

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women, its causes and consequences

Ref.: OL SRB 3/2022
(Please use this reference in your reply)

7 April 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 41/12, 42/16, 43/6, 42/10, 44/4 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a **draft law on Seasonal and Other Occasional Employment in Specific Business Activities ("Draft Law")** proposed by your Excellency's Government that if adopted, may impinge on the exercise of the right to freedom of association, including the right to form and join a trade union and collective bargaining, the right to freedom of peaceful assembly, specifically the right to strike, and the right to freedom of opinion and expression in the labour sector.

These rights are guaranteed under international human rights law, in particular under articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Serbia succeeded on 12 March 2001; under article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Serbia succeeded on 12 March 2001; under articles 13 and 26 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), which Serbia signed on 11 November 2004; as well as the Conventions No. 11, No. 87 and No. 98 of the International Labour Organization ("ILO Conventions"), ratified by Serbia on 24 November 2000.

We are respectfully submitting these comments in light of international human rights standards and best practices on the rights to freedom of association and peaceful assembly, as well as on the rights to freedom of expression and opinion and stand ready to engage further with your Excellency's Government on this matter.

We also would like to emphasize that though the present letter provides comments on the abovementioned rights, concerns on related and alleged human rights violations have been brought to your Excellency's Government before, specifically via the communications procedure.

1. *Applicable International and Human Rights Law Standards*

We respectfully draw your Excellency's Government's attention to the relevant international human rights laws provisions enshrined in the ICCPR and ICESCR. In particular, we consider ICCPR international human right standards applicable under article 19, which guarantees the right to freedom of opinion and expression; and under article 21 and 22, which guarantee the rights to freedom of peaceful assembly and freedom of association; as well as ICESCR international human rights standards applicable under article 8, which guarantees the right to form and affiliate to trade unions.

Article 2 of the ICCPR and ICESCR, respectively, sets forth your Excellency's Government responsibility to take deliberate, concrete and targeted steps towards meeting the obligations recognized in the respective Covenants, including but not limited to adopting laws and legislative measures to provide domestic legal effect to the rights stipulated in the Covenants and to ensure that the domestic legal system is compatible with the international human rights treaties.

We also refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, the Declaration reaffirms each State's responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, including every person's right, individually and in association with others to, "at the national and international levels (...) to form, join and participate in non-governmental organizations, associations or groups" as well as to "to meet or assemble peacefully" (A/RES/53/144, Art. 5). It further protects the rights to freedom of opinion and expression of human rights defenders and other civil society actors, as well as states that everyone has the right to engage in peaceful activities to counter violations of human rights and fundamental freedoms (Ibid., Art. 6 & Art. 12).

In addition, we draw your Excellency's Government's attention to the international human rights and labour standards contained within the ratified ILO Conventions, in particular Convention No. 87 on freedom of association and protection of the right to organise; Convention No. 98 concerning the application of the principles of the right to organise and to bargain collectively; and Convention No. 11 on the rights of association and combination of agricultural workers. In addition, other related ILO Conventions which also protect the right to freedom of association and freedom of peaceful assembly are Convention No. 143 on Migrant Workers, No. 155 on Occupational Safety and Health and No. 187 on the Promotional Framework for Occupational Health and Safety, the two former ratified by Serbia on 24 November 2000 and the latter on 16 September 2009.

We finally refer your Excellency's Government to the ILO Declaration on Fundamental Principles and Rights at Work ("ILO Declaration"), adopted in 1998 and lastly amended in 2010. In this declaration, Member States commit to protect and respect the principles and rights contained therein, regardless of the ratification status of the respective Conventions. The provisions are divided into four (4) categories: a)

freedom of association and the effective recognition of the right to collective bargaining, b) the elimination of forced or compulsory labour, c) the abolition of child labour and d) the elimination of discrimination in respect of employment and occupation (article 2).

2. *National legal framework*

The rights to freedom of association and peaceful assembly, and the freedom of opinion and expression are enshrined in the latest Constitution of the Republic of Serbia which was adopted by the National Assembly at a special session on 30 September 2006 and endorsed by a referendum on 28 and 29 October 2006. The Constitution was declared and subsequently entered into force on 08 November 2006 (Official Gazette of the Republic of Serbia No. 98/2006). In particular, the abovementioned rights and fundamental freedoms are guaranteed under articles 46 (freedom of thought and expression), 54 (freedom of assembly), article 55 (freedom of association) and article 61 (the right to strike).

The Government has promulgated a number of laws to give effect to the Constitution and specifically to the aforementioned articles.

The paramount law regulating the employment sector in the Republic of Serbia is the “**Labour Code**”, first published in the Official Gazette of the Republic of Serbia No. 24/05 and lastly amended by the decisions of the Constitutional Court No. 113/2017 and No. 95/2018. Article 3 of the Labour Code protects the right to form associations, trade unions, the affiliation to them as well as the right to “collective agreement”, by stating that if such rights are not guaranteed in the employment contract, the present Code regulates those rights. Section XIX on “Organisations of Employees and Employers” (art. 206-239) regulates the rights to form associations, specifically stating that “(T)he employees are guaranteed the freedom to organize in trade unions and engage in trade union activity which shall require no approval, pending registration” (art. 206). On the other hand, Section XX on “Collective Agreements” (art. 240-272) guarantees and protects the right to collective bargaining, key to comply with the right to freedom of association.

Section XVIII “Special Provisions”, Paragraph 1 on “Work outside of the Employment Relationship”, defines *Temporary and Periodical Jobs* as any job that does not exceed more than 120 working days in the year (art. 197), and stipulates that it is only guaranteed for unemployed, old-age pensioners and part-time employees who might scale up to full-time working hours, as well as members of student cooperatives and youth of up to 30 years of age (art. 197 ff.).

In regards to foreign nationals working in Serbia, the Labour Code states that “The provisions of the present Act apply to the employed foreign nationals and stateless persons working for an employer in the territory of the Republic of Serbia, unless otherwise specified by the law” (art. 2). It is worth mentioning that article 29 of the Labour Code stipulates that the provisions within said Code and a special law may apply to foreign nationals and stateless persons, however, solely in regards to the conditions for the employment relationship.

In addition to the Labour Code, the rights to freedom of association and freedom of peaceful assembly of workers find protection in the following laws:

- a. The **Law on Associations** adopted in July 2009 as in the Official Gazette of the Republic of Serbia No. 51/09, which guarantees the right to freedom of association, mainly of non-governmental organisations, but also of political parties, trade unions, associations founded for the performance of certain activities aiming at gaining profit, sports organizations and associations, church and religious communities, spontaneous temporary connections of several persons and other persons, who are not subject to a Special Law.
 - b. The **Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities** adopted in June 2018 as in the Official Gazette of the Republic of Serbia No. 50/18, which aims at regulating seasonal and non-standard forms of employment in the agricultural, forestry and fisheries sector.
 - c. The **Act on Strikes** adopted in 1996 as in the Official Gazette of the Republic of Yugoslavia No. 29/1996 and the Official Gazette of the Republic of Serbia No. 101/2005.
3. *Issues concerning human rights in regards to the Draft Law*

General observations (Scope)

The Draft Law aims at regulating “(...) employment in certain jobs of occasional nature, including seasonal jobs (...)” (art. 1) and thus at replacing the existent Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities, adopted in 2018 (art. 37). The scope of the Draft Law is further detailed in article 2 whereas it stipulates that “Employment in accordance with this law shall be considered work outside employment relationship”.

Under Serbia’s Labour Code, work outside of the employment relationship can be carried out in maximum 120 working days per year, whilst article 7 of the Draft Law allows employers to hire employees under this Law for up to 180 working days, in addition to the limitations to 120 and 90 working days, depending on the sector.

Article 8 of the Draft Law stipulates that unemployed, and old-age and early-age pensioners might be subject to the Law, as well as part-time employees who could be scaled up to full-time working hours; thus only excluding youth and students’ cooperatives subject of the Special Provisions within Serbia’s Labour Code. However, it is worth emphasizing that children (persons under the age of 18) are subject to the Draft Law if they are employed in the industries and sectors mentioned in the following paragraph (art. 6).

In regards to the industries and sectors under the Draft Law, whilst the 2018 Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities limits its regulation scope of non-standard forms of employment to the

agricultural, forestry and fisheries sectors, the present Draft Law extends that scope by including the following sectors:

- Construction,
- Accommodation and food services,
- Administrative and auxiliary service activities, and activities in tourism,
- Domestic support care for the needs of natural persons such as caring for children or the elderly and cleaning, and
- Cleaning of residential buildings (art. 4)

We express our concern that by broadening the overall scope of non-standard forms of employment, existing labour laws such as the Labour Code are rendered inapplicable and thus, the protection and guarantee of rights of informal and/or seasonal workers might be hampered. Therefore, the Draft Law might be in violation of the principles and standards of international human rights and labour laws.

We are specifically concerned that the following rights seem not to be protected in the current Draft Law:

Specific observations

a. Right to freedom of association (trade unions)

According to the aforementioned analysis, the Draft Law regulates work outside the employment relationship out of the scope of the provisions set by the Labour Code, and the former (Draft Law) does not have explicitly stipulated the right to freedom of association, specifically the right to form and affiliate to trade unions and other workers' organisations or associations. In addition, the Law on Associations adopted in 2019 clearly stipulates that trade unions are only subject to this Law when no Special Law prevails. We understand that the Draft Law is considered a "Special Law", and thus strips the workers subject to the present Draft Law from the protection of rights stipulated in the Law on Associations.

The lack of protection of the right to freedom of association is a clear violation to international human rights standards on the matter, by hindering the establishment of associations and civil society organisations. We wish to draw your Excellency's Government's attention to Human Rights Council Resolution 27/31 on Civil Society Space where it states that "(...) the legal framework within which civil society operates is that of national legislation consistent with the Charter of the United Nations and International human rights law" (A/HRC/RES/27/31). The Human Rights Council further urges Member States to "(...) create and maintain, in law and practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity" (Ibid).

In addition, we would like to draw your Excellency's Government's attention to a report of the UN Special Rapporteur on the rights to freedom peaceful assembly and of association, whereas he states that "States have obligations under international human rights law to ensure that everyone within their jurisdiction is able to exercise his or her rights. Those obligations include refraining from violating workers' rights, taking positive measures to fulfil the rights and protecting against violations by third parties" (A/71/385, para. 96).

We also remind your Excellency's Government that no legislative framework including both restrictions or a lack of positive protection of the right to freedom of association, can be imposed on workers only due to their specific employment contracts or status. ILO's Committee on Freedom of Association has repeatedly stated that "(A)ll workers must be able to enjoy the right to freedom of association regardless of the type of contract by which the employment relationship has been formalized" and "(T)he status under which workers are engaged with the employer should not have any effect on their right to join workers' organizations and participate in their activities".¹

Collective bargaining

The Labour Code regulates "collective agreements" of labour associations, thus, the Draft Law, if adopted, would deprive numerous workers in several industries the protections guaranteed under Serbia's Labour Code; and due to the lack of explicit mention of the right to collective bargaining, those workers' aforementioned right is not guaranteed overall.

The subsequent violation of international human rights standards does not only imply the violation of the right to freedom of association, but also the right to freedom of expression and opinion, key elements to participate in labour associations by – among others – participate in collective bargaining which ultimately leads to collective agreements. In fact, ILO's Committee on Freedom of Association confirms that "(F)reedom of opinion and expression constitutes one of the basic civil liberties essential for the normal expression of trade unions"². The Committee proceeds with emphasizing the respect of fundamental freedoms for trade unions by reaffirming the interrelatedness thereof as follows: "(T)he Committee wishes to emphasize the importance which it places on respect for the basic civil liberties of trade unionists and for employers' organizations, including freedom of expression, as essential prerequisites to the full exercise of freedom of association"³.

Right to strike (freedom peaceful assembly)

The right to freedom of peaceful assembly, specifically the right to strike mainly exercised by trade unions and other labour associations, is protected under

¹ ILO, Compilation of decisions of the Committee on Freedom of Association, Right of workers and employers, without distinction whatsoever, to establish and join organizations, <https://www.ilo.org/dyn/normlex/en/f?p=1000:70001:NO>, paras. 327 & 328

² ILO, Compilation of decisions of the Committee on Freedom of Association, Right to Strike, <https://www.ilo.org/dyn/normlex/en/f?p=1000:70001:::NO>, para 754

³ Ibid.

Serbia's Act on Strike adopted in 2005 and lastly amended in 2012 as in the Official Gazette of the Republic of Serbia No. 103/2012. Article 3 of said act stipulates that the decision on going on strike and informing the employer on any potential strike lies within the trade union body, determined by a general act of the union or the majority of employees. According to the information analysed beforehand, workers subject of the Draft Law would not be guaranteed the right to form and/or join trade unions, and consequently would also be stripped of their right to strike. Likewise, the right to strike or to peaceful assembly overall is not explicitly mentioned in the Draft Law.

The lack of protection of the right to peaceful assembly in the Draft Law would entail a failure of Serbia's positive obligation to protect this right in accordance with international human rights standards (A/HRC/41/41, para. 13). In addition, we would like to remind your Excellency's Government that the right to peaceful assembly as stipulated in article 21 of the ICCPR, must be respected fully and the provisions that provide the highest protection standards are applicable. As such, the Human Rights Committee states in General Comment No. 37 that "article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches" (CCPR/C/GC/37, para. 6). In addition, the Committee emphasizes that the exercise of this right is applicable for everyone, citizens and non-citizens alike, including but not limited to "(...) foreign nationals, migrants (documented or undocumented), asylum seekers, refugees and stateless persons" (Ibid., para. 5).

In regards to *strike* as a specific mechanism to exercise the right to peaceful assembly and to organise⁴, the ILO has repeatedly recognized and regarded "(...) the right to strike as constituting a fundamental right of workers and of their organizations (...)"⁵. The importance of the exercise of this right to defend occupational and economic interests does not solely lie within the defence of "(...) better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems (...)"⁶.

We wish to put your Excellency's Government attention on the role of workers and their representatives when it comes to specifically promoting and advancing the health and safety conditions in the respective work environments. Thus, we would like to remind your Excellency's Government of the Convention No. 155 on Occupational Health and Safety, which urges its State parties to "(...) in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working

⁴ Ibid.

⁵ Ibid., para 751

⁶ Ibid., para. 758

environment”⁷, as well as the Convention No. 187 on the Promotional Framework for Occupational Safety and Health that determines that “(...) the national system for occupation health and safety shall include, among others: a) (a) laws and regulations, collective agreements where appropriate, and any other relevant instruments on occupational safety and health; (...)”⁸.

b. Protection of marginalized groups

According to a recent study of the ILO on “The rising tide of non-standard employment”, non-standard forms of employment are not only increasing globally, but also impacts workers unequally.⁹ The same study suggests that women, young people and migrants are far more likely to work under non-standard agreements.¹⁰

Consequently and for instance, female workers’ rights are specifically protected under article 11, of the Convention on the Elimination of All Forms on Discrimination against Women, succeeded by Serbia on 12 May 2001; and articles 6, 7 and 10 of the ICESCR.

We express our concerns that in the absence of safeguards to protect and respect the fundamental freedoms of workers and non-traditional employees, the Draft Law, if adopted, would impact certain groups disproportionately, increasing the likelihood of exploitation and abuse.

Migrant Workers

Article 6 of the Draft Law stipulates:

“A foreigner who, in accordance with the visa regime, does not need a visa to enter the Republic of Serbia may work in accordance with this Law, without the obligation to obtain a work permit for foreigners in accordance with the law governing the work of foreigners, for the time of a short stay in the Republic of Serbia in accordance with the regulations governing the stay of foreigners.”

In line with article 2 of Serbia’s Labor Code, foreign nationals are subject to said Code unless a Special Law prevails. We understand that the Draft Law is considered a “Special Law”, and thus strips migrant workers subject to the Draft Law of the protection of rights stipulated in the Labour Code. We are specifically concerned that the Draft Law might push more migrants to non-

⁷ ILO (1981), Convention No.155, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312300:NO, para. Article 4, para. 1

⁸ ILO (2006), Convention No. 187, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187, article 4, para. 2 (a)

⁹ ILO (2017), the rising tide of non-standard employment, <https://www.ilo.org/infostories/en-GB/Stories/Employment/Non-Standard-Employment#who-works-in-non-standard-employment>

¹⁰ Ibid.

standard forms of employment, which are outside the scope and protection of the Labour Code.

If applied, the Draft Law is in direct violation of international human rights and labour standards, among others and specifically to article 10 of the ILO Convention No. 143 which protects the fundamental freedoms, and the right to form and affiliate to trade unions of migrant workers. In line with the aforementioned Convention, we wish to draw your Excellency's Government attention to the report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (FoAA) on FoAA rights in the workplace, whereas he concludes that "(W)orkers are entitled to the rights to freedom of peaceful assembly and of association regardless of their status within a country. Further, those rights are central to ensuring that workers can claim their rights to just and favourable conditions of work in the face of structural obstacles that keep them and their issues marginalized" (A/71/385, para. 95).

We would also like to refer to the report of the Special Rapporteur on the human rights of migrants on "right to freedom of association of migrants and their defenders", in which the Special Rapporteur recommends that States "Establish laws, policies and practices that are supportive of trade union membership for migrants; and "ensure migrants' work visa or permits are issued with no effective restrictions on the migrant workers' right to freedom of association, including to form and join trade unions" (A/HRC/44/42, para. 89 (b) and (o)).

In addition, we also wish to draw your Excellency's Government attention to the 2018 UN Principles and Guidelines on the human rights protection of migrants in vulnerable situations, particularly Principle 2 on countering all forms of discrimination which guides States to "(...) Ensure that, regardless of their status, migrants are able to enjoy their right to freedom of association including through forming and joining trade unions and participating in informal networks and associations (...) "¹¹.

In an effort to apply the intersectional focus, we would like to provide the example of female migrant workers, who would be even more so impacted by the proposed Draft Law, as opposed to migrant workers overall. Except for the constructions industry, the industries subject to the Draft Law are considered female dominated industries, which represents one factor of the disproportionate effect for female workers¹². As a result, the claims that female workers would like to voice and the agreements to which they adhere are -in content- different than thus voiced by male workers; this is added to the differentiated sexual and gender-based violence that women suffer in the employment sector. Hence, even if the Labour Code still protects women and other vulnerable groups from every type of discrimination, specifically in "Section V: Ban on Discrimination", regardless of the adoption of the Draft Law, we express our concerns of the lack of specific provisions on gender-based violence and

¹¹ United Nations, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, Principle 2, Counter all forms of discrimination against migrants, <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>, para. 3

¹² ILO (2020), These occupations are dominated by women, [These occupations are dominated by women - ILOSTAT](#)

particularly sexual harassment in the workplace from accessing, remaining and advancing in the labour market, as recognized in ILO's Convention 190 on Violence and Harassment.

We remind your Excellency's Government of its obligations of partnership, arising under the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which provides in article 9 (Prevention of Trafficking in Persons), that, "Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society." (9(3)).

Further, we highlight article 35 of the Council of Europe Convention on Action against Trafficking in Human Beings, addressing co-operation with civil society, which provides that, "(E)ach Party shall encourage state authorities and public officials, to co-operate with nongovernmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention."

We also remind your Excellency's Government of the Recommendation of the Group of Experts on Action against Trafficking in Human Beings (GRETA) to Serbia, "GRETA considers that the Serbian authorities should continue building strategic partnerships with NGOs and trade unions, in accordance with article 35 of the Convention". (GRETA (2017) 37 at paragraph 216.) In its General Recommendation No. 38 on Trafficking of women and girls in the context of international migration, the Committee on the Elimination of All Forms of Discrimination against Women, calls on states to, "(C)ollaborate with civil society organizations including through strengthening their human, technical and financial resources, to ensure that victims of trafficking are identified, assisted and protected at an early stage".

Finally, we would like to recall your Excellency's Government that the vulnerability of (migrant) workers arises from different factors, and thus, in protecting workers in a vulnerable situation, intersecting forms of discrimination shall be considered, and inter-sectorial approaches must be applied. We have repeatedly informed your Excellency's Government of allegations of the precarious situation of migrant workers in Serbia and therefore urge your Excellency's Government to reply to the letter at hand with the broadest human rights approach possible.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned issues.
2. Considering your Excellency's Government obligations under articles 19, 21 and 22 of the ICCPR, under article 8 of the ICESCR, under articles 13 and 26 of the ICMW as well as under the ILO Conventions

No. 11, No. 87 and No. 98, No. 143, No. 155 and No. 187, and in light of the aforementioned inconsistencies of the Draft Law with such obligations, please provide information on the steps it may take to remediate such inconsistencies to bring the Draft Law in line with international human rights standards;

3. Please provide any information on the remaining stages of the legislative process with regard to the Draft Law, including your Government's plans for consultation with civil society and concerned groups.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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