from 2 to 4 years of service, 1 months' salary;
- ✓ from 5 to 9 years of service, 2 months' salary;
- ✓ from 10 to 19 years of service, 3 months' salary;
- ✓ from 20 to 29 years of service, 4 months' salary;
- ✓ 30 years of service or more, 5 months' salary and
- ✓ where an employer recommences employment within a 2-year period from the date of termination, preference will be given to those equally qualified employees who were discharged.

Employees discharged as a result of bankruptcy and reorganization administered by a court shall not be governed by this regulation.

Equal Pay for Women and Men

An employer shall pay equal remuneration, which includes the basic salary/wage and any additional entitlements and emoluments payable directly or indirectly, in cash or in kind, by the employer to the employee, to women and men for work of equal value. (UNMIK Re 2001/27)

Salaries/Wages

Salaries/wages shall be payable:

- (a) at least every month;
- (b) to the employee personally or via bank transfer; and
- (c) with an accompanying payment slip.

The payment slip shall indicate the following:

- (a) name and headquarters of the employer, and the employer's registration number in the business register;
- (b) name and surname of the employee;
- (c) month and year for which the salary/wage is paid;
- (d) number of working hours during this period;
- (e) period of paid leave, if any leave was taken during this period; and
- (f) amount of monthly salary/hourly wage.

Salaries/wages shall be paid in Euros in Kosovo.

Minimum Wage

All employers shall pay their employees at least the minimum wage, the lowest wage in the salary scale, as set by the Administrative Department of Public Services, or the authority that will succeed it.

Working Time

The working week shall begin on Monday at 12:01 a.m. and shall end on Sunday at midnight.

Working hours entail the period, except break time, during which the employee performs work or services for the benefit of the employer.

Working hours shall be determined by the employer. An employer shall inform its

employees prior to any change in the working hours schedule.

Working hours shall be posted in the workplace.

Working hours shall not exceed 40 hours per week.

A working day shall not exceed 12 hours.

In the mining sector, a working day for employees underground shall not exceed 8 hours.

In the road transport sector, a working day for drivers shall not exceed 9 hours.

An employee shall be entitled for a 30-minute unpaid break during a working day.

An employee shall be entitled for a 10-hour rest break between two successive working days.

An employee shall be entitled to 1 day off during the working week, and where it is

necessary for him/her to work during this period he/she shall be entitled to 1 additional day off during the following working week.

For an employee in a non-managerial position, every working hour over 40 hours per week shall be considered overtime.

Working hours between 10:00 p.m. and 5:00 a.m. shall be considered as night work,
and paid as overtime.

Overtime may not exceed 20 hours per week and 40 hours per month.

Overtime shall be paid at a rate of 20% per hour or, at the request of the employee,

compensated with corresponding time off during the following month.

A person under 18 years of age shall not be permitted to work over 40 hours per week.

A disabled person and a pregnant woman in her third trimester shall not be permitted

to work over 40 hours per week.

A person under 18 years of age and a pregnant woman shall not be permitted to work

during the hours 10:00 p.m. and 5:00 a.m.

Where work is organized in shifts, the Employment Contract and the Collective Agreement, where applicable, shall indicate the working hours.

Annual Leave

An employee shall be entitled to paid annual leave during the calendar year.

The period(s) of annual leave shall be determined by the employer after consultation

with the employee.

After 1 year of employment, an employee shall be entitled to 18 working days of paid

annual leave during each calendar year. Such annual leave shall be earned at a rate of 1.5

days for each completed calendar month of employment.

During the first year of employment, an employee shall be entitled to 12 working days

of paid annual leave. Such annual leave shall be earned at a rate of 1 day for each completed calendar month of employment.

Unless otherwise agreed between the employer and the employee, paid annual leave

shall be taken during the calendar year in which it is earned, but not later than 31 January of the following calendar year. Paid annual leave may not

be carried later than 31 January of the following calendar year and may not be encashed, except upon the termination of the Employment Contract.

Official Holidays

An employee shall be entitled to paid leave during official holidays. If an employee is required to work on an official holiday, he/she shall be paid at an overtime rate or shall be entitled to 1 day off for each official holiday that he/she works.

Maternity Leave

A female employee shall be entitled to at least 12 weeks paid maternity leave upon the birth of a child. This leave shall be considered as a working period and shall be paid by the employer at a rate of no less than two-thirds of the woman's earnings.

Compassionate Leave

The employee shall be entitled to compassionate leave for marriage, birth or death in his/her family. The period of leave and the rate at which it is paid shall be subject to agreement between the employer and the employee. The employer may, at the request of the employee, approve compassionate leave for other family events.

Unpaid Leave

The employer may, at the request of the employee, approve unpaid leave.

Sick Leave

The employee shall notify the employer within 48 hours of taking sick leave.

Where sick leave is taken as a result of a work-related accident or illness, an employee shall be entitled to his/her salary/wage for the period.

Employees' Register

The employer shall maintain the employees' register.

The employees' register shall record the following information about each employee:

- (a) name and surname;
- (b) nationality;
- (c) date and place of birth;
- (d) address;
- (e) name, nature or type of work;
- (f) date of commencement of employment; and
- (g) the date of termination of employment, where applicable.

An employer shall maintain the employees' register for 3 years after the register is closed.

Labour Inspection

Labor inspection shall be conducted by a labor inspector designated as such by

the Department (what department?), or the authority that succeeds it.

A labor inspector may, without prior notice, inspect the workplace and the employer's headquarters during working hours. The employer shall cooperate with the labor inspector, and shall make available all official documents related to employment and the conditions of employment, including the employees' register.

The employee and his/her respective organization(s) shall cooperate with the labor inspector, where applicable.

The labor inspector shall also perform the following functions:

- (a) ensure the enforcement of this regulation and other relevant provisions in the applicable law related to working conditions, working hours, salary/wage, safety and health;
- (b) provide technical information and advice to employers and employees on the

most effective means of complying with this regulation and other relevant provisions in the applicable law;

(c) notify the Department, or the authority that will succeed it, in writing on deficiencies in the applicable law; and

(d) provide advice on issues related to the reorganization or restructuring of an enterprise.¹⁴

Where the labor inspector determines that the employer is in violation of a provision of

UNMIK Regulation 2001/27, such labor inspector may issue a written warning to the employer or impose a fine up to 10,000 Euros.

An employer may appeal to a competent court in Kosovo for a review of the decision made by the Department, or the authority that succeeds it.

The UNMIK Regulation 2001/27 entered into force on 8 October 2001.

COMMUNITY IMPACT

LAW No : 2003 / 19

ON OCCUPATIONAL SAFETY, HEALTH AND WORKING ENVIRONMENT, Promulgated by UNMIK Reg 2003/33 explained above

Land management is the art or science of making informed decisions about the allocation, use and development of the earth's natural and built resources. Land management includes resource management, land administration arrangements, land policy and land information management. It extends from making fundamental policy decisions by politicians and governments to routine operational decisions made each day by land administrators such as land surveyors, values and land registrars. Land management is both the science and art concerning technology, the people who use it, and organizational and administrative structures that support them.

Undertaking land management is a complex task that is made even more complex in a post conflict society.¹⁵

¹⁴ UNMIK Re 2001/27

¹⁵ *UN Habitat*

CADASTRE IN LAND ADMINISTRATION IN KOSOVO

New ways of empowering participation of citizens in the process of decision-making and

creation of partnerships between rural and urban regions as well as promotion of public and private sectors. All GIS and land administration activities have been very much affected by the IT development in Kosovo. GIS data and LIS (Land Information System) in digital form represent a base to start with e-governance. Textual and graphic cadastral database is in a digital format and most used products are INTERGRAPH itf files products and shape files from ESRE.

UNMIK Regulation 2002/22 promulgated the law adopted by the Kosovo Assembly to establish a real estate rights register as a mechanism to protect private ownership of land. The Kosovo Cadastral Agency (KCA) has authority over entire administration of the official register in compliance with the provisions of the Applicable Law. The municipal cadastral offices record real estate rights in the register under the authority of the KCA. Security interests against movable property, accounts, proceeds, etc. are protected by the Regulation 2001/5, which provides exclusive means by which pledges are to be created, which become effective against third parties, and are enforced. This regulation applies to all transactions, regardless of form, intended to create a pledge. UNMIK Regulation 2002/21 promulgated the law adopted by Kosovo Assembly on mortgages, establishing a uniform system for securing and registering pledges against real estate, and instituting a mortgage and pledge registry. The Law on Cadastre defines that cadastral data are public with the restriction to the information about owners and property. This restriction refers to the public and excludes Official Administrations (Courts, Cadastral Offices) and the owner of the respective property itself.

The beginning of an analog Real Estate Right Register (IPRR) dates from January 2005. Then it started being populated with digital data. Since January 2005 until May 2006 there were **29374** applications. MCO-s staff's responsibility is to register all cadastral changes regarding properties. KCA connection with MCOs enabled improved data quality and quality control at the same time reduced timeframe for data updates.¹⁶

¹⁶ *Effects of Cadastre in Land Administration in Kosovo and in Other Post Conflict Countries*, Murat MEHA

Like in all countries, we found that corruption exists in Kosovo today. But, despite public opinion and discussions in the mass media that presume very high levels of public corruption, it does not appear that corruption is a pervasive force in the governance process and it does not appear to significantly undermine the capacity of government to perform its duties and deliver services in a fundamental way. The institutions perceived to be the most corrupted are the Kosovo Energetic Corporation (KEK), the business community, Post Telecom Corporation (PTK), customs, hospitals, and lawyers. Significant findings suggest that:

For some, the pre-war experience of corruption and discrimination during the Milosevic period strengthened their political will to resist and combat corruption, but for others, it reinforced the practical utility of corrupt practices to simply get things done.

Significant economic growth is one of the major preconditions for reducing corruption in Kosovo. If economic stagnation continues, the impact of even the most effective of governance reforms and law enforcement programs against corruption are not likely to be sufficient to prevent backsliding toward corrupt practices.

The upcoming privatization process offers the potential for major abuses.

In comparison to other countries in the region, the corruption situation in Kosovo is more optimistic. Corruption does not appear to be as widespread among public officials, the demands of corrupt officials are lower, and the extent of citizen involvement in corrupt transactions is lower in Kosovo than in other countries of Southeast Europe. In addition, Kosovars appear to believe that they can cope with the problem. In terms of tolerance for corruption and susceptibility to corruption, Kosovo seems to be at the same level as other former republics of Yugoslavia.

As more powers are transferred to the Kosovar Provisional Government from UNMIK, corruption problems are intensifying. It is incumbent upon the current international administration in Kosovo as well as upon donors to provide as much help as possible now to establish and implement a significant framework of laws, practices, and governance procedures and controls, side-by-side with a mobilized civil society, private sector and mass media, to prevent and manage the growth of corruption.

Lots of work has been accomplished in establishing an operational governing authority across a wide range of public services. This has involved the development of laws, procedures, systems and institutions. Most are still at their incipient stages. It is critical now for attention to be paid to how governance procedures and systems, which may be state-of-the-art, are implemented, bureaucrats and supervisors trained in them, and their performance tracked and monitored. While they may appear tamper-proof on paper, ways to subvert these systems have already been found and it is critical that these gaps and loopholes be plugged quickly to avert further abuse. As well, many existing governance procedures still leave excessive discretion to bureaucrats and need to be brought to the next level of detail.

Overall, the UNMIK administration has been a poor role model for the Kosovars when it comes to transparency and accountability. It created a situation where the *appearance* of impropriety has become more potent than perhaps the actual occurrence of corruption within the UNMIK administration.

This can be remedied, but it will take a major conscious effort by the SRSB to direct greater openness and responsiveness by the international administration. Meanwhile, the transfer of greater responsibilities and authority to Kosovar administrations at the central and municipal levels put the onus on local leaders to develop situations where governing practices and the rule of law prevent and control effectively for misuse of public office. Civil society, business and the media will have to be further mobilized and their capacity developed to take on active roles of educators, advocates and watchdogs. As this is proceeding, international donors will need to coordinate their activities more effectively in the broad area of anti-corruption and good governance programs.

With respect to the justice and law enforcement sector, there is much to be done if judicial, legal and law enforcement institutions are to avoid corrupt influence and fulfill legal responsibilities to address public corruption. Because authority in this sector (Pillar 1) remains reserved to UNMIK, it is difficult to determine the extent to which Kosovar institutions are capable of functioning on their own, particularly given the severe shortages of resources noted in the body of this report. Indigenous strength in the sector is derived from senior judges, lawyers, and prosecutors who seem to have

the capacity and the willingness to provide the leadership necessary to transition to autonomy and from a police force being built from the ground up that seems to have gained public confidence. The most significant weaknesses are the relatively rudimentary nature of court administration, insufficient salaries for judicial and law enforcement personnel and the continued perception that fundamental laws and procedures are being imposed without meaningful local consultation and input.

As indicated throughout, avoiding the temptation to make definition and quantification of corruption and crime a program goal is an important step toward realizing the programmatic opportunities presented. Focusing on development of fundamental judicial and legal institutions as a program priority will do far more to contribute to the capacity of Kosovo institutions to address internal corruption and meet responsibilities to fight external (extra-institutional) corruption than support of sophisticated initiatives built on shaky institutional foundations. Below are some suggested initiatives in the justice and law enforcement sector that meet these criteria.

Years of suppression under Milosevic's totalitarian regime developed a tolerance among the majority of people to uncontrolled arbitrariness of the government and pessimism about the mission of government to serve in the public interest. The international administration that has been governing Kosovo for several years has not put a priority on citizen participation in decision-making processes or on transparency and accountability in government. Now, with more governmental power and responsibilities transferred to Kosovo institution, there is a need to educate citizens on their rights and government responsibilities and to promote their active participation in keeping government accountable to prevent further abuses by government.

Civil society organizations, the media and the business community have to play an important role in these initiatives. There is a general understanding of the negative economic and social impact of corruption on Kosovar society and a sincere willingness to prevent corruption from getting rooted in a newly established Kosovar government and in society at large. Some civil society organizations and media, as well as business associations have made efforts in the right direction through their advocacy, public awareness and reform initiatives. These efforts, though, tend not to be fully thought

through in terms of their application against corruption and are rather discrete and event driven. NGOs seem to be likely to become an active player in anti-corruption campaigns upon better education and awareness about corruption impacts and training in anti-corruption techniques. The media and the business sector may require more effort to direct them towards effective actions against corruption. Insecurity, lack of professionalism and limited resources in the media, and insecurity and self-interest among businesspeople create obstacles for these sectors to become proactive partners in anti-corruption campaigns unless they are organized through professional associations where they can express their position anonymously.¹⁷

The Kosovo Assembly for the purpose of protection of the rule of law, democracy and human rights, good governance, fairness and social justice, competition, economic growth, general trust in public institutions and moral values of society, adopted the Suppression of the Corruption Law.

Suppression of the Corruption Law foresees anti-corruption measures within the scope of the anti-corruption strategy, particularly in the field of administrative investigation of public corruption, eliminating the causes of corruption, the incompatibility of holding public office and performing profit-making activities for official persons, restrictions regarding the acceptance of gifts in connection with their execution of office, supervision of their assets and those of persons from their domestic relationship, and restrictions regarding contracting entities participating in public tenders conducting business transactions with firms in which the official person or person from his/her domestic relationship is involved.¹⁸

Intellectual Property Rights in Kosovo are regulated with the laws listed below:

Kosovo Patent Law:

Kosovo Assembly 2004/49, adopted on September 29, 2004.

Promulgated by Special Representative of the Secretary General (SRSG) on December

¹⁷ *Corruption in Kosovo: Observations and Implications for USAID*

¹⁸ *Kosovo Law No.2004/34, Suppression of corruption law*

21, 2004.

Kosovo Trademark Law:

Kosovo Assembly 2006/02 L54, adopted on February 23, 2006. Promulgated by SRSG on June 26, 2006.

Kosovo Law on Industrial Design:

Kosovo Assembly 2005/02-L45, adopted on November 21, 2005. Promulgated by SRSG on April 21, 2006.

Regulation 2001/3 on Foreign Investment in Kosovo guarantees rights of ownership, extending national treatment to foreign investors. Foreign investment is subject to approval by the authorities only to the extent that such approval would be required for similar domestic business organizations. In addition:

- ✓ foreign investors may transfer property rights, including permits, to other legally qualified persons in the same manner and to the same extent as domestic persons;
- ✓ foreign investors have the same right to purchase residential and non-residential property as domestic business organizations;
- ✓ foreign investors with less than a majority stake in a foreign investment shall be protected as domestic minority shareholders in accordance with the applicable law;
- ✓ foreign investments are not subject to more onerous tax obligations than similar domestic business organizations; and
- ✓ foreign investors may establish subsidiary enterprises, branches and representative offices in the same manner and to the same extent as similar domestic organizations. (How is the section marked in red relevant to the topic of the paper?)

This text was correct at the time it went to press April 2008; however, legislative changes and changes in interpretation by the authorities and courts can occur frequently in Kosovo. This text contains information that is summarized and, in part, simplified. It does not substitute for specific legal and tax advice. Despite attempting to exercise care in compiling this text, the authors can not warrant the accuracy, completeness, or up-to date character of its contents.

Legislative Preconditions for the Development of the Corporate Social Responsibility in Macedonia¹

by Albert Musliu & Zemri Elezi

Abstract

The Report on Legislative Preconditions for the Development of the Corporate Social Responsibility (CSR) is a sublimation of the analyses of legal aspects for the development of corporate social responsibility in the Republic of Macedonia, as well as an attempt to draw general conclusions on the basis of the information and data available.

Discussing the development of CSR in a country undergoing transition and rapid economic reconstruction is definitely a challenge. Transition in Macedonia has been associated with economic decline, impoverishment of workers, disappearance of the middle class, and widening of income disparities.

The concepts of entrepreneurship and business came to be associated with values and appeals such as quick enrichment, predation, dishonesty, irresponsibility, and bending of rules. This widespread and enduring sociology of the “transition entrepreneurship” makes the debate on CSR, not premature as some would like to say, but as timely as it can be.

This report discusses the legislative preconditions for the development of CSR in the country. Its focus is by and large on outlining normative provisions, but it also provides occasional qualitative comments on the reality of enactment of policies and legal provisions. Where possible, national legislation is compared and analyzed vis-à-vis international standards and the European Union *acquis* in particular.

The report comprises two parts whereby the first focuses on employment practices and the second on community impact.

¹ Proofreading by Emel Karaman

The first part of the report covers the issues of: the right to association of workers, collective bargaining, forced & compulsory labor, child labor and minimum age for employment, the right to work and working conditions, and the issue of discrimination and violence at work. The second part on community impact looks into: the right to intellectual property, and property in general, minimum environmental safety, and product liability.

Keywords: Corporate Social Responsibility (CSR), national legislation, international standards, employment practices, community impact.

Introduction

The report laid out herein analyses the legal aspects for the development of corporate social responsibility (CSR) in the Republic of Macedonia.

In attempting to avoid complex definitions, the term CSR, which is quite self-explanatory by nature, can be understood as greater social awareness and responsibility of the corporate sector.

The behavior of the business sector has widespread impact on aspects of life in society. It directly affects the status of workers, protection of the environment, general public health, and the quality of life overall. This report primarily looks into the legal framework, which shapes and steers business behavior.

Discussing the development of CSR in a country undergoing transition and rapid economic reconstruction is definitely a challenge. Transition in Macedonia has been associated with economic decline, impoverishment of workers, disappearance of the middle class, and widening of income disparities.

Furthermore, due to the disintegration of rules, institutional collapse, and moral erosion, the concepts of entrepreneurship and business came to be associated with values and appeals such as quick enrichment, predation, dishonesty, irresponsibility, and bending of rules. This widely spread and enduring sociology of the “transition

entrepreneurship” makes the debate on CSR, not premature as some would like to say, but as timely as it can be.

After providing an outline of the context of the economic transition in the Republic of Macedonia, the report discusses the legislative preconditions for the development of CSR in the country. Its focus is by and large on outlining normative provisions, but it also provides occasional qualitative comments on the reality of enactment of policies and legal provisions. Where possible, national legislation is compared and analyzed vis-à-vis international standards and the European Union acquis in particular.

The report comprises two parts whereby the first focuses on employment practices and the second on community impact.

The subheadings of the first part cover the issues of: the right to association of workers, collective bargaining, forced & compulsory labor, child labor and minimum age for employment, the right to work and working conditions, and the issue of discrimination and violence at work.

The second part on community impact looks into: the right to intellectual property, and property in general, minimum environmental safety, and product liability. The last section provides a conclusion.

Context

Following Macedonia’s independence in 1991, successive governments have adopted and enforced policies for macroeconomic, structural reforms, and stabilization, with the objective of establishing a functional market economy and promoting economic growth.

Macedonia successfully implemented internal price stabilization and stable budget consumption, but huge work still lays ahead with respect to attracting investment, reducing unemployment, eradication of poverty, fight against corruption, structural reforms, and raising the standard of living.

The salary level in the country is among the lowest in the region,² and poverty and income inequality have been on the rise.³ According to the data from domestic institutions, a steady increase in unemployment has been recorded in Macedonia over the entire transitional period, reaching the level of 37.2 percent in 2004, with 391,072 unemployed people in absolute figures. Despite the fact that statistics for December 2007 indicated a decrease in unemployment by 33,906 people, the rate of unemployment continues to be very high.

The Macedonian constitution guarantees the basic socio-economic rights, including the right to work, and lays down the foundations for worker protection. While legislative and institutional framework are in place, the actual protection of workers' rights has been on the decline during the period of transition. Rapid economic reconstruction (combined with the loss of formerly common Yugoslav markets) led to the collapse of hundreds of companies and left tens of thousands workers unemployed.

At present, these are still critical challenges for the Macedonian government and economy. Pervasive unemployment, stagnant and decreasing standard of living, and the widespread corruption remain top economic and governance priorities in the country. The combination of these factors creates an environment that is conducive to perpetuation of poor working conditions and continuous disrespect for workers' rights. The protection provided by pertinent mechanisms is often poor and inconsistent.

² see for example the regularly updated Economic Data SEE provided by the Balkan Observatory (LSE & WIIW) at <http://www.wiiw.ac.at/balkan/data.html> ; or the country overviews from the statistical database of the United Nations Economic Commission for Europe at http://w3.unece.org/pxweb/Dialog/varval.asp?ma=02_COsummary_r&ti=Country+Overview+by+Indicator%2C+Country+and+Year&path=../DATABASE/Stat/10-CountryOverviews/01-Figures/&lang=1 ;

³ see for example UNDP, "*Socio-Economic Disparities among the Municipalities in Macedonia*", Skopje, 2004; UNDP, "*Social Exclusion and Human Insecurity in FYR Macedonia*", National Human Development Report Macedonia 2001, Skopje, 2001; the World Bank, "*Country Assistance Strategy for the Former Yugoslav Republic of Macedonia*", Washington DC, 2003.

1. Employment Practices

1.1. Right to Association

The basic piece of labor legislation in Macedonia is the comprehensive Labor Law⁴, which sets the general framework for all relations between workers and employers in the country.

The right to workers' association is crucial to the promotion of worker's interests and it comprises an important section of the Labor Law. The right to form and join unions is guaranteed by the law as well as the Constitution of the Republic of Macedonia. Article 37 of the Constitution foresees that "citizens have the right to form unions for the purpose of promoting their economic and social rights."⁵

More than 50 percent of legal workforce in the country has been unionized, and unions are particularly well represented in the public sector.

Workers Unions register with the Ministry of Labor and Social Policy (MLSP). The Labor Law provides that independent unions may freely register. In reality, however, some unions have reported obstacles, particularly, delays in the registration process. Without registration, a union cannot operate legally.

Unions are not required to belong to the umbrella organization Federation of Trade Unions of Macedonia (SSM), which was alleged in the past to have maintained close ties to certain political parties and government officials.⁶ Several new unions have been created outside the SSM in recent years, including unions of journalists, police officers, and farmers.

⁴ Official Gazette of the Republic of Macedonia No. 62/05 as of 28 July 2005.

⁵ Official Gazette No. 52, as of 22 November 1992.

⁶ see for example "Cvetanovski: The Times of Controlled Union are Gone", A1 TV, 22 October 2005, <http://www.a1.com.mk/vesti/default.aspx?VestID=52984> ; "DPMNE: The SSM Leadership is Disorganized", A1 TV, 2 May 2005, <http://www.a1.com.mk/vesti/default.aspx?VestID=46035>; "SSM Lobbied a Vote for SDSM", A1 TV, 13 September 2002, <http://www.a1.com.mk/vesti/default.aspx?VestID=12128>.

Labor legislation prohibits worker discrimination on grounds of membership in a trade union⁷; however, cases of such discrimination have been reported whereby companies had fired workers who had participated in union activities. The companies' justifications for such layoffs were unrelated to the workers' union activities. The employees however claimed their union activities were the cause of their dismissal. Because of delays in the court system, it could take a worker two to three years to be reinstated through legal action.

1.2. Right to Collective Bargaining

Labor legislation allows unions to freely conduct their activities; however, the government did not always actively promote this freedom. The law protects the right of employees to bargain collectively, and most branch and local unions had collective bargaining agreements. All legally employed workers are covered by one of two collective bargaining agreements, one for public sector employees and the other for private sector employees. While collective bargaining did take place, employees had very little practical negotiating leverage. Therefore, many collective bargaining agreements failed to keep pace with changes in the environment and workplace.

The Labor Law elaborates in detail the constitutional right to strike⁸, and workers have exercised this right in practice. The Constitution⁹ and the labor legislation allows members of the military and police to strike, but only if they adhere to restrictive guidelines and continue to perform essential services. However, the law allows private employers to "exclude" or temporarily release up to 2 percent of a company's workers during a strike if the company considers these workers to be potentially violent or disruptive. The laid-off workers have to be rehired after the strike. In the past, the unions have maintained that this provision allows employers to exclude union leaders from negotiations during a strike.

⁷ Article 6 and Article 185, Paragraph 2 of the Labor Law, Official Gazette of the Republic of Macedonia No. 62/05 as of 28 July 2005.

⁸ Article 36, Constitution of the Republic of Macedonia, Official Gazette No. 52, as of 22 November 1992.

⁹ *ibid*

1.3. Prohibition of Forced or Compulsory Labor

In addition to the right to work which is guaranteed in the Macedonian Constitution, people have the freedom to choose their employment,¹⁰ that is, they cannot be forced into employment against their will. With the aim of providing further protection, the Constitution stipulates that workers cannot give up certain rights, such as the right to a paid daily, weekly, and annual holiday.¹¹

1.4. Child Labor and Minimum Age for Employment

Child labor is prohibited. The minimum age for employment is 15 years.¹² The law prohibits employment of minors under the age of 18 in work that is detrimental to their physical or mental health and moral.¹³ The law also prohibits minors under the age of 18 to work at night or more than 40 hours per week¹⁴.

The Criminal Code¹⁵ foresees a prison sentence of minimum eight years for anyone who buys, sells, keeps, or takes children or minors for the purpose of exploitation.

There were no official reports of child labor during the current year; however, there is clear evidence that child labor is being used in gray economy.¹⁶ Children are used for selling cigarettes and other small items at open markets, in streets; bars or restaurants, sometimes even at night. The children involved in these activities are primarily Roma and most of them often work for their parents. Officials have not been persistent in punishing

¹⁰ Article 32, Constitution of RM

¹¹ *ibid*

¹² Article 250, Paragraph 1, Labor Law

¹³ Article 173, Paragraph 1, *ibid*

¹⁴ Article 174, Paragraph 1, *ibid*

¹⁵ Article 418-a, Paragraph 2, Criminal Code of the Republic of Macedonia, consolidated text, Official Gazette, No. 37/96, 80/99, 4/2002, 43/03, 19/04, and Decision of the Constitutional Court, Official Gazette, No. 48/01.

¹⁶ Even without referring to documented evidence, simple observation in the center of the capital Skopje and other major cities suffices. They are crowded with children, usually Roma, engaged in petty trade and/or begging.

and discouraging such practices, and these children remain exposed to exploitation.

The Ministry of Labor and Social Policy is responsible for enforcing legislation concerning child work. The government has produced efforts to eliminate the abuse of child labor, and while the necessary legislation is in place,¹⁷ a lot more work is needed for its implementation.¹⁸

1.5 Right to Work and Working Conditions

The Constitution of Macedonia guarantees the right to work and free choice of employment under equal conditions as a basic entitlement in its section on economic, social and cultural rights.¹⁹ Every citizen of the Republic of Macedonia has the right to adequate remuneration. However, the country does not have a national minimum wage established by law. The average monthly wage according to official statistics was approximately \$340 (14,264 denars) and did not provide for a decent standard of living for a worker and family. The State Statistical Office estimates that about 30 percent of population lives below the poverty line. The unemployment rate is especially high with young people and socially excluded groups such as the Roma.²⁰

¹⁷ Law on Child Protection, Official Gazette, No. 98/00; subsequent changes Official Gazette, No.

17/03, 65/04, 113/05; also Government of Republic of Macedonia, "Program for Development of Child Protection for 2008.", of 20 January 2008.

¹⁸ See for example UNICEF, "*Children in FYR Macedonia. A Situation Analysis*", Skopje, February 2008; UNICEF, "*Child Poverty Study in FYR Macedonia*", Skopje, 2007;

¹⁹ Article 32, Constitution of RM

²⁰ See for example La Cava, G., et al., "*Young People in South Eastern Europe: From Risk to Empowerment*", World Bank, Washington, DC, US, 2004; Kolev, A., and Saget, C., "*Towards a Better Understanding of the Nature, Causes and Consequences of Youth Labor Market Disadvantage: Evidence for South East Europe*", back ground paper to the World Bank 2004 report "Young People in South Eastern Europe: From Risk to Empowerment", the World Bank, Washington, DC, US, 2004; Council of Europe Development Bank (CEDB), "*Social Challenges in South Eastern Europe*" Paris, 2005; Government of the Republic of Macedonia, "*National Strategy for Poverty Reduction*", Skopje, 2002; Government of the Republic of Macedonia, "*Report of the Republic of Macedonia on the Millennium Development Goals*", Skopje, 2005.

The Labor Law stipulates the obligation of the employer to provide safe and healthy working conditions.²¹ Workers can refuse to work under conditions that endanger their health or safety.²² The issue of work safety is further elaborated with the Law on Protection during Work.²³ This piece of legislation “sets forth the measures of protection during work, the obligations of employers, and the rights and duties of workers in providing work safety.”²⁴ This legislation elaborates in detail the specific responsibilities with regards to work under difficult or hazardous conditions, and it acts as a supplement to the Labor Law, which provides the general framework.

The Labor Law establishes a 40-hour workweek with a minimum 24-hour uninterrupted rest period per week.²⁵ It operationalizes the right to vacation and sick leave benefits. The law elaborates the conditions under which the employer can ask a worker to do overtime work in full detail. Article 117 lays down the conditions when the worker must comply with the employer’s request for overtime, whereas Article 120 specifies the situations when the employer cannot order overtime work.²⁶ Employees cannot work more than 9 hours of overtime per week or 190 hours per year except in specifically regulated circumstances.²⁷ According to the collective agreement between the government and the Federation of Trade Unions of Macedonia (SSM), employees have the right to overtime pay in the amount of 135 percent of their regular pay. In addition, employees who work more than 150 hours of overtime per year are entitled to a 1-month bonus salary.

Although the legislative framework provides for enviable entitlements and protection for the Macedonian worker, high unemployment rate and difficult economic conditions led many employees to accept work under conditions far below the standards set by the Labor Law. For example, small retail businesses often require employees to work well beyond the legal time limits.

²¹ Article 42, Labor Law

²² Article 32, Paragraph 2, Labor Law

²³ Official Gazette, No. 13/98, 18 March 1998.

²⁴ Article 1, Law on Protection during Work. *ibid*

²⁵ Articles 116, Paragraph 1, and 134, Paragraph 1, Labor Law

²⁶ Labor Law

²⁷ Article 117, Paragraph 2, Labor Law

The vulnerability of workers in Macedonia is a result of the combination of a very high unemployment rate, government ineffectiveness in providing effective protection, and the still limited capacity of trade unions. The high unemployment rate in some communities' forces workers to accept work under any conditions, and there were cases when workers refused intervention by a trade union out of fear of losing their job (knowing they cannot find anything else).²⁸ In many cases, workers have been faced with the choice of working without pay for months (with the argument that the company is doing bad) or not working at all. Work without pay has become one of the most well known metaphors of transition.

1.6. Discrimination and Violence at Work

The Constitution pledges that “everyone can be equally eligible for any job, under equal conditions”²⁹, thus providing a general anti-discrimination clause. The Labor Law regulates in detail the issue of discrimination at work.³⁰ The Law differentiates between direct and indirect discrimination.³¹ Discrimination is treated in the same section on harassment at work. Article 9 is titled “Harassment and Gender-Based Harassment” and it specifies the types of behavior at the work place which qualify as harassment, with clear emphasis on gender-based harassment.³²

The right to protection from harassment is also related to the right of the worker to privacy. In stipulating the duty of the employer to “respect and protect the integrity and dignity of the worker, as well as to respect his/her privacy”, the employer has the duty “to ensure that no worker is a victim of harassment or gender-based harassment.”³³

²⁸ Employers have often been shrewd in exploiting this situation and “bluffing” trade unions and government bodies that they cannot afford to pay benefits and that they would prefer to close the business down and lay off everyone.

²⁹ Article 32, Constitution of RM.

³⁰ Articles 6-10, Labor Law.

³¹ Article 7, *ibid*

³² *ibid*

³³ Article 43, *ibid*

2. Community Impact

2.1. Right to Intellectual Property

In terms of legal reform at the beginning of transition, considerable progress has been made in the realm of protection of intellectual property in the country.

With regard to copyright and related rights, the Criminal Code has been amended to provide a precise definition of intellectual property rights offences.³⁴ The amended law on the State Market Inspectorate (SMI) empowered the SMI, which already has a right to initiate misdemeanor proceedings, and impose fines in cases of breach of intellectual and industrial property rights. Macedonia signed a memorandum of cooperation with the World Intellectual Property Organization. Three collective rights management societies are operating in the country; however, cooperation between the government, collective rights management societies and other stakeholders is insufficient, which prevents addressing piracy more effectively. The administrative capacity of the Ministry of Culture to manage the copyright policy and conduct inspections is underdeveloped.

The legislation on industrial property rights was amended with the aim of bringing it into line with the *acquis*.³⁵ Harsher penalties were introduced. The law on the protection of new agricultural plant varieties was adopted.³⁶ This is the first step in the ratification procedure of the International Convention for the Protection of New Varieties of Plants (UPOV).

The Customs Administration is establishing a credible enforcement record in combating cross-border breaches of industrial property rights. Within the country, the activities and the capacity of the SMI and the Ministry of the Interior are not sufficient, especially with regard to the seizure and destruction of equipment used to produce counterfeit goods. The data

³⁴ Law for Revision and Complementing of the Criminal Code, Official Gazette, No. 7, from 15 January 2008.

³⁵ Law on Industrial Property, Official Gazette No. 47/02, from 30 June 2002. Subsequent changes: Official Gazette No. 42, from 30 June 2003; No. 9, from 27 February 2004; No. 39, from 30 March 2006; No. 79, from 25 June 2007.

³⁶ Law for Protection of New Agricultural Plant Varieties, Official Gazette, No. 84, from 4 July 2007.

provided by different institutions on seized and destroyed counterfeit goods is not yet consistent.

A joint coordination body (Coordinative Body for Intellectual Property) for both intellectual and industrial property rights was created, consisting of 11 members from various institutions.³⁷ Its aim is to coordinate the activities of all relevant institutions and to enhance the enforcement of the legislation on intellectual and industrial property rights.

2.2. Right to Property

The right to property and the right to inheritance are guaranteed by Article 30 of the Constitution.³⁸ Article 31 provides for the possibility of foreign persons acquiring the right to property under conditions determined by law.³⁹ However, the process of restitution of property confiscated during the socialist Yugoslav regime has been progressing very slowly. The issue of restitution of the property of the Orthodox Church and the Islamic Community has seen little progress since independence in 1991. The Islamic Community of Macedonia claimed it had not been able to restore several mosques that the government had committed to restitute. In addition, the Islamic Community has been alleging that the government in some cases delayed the process of restitution by selling or starting new construction on disputed property and questioning the historical legal claim of the Islamic Community to religious property.

The Jewish community is the only religious community in the country whose communal property has been fully restituted. However, the Jewish community continued to work with the government towards full restitution of private property of heirless victims of the Holocaust whose property was later nationalized by the former Yugoslav government.

³⁷ The Coordinative Body for Intellectual Property was established on 24 April 2007. It comprises representatives of all government agencies with competencies concerning intellectual property, such as ministries of culture, interior, justice, finance, economy, the customs department, the public revenue office (PRO), SMI, Secretariat of European Affairs, etc. The body is chaired by the State Office of Industrial Property.

³⁸ Constitution of the RM

³⁹ *ibid*

2.3. Minimum Environmental Safety

Comprehensive legislation on the environment was introduced in 2005 regulating in detail the protection of the environment and the rights and duties of pertinent actors thereof.⁴⁰ Soon after its adoption, the Law on Environment⁴¹ has been amended to bring penal provisions in line with the Law on Misdemeanor.⁴² The amendments empower central and local environmental inspectorates to impose directly the penalties prescribed in the law on environment. Some progress has been made in the area of industrial pollution control and risk management.

The implementation of the Integrated Pollution Prevention and Control (IPPC) Directive of the EU has further advanced. Several major 'A' installations have been issued with IPPC adjustment permits, and the public has been given the opportunity to participate in the permit issuing process. The State Environmental Inspectorate (SEI) has listed 140 main polluters in a national register of air polluters. The inspectorate performs inspections once a month and has sanctioned several polluters in accordance with the “polluter pays” principle.

A national strategy for protection and rescue has yet to be adopted. The law requires operators of industrial sites to prepare contingency plans, but this requirement has not been implemented in practice. Some provisions on the control of major accident hazards involving dangerous substances (Seveso II Directive) have still not been fully implemented. The capacity of the Ministry and municipalities to implement industrial pollution control and risk-management measures is still inadequate. Preparations in this area are moderately advanced.

Some progress can be reported in the area of **chemicals** and **GMOs**. A Law on Chemicals⁴³ has been adopted. However its implementation is at an early stage.

⁴⁰ Law on the Environment, Official Gazette No. 53, as of 5 July 2005. Subsequent revisions: Official Gazette No. 81, as of 27 September 2005; No. 24, as of 1 March 2007.

⁴¹ *ibid*

⁴² Official Gazette, No. 62/06, as of 22 May 2006.

⁴³ Official Gazette, No. 113/07, as of 20 September 2007.

The Law on Protection from Noise in the Environment⁴⁴ has been enacted. In addition, amendments have been produced to the Law on Forests⁴⁵ and Law on Forest Reproductive Materials⁴⁶. In these areas, implementation is moderately advanced.

2.4. Product Liability

The country has made considerable progress in the sphere of food safety. Legislation on food safety⁴⁷ has been amended to bring national law in accordance with international standards. Efforts have been planned to produce a national strategy on food safety and software for a rapid alert system, but they have not yet been prepared.

In the area of veterinary policy, harmonization of national legislation with the *acquis* on veterinary has continued. The Law on Veterinary Health⁴⁸ has been enacted. It sets the general framework for further elaboration of the matter in five other special laws.

Legislation on control systems in the internal market and on control systems for imports is partially harmonized with the *acquis*. Legislation on veterinary border controls has not yet been adopted. The amended animal identification and registration legislation provides for identification and registration of sheep and goats. The operational character of the system for the identification of cattle and registration of its movement remains to be confirmed.

The capacity of the veterinary laboratory, which is part of the Veterinary Faculty, to provide reliable tests is not satisfactory. The capacity of the

⁴⁴ Official Gazette, No. 79, as of 25 June 2007.

⁴⁵ Official Gazette, No. 47/97, as of 19 September 1997. Subsequent revisions: Official Gazette, No. 7/2000, as of 1 February 2000; No. 89, as of 16 December 2004; No. 54, from 3 May 2007.

⁴⁶ Official Gazette, No. 55, as of 4 May 2007.

⁴⁷ Law on the Safety of Food and Products and Materials in Contact with Food, Official Gazette of the Republic of Macedonia, No. 54, as of 15 July 2002. Subsequent changes: Official Gazette, No. 84, as of 4 July 2007.

⁴⁸ Official Gazette, No. 113/07, as of 20 September 2007.

veterinary service at both central and local levels to put in place EU-compatible control systems has not been sufficiently strengthened.

With respect to the commerce of food and feed, the legislation on hygiene rules, specific rules for animal products and control rules have been harmonized with EU regulation.

EU legislation on specific control rules for animal products has been partially implemented. It does not include inspection surveillance and sampling. Assistance for implementation of the Hazard Analysis and Critical Control Point (HACCP) certification for exported products was prolonged till 2007. HACCP certification is only implemented in a limited number of establishments. It is not mandatory for the domestic market. The strategy for enhanced implementation of the HACCP system to begin in 2009 has not yet been prepared. The country does not yet have a program for upgrading food-processing establishments to meet EU requirements. New rules on animal by-products have been adopted. The producers and the importers provide the funding for food checks.

The Food Safety Directorate (FSD) has a new organizational structure, with two new units for consumer protection and for administrative and legal issues.

In the area of food safety rules, the acquis on flavorings, fortified food, and food for particular nutritional uses, ionizing radiation and quick-frozen foodstuffs has been implemented. The FSD has not yet established registers for fortified food, food for particular nutritional uses, food additives and mineral waters. The legislation on food contact material, food supplements, and implementing legislation on novel food and GMOs has not yet been adopted. In general, there has been moderate progress in this area.

Conclusion

The preceding pages attempted to give an overview of the legislative preconditions for development of CSR in the Republic of Macedonia. Various fields were covered, from labor relations, through intellectual

property and the environment, to veterinary health and food safety. Whenever possible references were made to international and, in particular, the European Union standards, and comments were provided on the extent of harmonization of national legislation with those standards.

This report is primarily a legal desk study to the extent that it concentrates on identifying the normative bases for CSR. It is a lot less of a social analysis in the sense that it explores the normative frame and the reality it regulates in their entirety.

Occasional comments are nevertheless made throughout the text on the discrepancy between the legal framework and the actual social reality it addresses. In some cases, such as concerning labor relations, they simply cannot be avoided, as the gap between the standards projected by the legal framework and the social reality in the country is simply too large. This definitely emerges as a conclusion with relevance beyond just labor: that a sound legal framework is only the first step, and as such it is necessary but not sufficient. What relates to this as a possibly important research question is – the extent of this gap as an indicator of legislation effectiveness.

Overall, it can be concluded that in terms of legal preconditions, Macedonia has the basic legal standards for promoting corporate social responsibility in place. The reality of the actual enforcement of these standards is a much more complex issue. It would be incorrect to say that it only depends on the integrity of government institutions and their capacity to implement policies, because it does not. This balance is much more complex and delicate.

Nevertheless, keeping to the basic point, many of the standards are there. In the field of labor, arguably, many of the standards in worker protection⁴⁹ had been inherited from the previous system whose ideology had the worker in the focus. New dimensions, such as gender-based harassment have been added in recent times. These standards, however, normatively had to find their new meaning in a new socio-economic setting.

⁴⁹ The phrase “protection during work” is one of the most often used in the Labor Law.

In other fields, such as intellectual property, which were embryonic by the beginning of transition, certain progress has been achieved in developing the legal framework.

Another conclusion, which clearly emerges from this short study, is that in a framework of rapid change propelled from abroad (the need to adopt the *acquis* and prepare for accession into the EU), the legal framework often recedes social reality in many respects.⁵⁰ The opposite scenario, whereby the legislator would actually rush to catch up with advanced realities is less likely, even though not impossible. The major challenge in this regard is that the legal framework and the social reality do converge over time. The sooner the better.

⁵⁰ Technological change is an exception to this. Innovation in information and communication technologies (ICT) for example has been spreading fast and legislation by default lagged behind.

Legislative Preconditions for the Development of Corporate Social Responsibility in Montenegro

by Darka Kisjelica¹

Abstract

This article gives an overview of Montenegrin legislation in areas of employment, environmental protection, intellectual property rights and land management. Furthermore the article points out deficiencies in relevant laws and problems in their implementation, which are illustrated through cases before courts and administrative bodies.

Key words: forced labor, employment practices, trade unions and collective bargaining, conditions of employment, discrimination, protection at work, paid absence, community impact, environmental law, corruption, land management, registration of ownership, intellectual property rights, product liability and consumers' rights.

Introduction

On its path to the European Union integration, Montenegro has adopted a significant number of laws with the help of the EU experts. These pieces of legislation are well written, modern, harmonized with EU regulations and other international instruments.

If you look at any field of life and work in Montenegro, you will find new laws and regulations that respond to all requirements of modern democratic society. A new Constitution was adopted under the supervision of the Venice Commission. Laws on political parties, conflict of interest, public procurement, and a set of laws related to the judiciary were also adopted with help of foreign experts. The laws on companies, labor, taxes, customs, free movement of capital and money, protection of industrial property,

¹ Thematic editor: Elmerina Ahmetaj Hrelja,
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protection of consumers, laws that guarantee the protection of human rights were also issued in cooperation with international institutions.

But if one examines whether the new legislation has effected the everyday life of an ordinary citizen one concludes that the picture is not bright. Judiciary is overwhelmed with work; administration is slow as usual. There is still demand for a friend, relative or party comrade in an influential position, who can help resolve the problem in one's favor and in time.

The implementation of the legislation is the problem in Montenegro. All the beautiful legal work stays in the system just to be shown to anyone who asks whether we have new modern laws.

In practice there is almost nothing new:

The old practice continues, as if laws hadn't been adopted. Officers, judges and staff are not educated to implement these laws, and, if educated, they don't feel compelled to implement new practices. There is a lack of control in the implementation of new laws.

This paper is a small contribution to the improvement of implementation of the laws in Montenegro.

a. employment practices

1. The Law on Labor², the General Collective Agreement (*GCA was concluded between the Government of Montenegro, the Alliance of the Independent Syndicates and the Commercial Chamber of Montenegro on 19th December 2003*) and the Branch/es Collective Agreement/s regulate employment practices in Montenegro.

In its first provisions, the Law on Labor envisages that it should be read in accordance with international treaties, and that fewer rights, or worse conditions couldn't be established by the Collective Agreement or the Employment Contract.

² (The Official Gazette of Montenegro no. [43/2003](#), [79/2004](#) and [25/2006](#)),

Article 3 of the Law guarantees equality in the employment process and realization of labor rights.

The compulsory overtime is limited to extraordinary situations:

- a) Natural disasters (earthquake, flood, etc.)
- b) Fire, explosion, ionic radiation, and larger defect on buildings, gear or machinery
- c) Epidemic or contagious diseases that endanger lives or health of people, livestock, or plants, food, or other material goods,
- d) Pollution of water, food or other goods for human or cattle nutrition in a wider range,
- e) Traffic or other accidents in which lives or health of people or material goods in a wider range are endangered,
- f) Need for emergency medical help to be given without delay
- g) Need for urgent veterinary intervention
- h) In other cases stipulated by the Collective Agreement

2. An Employment Contract can be concluded by the following persons:

- At minimum age of 15
- With general health capability

3. 15 years is the minimum age requirement and there is no child labor practice in Montenegro. (There is organized practice of using small children as beggars by their parents or relatives among Roma nationals.³)

The protection of young workers between 15 and 18 is especially guaranteed:

- They cannot be relocated for work out of the residence place,
- They cannot be relocated to a post where especially hard physical labor is performed, work under ground or under water nor to work which may harm their health or have great risk for their health,
- They cannot be ordered to work overtime or to work during the night shift, (the exception is made in the case of natural disasters or to prevent damage on equipment).

³ This can be spotted in the streets of larger cities.

4. Hazardous and harmful work is treated by the Law on Labor.

The Law provides:

a) General protection⁴

It is stipulated that an employee has the right for protection at work in accordance with the Law and the Collective Agreement.

The employee cannot be relocated to a working post or made to work longer than the full working time if, based on the findings of the competent organ for the assessment of his/her health capability, the work could worsen his/her health condition. The employee can be relocated to a working post where there is a risk from disability or professional or other illnesses only if he/she fulfills the requirements for work with regard to his health, psychophysical capability and age, apart from the requirements established in the Act of Systematization of Working Posts.

There is also a provision on reduced working hours⁵. For an employee who performs especially hard, exhausting, and harmful-to-health work, the full working time is reduced in proportion with the damaging influence or working capability of the employee. Such working posts are established by the Act of Systematization of Working Posts⁶ on the basis of the Collective Agreement.

(A collective agreement can be: General Branch and Collective Agreement with the Employer. The General CA is concluded for the territory of Montenegro and is applicable to all employers and employees. It is concluded between the government of the Montenegro and the Labor Union of Montenegro and the Commercial Chamber.

The Branch Collective Agreement is concluded for the branches of the commercial activity, groups or subgroups of commercial activities. It is applicable on employees and employers in the branch, group or subgroup. The Collective Agreement with the Employer is concluded between the Labor Union organization with that employer and the employer. The collective agreement with the employer is not mandatory, and if it doesn't

⁴ Article 72, 73 of the Law on Labor

⁵ The Article 40 of the Law on Labor

⁶ The Act of Systematization of Working Posts is an internal regulation of the Company. It is issued by the Employer.

exist, the General CA and Branch CA apply with contract on the employment.)

The rights of such an employee are equal to those of full-time employees. Such employees cannot work overtime or conclude the employment contract with another employer (parallel).

b) Special protection of young workers, women and the disabled

They have special protection guaranteed by this Law.

A woman and an employee under 18 cannot be relocated to a work post where especially hard physical work, work under ground or under water is performed or to posts that may harm their health or life with high risk.⁷

Women who work in industry and construction work cannot be relocated to work over night if they did not have rest of at least 12 hours (this is not applicable to women in executive positions or in health or social services).

Exceptionally, a woman can be asked to work over night if work needs to continue uninterruptedly because of a natural disaster or in order to prevent the damage on raw materials or equipment.

An employee under 18 years of age cannot be ordered to work longer than the full working time or during the night (22p.m.-6a.m.), with the same exception that applies to women.

An employee who is a disabled person or if there is danger of becoming a disabled person (pursuant to special regulations), should be relocated to an adequate working post and guaranteed other rights in accordance with the law and the Collective Agreement.

Minimum Wage

1. The employer is obliged to give the employee the guaranteed wage in the amount of the lowest work price which is established depending on the need of the employee and his family and general level of earnings in Montenegro, costs of life, economic factors and level of production. At the moment, this amount is 55€/month. This is paid for the full working time for the simplest work. The minimum wage was agreed

⁷ Ibid. Article 75

between the Government of Montenegro, Independent Alliance of the Labor Union and the Employers' Union, a few years ago.

2. The negotiations in January 2008 to increase the minimum wage from 55€ to 60€ failed.⁸

According to the Statistical Office of Montenegro, an average wage was from 127 € in Fishing to 875 € in Financial Intermediary in April 2008.⁹

3. In case of disturbance in the Company's management, there is a legal possibility to pay only the guaranteed wages but only for 3 months in the calendar year. This decision should be made with the opinion of the Syndicate or Counsel of the employees.
4. The retention of deposits and wages are illegal in Montenegro. No deposit retention has been reported. In case of damage suffered by the employer, there were cases of wage retention (*if the cashier receives a false bill, it is automatically deducted from his/her wage for that month, and the situation is similar in case of other damage on goods or equipment*). The disciplinary proceedings established under the Labor Law are not carried out by the employer. The employer, in social circumstances of employment insecurity, instead uses a shortcut by simply not paying a full wage to the respondent employee. In case of objection by the employee he/she is dismissed, hence such objections are rare in order to save the job.¹⁰

5. There is discrimination in hiring, firing, promotion and training opportunities. The employees or candidates are usually discriminated against on the basis of political affiliation, nationality, gender and age. There is the practice of hiring only the employees who are members of or affiliated with governing political parties in all state organs, but also in enterprises of public interest which are financed by the state budget. In

⁸ Source: Beta 22.01.2008. The Government of MNE refused the increase of the minimum wage from 55€ to 60€http://www.b92.net/biz/vesti/region.php?yyyy=2008&mm=01&dd=22&nav_id=281581&fs=1, and all other daily newspapers

⁹ www.monstat.cg.yu, monthly income, wages, April 2008 (the Statistical Office of Montenegro gives the absolute amount of wages per month, the costs of living are given only in index, so you cannot compare it easily)

¹⁰ The Article 29 of the GCA forbids the retention of wages without disciplinary proceedings.

large private companies the situation is similar, since they cannot work if not connected to governing parties, and the owners of such companies make sure that only politically suitable workers are hired. In local governments, there is similar practice depending on the fact what parties have the majority in the local Assemblies. The fact of education and expertise for the job compared to this “criterion” are not taken into account. Discrimination based on nationality also exists. There is no proportional representation of national minority members in the State organs, administration, courts, banks, insurance companies, public interest enterprises etc.

Discrimination against women is another form of discrimination. There is a practice of hiring young, single women who do not plan to have children soon. Women are asked to return from maternity leave earlier than prescribed by law or they are otherwise fired.

(There is a case of a medical worker, a mother, who was asked to come back to work 17 days after giving birth to a child after years of treating infertility (INTV presentation in the „Insider“).

If employed in the 80-ies or early 90-ies one was most likely to be discriminated against when considered for promotion. Such practice led to the employee’s resigning from work and starting a small business.

During 90-ies, until the Referendum on the Independence held in 2006, there was a widespread practice among employers of asking employees to fill out internal questionnaires with an aim of finding out what their political and national affiliation was. ‘Inadequate’ national or political affiliation was often a cause for termination of an employment contract. By the same token, there is a practice of concluding short-term employment contracts which would be renewed only if the candidate was considered ‘adequate’.

All kinds of techniques are employed to fire ‘inadequate’ employees:

- a) relocating him/her to another working unit in another town,
(there is an example of a bank clerk who was relocated from H.-Novi bank unit to Rozaje bank unit with fabricated reason of expansion of work with the bank unit in Rozaje, but the real reason was national affiliation stated in the questionnaire which was given to all workers /Case law before the Court of First Instance in H.-Novi/)

- b) forbidding him/her to approach the premises of the Company and after that terminating the employment on the grounds of not coming to work for 5 working days consecutively,

(There is a case of a worker who was warned to stay at home to reconsider the employment with a threat to be pushed away from the company's gate by security guards and after that he was dismissed for not coming to work for 5 days /Case law before the Court of First Instance in H.-Novi)

- c) allowing him/her annual leave without written decision and then terminating the employment on the grounds of not coming to work for 5 working days consecutively¹¹

(There is a case law before the Court in H.-Novi of a worker who was sent to annual leave without written decision (it is a common practice) and after that he was fired for not coming to work for 5 working days)

6. The Law on Labor regulates freedom of association of workers.

Employees, if more than 20, have the right to organize their Counsel or if fewer than 20, to have their representative with the employer. They have an observing and counseling role. They provide opinion on employer's decisions which affect the positions and rights of employees. The employer is not obliged to take these opinions into account, but these opinions are relevant if a related case ends before a court or administrative body.

Employees have the right to organize the Labor Union and to be members in one¹². The Labor Union should be registered with the Ministry of Labor.¹³ This organization is independent from the employer. The Labor union may appoint a representative with the employer. The employer is obliged to give the labor union representative access to all necessary information and support him/her in performing his/her duties. The representative is obliged to do all activities in the manner which does not influence efficiency of the employer's work. The employer has the duty to inform at least once a year the Labor Union on:

¹¹ Article 111 of the Law on Labor: „The employer may cancel the employment contract with an employee: 1) in case of unjustified absence from work 5 days consecutively or 7 days with interruptions within a 3-month period...”

¹² The Article 5 of the Law on Labor

¹³ Articles 136-140 The Law on Labor

1. Work results,
2. Development plans and their influence on the position of employees, movement changes and earnings policy,
3. Measures of improvement of work conditions, protection and safety at work.

The employer consults the Syndicate regarding:

- 1) protective measures and safety at work,
- 2) the appliance of new technology and organizational changes,
- 3) changes in working time and night and the overtime work,
- 4) the development and adoption of programs to be applied when technological or structural changes are needed, which may lead to cuts in the number of employees.

The employer is obliged to secure free realization of the Labor Union rights, and conditions for its work. The representative has the right for paid leave from work for carrying out activities organized by the Labor Union with 3 days advance notice to the employer. A Labor Union representative or a representative of employees during their mandate and 6 months after, cannot be held responsible, relocated, dismissed or send to other employer.

The General Collective Agreement also regulates the conditions of work of the Labor Union¹⁴. According to the collective agreement the Labor Union is guaranteed at least the following conditions:

- the right to participation in the home and international Labor Union activities,
- the right to inviolability of the premisses of the Labour Union mail and telephone calls,
- the protection of syndicate funds and property from intervention of public authorities,
- the right to access media,
- the right to voluntary agree to alternative dispute resolution processes,
- the right of employees to education and qualification.

¹⁴ Article 60-67

The employer in the process of calculation of gross-wages calculates 0,2% for the Labor Union's funds, which are allocated under the regulation of the Alliance of Independent Syndicates of Montenegro.

The process of protection of the workers' rights is regulated in detail, with emphasis on the participation of the syndicate representative in the disciplinary proceedings against the employee. The disciplinary proceedings may be started if the employee violated his/her working obligations, such as:

- 1) unjustified failure to inform the employer on the sick leave,
- 2) being late for work or leaving work before the end of the working time,
- 3) coming to work in an alcoholic state, drinking during the working time or using drugs,
- 4) giving a false report on the facts that may influence the decision of the management,
- 5) unsafe keeping of official records,
- 6) not wearing the working suit or the personal protection gear or signs with personal name when it is mandatory,
- 7) the refusal to execute working obligations from the employment contract,
- 8) unlawful allocation of the means of work,
- 9) non-compliance with the regulation on protection from fire, explosion or etc.
- 10) the abuse of the official position, violation of the authority and disclosure of an official secret,
- 11) distraction of one or more employees during work,

Such violations may lead to following measures:

- a fine,
- termination of the employment contract and dismissal.

The disciplinary organs are the director (first instance) and the managing board or board of directors (second instance). If there is no managing board in smaller companies, the director is the second instance as well.

After the disciplinary proceedings within the company the employee may file a complaint against the decision before the court. In the entire proceedings the employee has the right to be represented by the Labor

Union organization or its representative or the labor union organization has the right to participate in all stages of proceedings on behalf of the employee.

7. The Law on the Protection at Work regulates safety at work.¹⁵

The employer with more than 20 employees has to:

- issue an Act on protective measures at work,
- take preventive measures for protection at work,
- estimate the health risk for every working post,
- ensure health examination of employees who work on the posts with risks for their health and life,
- provide workers with training on safety at work in relation to the new technology or new equipment,
- review theoretical and practical qualification of employees for work with new technology or equipment.

An employee who works on the post under special conditions should fulfill, beside the general requirements, special requirements regarding age, gender, education, qualifications, general health, and psychical health. The Ministry of Labor regulates posts with special work conditions and the manner in and terms under which qualifications of the employee for the post are examined.

The employer has the duty to provide the employee with the protective gear and make sure it is used accordingly.

The employer is obliged to provide the necessary health insurance to employees covering professional illnesses and other diseases related to work.

Depending on the number of employees and the working process, the employer is obliged to:

- organize professional Department for protection and safety at work (within the company),
- appoint a professional to take care of protection and safety at work (who works with the employer),

¹⁵ The Official Gazzette 79/2004

- to engage a company or a professional to maintain the protection and safety at work (outside the company)

This Department of Safety at Work or the responsible persons are obliged to perform the following:

- counseling the employer about planning, choice and maintenance of work equipment, equipment and protective gear for personal safety at work,
- counseling the employer about arranging the working post,
- participating in making a professional base for the Act on Assessment of Risks at Work,
- organizing a preliminary and periodical test of work environment (chemical, physical and biological detriment, microclimate and lightning)
- organizing a periodical test and checking the work equipment, electric and other installations,
- suggesting measures for improvement of working conditions for the posts with increased risks,
- monitoring the application of measures for the protection at work and maintenance of equipment for work for proper functioning as well as protective gear and equipment,
- obtaining the guidance for safe work and controlling its application
- monitoring conditions related to hazards at work and professional illnesses, participating in the investigation of its causes and preparing the reports with the suggestion of measures for the employer,
- preparing and organizing the training for employees for safe work
- suggesting measures for banning work on a working post or use of equipment in cases when immediate risks for life and/or health of the employee/s are established, and informing the employer and the representative of employees at once,
- collaborating and coordinating all questions about protection and safety at work, and performing all other related activities.

If the employer allows the continuation of work despite the work ban, this Department or person is obliged to inform the Labor Inspectorate.¹⁶

8. The Law on Labor prescribes 40 hours working week. The minimal (guaranteed) wage is 55€/month.

A worker will be remunerated:

- a) during state and religious holidays which are non-working days,
- b) during annual leave,
- c) during paid leave in accordance with the law and the collective agreement,
- d) during the military exercise,
- e) during training ordered by the employer,
- f) during sick leave,
- g) during interruption of work which occurred without the employee's liability,
- h) when refusing to work because the protective safety measures are not enforced,
- i) when absent from work due to the participation in work of organs with the employer and organs of syndicate,
- j) while waiting for relocation to another position,
- k) while waiting for re-qualification or qualification under the acts of social security and for the period of re-qualification or qualification or in the other cases defined by the law or collective agreement.

One is entitled to a break during work, daily rest, weekly rest, and the annual leave.

There is a guaranteed break during daily work of at least 30 minutes, but not at the beginning or at the end of the working period. This break is calculated in working hours.

The rest between 2 consecutive working days should be provided in the amount of 12 hours uninterruptedly. During season the rest can be 10 hours, but for workers under 18 there have to be 12 hours.

¹⁶ Article 36 Paragraph 2 of the Law on Protection at Work

The weekly rest is at least 24 hours uninterruptedly, but if this is not possible, there has to be one day of rest during the next working week. Employees cannot be deprived of the break and rest.

The annual leave is guaranteed for the employees in the amount of 18 working days. Employees under 18 have the right to annual leave in the amount of 24 working days. The length of the annual leave is established on the basis of: work contribution, complexity of tasks at work, work conditions, work experience, disability, health capability, and other criteria. Employees cannot waive the right to annual leave and cannot be deprived of this right. If he/she does not practice the right due to the employer's fault, he/she has the right to damages.¹⁷ *(There is common knowledge that in private companies annual leave is granted under the legal minimum of 18 days (7 days, 10 days) and that employees give their consent to that, as they want to keep their jobs. The work inspection doesn't have any reports on this).*

Paid absence

One is also entitled to the right to paid leave up to 7 days in one calendar year in cases of:

- 1) marriage,
- 2) moving from one place of living to another,
- 3) child-birth of a close family member
- 4) taking of a specialization exam,
- 5) death of a close family member (spouse, children or parents).

The General Collective Agreement regulates other cases of paid absence:

- up to 3 days for child birth (for the parent who does not use the maternity leave)
- up to 3 working days annually for care of an infant with physical or psychological damage;
- 1 working day for the death of the next of kin within close family concluded with third grade of blood relation;
- up to 7 working days for a seriously ill close family member;

¹⁷ The Articles 49-61 of the Law on Labor.

- up to 3 working days for protection and elimination of consequences in the household caused by a natural disaster
- the participation in the competition in production (work) up to 2 working days; (those are competitions that are organized by the Commercial branches)
- the voluntarily giving of the blood, tissue or organs up to 3 working days;

Unpaid leave

An employee has the right to unpaid leave in cases established by the Collective Agreement. During this leave the employee has the right to health insurance while other work rights and obligations are suspended.¹⁸ The General Collective Agreement stipulates that unpaid leave of up to 30 working days in a calendar year could be taken in case of:

1. nursing a seriously ill close family member,
2. medical treatment at one's own expense
3. participation in cultural sports or other public manifestations.

In case of 1 and 2 longer unpaid leave can be granted.¹⁹

9. The Law on Labor dedicates one paragraph²⁰ to the duty of the employer to respect the privacy and dignity of the employee. There is no special law beside the Criminal Law and Law on the Contracts and Torts which regulates the rights of employees in relation to violence, assault, harassment and threats at work.

The Criminal Law regulates criminal offences, such as:

- Serious Injury,²¹
- Injury,²²
- Compulsion (Force),²³

¹⁸ Article 63

¹⁹ Article 8 of GCA

²⁰ The Law on Labor, Article 3 Para 2

²¹ The Criminal Law, Article 151

²² Ibid. Article 152

- Molestation and Torture,²⁴
- Endanger of the Security of Person,²⁵
- Unauthorized Collection of the Personal Data,²⁶
- Insult,²⁷
- Defamation²⁸

The proscribed sentences for these crimes are fines and imprisonment up to several years depending on the seriousness of the crime.

The Law on Contract and Torts provides for the liability of the employer for the damage that the employee has suffered at or during the work,²⁹ and in cases of assault of other workers if related to the working process. The Law provides pecuniary and non pecuniary damage for the death, injury or violation of personal dignity³⁰. The damage has to be paid by the responsible person or the employer if there is ground for his/her liability.

There is also the Law on Corporate Criminal Liability which provides for all criminal offences from the Criminal Code that are committed by corporations.

b. community impact

The following laws are relevant to this matter:

1. the Law on Environment, the Law on Integrated Prevention and Control of Pollution and the Environment, which regulates the business of enterprises with regards to minimum safety of the environment. There are also general rules of the Contract and Tort Law for that kind of damages.

(There is a well-known case of land slide and the damage on village households and houses in the village of Mojdez in Herceg-Novi resulting from the unprofessional installation of major water pipes in

²³ Article 165 of the Criminal Law

²⁴ Ibid. Articl 167

²⁵ Ibid. Article 168

²⁶ Ibid. Article 176

²⁷ Ibid. Article 195

²⁸ Ibid. Article 196

²⁹ The Law on Contracts and Torts (Obligations) Article 170 and 171

³⁰ Ibid.189,190,200

2002. The proceedings for damage claims of citizens who lost their homes are still pending before the first instance court.)

2. the Law on State Measurement and Cadastre, the Law on Building Site, the Law on Spatial Arrangement and Planning and Law on Land Expropriation.³¹

The Law on State Measurement and Cadastre regulates the process of transfer³² and registration of ownership of land and buildings (real estates). The existing system was first established in 1985, but with the transfer of all real estate registrations from courts (Austrian Land Registry) a great number of requests for the revision of existing registrations were filed. Corrections had to be made for registrations which took place in the past 20 years. However, under the pressure of numerous requests, authorities provided little time to those who carried out the corrections of mistakes in registration in relation to the size of real estate, owners etc. A number of estates were mistakenly registered as being in public ownership, i.e. ownership of a municipality. Some registrations were in part correct and in part incorrect.

Although the same law stipulates that the mistakes should be corrected officially the actual owners who are not registered have to file the action before the court to correct these mistakes. The courts have to compare the registration under the old Austrian Land Registry with the new registry - cadastre in the lawsuits, to compare the surveyors report and the maps under Old and New registrations, and to find which part of the property belongs to the plaintiff.

These kinds of lawsuits may last up to several years, that is, minimum up to 2 years if no appeal against the First Instance Court decision is filed. The costs of these lawsuits are born by the party who loses the case. Since 1990 the courts of Montenegro have been correcting these mistakes, and the job has not been finished yet.

³¹ (Zakon o gradjevinskom zemljištu) The Official Gazette 55/2000, (Zakon o državnom premjeru I katastru) the Official Gazette (Zakon o eksproprijaciji) the Official Gazette

³² The transfer of ownership is regulated by the Law on Fundamental Property Relations (Zakon o osnovama svojinsko-pravnih odnosa). Ownership can be obtained on the basis of : 1. the law, 2. the contract with registration in the Cadastre and 3. the decision of a state authority. All the three ways should be registered in the Cadastre and the transfer is thus completed.

Under the Law on Construction Land the construction land can be in private and public ownership.

The construction land is divided into:

- city building site and
- building site beyond the city building site limits.

Which area is city building site is determined by the local government or the state as a functional and urban entirety according to the law.

The city building site is determined by the spatial or urban plan by elaborating details. The following can be regarded as city building site:

- The land which is a densely built whole integrated in the city or in the settlement
- The land which is intended for city or settlement enlargement based on the general urban plan
- The land in other areas planned as the housing area or other complex building (industrial or energetic or tourist centers).

The city building land can be used based on:

- the ownership of land,
- the ownership of a building
- the act of the land given for use

The city building land is divided into urban plots. Everybody is to bear the changes of the borders of urban plots according to plans.

(There is a recent decision of the Supreme Court that shows if the border of the plot is changed according to the urban plot, the owner might lose the ownership on the part of his plot which is joint with the other plot., no. 45/2008 The supreme court ordered the first instance court to “examine if plaintiffs have lost their right of ownership if the urban plot of the defendant took part in the plot they had owned”)

The transfer of rights to the building leads to the transfer of rights to the urban plot where the object is located.

The building land out of the city building land limits is determined by spatial or urban plans.

Under the Law on Expropriation³³, land and buildings can be expropriated from their owners only if public interest is established in favor of the State, municipalities, state funds, public enterprises with payment of the market price.

The expropriation can be:

- complete, when the ownership of land or a building is transferred from one person (the former owner) to another (the recipient)
- partial, the property is leased for a limited time

Public interest has to be established before the expropriation proceedings are started. Public interest can be established by the special law or by the Government on the basis of a special project analysis.

The property cannot be delivered before the decision comes into effect. Exceptionally, in case construction has to take place urgently, the delivery of the property will be done before the decision comes to effect, but not before the decision is final³⁴.

The proceedings for just compensation (market price + costs (i.e. costs of moving) + damage) for expropriated property starts after the decision comes into effect. The recipient should offer the amount for just compensation within 15 days from the moment when the decision on expropriation comes to an effect. If agreement is not reached within 2 months as of the effective date of the decision, the file has to be transferred to the court for the decision.

The problem in practice is that former owners are deprived of their ownership and properties and in case of judicial decision they will wait for the compensation for years until the proceedings are over.³⁵

3. In practice, when attempting to realize their rights, citizens are not treated equally. This may lead to a conclusion that bribery and corruption are widespread, which is an opinion shared by citizens. The observed anomalies are:

³³ The Official Gazette 28/06

³⁴ The decision is final when the appeal is rejected, and it is in effect when the action before the Administrative Court is rejected (or not submitted in the legal period).

³⁵ As an exception, the Municipality of H-Novci first paid just compensation for the land that has been expropriated for the motorway Trebinje (BIH)-Herceg Novi (MNE) and then took possession of the land. The former owners had found it extremely fair.

- that upon the same facts different decisions are made:
(The Supreme Court's decision about a flat in Herceg-Novi „Matkocivc vs. Ristelic“ (there was a supposition that since the 50-ies the flat has belonged to the Municipality of H.-Novi and was given for use to Mrs. Ristelic, a midwife from Herceg-Novi, in which she lived for over 35 years. Previous owners who lived in the USA filed a suit in order to return the property as the flat had never been legally taken away by expropriation, confiscation or nationalization. Even though Mrs Ristelic had paid the flat and registered it as her ownership, at the beginning of 1990-ies, in this case the Supreme Court did not uphold the right of an honest owner who didn't know that he/she had acquired the property from a person who +was not owner.)
- that in the same cases proceedings are efficiently finished, while others last beyond a reasonable time:
(This is the case in all administrative cases, registration of ownership, planning, urbanism and building permit on all levels of decision-making, before the courts at all instances).
- that in some planning cases the exception under the same plans are allowed to some investors, but not to the others:
- in cases before the inspection and communal police who supervise investments and buildings without a permit, some building sites are closed and future activity is banned if not properly marked (there has to be table with names of the investors, constructors, architects no. of the building permit etc), but others can build large buildings with no signs of names of investors, constructors, architects etc.
(In the heart of Igalo, 50 m from the beach (Stara Banja,) there is a 4-floor building in development, with no signs of investors, constructors, architects, which are mandatory etc.)
 - that before the courts the amount of the just satisfaction differs in identical cases, or is equal in different cases:
(For the death of father and husband 20.000€, but also for the libel against a high state official)

4. Until a new Montenegrin law was adopted, the intellectual property was regulated by former federal (Serbia and Montenegro Federation) laws:

1. The Law on Copyright and Related Rights³⁶ (Zakon o autorskom i srodnim pravima)
2. The Law on Patents (Zakon o patentima)
3. The Law on Trademarks (Zakon o žigovima)
4. The Law on Legal Protection of Design (Zakon o pravnoj zaštiti dizajna)
5. The Law on Protection of Topography of Integrated Circuits (Zakon o zaštiti topografije integrisanih kola) and
6. The Law on Implementation of Regulations for the Protection of Rights of Intellectual Property (Zakon o primjeni propisa kojima se uređuje zaštita prava intelektualne svojine)

These laws were adopted by the SCG Parliament in 2004 as part of a large reform of regulations in this legal area and harmonization with regulations of WTO – TRIP agreement. The new laws are harmonized with corresponding regulations of the EU.³⁷

The Law on Implementation of Regulations for the Protection of Rights of Intellectual Property³⁸ defines:

- the procedure of reporting the breach of intellectual property rights,
- inspection and control measures and
- fines which can be from 3.000€ to 30.000€.

The Law on Patents³⁹ regulates what products can be protected as a patent, the right to have a patent, moral and pecuniary rights of the inventor, the procedure of patent acknowledgment, patent duration and termination, and legal patent protection. There are few cases concerning protection of the patents.

The Law on Trademarks⁴⁰ defines the registration and protection of trademarks.

³⁶ The Official Gazette SCG 61/2004

³⁷ The opinion of the EU experts in the Workshop within the CARDS Regional project 2003 in Budva 31.03.2006.

³⁸ The Official Gazette of the State community of Serbia and Montenegro (SCG) 45/2005 and it is applicable in Montenegro under the Law on Implementation of Regulations on Intellectual Rights

³⁹ The Official Gazette SCG32/2004. The Montenegrin Law on Patent is in the process of drafting and adoption, the draft dates from February 2008

⁴⁰ The Official Gazette of SCG 61/2004,7/2005

The Law on Copyright and Related Rights⁴¹ defines the notion of the copyright and the protection of the copyright and related rights.

The Law on Legal Protection of Design⁴² regulates the object and condition of design protection.

Montenegro is in a process of adopting new laws in this field, and based on released drafts it can be concluded that these laws are going to follow the above mentioned ones.

The problem of implementation of these laws in Montenegro is obvious as there is a lack of expert witnesses in this area, so the courts have to use help from other states with the common language (BiH, Croatia, Serbia).

The protection of the copyright and industrial property was in the jurisdiction of the Higher Courts of Montenegro. After the reform of court jurisdiction, the protection is under the jurisdiction of first instance courts. In first instance courts there is a lack of experience in rendering justice in these cases.

The Intellectual Property Office has started working as of 28th of May 2008. Under the federal laws there was the federal intellectual property office in Belgrade, so from 22nd May 2006 until 28th of May 2008 there was no IPO for Montenegro.

This office has to have four functions:

- 1) manage proceedings for recognition and registration of industrial property rights;
 - 2) follow international and foreign regulations in this area and accordingly influence the adoption of new legislation in Montenegro;
 - 3) cooperate with commercial branches;
 - 4) perform public information and educational role.
4. The Law on Protection of Consumers regulates all rights of consumers and obligations of manufacturers and traders and the liability in case of selling products dangerous for health and life. The most important EU directives in the area are implemented by this law and all three of basic rights of consumers are guaranteed:
- the protection of safety and health of consumers,
 - the protection of economic interest of consumers, and

⁴¹ The Official Gazette of SCG 61/2004

⁴² The Official Gazette of SCG 61/2004

- the right to damages, judicial and extrajudicial protection of consumers.

The implementation of this law is in the jurisdiction of the Ministry of Economic Development, in the jurisdiction of all inspections (market, health, financial, etc.) with different Ministries, and organizations of consumers. There is an organization for the protection of rights of consumers: CAZAS.

But despite all this, the major supermarkets still make consumers pay a higher price than labeled on the product.

(„Pantomarket“ and „Novito“ at the end of May had a particular price on a frosted chicken meat product of „Vindija“ Croatia but charged a higher price, since they had the higher price in the computer system. If the consumer doesn't want to pay for the product according to the higher price that was marked on the product, he/she can only give back the product and go to the market inspection.)

Conclusion

Montenegro has come a long way in the process of transition. The final effort has to be invested to fully implement the modern legislation, without delay and hesitation, using domestic capacities, but with the help of international experts and funds. A system of supervision and control of the implementation of legislation needs to be put in order, so that all citizens can benefit from it.

Legislative Preconditions for the Development of Corporate Social Responsibility in Serbia¹

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Abstract

This article gives a detailed overview of Serbian legislation in the areas of employment and labour laws, corruption, environmental protection, intellectual property rights and land management. The article is a review of the most important legislative acts, and it also points out deficiencies in relevant laws and problems of their implementation. The first part is devoted to labour laws. These laws were adopted in the last few years and are mostly in accordance with relevant international standards, but their implementation is still seriously overshadowed and strongly influenced by transition processes and political turbulence. The second part focuses on the issues of environmental protection, corruption and product liability. These areas are the ones in which most work is needed, both the enactment of new legislation and the implementation of the existing law.

Key words: Forced labour, employment practices, trade unions and collective bargaining, conditions of employment, mobbing, community impact, environmental law, corruption, land management, intellectual property rights, product liability

Introduction

The purpose of this article is to give a detailed overview of Serbian legislation in the areas of employment and labour laws and regulations on property rights, corruption, environmental protection and intellectual

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property rights. These regulations are, for practical purposes, listed at the beginning of the each subject. Serbia is bound by a large number of international treaties and this list is also provided. In the article there are very few reflections on international standards—only where there are serious discrepancies between those standards and domestic legislation or where we considered them important—keeping in mind the problems relevant to Serbian society. We have decided on this particular approach because the Quick Check gives a very comprehensive list of all applicable international treaties and embodies the standards in the questions and indicators. We hope that, in this way, the two will make a useful guide. Some attention was also devoted to the actual enjoyment and/or violations of particular rights.

Serbia is still in the process of the transition to market economy and is a politically turbulent society. Serbian society was, for a very long time, devoted to issues of systematic violations of civil and political rights and transitional justice. This still seriously overshadows and strongly influences the enjoyment and effective protection of most socio-economic rights, property rights and other rights, as well as the fight against corruption; all of which has a strong impact on the community. Only recently, May 2008, have electoral campaigns and election results shown that citizens are finally prioritizing these issues.

One company official—who contributed to the adjustment of the Quick Check for Balkans—said, “we are only now starting to implement the practices of corporate responsibility in the way the West has been doing for decades”. We would also like to stress, though this issue is not addressed in this article, that Serbia lacks relevant legislation that would stimulate the development of corporate social responsibility. Hence, urgent reforms in some area of legislation (in particular regulation of taxes) are needed for the encouragement of this much-needed kind of corporate behaviour.

I Employment Practices

- *Relevant Ratified International Treaties*

Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01; **Convention No. 182 Concerning the Worst Forms of Child Labour**, *Sl. list SRJ (Međunarodni ugovori)*, 2/03;

Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ (Međunarodni ugovori)*, 11/81; **Convention on the Rights of the Child**, *Sl. list SFRJ (Međunarodni ugovori)*, 15/90; *Sl. list SRJ (Međunarodni ugovori)*, 4/96, 2/97; **ILO Convention No. 3 Concerning Maternity Protection**, *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27; **ILO Convention No. 11 Concerning Right of Association (Agriculture)**, *Sl. novine of the Kingdom of Yugoslavia*, 44-XVI/30; **ILO Convention No. 14 Concerning Weekly Rest (Industry)**, *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27; **ILO Convention No. 16 Concerning Medical Examination of Young Persons (Sea)**, *Sl. novine of the Kingdom of Serbs Croats and Slovenes*, 95-XXII/27; **ILO Convention No. 17 Concerning Workmen's Compensation (Accidents)**, *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27; **ILO Convention No. 18 Concerning Workmen's Compensation (Occupational Diseases)**, *Sl. novine Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27; **ILO Convention No. 19 Concerning Equality of Treatment (Accident Compensation)**, *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27; **ILO Convention No. 29 Concerning Forced Labour**, *Sl. novine of the Kingdom of Yugoslavia*, 29/32; **ILO Convention No. 45 Concerning Underground Work (Women)**, *Sl. vesnik of the Presidium of the Assembly of the Federal People's Republic of Yugoslavia (FNRJ)*, 12/52; **ILO Convention No. 81 Concerning Labour Inspection**, *Sl. list FNRJ (Addendum)*, 5/56; **ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise**, *Sl. list FNRJ (Dodatak)*, 8/58; **ILO Convention No. 89 Concerning Night Work of Women (revised)**, *Sl. list FNRJ (Dodatak)*, 12/56; **ILO Convention No. 90 Concerning Night Work of Young Persons in Industry (Revised)** *Sl. list FNRJ (Dodatak)*, 12/56; **ILO Convention No. 91 Concerning Paid Vacations for Seafarers (Revised)**, *Sl. list SFRJ (Međunarodni ugovori)*, 7/67; **ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively**, *Sl. list FNRJ (Dodatak)*, 11/58; **ILO Convention No. 100 Concerning Equal Remuneration**, *Sl. list FNRJ (Međunarodni ugovori)*, 11/52; **ILO Convention No. 103 Concerning Maternity Protection (Revised)**, *Sl. list FNRJ (Dodatak)*, 9/55; **ILO Convention No. 105 Concerning Abolition of Forced Labour**, *Sl. list SRJ (Međunarodni ugovori)*, 13/02; **ILO Convention No. 106 Concerning Weekly Rest (Commerce and Offices)**, *Sl. list FNRJ (Dodatak)*, 12/58; **ILO Convention No. 109 Concerning**

Wages, Hours of Work and Manning (Sea), (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 10/65; **ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation,** *Sl. list FNRJ (Dodatak)*, 3/61; **ILO Convention No. 121 Concerning Employment Injury Benefits,** *Sl. list SFRJ (Međunarodni ugovori)*, 27/70; **ILO Convention No. 122 Concerning Employment Policy,** *Sl. list SFRJ*, 34/71; **ILO Convention No. 129 Concerning Labour Inspection (Agriculture),** *Sl. list SFRJ (Međunarodni ugovori)*, 22/75; **ILO Convention No. 131 Concerning Minimum Wage Fixing,** *Sl. list SFRJ (Međunarodni ugovori)*, 14/82; **ILO Convention No. 132 Concerning Holidays with Pay Convention (Revised),** *Sl. list SFRJ (Međunarodni ugovori)*, 52/73; **ILO Convention No. 135 Concerning Workers' Representatives,** *Sl. list SFRJ (Međunarodni ugovori)*, 14/82; **ILO Convention No. 138 Concerning Minimum Age for employment,** *Sl. list SFRJ (Međunarodni ugovori)*, 14/82; **ILO Convention No. 140 Concerning Paid Educational Leave,** *Sl. list SFRJ (Međunarodni ugovori)*, 14/82; **ILO Convention No. 144 Concerning Tripartite Consultation (International Labour Standards),** *Sl. list SCG (Međunarodni ugovori)*, 1/05; **ILO Convention No. 155 Concerning Occupational Safety and Health,** *Sl. list SFRJ (Međunarodni ugovori)*, 7/87; **ILO Convention No. 156 Concerning Workers with Family Responsibilities,** *Sl. list SFRJ (Međunarodni ugovori)*, 7/87; **ILO Convention No. 161 Concerning Occupational Health Services Convention,** *Sl. list SFRJ (Međunarodni ugovori)*, 14/89; **European Convention for the Protection of Human Rights and Fundamental Freedoms,** *Sl. list SCG (Međunarodni ugovori)*, 9/03; **Framework Convention for the Protection of National Minorities,** *Sl. list SRJ (Međunarodni ugovori)*, 6/98; **International Convention on the Elimination of All Forms of Racial Discrimination,** *Sl. list SFRJ (Međunarodni ugovori)*, 6/67; **International Covenant on Civil and Political Rights,** *Sl. list SFRJ*, 7/71; **International Covenant on Economic, Social and Cultural Rights,** *Sl. list SFRJ*, 7/71; **Optional Protocol to the International Covenant on Civil and Political Rights,** *Sl. list SRJ (Međunarodni ugovori)*, 4/01; **Second Optional Protocol to the International Covenant on Civil and Political Rights,** *Sl. list SRJ (Međunarodni ugovori)*, 4/01; **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,** *Sl. list SRJ (Međunarodni ugovori)*, 13/02; **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment**

or Punishment, Sl. list SCG (Međunarodni ugovori), 16/05; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Sl. list SRJ (Međunarodni ugovori), 7/02; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, Sl. list SRJ (Međunarodni ugovori), 7/02; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Sl. list SRJ (Međunarodni ugovori), 6/01; Protocol Amending the Slavery Convention Signed at Geneva 25 September 1926, Sl. list FNRJ (Dodatak), 6/55, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Sl. list SRJ (Međunarodni ugovori), 6/01; Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Sl. list SCG (Međunarodni ugovori), 5/05, 7/05; Slavery Convention, Sl. novine Kraljevine Jugoslavije, XI–1929, 234; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sl. list FNRJ (Dodatak), 7/58.

- **Relevant Domestic Legislation**²

Act on the Army of Serbia, Sl. glasnik RS, 116/07, Act on Defense, Sl. glasnik RS, 116/07, Act on Health and Safety at Work, Sl. glasnik RS, 101/05; Act on Labour Relations in Government Agencies, Sl. glasnik RS, 48/91, 66/91, 44/98, 49/99, 34/01, 39/02 and 49/05; Act on Peaceful Settlement of Labour Disputes, Sl. glasnik RS, 125/04; Act on Pensions and Disability Insurance, Sl. glasnik RS, 34/03, 64/04, 84/04 and 85/05; Act on Prevention of Discrimination against Persons with Disabilities, Sl. glasnik RS, 33/06; Act on Professional Training and Employment of Disabled Persons, Sl. glasnik RS, 25/96 and 101/05; Act on Social Organisations and Citizens Associations, Sl. glasnik SRS, 24/82, 39/83, 17/84, 50/84, 45/85, 12/89 and Sl. glasnik RS, 53/93, 67/93, 48/94; Act on Social Security and Provision of Social Welfare, Sl. glasnik RS, 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01 and 84/04; Constitution of the Republic of Serbia, Sl. glasnik RS, 83/06; Criminal

² Majority of the below mentioned texts can be downloaded from the web page of Serbian Parliament: www.parlament.sr.gov.yu

Code, *Sl. glasnik RS*, 85/05; **Employment and Unemployment Insurance Act**, *Sl. glasnik RS*, 71/03 and 83/04; **Family Law**, *Sl. glasnik RS*, 18/05; **Health Protection Act**, *Sl. glasnik RS*, 107/05; **Labour Act**, *Sl. glasnik RS*, 24/05 and 61/05; **Liquidation Act**, *Sl. glasnik RS*, 84/04; **Medical Insurance Act**, *Sl. glasnik RS*, 17/05; **Personal Data Protection Act**, *Sl. list SRJ*, 24/98 and 26/98; **Planning and Construction Act**, *Sl. glasnik RS*, 47/03; **Rulebook on Rights of Unemployed Persons**, *Sl. glasnik RS*, 35/97, 39/97, 52/97, 22/98, 8/00, 29/00, 49/01 and 28/02; **Rules on Entry of Trade Union Organisations in Register**, *Sl. glasnik RS*, 6/97, 33/97, 49/00, 18/01 and 64/04; **Strikes Act**, *Sl. list SRJ*, 29/96.

- ***Laws regulating employment practices in regard to forced labour***

With regard to the prohibition of slavery and forced labour, Serbia is bound both by the United Nations International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 16 December 1966, as well as many other international treaties.

The Serbian Constitution³ of 2006 explicitly bans slavery, keeping persons in conditions akin to slavery, all forms of trafficking of persons and forced labour⁴. This article also envisages that sexual or economic exploitation of vulnerable persons shall be deemed forced labour. Forms of labour that are not to be considered forced labour are listed in the Constitution: Labour or service of persons serving sentence of imprisonment if their labour is based on voluntary basis with financial compensation, labour or service of military persons, nor labour or services during war or state of emergency in accordance with measures prescribed on the declaration of war or state of emergency, shall not be considered forced labour.⁵

In terms of labour conducted by prison inmates, relevant provisions of national legislation have been harmonised with international standards.⁶ The obligation in the Act on Army is not considered compulsory work, only if it is purely military in character. The Act on Defence prescribes the work obligation of citizens during states of war and states of emergency. This obligation is restricted in specific cases with the aim of providing

³ For full text of the Constitution in English see: http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_ceo.asp

⁴ Article 26

⁵ Article 26 Para. 3

⁶ See e.g. *De Wilde, Ooms, Versyp v. Belgium*, ECHR, App. No. 2832/66 (1971)

special protection to particularly vulnerable persons (e.g. the parent of a child under 15 years of age whose spouse is performing military service), which is in accordance with international standards. However, the Act on Defence does not prescribe the duration of the work obligation for individuals and prescribes the work obligations for all able-bodied citizens over 15 years of age, which is not in line with the international standards.⁷

The Criminal Code of the Republic of Serbia sanctions human trafficking,⁸ including slavery and transportation of enslaved persons.⁹ In accordance with this law, whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labour or forced labour, shall be punished by imprisonment of two to twelve years. The Code prescribes longer sentences of imprisonment if the criminal act is committed against a minor, resulted in grave bodily injury, resulted in death of one or more persons or if the offence is committed by an organized group.¹⁰

This serious subject is not given enough attention, though during 2007 Serbian media have shown slight rise of interest on the issues of the prohibition of slavery and forced labour (from 0.77% in 2006 to 1.56% in 2007).¹¹

- ***Laws regulating employment practices in regard to minimum age requirements, special protection of young workers and child labour practices***

Under the Constitution, the employment of children under 15 is prohibited and minors over 15 are prohibited from performing jobs that may adversely affect their health or morals.¹²

⁷ For international standards see ILO Convention No. 29 and *W., X., Y. and Z. v. United Kingdom*, ECmHR, 11 Yearbook 562 (1968). For more on forced labour in Act on Defence and the Serbian Army Act see *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007 p. 77 and 78

⁸ Article 388 Para 1.

⁹ Article 390. For more information on trafficking in human beings in Serbia see the web page of the NGO ASTRA: <http://www.astra.org.rs/>

¹⁰ Article 388 Para 2-6

¹¹ *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007 p. 214

¹² Article 66

The Labour Act also sets 15 as the minimum employment age¹³ and affords special protection to employees under 18 years of age.¹⁴ In accordance with this Act, the employment of persons aged between 15 and 18 is possible only with prior written permission of their parents, adoptive parents or guardian and only if such work is not harmful to young workers health, morals or education or if such work is not prohibited by law. Another condition prescribed by the act for hiring persons under the age of 18 is obtaining a medical statement from the authorised institution—providing that the person in question is capable to conduct specific working obligations and that those obligations are not harmful to his/hers health. In order to protect their health, minors and young adults cannot be hired to perform hard physical work, work underground, work underwater or work in high altitudes; jobs exposing workers to harmful radiation or poisons, materials that could cause cancer, substances or other substances that could cause hereditary disease, as well as risks to health caused by cold, heat, noise or vibrations, nor jobs that could according to findings of the authorized health institutions have negative effects on the young workers health and life, having in mind his/her psycho-physical abilities.

Young workers aged 18 to 21 are also given special protection by the Labour Act. They can be hired for the above-mentioned specific jobs only through a previously acquired permission from authorized health institutions.

Working hours are also set differently for minor workers; they are not to work longer than 35 hours per week, nor 8 hours per day. For this category of workers neither afterhours work, nor rearrangement of working hours are allowed. Workers under the age of 18 can be assigned night shifts only if they are performing jobs from the sphere of culture, sports, art or marketing. Underage workers are to be supervised at all times by a staff of full age.¹⁵

There is no reliable data on how widespread the most serious abuses of child labour are because in Serbia there is no universal system of record keeping and surveillance. According to the US State Department's Trafficking in Persons Report 2008, Serbia is considered to be a Tier 2 State, and some children continue to be trafficked into forced labour or forced street begging.¹⁶ The UNICEF data from 2005 show that children

¹³ Article 24

¹⁴ Article 12

¹⁵ Articles 84 - 88

¹⁶ For full text of the Report see the web page: <http://www.state.gov/g/tip/rls/tiprpt/2008/>

between 5 and 11 years of age perform at least one hour of economic labour (on farm) or 28 hours of house chores per week. Children 12 to 14 years of age perform at least 14 hours of economic labour (on farm) or 28 hours of house chores per week, and 4% of children 5 to 14 years of age work mostly without remuneration within the family business. There is a strong connection between child labour and the environment in which a child lives. Children that live in rural areas are involved in child labour twice as much (6%) as children in urban areas (3%). This tells us that children living on farms are exploited through hard physical labour (farm work: carrying goods to the market). Victims of child labour come from the poorest communities and especially the Roma minority. The form is the same; generally the labour is performed without remuneration and within the family business.¹⁷

- ***Laws regulating the discrimination in hiring, firing, promotional, advancement and training opportunities***

Serbia is bound by international documents prohibiting discrimination (the ICCPR, the ICESCR, the ECHR and Protocol 12 thereto, the CERD, CEDAW, ILO Convention No.111 concerning Discrimination and UNESCO Convention against Discrimination in Education the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, ILO Convention No. 111 concerning Discrimination (Employment and Occupation).

The Serbian Constitution regulates the prohibition of discrimination (direct or indirect on any grounds).¹⁸ The Constitution introduces the possibility of affirmative action measures for the achievement of full equality for individuals or a group of individuals in a substantially unequal position compared to other citizens, but it lacks the norms on the temporal restriction of these measures. This criterion is needed for proper assessing of the proportionality of these measures. This shortcoming could be overcome through court practice, and it would be

¹⁷ Shadow Report: Implementation of The Convention on the Rights of the Child in Serbia

¹⁸ Article 21

very important to include norms on the temporal restriction of these measures in future anti-discrimination legislation.

In addition, discrimination is a criminal offence under the Criminal Code.¹⁹ Serbia still lacks a general anti-discrimination law that would include definitions of basic legal concepts, regulations and standards; the courts would be obliged to apply and special mechanisms for the protection of victims of discrimination. This shortcoming was noted both by the UN Committee for Human Rights in July 2004 and the UN Committee on Economic, Social and Cultural Rights in May 2005 in their concluding observations after their reviews of the then Serbia and Montenegro state reports on the implementation of the ICCPR and the ICESCR respectively. Both Committees called on the authorities to enact comprehensive anti-discriminatory legislation.²⁰ At the moment there are two texts—one is proposed by the Liberal Democratic Party and one by the Government Agency.²¹

Under the Constitution, everyone shall have the right to fair and favourable working conditions and equal access to all jobs.²²

The Labour Act prohibits both direct and indirect discrimination on the grounds of sex, birth, language, race, skin, age, pregnancy, health, disability, nationality, religion, marital status, family situation, political, beliefs, social background, property, membership in a political organization, syndicate or any other characteristic. Direct discrimination according to the act is any act based on the above-mentioned grounds that puts the person in a less favourable position. Indirect discrimination includes a seemingly neutral provision, criteria or practice that put or would put a person in a less favourable position. These anti-discrimination provisions refer to conditions of employment and choice of the candidate to be employed, working conditions and labour rights, training, education, advancement, dismissal. In addition, the Act states that discriminatory provisions in employment contracts shall be deemed null and void.²³ Distinction necessary for the performance of a specific job shall not constitute discrimination in keeping with this Act.²⁴ There is no list of such

¹⁹ Articles 128 and 387

²⁰ *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p.58

²¹ For more on Serbian anti-discrimination law see: *Report: Monitoring i izveštavanje o aktivnostima pravnih institucija u Srbiji u oblastima organizovanog kriminala, ratnih zločina, diskriminacije i nasilja u porodici*, Belgrade Centre for Human Rights, Belgrade 2007, p.49

²² Article 60

²³ Article 21

²⁴ Article 22

distinctions that when applied, would not certainly put some one in a less favourable conditions. One should always have in mind that very same personal distinction (e.g. height) could be, but is not always, a ground for discrimination.²⁵

The Serbian Act on the Prevention of Discrimination against Persons with Disabilities prohibits discrimination in specific areas, such as employment, health and education.²⁶ In December 2007, Serbia signed the UN Convention on the Rights of Persons with Disabilities— endorsed by the UN General Assembly in December 2006.²⁷

In Serbia, Roma and other ethnic and religious minorities, women (especially pregnant women), persons with disabilities and sexual minorities are the most frequent victims of discrimination. There are no general reliable surveys of the unemployment rate of persons belonging to national minorities,²⁸ but it's predicted that 60% of all unemployed persons belongs to this group.²⁹ According to statistics, around 87% of persons with disabilities are unemployed,³⁰ and no relevant statistics are available for most of the vulnerable groups.

Discrimination of women is also widespread but is rarely addressed in the media. Only few incidents attracted public attention in 2007, two of which were: 1) the discrimination against women working in the Sevojno plant Impol who were underpaid—that is—were victims of the violation of the principle of equal pay for equal work and 2) the dismissal of Knić municipal assembly chairwoman for being pregnant, both of which are grave breaches of both domestic and international law.³¹

Some aspects of employment are regulated in detail by the Employment and Unemployment Insurance Act. This law establishes the National Employment Agency and regulates the initial and additional

²⁵ Also see *Thlimmenos v. Greece*, Application no. 34369/97, ECHR, 2000;

²⁶ Articles 11–31

²⁷ The Convention has to date been signed by 127 and ratified by 23 states. It will come into force once twenty states have ratified it. For the list of signatures and ratifications see:

<http://www.un.org/disabilities/>

²⁸ For specific cases of discrimination of national minorities in labour rights see Reports of the Minorities Rights Centre, available at: <http://www.mrc.org.yu/>

²⁹ *Newsletter No. 5*, Lawyers' Committee for Human Rights, available at: www.crnps.org.yu/xdoc/arhivavesti/EWS5srpski08042008.pdf

³⁰ Survey conducted by Center for Study of Alternatives, available at: www.crid.org.yu/Files/Istrazivanje%20-%20rezime%20za%20medije.pdf

³¹ See for more details and examples: *Report: Monitoring i izveštavanje o aktivnostima pravnih institucija u Srbiji u oblastima organizovanog kriminala, ratnih zločina, diskriminacije i nasilja u porodici*, Belgrade Centre for Human Rights, Belgrade 2007, p. 56

training of job seekers and the employment programme for persons with physical or psychological disabilities.³²

- ***Laws regulating the freedom of association of workers, right to strike and collective bargaining***

Freedom to form unions or associations, and a membership on voluntary basis, is guaranteed under the Constitution. Associations are to be formed without prior approval and entered in the register.³³ The Labour Act regulates the freedom of organisation in trade unions in greater detail—laws regulating association of citizens and bylaws. The Labour Act defines a trade union as an autonomous, democratic and independent organisation of employees that represent, advocate, promote and protect their professional, labour, economic, social, cultural and other individual and collective interests.³⁴ Under the Labour Act, trade unions do not need approval for registration in the register that is kept by the ministry charged with labour affairs.³⁵

The Labour Act protects workers' representatives.³⁶ In line with these provisions, the employer is forbidden from terminating an employment contract or placing a workers' representative at a disadvantage in another manner during the period the employee is holding the position of workers' representative. The workers' representative continues to enjoy this protection over the following year under the conditions of obeying the law, general enactments and the employment contract.³⁷ The representative who refuses to sign an amended employment contract can be dismissed in accordance to this Act.³⁸ The Act also prescribes that, in keeping with the relevant agreement between the employer and the trade union, the union representatives are entitled to paid leave to perform their trade union function, and this leave is proportionate to the number of trade union

³² See more in *Report: Human Rights in Serbia and Montenegro in 2005*, Belgrade Centre for Human Rights, Belgrade 2006, p. 294

³³ Article 55

³⁴ Article 6

³⁵ See more in *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p. 192

³⁶ Members of staff councils and staff representatives in the employer's executive or supervisory boards, chairmen of trade union branches in the company and appointed and elected trade union representatives

³⁷ Article 188

³⁸ This is in keeping with ILO Convention 135 on workers' representatives. See more in *Report: Human Rights in Serbia and Montenegro in 2005*, Belgrade Centre for Human Rights, Belgrade 2006, p. 239

members in the company. An authorised trade union representative may be fully relieved of his duties under the employment contract while holding the function by a collective agreement or another agreement.³⁹

Under the Serbian Constitution, the employee shall have the right to strike in accordance with the law and collective agreement, and this right may be restricted only by the law.⁴⁰ In greater detail, the right to strike is regulated by the Strike Act. Under this act, the right to strike is limited by the obligation of the strikers' committee and the workers participating in the strike to organise and conduct the strike in a manner which does not jeopardise the safety of people, property and people's health, which prevents direct material damage and enables the continuation of work upon the termination of strike.⁴¹

During 2007, public sector employees expressed their dissatisfaction with salaries and working conditions on a number of occasions. A series of strikes broke out as the Government and trade union representatives, more often than not, failed to come to terms (e.g. the Police Trade Union threatened to go on strike over the Government's decision not to pay the police Christmas bonuses; representatives of all six metal workers' TUs in Kragujevac travelled to Belgrade to submit their demands to the Prime Minister to stop dismissing workers and adopt a metal industry development strategy; primary and secondary school staff across Serbia launched a strike and the duration of classes was cut down from 45 to 30 minutes, as prescribed by law, etc.). Trade unions of workers in the private sector were also active, albeit to a much lesser extent (e.g. the strike of the Vranje textile plant Jumko workers who did not want to sign contracts with the British company Zamber Ltd, which had leased the plant in agreement with the Economy and Regional Development Ministry on the condition that it keep on the Jumko workers). The employees claimed that Zamber Ltd was offering below-average salaries.⁴²

The Labour Act stipulated that the General Collective Agreement in force would terminate in six months from the day the Labour Act came into force. The Act came into force on 23 March 2005; hence, the deadline expired on 23 September 2005. The new General Collective Agreement

³⁹ Taken from *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p. 194

⁴⁰ Article 61

⁴¹ See more in *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p. 195

⁴² *Ibid.* p. 323

was, however, never passed. It is very important that the General Collective Agreement be reached as soon as possible, firstly because laws often refer to the norms of the agreement. Secondly, it would be within the frames pre-set by the Labour Act— to regulate rights, duties and liability of employers and employees, thus providing for better protection of work conditions and interests of workers. And thirdly, it would provide a detailed regulation of specific issues, such as arbitration and other means of peaceful resolution of dispute between employers and employees.

- ***Laws regulating hazardous and harmful work, the safety of the workers which provide the minimum health standards including training and protective gear***

Under the Constitution everyone has the right to safe and healthy working conditions necessary protection at work, and no person may forgo these rights.⁴³

Under the Labour Act workers are entitled to health and safety at work.⁴⁴ Also, the act notes the obligation of all employees to respect regulations on health and safety at work in order not to put themselves and others in danger.⁴⁵ Moreover, the employee has the responsibility of notifying the employer about any possible risks to health and safety.⁴⁶ The act permits recruiting employees for jobs that pose enhanced risk to ones health only if he/she is fulfilling specific conditions (health, psycho-physical characteristics) and has an approval from authorized health institution.⁴⁷

The Act on Health and Safety at Work adjusts the safety at work regulations to the new demands of an increasing number of small and medium sized enterprises dominating the Serbian market. The act permits individuals to manage safety at work themselves to the—under condition that they passed the state exam on safety at work, come from a certain branch and employ less than ten people.

The act introduces the possibility of the establishment of enterprises and other legal entities licensed to provide safety at work

⁴³ Article 60

⁴⁴ Article 80 Para. 1

⁴⁵ Article 80 Para. 2

⁴⁶ Article 80 Para. 3

⁴⁷ Article 38 and 82

services on the basis of criteria set by the Ministry for Labour and issued by the Minister.⁴⁸

Statistics on injuries at work covering a 40-year period and collected by Niš Protection at Work College Dean show that a life is lost at work every other day in Serbia. He warns that the statistics would be much more direr if they also included the deaths of workers that ensued several days after they sustained injuries. The extent of disrespect of protection at work regulations in Serbia is corroborated by the fact that one out of three pensioners receives disability benefits. His data indicate that the number of injuries has fallen in the past fifteen years; this cannot be ascribed to investments in protection at work, but, rather, to lack of economic and industrial activity.⁴⁹

A comparative analysis of inquiries into work-related injuries shows that there were 55% more fatal work-related injuries in 2006 than in 2007—when 22 such accidents occurred. Most of them were sustained by industrial and construction workers and miners. Most of the injured were between 41 and 55 years of age and had secondary schooling or were unqualified. The main causes of such accidents includes unsecured work at heights or on the edges of buildings, on inadequately secured facilities and work without personal protection gear, such as helmets and safety belts. The Labour and Social Policy Ministry denied information on the number of work-related injuries in 2005 and the first seven months of 2006 made public by the Nezavisnost Trade Union. Nezavisnost said that there were 43 fatal and 933 grave work-related injuries in 2005, while, in the January-July 2006 period there were 27 fatal work related injuries, five of them at construction sites and 533 grave work-related injuries, 158 of which were sustained at construction sites.⁵⁰

- ***The conditions of employment under Serbian legislation***

Maximum of the working hours, overtime work and night shifts

Full working time in Serbia is 40 hours per week. A maximum of 10-hours/week reduction of working hours is possible for jobs that would

⁴⁸ Articles 55-58. See more in *Report: Human Rights in Serbia and Montenegro in 2005*, Belgrade Centre for Human Rights, Belgrade 2006, p. 300

⁴⁹ *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p. 319

⁵⁰ *Ibid.*

cause damage to the health of a worker if standard working hours were applied in spite of the use of protective gear and other security measures.

At the request of the employer in cases of *vis major* (an unexpected increases in the amount of work, and in other situations when it is necessary to finish unexpected work within a certain period of time) workers are obliged to work overtime.⁵¹ This overtime work for each employee cannot be continued for more than 8 hours per week, nor can it be longer than 4 hours per day.⁵²

Under Serbian law, redistribution of working hours by the employer is allowed but in specific cases and under conditions prescribed by the Labour Act. This is not considered to be a form of overtime work. Redistribution of working hours is acceptable if it is a requirement caused by the nature of the work, organization of the work, need for rationalization of working hours or a need to finish a specific work within a certain period of time. On the occasion of the redistribution of working hours, an average of overall working hours within a period of 6 months are not to be longer than the full time working hours of a single employee and cannot be longer than 60 hours per one week.⁵³ The redistribution of working hours is never allowed for conducting jobs for which the working hours are reduced due to the health or life threats they pose.

The work conducted between 10 p.m. and 6 a.m. is to be considered night work.⁵⁴ Before introducing night shifts, it is mandatory for the employer to obtain opinions on security and protective measures from the ministry in charged with labour issues, the ministry responsible for health matters and relevant workers associations. If an employee is working in night shifts at least 3-hours per night, every night or one third of overall working hours conducted during one week, and this considered having the potential negative effects to his/her health, the employer is obliged to assign this employee to day shifts.⁵⁵ If the work is organized in shifts, it must be organized in such manner that provides different shifts for every employee; meaning that no one is to work continuously in night shifts for more than one week. Exceptions to this rule are possible only if the employee has given his/her written consent.⁵⁶

⁵¹ Article 53

⁵² Staff on duty in medical institution is under a specific legal regime.

⁵³ Article 57

⁵⁴ Article 62 Para. 1

⁵⁵ Article 62 Para. 2

⁵⁶ Article 63 Para. 2

Minimal wages

Serbian Labour Act envisages the right of employees to minimum wages. Conditions for fixing the minimum wage are supposed to be defined by the General Collective Agreement, but since no such agreement has been in force since 2005, as it was already mentioned, the minimum wage is fixed by a decision of the Social Economic Council of Serbia⁵⁷. The council is an independent agency comprised of representatives of the Government and of large employer associations and trade unions. If the Social Economic Council failed to reach a decision within 10 days from the day the negotiations began, the Government of Serbia will decide on the minimum wage. When setting the minimum wage, the following must be taken into account: living expenses, average salary trend in the Republic of Serbia, existential and social needs of the employees and their families, unemployment rate, employment trend at the labour market and the general level of economic development of the Republic of Serbia.⁵⁸

The minimum wage is fixed periodically, and it may not be reduced; every time a new minimum wage is fixed it can remain either at the same level or increase.

The minimum wage must be sufficient for a decent standard of living for the worker and his/her family.⁵⁹

Statistics indicate that Serbia's citizens spend 40% of their income on food, 24% on public utilities and around 12% on transportation. This means they are left with between 6,000 and 7,000 dinars (between 75 and 85 Euros) to cover their health, cultural and other needs. The Consumer Protection Movement alleges that even this dismal data was arrived at by statistical manipulation and warns that the situation is direr.⁶⁰

⁵⁷ Article 112. The Council is consisted of 18 members: 6 members of the Government, 6 members of the representative trade unions, and 6 members of the representative employers associations). For more see www.socijalnoekonomskisavet.org.yu

⁵⁸ See *Report: Human Rights in Serbia and Montenegro in 2005*, Belgrade Centre for Human Rights, Belgrade 2006, p.297

⁵⁹ See Art. 7a of the ICESCR and Art. 4 of the European Social Charter (Serbia signed the revised European Social Charter on 22 March 2005), ILO Minimum Wage Fixing Convention (No. 131)

⁶⁰ See *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p. 321. For official data on the living expenses in Serbia see <http://www.mtu.sr.gov.yu/cms/?cat=9>

Sick leave, holiday, rest periods and breaks

An employee working full time is entitled to a rest period of 30 minutes (at minimum) per day, and employees working minimum of 4 hours but not longer than 6 hours are to have at least 15 minutes of rest per day. Workers working overtime, more precisely 10 hours per day or more, have the right to a minimum of a 45 minutes rest period. The rest periods are scheduled by the employer, but they are never to be used on the very beginning or the end of working hours.

An employee is, in addition, entitled to a minimum of 12 hours of rest between two working days⁶¹ and a minimum of uninterrupted 24 hours long rest per week—usually on Sundays.⁶² If it's necessary for an employee to work on a day envisaged to be the resting day, the employer is obliged to provide him/her with opportunity to use the 24 hours of rest on another day of the week.

Under Serbian law, the right to a holiday is gained after the completion of six months of continuous work and not necessarily with the same employer. A period of continuous work is considered interrupted if the break lasted over 30 days. Under continuous work, the Labour Act comprises, also, periods during which the employee was not able to work but was compensated in accordance with the provisions of law regulating health insurance (e.g. sick leave). Employees cannot be denied the right to a holiday, nor can they waive this right.⁶³

According to Labour Act, a holiday cannot last for less than 20 working days. The duration of every employees holiday is calculated in such way that the mandatory 20 working days are increased on basis of achievements, conditions of work, work experience, education, etc.⁶⁴ When calculating, one week is to be considered five working days, and state or religious holidays recognized by law are not to be included.

For the period of one year, employees are entitled to 7 days of paid absence from work in cases such as their marriage day, the day on which one's wife is in labour, serious sickness of a close family member etc. An additional five days of paid leave are envisaged for the case of the death of a close family member (spouse, children, brothers, sisters, parents, adoptive parent, adoptee, guardian and other persons living in the same family home

⁶¹ Article 66

⁶² Article 67

⁶³ Article 68

⁶⁴ Article 69

with the employee) and two days for every time an employee voluntarily gives blood.⁶⁵

Unpaid leave can be granted by the employer upon the employee's request.⁶⁶

Layoffs and dismissals

The economic transition and move towards a market economy are burdened by grave breaches of labour laws and, in particular, rules on the termination of employment. A significant number of provisions of the Labour Act regulate, in great detail, the termination of employment against the will of the employee.

The Act envisages the termination that can occur due to redundancies arising from the change with regard to the employer's needs (e.g. technological, economic or organisational changes in a company and bankruptcy). After terminating an employment contract on grounds of surplus labour, the employer does not have the right to hire another person to perform the same job in the following six months. If the need arises for the opening of the same job before the six months are up, advantage shall be given to the employee who held the job before his/her employment was terminated.⁶⁷ Before termination of the employment contract, the employer is obliged to pay the employee a severance package.⁶⁸

Dismissal may also occur for justified reasons regarding the employee's ability to perform the job (e.g. under-performance or lack of knowledge or skills required for a specific job) or the conduct of the employee (e.g. if one commits a criminal offence at work or related to work, in the event one does not come to work 15 days upon expiry of unpaid leave or dormancy of employment or if one abuses sick leave).⁶⁹

The Act also allows for the dismissal of an employee who refuses to transfer to another appropriate job because of organizational or work process changes, to transfer to a job in another town or an appropriate job with another employer. The Labour Act defines an appropriate job as a job that requires the same type and degree of qualifications set in the employment contract.

⁶⁵ Article 77

⁶⁶ Article 78

⁶⁷ Article 182

⁶⁸ See *Report: Human Rights in Serbia and Montenegro in 2005*, Belgrade Centre for Human Rights, Belgrade 2006

⁶⁹ Article 179

The act does not include any provision about the right of the employee whose employment contract was terminated because of the refusal to sign an amended employment contract; however, there is no reason why one would not be able to exercise this right in a civil lawsuit.⁷⁰

An employer may not dismiss an employee without prior written warning.⁷¹ Also, it would be in opposition to this act for employer to dismiss an employee if another job or re-qualification of the employee could be offered.

The act expands the provisions prohibiting the dismissal of specific categories of employees. Apart from banning the dismissal of employees during pregnancy, maternity or child care leave, the act also prohibits the dismissal of the employee representatives during their terms in office and, in the subsequent year, if the representative of the employees has acted in keeping with the law, general enactment and the employment contract.⁷²

Protection accorded to family and people with disabilities

Besides young and disabled persons that have already been mentioned above, under the Constitution women are to be provided with special protection at work and special work conditions in accordance with the law.⁷³ Moreover, the Constitution introduces general right to special protection of families, mothers, single parents and children.⁷⁴

The Labour Act contains no provision that would provide for special protection of women in general. Such protection would not constitute discrimination but would be in line with the trend of providing equal treatment for men and women. However, this Act affords special protection to pregnant women and women with children below the age of three (e.g. they may not work overtime or at night, except if they file a request in writing). In addition, single parents or parents of severely handicapped enjoy this kind of protection.⁷⁵

The Constitution provides only general and already mentioned norms on people with disabilities. Their labour rights are regulated by the

⁷⁰ See: *Report: Human Rights in Serbia and Montenegro in 2005*, Belgrade Centre for Human Rights, Belgrade 2006, p. 293

⁷¹ Article 180

⁷² See: *Report: Human Rights in Serbia and Montenegro in 2005*, Belgrade Centre for Human Rights, Belgrade 2006, p. 293

⁷³ Article 60

⁷⁴ Article 66

⁷⁵ Articles 89 – 93, See more in *Report: Human Rights in Serbia and Montenegro in 2005*, Belgrade Centre for Human Rights, Belgrade 2006

Law on Employment and Professional Rehabilitation of the Disabled, Employment and Unemployment Insurance Act, the Social Welfare Act and the Act on Professional Training and Employment of Disabled Persons. However, the provisions in the latter act are insufficient as they invoke other regulations to be passed, which has not happened yet and impose very low fines. The Rulebook on Rights of Unemployed Persons prescribes that persons with disabilities shall be given priority in employment, professional orientation programmes, employment preparations and educational programmes. The state budget subsidises 80% of the average net wage of an employee with a disability during the first 12 months of employment.⁷⁶

Employment privacy

Although guaranteed in many international human rights treaties ratified by Serbian state, the Constitution does not protect the right to privacy, but it does guarantee the inviolability of physical and mental integrity,⁷⁷ as well as the inviolability of letters and other means of communication.⁷⁸ The Constitution also guarantees the protection of personal data and prescribes that the collecting, keeping, processing and use of personal data shall be regulated under the law.⁷⁹

According to the current Personal Data Protection Act, personal data may be collected, processed and used only for the purposes specified by the act. However, this Act does not meet the international standards of data protection (e.g. the purpose of collecting, processing and using personal data must not only be lawful but also specified before the beginning of collection). In 2007 The Ministry of Justice drafted an act on the protection of personal data, in line with European data protection conventions, and this draft is waiting to be put in motion.⁸⁰

In addition, the Constitution explicitly prescribes that the use of personal data for any other purpose save the one they were collected for shall be prohibited and punishable; unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia.⁸¹

⁷⁶ Taken from *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p. 208

⁷⁷ Article 25, Para.1

⁷⁸ Article 41

⁷⁹ Article 42 Para. 1 and 2

⁸⁰ See more on privacy in current regulations in Serbia in *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007 p. 109

⁸¹ Article 42, Para 3

Under the Constitution, everyone has the right to access his personal data as collected by a competent authority and the right to judicial protection in case of the abuse of his/her personal data.⁸² Under the Labour Act Employees have the right to access all documents containing their personal data, the right to demand deletion of all data irrelevant to his/her job and the right to correction of inaccurate information. Collected information can be disclosed only in situations prescribed by law or in order to prove labour obligations or rights.⁸³ On the occasion of the establishment of the working relation, an employee cannot be asked to give information on family or marital status, family plans or any other documents or proofs that are not directly relevant for the working post in question. The employer cannot impose conditional pregnancy tests; unless the job poses a significant risk to health of the women and the child, as recognized by the authorised health institution.⁸⁴

The Criminal Code criminalizes unauthorised collection, attainment, imparting and abuse of personal data that is collected, processed and used in accordance with the law.⁸⁵

• ***Laws regulating the rights of the workers in relation to the workplace violence, including: assault, harassment and threats***

Harassment and sexual harassment are forbidden under the Labour Act.⁸⁶ Under the provisions of this Act, every unwanted act caused by the above mentioned forbidden discrimination grounds, undertaken in order to cause or causing violation of dignity of a person seeking employment or employee, creating fear, hostile, humiliating or offensive environment is considered harassment. On the other hand, sexual harassment presents any verbal, non-verbal or physical conduct that is, or whose purpose is, a violation of dignity in the sphere of sexual life that creates fear, hostile, humiliating or offensive environments of a person seeking employment or an employee.

Abuse and harassment at work is a widespread problem in Serbia, but it only recently caught the public eye. According to studies of this phenomenon conducted in Belgrade and in Central and South Serbia, every other man and every other woman are exposed to some form of harassment.

⁸² Article 42, Para 4

⁸³ Article 83

⁸⁴ Article 26 Para. 3

⁸⁵ Article 146

⁸⁶ Article 21

These studies show that one out of fourteen men and one out of three women were (at least once) the victim of sexual abuse at work. The NGO Antimobing claims that workers are systematically harassed in the Sunce, Vital and Jumbo plants, which is corroborated by the fact that this NGO receives between 5 and 10 complaints every day. There was also an alleged mobbing by US Steel Serbia company's management, which allegedly divided female staff into young women and "old hags". The media devoted much attention to some cases of mobbing. For example, in the case of the TV station *Sveti Đorđe* a journalist sued the owner of the station for abuse because he allegedly threatened his staff that he would kill them, put them in his car trunk, tie them to his car, drag them through the fields, cut off their heads and arms and break their legs.⁸⁷

Community Impact

- ***Relevant Ratified International Treaties***

Act Amending the Act on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 5/05; Additional Protocol to the Criminal Law Convention on Corruption, *Sl. glasnik RS*, 102/07; Agreement on Amending and Accessing the Central Europe Free Trade Agreement–CEFTA 2006; Civil Law Convention on Corruption, *Sl. glasnik RS*, 102/07; Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01; Convention on Environmental Impact Assessment in a Transboundary Context, *Sl. glasnik RS*, 102/07; Convention on the High Seas, *Sl. list SFRJ (Dodatak)*, 1/86; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, *Sl. list SRJ (Međunarodni ugovori)*, 7/02, 18/05; Criminal Law Convention on Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05; European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 9/03; International Covenant on Civil and Political Rights, *Sl. list SFRJ*, 7/71; International Covenant on Economic, Social and Cultural Rights, *Sl.*

⁸⁷ See *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p. 319

list SFRJ, 7/71; Kyoto Protocol to the UN Framework Convention on Climate Change, Sl. glasnik RS, 88/07; Optional Protocol to the International Covenant on Civil and Political Rights, Sl. list SRJ (Međunarodni ugovori), 4/01; Second Optional Protocol to the International Covenant on Civil and Political Rights, Sl. list SRJ (Međunarodni ugovori), 4/01; Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Sl. list SCG (Međunarodni ugovori), 5/05, 7/05; UN Convention Against Corruption, Sl. list SCG (Međunarodni ugovori), 18/05.

- ***Relevant domestic legislation***

Act on Environmental Protection, Sl. list RS, 135/04; Act on the Safety of Foodstuffs and Objects in General Use, Sl. list SRJ, 24/94, 28/96 and 37/02; Law on integrated environmental pollution prevention and control, Sl.glasnik135/2004; Law on strategic environmental impact assessment, Sl.glasnik135/2004;

- ***Legislation***

The Act on Environmental Protection regulates right to life and development in a healthy environment and a balance between economic development and the environment. The Act charges the competent Environment Ministry with informing the public and adopting a decree on the introduction of special measures in instances of immediate danger or excessive pollution levels. In the event pollution is limited to the territory of a municipality, the municipal body shall have the same obligation. Moreover, in case of an accident and the assessment that its effects may directly or indirectly endanger human health and the environment, a state of emergency must be declared and necessary measures must be undertaken and the public informed.⁸⁸

The Republic of Serbia, the autonomous province and the units of local self-government are obliged to provide “continuous control and monitoring

⁸⁸ Article 62

of the state of the environment”.⁸⁹ These bodies, as well as authorized organizations and other organizations (e.g. the Agency for Environmental Protection and the Fund for Environmental Protection), are obliged to regularly, timely, fully and objectively notify the public of the state of the environment (i.e. the monitored emission values, warning measures and pollution that may pose a hazard to the lives and health of people)⁹⁰. In addition to the obligation of the state bodies, the act guarantees the public’s right to access registries and information systems containing information and data related to environmental protection. The fulfilment of these obligations by the state need to be monitored more closely, as there are doubts about whether the state has been taking preventive measures to prevent hazardous situations and alerting the population about such risks to their lives and health.

The Criminal Code devotes a separate chapter to crimes against the environment and envisages new crimes, such as: failure to take environmental protection measures⁹¹, illegal construction and operation of facilities and installations polluting the environment⁹², damaging of environmental protection facilities and installations⁹³ and damaging the environment⁹⁴. Criminal prosecution of these acts increases the importance of environmental protection and the state’s obligations and accountability in this field.

The main problem is not with the legislation per se but with its ineffective enforcement, as is illustrated below.

⁸⁹ Article 69

⁹⁰ *Report: Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p. 64

⁹¹ Article 261

⁹² Article 262

⁹³ Article 263

⁹⁴ Article 264

- ***Problems***

In practice main problems are: bad and underdeveloped waste management (only 10% of waste is recycled), non-existence of waste water purification (only 8% of citizens are included in this system), great risk from ecological accidents, unsatisfactory protection of flora and fauna and, above all, inefficient application of international conventions.

A number of environmental disasters caused by pollution occurred in 2007.

- In Pancevo, the concentration of benzene and other harmful matter exceeded permissible limits many times. Although the Environmental protection Ministry ordered the Pancevo petrol refinery and the local artificial fertilizer plant Azotara to adjust their activities to the weather, these orders were ignored. Environmental inspectors filed several criminal reports against several Azotara directors for disregarding the inspection's orders to halt production in four of the plant sections, which had led to ammonium pollution.
- In Zlot caves speleologists found 10 containers with the carcinogenic substance cresol. They were returned to the factory compound, which at the time had another 100 containers full of cresol. The most alarming thing is that factory management had no idea until a year ago that cresol is carcinogenic and had been selling the empty containers in Bor, where citizens bought them to make sauerkraut.
- Four plants (Dzervin, Dzersi, Venus and Stokoinpeks) were shut down after they released their wastewater into the Beli Timok River, polluting it and causing the death of around 50 tons of fish. None of the plants acted according to law and were served with orders prohibiting their work.

Land management

- ***Relevant Domestic Legislation***

The Act on Assets Owned by the Republic of Serbia *Sl.glasnik RS, 54/96*; **The Expropriation Act**, *Sl.glasnik; 40/84,53/87,22/89 and Sl.Glasnik RS 6/90,15/90,53/95,23/01*; **Planning and Construction Act** *,Sl.glasnik RS 47/03*; **Act on the Basis of Property Relations of Serbia**, *Sl.glasnik RS 54/96*; **Act on Maintenance of Condominiums** *Sl. glasnik RS, 44/95, 46/98 and 1/01*; **Act on the Basis of Property Relations** *Sl. list SFRJ, 6/80, 36/90 and Sl. list SRJ, 29/96*; **Act on Recognition of Rights to and Restitution of Land Transformed into Socially Owned Property by Inclusion in the Farmland Fund or by Confiscation due to the Non- fulfillment of Obligations Arising from the Obligatory Sale of Farm Produce** *Sl. glasnik RS, 18/91, 20/92 and 42/98*; **Act on Registration of Arrogated Property** *Sl. glasnik RS, 45/05*; **Act on the Restitution of Property to Churches and Church Communities** *Sl. glasnik RS, 46/06*; **Act on Housing**, *Sl. glasnik RS, 50/92*.

- ***Expropriation***

Serbian legislation provides for a balance between public and private interests and tries to prevent violations of the right to property when it comes to expropriation. Expropriation is only possible when it is in public interest, and fair compensation must be granted for expropriate property.

Because expropriation is, by Serbian law, considered to be one of the most serious forms of interference in the peaceful enjoyment of property rights, the Serbian government determines the existence of public interest by its decision. The question is whether the state bodies will correctly assess general interest. The problem is the manner in which the Serbian Government decided on the essence of public interest. Although the legislation is well done, it is clear that in practice the Government really didn't take into consideration individual interest.

Individual interest is also impaired at the stage of the proceedings before municipal bodies which issue the expropriation order. Often, owners are not allowed to build anything on the real estate and have greater difficulties in disposing of their property because the notice of expropriation entered in the land registry books. Also, the Expropriation Act does not set a time limit within which this stage must be completed, nor does it envisage material compensation for damage to the owner if it lasts too long.⁹⁵

The situation is similar when an expropriation order is passed before the compensation is set. During that time, the former owner is put in a disadvantaged position because the beneficiary of the expropriated real estate property has acquired the right of ownership of the real estate, while its owner only possesses it formally.

Fair compensation is the other prerequisite that must be fulfilled to avoid a violation of the right to property. The Expropriation Act stipulates that fair compensation may not be lower than the market value of the real estate. Due to the length of the proceedings, the awarded compensation often does not reflect the market value of the real estate because it is set by court experts, who are not always able to follow the increase in price.⁹⁶

To date, a number of expropriation decisions were rescinded. The authorities have, in some cases, acted arbitrarily and the administrative proceedings are, as a rule, much too long. The successfulness of the former owners' demands hinges on their persistence and the methods they employ to regain their property.

- ***Restitution of Unlawfully Taken Property and Indemnification of Former Owners***

The overdue law on property restitution and indemnification has not been passed in Serbia yet. The restitution of land to its previous owners or their heirs is allowed under the Act on Recognition of Rights to and

⁹⁵ Report: *Human Rights in Serbia in 2007*, Belgrade Centre for Human Rights, Belgrade 2007, p.144

⁹⁶ *Ibid.*, p.145

Restitution of Land Transformed into Socially Owned Property by Inclusion in the Farmland Fund or by Confiscation due to the Non-fulfilment of Obligations Arising from the Obligatory Sale of Farm Produce.

Restitution takes place when the former owners or their heirs are given their land back or are given land of the same size and quality. The Act prescribes financial compensation at the market rate if restitution is impossible. Only land that was socially owned at the time the act was adopted may be returned.

In 2006, the Serbian Assembly adopted the Act on the Restitution of Property to Churches and Church Communities. The main flaw of the law is that it gives religious communities an advantage over other, notably legal, persons whose property was confiscated during the Socialist era.⁹⁷

The previous Government endorsed the latest draft of Denationalization Act, but the new Government withdrew the bill for revision. It differs from the previous drafts, as it provides for the restitution of construction land to the former owners regardless of the fact of who owns the facilities built on that land. This provision will lead to the numerous misunderstandings that will inevitably end up being resolved in the court. The solution will help the state save a huge amount of money it would otherwise need to spend to compensate the former owners of the land on which someone else has built facilities. However, these owners will, in essence, regain burdened property (i.e. they will have a title to it but its possession and use will remain in the hands of a third person). The right of disposal will also be burdened by the right of priority in buying. The former owner will have the right to draw rent. The amount of the rent will also be limited in the beginning and difficult to put in effect in practice.

The principle of conscientious disposal of arrogated property enshrined in the Act on Registration of Arrogated Property does not apply to the state and, thus, to transactions performed within the process of privatization. Such a solution is unacceptable because there can be no justification for the actions of the state allowing the privatization of

⁹⁷ *Ibid.*, p. 147

nationalized property. Such state actions fail to ensure a fair balance between an individual's private interest for property restitution and the state's public interest to sell this property and, in the process of denationalization, pay the former owner compensation that does not correspond to the value of the sold property.

Many provisions of the draft of Denationalization Act will inevitably lead to lawsuits, which, per se, constitute interference in the right to property. There is no doubt that the former owners will have to wait for several years to be compensated—given the length of court proceedings in Serbia, the complexity of the issue that can partly be attributed to the lapse of time and, partly, to the deficient legal provisions.

- ***Transformation of Forms of Ownership in Favour of State Ownership***

The Act on Assets Owned by the Republic of Serbia defined assets as: all those acquired by government agencies, bodies and organizations with units of territorial autonomy, local governments, public services and other organizations founded by the republic or territorial units and all other assets and revenues released on the basis of the investment of government funds.

Apart from expropriation, change of ownership to the benefit of the state is limited to inheriting property from a defunctus without legal or testamentary heirs (i.e. this does not constitute the state's interference of property).

The Planning and Construction Act prescribes that non-public construction land is commercially available. Local self-government bodies are charged with establishing who has the right to use non-public land. State authorities have been known to resort to abuse—especially where property of high value is at issue.

- ***Construction of Additional Floors and Condominiums***

This matter is regulated by the Act on Maintenance of Condominiums, which has allowed for numerous violations of the right to property with the consent of the state. The Act was passed after most of the socially-owned apartments had been bought by tenancy rights holders. Under this Law, common premises are co-owned by owners of condominiums.

These provisions allow owners of 51% of joint property to arbitrarily, and in their own interest, deprive the owners of the other 49% of the joint property without providing them with any compensation. A private deal with some of the condominium residents, often the president of the assembly and the council of the building's residents, has frequently been behind such contracts. The essence of right to property and ownership of the joint parts of the condominium should be taken in account, as should the provisions in the Act on the basis of Property Relations requiring the consent of all the owners of the common premises to dispose of them.

The draft of the Denationalization Act envisages that the former owners of the buildings, which had been nationalized, shall regain the garret space and other common parts of the building even if restitution of their nationalized apartments is impossible. However, the former owners will probably not be able to regain even the attic area due to the construction of additional floors and the conversion of attics into apartments in the previously described manner. The question remains whether these owners will have the opportunity to demand compensation for the garret space at market rates for the period after the adoption of the

Act on Registration of Arrogated Property.⁹⁸

⁹⁸ *Ibid.*, p. 146

Corruption

- **Relevant domestic legislation**

Act on Public Procurement, *Sl.glasnik*, 39/02; Act on Financing of Political Parties *Sl. glasnik RS*, 72/03 and 75/03; Act on Free Access to Information of Public Importance *Sl. glasnik RS*, 120/04 and 54/07; Act on prevention of Conflict of Interest *Sl.glasnik RS*, 43/04; Act on the State audit Institution *Sl. glasnik RS* 101/05; Act on the Protection of Competition *Sl.glasnik RS* 79/05, Act on Protector of Citizens, *Sl. glasnik RS*, 79/05 and 54/07

Corruption is one of the biggest problems Serbia is facing. While there are some indications that corruption may have become less rampant in recent years, available evidence suggests that the level of corruption is still high, while trust in key institutions is low.

The impact on citizens is significant: day-to-day corruption can put a substantial strain on the poorest and most marginalized groups, while frequent scandals involving corruption among highest public officials undermines people's confidence in the government.

It seems that the opportunity to tackle corruption systematically, before it became institutionalized, is lost. The political nature of the problem is constant, and more ambitious reforms are often effectively blocked by political and business elites.

A lasting impact on the corruption level cannot be achieved while there is no political will to ensure the effective implementation of relevant laws. In most cases, the bodies responsible for implementation of the adopted laws lack the personnel and the resources to carry out their mandate.

The consequences have been numerous affairs appearing in the news.

Scandals have included:

- The privatization procedure of the National Savings Bank;
- A bribery situation publicly known as the ‘Brief Case Affair’ involving the Vice-Governor of the National Bank of Serbia;
- The gross manipulation of a mineral water company’s privatization;
- Graft in army procurement and the unauthorized commitment for the purchase of a satellite for monitoring security zones around Kosovo;
- Importation of electricity (owners of the import company are said, in public, to be financiers of the biggest Serbian political parties);
- The import of petroleum from Syria;
- The buying of railway cars without tender and procurement procedures.

No investigation into these matters was initiated.

- ***Legislation***

Effective legislative improvements are needed in the fields of free access to public information, the elimination of conflicts of interests, the promotion of free competition and the financing of political parties.

Serbia is now the only country in the region that does not have a State Audit Institution.

Law on Protection of Competition

Most public companies are monopolies and a number of private companies are looking for ways to avoid market competition (most commonly protection is purchased by buying laws via connections in the government). To curb monopolies, the Law on the Protection of Competition was passed last year. The Anti-monopoly Commission was established after a long delay.

The law will not be effective because of its evident deficiencies: it does not punish a dominant position in the market, only the ‘misuse’ of such dominant position on the basis of “reasonable discretionary estimation”.

Law on the financing of political parties

The Law was passed in 2003, but it did not meet the expectations to prevent secret, under-the-table, party financing, which has become a tradition in Serbia since the introduction of the multiparty system in 1990. The government and the parties are supported by big capital contributions, and it is a well-known public ‘secret’ that tycoons finance all the major parties.

Regulatory bodies

Regulatory institutions are being developed in Serbia, but they are not independent from the executive or from political and business influence. Their lack of independence has destroyed their reputations from the outset. Each institution has the same problem: they are purposely designed by law not to function. The most scandalous case of fixing the work of such institutions was Republic Radio-diffusion Agency (RRA)⁹⁹ for the distribution of national frequencies to TV and radio stations in the manner that was non-transparent and highly unprofessional.

Anti-corruption agencies and commissions have not yet been formed, although the National Anti-corruption Strategy was passed in the Parliament in December 2005. What still exists is the Anti-corruption Council, a body comprised of civil society representatives, which was formed during the first transitional government, and which will be dismissed since the new agency mentioned above will take its place. There are a couple of NGOs that are dealing with corruption. The most prominent and active is Transparency Serbia.¹⁰⁰

⁹⁹ For more see: www.rra.org.yu

¹⁰⁰ For more see: www.transparentnost.org.yu

It can be said that the main problem in fighting corruption is that authorities are not efficient. For example, the criminal offence of the misuse of official position is well defined in Criminal Law, but trials, inspections and prosecutions are to be questioned.

From the court practice, it is obvious that Serbian society is highly tolerant to corruption, even the state authorities. Also, corruption sentences are considered to be mild.

However, while good news and perceptions are thin on the ground, Serbian legislation is on a positive track in several areas: there are signs of greater control of public procurement, conflict of interest has begun to be regulated, access to information and the transparency of government institutions has improved significantly, and the capacity of enforcement agencies to investigate and prosecute organized crime and corruption is increasing.

Intellectual property rights

- ***Relevant Domestic Legislation***

The Patent Law, *Sl.list SCG, 32/2004*; **The Law on Trademarks**, *Sl.list SCG, 61/04*; **The Law on Legal Protection of Design**, *Sl.list SCG, 61/04*; **The Law on Copyright and Related Rights**, *Sl.list SCG, 61/04*; **Cooperation and Extension Agreement**, *Sl.list. 14/2004*;

Although laws in Serbia mostly follow EU standards, there are still many problems. The main problem is the lack of awareness that unauthorized usage of patents or trademarks is a criminal offence. Although the issue of intellectual property rights is more frequently addressed in the media today than before, the fact is that the culture of respecting intellectual property rights is far from developed in Serbia.

One of the important obstacles for more efficient criminal enforcement of copyright and related rights in Serbia, that was solved, was the rule according to which criminal offences in this field could be prosecuted only

upon private action of injured party. Since the position of a private prosecutor does not allow him to conduct an efficient procedure for collecting evidence, the fact is that copyright owners were completely discouraged to seek protection before criminal courts.

The situation in Serbia has changed since the adoption of the amended Criminal Code in 2005, which provides for *ex officio* public prosecution of criminal offences in all fields of intellectual property. Such an approach, drastically improving the position of intellectual rights owners, has resulted in noticeable increase in numbers of prosecutions. The growth is visible but not satisfactory.

Another problem is that untrained authorities are obliged to enforce the laws. Specialization of courts is essential for raising effectiveness of intellectual property rights enforcement. In Serbia, a great number of courts are competent to act on intellectual property matters in different instances, and this has been a great obstacle for faster improvement of efficiency of the judiciary.

Since intellectual property rights cases require a specific legal knowledge, many training activities were financed and carried out by international, foreign and domestic organizations and experts. These activities simply did not produce a satisfactory result because of the inability of the organizer to identify a limited number of judges who are involved in intellectual property rights cases and who can be expected to stay involved in intellectual property rights cases in near future.

In combating the relatively primitive but widespread forms of piracy in the field of copyright, related rights, trade marks, geographical indications and design, experience has shown that administrative protection has the potential to be the most efficient and most appreciated among rights holders.

The effectiveness of enforcement of intellectual property rights is proportionate to the attention paid by the government on this matter. If the government is not committed to the objective of efficient enforcement, there is little use of addressing state organizations like the courts, the inspectorates, customs, the police, and the intellectual property office.

The objective of achieving effective enforcement of intellectual property rights should be part of a broader national strategy on intellectual property as a tool for economic and social development and made therewith a part of the national political program. Such a strategy should inter alia establish a clear institutional division and specialization of work in this field.

Enforcement of intellectual property rights strongly depends on the quality of legislation. Pragmatic legislative solutions are welcome, as well as those approaches where intellectual property is indirectly protected by laws regulating matters different from but related to intellectual property, such as the Law on Broadcasting and the Law on Advertising.

Efficient enforcement of the intellectual property laws and cooperation of the institutions is an important signal to foreign investors that Serbia is able to provide secure and stable economy.

Products liability

- ***Relevant Domestic Legislation***

Product manufacturer liability Act *Sl. Glasnik* rs 101/05; **Consumer Act** *Sl. Glasnik* 79/05 ; **Act on the Protection of Competition** *Sl. glasnik* RS 79/05; **Act on Environmental Protection**, *Sl. list* RS, 135/04; **Act on the Safety of Foodstuffs and Objects in General Use**, *Sl. list* SRJ, 24/94, 28/96 and 37/02.

Protection of consumers in Serbia isn't at a satisfactory level, although improvement can be noticed since the adoption of the Consumer Protection Act.

The law on the consumer protection is harmonized with EU regulations. The law consists of several guidelines that relate to the right to satisfy basic needs, the right to safety, the right to free information, the right to free elections, the right to reimbursement, the right to education and the right to a healthy living environment.

Products must be produced in line with health and safety conditions, technical standards and other regulations for the protection of the environment¹⁰¹. Failure to respect these standards leads to the prohibition of the distribution of products.

Article 11 of this Law prohibits any kind of consumer discrimination¹⁰². This article represents the anti-monopoly provision.

The Law also prohibits the joint trade, a situation in which a buyer is only allowed to purchase some merchandise that is in the low stock if at the same time he/she purchases some other goods. Prices must be clearly visible and they should not mislead the buyer or the customer¹⁰³. The consumer must not be deceived regarding the character and specifications of the product. It is mandatory that product price, quality, quantity, and ingredients are clearly visible and readable. On the other side, there is a mandatory control of false and purged marketing.

Concluding Remarks

Like in other countries in transition, in Serbia economic and social rights remain most vulnerable to violation. Furthermore, as a result of systematic and severe violations of civil and political rights, economic, social and cultural rights were neglected.

However, since Serbia started the process of EU integration, strict compliance with EU directives has become very important. Also, legislative reform of a country that is an EU candidate is monitored constantly. For the Government, the goal is not only to follow directives but, also, to try and adjust them to the specific political and historical situation in Serbia.

In the area of social and economic rights realization, legislative standards of EU and UN need to be understood as the minimum guarantee of protection and as the bottom line of joint market principles. It is in our general interest to increase the level of protection of citizens.

¹⁰¹ Article 5

¹⁰² Article 11

¹⁰³ Article 16 and 17

In conclusion, while it is hard to overcome years of legislative delay, in terms of EU integration, it is even harder to put those newly adopted laws in practice. But, it is clear that in future the issues of economic and social rights will become main issues in Serbian society; a sign that Serbia has become a democratic society in which political and civil rights are not in constant danger any more.

Report on the Activities of the Balkan Human Rights Network (BHRN) in the Period October 2007 – July 2008¹

By Aida Vežić, Jelena Mičić and Snježana Ivandić

Introduction

The period between October 2007 and July 2008 was characterized by the final phase in the implementation of several Balkan Human Rights Network projects: “Gender Mainstreaming in Media, Government, Police and Court”, “Guardians of Rights”, “Human Rights and Business”, “Regional Human Rights Report 2007”, “Balkan Yearbook of Human Rights 2008”, “Web portal” and “BHRN Newsletter”. These projects were fully supported by the Neighbourhood Programme of the Danish Ministry of Foreign Affairs, as well as the assistance to BHRN bodies, Secretariat and Steering Committee. The final project program has been closed with the financial auditing of individual projects as well as the overall program.

Also, this period was characterized by the documenting of the lessons that we have learned working as a Network in the last ten years. BHRN has been publishing annual reports every year in which we have presented our work, but when one is making an overview and evaluation of 10 years of work and more than 70 regional projects that were implemented then one is being confronted with a big task. There are various criteria for evaluation – number of final beneficiaries, geographical area covered, number of follow-up projects, synergy with other initiatives, impact on the target group, etc.

Other important events that happened in this period concern closing down of the Neighbourhood Program of the Danish Ministry of Foreign Affairs after eight years of program implementation, implementation of the suitability strategy of the Network and sustaining the Secretariat as an independent unit. The Network will be sustain as a forum for the exchange of information and good practices, and members will be able to apply to different donors as a coalition of organizations.

¹ Proofreading by Andrew Braith

Closing Down the Neighbourhood Program and its Evaluation

The Danish Ministry of Foreign Affairs, as it was planned, closed down the Neighbourhood Program in May 2008. BHRN met with the representatives of the NAB program on the final Half-Year Review Meeting that was held with each of the NAB Networks² in Sarajevo. The Danish Ministry of Foreign Affairs will continue supporting individual countries in the region through their programs for the support to the non-profit sector (civil society and government) and the business sector. Some of the programs will be managed by the country's embassies present throughout the Western Balkans. As for the Neighbourhood Program, evaluation of the whole program will be conducted and the lessons learned shared with all those who are interested to read more about them. BHRN is very thankful to have been supported by the Neighbourhood Program since 2000, and we have learned a lot through this important partnership. Regardless of the closing down of the Neighbourhood Program, the Danish Institute for Human Rights will remain a member of the network and our partner in implementation of different programs and projects.

Sustaining the Secretariat of the BHRN

The Secretariat of the BHRN managed to transform itself from the re-granting and administration body of the network to implementing and consulting NGOs in Bosnia and Herzegovina. The Secretariat will remain at the disposal of the members as knowledge and information centre that will maintain the network's web page (www.balkan-rights.net) and produce bi-monthly newsletters. Also, the secretariat remains open to take part in the project development and fundraising activities for network projects. Currently, the Secretariat is playing the role of a consultant and evaluator of several programs, and it offers a number of trainings and services (full list is available at www.adi.org.ba). As an implementing organization, the Secretariat is leading the realization of the project "Strengthening the Role of Professional Associations in the Judiciary Sector in Bosnia and Herzegovina – JUP-BiH", which is supported by the Government of Great Britain and will be implemented in March 2009.

² Other NAB Networks are SEE-RAN (South-East European Refugee Assistance Network), SEEYN (South-East European Youth Network), SEENAPB (South-East European Network of Private Broadcasters) and TWINNING Platform

Realized projects***Gender Mainstreaming in Media, Government, Police and Court***

Project title	“Establishment of Gender Mainstreaming in the Work of Media, Government, Police and Courts”
Project implementation	Association for Democratic Initiatives from Gostivar
Project partners	1. Albanian Foundation for Conflict Resolution and Reconciliation of Disputes; 2. Council for the Defence of Human Rights and Freedoms and 3. Bulgarian Gender Research Foundation
Reporting responsibility	Lulzim Haziri
Implementation period	1 November 2006 – 31 October 2007
Budget	75.231,70 EUR

This project was implemented by the Association for Democratic Initiatives from Gostivar in cooperation with the Albanian Foundation for Conflict Resolution and Reconciliation, the Council for the Defence of Human Rights and Freedoms and the Bulgarian Gender Research Foundation. The objectives of this project included: making an assessment through research about gender mainstreaming in the field of mass media, government authorities (national and local-government), police and court officials in order to address women’s human rights and improve the position of women. Panel discussions were organized with target groups of journalists, government policy-makers, police and court officials that discussed the results of the research and informed these professionals about gender mainstreaming in their work. It is expected that the increased awareness of women’s issues will translate into their professional work and raise awareness among general public. The general public was, also, informed via media campaign with billboards, posters and TV spots.

The project consisted of three phases. The first phase included conducting a gender mainstreaming assessment about the current situation of women’s

issues in media, government policies and women’s needs as victims of violence and trafficking. The second phase included organizing panel discussions for professional journalists, government policy makers, police, lawyers and judges in each of the implementation locations of Tirana, Prishtina and Skopje. The third phase consisted of organizing a media campaign to raise awareness amongst the general public about women’s issues and how they are perceived.

Guardians of Rights

Project title	“Guardians of Rights”
Project implementation	Belgrade Centre for Human Rights
Project partners	1. Human Rights Centre, University of Sarajevo (Bosnia and Herzegovina) 2. Croatian Helsinki Committee (Croatia)
Reporting responsibility	Marko Karadzic
Implementation period	1 November 2006 – 31 October 2007
Budget	48.748,30 EUR

Access to rights is one of the most important preconditions for building civil society in the region, and strong NGO involvement in human rights promotion and protection enables individuals to access their rights. In order to ensure their involvement, civil society needs high quality projects and stable funding, which is becoming increasingly difficult as many international donors are withdrawing from the Balkans.

The project “Guardians of Rights” corresponded to the growing need for better legal protection of the marginalised groups in the region. Sharing the same historical, economic and legal background in their countries, four member organisations tried to solve the problem of insufficient legal protection for people deprived of their legal capacity because of their inability to independently take care of their rights and interests due to illness or mental incapacity. The objective of this project was to train decision makers in the process of implementing internationally recognized standards of HR in genera, and, in the field of protection of adults with special needs, give directions to persons involved in guardianship on how to conduct their duties in accordance with the international standards of

HR. Main project activities were training courses and the publication of a booklet, which included the translation of the Council of Europe's Recommendation R (99) 4 on Principles Concerning the Legal Protection of Incapable Adults and the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities. These two documents were part of the seminar materials along with the integral translation of the European Convention on Human Rights with protocols. The copy of the publication was sent to the Centres for Social Affairs and Non-Contestant Procedure Departments of the Municipal Courts. The materials were distributed to the social care institutions and NGOs dealing with disability issues in the mentioned countries. The courses were conducted in time intervals of 2 months. The announcements were provided to the NGOs, courts and institutions directly.

This project was implemented by Belgrade Centre for Human Rights from Serbia in cooperation with Human Rights Centre, University of Sarajevo (Bosnia and Herzegovina) and Croatian Helsinki Committee (Croatia).

Human Rights and Business Project

Project title	Human Rights and Business Project
Project implementation	Secretariat of the BHRN and Danish Institute for Human Rights
Project partners	Albanian Human Rights Centre, Association for Democratic Initiative Kosovo, Association for Democratic Initiative Gostivar, Belgrade Centre for Human Rights and Rule of Law Institute (members of the Balkan Human Rights and Business Focal Group)
Reporting responsibility	Danish Institute for Human Rights
Implementation period	1 January 2007 – 31 December 2007
Budget	24.238,24 EUR

The Balkan Human Rights Network and the Human Rights and Business Project of the Danish Institute for Human Rights initiated a joint project on

human rights and business in the Balkans. The project, Human Rights and Business, was initiated to promote respect for human rights by companies in the Balkan region. The objective was to create the cooperation and build the capacity of participating organisations to work with Corporate Social Responsibility (CSR) and engage with businesses on human rights. The Balkan Human Rights and Business Focal Group concentrated on two activities: First, CSR and human rights training and second, the development of the Balkan Quick Check. The objective was to develop a tool that would provide an effective assessment of Balkan companies' human rights performance, while at the same time being time-limited, user-friendly and easy to incorporate into a business setting.

Yearbook 2008 “Legislative Preconditions for the Development of the Corporate Social Responsibility in the Countries of the Western Balkans”

Project title	BHRN Yearbook 2008 “Legislative Preconditions for the Development of the Corporate Social Responsibility in the Countries of the Western Balkans”
Project implementation	Secretariat of the BHRN
Project partners	All BHRN members
Reporting responsibility	Secretariat of the BHRN
Implementation period	1 January 2008 – 31 July 2008
Budget	11.200,00 EUR

Balkan Human Rights Yearbook (BHRY) is annual publication of the Balkan Human Rights Network (BHRN). The Yearbook is a scientific periodical publication that promotes and explores Balkan countries' achievements and experiences in the implementation of the universally accepted concept of human rights. The eighth edition of the Yearbook had a topic “Preconditions for the Development of the Corporate Social Responsibility in the Countries of the Western Balkans”. The secretariat

was the regional coordinator of this Yearbook. The format of the Yearbook is relevant (thematic articles, book reviews and reports on the network activities) and remained similar to the previous editions. The central part of the Yearbook was the section with the research articles that offer a variety of perspectives, theories, approaches, or methodologies. Articles were written by BHRN member organizations and the regional human rights community, with special consideration given to voices or perspectives from human rights practitioners and young scholars.

Regional Human Rights Report 2007

Project title	Regional Human Rights Report 2007
Lead organisation	Secretariat of the BHRN
Project partners	All BHRN members
Reporting responsibility	Secretariat of the BHRN
Implementation period	1 January 2008 – 30 September 2008
Budget	25.000,00 EUR

This project, Regional Human Rights Report, aimed to develop a regional monitoring mechanism through existing Balkan Human Rights Network in order to monitor the human rights situation in the region on the annual basis. It also aimed to produce comprehensive human rights report with the detailed and relevant information on legislation, practice and citizen's attitudes toward human rights and its enjoyment, main trends, highlights and obstacles in enhancing human rights culture and the main problems of the human rights protection. The Human Rights Report project includes recommendations for the improvement of legislation gaps and failures of respect for human rights standards and a comparison of domestic laws with international human rights instruments, which are binding as well as presenting the case law before the international courts and tribunals affecting the human rights situation in the countries throughout the region. The Report will serve as a resource for future legislative activity in the fields that have not been regulated and as an indicator of which existing provisions need to be amended. The Report was methodologically uniform and indicated the most important and most frequent human rights problems in the transitional societies of the Western Balkans. All reports included a list of international human rights instruments – universal and regional –

that the country has ratified, followed by an introduction explaining political and social background providing the basic data and general framework in which the Report should be “read”. The cores of the reports are represented by the analysis of current legislation and its conformity with universal and European standards in the field of the promotion and respect of human rights. Special attention was drawn to the most significant problems in practice: structural, institutional, traditional, economic, social and cultural challenges in this field.

Annual Report 2007-2008

Project title	Annual Report 2007 - 2008
Lead organisation	Secretariat of the Balkan Human Rights Network
Project partners	BHRN members, Strategic partners & Associated members
Reporting responsibility	Snjezana Ivandic, BHRN Executive director
Implementation period	1 August 200 – 1 November 2008
Budget	1.200,00 EUR

Secretariat has already produced three BHRN annuals reports (2004-2006, 2005-2006 and 2006-2007) that are available in both print and electronic version. Annual report for 2007-2008 is to be produced by the Secretariat and posted on the BHRN web site. The Secretariat will print and broadly distribute Annual Report 2007-2008 in July 2008.

Web page

Project title	Web site and data base
Project implementation	Human Rights Centre of the University of Sarajevo
Project partners	All BHRN members
Reporting responsibility	Miroslav Zivanovic – project coordinator
Implementation period	1 August 2007 – 1 July 2008
Budget	4.775,50 EUR

In the period of 2006/2008 the Webmaster from the Human Rights Centre of the University of Sarajevo has been contracted to continue with the management and further development of the BHRN Web Portal. This time, the contract is made with the individual and not with the institution, and there are no administration costs. Also, the Webmaster has a technical and advisory role while the Secretariat is in charge for collecting information and channelling it to the Webmaster. Implementation of the project “Balkan Human Rights Web Portal” – BHRN Web Portal started on August 1, 2006. The first project period was 12 months and it ended on June 31, 2007. The second project period started on August 1, 2007 and will end on June 31, 2008. This means that portal will be regularly updated with all relevant BHRN information issued by the BHRN Secretariat, BHRN members and the partners of the BHRN. The HRC Sarajevo will, also, pay special attention to the existing information flow and its further enhancement.

During the project period, BHRN Web Portal project team was engaged in the following activities: overall management of the BHRN Web Portal (regular updates, content development, design and structure interventions), regular contacts with BHRN member organizations (contacts with organizations representatives, visits to web presentations of BHRN member organizations), management and update of BHRN Databases (Resources, Fundraising, Projects, Publications) and information disseminating activities (information alerts, issuing of BHRN Web Portal Updates through www.balkan-rights.net mailing list).

Newsletter

Project title	BHRN Newsletter, 5 editions
Lead organisation	Secretariat of the Balkan Human Rights Network
Project partners	BHRN members, Strategic partners & Associated members
Reporting responsibility	Aida Vezic, BHRN Network Coordinator
Implementation period	1 August 2007 – 31 July 2008
Budget	2.904,80 EUR

To ensure and improve the information flow between the BHRN and rest of the world, and in order to increase the promotion and visibility of BHRN activities, BHRN will to produce 5 double issues of the BHRN Newsletter. Since 2001, 67 editions of the Newsletter have been produced and distributed. An electronic version is also available at BHRN web site at www.balkan-rights.net. The design and content of the newsletter are being continuously improved and the level of information available in each issue of the newsletter is maintained and improved. All the feedback that we received from partners has been very positive and organisations and individuals find it useful.

Members of the BHRN Steering Committee

Members of Steering Committee			
	Country	Organisation	Representative
1	Albania	Albanian Centre for Human Rights	Erinda Bllaca
2	Bosnia & Herzegovina	Human Rights Centre University of Sarajevo	Miroslav Živanović
3	Bosnia & Herzegovina	Helsinki Committee for Human Rights in Republika Srpska	Aleksandra Letic
4	Bulgaria	Rule of Law Institute Bulgaria	Violeta Tachinova
5	Croatia	Croatian Helsinki Committee	Ranko Helebrant
6	Denmark	Danish Institute for Human Rights	Francesco Castelani
7	Kosovo	Centre for Defense of Human Rights and Freedoms	Behxhet Shala
8	Macedonia	Association for Democratic Initiatives	Albert Musliu
9	Macedonia	Association for Human Rights Protection of Roma	Zlatko Sarev
10	Montenegro	Women Safe House	Ljiljana Raičević
11	Serbia	Belgrade Cente for Human Rights	Vesna Petrović

Steering Committee members met in Zagreb for two day meeting, which was held on 11-12 April 2008. Representatives of majority Steering Committee members' organizations took part into the meeting in Zagreb.



BHRN was initiated by group of human rights organizations representing most Balkan States in 1998. This group fostered the idea of closer cooperation between the human rights organizations in the Balkans to ensure the exchange and development of knowledge in the region. The main areas of strategic intervention of the working groups within the BHRN are:

Knowledge, information and dialogue about human rights, Rights of disadvantaged, marginalized and vulnerable groups, Access to rights and network development. Today, the members of the network are 44 NGOs working with various aspects of human rights in the Balkans. The vision of the BHRN is to see stable and democratic societies developed in the region, and to have knowledge of and respect for human rights widespread in all spheres of society. The results obtained so far have confirmed the importance of involving human rights organizations in the process of developing democracies through raising public and government awareness of human rights issues. BHRN member organizations, also, significantly contribute to the development of a dialogue between civil society and governmental structures. The member organizations of the BHRN share a set of common values. The values are based on the perception of human rights as adopted and specified in a number of international conventions related to human rights. The main purpose of the network is to promote human rights standards in South Eastern Europe in legislation as well as in administrative practice; then to contribute to the peace-making and reconciliation process in the Balkans after a long period of violent conflicts, and to develop stable and democratic societies in the Balkan region.

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