Прегледни научни чланак*

Ivica Lazovic, [*] ***Ph. D,***
Republic Agency for Peaceful Settlement of Labor Disputes
Mile Radivojevic, [*]
Republic Agency for Peaceful Settlement of Labor Disputes

UDK: 331.109

CHALLENGES OF LABOR LEGISLATION IN THE FIELD OF PEACEFUL SETTLEMENT OF LABOR DISPUTES

Abstract**:** *In this paper, we will deal with the current challenges of labor legislation in the field of application of the institute of peaceful settlement of labor disputes. The paper analyzes the challenges of labor legislation in this area, as well as the most common problems in resolving labor disputes. It also provides an overview of key developments in the field of peaceful settlement of labor disputes in the Republic of Serbia. The paper also presents current statistical data regarding the number of disputes that are resolved amicably and the number of consents obtained in this way of alternative dispute resolution. Special attention is paid to the challenges of developing a new regulation that would regulate the strike in Serbia. One of the segments of interest is the possibility of developing a peaceful settlement of labor disputes among civil servants. The authors decided to publish this paper in English for two reasons, the first being that it is an international journal and our goal is to present it to the general professional public, and the second is that holding of the annual session of the Association for Labor and Social Law and interactive discussion on the works is uncertain due to preventing the spread of coronavirus disease.*

Key words*: labor legislation, conciliation, arbitration, strike, civil servants.*

[*] *e-mail:* ivica.lazovic@ramrrs.gov.rs
mile.radivojevic@ramrrs.gov.rs
Рад примљен: 25.06.2020.
Рад прихваћен: 20.07.2020.

1. Introduction

As the then chairman, esteemed professor Jasarevic, said in an introductory speech at one of the earlier conferences of the Association for Labor Law and Social Insurance of Serbia, some thirty years ago Labor Law seemed so organized and predictable that there were almost no major challenges. And then everything changed drastically. Accelerated and drastic changes have taken place since the 1990s, from transition, globalization, digitalization to demographic changes. All of the above has had a significant impact on the world of work, and there are many unanswered challenges, such as new forms of work, flexible employment, teleworking, precarious work, pronounced migration, declining power of social partners, imbalance between prescribed rights and real rights, as well as the latest challenges for labor rights in epidemics and pandemics.

On the pages in front of us, we want to make another review of the challenges of labor legislation in the field of peaceful settlement of labor disputes in Serbia.

2. About the Republic Agency for Peaceful Settlement of Labor Disputes and its practice

The Republic Agency for the Peaceful Settlement of Labor Disputes, on the basis of the Law on the Peaceful Settlement of Labor Disputes[1], performs professional tasks related to: peaceful settlement of collective and individual disputes; selection of conciliators and arbitrators; keeping the Directory of Conciliators and Arbitrators; professional training of conciliators and arbitrators; deciding on the exemption of conciliators and arbitrators; records on procedures for peaceful settlement of labor disputes; other tasks determined by law. The Republic Agency for the Peaceful Settlement of Labor Disputes is a special organization of the Government of the Republic of Serbia.

The services provided by the Agency to interested parties are the resolution of individual and collective labor disputes (arbitration and conciliation), in accordance with the Law on Peaceful Settlement of Labor Disputes.

An individual labor dispute, in terms of this law, is considered a dispute regarding: termination of employment contract; working hours; exercising the right to annual leave; wage/salary payments, wage/salary compensations and minimum wages in accordance with the law; payment of compensation for expenses during meals, for arrival and departure from work, recourse for the use of annual leave and other compensation of expenses in accordance with

1 Official Gazette of RS no. 125/04, 104/09 and 50/18

the law; payments of severance pay upon retirement, jubilee awards and other benefits in accordance with the law; discrimination and harassment at work.

A collective labor dispute within the meaning of this law shall be considered a dispute regarding: concluding, amending and/or supplementing a collective agreement; application of the collective agreement as a whole or its individual provisions; application of a general act regulating the rights, obligations and responsibilities of employees, employers and trade unions; exercising the right to organize and act as a trade union and exercising the right to determine the representativeness of the trade union with the employer; strike; exercising the right to information, consultation and participation of employees in management, in accordance with the law; determining the minimum work process, in accordance with the law.

The procedure of peaceful settlement of a labor dispute is initiated by submitting a Proposal to the Agency, which the parties to the dispute may submit jointly or individually.

The proposal contains in particular: name, surname and address, i.e. name and registered address of the parties to the dispute, subject of the dispute.

Along with the proposal, the parties to the dispute shall submit documentation related to the subject matter of the dispute, as well as the names of witnesses, if they have them.

If the proposal was submitted by one of the parties to the dispute, the Agency submits the proposal and documentation to the other party to the dispute and invites it to state within three days whether it accepts the peaceful settlement of the dispute.

The conciliator or arbitrator shall be determined by agreement of the parties to the dispute from the Directory, in a joint proposal, i.e. within three days from the day of acceptance of the individual proposal.

If the parties to the dispute do not agree on the appointment of a conciliator or arbitrator, a new one shall be appointed by the Director of the Agency.

The Agency submits the proposal and documentation related to the subject of the dispute to the conciliator, i.e. the arbitrator appointed to resolve the specific dispute.

From 2005 to 2020, i.e. since the establishment of the Republic Agency for the Peaceful Settlement of Labor Disputes, 18,522 proposals for the peaceful settlement of labor disputes were submitted.[2]

The most common individual labor disputes are disputes related to nonpayment of the minimum wage, there are also disputes related to the termina-

2 More at: www.ramrrs.gov.rs

tion of employment contracts and non-payment of other benefits from work and on the basis of work, as well as harassment and discrimination at work.

The most common collective labor disputes are disputes related to the conclusion of the Collective Agreement and a strike with the employer, and there are also disputes arising from the application of the Collective Agreement and violation of the right to organize and strike.

STATISTICS REGARDING PROCEDURES FOR THE PEACEFUL SETTLEMENT OF LABOR DISPUTES

Statistical Review of the Number of Labor Disputes Resolved before the Republic Agency for the Peaceful Settlement of Labor Disputes 2005-2020	
The year 2005	
Collective labor disputes Initiated 10	Individual labor disputes Initiated 857
Total 867	
The year 2006	
Collective labor disputes Initiated 17	Individual labor disputes Initiated 4977
Total 4994	
The year 2007	
Collective labor disputes Initiated 16	Individual labor disputes Initiated 3410
Total 3426	
The year 2008	
Collective labor disputes Initiated 12	Individual labor disputes Initiated 958
Total 970	
The year 2009	
Collective labor disputes Initiated 12	Individual labor disputes Initiated 789
Total 801	
The year 2010	
Collective labor disputes Initiated 25	Individual labor disputes Initiated 249
Total 274	
The year 2011	
Collective labor disputes Initiated 18	Individual labor disputes Initiated 837
Total 855	

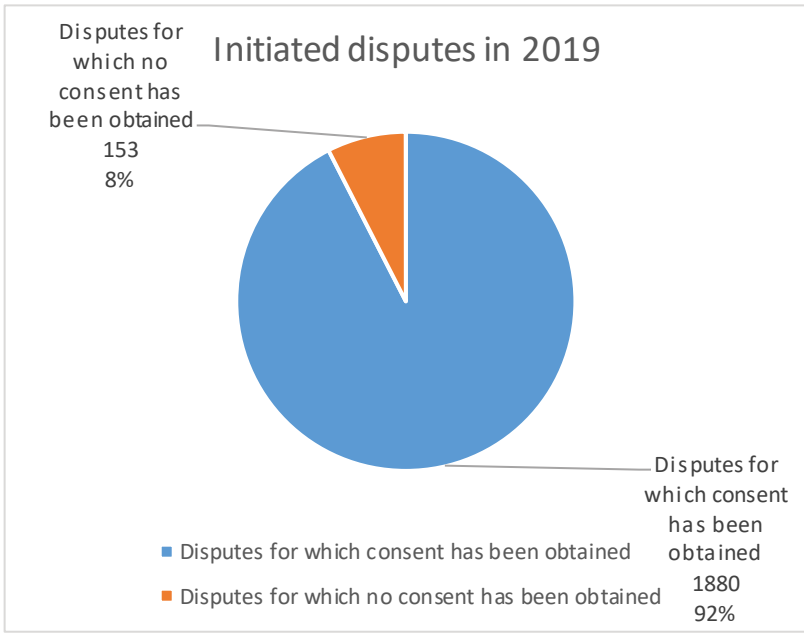
The year 2012	
Collective labor disputes Initiated 20	Individual labor disputes Initiated 239
Total 259	
The year 2013	
Collective labor disputes Initiated 28	Individual labor disputes Initiated 251
Total 280	
The year 2014	
Collective labor disputes Initiated 26	Individual labor disputes Initiated 173
Total 199	
The year 2015	
Collective labor disputes Initiated 30	Individual labor disputes Initiated 292
Total 322	
The year 2016	
Collective labor disputes Initiated 28	Individual labor disputes Initiated 928
Total 956	
The year 2017	
Collective labor disputes Initiated 28	Individual labor disputes Initiated 1046
Total 1074	
The year 2018	
Collective labor disputes Initiated 37	Individual labor disputes Initiated 920
Total 957	
The year 2019	
Collective labor disputes Initiated 39	Individual labor disputes Initiated 2261
Total 2300	
Collective labor disputes Initiated 345	Individual labor disputes Initiated 18177
TOTAL INITIATED 18522	

STATISTICAL DATA FOR 2019

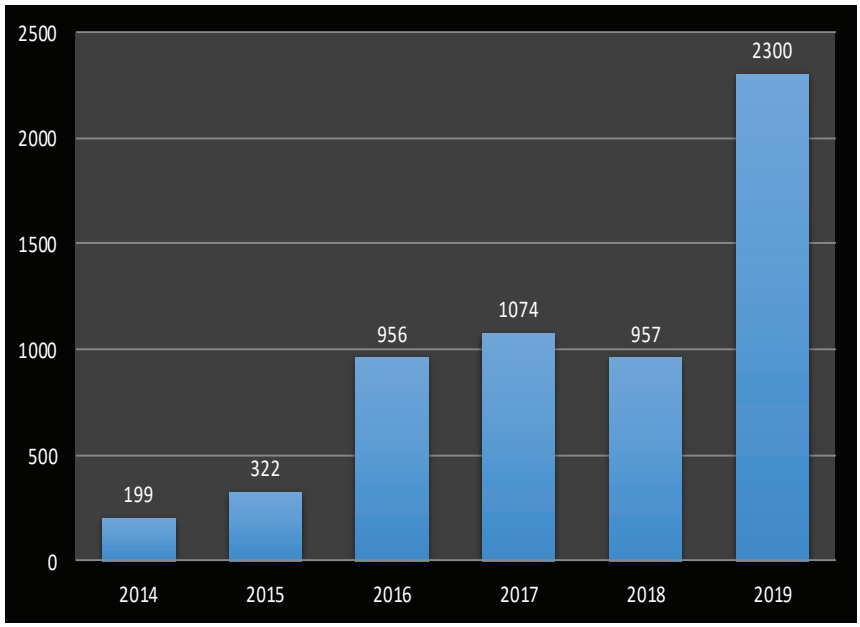
Status as at 31.12.2019

In 2019, the Republic Agency for the Peaceful Settlement of Labor Disputes acted in 2,300 labor disputes, of which 2,261 were individual labor disputes and 38 were collective labor disputes. Consent for a peaceful settlement was obtained in as many as 1870 labor disputes. The number of labor disputes that were resolved peacefully is almost two and a half times higher than in 2018, and as many as 11 times more labor disputes were resolved peacefully compared to 2014.Consent for a peaceful settlement was obtained in as many as 92% of proceedings, which testifies to the increase in trust in this way of resolving disputes.

Review of obtained consents in 2019



,



Review of the number of proceedings before the Agency

3. Social benefits from peaceful resolution of labor disputes

There are numerous social benefits from the peaceful settlement of domestic disputes, such as: relief of courts; promoting social dialogue; reduction of the number of strikes, improved communication with social partners, cooperation with trade unions and employers' associations, efficiency of the procedure, informality and relaxation, simplicity, free of charge, and especially the saving of funds financed from the budget, which reduces the costs of the procedure.

This is perhaps best illustrated by the example of a collective labor dispute between a local self-government and a union of workers in education, regarding the payment of transportation costs agreed in a collective agreement. The compensation for 68 employees who refused to use monthly tickets was disputable. For each individual, that monthly compensation ranged from RSD 800 to RSD 1,200 and the maximum amounts per employee ranged up to RSD 4,500. The total receivables from the local self-government for the disputed period amounted to around RSD 1,125,000. The costs of the first-instance proceedings in these disputes were around RSD 38,000 per employee, which

means that they would amount to a total of around RSD 2,584,000 for everyone. 22 first-instance court proceedings were initiated, and three first-instance verdicts were passed in favor of the employees, which were appealed by the local self-government. In the second instance, the Court of Appeals passed the first verdict in favor of the employees. The costs of this procedure amounted to RSD 79,000 and if all 68 employees went the same way to resolve the dispute, it can be assumed that the total costs would amount to RSD 5,372,000.

However, the parties in this dispute initiated proceedings before the Agency, and in just two hearings, arbitration decisions were reached, which are the same as court rulings, they did not have any costs, and the costs of compensation for the arbitrator amounted to RSD 30,000. Bearing in mind that these are budget funds, this saving is more than justified.

The situation in the private sector is similar, so that during the strike in a large export company a couple of years ago, the media estimates were that EUR 4,400,000 were lost daily. At the beginning of the negotiations on the peaceful settlement of the dispute, the main thing is to immediately normalize the work in order to reduce losses and reduce financial damage, because most strikes are basically related to material disputes. Based on the above, it is not difficult to precisely calculate the savings achieved by accessing peaceful methods of resolving labor disputes.

4. Challenges of existing legal solutions

Law on Amendments to the Law on Peaceful Settlement of Labor Disputes, amended many provisions that showed weakness in practice and which reflected on the work of the Republic Agency for Peaceful Settlement of Labor Disputes.

The aim was to improve, but also to supplement, especially in terms of the Agency's competence in collective and individual labor disputes.[3]

Jurisdiction for individual labor disputes has been supplemented, and they are extended to disputes regarding the payment of full salary or salary in accordance with the law, and not only in connection with the payment of minimum wage, payment of salary or salary, payment of compensation and other benefits in accordance with law , collective agreement, rulebook and employment contract, determination of working hours, as well as payment of severance pay upon retirement.

Collective labor disputes, among other things, after these changes are disputes regarding the exercise of the right to determine the representativeness

3 The Law on Amendments to the Law on Peaceful Settlement of Labor Disputes was published in the Official Gazette of RS no. 50/18,

of the union with the employer, determining the minimum work process, as well as disputes regarding determining the minimum work process in accordance with law.

The basic principles of the procedure for the peaceful settlement of labor disputes have been amended, so that the principle of independence has been introduced, which stipulates that the conciliator or arbitrator is independent in his work. That independence was implied, but it was not clearly prescribed.

Deadlines are specified, e.g. the period of 3 days that the other party in the dispute had to declare was extended to 5 days. This does not lose efficiency, and is gained in the procedure because the deadline is more realistic, especially for larger employers with more complex decision-making.

Regarding collective bargaining, the role of the conciliator in the collective bargaining procedure is specified so that in case of engaging a conciliator in the collective bargaining procedure, the conciliator provides assistance to the participants in order to prevent the occurrence of a dispute. The purpose of this provision is that the conciliator is involved only in the event that there is a danger of a dispute arising during the negotiations.

The provisions on the parties to the dispute in activities of general interest have been amended, and they are obliged to approach the peaceful settlement of collective disputes in cases of exercising the right to determine the representativeness of trade unions with employers, as well as in determining the minimum work process in accordance with law. In activities of general interest, the parties are obliged to submit a proposal for initiating the procedure of peaceful settlement of a labor dispute within three working days from the occurrence of the dispute, and not three days as prescribed in order to prescribe realistic deadlines.

Regarding the authorization of the conciliator during the procedure in case the parties to the dispute do not agree on the recommendation, the current decision that the conciliator can propose a recommendation to the parties to the dispute has been changed, so that the mediator can propose a recommendation only at the request of one of the parties. within three days from the day of concluding the hearing. An agreement on the settlement of the dispute may be concluded on the basis of the recommendation or independently of it.

It is also specified that in the event that the parties to the dispute conclude an agreement, that agreement becomes the basis for concluding an amendment to the collective agreement or has the force of an executive document. The reason for this is that the collective agreement should contain the structure of the general act and that when drafting, amending and supplementing the

basic methodological rules for drafting regulations are respected, the agreement is drawn up in a free form.

In collective disputes, which often last longer than the prescribed deadline due to complexity, it has been adopted that the deadline of 30 days from the day of the opening of the hearing, exceptionally at the request of the parties to the dispute may be extended for another 30 days. So far, the legal solution has been for the conciliator to dissolve the Board and continue the conciliation process through direct contact with the parties to the dispute, where he assists them to meet and discuss the subject matter of the dispute.

An important change is to enable the arbitrator to indicate to the parties to the dispute during the procedure in case of harassment at work that they can resolve the dispute amicably, which is in the spirit of peaceful resolution of the dispute. A dispute regarding abuse and discrimination may exceptionally be terminated only on the basis of an agreement between the parties to the dispute, and if it does not exist, the arbitrator shall issue a decision suspending the proceedings and instructing the parties to the dispute to conduct court proceedings on the same legal matter.

An important novelty is the inclusion of expertise, and since the jurisdiction in individual disputes is extended to salaries, which are not only the minimum wage, compensation of expenses and other income, it is necessary that if the parties to the dispute so they can hire an expert. Unlike the services of arbitrators and conciliators, which are free of charge for the parties to the dispute, the costs of hiring an expert are borne by each of the parties to the dispute.

The provisions concerning the election of conciliators and arbitrators have been amended, where it is specified that the Agency publishes a public announcement for the election of conciliators and arbitrators in the Official Gazette of the Republic of Serbia, that the decision on the election of conciliators and arbitrators is made within 60 days.

The adoption of the code of ethics for conciliators and arbitrators, which is proposed by the line minister, is also prescribed. The issue of ethics of conciliators and arbitrators was also assessed by the International Labor Organization as very important for regional cooperation and announced as a topic of the next regional conferences.

5. Challenges of labor legislation in passing the new Strike Law

One of the especially important topics is the adoption of the new Strike Law, which is a special challenge. Although the Labor Law has been changed 3 times in 20 years, and as many as 4 versions of the Strike Law have

been drafted, that law has managed to survive since 1996, even though FR Yugoslavia also fell apart.[4]

The latest text of the Draft Law on Strike, which was at a public debate in 2018, carries several novelties regarding the role and competencies of the Republic Agency for Peaceful Settlement of Labor Disputes, which should contribute to further development of the institute of peaceful settlement of labor disputes in our country.

It has been proposed that the minimum work process, i.e. the type and scope of work, be determined by a collective agreement, unless otherwise prescribed by law, which is a novelty. If the minimum work process is not determined by the collective agreement, the employer and the union, i.e. the majority of employees, should try to reach an agreement on the minimum work process. If the said agreement is not reached, the minimum work process shall be determined by the decision of the arbitration panel formed by the Republic Agency for the Amicable Settlement of Labor Disputes. The Arbitration tribunal shall consist of five arbitrators, shall render its decision within 30 days of the initiation of the proceedings, and its decision shall be binding. It is envisaged that the manner of work of the arbitration panel will be regulated in more detail by an act of the minister responsible for labor affairs. An interesting and original solution is given, which certainly represents a special value of this draft law.

Also, it is prescribed that the employer appoints employees who are obliged to work during the strike in order to ensure the minimum work process, according to the obtained opinion of the strike committee, and that it cannot appoint members of the strike committee to work without the consent of the strike committee. It is prescribed that when a strike is organized in activities of general interest, the decision to go on strike is submitted to the Agency for participation in the procedure of peaceful settlement of a labor dispute. If no agreement is reached within 10 days from the day of delivery of the decision, the employees can go on strike.

It was also proposed that the Agency keep records of the strike, as follows:employer, type of strike, number of organized strikes, demands of the participants in the strike, duration of the strike, place of holding and manner of termination of the strike.

Although the procedure for drafting this regulation is still ongoing, it is expected that the proposed solutions on the competencies of the Agency will

4 P. Trifunovic, Trifunović, Dismissal due to illegal strike, Kopaonik School of Natural Law, no. 11, 2019. pg. 531,

be accepted, in order to improve the exercise of the right to collective action in our legal system, as a basic collective socio-economic right..[5]

6. Applicability of methods of peaceful settlement of labor disputes to civil servants

A special challenge for the further development of the institute of peaceful settlement of labor disputes is the possibility of applying these methods to civil servants. The existing legal solutions also give the possibility to civil servants and especially employees to address the Agency in terms of resolving labor disputes regarding e.g. vacations or harassment at work.

The Government of the Republic of Serbia has adopted two conclusions by which it recommends the public sector, as well as civil servants, to resolve labor disputes peacefully. The first is Conclusion 05 Number: 116-8060/2015-02 of 29. 7. 2015, which recommends to the public sector to, in accordance with the law, resolve collective and individual labor disputes before the Republic Agency for the Peaceful Settlement of Labor Disputes. The second is Conclusion 05 Number: 11-10175/2017-1 of 26 October 2017, which recommends that the public sector use the opportunity for conciliators to participate in collective bargaining when concluding collective agreements in accordance with the law governing the peaceful settlement of labor disputes and to inform their representatives in collective bargaining on the possibility of introducing a clause in collective agreements, to resolve labor disputes in accordance with the law governing the area of peaceful settlement of labor disputes.

However, the specificity is that according to the Law on Civil Servants: a civil servant has the right to appeal against the decision deciding on his rights and duties, if the appeal is not explicitly excluded by that law (Article 16, paragraph 1); appeal commissions decide on appeals of civil servants against decisions by which their rights and duties are decided in administrative proceedings; the Complaints Commission of the Government decides on the appeals of civil servants from state administration bodies, government services and the Republic Public Attorney's Office (Article 144, paragraph 1); the administrative inspector may propose to the appellate commissions to annul or revoke illegal final decisions deciding on a right or duty of a civil servant on the basis of official supervision (Article 175, paragraph 3), provided that the annulment or revocation of an illegal final decision deciding on a the right or duty of a civil servant from state administration bodies, government servi-

5 See more about the right to collective action in S. Jašarević, *Social Law*, Faculty of Law, Novi Sad, 2010. p. 133,

ces and the Republic Public Attorney's Office is decided by the Government Appeals Commission.

Therefore, according to the formal basis arising from the above provisions, the Complaints Commission of the Government is competent to decide on complaints of civil servants from ministries, with administrative bodies within them; special organizations, government services, professional services of administrative districts (to which, in accordance with Article 41, paragraph 4. Law on State Administration - "Official Gazette", no. 79/05 and 101/07, apply the regulations on state administration) and the Republic Public Attorney's Office.

Therefore, a peaceful settlement of the dispute is possible only if the civil servant is not satisfied with the decision of the Complaints Commission, and before the court procedure. However, the limited competence of the Agency, but also the specifics of the current Law on Civil Servants limit that space.

7. Conclusion

The Law on Peaceful Settlement of Labor Disputes in Serbia has been in force for over 15 years.

The Law on Peaceful Settlement of Labor Disputes has encountered numerous challenges in our legal system, which has led to amendments to laws and bylaws. This is evidenced by three amendments to the law. We can conclude that there are still a large number of challenges in the practical application of these regulations.

Following all the challenges that we have paid special attention to in this paper, we should draw attention to the new Law on Strike and the challenges it brings. This law will give a special place to peaceful methods for resolving disputes, which will also raise the quality of the procedure for peaceful settlement of labor disputes.

Also, successful practice of applying the institute of peaceful settlement of labor disputes with over 18,500 initiated proceedings, the trend of a large number of consents to resolve disputes amicably (over 90%), social benefits of alternative labor dispute resolution, speak of the applicability of these methods and their readiness to answers to all current challenges of labor legislation in the field of peaceful settlement of labor disputes.

Bibliography

Јашаревић, С. (2010). *Социјално право*, Правни факултет Нови Сад,

Јовановић, П. (2015). *Радно право*, Правни факултет Нови Сад,

Ковачевић Љ. (2016), *Ваљани разлози за отказ уговора о раду*, Правни факултет у Београду,

Лубарда, Б. (2014). *Увод у радно право, са елементима социјалног права*, Правни факултет Универзитета у Београду,

П. Трифуновић, Отказ због незаконитог штрајка, Копаоничка школа природног права, Бр. 11, 2019. стр. 531,

Закон о изменама и допунама Закона о мирном решавању радних спорова („Службени гласник РС“ бр. 50/18),

Закон о мирном решавању радних спорова (Службени гласник РС бр. 125/04 и 104/09, 50/18),

https://www.ramrrs.gov.rs

Др Ивица Лазовић, Републичка агенција за мирно решавање радних спорова
Миле Радивојевић, Републичка агенција за мирно решавање радних спорова

Изазови радног законодавства у области мирног решавања радних спорова

Резиме

У овом раду бавимо се актуелним изазовима радног законодавства у области примене института мирног решавања радних спорова, првенствено у Републици Србији. У раду се анализирају изазови пред којима се налази радно законодавство у овој области, као и најчешћи проблеми приликом решавања радних спорова. Такође се прави преглед кључних дешавањау области мирног решавања радних спорова у Србији, између два саветовања Удружења за радно право и социјално осигурање. У раду се износе и актуелни статистички подаци у погледу броја спорова који се решавају мирним путем и број добијених пристанака на овај начин алтернативног решавања спорова. Ти подаци су посебно афирмативни у неколико последњих година, а посебан пораст је

забележен 2019. године. Наведено је и повод кратке анализе бенефита од овог правног института као што су растерећење судова; унапређење социјалног дијалога; смањење броја штрајкова, побољшана комуникација са социјалним партнерима, сарадња са синдикалним организацијама и удружењима послодаваца, ефикасност поступка, неформалност и релаксираност, једноставност, бесплатност, а истакнута је и уштеда средстава која се финансирају из буџета и којом се умањују трошкови поступка. Посебна пажња се посвећује и изазовима које поси рад на новом пропису којим би се уредио штрајк у Србији. Један од сегмената интересовања је могућност развоја мирног решавања радних спорова међу државним службеницима имајући у виду посебан правни режим којим су ови односи регулисани. Аутори су се определили да овај рад буде објављен на енглеском језику из два разлога, прво што је часопис међународног карактера те нам је циљ да се представимо широј стручној јавности, а друго што је у време епидемиолошких мера због спречавања ширења Корона вируса неизвесно одржавање годишњег заседања Удружења и интерактивна расправа о радовима. У сваком случају, овим радом се допуњавају ранији подаци и дају неки нови показатељи о раду Републичке агенције за мирно решавање радних спорова и пракси овог правног института.

***Кључне речи**: радно законодавство, мирење, арбитража, штрајк, државни службеници.*