

Table of Contents

1. INTRODUCTORY CONSIDERATIONS	3
2. LEGAL AND STRATEGIC FRAMEWORK.....	6
2.1 Strategy for the Development of the Public Information System and accompanying Action Plan for the period 2020-2022.....	6
2.2 Employment relationship - Labour Law and related laws	9
2.3 Labour Law and other laws regulating forms of work engagement outside the scope of employment.....	16
2.4 Law on Public Information and Media.....	19
2.5 Other acts.....	20
3. THE POSITION OF JOURNALISTS IN THE APPLICATION OF THE CURRENT NORMATIVE FRAMEWORK.....	22
3.1 Work in employment relationship - exercising individual rights	22
3.2 Work in employment relationship - exercising collective rights	30
3.3 Work outside employment relationship.....	36
3.4 "False self-employment"	44
3.5 Volunteering and professional practice	48
3.6 Trends in the future labour legal status of journalists.....	50
4. RECOMMENDATIONS FOR IMPROVING THE LABOUR LEGAL POSITION OF JOURNALISTS.....	53
4.1 General labour legal recommendations.....	54
4.2 Special labour legal recommendations.....	62

Mario Reljanović¹

ANALYSIS OF THE LABOUR LEGAL STATUS OF JOURNALISTS AND MEDIA WORKERS IN SERBIA WITH RECOMMENDATIONS FOR IMPROVEMENT

Publication of this analysis was supported by the OSCE Mission to Serbia. The views expressed in this analysis are solely those of the authors and do not necessarily reflect the official views of the OSCE Mission to Serbia.

1 Research associate at the Institute for Comparative Law in Belgrade, m.reljanovic@iup.rs.

1. Introductory considerations

Journalists and media workers² in Serbia (hereinafter: journalists) are particularly exposed to trends of work flexibilisation, which expansion has been noted in the previous decade.

"In 2018, the Journalist Union of Serbia conducted research in the framework of the International Federation of Journalists (IFJ) project on labour rights and trade union engagement of journalists and media workers. The results were disheartening: salaries are at the minimum wage level; work is based on "weak" contracts, unionisation takes place only in certain portals that operate within larger media houses. The average salary in digital media is at 70% of the minimum wage level. Forty percent of respondents have an indefinite-term employment contract, mostly employees of portals operating within larger (national) media houses. The same percentage of respondents has a fixed-term employment contract, while 20% are engaged under a copyright contract. Half of the respondents report that they work longer than eight hours a day, as well as on weekends. Trade unions are registered in digital media that operate within public services, and print media Novosti, Politika and NIN, with only 10% in "other" media. "³ ... "In Serbia, about 11 thousand journalists and media workers are employed in various ways. Out of that number, about 39% are in permanent employment, and due to the latest events of 2020, there are many indicators that suggest that employment on a permanent basis is rapidly declining. A large number of engaged journalists and media workers are employed through

2 Due to the specificities of regulating labour in the Serbian legislation, the analysis will be using three terms to denote persons who are performing some form of work with the employer. The term "employee" is related exclusively to persons who have concluded an employment contract and are employed by the employer; the term "person engaged for work" includes all persons who work in one of the many work regimes outside the employment relationship and have not concluded an employment contract with the employer but some other work engagement contract; the term "worker" will serve as a generic, general term that encompasses all persons working for an employer regardless of the legal basis of such work (employment contract or another work engagement contract).

3 Interview with Dragan Čabarkapa and Dejan Gligorijević, Journalist Union of Serbia, 26 July 2021

agencies that are again engaged by the media. That mostly applies to the situation in the public media service."⁴

The specific character of the work they perform, as well as the exploitation of shortcomings in labour legislation, have therefore influenced the emergence and spread of precarity⁵ in the journalistic and media professions. These changes are happening simultaneously both in general and in particular terms.

Broadly speaking, changes in labour legislation are generally not in the interest of workers. The intensive implementation of economic and investment policies that promote foreign direct investments and major financial concessions to such investors, leads to a drastic reduction in the scope and quality of workers' rights, especially from 2014⁶ onwards. The changes affect workers who are in a legally regulated employment relationship, and who are deprived of a number of rights as well as opportunities to protect themselves from their violation. At the same time, models of work engagement outside the employment relationship are being promoted and multiplied, and are applied to various jobs and professions. What they all have in common is that they are intended to regulate work of a temporary nature, but they are also abused in cases when there is a need for continuous work.

4 Interview with Rade Đurić, IJAS, 1 August 2021

5 The term "precarity" implies short-term work engagement, job insecurity, as well as unsatisfactory working conditions and protection at work that are at the legal minimum or below it. In that sense, precarity is reflected not only in the duration and (un)certainly of employment and work engagement, but also in the significantly reduced opportunities for journalists to enjoy most of the basic rights at work and related to work during such a relationship. See: Miroslav Ružica, "Prekarizacija i prekarijat u Evropi (*Precarization and Precariat in Europe*)", in: Srećko Mihailović (ed.), *Od novinara do nadničara. Prekarni rad i život (From Journalists to Hired Hands. Precarious Work and Life)* (hereinafter: *Mihailović*), Belgrade, 2015, pp. 21-48. An attempt to quantify the precarity index can be found in the same research in: S. Mihailović, "Sve nesigurniji rad i život medijskih radnika (*Increasingly Insecure Work and Life of Media Workers*)", pp. 73 - 81 and S. Mihailović, "Prekarni rad i prekarni život radnika (*Precarious Work and Precarious Life of Workers*)", pp. 154-189.

6 Despite various previous attempts to significantly change labour legislation, only the amendments to the Labour Law in 2014, when over 100 articles of the still valid law from 2005 were amended, marked a drastic break with the policy of maintaining a balance between the social partners and open support for changes in legislation in order to reduce labour costs, primarily by abolishing and limiting the range of labour rights. See: Mario Reljanović, Bojana Ružić, Aleksandra Petrović, "Analiza efekata primene izmena i dopuna Zakona o radu (*Analysis of the effects of the application of amendments to the Labour Law*)", Belgrade, 2016.

On the other hand, when it comes to specific situations in certain professions, the trends of breaking the law are becoming increasingly prevailing, among which the jobs of journalists and media workers stand out as highly suitable for this type of abuse. For example, the so-called "false self-employment" is one of the popular models of journalists' work engagement which conceals the actual employment relationship and puts the person who agreed to work under this model in an extremely difficult position which inevitably leads to drastic labour exploitation and precarity.

Therefore, the analysis of the labour legal status of journalists must certainly include several factors. First to be observed is the political (strategic) and legal framework applied to journalists concerning their rights at work and in relation to work. The focus then shifts to the practice, application and supervision of the analysed legal framework, in order to assess the factual labour legal status. Based on that research, characteristic problems can be singled out related to the manner and quality of exercising and protecting the rights that journalists should enjoy unhindered on the grounds of labour law regulations that apply to them. Finally, the analysis contains two types of recommendations. The first group refers to labour legal recommendations - both those of a general nature and those that are specifically aimed at the journalistic and media professions. The second group is an attempt to empower journalists in their efforts to improve their position and achieve a better and more complete application of the legal framework, namely to adapt the legal framework to their specific professional needs.

2. Legal and strategic framework

2.1 Strategy for the Development of the Public Information System and accompanying Action Plan for the period 2020-2022

Strategy for the Development of the Public Information System of the Republic of Serbia for the period 2020-2025 (hereinafter: the Strategy) contains several important conclusions and goals related to the labour legal status of journalists.

The analysis of the current state of affairs identifies the unfavourable socioeconomic position of journalists and media workers, their work in adverse conditions and without adequate legal grounds. It is noted that the share of indefinite-term employed journalists is continuously falling, while the share of work engagement under outside employment contracts is growing: contracts for temporary and occasional jobs, service contracts, and copyright contracts. A survey is quoted that shows that one fifth of journalists are in the status of "freelancers" (in the context of the Strategy the term is used to denote workers engaged outside employment), half of them have precarious jobs, and stable employment is mostly enjoyed by senior media workers (50 - 60 years of age), while only 27% of young journalists have an indefinite term employment. Journalists in the online media are in the most difficult position since less than a third of them are employed on a permanent basis. At the same time, the problems are low and irregular salaries, as well as unpaid overtime work. Such a position puts pressure on journalists and fosters self-censorship, limits independence, prevents quality journalism, and favours "tabloidisation".⁷

7 Strategy, pp. 8 i 9.

The conclusion of a branch collective agreement is proposed as one of the potentially effective solutions, yet at the same time, several factors are listed that make something like that very hard to achieve at the moment.⁸

In line with these findings, one of the particular objectives of the Strategy is defined as "improved safety, socioeconomic and professional conditions for the work of journalists and media workers". This specific objective has been elaborated through several measures⁹, and measure 1.1 is especially relevant in terms of the analysis: Creating conditions for improving safety, socioeconomic, and professional environment for the work of journalists and other media workers. The measure is essentially elaborated through a number of indicators that are conducive to ensuring conditions for and actual conclusion of a branch collective agreement, as well as indicators related to gender equality, employment of persons with disabilities, and balancing family responsibilities and professional obligations. Further concretisation was made by listing as many as 12 activities for the purpose of achieving the specified indicators during the period of validity of the Strategy:

- 1) Establish the data on the number of employed journalists and media workers (and those outside employment), remuneration level, educational structures, sex, and professional positions broken down by sex. The data is to be collected by the Statistical Office based on a previously determined methodology;
- 2) Establish the number of journalists and media workers organised in unions; status analysis and generation of reports about the implementation of concluded collective agreements;
- 3) Map the situation with regard to the number and representativeness of employers' organisations of media publishers and the representativeness of journalists' and media workers' unions;
- 4) Establish socioeconomic dialogue in view of signing the branch collective agreement, in accordance with the law governing labour issues;

8 *Ibidem.*

9 *Ibid.*, p. 46.

- 5) Organise educational projects for journalists and media workers, as well as employers, about the manner in which persons employed in the media sector are to exercise their labour and professional rights, as well as occupational health and safety rights;
- 6) Provide financial incentives for media publishers which have concluded the collective agreement;
- 7) Develop the mechanisms to stimulate the creation of new jobs in the media sector, or for employment of young journalists, with the definition of precise criteria;
- 8) Support the educational projects for and strengthening the capacity of journalists to defend their labour and professional rights in view of the protection against censorship and auto-censorship;
- 9) Introduce internal measures and procedures concerning the policies for ensuring gender equality in media services, and ensure women's participation in the design and implementation of effective gender-sensitive policies and programmes.
- 10) Create the environment for greater representation of women (women journalists) among the editors and at the decision-making positions, as well as the work conditions which enable balancing the professional and private obligations;
- 11) Gathering and analysis of data about the inclusion and work engagement of persons with disabilities in the media sector;
- 12) Enable accessibility for equal inclusion of persons with disabilities in the media sector, particularly in the situations when the disability requires the adjustment of the work environment.

The exhaustiveness of the details in listing the activities is encouraging in the sense that the solution to the mentioned problems was approached analytically and with due attention and will to make effective, tangible changes in the labour legal (i.e. socioeconomic) status of journalists. In the Action Plan for the implementation of the Strategy in the period 2020-2022 (hereinafter: Action Plan), these activities are further concretised, implementing parties have been identified, as well as deadlines for implementation (the earliest deadline being the fourth quarter of 2021, so it is still impossible to comment on the efficiency of realisation), and for certain activ-

ities the funds required for implementation have been determined. It is clear that the first period of implementation of the Strategy is envisaged for preparatory activities for the possible conclusion of a branch collective agreement, various forms and levels of education of journalists, as well as for the adoption of internal acts and procedures in the media themselves.¹⁰ Some of these activities will be analysed in more detail below.

2.2 Employment relationship - Labour Law and related laws

The Labour Law¹¹ (hereinafter: LL) is the basic legal act that regulates work in the so-called general employment regime. This practically means that LL sets the ground rules on the manner of employment and working conditions, that is to say, all the rights, obligations and responsibilities of the employee and the employer. They will always apply when some special law (in the case of journalists, it is the Law on Public Information and Media¹²) does not regulate a situation in a different way. However, over time, the matter of the general employment regime has been divided into several additional laws, so the Law on Strike¹³, the Law on Labour Records¹⁴, the Law on Occupational Safety and Health¹⁵, and the Law on Agency Employment¹⁶ can be referred to as relevant in relation to journalists.

Although the LL is written for all professions and contains only general rules that apply to all employees (persons who have concluded an employment contract with the employer), certain provisions of this law may be of greater importance for journalists, and special attention will be paid to them.

10 Action Plan, pp. 6-12.

11 Official Gazette of RS, no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - CC decision, 113/2017 and 95/2018 - authentic interpretation.

12 Official Gazette of RS, no. 83/2014, 58/2015 and 12/2016 - authentic interpretation.

13 Official Gazette of the FRY, no. 29/96 and Official Gazette of RS, no. 101/2005 - state law and 103/2012 - CC decision.

14 Official Gazette of the FRY, no. 46/96 and Official Gazette of RS, no. 101/2005 - state law and 36/2009 - state law.

15 Official Gazette of RS, no. 101/2005, 91/2015 and 113/2017 - state law.

16 Official Gazette of RS, no. 86/2019.

Fixed-term employment. Employment relationship for a definite period is regulated by Article 37 of the LL. Definite period employment implies short-term engagement of a person in a situation when the nature of the work he performs with the employer is such that it can be expected to be completed in a fixed, short period of time. Over time, the maximum duration of a definite employment contract has been extended, so now it stands at 24 months, with prescribed exceptions when it may last longer (or shorter) than that. What is common to all cases, however, regardless of the duration of employment, is that the employee works on systematised jobs that are of a permanent character but which due to certain circumstances with the employer (such as increased workload, replacement of absent employee) are of limited time duration. The employee will work until the need for his work lasts, so it may happen that he switches from one job to another during the employment relationship with the same employer. This practice is legal until the maximum duration of the employment relationship for a definite period of time prescribed by law is exceeded.

Working hours - restrictions and schedule; availability and standby; work outside the employer's premises. The journalistic profession implies fieldwork and research, covering events where they occur, as well as far greater employee mobility compared to some other professions. This does not change the fact that general labour law rules apply to journalists; the law provides for flexible solutions that can be applied so as to meet the needs of the job and at the same time remain within the limits permitted by law. When it comes to working hours, it is logical for a journalist as an employee to be employed full-time. Exceptions may be journalists who cover specific topics and whose scope of work during one working month really cannot reach full-time, even on average. Applying the general rules to journalists essentially means that they must have the same working hours schedule as other employees: eight working hours per day, 40 working hours per week, with overtime of four hours per day and eight hours per week allowed. Also, the rules of daily and weekly rest apply, at least 12 hours between two working days, or 24 hours between two working weeks.¹⁷

17 Articles 51, 53, 66 and 67, LL.

It is quite clear that often, especially during fieldwork and work on continuous coverage of important events, it will not always be easy to realise something like this. It is even less certain that the employer will always be able to inform the employee about the change of the working hours schedule at least five days in advance, as regulated by Article 56, paragraph 1 of the LL. But in such cases, the provisions on working time flexibility come to the fore. With regard to the duration of working hours, the employer may introduce a rescheduling of working hours for one, several, or all employees, in situations where this is justified. Rescheduling means that employees will work a maximum of 60 hours per week instead of 40, or a maximum of 13 hours per day instead of eight.¹⁸ It can last only a certain amount of time, but long enough to meet the needs of a short-term job. If there is a continuous need for longer work than eight hours a day and/or 40 hours a week, the employer must hire additional employees.

After the changes in 2014, the LL also recognises the availability and standby for work. Availability is calculated in working hours and represents a situation in which the employee is waiting to be "activated" at the employer's premises (or at another place where he will perform work). Standby on the other hand means that the employee is not at work but that he is ready to join the work process at very short notice. Unlike availability, standby is not included in working hours, and the law does not recognise restrictions on a daily or weekly basis (standby time can certainly not be determined so that there is no daily and weekly rest of the employee in accordance with the law, or in another manner that violates employee's rights to limited working hours).¹⁹ Finally, in 2014, LL also regulated the regime of work outside the employer's premises.²⁰ Although this regulation is incomplete, it can be assessed as sufficient to solve many important issues of field engagement of journalists, as well as the engagement of journalists working at home (i.e. exclusively via the Internet), as well as hybrid employment relations which are partly realised at the employer's premises and partly in the field.

18 Article 57, LL.

19 Article 50, LL.

20 Article 42, LL.

Salary - structure, salary increment and other earnings. It should be noted that the structure of a journalist's salary is identical to that provided by LL and that it consists of salary for work performed and time spent at work, salary based on the employee's contribution to the employer's business success (awards, bonuses, etc.) and other employment-based earnings. Salary for work performed and time spent at work consists of basic salary, performance-based part of salary and salary increment.²¹ This is therefore identical as for all other workers in the general labour regime. Attention should be focused on the fact that journalists will very often meet the conditions for increased salary - for example, through overtime work or work at night, as well as work on holidays that are non-working days. The profession of a journalist is also specific in that neither the employer nor the employee can always influence what the working day will look like or how long it will last. It is important to note, however, that even in this case, journalists as employees have the right to an increase in salary on any basis provided by the LL.²² The same is the case with reimbursement of expenses incurred by employees at work and in connection with work, specifically reimbursement for business trips in the country and abroad, as well as for accommodation and meals during the fieldwork (if the employer has not otherwise provided accommodation and food).²³

Termination of the employment contract. Journalistic integrity is extremely important and it must be stated that LL does not provide any pretext for the employer to dismiss an employed journalist due to demonstrated objectivity and refusal of self-censorship, or take similar actions that would affect the journalist's objectivity and independence of work. In that sense, it is especially important to emphasise that the editor has the authority to issue work orders to the journalist, and that -by creating a general editorial policy and the style of reporting on specific events- he can set the preconditions as to whether and in what manner the journalist's work is to be published. Such an editor-journalist relationship stems from the nature of their jobs and the subordination relationship that is characteristic of an employment relationship. However, it is not legal to in any way condition a journalist to perform

21 Articles 105 i 106, LL.

22 Article 108, LL.

23 Article 118, LL.

his assignment by creating the content of news, analysis, articles, or any other journalistic form, in a way that does not correspond to reality, truthfulness and objectivity in reporting. In other words, a journalist cannot suffer harmful consequences, nor have his employment contract terminated, because he adheres to valid and established ethical and normative rules. Refusal to act upon a decision of the employer (editor) that is contrary to the applicable regulations or the journalistic code of ethics, cannot lead to termination of employment, nor to another form of sanctioning. The employer can regulate various grounds for dismissal with internal acts and has the right to do so according to the law,²⁴ but dismissal of an employee, as well as the imposition of disciplinary measures or any other pressure on an employee who does not violate the law and strives to preserve journalistic integrity in reporting, will always be assessed as a violation of the law by the employer, that is to say as an illegal dismissal if the employment contract was terminated for such reasons.

Collective rights. Journalism as a profession is often viewed as individualistic, so it is not surprising that such business activities, especially if they are performed outside the employer's premises, are not linked to trade union affiliation, collective bargaining, etc. However, this perception is wrong, since employed journalists have and can enjoy and exercise all the collective rights provided by labour legislation in the general regime, without special restrictions. This means that they can join unions, negotiate collectively, go on strike, and participate in the work of employee councils, without any distinction from employees in other industries.

As mentioned, journalists have *the right to strike*. It is exercised according to a special Law on Strike. This is an outdated and obsolete regulation, and there are indications that a new law could be adopted in the coming period, which would regulate this right in a more detailed and modern way. For the purposes of this analysis, it is important to note that the journalists' right to strike must be realised in accordance with this law and that pursuant to Article 9, paragraph 2 of the Law on Strike, providing information is recognised as an activity of general interest which means that it falls under the so-called special strike regime, in which it is necessary to ensure a

24 Article 179, LL.

minimum of work processes for the duration of the strike. However, the obsolescence of this legal solution leads to considerable doubts, since only radio and television are explicitly named in relation to information activities. There is no mention of other print and electronic media (daily and weekly press, internet portals, etc.), so it can be concluded that other information service providers can carry out a strike in the general, regular regime.

The Law on Labour Records is also an outdated legal text that is not in compliance with a set of new regulations (such as regulations on personal data protection or the Central Register of Compulsory Social Insurance). However, this law could have its (limited) scope when it comes to the implementation of certain measures that are envisaged in the Strategy and Action Plan as preparatory activities for the adoption of a special collective agreement. In particular, it could be important when collecting data on employees in the media sector. But this data, probably far more precise, can certainly be obtained through the aforementioned Central Register of Compulsory Social Insurance (hereinafter: CRCSI).²⁵

The Law on Occupational Safety and Health is relevant for the journalistic profession primarily due to the specific aspects of fieldwork, i.e. work outside the employer's premises. These are circumstances in which the employer cannot always and completely control the working conditions, which is why the consistent application of this law gains in importance. It is necessary to insist that employers adopt an act on risk assessment (which is otherwise their legal obligation²⁶) and to regulate the manner of work and protection of journalists in various situations accordingly. Also, it should be pointed out that the right to protection of safety and health at work is not limited to employed persons, but to all workers who participate in the work process.²⁷

25 The data in CRCSI are more detailed for the simple reason that this database keeps records of all contracts for which contributions for compulsory social insurance are paid and not only employment contracts.

26 Article 13, Law on Occupational Safety and Health. The act on risk assessment refers to the "working environment", which comprises the space in which the work is performed and includes work posts, working conditions, work procedures and relations in the work process (Article 4, Item 7, Law on Occupational Safety and Health).

27 Article 5, Law on Occupational Safety and Health.

The Law on Agency Employment can be applied in cases when the employer has a temporary need to engage additional journalists, in accordance with the already described conditions from Article 37 of the LL (relating to employment relationship - usually for a definite period - and the assignment of employees to the beneficiary employer for a pre-agreed period of time). However, it should be noted that the Law on Agency Employment, although proclaiming the equality of treatment of employees by the employers and the agency, contains several controversial solutions when it comes to enjoying certain rights, including all collective rights that employees have under the LL and the mentioned special laws. Consequently, journalists engaged through temporary employment agencies can count on somewhat different treatment from the employer, which makes them particularly vulnerable to the challenges they often face in performing their professional tasks. This situation has been abused by many media, and the number of journalists hired through agencies is constantly increasing.²⁸ In that sense, the fate of the journalists of the public service Radio Television of Vojvodina, who were engaged through an agency that was not registered for the activity of assigning employees, is especially indicative. As a result, when the contract between RTV and the agency was terminated, they were left practically jobless after many years of engagement on RTV.²⁹ Among the dismissed were journalists employed by the agency for an indefinite period of time³⁰, which only highlights the insufficient quality of legal solutions in the Law on Agency Employment, which result in the lack of protection of journalists, regardless of the type of employment contract they have concluded with the agency. The additional question is how can any media (and the public service is always under special public scrutiny since it is financed by citizens) engage a large number of people through agencies, having in mind legal restrictions but also the primary limitation that it is a fixed-term engagement with an individual employer - which was certainly not true in the case of RTV. This represents another type of abuse to which the labour inspection must react.

28 Interview with Rade Đurić, IJAS, 1 August 2021

29 <https://voice.org.rs/voice-agencije-koja-zaposjava-radnike-na-rtv-u-nema-u-registru/>; <https://voice.org.rs/bez-posla-u-rtv-u-ostao-91-radnik-sa-ukupno-556-godina-radnog-staza-uglavnom-na-rtv-u/>;

30 <https://novinarska-skola.org.rs/sr/mediji-u-vreme-korone-otkazi-na-rtv-tek-prethodnica-nevolja-u-medijima/>.

2.3 Labour Law and other laws regulating forms of work engagement outside the scope of employment

Labour law in Serbia recognises very specific forms of work outside the employment relationship. Although these forms indisputably exist in some format in comparative legislation, the manner of legal standardisation of several models of work engagement in LL has created a specific "interim category" of work that is neither labour nor contract law matter. This category is disputable because it deprives work engaged persons of all employment rights that are regulated by the LL, but at the same time imposes obligations and responsibilities that are equal to those that exist in the employment relationship. At the same time, these workers are completely unprotected from the termination of employment contracts and are not entitled to specific judicial protection (they can only obtain general protection in civil proceedings but cannot initiate a labour dispute).

There are several types of such contracts, and here the contracts that are (ab)used for the purpose of engaging journalists will be highlighted in more detail.

The contract on performing temporary and occasional jobs is regulated by Article 197 of the LL. Temporary jobs are those that are short-term by nature and relate to one specific type of work with the employer. Occasional jobs are identical to temporary ones but are repeated cyclically two or more times during a year. What both types of jobs have in common is that they must not last longer than 120 working days during a calendar year. A person who is engaged in temporary or occasional jobs is not employed and is not subject to the provisions of the LL which governs the position of employed persons, nor other laws that regulate the position of employees. The purpose of this contract is to regulate the need of the employer for workers who perform temporary jobs, which are not systematised as permanent jobs. If a job is systematised, it cannot be performed under this contract, but only by concluding an employment contract. However, there is a clear intention to give these contracts broader interpretation than the one prescribed by law, so the Ministry of Labour, Employment, Veterans and Social Affairs (hereinafter: the Ministry of Labour) issued

an opinion according to which it is practically possible to abuse this type of contract so that the person can be in permanently engaged in "temporary" jobs.³¹

The service contract is from a comparative legal aspect a part of contractual regulation of labour. However, in Serbia, it is partly regulated by LL³², and significantly more in detail by the Law of Contract and Torts³³. The part of the regulations contained in the LL clearly indicates the limited application of this contract, since it prohibits its use for the engagement of workers to perform jobs within the scope of the employer's line of business. The service contract is specific because it does not imply working hours, nor is it relevant for the payment of the supplier (worker). Only the final product is relevant, which has a certain value and for which the worker receives the agreed remuneration.

The copyright contract is a subtype of the service contract, and everything said above about a service contract also applies to it. The main difference between the two contracts is in the nature of the work being contracted. While in the case of a service contract, it is possible to contract both physical and intellectual work without special restrictions, in the case of a copyright contract, the object of the contract, i.e. the product of the contracted work, is the copyrighted work of authorship (scientific, professional, artistic). This contract is especially interesting for journalists because the product of their work is often precisely a copyrighted work (text, audio or visual recording, photography, radio or television show, etc.).

31 Opinion of the Ministry of Labour, Employment, Veterans and Social Affairs, Labour Sector, number 011-00-483 / 2015-02, dated 8 May 2015. This opinion practically allows employers to conclude an unlimited number of contracts for temporary and occasional work with the same employer if these contracts are concluded for different jobs. Such a decision is contrary to the purpose of the existence of a contract for the performance of temporary and occasional jobs and practically abolishes the legal limit of 120 working days during one calendar year that a person can spend on these jobs. This (illegal) interpretation of the provisions of the Labour Law has created space for legalisation of frequent abuses that occur in practice when employers fake the transfer of workers to other jobs by concluding another contract on work engagement, while the worker actually performs the same job all the time.

32 Article 199, LL.

33 Official Gazette of SFRY, no. 29/78, 39/85, 45/89 - decision of the CC and 57/89, Official Gazette of the FRY, no. 31/93, Official Gazette of Serbia and Montenegro, no. 1/2003 - Constitutional Charter and Official Gazette of RS, no. 18/2020, Articles 600 - 629.

*Contract on Professional Training and Development*³⁴ arose as a need to regulate the traineeship as work outside the employment relationship as well. A person who is professionally trained or professionally developing under this contract has almost no labour rights deriving from work and in relation to work. This is the only contract that makes it formally possible to invest work with the employer and get no remuneration in return. The extremely difficult position of persons engaged under this contract, as well as the extremely low employer costs for the work of such persons, in practice have led to significant abuses of this mode of work engagement; the extent of the abuse was reduced after the redefinition of the scope of use of such contract in 2014.

Apart from LL, non-specific modes of work used in journalism and media professions are regulated by some other laws.

*The Law on Cooperatives*³⁵ provides for the possibility of establishing and operating student-youth cooperatives (Articles 10 and 11). This opportunity was used and largely abused in the work engagement of persons (even journalists) in several ways. First of all, the practice of applying these provisions is completely contrary to the spirit and purpose of the law, which regulates cooperatives as a form of community and solidarity organisation. Instead, cooperatives in Serbia function as for-profit societies that generate considerable revenue from the exploitation of youth.³⁶ Second, work engagement through cooperatives is only possible by concluding contracts for temporary and occasional work - which leaves persons working through cooperatives in a very vulnerable position and allows for all the abuses that were discussed in the analysis of this mode of work engagement. Finally, it is evident that in practice there is a significant violation of the law regarding the age limit of persons who can be engaged in this way, which by law is set at 30 years of age, as well as regarding the exercise of legal rights such as the right to health care and temporary

34 Article 201, LL.

35 Official Gazette of RS, no. 112/2015.

36 See: Dijana Petrović, Svetlana Jovanović, „Radno angažovanje posredstvom studentskih zadruga (*Work Engagement Through Student Cooperatives*)”, in: M. Reljanović, Lj, Kovačević (ed.), *Pravni i institucionalni okvir borbe protiv radne eksploatacije (Legal and Institutional Framework for Combating Labour Exploitation)*, Belgrade, 2018.

incapacity to work. Although declared unconstitutional by the Constitutional Court in 2018³⁷, the General Rules on Student and Youth Cooperatives³⁸ remains a document that many cooperatives still apply.

*The Law on Volunteering*³⁹ clearly regulates volunteering as "organised voluntary provision of a service or performance of activities of general interest, for the common good or the benefit of another person, without payment of monetary compensation or claim for other tangible benefits" (Article 2, paragraph 1). In legal dealings, however, volunteering includes various activities that are not in the spirit of the given concept of volunteering, most often work of a commercial nature with employers, a practice that is not uncommon even among journalists. The adoption of a new law on volunteering has been announced, but for now, it is uncertain whether and to what extent the nature of volunteer work will be changed by it.

Finally, *professional practice* is not currently regulated by law (it is announced that a special law will be adopted by the end of 2021 regulating this form of work). Professional practice is primarily applied for those professions and jobs that cannot be subsumed under the definitions of traineeship and professional training⁴⁰, and even journalistic professions are not immune to it.

2.4 Law on Public Information and Media

The Law on Public Information and Media could potentially regulate a special regime related to the labour legal status of journalists. However, this has not been done, so the general rules regulated by LL and other general laws that were analysed in the previous section, for the most part, apply to journalists.

37 Decision of the Constitutional Court No. IUo-1231/2010 of 20 February 2018

38 Official Gazette of the FRY, no. 20/98 and 7/2000 - decision of FCC, Official Gazette of Serbia and Montenegro, no. 1/2003 - Constitutional Charter and Official Gazette of RS, no. 47/2010.

39 Official Gazette of RS, no. 36/2010.

40 Tanja Pavlović-Križanić, Aleksandra Đurović, Bojan Velez, *Stručne prakse i stručno osposobljavanje u Republici Srbiji: izazovi sprovođenja i moguće perspektive (Professional practice and vocational training in the Republic of Serbia: implementation challenges and possible perspectives)*, Belgrade, 2015.

Among the rare special rules are the following provisions:

- Article 49 stipulates that "a journalist may not be terminated from employment, or the contracted salary or the agreed remuneration for work reduced, nor in any other way be put in an adverse position because he published a true statement or expressed an opinion in a public medium, nor because he expressed his opinion outside the media as a personal position." This provision establishes special protection against dismissal, as provided in the LL for some other categories of employees.⁴¹ Article 50 is also in the function of protection (not just labour legal), which stipulates that "a journalist is entitled to refuse to execute an editor's order if by following the order would violate the regulations, code of professional conduct and ethics of the journalistic profession."

- Article 54 stipulates that "an association of journalists has a legal interest in interfering in a labour dispute involving a member of such association, provided that he does not object to it." This somewhat eased the position of the journalist who initiates a labour dispute, by giving the association of journalists the status of the intervener in a litigation on the side of the plaintiff. There are no other provisions that would be relevant to the labour legal status of journalists, and the possibility of introducing some specific normative solutions will be considered in the framework of special recommendations.

2.5 Other acts

There are other acts that may be of importance for understanding the labour legal status of journalists in Serbia.

The Code of Journalists of Serbia⁴² contains certain restrictions, namely rules on the incompatibility of performing certain jobs, duties and functions, with the work of

41 Articles 187 and 188, LL. – Special Protection against the Cancellation of Employment Contract

42 <https://savetzastampu.rs/dokumenta/kodeks-novinara-srbije/>.

journalists, such as work in PR and marketing agencies, lobbying agencies, state bodies and institutions, as well as political parties, or work in or for counterintelligence, intelligence and other security services.⁴³

The Charter on Journalists' Working Conditions⁴⁴ adopted by the European Federation of Journalists (EFJ) as part of a project entitled Building Trust in Media in South-East Europe and Turkey, contains basic determinants of some of the most important labour rights of journalists: freedom of association, the right to a written contract, the right to collective bargaining, the prohibition of discrimination, the right to rest, the right to occupational safety and protection, and so on.

The statutes of journalists' associations also contain several relevant provisions. Thus, the Statute of the Journalists' Association of Serbia (JAS)⁴⁵ declares that one of the goals of the association is to provide protection to members when their work and professional rights are violated or endangered, while the Statute of the Independent Journalists' Association of Serbia (IJAS)⁴⁶ specifies the protection of the rights and interests of journalists and other members, as well as the protection and improvement of the social and economic status of members, in order to ensure their professional work and true independence. In the following text, more will be said about the position of professional associations in the system of protection of rights at work and in relation to the work of journalists.

43 The Code of Journalists of Serbia, p.14.

44 <https://www.cenzolovka.rs/scena/povelja-o-radnim-uslovima-za-novinare/>. The EFJ Charter on Journalists' Working Conditions is a non-binding instruction on working conditions signed in Belgrade on 12 February 2019 by representatives of 14 journalist organisations associated with the European Federation of Journalists and leading journalist unions from the Western Balkans and Turkey. The Charter is open for signature to all journalistic organisations, private or public media or authorities wishing to commit to improving working conditions and strengthening the working rights of journalists and media professionals in Europe, combating censorship and promoting free access to information and sources. The Charter contains 10 articles that set out the main principles that affect the labour relations between journalists, their employers and the public as the end-user of their work.

45 <https://www.uns.org.rs/sr/o-nama/files.html>.

46 <https://nuns.rs/dokumenta/>.

3. The position of journalists in the application of the current normative framework

In order to analytically present the position of journalists in terms of the rights they can exercise at work and in relation to work, this inhomogeneous group must be divided into categories according to the above models of work engagement. Also, in the beginning, a general remark should be made regarding the difference between the normative framework and its application. Namely, as confirmed by the journalists themselves⁴⁷, often the application of labour law regulations depends on the employer, that is to say on his (unilateral) will to regulate his treatment of journalists in accordance with the valid rules. This is primarily the outcome of poor supervision of employers (in general, not just in the field of information and media) as well as the inefficiency of the system of sanctioning employers who violate regulations, which result in a subjective sense of impunity for various illegal practices. In that sense, in several places in the text that follows, the negative practices of unscrupulous employers will be highlighted.

3.1 Work in employment relationship - exercising individual rights

An employment relationship for an indefinite period of time is certainly traditionally seen as the most stable way of connecting the employee and the employer in

⁴⁷ Interview with Svetozar Raković, journalist of the UBTU „Independence“ portal, 29 July 2021

the long term. The Independent Journalists' Association of Vojvodina (IJAV) analysis clearly shows a striking connection between the percentage of employed journalists and the percentage of journalists exercising basic individual labour rights - the share of journalists who stated that they can use certain individual rights is between 55 and 75%, while according to the same survey, the share of journalists in employment for an indefinite or definite period is slightly below 70%⁴⁸. However, the various labour rights that belong to them are very difficult for journalists to exercise, or they are completely prevented from enjoying them. Several factors contribute to this situation, among which the most common are employer negligence and illegal conduct, weak supervision over the application of labour regulations, as well as vagueness and the possibility of different interpretations of the provisions of the LL and other regulations governing these rights. It should also be noted that a decreasing number of journalists work in employment relationships. This is a consequence of the general trend of precarisation of work, but even when this fact is taken into account, the share of employees for an indefinite period (which according to LL should be the basic form of work for each person) is lower than the average, and in comparison to other occupations - only 45.2%.⁴⁹ This fact alone leads to the conclusion that journalists are more often exposed to atypical contracts that do not guarantee them even basic labour rights. "The media is dominated by temporary and occasional jobs, fixed-term jobs or jobs under copyright contracts, although the media profession is a matter of continuity. It is completely incomprehensible that for occupations such as journalist, cameraman or editor, employers do not opt for employment for an indefinite period of time when without these occupations it is impossible to imagine the work of the media."⁵⁰ However, even when they are employed,

48 IJAV Analysis, pp. 25, 29. Several interviewees pointed out that fewer and fewer employment contracts are being concluded while the number of contracts for work engagement outside employment is growing. Marija Babić notes that an increasing number of journalists are addressing their association (IJAS) about legal advice concerning copyright contracts (Interview with Marija Babić, IJAS, 30 July 2021).

49 Iskra Krstić, Predrag Momčilović, *Širom zatvorenih očiju: koliko novinari i novinarke poznaju svoja radna prava? (With Eyes Wide Shut: How well do journalists know their labour rights?)*, Belgrade, 2021 (hereinafter: *Krstić-Momčilović*), pp. 17-18. Journalists in Vojvodina are in a slightly better position. According to the survey *Percepcije socio-ekonomskog položaja novinara i medijskih radnika u Vojvodini (Perception of the socio-economic position of journalists and media workers)*, published in March 2021 by the Independent Journalists' Association of Vojvodina (hereinafter: IJAV Analysis), 58.5% of journalists are employed for an indefinite term, which roughly corresponds to the share of these categories of workers in the number of employees at the national level.

50 Interview with Darko Šper, Trade Union of Culture, Art and Media "Independence", 17 July 2021.

certain aspects of their positions remain extremely unfavourable. This, of course, does not apply to all journalists (and all media as employers), but based on practical experience, certain tendencies that are relatively common can be observed.

Employment for a definite period of time as a means of controlling journalists. Employment relationship for a definite period of time is certainly set as an exception, not as a rule. Therefore, it is not surprising that its share in the forms of employment of journalists is relatively low - 13.9%.⁵¹ What must be noticed, however, is the fact that such a fixed-term employment contract is sometimes offered only as a means of keeping the employee under (illegal) control by the employer, which is not atypical in other industries as well. The unfavourable way of regulating the conclusion of fixed-term contracts in the LL enables the employer to conclude successive contracts with employees within its duration (up to 24 months), which can last only one month. Therefore, an employee can have one contract for a period of 24 months from the very beginning of work, but he can also have 24 contracts for a period of one month. This strategy of concluding successive contracts of extremely short duration is rarely the result of the actual needs of the employer and is mainly used to put pressure on the employee.⁵² In the general regime, and observed in all types of industries, in this way the employer usually blackmails the employee to factually give up some of the legally guaranteed labour rights - paid overtime, weekly rest, paid leave, or trade union organisation and action. In the journalistic profession, this type of pressure can, however, be used as an influence on the content the journalist creates, which further generates negative consequences for the independence of journalists in their work and the objectivity of their research. This practice is more frequent in non-employment regimes (when the employee acts according to the instructions of the employer, hoping that his employment status will be resolved on a more permanent basis), but it is not uncommon in employment relationships for a definite period of time.

51 *Krstić-Momčilović*, pp. 17-18.

52 As a rule, the labour inspection does not react to this practice as illegal. If the employee has a definite period employment contract with the employer, the inspector will usually not enter into whether the conditions for concluding such a contract were met, as prescribed by Article 37, LL. This has led to the practice among employers (in various industries) that the vast majority of employees have a fixed-term employment contract, with the obvious aim of abusing this type of labour regulation

Work through temporary employment agencies. Although the adoption of the Law on Agency Employment finally regulated the work of temporary employment agencies (colloquially "staff leasing agencies"), the position of agency workers⁵³ is not regulated completely in their favour. They are certainly employed, for a definite or indefinite period of time, but not with the employer (media) but with the agency. Agency workers do not have a directly regulated legal relationship with the media in which they perform their work, but it is done indirectly through the agency with which they are employed. They are always engaged in the media for a definite period, regardless of whether they have a definite or indefinite employment contract with the agency. This results in a number of disadvantages when it comes to exercising collective rights, but even when it comes to individual rights they are not fully protected. The most disputable solution concerns the possibility of bypassing the application of the institute of a comparable employee by the employer, which leads to the situation that the employer himself regulates the working conditions of the agency worker without restrictions.⁵⁴ Also, for an agency worker, an employment contract for an indefinite period of time does not represent any security, since during inactivity (when he is not assigned to the employer) he may find himself in a situation where he does not earn nearly enough for a dignified life,⁵⁵ and bearing in

53 The Law on Agency Employment uses the term "assigned employees".

54 This will happen when there is no comparable employee at the employer-beneficiary because the employer-beneficiary hires all his employees for certain job positions through the agency. The Law on Agency Employment allows the use of an unlimited number of agency workers if they are employed in the agency for an indefinite period of time (Article 14, paragraph 3). Indefinite employment, however, as will be explained below, does not guarantee these employees the certainty of employment status, as they can be fired very easily.

55 In periods of inactivity, pursuant to Article 24 of the Law on Agency Employment, the agency may keep the employee on minimum working hours (for example, 5% of work hours, although in theory, he may be on only one working hour or 2.5% of working hours) and on minimum wage. This means that employees in such a position will in the worst case (according to the data on the minimum wage from July 2021 and 5% of working hours per week) receive a monthly net amount of 1618 dinars (about 14 euros).

mind he can be dismissed much easier than in the general employment regime.⁵⁶ When applied to the journalistic profession, all this means that identical problems can be expected in this model of work as in "regular" fixed-term employment, in addition to many particular problems arising from poor regulation of agency work.⁵⁷

Non-compliance with the provisions on limited working hours and rest. As already mentioned, the specifics of the journalistic profession make it sometimes very difficult for an employer to fit the schedule of working hours (and therefore the rest) into the standards prescribed by law. Although according to research the working hours of journalists are within the limits of the law,⁵⁸ it is certainly important to note that certain provisions of the LL can hardly be respected in the specific circumstances of covering important events continuously, especially in the case of events that happen unexpectedly. For example, it is hard to believe that the media in such circumstances will be able to announce a rescheduling of working hours 48 hours earlier, as prescribed by LL.⁵⁹ In this regard, it is necessary to: 1) distinguish between professional needs and labour exploitation, (for example, the necessity of report-

56 If it is estimated that the employee will not be assigned to an employer in the following period, the agency may dismiss him according to the LL rules for resolving redundancy (Article 24 of the Law on Agency Employment). This means that an employee who is in the agency for less than a year will not be entitled to severance pay, and for each completed year of service in the agency he is entitled to receive one third of the average salary he received in the three months preceding the month in which his employment contract was terminated (Article 159 LL). This means that the agency can keep the employee on an extremely low salary (as already explained) for three months, after which it will pay him more than symbolic severance pay. In case the employee has not worked for one full year in the agency, he can be fired immediately (without waiting for three months) also without the right to severance pay. Such a solution renders meaningless the rights of employees whose employment is terminated as redundant and practically equates an employee for an indefinite period of time with an employee for a definite period of time – making the costs of dismissing an employee for an indefinite period of time insignificant. In practice, the shortcomings of the provisions on employment security for agency workers were quite evident at the beginning of the COVID-19 pandemic when this category of workers was among the first to be fired - journalists were no exception (Interview with Draganom Čabarkapa and Dejan Gligorijević, Journalists' Union of Serbia, 26 July 2021).

57 "Currently, there is an ongoing mass cancellation of fixed-term employment contracts for numerous employees, followed by their registration in the agencies whose services the media house uses, which is one of the most dangerous trends in the long run. Contracts of (most often) press operators, photo reporters, cameramen, correspondents, become additionally insecure, and the opportunities that other employees in that company have, such as systematic medical checkups, potential year-end or holiday bonuses, the possibility of education, are now unavailable to them." Interview with Dragan Pejović, Journalists' Association of Serbia, 23 July 2021.

58 On average, journalists work about 39 hours a week. *Krstić-Momčilović*, p. 18. Other surveys, however, indicate that the situation is not identical in all regions. Thus, in Vojvodina, almost a third of journalists (30.6 percent) claim to continuously work 41-50 hours a week. *IJAV Analysis*, pp. 4, 27.

59 This deadline is set for exceptional situations, while the general deadline of five days is practically impossible to respect even in regular working conditions.

ing cannot be used as justification if a 24-hour working day is introduced for a journalist covering an event, and yet it is clear that the employer should hire two journalists in 12-hour shifts); 2) regulate in more detail the schedule of working hours and rest (especially daily and weekly rest), as well as the manner of rescheduling working hours. A separate legal solution could contain certain special norms that would reflect the specific aspects of the work of journalists, but that potential has not yet been explored.⁶⁰ At the same time, it is impermissible that, due to specifics of their profession, journalists end up in a situation where they cannot have a rest during the working day or week. "The employer demands that the journalist be always available."⁶¹ - this summary statement sublimates the various problems that journalists face when exercising their right to limited working hours. There is no legal basis to authorise an employer to keep a journalist on standby; also, if the time spent on standby is not paid (and this is usually the case since it is mostly not regulated by the general acts of the employer), this represents another illegal practice of the employer.

Non-compliance with the provisions on increased earnings. Although the employer is obliged to keep records of overtime work for the purpose of accurate payment of increased earnings on that basis, in practice this provision is often violated in various industries. A considerable number of workers do not receive increased earnings for

60 At the same time, it is certainly important to note that in practice, employers do not potentially care much about limitations even when applying the existing normative framework – 57% of journalists in Vojvodina stated that they always or sometimes have to work outside working hours at the request of the employer (this is especially interesting to compare with the fact that only 26.6% of journalists receive increased salary for overtime work); as many as 73.3% of journalists work on weekends always or sometimes. Only one third of journalists (33.6%) are always familiar with the work plan in advance, while two thirds have it sometimes, rarely or never (IJAV *Analysis*, pp. 29, 30). According to another analysis, 44% of journalists said they work on-call, and 39% work on weekends; 38% of journalists do not know the work plan a week in advance (S. Mihajlović, „Prekarni rad i prekarni život radnika (*Precarious work and precarious life of workers*)”, in: Mihajlović, pp. 161, 166). Although these findings do not in themselves mean that the media as employers constantly violate the provisions on limited working hours, it is certainly worrying that relatively little attention is paid to the journalist's right to "switch off", i.e. to be unavailable to the employer at certain times of the day.

61 Interview with Dragan Čabarkapa and Dejan Gligorijević, Journalists' Union of Serbia, 26 July 2021. Svetozar Raković also believes that the right to rest is one of the most frequently violated (interview with Svetozar Raković, journalist of the UBTU „Independence” portal, 29 July 2021). Marija Babić observes that journalists often think that this situation is a consequence of the specific nature of the profession but still points out that it is especially characteristic of small newsrooms that do not have a sufficient number of employees (interview with Marija Babić, IJAS, 30 July 2021).

overtime work. This is also the case in the journalistic profession⁶², however, it is difficult to determine overtime work in situations when the schedule of working hours (due to an important event) suddenly changes. Therefore, provisions on the urgent introduction of rescheduling of working hours should be added to the special legal regime, which would solve this type of problem in many situations. The option of introducing rescheduling of working hours by oral notification in cases of urgency could also be introduced, while a written decision would be made in a subsequent period (no longer than 24 hours). This method of work would enable journalists to have more rest and allow employers to keep records of working hours and overtime work more easily.

Inconsistent implementation of occupational safety and health provisions. It is important to observe this problem in a narrower sense so that it does not directly concern the safety of journalists in terms of protection from attacks, physical integrity and undue influence on their work (threats, coercion), but rather the respect for basic principles of safety of journalists during the work process. The act on risk assessment issued by the employer refers to the risks that may lead to endangering the health and physical integrity of journalists during work. It is quite clear that an employer cannot ensure the safety of a journalist who, for example, reports from demonstrations, but it is possible to minimise the risks to which a journalist is exposed by consistent application of the law. Also, it is necessary to regulate both work at home and remote work of journalists, as well as work in the field (in all situations, not just in those that are potentially dangerous for journalists). This area, as already mentioned, is not fully and precisely regulated by LL. In that sense, it is possible, and recommended, to regulate the specifics of the work of journalists outside the employer's premises. Another aspect related to this problem refers to the possibility of using the right to health protection deriving from health insurance - specifically, the use of sick leave (temporary incapacity for work) as well as a visit to the doctor to perform regular or extraordinary checkups and controls. According to the

62 As many as 49 percent of journalists in Vojvodina claim that they never receive increased earnings based on overtime work, and 24.5 percent that this increase is rare. *IJAV Analysis*, p. 5. In another survey, at the national level, as many as 66% of journalists reported that their employer does not pay them at all or does not pay them regularly for overtime and work on non-working days and holidays (S. Mihajlović, "Prekarni rad i prekarni život radnika (*Precarious work and precarious life of workers*)", in: *Mihajlović*, p. 168)

results of the survey,⁶³ journalists limit themselves when using these rights because they are afraid that they will suffer consequences for their employment status or working conditions, even though these rights are regulated by law and must be formally available to them without exception.

Harassment at work. As many as 53 % of journalists have experienced some kind of work-related pressure during their careers.⁶⁴ Journalists described political pressures, workload pressures, censorship, threats of dismissal and salary cuts as characteristic situations. Although journalists may not perceive them as such, all these actions can be classified as harassment at work (colloquially: mobbing) and constitute a violation of the law. The Law on Prevention of Harassment at Work⁶⁵ as well as the Rulebook on the Rules of Conduct of Employers and Employees Regarding Prevention and Protection against Harassment at Work⁶⁶ clearly define potential acts of harassment, including those characteristic of the journalist's statements: unjustified and intentional prevention of the employee to express his opinion, as well as unjustified interruption of the employee in speech; addressing employee yelling, using threats and insults; humiliating employee with derogatory and degrading words; unwarranted constant criticism and belittling of the employee's work results; setting inappropriate deadlines for work; unjustified excessive supervision; manipulation with the output and business objectives of the employee; unjustified constant threats (e.g. with dismissal, or termination of the employment or other contract) and pressures that keep the employee in constant fear, and the like.⁶⁷ In all these cases, as well as in the case of other similar conduct, the employee has the right to protection in accordance with the law.

63 According to the survey findings, 38% of journalists did not visit a doctor in a situation where they should have done so; an additional 20% of journalists had problems going to the doctor; 30% of journalists also worked when they were ill. (*Ibid.*, pp.165-166) The other data should be added that provide a broader negative picture of the possibilities of exercising the right to health care: 20% of journalists (in various forms of work engagement, including employment) do not have a certified health card, which would mean that the employer does not fulfil its legal obligation to pay social security contributions; also 20% of journalists are not entitled to paid sick leave. (*Ibid.*, pp. 166, 182, 188).

64 *Krstić-Momčilović*, pp. 19-20.

65 Official Gazette of RS, no. 36/2010.

66 Official Gazette of RS, no. 62/2010.

67 Journalist Zlatoja Martinova has an interesting opinion which, it seems quite correctly, points to the fact that journalists self-censorship is a form of harassment at work because it is always a consequence of the pressure exerted on the journalist or editor; although the illusion has been created that self-censorship is a personal act, it is, in fact, the result of a systemic undue influence on the work of journalists. See: "Introductory Note", in: *Mihajlović*, p.14.

At this point, we should add the practice recorded in some media, to give journalists excessive responsibilities that go beyond the domain of their work and specialisation (which can grow into the so-called "full table mobbing"): "The trend that began in recent years where new jobs are added to the work contract for the same salary still continues, so for example, during fieldwork journalists are increasingly obliged to film, take photos, translate texts."⁶⁸ Employers chose this practice primarily because of savings and opportunities to additionally charge journalists with work tasks that will not require too much extra effort - the motivation is therefore not always identical to that which exists in harassment at work. This is especially characteristic of smaller media in which the actual distribution of work does not always follow the scope of work established by the employment or work engagement contract. The effects of such conduct can, however, result in harassment in combination with the other abovementioned actions of employers, especially if they are prolonged and systematically applied to keep journalists in a state of increased labour exploitation, since it keeps them overburdened with various jobs that cannot be appropriately performed simultaneously with regular duties (or they can, but this requires significant additional efforts and overtime work that is not paid) and which, due to their vulnerable position, they cannot refuse.

3.2 Work in employment relationship - exercising collective rights

Although the employment relationship should be a guarantee of the full and unhindered exercise of collective rights, the greatest difference between the established normative framework and its application can be found precisely in this segment.

The right to trade union association and action. Trade unions in the media are not common. Only 19.1% of journalists are members of a union, while as many as 18.3% of

68 Interview with Dragana Pejović, Journalists' Association of Serbia, 23 July 2021. They have identical experiences in the Journalists' Association of Serbia, where they report that an employer has tripled the performance norm (by introducing the obligation that in addition to regular work norm all journalists must write three news items for the portal every working day) and the salary has remained the same." Interview with Draganom Čabarkapa and Dejan Gligorijević, Journalists' Union of Serbia, 26 July 2021.

journalists state that there is an obstacle to founding a trade union in their media.⁶⁹ "With regard to collective labour rights in the Serbian media, the one most jeopardised is the right to unionise. A considerable number of media workers who tried to form a trade union organisation in their companies encountered passive or active resistance from the employer, which is contrary to positive legal solutions. This practice is especially evident in the private media."⁷⁰The Journalists Union of Serbia has the same view on illegal actions of employers:"Employers are trying by all means to prevent the establishment of trade unions in the media. From the open threats to employees that they will be fired if they form a union, to the placement of stories in public that unions are weak, quarrelsome, corrupt ... incapable of protecting colleagues. Media trade unions do not have space in the media to present their activities."⁷¹

However, the low coverage of trade unionism is not only the result of illegal actions of employers. Almost half of the journalists are work engaged outside employment relationships, which means that they do not even have the right to unionise (see the analysis below). Consequently, it is not surprising that the number of members of professional associations is several times higher than the number of trade union members. Some journalists, on the other hand, do not trust trade unions or, more often, say that unions could not be effective in improving their labour legal position because the media employer is in an extremely grave financial situation, so consistent compliance with LL and other regulations would lead to its dissolution.⁷² The individualisation of journalism as a profession, which is promoted the same way as the individualisation of other professions and industries, certainly leads to a loss of

69 *Krstić-Momčilović*, pp. 23-24. The situation is much better in Vojvodina: 51.4% of journalists reported that their employer (the media in which they are employed) has an organised union, while 62 out of 144 respondents stated that they are union members. *Analysis IJAV*, p. 31.

70 Interview with Darko Šper, Trade Union of Culture, Art and Media "Independence", 17 July 2021. The same opinion is shared by Dragana Pejović, who identifies the right to organise as the most endangered right of journalists. "Apart from" inherited" unions in large former state media (such as Politika or Novosti) and public services, the union affiliates in the media, as well as union membership in general, are rare. One of the consequences of this is the impossibility of reaching a branch collective agreement, which is why regulating internal relations in the media is left to the owners, and when it comes to any internal issues the employees are not the party being asked and negotiated with." Interview with Dragana Pejović, Journalists' Association of Serbia, 23 July 2021.

71 Interview with Dragan Čabarkapa and Dejan Gligorijević, Journalists Union of Serbia, 26 July 2021.

72 *Krstić-Momčilović*, p. 35.

sense of collectivity, and individual journalists working from home or in the field have no idea about the collective state of labour rights, or about colleagues who may have their rights threatened or violated, nor do they have a sense of the power of collective action. Hence, one of the most eloquent responses from the participants in the Krstić-Momčilović survey was the unanimous answer to the question of whether media workers should influence the improvement of their labour rights – 100% of the respondents answered in the affirmative, but in their other answers they were unable to articulate how they could do it, nor did they believe that an individual could make a significant difference.⁷³ At this point, therefore, two major problems collide - the restriction stemming from the general legal norm of the LL that only the employed can be founders and members of trade unions, and a developed sense of individuality in the profession which beforehand strips unions of the capacity to make a major difference for the benefit of workers.

Nonetheless, the fact remains that there is no alternative to unionising. This is particularly important for those employers who knowingly violate workers' rights, including the right to freedom of association. Collective action always results in a stronger negotiating position with the employer, as well as easier achievement of demands - especially if they relate to employer's compliance with the law. Čabarkapa and Gligorijević cite the example of the media without an organised union, where nevertheless the union's intervention has led to a concrete improvement in the position of journalists, or more specifically the possibility to exercise their legal right to salary.⁷⁴

The right to collective bargaining and the conclusion of a collective agreement. The previous problem inevitably results in the following one, which is a low level of collective bargaining and social dialogue in general. The passivity of employers leads to the fact that even in the media where there are representative unions, there is not always a concluded collective agreement: "It happens that in companies where there are trade unions and social dialogue, there is no collective bargaining or that

73 *Ibid.*, p. 32.

74 Interview with Dragan Čabarkapa and Dejan Gligorijević, Journalists' Union of Serbia, 26 July 2021.

ready-made solutions to the collective agreement are imposed on the representative trade unions' representatives, which is impermissible."⁷⁵

On the other hand, low membership coverage, in addition to the absence of employers' associations that would potentially have negotiating legitimacy, are the biggest obstacles to concluding a branch collective agreement. Branch agreements, otherwise vital for the rights of workers in every industry, in this case, have a special importance for the harmonisation of the minimum standards of journalists' rights. "Such an agreement would enable the majority of media employees to enjoy positive solutions from the collective agreements of the media that have a long tradition of trade unionism and collective bargaining, such as Radio Television of Serbia and Radio Television of Vojvodina."⁷⁶ Consequently, a significant part of the Strategy and Action Plan is dedicated to creating the preconditions for branch collective bargaining. In order for a media branch collective agreement to be concluded, its content must be agreed upon by unions that hold as members at least 10% of the total number of media employees, as well as employers' associations, joined by at least 10% of the total number of media employers that employ at least 15% of the total number of employees in the entire branch.⁷⁷ It seems that the existing unions if united could meet the requirements of representativeness. When it comes to the media employers, there is a sufficient number of media in the public sector with a large number of employees, while several smaller media could join a future association and help to reach the overall share of the number of employers. Therefore, it is necessary to initiate attempts to unite on both sides, while simultaneously updating records that should show the total number of employers and employees in the media industry, as well as investing efforts in regulating collective bargaining in the media sector in a different way, having in mind specific aspects of these professional activities. Since concluded agreements at the level of individual employers exist in the media, especially in the public sector,⁷⁸ the actual negotiation on the

⁷⁵ Interview with Darkom Šperom, Trade Union of Culture, Art and Media „Independence“, 17 July 2021.

⁷⁶ *Ibidem*.

⁷⁷ Articles 220 and 222, LL.

⁷⁸ In that sense, it can be said that the data are relatively favourable, although they are far from excellent. In Vojvodina, 37.1% of journalists work for an employer with which a collective agreement has been concluded. *Analysis IJAV*, p.5.

content of the collective agreement could be based on a common platform of minimum employee rights already established at the level of the major media who concluded collective agreements as employers. However, this practice could lead to the shutdown of small media or to their refusal to apply a special collective agreement because it would not be financially feasible for them.

The right to strike. As already mentioned, based on Article 9, paragraph 2 of the Law on Strike, "information (radio and television)" is considered an activity of public interest in which a strike can be organised only in accordance with special rules, while ensuring the minimum work process. As in some other examples, here we have a joint effect of unfavourable provisions of the general and special regimes. Journalists are recognized as a professional activity of public interest, which certainly cannot be true because providing information - no matter how important - is not an activity on which in certain circumstances the survival or security of the state will depend upon, which if stopped could jeopardise the life and health of people or inflict large scale damage. These terms used in the Law on Strike are not precisely defined nor even regulated in detail. However, it is quite certain that it is not realistic to keep the information activity in the category of activities of public interest, with the possible exception of public services (although even such a solution would be extremely debatable). Activities of public interest are those that are necessary to meet the basic needs of citizens, as well as the smooth functioning of emergency (and possibly some utility) services. Everything else should not fall into this type of activity. Also, there is a problem with a very imprecise definition of "information" since only radio and television are specified in this legal norm. Since the law itself was written before the Internet was widespread and broadly available in Serbia, it is logical that other electronic media are not referred to. However, there is no mentioning of the print media either, so it is unclear whether they have been left out of this list - as well as whether it is a list at all, or the radio and television are listed only as examples of the means of information.

Whatever interpretation is accepted, a special strike regime certainly applies to a part of the media or to all media. It is regulated very poorly and superficially by the Law on Strike, as are many other legal institutes of the strike because the law was passed as a federal one (at the time of the Federal Republic of Yugoslavia) and was supposed to regulate only the basic aspects of the strike, which would be further

elaborated in detail by the republican laws. However, they were never passed and the Republic of Serbia took over the former federal law, which is still valid today. The special strike regime is insufficiently well regulated, primarily due to potential abuses of established rules and the possibility for the employer to actively work on breaking the initiated strike with solutions that are legal but which actually diminish the power of the strikers. These solutions are primarily contained in the provisions that regulate the minimum work process, which according to the law is determined by the director at the employer where the strike is organised⁷⁹. The employer therefore independently defines what is the minimum work process, as well as who and under what conditions can perform it. Something like this in practice can render strike meaningless, for example by organising a minimum work process at the level of 80 % of the regular one, or by including all members of the strike committee in the group of employees who have to work to achieve that minimum work process.

Collective rights of agency workers. The Law on Agency Employment very vaguely regulates the collective rights of agency workers, which in practice makes them completely meaningless: "Assigned employees are guaranteed the freedom of trade union organising, union action and collective bargaining at the Agency and with the beneficiary employer. The assigned employee may participate in the strike organised at the beneficiary's employer under the conditions and in the manner prescribed by the law governing the strike."⁸⁰ The provisions formulated in such a way, which essentially do not mean much, have multiple adverse consequences for the exercise of the collective rights of agency workers. Namely, they can be members of the union at their employer, which in this case is the agency where they are employed. However, it is difficult to find a rationale for this, because all conditions of work and participation in the work process are related to the beneficiary employer where they perform work. In other words, agency workers have no interest in unionising at the agency, and most often they will not even know each other because they will work for different beneficiary employers. In practice, this solution means that unions can be established with temporary employment agencies that potentially may be able to influence some of the agency's basic policies and - in relation

79 Article 10, Law on Strike.

80 Article 30, Paragraphs 2 and 3, Law on Agency Employment.

to permanently employed - try to improve conditions for employees during periods of inactivity. However, agency workers will not be able to become members, nor join trade union actions with beneficiary employers who in fact regulate their working conditions during the entire period of activity. According to the law, a collective agreement concluded with the employer (if any) applies to them, but they cannot participate in its conclusion (because the negotiation legitimacy is related to the trade union representative with the employer, which they cannot become). The situation is the same with strikes – under the Law on Agency Employment, agency workers can strike in accordance with the Law on Strike. However, this law is outdated and does not provide for the existence of this category of employees at all. If applied literally to agency workers, it means that they can strike only at the agency, and not at the employer beneficiary. However, a strike with an agency will not make any sense (unless the agency's actions alone are the reason for the strike, which is likely to happen in a relatively small number of cases).

3.3 Work outside employment relationship

Work outside the employment relationship, as already pointed out in the previous text, is a source of significant abuse and labour exploitation. The possibility for a person to be engaged to perform work in a manner that is approximately identical to the one in the employment relationship, but without having almost any employment-related rights, makes these models of work attractive to unscrupulous employers. If we take into account the weak supervision over the application (or abuse) of the provisions of the part or LL which refers to work outside employment, it is clear that the work of such workers is much cheaper for employers (see Table 1). Although the division into contract law and labour law is common in all countries, and for example, contracts that by their nature correspond to a service contract or a contract for temporary and occasional work can be found in most legislations, the system in which there is "work outside the employment relationship" which is not regulated by the law of contracts and torts but by the labour law, is a completely unique creation of the Serbian labour legislation. In the process of harmonisation with the *acquis communautaire*, work outside employment relationship will have to be deleted from the LL, and its various forms will have to become either part of the employment relationship (contract for temporary and occasional work) or part

of the law of contracts and torts (primarily service contract and the copyright contract), or will simply be abolished.⁸¹

The journalistic profession is ideal for abuses in labour regimes of work outside the employment relationship. These are mostly individualistic jobs, which can be done both occasionally and continuously (which makes their "occasionalness" easy to fake). What follows is a brief overview of the most common abuses. A number of them are characteristic for many industries and others only for some of them. What they have in common is that they all show up in the practice of illegal regulation of the labour legal position of journalists.

Occasional jobs as a permanent engagement. As already mentioned, the contract on performing temporary and occasional jobs can be concluded only for jobs that are not systematised with the employer. This points to the fact that systematised jobs are of permanent character, and only jobs that are short-term can be performed by concluding this type of contract, among others. However, the LL gives free hand to the employer to decide which jobs to systematise by adopting an appropriate rulebook on the organisation and systematisation of jobs. Consequently, in practice, occasional job contracts are concluded for long-term jobs that are continuously performed, practically without interruption, and predominately fall into the core activity of the employer. This is characteristic of the journalistic professional activity - 9.6 % of journalists work under this type of contract or volunteer⁸², which is a significant share that shows a constant growth trend. Contracts on work engagement outside employment relationships are often used as a means of exerting pressure on journalists. "Apart from journalists working in public media services, a very small number of journalists are in permanent employment, and those who work in public media services have recently been engaged either through an employment agency or based on some kind of contract for work outside employment, such as temporary and occasional job contracts or service contracts. That is why it is very easy to shift

81 Action Plan for Chapter 19 - Social Policy and Employment, Government of the Republic of Serbia, May 2020, Activity 1.2.4, pp. 48-49.

82 *Krstić-Momčilović*, p. 18. In Vojvodina, the survey results are similar, 4.8% of journalists have temporary or occasional job contracts and 4.1% volunteer (*Analysis IJAV*, p. 4).

them from one job position to another, mostly not due to real organisational needs, but rather to “remove” journalists from sensitive positions”.⁸³

The situation is further aggravated by the opinion of the competent Ministry of Labour that it is possible to keep a person in these jobs for a practically unlimited period of time (although in LL the maximum of 120 working days per year is very precisely determined) if a person switches from one job to another. As a result, very often there is a fake assignment to another job, even though a person does the same job for the entire time. The case law is very clear in this regard - such cases usually mean that the person who formally works on a contract for occasional jobs is, in fact, employed. However, a labour dispute to determine employment status is often quite slow, and the person who initiates it will, as a rule, lose his work engagement, because the employer can terminate the contract on occasional jobs at any time, without giving reasons and without notice, deadline or severance pay. In this way, the potential has been created for journalists to be blackmailed to remain in the labour regime determined by the employer, even when it is clear that it is contrary to the nature of the work performed by the worker.

Work through cooperatives as a type of temporary or occasional job. As already mentioned, the Law on Cooperatives leaves a great deal of room for abuse when it comes to the work engagement of young people through student-youth cooperatives. Although cooperatives are conceived as the embodiment of the principles of cooperation and solidarity, in reality, they have been used exclusively for several decades to make a profit for a narrow circle of people. Cooperatives, by their nature, can operate to make a profit, but it would be logical for it to be directed to the further development of the cooperative.⁸⁴ Also, young people who are engaged through cooperatives pay a membership fee, which allows them to become cooperative

83 Interview with Veljko Milić, Independent Journalists' Association of Vojvodina, 23 July 2021

84 The assembly of the cooperative, which consists of all cooperative members, decides on the distribution of profits at the proposal of the board of directors, which are also appointed from among the cooperative members (Article 37, paragraph 3, item 1; Article 41, item 5; Article 59). This practically means that in cooperatives that are closed for the admission of new members, several founding members share all the profits among themselves.

members and thus acquire management rights.⁸⁵ In reality, however, this does not happen - the cooperative has a director and founders who collect all the profits and conduct all the business operations without admitting new members, regardless of the number of people working through the cooperative, which goes against the very idea of collectivity and collective management. In labour legal terms, work through cooperatives offers young people only precarious status based on contracts for temporary and occasional work – quite surprisingly, the legislator decided to make it a mandatory type of contract, while all other contracts with cooperatives are prohibited (therefore, according to the letter of the law, they cannot be in the employment relationship). As already analysed, this manner of regulating the work of cooperative members leads to labour exploitation. When it comes to journalists, it should be said that this type of engagement is not particularly widespread, but not unknown either. Younger journalists can start working in their profession in this way.

The Law on Cooperatives, therefore, does not provide sufficient answers nor properly regulates the work of student-youth cooperatives. It is especially indicative that according to the valid laws, practically no inspection has competence for the work of cooperatives - the labour inspection can control only the work of cooperative members with employers to whom they are assigned. Violations of the law, such as the termination of a contract with a cooperative member who is injured at work – and such conduct is a common practice of cooperatives - are not regulated satisfactorily, so cooperative members are often left to fend for themselves without protection. It is certainly necessary to ensure effective supervision over the work of cooperatives, as well as the proper application of the legal provisions. Also, the work of student-youth cooperatives must be regulated in much more detail in order to prevent abuses that now take place in practice.

85 Article 23 of the Law on Cooperatives stipulates that the status of cooperative members cannot be automatically acquired by paying the membership fee, but that the cooperative rules must prescribe the appropriate procedure and possible additional requirements. It can be argued that this solution protects the founders of cooperatives in a very dubious way and is not in line with the proclaimed principles of equality and solidarity. This provision of Article 23 is at the same time contrary to the provision of Article 22, paragraphs 1 and 2: "For cooperatives which are established without contributions of cooperative members, funds for their establishment and operation shall be provided from the cooperative membership fee. Amount of the membership fee shall be determined by cooperative rules in an equal amount for all the founders, as well as for cooperative members who join the cooperative after its establishment." It is therefore a very poor way of organising the work of cooperatives, which clearly must be changed to make the provisions more functional, and more in the cooperative spirit.

Finally, it should be noted that in the future cooperatives could turn out to be an ideal way to unite journalists - freelancers, who in this way could more easily get a job and better protect their labour rights and interests.

Service contract for jobs from the registered activity. As already mentioned, the service contract cannot be concluded for jobs that are within the scope of the regular activity of the employer. However, in practice, this is not an obstacle (although it should be) for the media to conclude large numbers of service contracts with their employees. A copyright contract is especially popular since the product of journalistic work is often copyrighted work of authorship. Nevertheless, it should be borne in mind that the same applies to these contracts (service and copyright) as previously analysed concerning the contract on occasional jobs - if there are elements of an employment relationship, it does not matter which work engagement contract is concluded, the court will always establish that the worker is in fact employed and that contract, which is formally in force, is concluded only to conceal the employment relationship.

Copyright contract as a form of precarious work. A copyright contract is ideal for media employers, as it implies lower contribution rates than a classic service contract, and can generally be concluded with any journalist who "sells" his copyrighted work to the media. The copyright contract is in the second place in terms of share in forms of labour, immediately after the contract of employment for an indefinite period - as much as one fifth (19.1%) of journalists work under this contract. Naturally, this situation is not realistic, because – in addition to making it possible to conclude a copyright contract for jobs that are within the scope of the regular activity of the employer – the continuity of work of such journalists with the employer could especially be an issue. If a journalist writes a column or has an obligation to submit one or two short articles a month, this can be assessed as a job of an occasional character.⁸⁶ In the case that his engagement is continuous, regardless of the quantity of the products (number of texts, or similar), this is a matter of employment relation-

86 Of course, if we are talking about investigative journalism and/or complex topics that take more time to research, the continuity of work will still exist - in this analysed aspect, the criterion is not the final quantity of outputs, but the time a journalist spends working for an employer.

ship concealed with a different contract, specifically the copyright contract. Such situations are sometimes not easy to distinguish, especially when the journalist in question has the characteristics of a "freelancer", i.e. performs a number of jobs for several employers at the same time.⁸⁷ However, the quantity of products and time spent at work are not the only criteria taken into account, but the court potentially evaluates the relationship of subordination between employer and worker, first in terms of giving work orders (instructions on what to write and what to research), then through possibilities of labour supervision (which is almost non-existent in the copyright contract regime) and sanctioning of workers if the work results are unsatisfactory. Subsequently, the circumstances concerning whether the journalist works from the employer's premises, whether the employer provides the journalist with means of work, and the like are also evaluated. Based on all the above, a conclusion can be derived about the factual nature of the relationship between the employer and the journalist - and it is clear that in a considerable number of cases, the court would take the position that it is indeed an employment relationship.⁸⁸

Professional training contract as a source of free work. Journalism is just one of the activities in which this type of contract is abused (although the degree of abuse has decreased after the changes in the scope of this regime in 2014). Media employers generally decide to conclude this contract in order to regulate the training of young journalists without previous work experience. By law itself, this is possible in case the employer determines so by its rulebook (internal general act): "Contract on professional training may be concluded, for completing traineeship or taking a professional exam, when the law or a rulebook provides that as a separate requirement for independent work in the field."⁸⁹ Although some employers practice this, it cannot be legal because the system of professional exams are regulated by law, while internships are also regulated by laws or bylaws, so it is up to the employer to further regulate this issue - since there is no such compulsory exam or traineeship in

87 For example, almost half of the journalists in Vojvodina (47.9%) work for more than one employer. *IJAV Analysis*, pp. 5, 27.

88 This evidently stems from the very nature of the work performed, as well as from the fact that most journalists who have a copyright contract are in a labour regime that has the classic characteristics of an employment relationship (especially in terms of subordination).

89 Article 201, paragraph 1, LL.

the journalistic profession. It is believed that this regime of abuse will be completely abandoned after the enactment of a law regulating professional practice (see section 3.5).

	Employment (indefinite/ definite)	Temporary and occa- sional jobs/ Cooperative	Service contract	Agency work	„False“ entrepreneur
The right to dignity at work (protection against discrimination and harassment at work)	yes	yes	yes	yes	no
The right to limited working hours per day	yes, 8 hours + 4 hours of overtime work	no	no	yes, 8 hours + 4 hours of overtime work	no
The right to limited working hours per day	yes, 40 + 8 hours per week (exceptionally 60 due to rescheduling of working hours)	no	no	yes, 40 + 8 hours per week (exceptionally 60 due to rescheduling of working hours)	no
The right to workday breaks	yes	no	no	yes	no
The right to salary	yes	no, remuneration for work is received	no, remuneration for work is received	yes	yes, but bears the cost of all contributions
The right to daily rest	yes	no	no	yes	no
The right to weekly rest	yes	no	no	yes	no
The right to increased salary	yes	no	no	yes	no
The right to minimum wage	yes	no	no	yes	no
The right to paid overtime work	yes	no	no	yes	no

	Employment (indefinite/ definite)	Temporary and occa- sional jobs/ Cooperative	Service contract	Agency work	„False“ entrepreneur
The right to transport to work allowance	yes	no	no	yes	no
The right to workday meal allowance	yes	no	no	yes	no
The right to paid leave	yes	no	no	yes	no
The right to paid annual leave	yes	no	no	yes	no
The right to occupational health and safety	yes	yes	yes	yes	yes
The right to sick leave	yes	yes (but often cannot be exercised in practice)	no	yes	no
The right to pension insurance (pensionable service)	yes	yes	yes	yes	yes, but bears the cost of contributions
The right to health insurance	yes	yes, limited	yes, limited	yes	yes, but bears the cost of all contributions
The right to dismissal procedure and notice period	yes	no	no	yes, but limited	no
The right to compensation during maternity leave	yes	yes (but there is a conflict of laws and the conditions are discriminatory)	yes (but there is a conflict of laws and the conditions are discriminatory)	yes	yes (but there is a conflict of laws and the conditions are discriminatory)
The right to unionise	yes	no	no	yes, but it is unenforceable	no
The right to trade union membership	yes	no	no	yes, but it is unenforceable	no

	Employment (indefinite/ definite)	Temporary and occa- sional jobs/ Cooperative	Service contract	Agency work	„False“ enterprenour
The right to collective bargaining	yes	no	no	yes, but it is unenforceable	no
Is the worker covered by the collec- tive agree- ment?(at any level)	yes	no	no	yes, but not the one in whose con- clusion he can participate	no
The right to strike	yes	no	no	yes, but it is unenforceable	no
The right to initiate labour dispute	yes	no	no	yes	no

Table 1: Possibilities of excercising worker's rights in different labour regimes

3.4 "False self-employment"

Self-employment is not regulated by the LL, nor by any other labour regulation. It is mostly identified with entrepreneurship, which is partially regulated by the Law on Companies⁹⁰. As a result, several categories of workers are in completely unregulated (freelancers, platform workers) or only partially regulated working status (independent artists, agricultural producers). Having in mind the identification of self-employment with entrepreneurship, the so-called "false self-employment" could be defined as forcing workers to set up an entrepreneurial business and then establish a business cooperation relationship, aiming to conceal the employment relationship. Falsely self-employed persons are actually employed by the employer but have not concluded an employment contract with him, but a contract on business cooperation. This contract is concluded between two economic entities, and therefore a false self-employed person must open an entrepreneurial business before its conclusion and become - in the labour legal sense - an employer.

90 Official Gazette of RS, no. 36/2011, 99/2011, 83/2014 - state law, 5/2015, 44/2018, 95/2018 and 91/2019.

Why resort to this illegal practice? First of all, such workers are significantly cheaper for the employer than employees or even persons under other types of contracts outside the employment relationship. As pointed out in Table 1 (above), a self-employed person does not receive a salary, but remuneration for work performed. This remuneration is agreed upon in the business cooperation agreement and can be determined separately for each work task. The remuneration comprises the *gross amount* from which the self-employed person must pay taxes and contributions, as well as all other operating expenses. Therefore, a self-employed person does not have the possibility to receive an increased salary, other salary supplements (transport allowance, meal allowance, per diems), or use paid leave of any kind - these rights belong exclusively to those in an employment relationship. There is no minimum wage as an established right of the self-employed, nor any standard labour norms - the scope of work and remuneration for work performed, regardless of the number of working hours, are agreed between the employer and the self-employed. It is quite clear that in such a relationship, especially if the employment and subordination relationships are concealed, the self-employed person has little influence on the total amount of remuneration received, and at the same time, he is extremely overburdened with the costs he has to pay to even be in a position to perform the contracted job.

In addition to cheaper labour, there is, however, another important factor that has influenced the prevalence of this practice, and that is *shifting business risk from the employer to the worker*. Namely, the basic task of the employer is to obtain a job that will employ the employee. If he fails to do so, the employment relationship is conceived in such a way that the employer in any case owes the employee a salary (or possibly a certain amount of salary compensation). Even at the time of poor business results, the employer will have to pay the employee the minimum wage. When it comes to false self-employment, no such right (to salary/wages) exists. If an employer has a job to offer to a false self-employed, he will pay him for the job. If there is no job, the employer is not obliged to pay any guaranteed remuneration. This shifts the business risk to the false self-employed, although the latter cannot in any way affect whether the employer will be successful in contracting new jobs.

The courts have no understanding for this conduct of employers. In the Serbian case law, decisions of the court concerning the requests for determining the existence of an employment relationship are not uncommon. These requests are submitted mainly in the situation when the employee works without a legal basis (undeclared "black labour") or when he works under one of the employment contracts outside the employment relationship.⁹¹ However, the deliberation process in cases of false self-employment is the same - the court determines whether there are basic elements of employment in accordance with LL and international standards⁹² and then decides on the existence of factual employment, or more specifically orders the employer to formalise the factual situation and conclude an employment contract with the employee. International courts act in the same way - in comparative practice, however, there is a much higher number of cases in which courts deliberated on the existence of an employment relationship when the employer claimed that it is an issue of business cooperation, i.e. self-employment of the other party.⁹³ Although as a rule such cases concern platform workers, especially cases of a more recent date, the same logic of reasoning can be applied to journalists who find themselves in similar circumstances.

So how does all of the above affect the employment status of journalists? False self-employment is certainly widespread, as many as 12.2% of journalists work in

91 See for example the judgment of the Supreme Court of Cassation: Rev2 761/2012 of 23 January 2013 (<https://www.vk.sud.rs/sr-lat/rev2-7612012-utvr%C4%91enje-postojanja-radnog-odnosa-0>), Rev2 1319/2015 of 27 April 2016 (<https://www.vk.sud.rs/sr-lat/rev2-13192015-utvr%C4%91enje-postojanja-radnog-odnosa>), Rev2 664/2018 of 10 June 2020 (abuse of temporary and occasional job contracts, <https://www.vk.sud.rs/sr-lat/rev2-6642018-357>) and Rev2 966/2016 of 15 March 2017 (a combination of fictitious contracts, <https://www.vk.sud.rs/sr-lat/rev2-9662016-radno-pravo-radni-odnos-na-neodredjeno-vreme>).

92 Recommendation 198 (2006) of the International Labour Organization on the existence of an employment relationship, https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R198.

93 Such decisions were made in the Netherlands (Rechbank Amsterdam decision of 15 January 2019, in the case of the *Deliveroo* platform), Italy (Corte di Cassazione decision of 21 January 2020, in the case of the *Foodora* platform), Spain (Spanish Supreme Court decision 805/2020 of 25 September 2020), Germany (decision of the Federal Labour Court of Germany on the position of platform workers: Roman Kormann, *Germany adds to recognition of platform workers*, <https://socialeurope.eu/germany-adds-to-recognition-of-platform-workers>), as well as in several other European countries. There is already significant case law of the European Court of Justice on these and similar issues (Mireia Llobera, "Bogus self-employment in cooperative platforms: recent trends in European case law", paper presented at the *XIII European Regional Congress of The International Society for Labour And Social Security Law - Work In A Digital Era: Legal Challenges*, 2-4 September 2020, Lisbon), among which is certainly one of the most significant the judgment C-434/15, of 20 December 2017, against Uber.

this status.⁹⁴ As mentioned several times, journalism jobs can be very suitable for abuses of this kind - journalists often work from home, or in the field, so they are not tied to the employer's premises. They mostly use their personal equipment for work, and if the employer pays an allowance for that (which rarely happens), it is not defined as such but is included in the total amount of remuneration in the business cooperation agreement. Such a position makes it difficult to prove that a journalist is in a relationship that holds elements of an employment relationship, rather than a business cooperation relationship. However, in practice, courts often focus on other elements of the existing factual relationship, when assessing whether it is an employment relationship or not. Continuity and exclusivity of cooperation are clearly important in that assessment - if a journalist cooperates with one media outlet for a long period of time and if the product of their "cooperation" entails performing several different tasks, it will certainly be an indicator of employment. Also, if a false self-employed person receives precise work orders from the employer according to a set, relatively standard, dynamics and cannot reject such work orders, it is considered that there is a subordination relationship that is characteristic of the employment relationship.⁹⁵ Finally, if a journalist relies exclusively or primarily on "cooperation" with only one media employer so that there is economic dependence on the part of the self-employed, it can be concluded that the business cooperation agreement is fictitious and intended to conceal the employment relationship.

The consequences of establishing the existence of an employment relationship concerning a person who was until then falsely self-employed can be multiple. First, the court will order the employer to conclude an employment contract with the employee. Then, in accordance with the law and the rules on statute of limitations, the court will order the employer to pay compensation to the employee (in the form of lost profits since he received lower remuneration than he would have received as a salary if he had been employed from the start), as well as to pay all related taxes and contributions on the amount of salary that the employee had to receive during the period of work with the employer. Certainly, the most significant decision of

94 *Krstić-Momčilović*, p. 18.

95 A business cooperation agreement is concluded between formally equal entities; if the dominance of one of them is obvious, so that the business of the other depends exclusively on his actions, it will certainly not be a matter of business cooperation but of employment relationship.

this kind was passed recently in Italy when employers were obliged to pay a huge amount of compensation to their employees - platform workers who they had been treating according to the business cooperation contract up to that point⁹⁶

3.5 Volunteering and professional practice

Volunteering is regulated by the Law on Volunteering. As stated in the cited Article 2, paragraph 1 in the previous text, volunteering is a form of community service work, which is related to non-profit operations and activities. The process of undermining this system began with the creation of special regimes under which law graduate "volunteers" - who are in fact interns - can work in the courts and at law offices to gain the required years of experience for taking the bar exam. In addition to this legal effort to render volunteering pointless, there are also examples in which for-profit employers, who obviously do not perform activities of public interest in a way that would enable the engagement of volunteers, still conclude volunteering contracts with workers. What lies behind these contracts is usually a promise that after a certain period of free work such "volunteers" will transfer to another labour regime, or it is a matter of avoiding payment of taxes and contributions by paying "volunteers" the net amount in cash.⁹⁷ Regardless of which alternative is in question, any such action of the employer is illegal and "volunteer" practices survive only thanks to the extremely reduced capacity of labour inspections and the ineffective system of supervision over the application (and violation) of labour regulations.

As already mentioned, 9.6% of journalists are in the regime of contracts on temporary and occasional jobs or they volunteer, or they are engaged in some other spe-

96 This is the case of "Foodora", the judgment of the Italian Court of Cassation number 11629/2019 of 24 January 2020. This verdict had drastic consequences for the improvement of the employment status of platform workers: Inoslav Bešker, *Italija naredila da se 60.000 dostavljača mora zaposliti na neodređeno (Italy ordered that 60,000 delivery workers must be employed indefinitely)*, <https://www.jutarnji.hr/vijesti/svijet/italija-naredila-da-se-60-000-dostavljacka-mora-zaposliti-na-neodredeno-15053578>.

97 The IJAV survey showed interesting data, that as many as 6.3% of journalists reported that they receive their earnings in cash (*IJAV Analysis*, p. 26). Payment of salary in cash is not prohibited, if: 1) it is equal to the agreed salary from the employment contract, or other concluded work engagement contract; 2) the employer, in addition to the payment of salary, duly pays the corresponding taxes and contributions for compulsory social insurance.

cific labour regime.⁹⁸ Proper volunteering in the media that operate as for-profit companies is practically impossible unless the media implements a humanitarian or similar action that is voluntarily supported by persons, who in that case perform tasks that do not otherwise belong to the regular activities of the media. False volunteering is certainly cost-effective for the employer: the volunteer does not exercise any right from the employment relationship related to the payment of salary and allowances, except for the compensation of expenses he has in connection with volunteering. As a result, the employer gets a free worker with whom he can act extremely flexibly (since he is already violating the law) - without limitations of working hours or type and number of work tasks. Journalism is quite suitable for this type of abuse because journalists spend a lot of time outside the employer's premises, texts or other products of their work do not have to be signed in their name, and so on - all these are circumstances that make it difficult to identify a journalist-volunteer, even by a labour inspection. In such case, the only option is to sue the employer in court and seek to establish the existence of an employment relationship, which very rarely happens given the "volunteers'" total dependence on the employer, as well as the fact that the requirements for the court to determine the employment relationship are not always met - for example, there is no continuity of work with the employer. Therefore, it is not surprising that journalists continue to volunteer, especially the younger ones at the beginning of their professional careers. A new law on volunteering has been announced, but for now, it is hard to say whether it will affect the reduction of illegal practices and the solution to the mentioned problems.

Professional practices are reminiscent of volunteering but in fact, differ significantly. What they have in common is that the legal grounds for work is not valid - in the case of false volunteering, it is contrary to the law, and in the case of professional practice, there is no regulation that governs this mode of work. The adoption of a special law on professional practice is announced, so this matter will potentially be regulated in the upcoming period. For now, however, there is no way to regulate this regime in accordance with the law, since for many professions and business activities, it is impossible to meet the conditions required for a person to be employed

98 *Krstić-Momčilović*, p. 18.

as a trainee, or engaged through a professional training contract. Until the 2014 changes in LL, it was possible (although there were contrary views even then) to engage a person for professional practice without any special conditions – it was sufficient to state that the person will gain new knowledge about the job in which he is to be engaged. This has led to a large number of abuses of such regulation of practice because according to the provisions on the contract on professional training, which have already been analysed in the previous text, this type of work does not have to be paid. On the other hand, there are employers who have approached professional practices far more conscientiously and offered appropriate remuneration to the trainees. After the changes in LL, this practice largely died out. If the new law regulates professional practices in a satisfactory manner,⁹⁹ it will certainly benefit young journalists who will be able to appropriately acquire practice in performing their job in the legal labour regime (it is recommended that it be a regime of fixed-term employment but having in mind the trends in the evolution of Serbian labour law in the last decade, one can expect the introduction of another regime of work outside the employment relationship).

3.6 Trends in the future labour legal status of journalists

As already stated, the labour legal status of journalists is influenced by general developments in labour legislation, as well as special challenges concerning journalism and related professions.

The general trends in the evolution of labour law are certainly not favourable to workers. There is evidence of something that can be called a "devolution" of labour law, that is to say, the regression of workers' rights to a level that is not characteristic of the 21st, and often not even of the 20th century. This is done both by amending the LL and by adopting special regulations that establish new labour regimes, different from the employment relationship. What such regimes have in common is

99 It is not clear why a special legal text is being prepared, when professional practices can be sufficiently regulated by additions to the LL.

that they put workers in a precarious position, that they are extremely flexible to the detriment of workers, and that they do not guarantee workers hardly any or almost none of the rights recognised by the international standards. The main characteristic of these forms is the short-term work engagement: "As the analysis of the Centre for Public Policy Research shows, the share of temporary employees in Serbia is growing. In 2011 the share was 12.4% while in 2018 it was 22.9%, which is an increase of temporary employment in total employment of approximately 10% in the indicated seven-year period".¹⁰⁰ Harmonization with the *acquis communautaire* could bring a significant turnaround in this regard. However, it is being postponed and it is uncertain whether it will have any impact on workers' rights in Serbia in the medium term.

The special challenges related to journalism as a professional activity, stem primarily from the fact that it is very suitable for flexibilisation. Consequently, in addition to the usual uses and abuses of special legal regimes, some still atypical forms can be found in the journalistic profession, such as false self-employment.

It is important to note that journalists are practically deprived of collective rights. Although about 60% of journalists are still employed (indefinitely or for a definite period of time), according to their testimonies, collective rights are very difficult to exercise. The results are evident, as the coverage of collective agreements is low, and there is practically no social dialogue at all. The fact that 40% of journalists are deprived of any opportunity to enjoy collective rights because they are reserved

100 M. Kovač, B. Anđelković and T. Jakobi, „Nestandardni oblici zapošljavanja u Srbiji: "Novi rad" u ekonomiji zasnovanoj na znanju"(Non-standard forms of employment in Serbia: "New labour" in a knowledge-based economy), in: T. Jakobi and B. Anđelković (ed.), *Predvodnici promena na tržištu rada: Prototipovi dostojanstvenog rada za Srbiju u digitalnom dobu*(Leaders of changes in the labour market: Prototypes of decent work for Serbia in the digital age), Belgrade, 2020, p. 6. Cited by: IJAV Analysis, p. 56. Although it may not seem like a pronounced trend, it should be borne in mind that the share of indefinite employment in the late 1990s was almost 95% (with the addition of 4% of fixed-term employees and only 1% in atypical forms of work). For the share to decrease in the previous period at the indicated speed, it is necessary for a high number of new employees to be hired outside of this dominant form of labour regulation. "The share of employees with fixed-term contracts in the total number of employees shows a growth trend, and in 2014 was 18.8%, while 22.7% in 2017, which is a significantly higher share compared to the European average (13.9% and 14.2% respectively). In the observed period, the number of employees with indefinite-term contracts increased by 5.5%, and employees with fixed-term contracts by as much as 33.8%." Sarita Bradaš, Mario Reljanović, *Indikatori dostojanstvenog rada u Srbiji* (Indicators of Decent Work in Serbia), Belgrade, 2019, p. 6.

exclusively for persons in the employment relationship is disheartening and worrying. The individualisation of the journalistic profession leads to the disappearance of the sense of collectivity, with exceptions that are conditioned by the collective performance of certain work tasks. Other journalists, however, especially in circumstances where they are not employed but are engaged in some flexible way, have a physical distance from the employer and do not perform their work at the employer's premises (or perform them to a much lesser extent). This fact also leads to a diminishing interest in unionising, as well as in any collective action.

All of the above points to the need for a thorough review of the labour legal status of journalists, and especially for the creation of a more detailed special labour regime.

4. Recommendations for improving the labour legal position of journalists

In order to answer the question of how the labour legal status of journalists can be improved, it is necessary to analyse the situation from two different angles. The first refers to the general labour regime, i.e. general labour legal regulations, and above all the LL. Related to it are the recommendations concerning the attitude of the state towards workers, and the changes of the existing dominant employment policies. The second part of the recommendations is focused on journalists and the media employers, that is to say, the position of the state towards these specific social partners. Recognising the particular character of the work of journalists is one of the basic steps in specifying the labour legal framework of their activities. Combined with the general recommendations, a system can be reached that will strive to solve a number of problems that currently affect the journalistic profession.

The following recommendations are given from the perspective of legal analysis. As already mentioned, they also somewhat infringe upon the domain of expert recommendations for changes to existing policies. They are based on previous normative solutions, comparative examples of regulation and practice, as well as on international standards of decent work.¹⁰¹

101 More about the concept of decent work indicators of the International Labour Organization and their application, and the achieved standards in Serbia: *Ibid.*, p. 2.

4.1 General labour legal recommendations

4.1.1 General recommendation on employment policy and the attitude of the state towards workers' rights

The trend of labour rights devolution that has been present for the past two decades, and has especially accelerated since 2014, must be reversed. The goal of all legislative changes in that period was to create alternative models of work engagement outside employment, as well as to reduce the scope and quality of the rights of persons in employment relationships. This process is characterised as one of those that help reduce the cost of labour in countries that rely heavily on foreign direct investment to support economic growth. However, the characteristics of FDIs in countries located on the so-called periphery of the labour and capital markets are investments in the simplest, highly profitable jobs that involve a low-skilled workforce. Such workers work in precarious forms and conditions of labour, are low paid in relation to the value of their work and - apart from low labour costs - are characterised by their inability to unionise and act collectively, as well as the unavailability of mechanisms to protect their individual and collective labour rights. Thus, on the one hand, the workers' labour rights are diminished or in certain labour regimes almost completely denied, and on the other hand, even those rights that are proclaimed by regulations, workers often cannot exercise or exercise to a lesser extent and quality than the legal minimum.

These processes affected all professions and industries, including journalism. As already mentioned, journalists perform jobs that are suitable for individualisation and precarisation of their position. If all the options permitted by law are taken into account, it is quite clear that some of them can find themselves in an extremely difficult labour legal but also existential position, even without employers violating the prescribed standards of working conditions. An example of the case is engagement under a contract for temporary and occasional jobs. By adding on top of it the cases where unscrupulous employers use (illegal and wrong) interpretations and applications of already unfavourable regulations, the data on the number of journalists who believe that their labour rights are continuously and systematically violated is

certainly not surprising. Therefore, a general shift in policy direction and changes in labour regulations in favour of workers would bring about significant improvements to journalists, starting with regulations on working hours and their scheduling, consistent application of the LL provisions on overtime and increased earnings, occupational safety and health, and so on.

If the current employment policies that promote precarious jobs and precarious work regimes, with the notion of making workers more competitive in the global market of (cheap) labour, were abandoned, some radical changes would have to be introduced in the valid strategic and normative acts. First of all, all workers must be equalized concerning their basic rights, regardless of the regime in which they work. Next, work should be done on improving general and special work conditions, as well as on creating effective mechanisms for the protection of workers' rights.

Regarding this recommendation, it must be emphasised that all proposed corrections of legislation and practice depend on the consistent application of the principle of separation of powers and the rule of law, that is to say, generally good status of the enforcement of law and protection of endangered and violated rights through judicial institutions.¹⁰²

4.1.2 Abolishing work outside the employment relationship

The number of models and types of work engagement in Serbia does not correspond to the real needs of the labour market. At the same time, these models are not made with the welfare of workers in mind, but on the contrary intended to reduce the scope and importance of work in the employment relationship, or more specifically to create labour regimes in which it is extremely easy to deny workers a whole

102 Veljko Milić offered a telling example of the non-functioning of the legal protection system, which makes it in effect impossible to exercise rights: "An example of successfully provided legal aid is the case of Slobodan Arežina, who was illegally removed from the position of RT Vojvodina program director. Several proceedings were conducted and all ended in favour of Slobodan Arežina. It is disheartening that Arežina, despite the successfully concluded disputes, was forced to resign because he was not able to do his job freely." Interview with Veljko Milić, Independent Journalists' Association of Vojvodina, 23 July 2021.

set of work-related rights, make them cheaper and defenceless in cases of violations of labour regulations. As already mentioned, this practice is unknown in the European Union, and some attempts characteristic of the wave of so-called flexibilisation of work in European countries in the 21st century, have in recent years been largely reversed to a standard employment relationship through changes in regulations and especially case law.

If Serbia were to fulfil its commitment to harmonise with the *acquis communautaire*, all current forms of non-employment work would have to cease to exist, or specifically be redefined as types of work in the employment relationship (or, potentially, as types of contract law labour – although realistically, only a service contract can be classified as such). For journalists working in various, often exotic, forms of work, this would mean a great improvement in working conditions in the formal sense - starting with the acquisition of the right to salary and compensation, the right to paid leave, minimum wage, union membership and collective bargaining, the right to strike, limited working hours, etc. In other words, they would have to acquire the basic rights that only employed journalists, those in the employment relationship, currently have. Even if a certain stratification of employment is legally standardised, so that there are different categories of workers in the employment relationship (such as trainees today), it is certain that such a shift could only positively affect the drastic reduction of the most precarious forms of work - such as those performed under temporary and occasional jobs or service contracts.

4.1.3 Detailed regulation of work of student-youth cooperatives

In line with the previous analysis, the scope of engagement of young people through cooperatives must be limited and the abuse of this system by engaging persons who significantly exceed the age limit established by law must be prevented. Also, the competence of the labour inspection should be established in terms of all aspects of work and operations of student-youth cooperatives, and all cooperative members should be enabled by law to acquire relevant rights by payment of membership fee, namely to acquire their rights to participate in the functioning of cooperatives.

Although cooperatives are not identified as significant sources of precarious engagement of (younger) journalists, they can certainly have - if the legislative framework is aimed at preserving the essential cooperative values, instead of making cooperatives a regime of labour exploitation - a significant place in organising journalists who do not work for a particular employer (freelance journalists).

4.1.4 Amendments to the provisions on the establishment, membership, functioning and representativeness of trade unions

Many unions assess the under-regulation of trade unions in LL as a positive thing, but it is evident that this is not the case, and that these shortcomings are actually the cause of some serious problems that exist with the organisation and functioning of trade unions in Serbia, especially in journalism.

First of all, there is the issue of union membership - the current solution according to which only those who are employed can be union members, is contrary to the very rationale of the right to association, as well as international standards.¹⁰³ By extending this right to all those who participate in the work process, but also to pensioners, students, and currently unemployed persons, the potential for association and the strength of the journalists' union would be multiplied.

Furthermore, the provisions on the establishment of a trade union are quite favourable because the full scope of freedom of association has been highlighted as per international standards, but employees who can form a trade union are often effectively prevented by employers (as already mentioned, a significant number of journalists believe that this is exactly the case with their employer). Therefore, effective supervision over the application of the provisions on the establishment of a trade union, where the labour inspection would give active support to the trade union at

103 The ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (Official Gazette of the FPRY - Annex, No. 8/58) clearly defines that the right to association must be enjoyed by all workers, without exception (Article 2).

the time of the establishment (in terms of legal advice and continuous supervision over the employer's actions) would give additional incentives to employees to join.

The functioning of a trade union is not disputable, but the lack of provisions on a trade union established outside the employer is very critical. There are virtually no such provisions in LL and - although not prohibited - it seems that the legislator's focus was not at all on unionising that does not take place at an individual employer. It is precisely in journalism that such form of unionising could come to the fore, since individuals may not be able to exercise the right to associate in the various media in which they work (due to illegal actions of the employer, or due to poor employee interest) but would certainly become members of the union that is established at a higher level. Also, favouring unions that are established at the employer has led to the practice that most such unions are in a position of dependence on the employer with which they are established - the employer is the one who provides them with working conditions, but also the one who can "sanction" or "reward" the union, depending on its policy. The provisions on trade union financing that prevent such actions by the employer are insufficiently developed, and often not observed. The easy establishment of trade unions also leads to the widespread case of "company unions" which exist only formally and have no independence or autonomy in their work.¹⁰⁴

Finally, the provisions on its representativeness are related to the manner of establishment and functioning of the trade union (outside the specific employer). The current threshold of representativeness set at 15% (at the employer) or 10% (in all other cases)¹⁰⁵ may be too high and may not encourage collective bargaining. This is especially evident in the current situation in the media, where unions at an individual employer can hardly cross the threshold of representativeness, especially if the employer acts illegally and suppresses unionisation. The real incentive for collec-

104 Such unions often serve to create the illusion of collective bargaining and social dialogue between the employer and the union, by concluding a collective agreement with the employer which does not fundamentally change the position, and there are also incidences when the adoption of a collective agreement in certain aspects worsens the position of employees compared to the period before its adoption.

105 Articles 219 and 220, LL.

tive bargaining would be to lower the threshold of representativeness and encourage the conclusion of territorial collective agreements, as well as branch collective bargaining.

4.1.5 Amendments to the provisions on the supervision of labour legal regulations

Section 4.1.2 states that the abolishment of forms of work outside employment would mean a significant equalisation of all workers in terms of possession of fundamental rights, in the formal sense. "In the formal sense" is emphasised because, in order to ensure the actual realisation and normal unhindered enjoyment of these rights, it is necessary to significantly improve the system of supervision over labour legal regulations, in particular sanctions for their violation. This primarily refers to the strengthening of the labour inspection, by giving it greater powers and better working conditions, and especially by increasing the number of labour inspectors. Only effective control and sanctioning can restore the practice of compliance with regulations by employers, which those unscrupulous among them had lost over time. Impunity for violations of labour legal regulations (as well as others that are not part of this analysis) has several consequences, including the impression of unscrupulous employers that they are above the state and can selectively apply regulations that benefit them; that the violation of regulations pays off because it generates extra profit, especially the one in cash¹⁰⁶; and that in any case, some regulations do not even need to be observed because they fell into desuetude.¹⁰⁷ To prevent such actions and sanction violations of workers' rights in accordance with the law, the system of supervision must be significantly improved - otherwise, just the formal acquisition of certain rights will not have any consequences for the labour legal status of workers, including journalists.

106 For example, by obliging employees to return in cash to the employer part of the salary they received - this is a practice that is widespread among unscrupulous employers in various industries.

107 Desuetude is a process in which a legal norm is not observed for a long time and the state does not react to such violation, nor does it allow other stakeholders (in this case workers, unions) to react and initiate procedures to protect those legal norms. Therefore, over time, a subjective impression is created among all actors that a norm has ceased to exist, although formally it is still valid.

4.1.6 The general right of workers to initiate labour disputes and reform of the free legal aid system

Currently, workers outside the employment relationship do not have the right to initiate an employment dispute, and employees (in the employment relationship) exercise it with additional difficulties. Introducing general right to initiate a labour dispute, simplifying the procedure and extending an incomprehensibly short deadline (60 days¹⁰⁸), as well as organising a free legal aid service on a qualitatively different basis from the existing normative regulation,¹⁰⁹ are just some of the steps towards exercising the right to a legal remedy, namely access to justice (judiciary), which has been severely limited in recent years when it comes to labour disputes. The second phase of this direction of reform to the benefit of workers would certainly imply wider and simplified options for resolving labour disputes out of court, as well as the introduction of specialised labour courts based on comparative experiences.¹¹⁰

The position of journalists is certainly influenced by the possibility of effective protection of their labour rights. The Law on Free Legal Aid must be amended to enable legal aid to anyone who needs it. The current circle of providers and recipients of legal aid is extremely limiting and does not correspond to the real needs of citizens.

4.1.7 More precise regulation of availability and standby for work, and the right to disconnect from communication

The categories of availability and standby for work are important for all workers, and certainly for the journalistic profession. Availability for work implies that the worker is at the employer's premises and is ready to participate in the work process at any

108 Article 195, paragraph 2, LL

109 The Law on Free Legal Aid (Official Gazette of RS, No. 87/2018) did not address this issue in an appropriate manner. On the contrary, in many respects and in relation to many workers, it has narrowed the possibility of obtaining free legal aid.

110 Mario Reljanović, Jovana Misailović, *Rešavanje radnih sporova (Resolving labour disputes)*, Belgrade, 2021, pp. 135-146.

time. Although this category of working hours is characteristic of emergency services (firefighters, police, ambulance), it can also be applied to the journalistic profession. The time spent in the availability status is counted in working hours and it is normally paid like any other work. The standby status, however, implies that the worker is ready to respond to the call of the employer to promptly join the work process, and during the standby he is not at the employer's premises but naturally, he cannot go too far (he may be at home or elsewhere in the same town where the employer is located). The Labour Law does not define the maximum length of standby for work (although it can be derived from other provisions of the law on limited working hours) or the amount of compensation for such work. Clear restrictions should be introduced for this category of working hours - although the Labour Law stipulates that standby is not counted in working hours, it is quite clear that significant abuses are possible that would render meaningless the right to limited working hours. For example, if someone were in a regular working hours regime for 8 hours a day, and for the remaining 16 hours in a standby regime - that would undoubtedly be deemed by the court as illegal conduct of the employer. At the same time, availability and standby are excellent mechanisms for the flexibilisation of working hours for journalists, without infringing on their right to rest.

Also, the right of workers to "disconnect from communication" with the employer must be precisely defined and regulated, especially having in mind the abuses related to the duration of working hours and work on call that has been recorded in practice. France was the first to introduce the right to switch off from communication by reforming labour legislation, and several countries followed suit. In many countries, there is an implicit workers' right to disconnect from communication, based on existing working hours norm.¹¹¹

¹¹¹ Mario Reljanović, Jovana Misailović, "Radnopravni položaj digitalnih radnika – iskustva evropskih zemalja (*Labour law position of digital workers - experiences of European countries*)", *Strani pravni život (Foreign Legal Life)*3/2021 (in press).

4.2 Special labour legal recommendations

Special recommendations refer to the specific aspects of the journalistic profession. The general recommendations also emphasised how they relate to the sphere of journalism and the media. However, the special recommendations are characterised by the fact that they are exclusively focused on changes in the normative framework or practice concerning the special regime of work of journalists.

4.2.1 Amendments to the legal framework for regulating the labour legal status of journalists

There is currently no special legal regime concerning the rights of employed journalists. Special employment regimes, on the other hand, are not uncommon in Serbian legislation nor in general - for example, each state regulates the work of judges, prosecutors, state administration, police, army, with special rules that apply only to employees in those sectors. A special regime is never comprehensive, but introduces only provisions concerning the specificities of a certain profession/business activity, while the general regime regulated by the labour law or similar legislation is applied to all other issues.

With this in mind, the question may be raised whether it is necessary to introduce special provisions related to the rights of journalists at work and in relation to work? It seems that this need exists primarily in the part that regulates working hours, working hours scheduling, as well as daily and weekly rest of journalists. It is certain that the rules on notifying employees about the schedule of working hours during one working week for the upcoming week (five days, or 48 hours according to the already cited provision of the LL), cannot always be observed by the employer. Also, in some circumstances, it cannot be expected that the formula of 8 + 4 daily working hours will be sufficient for a journalist reporting on an event, especially an unexpected one, and if the journalist has already spent part of the working hours at work during that working day. The same applies to the provisions on daily and weekly rest, which can be "carried over" in exceptional circumstances, primarily due

to the fact that journalistic reporting is not a type of work that can be done on the principle of substituting an employee during the actual performance of the job - journalists create copyrighted works but they also make personal connections and put themselves in specific situations so that they can investigate stories that are of interest to them, so in such circumstances, it is not possible to simply replace them with another employee. Furthermore, more than all other "non-urgent" professional activities, the journalistic profession depends to a greater extent on standby for work, which is not adequately and sufficiently regulated by the general work regime in the LL, so regulation by a special law is an opportunity to precisely define particular standards that would be in line with general working hours restrictions.

However, as already mentioned, it should be kept in mind that too flexible provisions on working hours schedule and rests could lead to the labour exploitation of journalists in situations where the solution clearly is for the employer to hire more journalists, and not to add to the workload of existing ones. Therefore, "brakes" should certainly be introduced to the employer, that is to say, restrictions on compliance with the basic rules on working hours during one working week or working month. For example, the average number of working hours of a journalist should by no means exceed full-time on a monthly basis, except when the journalist is working in a rescheduling of working hours regime. Also, all overtime hours, regardless of the circumstances in which the overtime work occurred, should be calculated in increased salary and should not exceed the general limit of eight working hours per week (with the potential possibility of a two-week averaging in case that overtime work longer than eight hours per week was the result of objective circumstances beyond the employer's control – e.g. reporting from an unexpected event that could only be covered by one journalist due to limited access or the spatial distance of other journalists, etc.). Therefore, all deviations that are the product of circumstances in which journalists are required to engage in additional work, should be defined as exceptions and not as a regular work regime.

4.2.2 New mandatory elements of journalists' employment contracts

Article 33 of the LL regulates the minimum content of the employment contract. In addition to the elements listed in that article, the employee and the employer may, in principle, contract everything relevant to the employee's labour legal status and that is not in conflict with the LL and other laws. On those grounds, a very interesting and useful practical paper was published some time ago, which suggests the possible introduction of additional elements to the employment contract of journalists (and editors-in-chief).¹¹² It is proposed that media employers can decide to include this additional content in regular employment contracts (and work engagement contracts) in line with their policy of compliance with the law and care for employees. However, it is worth considering that some of them should be regulated by law as mandatory, by an additional legal norm in a special regime of regulation, as already explained in the previous text.

A few elements could indeed find their place in every contract a journalist concludes with an employer. Although they are essentially declarative, because the parties actually undertake to respect the rules already established by other regulations, they are extremely important because they resolve some specific, potentially controversial, issues in the work of journalists, which may affect their labour legal status or working conditions:

- The journalist will take care not to discriminate in his reporting; not to spread hate speech; not to violate human rights; to respect the presumption of innocence and the rights of the person to whom the information refers, but also members of their family; to respect the rights and interests of minors; to respect the copyright; not to spread unjustified fear or false hope by publishing information; to respect the culture of ethics of public speech and dialogue; not to subordinate the manner of reporting to personal, commercial or political interests.

¹¹² Kruna Savović, *Aneksi ugovora o radu (Annexes to employment contract)*, IJAS, Belgrade, 2013.

- The founder of the public media agrees that he will refrain from exerting any influence on the reporting of journalists, both indirect and direct, and especially the influence based on the abuse of ownership rights.
- The journalist's employment cannot be terminated, his salary cannot be reduced, nor his position in the editorial office be compromised due to the true statement published in the public media in which he is employed.
- The journalist's employment cannot be terminated, his salary reduced, nor his position in the editorial office be compromised due to his refusal to execute an order that would violate the legal and ethical rules of the journalistic profession.
- The journalist undertakes not to ask for or receive any material or any other benefit in order to report in a certain way on a certain phenomenon, event or person, etc. In case of violation of the employment obligation defined in the previous paragraph of this Article, the employment of the journalist shall cease by the termination of the employment contract by the founder.

4.2.3 Special rules on collective bargaining

Special rules on collective bargaining could find their place in a special law, with the primary goal of encouraging collective bargaining, as well as opening (facilitating) the way to conclusion of a special (branch) collective agreement.

In general, there are two types of provisions that could be part of a special regime for journalists' collective bargaining:

- *Provisions relating to negotiating legitimacy.* This idea has already been presented in the section on general recommendations and comes down to reducing

the representativeness threshold.¹¹³ This reduction would be of particular benefit in the field of journalism and media, as it is extremely difficult to define the social partners who would negotiate, primarily on the employer side. Therefore, the ideal solution would be to lower the census - if not in general through changes to the LL, then through the introduction of special provisions - so that media employers who want to negotiate can more easily achieve their goal. Of course, a reduction would only be possible in relation to both sides, but it seems that the unions could certainly pass the 10% threshold.

- *Provisions relating to the scope of the collective agreement.* These provisions are primarily aimed at maximising the scope of application of the collective agreement to those types of workers who are not otherwise covered by the right to collective bargaining. Namely, it is not impossible to determine that the provisions of the branch collective agreement apply to false self-employed persons, that is to say, all entrepreneurs who are in a position in which they depend on one or more media employers, as well as to freelance journalists who do not have a permanent employer. The application of a collective agreement when contracting jobs with these categories of journalists would enable them to exercise the minimum labour rights, just as employed persons, and thus introduce essential equality in the labour legal treatment of journalists.¹¹⁴ Comparatively speaking, this practice already exists in many European countries. "In Germany, a legal exception in the law on collective contracts (*Tarifvertragsgesetz*) means that freelance journalists are considered "comparable to dependent workers" if at least 50% of their salary comes from an employer/client (for workers who do artistic, creative or journalistic work, even a third of the salary is sufficient). In this case, these "comparable workers" are exempt from any competition regulations preventing the conclusion

113 The experiences of countries are different when it comes to the optimal threshold of union representation. The International Labour Organization, as the most relevant source of a potential standard, does not have a pre-determined threshold, but depending on circumstances, it recommends it should be at the level of 2% to 10%. However, the ILO collective bargaining experts generally suggest that the optimal representativeness threshold is 5%, especially if there are objective obstacles to collective bargaining due to insufficient interest or fragmentation of the social partners.

114 At this point, it should be emphasized that it is assumed that some of the general preconditions have been met, so that work in the employment relationship is equated with work outside employment, in the manner already described in the text. If this has failed to happen, it should be borne in mind that the extension of the scope of collective agreements should also cover these categories of workers.

of collective agreements on common fees and prices. ... In Italy, the labour reforms extended basic protections to all workers, but with specific protections for specific categories. They define the category of economically dependent workers (called *parasubordinati*) as those who perform a “continuous, coordinated and mainly personal” form of collaboration with the same employer (Article 409, N 3, Codice di Procedura Civile). The legislation provides levels of social protection similar to those guaranteed to dependent workers, and trade unions can represent them in collective bargaining.”¹¹⁵

Finally, if such changes are not possible to implement or that they do not result in the possibility of concluding a branch collective agreement - the question should also be asked whether there can be an alternative to collective bargaining? The answer to this question is not so simple. Perhaps, based on the agreement between the employer and employees regulated by LL in situations when it is not possible to conclude a collective agreement, and no trade union was established at the employer,¹¹⁶ a certain type of negotiations could be approached directly with the state as a social partner, and in that way come to a unified regulation of at least the most essential issues of importance to journalists. This practice, however, is not common and it is hard to believe that state authorities would decide on this type of precedent (which, of course, would need to have its legal grounds).

At the same time, the importance of professional associations in social dialogue should be recognised: "What journalists' associations can do in this matter is to work together to establish a socioeconomic dialogue that would lead to the signing of a branch collective agreement which would ensure better conditions of work. Also,

115 H el ene Br edart, Mike Holderness, *Rights and Jobs in Journalism: Building stronger unions in Europe*, European Federation of Journalists, Bruxelles, 2016, p. 37. "Other countries have maintained the strict dichotomy between employed and the self-employed and have tried other approaches to capture the growing reality of the dependent self-employed. These have included: presumptions that these are employees and that they fall within the scope of employment protection legislation (France, Greece, Luxembourg); reversal of the burden of proving employee status (Belgium); listing criteria that enable identification of workers as either employees or self-employed (Austria, Belgium, Germany, Ireland); extending protection to specified categories, even though they are not presumed to be employees (Denmark, France, Germany, Greece, Italy). In certain countries where the dependent employment was not defined or where the legal definition was general (Ireland, Norway, Sweden, UK), case law has played an important role."

116 Article 250, LL.

associations can work together with trade unions to empower journalists and other media workers to unionise in higher numbers and to educate journalists regarding their professional and labour rights, as well as the right to trade union organisation."¹¹⁷

4.2.4 Cooperatives as a manner of associating freelance journalists

Freelance journalists cannot currently count on any kind of legal protection of labour rights. They mostly work under service or copyright contracts. As already discussed, such practice of employers is extremely debatable but is tolerated by the labour inspection and other competent services. In such a position, when they are left to the almost unilateral will of the employers they work for, the cooperatives seem to be a very interesting way of association of journalists aiming to improve their working conditions. This concerns the professional cooperatives,¹¹⁸ which have nothing in common with the previously criticised student-youth cooperatives. A professional cooperative is established in order to unite the interests of journalists. The cooperative can negotiate the conclusion of business cooperation contracts, which will result in jobs for the cooperative members. On the other hand, all members participate in its work of a cooperative and have management rights. The cooperative established in order to strengthen the negotiating position of journalists when concluding contracts will certainly be able to provide better conditions for work and more favourable work engagements to its members. In addition, the cooperative can be a place to provide professional and legal assistance to journalists. There are no legal or other obstacles for such cooperatives to come to life in the current normative framework. They would not be an alternative or substitute for journalists' associations. On the contrary, cooperatives can be complementary to the efforts that these associations undertake and support joint actions and projects.

117 Interview with Maria Babić, IJAS, 30 July 2021. The interlocutor pointed out that this cooperation can be organised in other areas of importance for the rights of journalists: "IJAS has established cooperation and signed an agreement with the branch union *Nezavisnost (Independence)* in cases of violations of labour rights, and although there were instances of collaboration, in my opinion, that cooperation has not come to life in full capacity, especially having in mind that journalists are addressing us in growing numbers primarily regarding the violation of copyright."

118 Pursuant to Article 11 of the Law on Cooperatives, cooperatives may be established to perform any activity that is not legally prohibited.

4.2.5 Change of the rules on the special strike regime

Finally, it should be reminded once again of the anomaly in the system when it comes to a special strike regime. As already mentioned in the previous analysis, there is no reason to treat information as an activity of public interest required to ensure minimum work process during the strike, with the possible exception of the public service in times of a national crisis (declared emergency situation, or a state of emergency or war at the national level). Information is not the only activity that should be relieved of this status - for example, there are also education and some utility services. While many countries do not have a special strike regime, the outdated Law on Strike regulates this area with a lack of precision and covers too broadly the activities that fall under the special regime. The adoption of the new law that has been announced will certainly be an opportunity to correct this approach and to limit the special strike regime only to those activities that are truly essential for the functioning of society. Although the media and information have undisputed importance that no one tries to take away from them, placing information on an equal footing with the electricity supply or emergency services is not a recognition of the importance of this activity but an attempt to minimise the strategic space for the strike, and as such represents one of the obstacles to exercising basic rights of journalists.