ANALYSIS OF THE GENERAL COLLECTIVE AGREEMENT'S IMPLEMENTATION

2008 - 2011

SERBIAN ASSOCIATION OF EMPLOYERS

International Labour Organization

Austrian Development Cooperation

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Staff of the Serbian Association of Employers

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SADRŽAJ

Chapter 1

ABOUT COLLECTIVE BARGAINING AND PREVIOUS GENERAL COLLECTIVE AGREEMENT

(„Official Gazette of the RS", No. 50/2008, 104/2008 - Annex I and 8/2009 - Annex II)

Collective agreements are legal instruments governing the rights, obligations and responsibilities regarding labor relations that are of importance for employees and employers. As a rule, these agreements generally systematize three groups of issues: economic rights and obligations, procedural issues, and penalties for failure to perform contractual obligations. Collective agreements represent an important source of labor law. In developed democratic countries, labor law has evolved in such a way that the laws only define minimum standards of labor legislation, while other issues are regulated by collective agreements. Contracts can be concluded at different levels - national, branch and company level.

Convention No 98 of the International Labour Organization – Right to Organize and Collective Bargaining - prescribes an obligation, in accordance with national legislation, to undertake measures to encourage and promote voluntary negotiation of collective agreements between employers or employer organizations and trade unions, in order to determine conditions of work .

Labour Law of the Republic of Serbia ("Official Gazette RS" no. 24/2005, 61/2005 and 54/2009), is brought into accordance with the international conventions, and in its Articles 3, 240, 242, 249, 254, 256 it defines a process for collective bargaining.

The said law provides that collective agreements may be on general, sectoral or company level.

A General Collective Agreement is one concluded between a representative organization of employers and representative trade union established for the territory of the Republic of Serbia.

A sectoral collective agreement for a specific sector, group, subgroup, or activity is one concluded between a representative employer organization and representative trade union set up for that sector, group, subgroup, or activity.

A special collective agreement for the territory of autonomous provinces and local government is one concluded between a representative employer organization and a representative trade union established for a territorial unit for which a special collective agreement is being concluded.

A special collective agreement for public companies and public services may be concluded by the founder, or body authorized by him, and the representative trade union. On behalf of the employer, the collective agreement is signed by the Director.

Special collective agreements for those self-employed in the arts or culture (independent artists) are concluded between a representative employer organization and representative trade union.

A special collective agreement for athletes, coaches and experts in sports may be concluded by the representative association for the sports activity in physical education and the representative trade union.

Collective agreements on the company level are concluded between the employer and the trade union representative on the company level. On behalf of the employer, the collective agreement is signed by the Director, or the Entrepreneur.

Previously the General Collective Agreement was concluded under the provisions of Article 244 of the Labour Law in Belgrade, on April 29, 2008, between the representative employers' organization – the Serbian Association of Employers and the representative trade unions established for the territory of the Republic of Serbia, being the Confederation of Autonomous Trade Unions of Serbia and the United Branch Trade Unions "Nezavisnost".

This Agreement regulated, in accordance with the Labour Law, the rights, obligations and responsibilities in the field of labor and labor relations between the parties to the collective agreement, as well as determining other issues of importance to the employee and the employer.

The Agreement was published in the Official Gazette of the Republic of Serbia, No. 50/2008, and it came into force on May 17, 2008.

In order to reduce certain financial burdens and for the purpose of bringing its wording in line with the legal terminology, the parties to the General Collective Agreement signed the Annex I of the General Collective Agreement ("Off. Gazette of RS" No. 104/2008), and it came into force on January 1, 2009.

Also, in order to implement economic and social policy in Serbia, to ensure equal working conditions of employees and the prevention of unfair competition, the Minister of Labour and Social Affairs made the decision to extend the General Collective Agreement and the Annex it to all employers in the Republic of Serbia. This decision became legally effective on November 19, 2008, and came into force on January 1, 2009.

Shortly after the Minister had signed the document, the circumstances under which the Agreement was signed significantly changed and clearly hampered the fulfillment of obligations undertaken by the Serbian Association of Employers. It became apparent that the Agreement did not meet the expectations of the parties to the Agreement, so the Serbian Association of Employers has taken the position that it was only unfair to retain the legal enforcement of the Agreement.

This change of circumstances was a result of both the global economic crisis and its impact on social and economic stability in our country, and of the decision of the Government of Serbia to unilaterally implement the Interim Trade Agreement with the European Union.

Bearing these circumstances in mind, the Serbian Association of Employers (SAE) has taken the firm position that further implementation of the General Collective Agreement would have a negative impact on the majority employers in the Republic of Serbia.

For the reasons just stated, recognizing the serious consequences of the imminent economic crisis on the economy and employment in the Republic of Serbia, and the impossibility of fulfilling the obligations undertaken by the said Agreement, and as a result of events for which neither party to the Agreement was liable, the Serbian Association of Employers took into account the views of competent authorities of the Serbian Chamber of Commerce and of the Foreign Investors' Council, and initiated the cancellation of the General Collective Agreement. The SAE also urged the State to take, as soon as possible, other measures to alleviate the nega-

tive effects of the global economic crisis and ensure long-term economic and social progress of the Republic .

At the same time, the SAE invited signatory parties to the Agreement, in accordance with the provisions of Article 264, para. 2 of the Labour Law, to start negotiations about a new General Agreement, which would better reflect the real situation in the economy. (Since that time the economic situation has in fact worsened.) The SAE has also informed the social partners that it remains open to negotiations about sectoral collective agreements.

In response to the SAE's initiative to terminate the General Collective Agreement, negotiations between the social partners were initiated and they resulted in the Agreement on the further development of social dialogue. This Agreement was signed on January 31, 2009 by the authorized representatives of the Serbian Government, Confederation of Autonomous Trade Unions of Serbia, United Branch Trade Unions "Nezavisnost" and Serbian Association of Employers. Later on, the SAE cancelled its initiative for termination of GCA.

In order to implement the aforementioned agreement, the Annex II of the General Collective Agreement was signed ("Off. Gazette of RS" no. 8 / 2009), and came into force on February 11, 2009. The Annex II temporarily postponed the implementation of the provisions from the General Collective Agreement relating to the financial burden on employers.

Due to the widely acknowledged consequences of the global economic crisis and the difficulties in the domestic economy, these provisions have never again been enforced, and the General Collective Agreement ceased to be valid on May 17, 2011 - after the expiration date.

Chapter 2 Economic Situation 2008-2010

The circumstances under which the General Collective Agreement was signed were outlined in the introduction. Even in 2008, when the GCA was signed, the economic situation was not befitting the signing of such an agreement. By way of reflection, the global financial crisis had in fact already started in the middle of 2008 with the collapse of the real estate market in the United States.

Despite the beginning of the global financial crisis and its obvious and rapid spread to other countries, on April 29, 2008 the General Collective Agreement was signed. It provided benefits to employees that were in that business and economic environment simply unsustainable and inappropriate.

Gross Domestic Product

Gross Domestic Product (GDP) in the Republic of Serbia has recorded significant rates of growth since 2005. However in 2009, a decrease by 3,5% was recorded, compared to 2008 (Table 1).

It is important to note that the gross value added by the processing industry's share of the total Gross Domestic Product in the Republic of Serbia has been in constant decline since 2005. The Processing industry has in general borne the heaviest burden of the global financial crisis and its impact on Serbia. Although the total gross value added by the processing industry recorded in 2008 represents modest growth of 0.8 percentage points compared to 2007, in 2009 it recorded a drop of 15.8 percentage points (Table 2).

It is important to note that in 2009 the share of gross value added of industries and of the services that are based on the industry dropped to about 57,97% of the Gross Domestic Product. Also, there has been a big share of net taxes in the GDP of 17.65% (average in EU countries is around 10%).

These changes in GDP and its components illustrate the crisis that hit the entire real sector in Serbia. Industrial production recorded modest growth in 2010. However, there will not be rapid economic growth without serious changes in economic policy that must create a favorable business environment as a precondition for any other development.

Table 1: Gross Domestic Product in RS

Year	2005	2006	2007	2008	2009	2010
GDP growth rates	5,4	3,6	5,4	3,8	-3,5	1,8
industrial production	100,6	104,2	104,1	101,4	87,4	102,5

Source: Statistical Office of the Republic of Serbia

Table 2: Share in GDP

	Republic of Serbia				
	2005	**2006**	**2007**	**2008**	**2009**
Gross Value Added of Economic Activities	**84,60%**	**85,20%**	**84,40%**	**84,98%**	**84,94%**
A – Agriculture, forestry and fishing	9,98%	9,62%	8,42%	8,81%	9,20%
B – Mining and quarrying	1,54%	1,55%	1,49%	1,51%	1,49%
C – Manufacturing	14,43%	14,35%	14,27%	13,85%	12,08%
D - Electricity and gas supply	2,74%	2,70%	2,65%	2,60%	2,72%
E – Water supply, collection, purification and distribution of water	1,36%	1,25%	1,22%	1,18%	1,26%
F – Construction	3,97%	4,06%	4,27%	4,31%	3,58%
G – Wholesale and retail trade; repair of motor vehicles and motorcycles	10,31%	11,01%	12,03%	12,36%	11,84%
H – Transport and storage	4,68%	4,90%	4,84%	4,54%	4,23%
I – Hotels and restaurants	1,05%	0,96%	0,98%	0,96%	0,89%
J – Information and telecommunication services	3,89%	4,78%	5,29%	5,64%	6,44%
K – Financial intermediation	2,24%	2,55%	2,63%	2,87%	3,14%
L – Real estate, and renting	10,33%	10,15%	9,78%	9,81%	10,29%
M – Research and development, computer and related activities	2,39%	2,39%	2,40%	2,51%	2,78%
N – Other business activities	0,93%	0,92%	0,91%	1,03%	1,19%
O – Public administration and defense; compulsory social security	4,14%	3,88%	3,66%	3,57%	3,79%
P – Education	3,83%	3,60%	3,41%	3,28%	3,41%
Q – Health and social work	4,88%	4,57%	4,37%	4,33%	4,51%

R – Recreational, cultural and sporting activities	0,90%	0,89%	0,90%	0,95%	1,05%
S – Other service activities	0,94%	0,98%	0,94%	0,94%	1,01%
T – Activities of households	0,08%	0,09%	0,08%	0,08%	0,09%
FISIM (Financial intermediary services, indirectly measured)	**1,83%**	**2,10%**	**2,13%**	**2,33%**	**2,60%**
Gross Value Added	**82,77%**	**83,11%**	**82,28%**	**82,67%**	**82,37%**
Taxes on production paid minus subsidies on production (net taxes)	**17,23%**	**16,89%**	**17,74%**	**17,32%**	**17,65%**

Source: Statistical Office of the Republic of Serbia

Industrial production in the Republic of Serbia

Industrial production in Serbia registered a significant decline in 2009, when the consequences of the global financial crisis were felt here. Industrial production recorded a slight recovery in 2010, although it was still below pre-crisis levels.

Despite the slight increase in industrial production, the overall situation in the Serbian economy is still alarming. Only four industrial activities have returned to pre- crisis levels - mining sector, tobacco, paper and paper products, and production of electrical equipment. At the same time, several other business activities recorded declines in 2010 as well (Table 3).

Table 3: Index of industrial production, base year = 2005

	2008	**2009**	**2010**	**2010-2008 differential**
Republic of Serbia				
Total	110	96,1	98,5	-11,5
B – Mining and quarrying	109,9	105,7	111,8	1,9
C – Manufacturing	110,6	92,8	96,4	-14,2
10 Manufacture of food products	107,6	101,4	102,8	-4,8
11 Manufacture of beverages	120,5	104,7	102,6	-17,9
12 Manufacture of tobacco products	108,1	105,9	114	5,9

13 Manufacture of textiles and textile products	66,2	45,1	51	-15,2
14 Manufacture of wearing apparel; dressing and dyeing of fur	88,7	68,5	67,8	-20,9
15 Manufacture of leather and leather products	94,3	77,2	75,8	-18,5
16 Manufacture of wood and wood products	100	56,5	45,3	-54,7
17 Manufacture of pulp, paper and paper products	109,6	105,1	115,9	6,3
20 Manufacture of chemicals, chemical products and man-made fibers	110,8	82,4	100,4	-10,4
21 Manufacture of basic pharmaceutical products and pharmaceutical preparations	128,6	107,8	106,6	-22
22 Manufacture of rubber and plastic products	103,8	84	84,7	-19,1
23 Manufacture of other non-metallic mineral products	101,4	81,4	81,6	-19,8
24 Manufacture of basic metals	124,4	88,6	107,2	-17,2
25 Manufacture of fabricated metal products, except machinery and equipment	123,8	100,8	108,4	-15,4
26 Manufacture of office machinery and computers, and optical equipment	44,6	35,1	25,1	-19,5
27 Manufacture of electrical equipment	128,6	115,5	132,4	3,8
28 Manufacture of other machinery and equipment	101,7	74,2	65,8	-35,9
29 Manufacture of motor vehicles, trailers and semi-trailers	75,8	45,6	43,5	-32,3
30 Manufacture of other transport equipment	227,3	216,3	179,1	-48,2
31 Manufacture of furniture	198	124,4	127,3	-70,7
32 Other manufacturing	78,3	81,1	65,8	-12,5

Source: Statistical Office of the Republic of Serbia

Employment

Employment in the Republic of Serbia has been in constant decline since 2005. While 2008 saw the drop in employment halted, 2009 witnessed another significant decline in numbers employed. (Table 4).

2009 and 2010 both saw a big decline in employment, both for legal entities, as well as in the sector of entrepreneurs.

Again, the greatest burden of the economic crisis was borne by industry. Declining employment has contributed to the fact that in 2010, only 300.000 were employed in industry (Table 5).

Table 4: Formal employment in RS, annual average

	Total	Legal entities	Private entrepreneurs
Number of employed - total, annual average			
REPUBLIC OF SERBIA			
2005	2.068.964	1.546.471	522.493
2006	2.025.627	1.471.750	553.877
2007	2.002.344	1.432.851	569.494
2008	1.999.476	1.428.457	571.019
2009	1.889.085	1.396.792	492.293
2010	1.795.775	1.354.637	441.138

Source: Statistical Office of the Republic of Serbia

Table 5: Active, employed, unemployed and inactive population

	REPUBLIC OF SERBIA					
	2005	**2006**	**2007**	**2008**	**2009**	**2010**
Active population	3.453.293	3.323.716	3.241.209	3.267.107	3.119.419	2.964.966
Employed population	2.733.412	2.630.691	2.655.736	2.821.724	2.616.437	2.396.244
Unemployed population	719.881	693.024	585.472	445.382	502.982	568.723
Inactive population	3.002.708	3.188.584	3.115.423	3.083.221	3.230.909	3.352.921

Source: Labour Force Survey, Statistical Office of the Republic of Serbia

Foreign trade

Since 2004 the Republic of Serbia has recorded substantial deficits in foreign trade.

In terms of quantity, the most exported products are basic metals, with hot-rolled iron sheeting being most represented. The next highest on the export scale are food & drink products - mainly primary agriculture products such as corn and frozen fruit and sugar, but also food products such as bakery items, chocolate and food products containing cocoa. Also, exports of chemical products feature strongly, such as medications and polymers of ethylene.

Fuel is mostly imported - oil, gas, coke and oil derivatives. Other significant imports are cars and motor vehicles for transport of goods, as well as chemicals and chemical products - medications, nitrogen fertilizers, products for washing, insecticides, rodenticides, and iron ore, machines and equipment (Table 6).

The above data illustrate the crisis in Serbian industry in 2009 and 2010. At the same time, despite the weak signs of recovery, the economy is still burdened by problems of illiquidity and high fiscal and para-fiscal burdens that have manifested in recent years, and these represent significant obstacles to employment growth.

In such circumstances, bearing in mind that the previous General Collective Agreement was not appropriate for the economic crisis, there is an obvious need to review the foundations of the General Collective Agreement and to adapt any future agreement to actual capabilities and needs of business. The future GCA must have as a primary goal increased competitiveness and the creation of a business environment conducive to employment growth, particularly in production and labor-intensive industries. This would set the foundation for production growth and sustainable development.

Table 6: Foreign exchange (mill. USD)

Year	Export	Import	Foreign trade	Coverage of export by import
balance	Coverage of export	10.753	-7.230	32,76%
by import	4.482	10.461	-5.979	42,84%
2004	3.523	10.753	-7.230	32,76%
2005	4.482	10.461	-5.979	42,84%
2006	6.428	13.172	-6.744	48,80%
2007	8.825	18.554	-9.729	47,56%
2008	10.974	24.331	-13.357	45,10%
2009	8.344	16.056	-7.712	51,97%
2010	9.795	16.735	-6.940	58,53%

Source: Statistical Office of the Republic of Serbia

During the period May 2008 to May 2011 the Serbian Association of Employers received numerous complaints from both small and medium enterprises (SMEs) and larger companies in Serbia that implemented the General Collective Agreement. These complaints related to specific Articles of the GCA and the incomplete definitions of rights and obligations of companies. Practical implementation of these inadequately defined obligations had caused numerous administrative problems and resulted in significant costs for employers. The primary complaint has been that the Labour Law of the Republic contains too much vagueness and too many legal gaps, which leaves much scope for subjective and arbitrary interpretations.

Disputed articles of the GCA were analyzed in this Chapter on the basis of 324 collated complaints, with reference to their implementation in practice and the resulting costs.

II Labour Relations

Article 6

The employer shall be obliged to file the request for employment with the National Employment Service.

The request shall contain general and specific terms set forth by the Rules of Organization and Job Classification.

The representative trade union of the employer shall be entitled to be notified on the employment policy.

Implementation in practice:

- Article 6 was not implemented in many companies during the period of validity of the General Collective Agreement (May 2008 – May 2010)
- The obligation to file the request with the NES is an obligation by the Law, so it is superfluous to have it in GCA as well
- The majority of companies in Serbia do not have Rules of Organization and Job Classification because entrepreneurs, small and micro companies have small numbers of employees, do not have separate departments and do not allocate specific works to specific departments inside the company
- The third paragraph of the Article 6 is also imprecise, because the companies do not have an employment policy (it is the obligation of the Ministry of Economy and Regional Development and of the National Employment Service). Sometimes an employment policy or plan exists at bigger companies and with investors who open new plants, but this accounts for just 0,1 percent of companies in Serbia. Therefore, this paragraph should be moved from GCA to single collective agreements.

Costs of implementation:

Article 6 as presently defined introduces an obligation for all companies, including entrepreneurs and micro companies to have Rules of Organization and Job Classification. Micro companies and entrepreneurs most often do not have a lawyer within the company who can write such a legal document. Therefore, the costs for writ-

ing these Rules amount between 8 and 15 thousand dinars (80-150 Euros) on the open market (average price charged by law offices and bookkeeping agencies).

Article 7

The employer may post the vacancies by means of an internal employment vacancies announcement.

Implementation in practice:

This Article is superfluous as it amounts to a recommendation only. The Labour Law gives a right to any private company to freely employ regardless of the way of announcing a vacancy – by means of an internal announcement or public contest. Employers should be given the right to independently decide which method of announcement to make.

A number of companies complained that trade union representatives referred to this Article insisting that companies hire their relatives and friends for certain jobs.

Costs of implementation:

In certain cases the internal announcement upon request of trade unions took employers and recruitment commissions a lot of time and energy only to find that candidates did not have adequate knowledge, experience and education. Afterwards employers had to organize a public contest, which doubled the labour and time costs.

IV Vacation and absence from work

Article 10

The length of the annual vacation shall be determined by increasing the legal minimum on the basis of criteria set forth by the law, as well as on the following basis:

- *night work;*
- *work on Saturdays and Sundays;*
- *disability;*
- *status of single parent of a child up to 14 years of age;*

The employer is obliged to determine the number of annual vacation days of the employee, by applying the criteria set forth by the law, this collective agreement and the special, or collective agreement with the employer.

Implementation in practice:

Forty-two companies complained that workers use this Article to accumulate days of annual vacation, due to the lack of any limit to the allowed number of vacation days during the calendar year. Employers propose that the maximum number of used days during one calendar year be limited to 30. It is also necessary to limit the number of days off, because it often happens that accumulated days of annual vacation and days off exceed 35 or 40 days which is often the case for representatives of trade unions.

There were also complaints that this Article is insufficiently defined and that criteria for calculating vacation days should also include special effects and success in the work during the current or the previous year. Implementation of this Article does not however enable significantly effective workers to be additionally rewarded by increased annual vacation.

Also, there is no timeframe during which a worker must advise his/her absence due to annual vacation, the number of days of absence, and the date of the beginning of vacation so an employer can organize work during the vacation season in an efficient manner.

Costs of implementation:

Due to accumulation of vacation days certain companies cannot organize work in an organized and efficient manner and it often happens that they have to hire extra persons through temporary employment agencies, while full time workers are on a vacation. This is particularly common in sectors such as agriculture and the food industry in Vojvodina and Central Serbia, but it also happens in other sectors such as the textile and construction industries in South, East and West Serbia when workers use vacation days for agricultural works on their own land or for seasonal construction works within the grey zone. At the same time their regular employer is forced to hire additional labour force. Estimates of costs vary – they are in proportion with the size of the company and number of its workers, from 10.000 to over 230.000 dinars (100 – 2.300 Euros) during one summer vacations' season.

Article 11

The employer shall be obliged to grant paid leave to the employee, up to seven working days per calendar year in the following cases:

1. marriage of the employee – three working days;

2. the spouse of the employee has given birth to a child- five working days;

3. other member of the employee's immediate family has given birth to a child- one working day;

4. death of the parent, adopter, brother or sister of the employee's spouse- two working days;

5. protection and repairs of damage caused to the household by a natural disaster- three working days;

6. moving the employee's household within the same settlement- one working day, or from one into another settlement- three working days;

7. taking professional or other examination- one working day, which constitutes a total number of six working days per calendar year;

8. participating at labor and production competitions organized by the trade union- at least one working day, depending on the distance of the competition venue;

9. using the organized recreational vacation for the purpose of preventing work disability- seven working days;

10. serious sickness of the immediate family member- seven working days;

11. other situations specified in the special or collective agreement with the employer.

Apart from being entitled to the leave referred to in Paragraph 1 of this Article, the employee shall be entitled to paid leave of the following duration:

1. five working days in case of death of the immediate family member;

2. two days for every voluntary blood donation, including the very day of donating blood.

The members of immediate family are considered to be the following: spouse, children, brothers, sisters, parents, adopter, adoptee, tutor and other persons living in the same family household with the employee.

Implementation in practice:

Employer grievances here are mainly that the Labour Law gives employees rights that are broad and generous enough with regard to the provisions of this Article and that it is enough to adhere to the Labour Law.

Fifteen medium and large companies stated that Point 3. of this Article is often misused and that the possibility for other members of an immediate family to be absent if a family member has given birth to a child should be cancelled, if absence for this reason has already been approved for a spouse.

Point 6 should also be cancelled because in practice it often happens that one employee moves household two or three times a year and each time asks for a day off. Moving household within the same settlement can be done during a weekend.

In a number of cases it was noted that employees participating at labour and production competitions from Point 8. often asked for days off, so that all these days together with vacation days and other days off exceeded 40 days!

Costs of implementation:

Article 11, in addition to the provisions of Article 10, increases the total number of days off, which, with days of vacation, adds to absence from work. Due to these lost days, planning and organization of work within the company is thrown into confusion and companies must often hire additional temporary labour force. The total costs are in proportion to the size of the company and the number of its employees, from 5.500 to 116.000 dinars (55 – 1.160 Euros) within a calendar year.

Article 12

The employer is obliged to grant unpaid leave to the employee up to five working days, in the events specified by special or collective agreement with the employer.

The employer may, upon request of the employee, grant to the employee longer unpaid leave than that set forth by the acts referred to in paragraph 1 of this Article, if it does not cause problems to the working process.

Implementation in practice:

In some cases employees filed demands for unpaid leave just one or two days in advance, which did not leave enough time to the employer to find appropriate replacement. It is necessary to have this type of absence advised to employers 20 days in advance so that proper workforce planning can be carried out.

Costs of implementation:

Costs of implementation mostly refer to losses incurred due to the fact that an experienced worker is suddenly absent, and the replacement person lacks experience to properly take over that job.

V Employee Protection at Work

Article 14

The employer shall be obliged, before building new facilities and introducing new production or work processes and work organization, to ask for the opinion of the trade union on the planned or needed measures of protection against noise, harmful substances, vibrations and other harmful effects for life and health of the employees.

The trade union shall be obliged to submit to the employer a written opinion referred to in Paragraph 1 of this Article, within 15 days from the date the opinion was asked for.

The trade union shall be entitled, directly or through the representatives of employees, to be notified and acquainted with the measures of security and health protection taken and working conditions in every post and to propose to the competent authority of the employer the implementation of the prescribed measures of security and health protection.

The competent authority of the employer shall be obliged to notify the trade union, within an appropriate timeframe, on the measures taken upon proposal referred to in Paragraph 3 of this Article.

Where the work process and conditions require, the employer shall establish a Board for Health Care and Protection, as an advisory body, consisting of the trade union representatives, employers and professionals in the field of health care and protection, if the employer employs such professionals.

Implementation in practice:

This Article impedes investment and expansion by those employers who built new facilities or rented and renovated existing facilities. Almost 40 documents are necessary for obtaining building and occupancy permits, so additional opinion by trade union slows down the investment process and incurs unnecessary costs.

This Article should be supplemented with an additional paragraph containing a clause that if a trade union does not submit to the employer the written opinion within 15 days from the date the opinion was asked, it should be taken as acquiescence for continuation of the works.

Costs of implementation:

The costs caused by this Article depend on total volume of investments and other costs caused by halting construction works. They can be within the range of tens of thousands to several million dinars.

Article 15

The employer shall be obliged, at its own expense, to provide group insurance for its employees in case of death, injury at work, reduction or loss of work capacity.

The employer shall be obliged, apart from insurance referred to in Paragraph 1 of this Article, to provide increased insurance against injuries at work and occupational diseases for its employees occupying posts with special working conditions, which is specified by the special or collective agreement with the employer.

Implementation in practice:

During the past three years the majority of companies in Serbia (particularly small and medium companies – 99% of companies) did not have funds for additional insurance for employees on the basis of this Article. Acknowledging that during the next several years, the economic growth will also be relatively modest, this should be left as an option, and not introduced as an obligation on the employer.

Should this still get introduced as a legal obligation on employers however, in order to prevent mass insolvency due to the additional burden it brings, these funds should be provided during the first years of implementation from the funds that are already being allocated for contributions for health insurance. Contributions for health insurance are among the highest in the region and they already represent a very significant burden on business.

Costs of implementation:

On the basis of the first screening and consultations with various insurance companies the minimum costs are between 550 and 2.724 dinars (5,5 and 27,24 Euros) per employee on a monthly level, depending on the type of work performed by each employee and the assessed risk for a particular working place.

VI Wages, Allowances and Other Incomes

Article 16

The signatory parties to this collective agreement shall seek to regulate the wages and to agree upon the base price of the simplest labor in the collective agreements pursuant to the basic principles, such as:

- *existential or social needs of the employee and his/her family;*
- *consumption bundle, the content and the value of which shall be determined by the Social and Economic Council of the Republic of Serbia;*
- *general level of economic development of the Republic and of individual economic activities.*

The signatory parties to this collective agreement agree that the Social and Economic Council of the Republic of Serbia give recommendations, at the end of every calendar year for the following year, and pursuant to the basic principles referred to in Paragraph 1 of this Article, for determining the base price of the simplest labor in the special collective agreements and that it make them public in an appropriate manner.

The signatory parties to this collective agreement agree to take measures needed for the purpose of implementing the recommendations referred to in Paragraph 2 of this Article.

Implementation in practice:

This Article overlooks the basic criterion for establishing the level of wages in the Republic of Serbia, and that is a treatment of wages as an economic category, directly in proportion with the development level of a particular sector, activity or company that performs it, and in accordance with financial possibilities of a company.

This Article has directly prompted often unrealistic requirements from representatives of trade unions for increased wages in companies that were facing accumulated debts and a difficult financial position, which brought some of them to the unenviable position of bankruptcy.

Also, the Social-Economic Council of the Republic of Serbia, headed by a Secretary and having only few employees, did not have capacity to assess, during the period 2008-2011, the level of basic wages for particular industry sectors.

This is how the minimum wage took over the role of basic wage in the Republic of Serbia. It had a negative affect on many sectors. In the period July 2008 – June 2011 the minimum wage increased some 30,77% even though the real economic growth was only 2,4% during the same period. Thus, private companies in Serbia, due to political decisions and the 'buying' of social peace were forced to raise basic wages 12,8 times more than real growth of their income.

The outcome of such recklessness in wages policy through use of the Labour Law and the GCA has been that almost 110.000 companies closed down in Serbia in the period early 2008 – June 2011.

Costs of implementation:

This unrealistic increase of wages cost the private sector (without public companies, public sector and state-owned companies)

nearly 176.175.234.000 dinars or around 1,75 billion Euros from April 2008 to May 2011. These costs, along with on average, some 45 other identifiable monthly burdens per sector, significantly contributed to stagnation of many companies.

Article 17

The signatory parties to this collective agreement shall seek to regulate the earnings in the collective agreement with the employer according to the base price of the simplest labor, specified by special collective agreements and according to:

1. achieved amount of earnings and their relation to the earnings paid by other employers of the same branch;
2. increase in life expenses;
3. share of earnings in the operation expenses;
4. financial and business results achieved.

Implementation in practice:

Practical implementation of this Article meant trade union demands for the basic price of labor to be determined on the basis of the basic price of labor and average wages in larger and more successful companies in the market (in which trade unions are present and where they have the greatest interest). This caused damage to small and medium companies whose financial results were significantly weaker than the results of larger companies in certain sectors. So the companies were forced to pay higher wages even if they did not generate sufficient income to afford it (with every increase of minimum wage which was often coefficient 1 in sector collective agreements). This, in addition to a number of other charges, contributed to their insolvency and decline.

It is necessary to determine wages in collective agreements at company level taking into account wages in companies that have achieved approximately the same financial results on annual level. This would help avoid an unrealistic expectation of increased wages.

Costs of implementation:

These parameters for determining wages from Articles 16 and 17 significantly, among other charges, increased costs of legal business and caused the accumulation of substantial financial losses . Such losses attributable such wage-fixing criteria vary from one company to another, depending on the number of employees, and the quantity of basic salary determined by the sector or individual collective agreement, or the amount of the minimum wage. They range from 20.000 to 30.000 dinars (200 – 300 Euros) for entrepreneurs with 2-3 employees per year, up to several hundred million dinars (several million Euros) in big enterprises with thousands of employees.

Article 18

The basic price of the simplest labor in the sector collective agreements and collective agreements at company level shall be agreed upon for a period not longer than six months and for an amount not lower than the previously stipulated amount.

Implementation in practice:

During 2009 and 2010, when the economy was heavily affected by the world economic crisis, as well as by accumulated domestic problems and numerous fiscal and parafiscal burdens, this Article prevented companies from reducing wages in cases where companies were insolvent. The business environment requires greater flexibility at negotiating wages considering that in Serbia there are significant issues such as:

- no legal restrictions in the collection of claims,
- VAT must be paid in advance (before the debtor pays for delivered services or goods),
- there is always a risk of change in exchange rate,
- the State and the local self-governments have for years been introducing new fiscal and parafiscal burdens without consultations with business, and
- the introduction of European standards mean higher domestic economy costs.

In these circumstances every guarantee for the amount of paid wages is a great temptation for the employer and greater flexibility is necessary so the companies can manage their financial obligations towards the State and employees.

Costs of implementation:

It is difficult to calculate total company costs due to implementation of this Article, but the approximate estimates put the costs to the economy in billions of dinars (tens of millions of Euros).

Article 19

The basic wage for the job performed by the employee, for specific tasks in the special, and/or for groups of tasks in the collective agreement, shall be determined by multiplying the basic price of the simplest labor by the labor coefficient.

Implementation in practice:

This Article should not be part of GCA, since each company should be left to determine its criteria for the amount of basic wage, depending on particular activities of a company or sector to which company belongs. This Article has so far conditioned employers' representatives while negotiating with trade unions about sector collective agreements to agree and accept the amount of basic wage for a particular branch, and then upgrade it with certain coefficients. This caused many problems in practice, because the companies in poorer and less developed parts of Serbia (southern, eastern and southwestern Serbia) had imposed on them the same amount of basic wage and coefficients as applied in companies in most developed regions.

Costs of implementation:

During just the first six months of implementation of a sector collective agreement for the construction industry and industry of construction materials 32 small, medium and large enterprises complained about this kind of regulation of relations between the basic wage and coefficients. Companies complained because it meant they could not motivate employees and that the level of education became the dominant criterion. Thus, employees who are qualified craftsmen, i.e. skilled workers, and who should receive higher wages according to the employer's appraisal and market value of the work done, could not be paid more. Otherwise, in accordance to Article 19 of GCA, an employer would have to increase wages to all employees with a college degree, which would cause millions of costs at the company level. In their complaints related to this Article the companies stated that its implementation causes an increase in annual company costs 350.000 (3.500 Euros) to even 27,5 million dinars (275.000 Euros) at large construction companies.

Article 20

The coefficient for determining the basic wage for the job per-

formed by the employee, stipulated by the collective agreement with the employer, consists of the following elements: complexity, responsibility, working conditions and qualifications.

As an exception to the Paragraph 1 of this Article, the coefficient may be determined without including the working conditions, if the employee is occasionally subject to difficult working conditions at work, on the occasion of which he/she shall be entitled to an increased coefficient for work in those conditions, pursuant to the collective agreement with the employer.

Implementation in practice:

Practical implementation of this Article has shown that there is a deeper division and complexity of jobs within certain sectors and activities, and that they must be addressed through more extensive criteria specific for each activity. This would prevent work in certain type of activities from being valued at less than it deserves despite its complexity.

Costs of implementation:

Together with Articles 17, 18 and 19 this Article has caused significant costs for employers during period May 2008 – May 2011.

Article 21

The basic wage of the employee shall be agreed upon by the employment agreement, in an amount not lower than the basic wage determined by collective agreement on company level, or the basic wage for specific tasks stipulated by sectoral collective agreement.

The higher amount of the basic wage referred to in Paragraph 1 of this Article can be agreed upon by the employment agreement, the maximum of which shall be represented in percentage stipulated by the collective agreement on company level.

Implementation in practice:

The implementation of Paragraph 2 of this Article showed that the restriction to increase the basic wage level as established in the collective agreement on company level creates unnecessary bureaucracy. If an employer, due to improved business, wants to increase the basic wage to those employees who were particularly effective in achieving greater financial gain for the company, he cannot do this because this would violate the collective agreement. In such cases the employer must either change the collective agreement, for which he must first obtain the consent of trade unions, or find other legal and administrative ways to overcome this obstacle.

Costs of implementation:

Costs of implementation of Paragraph 2 are related to the conclusion of a new collective agreement or annex to the collective agreement at company level and the superfluous work of employees on technical and administrative works, which prevents them from performing regular duties.

Article 23

The labor normative provisions and standards, as well as the criteria and benchmarks for measuring the work output of the employee shall be defined by the employer based on technical and technological equipment of the working process and optimum use of the working hours.

The employer shall be obliged to timely inform the employee on the labor normative provisions and standards, on the criteria and bench-

marks for determining the wages, as well as the changes in wages.

The employer, and/or its competent authority shall be obliged on the occasion of bargaining and signing the collective agreement to submit to the trade union the labor normative provisions and standards, as well as the benchmarks for determining the work output of the employee, in case they constitute an element for wage determining.

The labor normative provisions and standards, criteria and benchmarks for determining the work output that apply on the date of agreeing the basic price of the simplest labor, cannot be changed without the consent of the union, while the agreed basic price of the simplest labor is still effective. Exceptionally, if the technical and technological equipment of the working process is significantly changed, the employer may change the labor normative provisions and standards without the consent of the trade union, while complying with the prescribed technical and technological norms of the new equipment.

The trade union may require expert arbitration of the normative provisions and standards (hereinafter referred as the Arbitration), defined by the employer, pursuant to the Paragraph 4 of this Article.

The Arbitration shall be conducted by a commission consisting of experts designated by mutual agreement of the employer and the trade union. The Arbitration award shall be binding on the parties to the dispute. The Arbitration costs shall be covered by the employer.

Implementation in practice:

Experience has proved that the rights given to trade unions in the last two paragraphs of this Article have often been used against the employer in cases when there has been a real reduction in workload or company's turnover so the company had to reach for measures of consolidation (austerity and rational use of fixed assets and raw materials, reorganization and redundancies, etc.). In such cases, access to accounts and knowledge of the deteriorating financial condition of a company was often not enough for trade unions. Trade unions have often hampered employers who have been forced to reduce the number of employees in order to prevent company failure.

There have been cases where trade unions, informed by the employer that the number of employees had to be reduced due to a real redundancy, would initiate monthly discussions and disputes, in attempt to get more time. Trade unions were aware that all the costs of initiating disputes and arbitration processes would be borne by the employer and that employers would try to avoid entering the arbitration process. Therefore, the complaints that an employer violates the Labor Law and other laws, as well as the General Collective Agreement, were frequent. Initiation of the arbitration process drew a halt to decisions about redundancies for several months. It caused significant expense to employers, while trade unions were never held responsible for the cases where the Court of Arbitration found that accusations against their employers were without foundation.

Further implementation of this Article is possible in practice only if the costs of arbitration are to be borne by the party that is proved wrong, be it an employer or union. Trade unions must be held responsible for illegal strikes and damage to the employer, just as in cases when the arbitration processes are initiated without foundation. This is supported by the court practice where the losing party pays the costs of court procedure.

Costs of implementation:

Arbitration procedures have restricted decision-making about redundancy and employers have been forced to keep employed for

many months persons for whom jobs no longer existed, and they eventually had to bear the costs of arbitration which varied from 18.000 to over 450.000 dinars (180 to over 4.500 Euros). In this way companies have been forced to operate with losses, either at the level of separate units or as a whole, for a number of months, which caused serious harm to those companies.

Article 24

The employee shall be entitled to an increased wage in the following cases:

1. for work on a holiday which is a non-working day- minimum 120% of the base;

2. for night work, in case where that work was not taken into account when determining the basis wage- minimum 30% of the base;

3. for work in shifts, where that work was not taken into account when determining the basic wage - minimum 26% of the base;

4. for overtime work - minimum 26% of the base;

5. on the basis of the time spent at work for each full year of service spent in employment, increased by the length of insurance which was calculated by taking into account its increased duration - 0,5% of the base.

When the conditions under several bases are met at the same time, the wage increase percentage cannot be higher than the total amount of percentages under every increase base.

Implementation in practice:

Article 24 was implemented for only 7 months, until January 2009, when the Government of the Republic of Serbia, with the consent of the members of the Social-Economic Council of the Republic of Serbia, due to the effects of the global economic crisis, made the decision to suspend financial provisions of the GCA. A deteriorating economy and mass company insolvencies from the first half of 2009 continues to this day, with small fluctuations, bringing into question even the regular payment of wages. Hardly any company in Serbia was able to provide for points 1, 2, 3, 4 and 5 of this Article.

The General Collective Agreement should apply to the entire economy. However, there are large differences in investment and working capital, human and material resources between small, medium and large enterprises. Most impositions of the previous GCA impacted negatively on SMEs. Therefore the Serbian Association of Employers considers that any future GCA should not include the financial obligations as laid down in Article 24, but that the financial obligations should be determined in accordance with the Article 108 of the Labour Law which already provides large enough benefits to employees having in mind the gross national income per capita and the real purchasing power of 99% of businesses in Serbia (SMEs).

Employers are in fact willing to provide additional benefits to employees for their work in the company, in order to stimulate employees to be loyal to the company and achieve higher performance. Past work with the same employer may be addressed between Serbian Association of Employers and trade unions. All other benefits of Article 24 will have to remain at the level of the Labour Law, otherwise the majority of enterprises in Serbia will not have the funds to finance them.

Costs of implementation:

Rights granted to employees by Article 24 were implemented for only 7 months, until the outbreak of the global economic crisis.

Their effect was to increase gross wages on a monthly level by 9 to 21 percent on average, depending on the number of overtime days, duration of night work and work during public holidays, as well as on length of service as the basis for past work.

Article 26

The employee shall be entitled to a share in the profit on the basis of having contributed to the business success of the employer (rewards, bonuses, etc.), which shall be specified by the collective agreement on company level, or by the employment contract.

Implementation in practice:

This Article has prompted many complaints and much confusion . It is necessary to redraft the entire Article and clarify that if there is an annual profit for company employees, the trade union or majority of employees are entitled to initiate negotiations with the employer and demand payment of bonuses or rewards and thus proportionally participate in the company's financial success. This can be defined in advance by a collective agreement or employment contract with the employer, but the threshold of financial gain above which compensation or bonuses shall be paid and other conditions and terms of payment should be more clearly defined.

Article 27

The collective agreement on the company level may, in accordance with the law, stipulate the right of the employee to have a share in the profit.

The earning from profit shall be paid out on the basis of the determined results of operation, yearly statement of accounts or the results estimated before determining the yearly statement of accounts, in accordance with the collective agreement on the company level.

Implementation in practice:

Accounting and bookkeeping departments in companies have had problems with the payment referred to in Article 27. It is not clear how these payments are to be treated in the financial accounts, as regular salary (thirteenth salary), or one-time bonus. The uncertainty means employers do not know whether that have to pay income tax, personal income tax or taxes and contributions for wages.

Costs of implementation:

There have been more cases where companies were penalized because they paid the thirteenth salary from the profit without paying income taxes. Some tax administrations have used this case to penalize the companies in amounts ranging 100.000 to 1.6 million dinars (1.000 – 16.000 Euros). This flaw of the General Collective Agreement and the mismatch of the Corporate Income Tax with International Accounting Standards meant expensive penalties especially for socially responsible companies that have paid out a significant share of their profits through additional wages and bonuses to employees.

Companies have also often addressed the Ministry of Finance and paid the republic administrative taxes to get an interpretation of the Law on Profit Tax and Labor Law. The cost of each submission ranged from 2.500 to 12.000 dinars (25 to 120 Euros).

Article 28

The employer may offer the employee to conclude the employ-

ment contract under changed terms relating to the payment of minimum earning, under the following conditions:

- *difficulties in the operation process of the company or part of the company, such as: operation with a loss; lack of work which shall be identified by the competent authority of the employer upon previously obtained opinion of the representative trade union;*
- *minimum wage can be agreed for the period the difficulties in operation referred to in the previous indent exist, and no longer than six months in a calendar year.*

Implementation in practice:

Practice has shown that it is necessary to supplement this Article with a paragraph on planned reorganization as the reason for the offer to conclude employment contract under the altered conditions. Confronting both the world economic crisis and a local decline in the supply of goods or services, many companies were forced to carry out a planned restructuring, but the trade unions and employees often opposed this. The planned reorganization is a common process in modern industry and it is a common phenomenon in all companies that follow dynamic market trends. It is an active measure of development and preserving liquidity of companies and as such must be available to employers in Serbia, as in developed countries.

Costs of implementation:

Inability to offer the employment contract under altered conditions had resulted in postponements of planned reorganization for several months in many companies. The employers were forced to retain employees for which there were no everyday tasks or were surplus to production or service requirements. This problem was registered in 2009 and 2010 in 16 large, 7 medium and 21 small companies. Rough estimates indicate that these companies have lost 1.1 billion dinars (11 million Euros) in just two years, due to artificially keeping redundant workers.

Article 29

The employer shall be obliged to pay to the employee the balance between the minimum wage and the wage the employee is entitled to pursuant to the collective agreement on company level, or the employment contract, within 9 months starting from the month when the last minimum wage payment was made.

Implementation in practice:

This is one of the most controversial Articles of the GCA. In 2009 and 2010, influenced by the global economic crisis, as well as numerous burdens such as unrealistically high fiscal and parafiscal dues, many companies in Serbia were forced to lower wages to the level of minimum wages. This happened in every third company with more than 5 million dinars (50.000 Euros) of unpaid claims. The majority of them were during the first half 2011, when business conditions were in fact worse than compared to 2008 - the year the General Collective Agreement was signed. Even today the majority of them are not able to return the level of wages to those of 2008 and to pay the difference as foreseen in Article 29.

Thus the GCA provision in question is obsolete in the current economic climate of Serbia and it should be modified in order to more properly reflect the realities of the companies that struggle to continue to operate.

If a company lacks financial resources to pay the difference even after 9 months, it is necessary to postpone this payment until the conditions for doing so are met.

The possibility for debt write-off should also be introduced, with the consent of trade unions and employees, in case that it is the only way for a company to overcome the crisis and survive in the interest of both the employer and the employees.

Costs of implementation:

There are examples of certain smaller companies going bankrupt because there was insistence on the payment of these differences. Much more frequent is the arguments between trade unions and employers, blaming each other and spending a lot of energy demanding or declining for payment of the difference stipulated in Article 29. Trade unions often demand an employer sell part of a company's movable and immovable property and settle the difference, even when such property is mortgaged or bought on credit to provide employees with work tools.

On the other hand, there were very constructive approaches by some trade unions who were more concerned that the company overcome the crisis and employees do not get laid off, than that the difference is settled. There were also cases where the employers, though in a crisis and with bank loans, borrowed additional money from commercial banks in amounts of 600.000 to 7.5 million dinars (6.000 to 75.000 Euros) to pay the difference to employees.

Article 30

In addition to the cases stipulated by law, the employer shall be obliged to pay to the employee the allowance for the period he/she was absent from work in the following situations as well:

- *donation of tissue and other organs for humanitarian purposes;*
- *participation at sessions and seminars of the public authorities, administration authorities and local government, chamber of commerce authorities, employers' associations, management authorities of the employer, authorities of the trade unions and trade union associations;*
- *professional education and development for the needs of work processes at company.*

Implementation in practice:

The first point of this Article partially transfers the social role of the state to employer. One cannot expect that every employer in the territory of the Republic of Serbia should bear the costs of providing tissue and other organs. Here the companies should be allowed to make decisions independently. They already pay for these purposes to the Budget of the Republic and Fund of the National Health Insurances through a series of taxes and contributions, fees, charges and other levies. These costs should be reimbursed to employers or an employee should get a standby status at a company and be reimbursed for wage during absence directly from the Fund.

Complications, even disability, can occur particularly in cases of organ or tissue donation. The entire time employer must cover these costs, which leaves him disempowered. This question must be primarily regulated by the Labor Law and it should define the role of an employee - organ donors, HIF Fund and the employer.

In addition, the maximum number of allowable days of absence from work referred to in paragraph 2 and 3 during the calendar year must be specified. In a number of companies, there were cases

that certain employees abused this right, and trade union representatives had 50, even more than 60 days of absence from work during the calendar year, when summed up the vacation, labor-production games and other. When frequent sick leaves of certain employees are added, the number is higher than 80, which means that they did not work between 3 and 3.5 months during a year.

Vacation is a legal right of workers. However, other absences from work should be thoroughly redacted – they are 40-50% longer than in developed industrial countries.

Costs of implementation:

One mini-analysis of a medium size production company from Belgrade with 122 employees showed that the total number of days of annual leave, paid leave from work and sick leave in 2010 was 5.050 working days annually, or 41.4 working days per employee. The total annual loss for the company measured by the minimum price the working hour was 3.838.608 dinars (38.386,08 Euros). However, the average cost of working hours in this company was 24% higher than the minimum, so the real loss was 4.759.874 dinars (47.598,74 Euros).

Taking into account that more than 72.000 companies actively operate in Serbia (those that submit the final accounts to the National Bank of Serbia), the estimates show that the annual loss for the entire economy is between 25 and 30 billion dinars (between 250 and 300 million Euros). Entrepreneurs are not included in this estimate, so the total annual loss is by far larger.

Article 31

The employer shall be obliged to pay to the employee the allowance of minimum 65% of average earning for the last three months preceding to the month when the temporary stoppage of work happened, in the following cases:

- *during the stoppage of work ordered by the competent public authority or the competent authority of the employer, for not having provided protection at work, which is the condition for further operation without endangering life and health of the employees and other persons and in other cases, in accordance with the law;*
- *while waiting for transfer to other post, professional retraining or additional training, pursuant to the positive regulations;*
- *during the period of completing professional retraining or additional training in accordance with the law;*
- *while waiting for assignment to appropriate post, after having professional retraining or additional training completed, pursuant to the applicable regulations;*
- *during the stoppage of work not caused by the fault of the employee, of maximum 45 working days per calendar year.*

Implementation in practice:

In applying this Article, many commercial entities have been forced to pay 65% of average earning at the level of the Republic of Serbia, which caused significant costs. It is necessary to amend this Article in such a way that an employee gets paid 65% of his/her average salary over the preceding three months before the month when the temporary stoppage of work happened.

Also, the last point remained undefined. Apart from defining an employer's obligation to pay an employee 65% of average earning for a maximum of 45 days during which an employee did not work, it does not specify precisely the causes for the implementation of this provisions of the GCA. In this way it creates a legal loophole

which could cause additional damage and costs to employer, particularly in the event of any arbitration and court procedure.

Costs of implementation:

Implementation of Article 31 in a given form caused most damage to entrepreneurs and SMEs in the least developed parts of Serbia. There have been in particular many complaints from companies from southern Serbia: Leskovac, Vranje, Nis, Bujanovac, and cities of eastern Serbia - Zaječar and Kladovo. Earnings in these companies are for 5.000 to 10.000 dinars lower than the republic average. There were also many cases of companies that paid minimum wages due to difficulties in conducting business in 2009 and 2010. Thus, the implementation of Article 31 in practice has led to an absurd situation where employees temporary prevented from working were paid 65% of average earnings and receive higher wages than other employees who came every day to work, performed their tasks and received a minimum or slightly higher wage.

It is impossible to estimate the costs of implementation of this Article for all companies in the country. For example, a small company with 29 employees in Kladovo, the costs in 2010 year amounted 846.350 dinars.

Article 32

The employer shall be obliged to compensate the employee the costs such as:

- *coming to and going from work, at the level of the price of the public transportation ticket;*
- *meals during the time spent on official trip in the country (daily allowance for the business trip in the country), amounting to 5% of the average monthly earning per employee of the economic sector of the Republic, according to the latest published data by the Republic authority in charge of the statistics, overnight accommodation costs according to the receipt attached, with the exception of accommodation in a luxury hotel, provided that the travel costs of transportation shall be compensated totally according to the receipt attached;*
- *time spent on an official trip abroad under the conditions and in a manner specified by appropriate regulations;*
- *daily allowance for increased costs of fieldwork and stay in field of work (fieldwork allowance) of 3% of the average monthly earning of the employee of the economic sector of the Republic, according to the latest published data by the Republic authority in charge of the statistics and, in case the accommodation and meals are not provided, the compensation of the accommodation and meals costs;*
- *usage of own vehicle for the service purposes up to the level of 30% of the price of one liter of the 'super' type of petrol per kilometer made;*
- *monthly meals at work for the days spent at work, in an amount up to 20% of the average monthly earning of the Republic, according to the latest data published by the Republic authority in charge of the statistics;*
- *the vacation allowance at the level of an average monthly earning of the Republic according to the latest data published by the Republic authority in charge of the statistics, in case the employee is entitled to annual vacation of minimum 20 days; and a proportionate part of the vacation allowance for the vacation, in case the employee is entitled to annual vacation not longer than 20 days;*
- *other compensations of costs, in accordance with the general act.*

Meals allowance in the sense of the Paragraph 1, item 6) of this

collective agreement, may be agreed upon between the employer and the person performing temporary or occasional work.

The payment of the vacation allowance in the sense of the Paragraph 1, item 7) of this Article, shall be made, in principle, when the employee goes on annual vacation, and not later than December 31 of the current year.

Implementation in practice:

In the implementation of paragraph 1, point 1, it has been proved that the terms under which the employer shall reimburse employee travel expenses are not sufficiently defined. There are numerous cases where the employee lives significantly far from work, and where these costs exceed half of the monthly wage of an employee. There were also cases where employees deliberately changed their place of residence and had it registered on the territory of other municipality, 40 and 50 km away from work, in order to get the increased amount of reimbursement for transportation, although they still lived close to work. These situations require a change in the method of calculating compensation for the transportation and the employer's obligation should be agreed individually with each employee within the employment contract. In this way, those employers who have an interest in financing the transportation of employees from distant cities and municipalities to the workplace will be able to agree with them on the amount of compensation for transportation or pay for part of the cost of transportation. This would prevent the possibility of manipulations and unnecessary costs for employer.

In implementation of paragraph 1, point 2, it is also necessary to determine the daily allowance for business trips in accordance with the average monthly salary in a particular industry or economic activity, in order to avoid an employee on a business trip receiving significantly higher earnings than other employees in the same company.

The practical implementation of paragraph 1, point 4, it proves that compensation for fieldwork should be left out from the General Collective Agreement, because in certain industries or activities an employee works every day in the field and his/her salary increases over 50% per month. This compensation should be subject to sector and individual collective agreements, or be determined within the employment contract.

With the implementation of paragraph 1, point 6, it is necessary delete from the GCA the amount of monthly meals at work and define it by the sector collective agreements or by individual or collective agreements at company level, in accordance with the specificities of economic activity and financial capability of employers in a particular sector, activity or at the company level. This should be done in order to spare SMEs, which account for over 99 percent of total business entities and most often do not have resources for payment of meals at work.

In implementing paragraph 1, point 7, it has become apparent that it is necessary to leave this out of the GCA. The vacation allowance should be determined by the sector collective agreements or individual collective agreements at company level, in accordance with the specificity of activity and financial capabilities of employers in a particular industry, sector or at the company level.

Due to differences in size and the financial situation of companies in the Republic of Serbia, it is also necessary to leave out the last two paragraphs from Article 32 of GCA, and add one paragraph:

"Employer and trade union (employee) may agree on amount and dynamics of payments for meals at work and vacation allow-

ance by sectoral collective agreements and individual collective agreements or employment contract, in accordance with the specificity of activity and financial capability of employers in a particular industry, activity or at the company level."

Costs of implementation:

Due to the inability of most companies in the Republic of Serbia to pay all financial obligations under Article 32 of the GCA, this Article was repealed by the Annex II of the GCA in February 2009, with prior approval of the members of the Social- Economic Council of the Republic of Serbia. The estimates were that the implementation of this Article would cost the economy in Serbia between 52 and 68 billion in 2009 alone.

Article 34

The employer may:

- *pay to the employee the premium of his/her voluntary pension insurance;*
- *pay to the employee the premium of collective insurance against the consequences of accidents and collective insurance in case of serious sickness or surgery.*

Implementation in practice:

It turned out that very few companies were able to pay employees any voluntary pension insurance, due to illiquidity, lack of funds and the impact of several other tax liabilities, fees, charges and burdens of business. This Article can stay in the General Collective Agreement only in the form of a recommendation to those companies that generate significant profits . The Serbian Association of Employers urges trade unions, if they want to keep this Article as part of the GCA or sector collective agreements, to support the initiative of the Serbian Association of Employers to have those companies that pay to their employees voluntary pension insurance in addition to the mandatory pension and health insurance, fully free from tax and all other state appropriations. This will ease the burden on the state pension fund particularly in the coming decades, and companies that comply with the principles of corporate social responsibility and worry about the future of their employees will significantly reduce costs.

Costs of implementation:

This Article has not caused additional costs to employers, since it was not binding. However, the introduction of compulsory insurance against accidents at work has been announced and that will significantly increase costs and threaten the solvency of many employers, especially small companies and entrepreneurs.

Article 35

In addition to payment of the employees' monthly earnings, the employer shall be obliged to provide funds of at least 0,15% to the total of funds paid out as earnings, for the work disability prevention and recreational vacation of the employee, in accordance with the special, or collective agreement with the employer.

Implementation in practice:

Companies implemented this Article of the General Collective Agreement in different ways. Some large companies that had available additional funds acted in accordance to Article 35, but most

small and medium-sized enterprises, faced with numerous challenges and lack of liquidity in the past three years, did not implement this Article.

Practice has shown that the majority of companies in Serbia did not have the funds to implement this Article, and it needs to be deleted from the General Collective Agreement. It should be negotiated in future within the sector or individual level, according to financial capability of employers in a particular industry or at the company level.

Costs of implementation:

Since this Article was only partially implemented, the total cost was 1.124.540 dinars on the level of one of the big companies with 512 employees that implemented this Article during three years of the GCA's validity.

VII Redundant Employees

Article 43

The employer shall be obliged to pay to the employee severance pay not lower than one third of the earnings of the employee per every year of employment, and not lower than 50% of average earnings per employee of the Republic, according to the latest data published by the authority in charge of the statistics, on the day of payment of severance, in case that is more beneficial for the employee.

Implementation in practice:

This Article of the GCA relates to Article 158 of the Labour Law, which alone represents a significant financial burden on employers, as well as being a disincentive to them to employ people with 20 or more years of service. It is therefore not necessary to repeat this Article from the Law in the collective agreement.

VIII Compensation of Damages

Article 45

The damage, its value, circumstances under which it occurred, who has caused it and a way to compensate it, shall be determined by the commission designated by the employer and which commission shall include the trade union representative as well.

The damage identification procedure shall be specified by the commission.

Implementation in practice:

This Article of the GCA did not adequately define exactly when significant material damage occurred, or what happens where there is no trade union in a company or a trade union representative is not willing to be a member of the commission. In practice, it happened that employees often stole from employer, took raw materials, tools and related equipment for work away from the factory, falsely reported on collected payments, etc. The employer was unable to immediately remove the person from work, and often such suspects appealed to representatives and leaders of the trade unions who protected them . Thus, the employer had to report the whole case to the police, and to wait until it would initiate investigation and criminal proceedings. Only after a verdict, could an employee be permanently removed from the workplace, which meant that the Labour Law and the General Collective Agreement

forced an employer to keep persons who stole from him employed for months, even more than a year.

Due to the large number of these cases, it is necessary to make significant changes to this Article of the GCA, in the event that a company suffers significant material damage, as well as where there is no trade union or trade union representatives willing to participate in the commission.

An employer must have the ability to report a case to police and simultaneously suspend a person assumed to have caused the damage, until police determine the facts and the responsibility of the offender. During this process a suspended person should not receive earnings from the employer. Should the charge be dismissed, then the employer would be obliged to return an employee to work and pay him all the remaining earnings. This could prevent stealing from employers which is prevalent in the south and southeast of Serbia in particular, but also happens in other parts of the country. In the years 2009 and 2010 , 203 companies complained to the Serbian Association of Employers about this problem and their inability to protect themselves from abuse.

Costs of implementation:

Implementation of this ambiguous Article left employers with little ability to protect their assets, raw materials and fixed assets from theft. The most common case was that the company was forced to keep for months persons who stole from it, and to pay earnings and other benefits, in accordance with the Labor Law. One trading company from Nis had 22 such cases in 2010, which caused total costs of 1,45 million dinars (the amount of damage caused) plus 1,25 million dinars (the amount for earnings and other) for payments to persons who caused it damage. Total amounts of are unknown for the entire Republic, but every year there are thousands of such cases, particularly in less economically developed areas where earnings are lower.

X Trade Union of Employees

Article 56

The employer shall be obliged to provide the trade union the following working conditions, without compensation:

- *the premises including the number of offices required, depending on the number of the trade union members, including the necessary office furniture;*
- *if needed, the right to use other premises of the employer for holding major gatherings, necessary for accomplishing the role of the trade union;*
- *necessary technical working conditions;*
- *special places for trade union announcements;*
- *use of a service vehicle or other appropriate transportation means, with all costs covered for attending meetings, seminars, etc.*

Implementation in practice:

Over 56 percent of companies in Serbia have only one room at their disposal and it often happens that the rights given to trade unions by this Article are too onerous in relation to the employers' abilities, especially in case of small businesses with 15 to 30 employees. The discrepancy between the rights given by the GCA and reality was the cause of conflict with the directors or owners of private companies that have not been able to provide additional premises, because it would increase the cost of renting office space.

Using a company car was also a stumbling block in relations between the trade unions and company management. This provision should be eliminated from the General Collective Agreement, because it defines the rights and obligations for all enterprises in the Republic, while most SMEs do not have resources to provide such benefits. The possibility of using a company car must be subject to a collective agreement on the company level, depending upon the employer's resources and ability to meet the needs of the trade union.

Costs of implementation:

Large companies that have big buildings and lots of offices did not have a problem with the assignment of rooms for the unions. In contrast to these, SMEs had to find their way around the requirement and tried to meet the demands of unions. Some of them had to lease additional offices, which led to unexpected costs, and others made further arrangements with the trade unions in order to provide them with a comfortable work environment.

Allowing usage of company cars was a real cost - 139.439 dinars a year in average per trade union representative in larger companies for fuel, maintenance and amortization of the official vehicles. (Calculation of this average is based on the costs of seven big companies operating in Serbia, which were willing to pull out of its balance sheet amounts for this purpose). The additional cost for some companies was usage of cars by secretaries, assistants and other trade union activists beside the president of the trade union, and mostly for trade union activities and transport to the labour-production games. The average number of persons who used official vehicles in these seven companies was 4, so the total annual cost is 139. 439 dinars multiplied by 4. In total, 557.756 dinars per company.

Article 59

The employer cannot cancel the employment agreement, or put the representative of the employees in an unfavorable position in any other manner (transfer to another, less paid post, transfer to another organizational unit, transfer to other place, transfer to other employer, declaring him/her a redundant employee) while he/she performs the function and two years after the end of his/her function, if he/she acts according to the law, collective agreement and employment agreement.

The employer shall be obliged to put the officials of the representative trade unions after the expiry of their functions back to posts they had held before being elected, that is the posts in which they won't earn less than before having been elected to professional function.

Implementation in practice:

In 2009 and 2010, there were many cases in which the earnings at the company level had to be reduced due to decline of turnover and reduction of workload. In practice, former presidents of the trade unions demanded that their salaries remain at the same level as before becoming trade union officials in 2007 and 2008, i.e. during years before the outbreak of the economic crisis, and threatened with lawsuits against employers.

It is therefore necessary to redefine paragraph 2 of this Article and underline that these rights do not apply in cases where the earnings at the level of the whole company have been reduced, due to illiquidity or negative financial results in the last six-month period.

A representative of the employees at certain functions, or after his/her mandate expired, cannot be treated differently, compared to other employees in the team in case of bad performance of a company.

Costs of implementation:

In some companies, the trade union representatives who returned to the previous posts prior to their engagement as the trade union officers received bigger earnings than all other employees in the team for a number of months, primarily because Directors feared that the company might be sued for violation of the Article 59 of the GCA. Such examples were rare, but very unfair to other employees in companies.

XI Fund

Article 60

The signatory parties to this collective agreement shall establish a Fund for development of democratic industrial relations, social dialogue, development and improvement of collective bargaining and employees' education.

Article 61

The signatory parties to this collective agreement agree to finance the Fund from the resources of the employer in an amount of 0,5% of the employee's earning, whereas the distribution of resources, manner of work and decision making shall be regulated by an agreement, that shall be concluded within 30 days from the date of entry into force of this collective agreement.

Implementation in practice:

Article 60 and 61 were never put into practice, because companies were facing the consequences of the global economic crisis and the numerous challenges in the domestic economy. They therefore did not have the resources or the capacity for such a Fund. The reality of Serbia's economy dictates that the idea of this Fund be jettisoned. Employer organizations and trade unions should however retain the option of creating solidarity funds for their members solely on a voluntary basis and without regulatory restrictions.

XIII Transitional and Final Provisions

Article 67

This collective agreement shall be concluded for a period of three years.

Upon expiry of the period referred to in Paragraph 1 of this Article, the collective agreement shall cease to be effective, unless the signatory parties to the collective agreement otherwise agree within the maximum of 30 days before the date of expiry of the collective agreement validity.

Implementation in practice:

The period of validity of the General Collective Agreement turned out to be too long in relation to economic and market instability in Serbia, as well as totally unadjusted to conditions in which the domestic economy operated during the global economic crisis that is still being felt.

Trade unions have not shown any inclination to try and influence the State to reduce the fiscal and parafiscal burdens on the economy in order to make room for real wage growth and providing additional benefits to employees. In actual fact the Republic and local governments introduced 17 new burdens in 2010 alone, so that in June 2011 the economy had a total of 66 different types

of fiscal and para-fiscal burdens, benefits from labor and other charges, taxes, higher rates of communal services for companies than for citizens, and so on.

In such circumstances, where the economy finances more than 1.62 million pensioners, more than 535.000 employees in the public sector, more than 750.000 persons who receive Social Security or other forms of assistance, and has an obligation to hire people with disabilities and cover the costs of unrealistic increase of minimum labor cost, it cannot be expected that the General Collective Agreement or sectoral collective agreements provide additional benefits, because the funds for it do not exist.

If new collective agreements are concluded they should guarantee basic labor rights, but agreement on financial provisions must be left to management and trade unions at company level, because the best way of coming to an agreement in conditions of economic crisis is that each company determines the level of rights that it can give to trade unions and employees. Also, as long as conditions of doing business are unstable and unpredictable, the period of collective agreement validity should be minimal, because employers cannot bind to long term guarantees of certain rights to employees, when even their business operations and survival in the market are uncertain.

Any other solution and the conclusion of unrealistic collective agreements will result in further business stagnation throughout Serbia.

Article 68

The general collective agreement shall become effective on the eighth day from the date of its publication in ''The Official Gazette of the Republic of Serbia".

Implementation in practice:

The Serbian Association of Employers will in the future request from the Ministry of Labour and Social Affairs to approve extending the application of any collective agreement signed by Serbian Association of Employers, to all the employers in the Republic of Serbia. They would then have the same rights and obligations as apply to selective application by only members of SAE. All business entities in a particular industry should have equal conditions for business and equal obligations and burdens arising from their operation.

It is therefore very important that all small, medium and large companies from particular sectors respond to the invitation of the Serbian Association of Employers to send their comments and suggestions during the negotiations for the conclusion of the collective agreements with trade unions. The information gathered from them is very important in order to lobby for change in any article of a certain law or regulation. The information gathered will used as well to negotiate the collective agreements, whose implementation directly affects the economy. This is the only way to realize the real circumstances in which the economy operates on a daily basis, and to determine the guidelines for ways to affect the State and trade unions to reduce the burden on employers. Thus, the overall economic environment could and would be made more favorable for general development and job creation.

During 2010 and 2011 the Serbian Association of Employers conducted research among companies in the Republic of Serbia about collective agreements concluded on the company level and contractual rights of employees. The research was conducted in cooperation with the representative trade unions - the Confederation of Autonomous Trade Unions of Serbia and the United Branch Trade Unions "Nezavisnost", sponsored by Swiss Labour Assistance (now SOLIDAR Swiss).

The study included 136 companies from the territory of the six local self-governments - Belgrade, Kragujevac, Leskovac, Sabac, Novi Sad and Uzice. The companies were also from different sectors: financial services, construction industry, chemistry and non-metals, metal industry, agriculture and food industry, transportation, commerce and tourism.

Financial provisions

The results showed that the largest financial provisions under the general collective agreement, such as paying for hot meal and vacation allowance, are rarely subject to negotiations between trade unions and employers - hot meal in 17.65% of the cases, and vacation allowance in 20.59% of cases. These liabilities are most often paid in the amount defined by the employer (in 44.12% cases for the hot meal, and in 43.38% cases for vacation allowance). Also, the results showed that these amounts are rarely calculated as the percentage of a wage, the way it was stipulated by the General Collective Agreement - hot meal in 11.03% and vacation allowance in 8.82% of the cases.

Time spent at work in most of the researched companies is still paid for in the amount of 0.4% per year of service, as defined by the Labour Law (in 69.12% of cases). Of all the companies who declared paying a percentage higher than stipulated by the Labour Law, a huge majority of them (81.48%) pay 0.5% per year of service as provided by the General Collective Agreement.

Paid leave

In addition to annual leave, the General Collective Agreement includes obligations on the employer to provide employees with paid leave in many cases. The study covered four cases in which the employer has an obligation to provide the employee with paid leave, how it was measured, the percentage of employers who allow employees paid leave on these grounds, as well as the number of enabled days of paid leave (Table 7).

In case of death of an immediate family member 95,59% of employers provide paid leave. In this case the general collective agreement provides 5 days for paid leave, which proved to be a practice among the researched companies – 70,77% of employers provides paid leave for 5 days or more.

In the case of illness of immediate family members, GCA provides 7 days' leave. Practice has shown that most companies allow 3 days paid leave on this ground. This proves to be a realistic num-

ber of days of paid leave that may be contained in future collective agreements, given the fact that 70,09% of the researched companies allow the worker 3 or more days of paid leave in case of illness of an immediate family member.

Table 7

Ground	The percentage of employers who allow
paid absence	95,59%
death of immediate family member	95,59%
illness of an immediate family member	86,03%
moving	80,15%
elimination of consequences of natural disasters	66,91%

In the case of moving a household, the General Collective Agreement provides one working day in case of moving within the same settlement, and 3 working days in case of moving to different settlement. The survey showed that employers usually allow two days of paid leave - 60.55% of researched companies provide 2 or more days of paid leave. However, a significant percentage of researched companies allow paid leave for a period stipulated by GCA, i.e. 22,94% of researched companies.

Where there is a need for protection as a result of the consequences of natural disasters, the GCA provides paid leave for 3 days. The largest number of surveyed employers allows this as long paid leave – 31,87%. However, a significant number of employers allow 1 to 2 days of paid leave in this case – 18,68% and 17,58% of total number of surveyed employers.

Control

Data on the inspection controls of researched companies were also collected during the research. In the period of implementation of the General Collective Agreement, inspections were made in 64 companies. Out of these, only two researched companies reported that implementation of the General Collective Agreement was controlled during the inspection.

Of course, the data on inspection has to be received with caution, bearing in mind that employers and management in companies are very reluctant to reveal data on inspection in their companies and about possible irregularities noted by the authorities. However, the fact that only a small number of companies were inspected regarding the implementation of the General Collective Agreement, along with the data about the level of employees' rights which is in most cases lower than the one foreseen by GCA, leads us to the conclusion that there was an understanding and agreement between employers, employees and representatives of the executive authorities that the General Collective Agreement was inapplicable in practice.

Chapter 5 Conclusion

Three years of implementation of the General Collective Agreement, with the period of suspension of financial provisions since the arrival of the global financial crisis to Serbia, pointed that it is necessary to introduce radical changes in the very approrach to conclusion of the General and sectoral collective agreements, as well as to more carefully consider those provisions which represent a financial burden on employers, or whose administrative and technical implementation cause additional costs to companies.

The relevant economic indicators, being GDP per capita, quantity and type of products, volume of export and dependency on import, show that the Serbian economy is among the last ones on the European list.

This necessarily implies low wages and living standards of employees, but also of the rest of the population. If the goal of both the entrepreneurs and employees in Serbia is to have by 2010 production and export increased and living standard improved, it is necessary to make way for establishment of as many companies as possible and development of the existing ones. This means that the bigger part of the excess funds must be directed to the accumulation of funds, i.e. to production, purchase of new machinery, equipment and high-tech tools, training of human resources, opening new facilities, rehabilitation of those parts of industry that have a realistic chance of recovery and working capital to increase production and sell their goods and services on foreign markets.

It is a serious question - are the citizens of Serbia, from the too large and often inefficient public sector, to businessmen and employees in the private sector, ready for it? The first decade of the 21st century showed that in Serbia it was more spent than earned, and the private sector was unable to meet the appetites of the public sector wich made the country debt rise more and more, year after year. In order to save the future of companies and enable them to invest in new technologies and working capital in addition to payment of wages, the shift from the general to the individual approach, when determining rights and obligations in relation employer-employee, is necessary.

All that is disclosed in this analysis suggests the following conclusions:

1. Financial provisions in collective agreements in the future should be determined solely on the enterprise level, according to their real possibilities
2. When putting their demands, the trade unions must take into account the reality on the level of a given company or industry and ask for the distribution of what is earned, not substance (fixed assets and investment capital) of companies
3. Trade unions must abandon the practice to only require certain rights in a situation where the conditions in Serbia are very unstable, because it just further endangers the survival of companies, and support, instead, the employers in their real demands towards the state to provide a better economic environment

4. Social-economic councils at the national and the local levels must be consulted by the authorities when making regulations that directly influence business and financial burdens of employers

5. Institutions of the social dialogue must make a decisive influence on the state to curb the gray economy, regulate the inspections, reduce corruption and organize a system of incentives and control in such a way that it stimulates the economy and employees.

6. Joint work of Serbian Association of Employers and trade unions for change of the current Labour Law and reduction of the financial and administrative costs of employers, where it s logical and rationall to expect cost savings and create the preconditions for development and creation of new jobs.

Collective agreements, as well as many other achievements of modern society, must be changed according to circumstances and conditions on domestic and foreign markets. Any delay in adjusting to the dominant trend results in stagnation and harms development. Owners of capital and trade unions in Serbia must build a partnership based solely on REALITY. Whoever is not ready for it must take his share of responsibility for bad results and their consequences.

Analysis of the implementation of a general collective agreement shows that neither the unions nor the employers were mature enough to assess the real possibilities of the economy at a time when it was signed. It is time to correct it!

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