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MINIMUM WAGE – THE RULE INSTEAD OF THE EXCEPTION IN THE LABOR MARKET

ABSTRACT: The issue of the minimum wage has been attracting attention for many years, not only from experts, but also from the general public. Determining the minimum wage in every country, including Serbia, aims to establish minimum standards for personal income and combat poverty. The basic feature of the minimum wage is that it is a temporary measure, lasting up to 6 months, as a response to an employer's poor financial performance, and as such it represents an extraordinary measure, which should be abolished upon returning to the normal economic conditions. Upon resuming normal business operations, the employer is required to compensate employees for the shortfall, ensuring they receive their contracted salary in full. However, instead of the minimum wage being an exception, used only in extraordinary circumstances, it has now become commonplace in the labor market, challenging the original concept of the minimum wage and raising questions about its effectiveness. This paper aims to examine the concept of wage and minimum wage in Serbia, along with its practical implications in the domestic labor market.

Keywords: *earnings, minimum wage, minimum price of work, employment relationship.*

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1. Introduction

One of the main instruments of the state's economic policy on the labor market is the minimum wage. The reasons for its introduction are different, such as the growth of personal income, the fight against poverty and the eradication of illegal work. In general, the minimum wage can be defined as the wage required to satisfy the minimum and basic life needs of the employee, as well as his family members. Therefore, the objective of the minimum wage is primarily social, and it is understood as an element of the social policy of a state within its labor market. The minimum wage protects the minimum standard of living of the employee, but also the members of his family, which he needs to support from such earnings. The poverty line is commonly used to represent this minimum standard of living (Anker, 2005, p. 4). The poverty line is the level of income that is necessary for a family of four to be able to afford the low cost of food and non-food items, at levels that are considered acceptable for a particular country (Anker, 2005, p. 6). One of the formulas for calculating the minimum wage required for living is the amount obtained when the poverty line is multiplied by the number of household members and the resulting amount is divided by the number of employees in the household (Kosanović & Paunović, 2020, p. 125). Throughout its history, the concept of minimum wage has changed. In some countries, it is first defined as an existential wage, that provides workers with the minimum means for living and reproduction (Aleksić, 2020, p. 15). In other countries, the minimum wage was manifested through the determination of a fair wage, which aimed to prevent the excessive exploitation of labor (Aleksić, 2020, p. 15). Certainly, the minimum wage can be explained as a salary sufficient for the basic and minimum needs, necessary for life. Although it has been said that the minimum wage is linked to the fight against poverty, the main justification for its introduction is not the reduction of poverty, but the establishment of minimum labor standards below which no employment relationship can be considered economically and socially acceptable. On the other hand, there seems to be at least a potential link between minimum wages and poverty, at least in the case of in-work poverty, so that raising the minimum poverty threshold should have a distributional effect on the lowest earners and benefit those who do not have enough resources to make ends meet (Aumayr-Pintar, Cabrita, Fernández-Macías & Vacas-Soriano, 2014, p. 141). For these reasons, this issue is given great importance, both by employers and by employees and their professional associations. Therefore, in this paper, the primary attention will be devoted to defining the general concept of earnings, but the central

topic will be related to the definition of the minimum wage in the legal regime in the Republic of Serbia, as well as the analysis of its practical domains in the labor market. The initial hypothesis is based on the fact that the procedure for determining the minimum wage is precise and clear, but that it is meaningless due to the short deadlines for its determination, as well as that the purpose of its existence is called into question, so that instead of an extraordinary state measure, it has become a permanent guarantee of minimum income of employees.

2. General concept of earnings

Initially, in order to define and analyze the concept of minimum wage, it is necessary to first define the general concept of earnings. Namely, the minimum wage derives its existence and its meaning from the general concept of wages/earnings, and therefore these two concepts are closely related. In this regard, we can say that the right to earnings is a fundamental right, which stems from the very nature of the employer-employee contract (Stajić, 2008, p. 1361). Salary is compensation for the fact that the employee puts his working abilities at the employer's disposal, while in the case of being prevented from working, the right to wage compensation is realized, because the employee is then unable to put his working abilities at the disposal of the employer (Kovačević, 2021, p. 43). Therefore, the employee personally perform work according to the instructions and orders of the employer, who in turn provide him with the necessary conditions for work and earnings for the work performed, while at the same time respecting the norms provided by the law and general acts of the employer (Bilić, 2011, p. 755). In domestic positive law, wages are understood as all payments to employees on which the corresponding taxes and contributions are paid. In everyday speech, wage or salary is mistakenly equated with the amount that the employer pays the employee for the work performed. Salary, seen as the amount paid to an employee, is only a partially correct definition, because net salary is only one segment of salary in its legal sense. In this sense, it can be said that salary can be defined as gross salary, which means the net salary, paid by the employer to the employee for the work performed, increased by tax and related contributions, which are paid at the expense of the employee. When, on the other hand, we are talking about the legal provisions of importance for earnings, the first is the Labor Law, which confirms that the employee has the right to an appropriate salary, which is determined in accordance with the law, the general act of the employer and the employment contract (Labor Law, 2005).

But with that, the legislator in a “stingy” way only confirms the constitutional right of the workers, without going into the clarification of what “appropriate salary” is (Perić, 2011, p. 74). It seems that the precise determination of the concept of appropriate earnings was deliberately omitted, possibly due to real problems in defining it, but also due to political and economic circumstances in society. Certainly, the concept of salary includes basic salary, salary based on performance, increased salary, salary from profit, but also a category of compensation equal to salary (so-called salary for inactivity) (Lubarda, 2013, p. 432). Salary can also be determined as periodic and monetary payments of an alimony character, to which the employee is entitled regardless of whether his work has led to positive business results or not (Kovačević, 2021, p. 45). The employee has the right to earnings, as a constitutional and legal right, and as such it must not and cannot be conditioned by business results, because that would lead to a direct violation of the said right and would depend on the current economic circumstances in society. By tying the payment of salary and its amount to the degree of success in business, it would mean renouncing the concept of fairness and dignity of the person. Therefore, the absence of a connection between the employer’s profit, on the one hand, and the payment of wages, on the other hand, is one of the basic features of work within the employment relationship (Kovačević, 2021, p. 45). This further means that the position of the employer, in addition to his management, normative and disciplinary authority, essentially determines that he exclusively bears the burden of business risks (Kovačević, 2021, p. 45). However, employers can give employees a salary increase due to achievements in work, when there is a possibility for it. In this field, it is natural that relations between employees and employers, that is, between their professional organizations, are built in the spirit of loyalty, i.e. on the basis of mutual respect, honesty, correctness and fairness (Mirjanić, 2014, p. 138). The essence of their relations should be expressed by a balance of interests (Mirjanić, 2014, p. 139). But in practice, we have witnessed that such a relationship often does not exist, leaving the workers to fight independently for their wages, i.e. higher-quality and better-paid jobs. A quality job includes many different elements – such as salary, safe working conditions and social protection, which are just some of the segments (Kovačević Perić, 2016, p. 121). But, of all the conditions, the appropriate salary for the work performed, which is adequate to satisfy life’s needs and enables a harmonious, decent and peaceful life, stands out as by far the most important factor when establishing an employment relationship. Certainly, in addition to the salary, the employee also has the right to compensation in the amount of the average salary in the previous 12 months, in accordance

with the general act of the employer and the employment contract, during absence from work on a holiday that is a non-working day, annual vacation, paid leave, military exercises and responding to the call of a state authority. As discussed above, it is sometimes referred to as inactivity compensation (Lubarda, 2013, p. 438). The right to remuneration (or the right to salary compensation) is recognized, as a rule, by law and regularly belongs to the rank of basic social rights, as part of the social public order (Lubarda, 2013, p. 438). Also, regarding the employer's obligations, the Labor Law points out that he is obliged to provide the employee with a calculation for each payment of salary and salary compensation. It was stated that the employer is obliged to provide the employee with the calculation for the month for which he did not pay wages, i.e. wage/salary compensation. In such a situation, the employer is obliged to provide the employee with a notice that the salary payment, that is, the salary compensation, has not been made and the reasons for which the payment has not been made (Labor Law, 2005). Therefore, in the mentioned situations, the law precisely, temporally and situationally binds the employer to the payment of wages to the employee in certain life circumstances, thereby protecting the employees' standard of living and their economic integrity. However, compliance with these provisions by employers is questionable, especially with regard to providing an explanation when salary or salary compensation has not been paid.

3. International standards on minimum wage

Convention of the International Labor Organization (ILO) No. 26 on the regulation of the mechanism for calculating the minimum wage, as well as the basic principles of the regulation of the minimum wage, from 1928, defines that every country that ratifies this convention is obliged to create or maintain a mechanism for determining the minimum wage. More precisely, it is stated that minimum wage rates can be established for workers employed in certain trades (and especially in jobs for work at home), in which there are no mechanisms for effective regulation of wages by collective agreement and where wages are extremely low. This provision, which refers to minimum wages, is the basis for a more precise definition of the minimum wage in the future. In the same convention, it is clearly stated that the established minimum wage rates are binding for employers and workers, so they cannot be subject to change by an employment contract or a collective agreement, except with the general or special authorization of the competent authority. The convention confirmed the obligation of all contracting states to take

the necessary measures, through a system of supervision and sanctions, to ensure that employers and workers are informed about the minimum wage rates in force and that wages are not paid at a lower rate than the established ones. Furthermore, the right of workers to whom minimum rates are applied and to whom wages are paid lower than these rates, to recover their rights within a certain period, through court or other legal proceedings, was also confirmed. In this way, for the first time, the possibility of protecting the rights of employees, based on salary and minimum wage, is foreseen.

The ILO Convention No. 95 on the protection of wages from 1949 is also significant, which defines wages as compensation for work that is determined or calculated, which can be expressed in money and regulated by agreement or national laws or other regulations, which the employer pays on the basis of a written or informal contract, for work performed or for services provided or to be provided in the future. Earnings are paid directly to employees, unless it may be determined differently by national laws or other regulations, a collective agreement or an arbitration decision, or if the employee has agreed to a different regime. Wages may be paid only in the manner and within the limits prescribed by national laws or other regulations, to the extent that they are considered necessary for the survival of the worker and his family. From this it can be seen that the method of salary payment is related to the possibility of meeting the basic life needs of employees and their family members, bearing in mind that the word “survival” was chosen.

Furthermore, the right to a minimum wage was regulated by the ILO in Convention No. 131. on determining minimum wages with special reference to developing countries from 1970, which was ratified by Serbia. The Convention in question concerns primarily the regulation of the issue of minimum wage, whereby the following elements should be taken into account when determining the level of the minimum wage, as far as possible and appropriate in the light of national circumstances: (A) the needs of workers and their families, taking into account the general level earnings in the country, cost of living, social security and relative living standards of other social groups; (B) economic factors, including the requirements for economic development, the level of productivity and the desirability of achieving and maintaining a high level of employment (ILO Convention No. 131). Therefore, the Convention expanded the field of action and confirmed that the right to earnings refers not only to the individual employee, but also to the needs of his family members, which must be met, but it foresees a limitation of regulating the level (height) of the minimum wage, related to social and economic components.

In the last few years, the issue of wages has become more relevant than ever in the European Union, especially considering the economic crisis since 2008, as well as the epidemic of *COVID-19* and the consequences that have been left behind. Namely, earnings in Europe have been affected by the then recession since 2008, which actually started for most countries even before the impact of the financial crisis. Maintaining workers' incomes is essential to economic recovery (O'Farrell, 2010, p. 23). Some European countries, such as Germany, have dangerously unbalanced economies that depend on exports. Higher worker incomes can help sustain and increase domestic consumption, thereby improving the economy (O'Farrell, 2010, p. 23). In other countries, many workers are heavily in debt. Maintaining the income of these workers will help them pay off their debts, which is an important factor in the health of the financial system (O'Farrell, 2010, p. 23). More recently, the activity in the European Parliament, which in 2022 passed the Minimum Wage Directive, No. 2022/2041, stands out. This act should ensure a minimum level of wage protection in all EU member states, in order to guarantee a decent and adequate standard of living for workers and their families. In the aforementioned Directive, No. 2022/2041, it is prescribed that minimum wages are considered appropriate, if they are fair in relation to the distribution of wages in the relevant member state and if they ensure a decent standard of living for employees, based on a full-time employment relationship. The adequacy of legal minimum wages is determined and assessed by each member state with regard to its national socio-economic circumstances, including employment growth, competitiveness and regional and sectoral trends (EU Directive 2022/2041). For the purpose of that determination, member states should take into account purchasing power, long-term national levels of productivity trends, as well as the level of earnings, their distribution and their growth (EU Directive 2022/2041). All EU member states have minimum wage policies, with the majority (21 states) having a legally regulated minimum wage, while in six states the minimum wage is the result of collective bargaining (Bradaš, 2021, p. 3).

As stated above, the directive on minimum wages makes progress on the level of harmonization of legal standards in that field of labor law. But the diversity of systems (related to minimum wages) among countries makes a coordinated approach difficult (Aumayr-Pintar, Cabrita, Fernández-Macías, & Vacas-Soriano, 2014, p. 3). In principle, coordination would be easier among countries with a static minimum wage determination system, compared to those where the minimum wage is agreed through collective bargaining (Aumayr-Pintar et al., 2014, p. 2). Ensuring that workers in the Union earn

adequate minimum wages is essential for guaranteeing adequate working and living conditions, as well as for building fair and resilient economies and societies, as stated in Principle 6 of the European Pillar of Social Rights: “Workers have the right to fair wages, which ensure a decent standard of living.” It was also stated that adequate minimum wages will be provided in a way that ensures the satisfaction of the needs of the worker and his family in the light of national economic and social conditions, while providing access to employment and incentives for job searching. In-work poverty will be prevented (The European Pillar of Social Rights, 2017). All wages will be determined in a transparent and predictable manner, in accordance with national practices and with respect for the autonomy of social partners (The European Pillar of Social Rights, 2017). The principles of transparency and predictability of wages will later, based on this provision, be an integral part of the right to a minimum wage. The above-mentioned acts of the European Union are significant in the field of reducing the differences in earnings that occur between the countries of Western and Eastern Europe, which still exist today, despite all the efforts made in this field. Namely, a large number of studies indicate that there is a persistent wage gap between Western Europe and the new EU member states from Eastern and Central Europe. Although great progress has been made, the difference is still significant even after 27 years of transition from the socialist system and after 14 years of membership in the EU (Myant, 2018, p. 5). We can say that progress in the field of labor law is of great social interest and importance, even for Serbia, which in the future will have to harmonize its normative framework with the above-mentioned EU acts. Certainly, it is important to say that adequate minimum wages contribute to the existence of fair competition, strengthening productivity and promoting general economic and social progress.

4. Minimum wage in the Republic of Serbia

The minimum wage, in terms of the Labor Law, is introduced in case of bad business performance of the employer (when the employer does not have the means to pay the contracted salary) and such a payment regime is of limited duration, up to six months. However, after the expiration of six months from the adoption of the decision on the introduction of the minimum wage, the employer is obliged to inform the representative trade union of the reasons for continuing the payment of the minimum wage (Labor Law, 2005). But this obligation loses its significance in the private sector where trade unions do not exist at the employer level or play no role at all. Namely, if such

a trade union does not exist, there is no problem for the employer to inform non-representative trade unions about the reasons for continuing the payment of the minimum wage, or to just highlight the notice on the notice board, about the reasons for the continuation of the payment of the minimum wage. Certainly, the payment of the minimum wage should be the exception, not the rule. However, there are also opposing opinions, which go in the direction that the minimum wage should still be the rule, even in normative standards. Namely, employers, regardless of whether or not they have difficulties in business, pay the minimum wage, and even the state as the largest employer pays the minimum wage (about 20,000 employees who receive wages from the budget of the Republic of Serbia, receive the minimum wage) (Kosanović & Paunović, 2020, p. 135). However, in the case of the minimum wage, there is a very easy possibility of abusing the aforementioned legal institute, so that employers can add even a single dinar to the amount of the minimum wage, thereby circumventing the regulations, but such behavior is not considered prohibited, that is, it is not a violation. The minimum wage is determined based on the minimum price of work, per working hour, for a period of at least 6 months. For the period January-December 2023, the minimum wage in Serbia is 230,00 dinars net per working hour. According to the decision of the Government of Serbia on the level of the minimum wage for the period January-December 2024, the minimum wage without taxes and contributions (net) will be increased to 271 dinars per working hour in 2024, which is an increase of as much as 17,8 percent. However, the main characteristic of the minimum wage should not be its height, which is constantly pointed out when talking about its increase, but it should be its temporary nature. Namely, after the return to normal operations, the employer is obliged to pay the employees the difference up to the contracted salary. But compliance with such an obligation is highly questionable. We can say that this type of income from the original idea of the lawmaker in practice, very quickly transferred to the field of employees in terms of some kind of security and minimum guaranteed value that the employee can count on at the end of the month, with a large number of employers in Serbia. Its legal nature is derived from the need to ensure the existential social needs of the employee and his family members. An additional problem with the minimum wage is the definition of the term "disruption in business" as a condition for its introduction. The employer is obliged to determine the reasons for the introduction of the minimum wage by its general act, i.e. an employment contract. If the reasons are not prescribed by the collective agreement (labor regulations), i.e. the labor contract, the employer cannot introduce a minimum wage. But that is only the first condition

for the introduction of the minimum wage, while the second condition is reflected in the actual occurrence of the prescribed circumstances, which result in a disruption in business. It is important to mention that in order for the employer to make a decision on the introduction and payment of the minimum wage in accordance with its general act, it must contain clear reasons for the decision to pay the minimum wage to all employees (Gajić, 2020). Therefore, in its general act, the employer must foresee specific situations in which he can make a decision on the introduction of the minimum wage. The position of judicial practice is unique that these situations must be determined – not determinable, e.g. the general reason “disruption in business” is not adequate, if it is not defined what concretely reflects the disruption of business and what is the precise reason for the occurrence of such a disruption (Gajić, 2020). It is very important for the employer to determine those reasons, and if he has not determined the reasons for making the decision on the introduction of the minimum wage, he is obliged to pay the employees the appropriate salary, even in the case of real disruptions in business. Also, if the employer paid the minimum wage to the employees, and failed to establish, in accordance with the law, the reasons for making a decision on the introduction of the minimum wage, he is acting illegally and with such actions he is causing damage to the employees in the amount of the difference between the corresponding and the paid minimum wage, which is why is obliged to pay the employees the difference (Judgment of the Court of Appeal in Belgrade, No. Gž 1 574/2017 of March 3, 2017).

As can be seen, the courts in their rulings largely went in favor of the employees, regarding the protection of the right to a minimum wage. However, in addition to the protection of rights from the employment relationship through the courts, recently there are more and more methods of out-of-court settlement of labor disputes, including those disputes concerning non-payment of the minimum wage. Namely, it is about conciliation, mediation and arbitration. This matter is legally regulated in Serbia with the adoption of the Labor Law and the Law on Peaceful Resolution of Labor Disputes. Thus, an individual dispute can be resolved before an arbitrator if the subject of the dispute is either the termination of the employment contract or the payment of the minimum wage (Počuća & Mirković, 2009, p. 112). Therefore, if the employee believes that the right to pay the minimum wage has been violated, he can turn to the Agency for Peaceful Resolution of Labor Disputes, which was established by the above-mentioned Law on Peaceful Resolution of Labor Disputes. Such a procedure is considered faster and more efficient than the “classic” judicial settlement of a labor disputes. However, this is

not the degradation of our courts in terms of their expertise and honesty, but the simple fact that they are relatively overwhelmed with various cases and that efficiency is not their strong point (Počuča & Mirković, 2009, p. 111). Such out-of-court settlement of labor disputes, including those concerning the minimum wage, raised the level of legal protection and legal security of employees. It is certainly the goal of every state to have as well-organized legislation and a well-rounded legal system as possible, and it is certain that in the future most labor disputes will be resolved this way (Počuča & Mirković, 2009, p. 115).

It is important to note that in addition to determining the reasons for the introduction of the minimum wage by a general act, the employer is obliged to offer the employees an annex to the employment contract, in the event of the introduction of the minimum wage. In addition to the offer to change the contract, the employer is obliged to submit in writing the reasons for offering to change the contract and the deadline in which the employee should declare the offer. Certainly, the employee has the right to a minimum wage for standard performance and time spent at work. The Labor Law further foresees the existence of the Social and Economic Council, which is responsible for determining the minimum wage in Serbia. The Socio-Economic Council (SEC) was originally established by the Socio-Economic Council Act of 2004. By that law, SEC is defined as an independent body, financed from the budget of the state, which has 18 members, six each from the government, representative trade unions and employers' associations. In countries like Serbia and Hungary, the SEC determines the level of the minimum wage, while in France it gives an opinion on the level of the minimum wage (Lubarda, 2013, p. 156). If the SEC does not make a decision within 15 days from the start of negotiations, the Government of the Republic of Serbia will make a decision on the level of the minimum labor price within the next 15 days (Labor Law, 2005). From a strictly legal point of view, we can say that the procedure for defining the minimum wage is clear. However, the effectiveness of the tripartite social dialogue, which refers to the participation of representatives of the Government, representative trade unions and employers' associations in defining the minimum wage, through the Social-economic tripartite dialogue, is limited in Serbia. Namely, it is often the case that the tripartite dialogue does not result in an agreement on the minimum price of work, i.e. minimum wage between the social partners, which is due to the short deadlines for the duration of the negotiations, and due to diametrical attitudes about the amount of the minimum price of work. As a result of such a situation, the government unilaterally determines the level of the minimum price of work, which means

that the purpose of the tripartite social dialogue and the negotiation process between the social partners is almost meaningless. The government often does not consult the social partners on social and economic reforms. Tripartism is, in fact, one of the methods of functioning of social dialogue, which still implies the participation of the state (Jovanović, 2014, p. 11). The so-called tripartite social dialogue is our practice and a transitional necessity and the result of the power imbalance of those who participate in that dialogue (Jovanović, 2014, p. 11). In such circumstances, it is clear that the position of employees in that relationship with the state and employers is unfavorable, so the struggle to achieve fair wages is made even more difficult, perhaps intentionally. However, the most responsible for building trust and understanding are those who are the strongest – the state and employers (Jovanović, 2014, p. 11). The situation in which there is no agreement between social actors, as well as the procedure of determining the minimum wage, have an unfavorable impact on employees in Serbia, on their social and economic position. In terms of social dialogue and tripartism, it is important that government institutions respect the principles of representativeness, voluntariness, autonomy and non-interference in the internal affairs of trade unions and employers' organizations (Mirjanić, 2014, p. 140). It is certain that even in the next few years, minimum wages will not reach the level of the minimum consumer basket and will remain at a level that does not allow employees to meet the basic needs of their families (Bradaš, 2021, p. 12).

Certainly, when determining the minimum wage, two criteria are taken: 1) the needs of the employees (and family members) and 2) the employer's ability to pay (the national economy) (Lubarda, 2013, p. 427). The elements, i.e. the criteria for determining the minimum price of work are: the existential and social needs of the employee and his family expressed through the value of the minimum consumer basket, the employment rate on the labor market, the growth rate of the gross domestic product, consumer prices, productivity and the level of average wages in Republic of Serbia (Jovanović, 2015, p. 282). Therefore, when it comes to the needs of employees, theoretically it most often refers to life needs, which the employee must satisfy. When we talk about life needs, we originally meant biological ones, while nowadays it also refers to broader social needs, without the satisfaction of which a decent and human-worthy life is not possible (Lubarda, 2013, p. 427). The minimum wage is adjusted by 1) indexation (automatically) or 2) a more flexible ratio (Lubarda, 2013, p. 431). The first method is related to the increase in the cost of living, if there is a price increase of more than two percent in two consecutive months and is applied in France and Belgium. The second method is used in

Argentina, as well as in countries that leave the regulation of the minimum wage to the competent institution, which performs its correction, but leave it the autonomy to determine the percentage of adjustment, taking into account the economic situation in the country, unemployment, etc. (Lubarda, 2013, p. 431). The most common adjustment of the minimum wage is based on growth rates: inflation, GDP, average wage, median wage, productivity, employment, etc. (Kosanović & Paunović, 2020, p. 126). In practice, a negative attitude is also taken regarding the employee's renunciation of the right to minimum wage. In the sense of the above, any statement by the employee about waiving the right to minimum wage would be null and void and without legal effect (Higher Commercial Court, judgment Pž 1285/2008 of June 5, 2008). In order for an employee to realize the right to minimum wage, it is necessary to have full-time work and standard work performance. It is about two cumulatively set conditions. Jurisprudence also gives us examples of requests for the payment of the minimum wage in situations of absence from work, i.e. non-arrival at work. Thus, the Commercial Court of Appeal in decision Pž 14578/2010 of October 26, 2011, concludes: "The employee has the right to the minimum wage, but for standard performance and full-time work, and not for the period in which he did not come to work and during which he did not work. Earnings/salary is a successive claim, which is paid in installments and only on the basis of work. The existence of the employment relationship itself, without work and coming to work, is not enough to realize the right to the payment of wages, and this also applies to the payment of the minimum wage". It is often the case in practice that the minimum wage is actually used as the basic price of work in collective agreements (with the employer and special, i.e. sectoral) contracts. This has the effect that any increase in the state-mandated minimum wage ultimately causes an increase in overall labor costs. In a period of economic instability, there are difficulties in doing business (insufficient demand on the market, low product prices, low product collectability, illiquidity, high production costs), so employers often cannot meet the minimum wage increase, i.e. to pay (minimum) wages. The result is that there is a reduction in the number of employees, irregular payment of wages, irregular payment of contributions for mandatory social insurance. For the above reasons, employers do not respect the provisions of collective agreements, and often the employees themselves agree to work for wages less than the minimum, in order to ensure their minimum existence and keep their existing jobs. Thus, instead of being a barrier to the violation of rights from the employment relationship, the collective agreement actually becomes an instrument for the same, which employers use without regard for the position

of employees and their families. Theoretically speaking, the collective agreement should strengthen the awareness of employees and citizens about the rule of law, about the development of mechanisms for correcting the operation of the market (Stajić, 2008, p. 1362). One of the ways of employees' fight in the field of wages can be stronger union organization of employees. Namely, trade unions played a key role in ensuring fair and safe working conditions for employees, from the very beginning of labor relations, until today (Jašarević, 2014, p. 30). Trade unions fought for the recognition of employment status (which implies certain legal and factual protection of workers), quality labor legislation and the participation of employees in regulating working conditions through collective bargaining (Jašarević, 2014, p. 30). There was a massive disillusionment of employees in trade unions and a decline in confidence in the possibility of a trade union contributing to the well-being of employees (Jašarević, 2014, p. 40). In order to improve this area of law, the fight against the violation of labor rights and the shadow economy, the Republic of Serbia has drawn up a special program related to the promotion of dignified work, which is harmonized with the ILO. Poverty rates and adequate living wages are at the center of public attention and political debate at the domestic and international level. Despite everything, the set social standards are often not respected, which is reflected in unemployment and underemployment of workers, low wages, non-payment of wages, minimal social protection of the global population, high rate of occupational diseases and accidents at work (Bilić, 2011, p. 785). Maintaining the aforementioned conditions on the labor market is possible due to the simple fact that the ILO has limited power in strengthening its normative acts in the member states (Bilić, 2011, p. 785). The application of ILO acts depends on the strength of assurance and technical support of member states in the implementation and enforcement of international labor standards (Bilić, 2011, p. 785). Also, the insufficient capacities of the labor inspection contribute to the existence of such a situation on the labor market. Labor inspection is a much-needed mechanism for promoting dignified work and ensuring working standards in the workplace. It can be said that the labor inspection is a vitally important instrument of state supervision over the application of labor regulations (Radovanović, 2023, p. 323). The operation of the labor inspection improves working conditions and ensures the protection of rights from the employment relationship (Radovanović, 2023, p. 323). In Serbia, the rapid transition to a market economy resulted in the deterioration of the working environment and working conditions. The Labor Inspectorate in Serbia faces the challenge of adapting the system to new conditions in the market economy. In connection

with the work of the inspection, there are frequent negative comments. This especially applies to its capacities, which cannot meet the needs of the market. Namely, according to certain information, Serbia has only 225 labor inspectors, who supervise about 400,000 economic entities (Bradaš, 2021, p. 16). According to the relevant parameters, each employer could be inspected only once every eight years (Kovačević, 2022, p. 220). The proper and timely operation of the labor inspection can significantly contribute to the establishment of relations in which the rights, obligations and responsibilities of employees and employers, as social partners, can be fully realized (Stojšić, 2008, p. 88). The field of activity of the labor inspection is very close to the citizens, because it is about the field of work, which is characteristic of every individual in one of its manifestations: through the exercise of rights from the employment relationship, employment outside the employment relationship, exercise of the right to safe and healthy work, the right on suspension of work and the like (Stojšić, 2008, p. 83). In this regard, the most common abuses of the minimum wage concept are regarding the length of the payment, the reasons for its introduction, the use of the minimum wage as a reference value for the payment of other wages (Bradaš, 2021, p. 16). Also, compliance with social security laws remains a problem, which also contributes to the underfunding of the social security system. Reporting lower earnings than what is actually paid is a widespread phenomenon in Serbia.

5. Conclusion

Considering the above, it is easy to see that a large number of workers face problems in the field of earnings and meeting their basic life needs, as well as the needs of their family members. Therefore, the question of wages and the level of the minimum wage will remain a neurotic point of the labor market in Serbia, which will be discussed for many years to come. Speaking of the legislative framework, it can be said that the current Labor Law has made great progress in the field of legal standards, especially in the part that concerns the definition of the minimum wage rate and the procedure on how it is determined, and as such remains significant. However, there is still room for improving positive legal standards. For example, it turned out to be unjustified to determine the minimum price of work through a special mathematical formula, but instead it should be the result of a social dialogue between social partners (the state, employers and trade unions), based on realistic statistical parameters. Also, we should consider the possibility that in addition to the minimum price of work at the national level, it can be introduced at the local

level as well. Also, due to the short deadline for reaching an agreement on the rate of the minimum price of work between the social partners, the possibility of extending the negotiation deadline should be considered, because it turned out that the current deadline of 15 days for finding a compromise is insufficient. Certainly, the minimum wage must not only be the wage sufficient for survival, but the one that can provide the employee and his family members with a life worthy of a human being, but in practice this is still not the case.

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MINIMALNA ZARADA – PRAVILO UMESTO IZUZETKA NA TRŽIŠTU RADA

APSTRAKT: Pitanje minimalne zarade dugo godina privlači pažnju, ne samo stručne, nego i šire javnosti. Utvrđivanje minimalne zarade u svakoj zemlji, pa i u Srbiji, vezuje se za uspostavljanje minimalnih standarda na polju ličnih primanja, te je kao takva vezana i za borbu protiv siromaštva. Osnovna odlika minimalne zarade je ta da ona ima privremeno trajanje, do šest meseci, usled lošeg poslovanja poslodavca, te kao takva ona predstavlja samo jednu privremenu i vanrednu meru, koja se ukida vraćanjem u normalno ekonomsko stanje. Nakon povratka u normalno poslovanje, poslodavac je dužan da zaposlenima isplati razliku do ugovorene zarade. Međutim, umesto da institut minimalne zarade bude izuzetak koji se koristi samo u vanrednim okolnostima, isti je postao pravilo na tržištu rada, čime se dovodi u pitanje čitav koncept minimalne zarade, do te mere da možemo reći da je svrha njenog uvođenja u potpunosti obesmišljena. Stoga ćemo u ovom radu razmatrati pojam zarade i minimalne zarade u Srbiji, kao i njene praktične domene na domaćem tržištu rada.

Ključne reči: *zarada, minimalna zarada, minimalna cena rada, radni odnos.*

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