IGMAN INITIATIVE

Expert reports

Free Movement of Labour Force between the Countries Signatories of the Deyton Agreement Using the Experiences of the Nordic Model of Cooperation

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Introduction

A handbook ''Free Movement of Labour Force between the Countries Signatories of the Dayton Agreement Using the Experiences of the Nordic Model of Cooperation'' is the result of the work of an expert team comprising experts from Croatia, Montenegro, Bosnia and Herzegovina and Serbia, who participated in the project FREE MOVEMENT OF LABOUR FORCE BETWEEN COUNTRIES SIGNATORIES OF THE DAYTON AGREEMENT USING EXPERIENCES OF THE NORDIC MODEL OF COOPERATION.

The Igman Initiative started the Project at the end of 2013 with the support of the Danish Embassy in Belgrade. While working on the Project, a number of consultations were done with representatives of parliamentary Committees from the four countries signatories to the Dayton Agreement and it was concluded that the first area that needed to be improved between these four countries was the area of free movement of labour force using the Nordic model for several reasons. The majority of construction workers in Montenegro come from Serbia but due to the lack of legal basis, they are forced to find illegal employment, which means that they are deprived of the pension and social insurance and the right to health care. There is a great demand for construction workers in Croatia, as well as other workers from Bosnia and Herzegovina, whereas Vojvodina is in great demand for seasonal workers in agriculture.

The Handbook contains detailed analysis of the legislative framework in the area of the free movement of labour force in the four countries, recommendations for the improvement of interparliamentary cooperation, with special emphasis on the importance of the conclusion of bilateral agreements in the area of employment of migrant workers, including a proposal for the necessary content of agreements.

The goal is to impove and enhance interparliamentary cooperation between the four signatory countries by applying the recommendations and using experiences of the Nordic model, as well as to raise awareness about the rights of migrant workers and the necessity for further development of the institutional framework for monitoring and managing the migration of labour force, i.e. the free movement of goods, people and capital.

We hope that the Handbook will be useful not only for parliamentary committees, but also for the media, social partners and non-governmental organizations and that it will encourage the cooperation between state agencies within a single country and the cooperation between state authorities of the signatory countries, and that it will encourage the exchange of information and positive experiences between the countries in the areas that are being processed.

2. International standards relating to free movement of labour force

International migration law as a separate law area does not exist yet. It is composed of the rules established in various subsystems of the public international law. They are the international human rights law, inernational humanitarian law, international criminal law. There is no set of rules at the international level that would be directly related to migrants. Rules on migration laws are used from other subsystems of the international law. Various instruments are applied depending on the type of migration and migratory groups to which they relate, among them migrant workers.

The Universal Declaration on Human Rights

The Universal Declaration on Human Rights is a declaration adopted by the General Assembly of the United Nations at the Palace Charlotte in Paris on Decembar 10, 1948. The Declaration provides the first catalogue on human rights and is still the source of customary international law and its provisions are binding for all member states of the international community. Guiness Book of Records ranked the Declaration as ''the most translated document'' in the world, having been translated into 321 languages and dialects by 2004.

The Declaration is based on the tradition of the civil rights law, including the preamble and thirty articles. After almost twenty years since the adoption, the Universal Declaration served as the basis for making two original, legally binding acts of the United Nations Convention on Human Rights - International Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights, which represent a significant source of human rights for everyone, including migrants, and which were passed in 1966.

International Covenant on Civil and Political Rights

International Covenant on Civil and Political Rights was adopted and certified for signature and ratification, or accession, by the United Nations General Assembly's Resolution UN 2200 (XXI) on December 16, 1966 and it entered into force on March 23, 1976. The Covenant on Civil and Political Rights is an international human rights instrument of a legislative character. It provides a catalogue of civil and political rights concerning the relationship of an individual and the state, as well as the possibility for an individual to participate in its management.

International Covenant on Economic, Social and Cultural Rights

International Covenant on Economic, Social and Cultural Rights was adopted and certified for signature and ratification, or accession, by the United Nations General Assembly's Resolution UN 2200 (XXI) on December 16, 1966 and entered into force on January 3, 1976. The exercise of rights under the Covenant on Economic, Social and Cultural Rights, regardless of the compliance with national legislations, is not easily provided. It depends on the economic power of a state. The state is obliged to provide its citizens favourable work conditions, fair remuneration for their work, social security, education and the right to participate in cultural life.

2.1. Conventions and recommendations of the International Labour Organization

The first international instruments aimed at finding solutions to the problems that migrant workers have in practice are contained in the Convention on Migration for Employment, 1949 (Revised) (No.97) and the Convention on Migrant Workers (Supplementary Provisions), 1975 (No.143), as well as Recommendations for their implementation into national legislations. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in December 1990, brings together the vast majority of independent provisions of the International Labour Organization instruments. It is of utmost importance that the countries provide through their national legislations the minimum standards for protection of basic human rights for all migrant workers, regardless of their status.

Migration for Employment Convention (No. 97)

General Conference of the International Labour Organization at its Thirty-second Session held on July 1, 1949 in Geneva, adopted the revised Convention on Migration for Employment.

The Convention contains a preamble and twenty three articles, as well as the Annex I relating to the recruitment, employment and working conditions for migrant workers who are not recruited on the basis of an agreement on collective migration under the control of governments, and Annex II that relates to recruitment, employment and working conditions on the basis of an agreement relating to collective migrations under government control. According to the said Convention, the obligation of Member States is to provide adequate public services, or to ensure that such free services that will help migrant workers to exercise and protect their rights already exist, providing them with accurate information; then, in accordance with national legislations, to take appropriate steps against false propaganda relating immigration and migration, if needed, and in cooperation with other interested Member States of the ILO to take appropriate steps within thier jurisdiction to faciltate departure, journey and receptoin of migrant workers.

The Convention guarantees treatment no less favourable than that which each Member applies to its own nationals on the basis of the nationality, race, religion or gender in respect of the following matters: issues under administrative authorities control, remuneration and other allowances; minimum age for employment, apprenticeship and training, women's work and the work of young persons; trade union membership and enjoyment of the benefits of collective bargaining; accomodation, social security in case of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contigency which, according to national laws or regulations, is covered by a social security scheme, subject to the limitations prescribed by national legislature. Limitations relate to appropriate arrangements for the maintenance of acquired rights and rights in case of bankrupcy; in relation to benefits or portions of benefits which are payable wholly out of public funds, and in relation to allowances paid to persons who do not fulfil the conditions necessary for the award of normal pensions, taxes, dues or contributions payable in respect of employed contributors and legal proceedings relating to the matters reffered to in this Convention.

Each member for which this Convention is in force undertakes to maintain, within its jurisdiction, appropriate medical services responsible for ascertaining, both at the time of departure and on arrival, that migrants for employment and the members of their families authorised to accompany or join them are in reasonable health and to ensure that migrants for employment and memebers of their families enjoy adequate medical attention and good higienic conditions at the time of departure, during the journey and on arrival in the territory of destination.

In cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, whenever necessary or desirable, the authorities may enter into special agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.

For legal regulation of these issues of particular importance are Annex I and Annex II, depending on who is under consideration - migrants for employment recruited otherwise than under government-sponsored arrangements for group transfer or migrants for employment recruited under government-sponsored arrangements for group transfer.

Migrant Workers Convention (No.143)

General Conference of the International Labour Organisation held on 24 June 1975 at its Sixtieth Session in Geneva, adopted the Migration for Employment Convention (Revised) - Supplementary Provisions.

The Convention is based on the ILO principles that ''labour is not a commodity'', that poverty anywhere constitues a danger to prosperity everywhere, it recognises the solemn obligation of the ILO to further programmes which will achieve full employment through ''the transfer of labour'', including migration for employment and the ILO's obligation to protect ''the interest of workers employed abroad''.

The Convention No. 143 made amendments to the Convention on Migrant Workers only for their better protection and elimination of all forms of discrimination in respect of nationality, to facilitate the free movement of workers under bilateral and multilateral agreements under the supervision of the employment bodies and for the prevention and suppression of illegal and permanent labour trafficking.

Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected, during their journey, on arrival or during their period of residence and employment, to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members to suppress clandestine movements of migrants for employment and illegal employment of migrants, against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions with the use of all legal actions, including imprisonment.

The Convention states that each Member for which this Convention is in force shall un-

dertake to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, trade union and cultural rights and of individual and collective freedoms for persons who, as migrant workers or as members of their families, are lawfully within its teritory.

Each Member shall, by methods appropriate to national conditions and practice, seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the policy of equality of opportunity and treatment in respect of employment and occupation, enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy, take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection, repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment, take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue; guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity whatever might be the particular conditions of their employment.

According to the principle of mandatory application of conventions and principles for the protection of minimum rights there are no barriers that the Convention No.97 on Migration for Employment and Convention No.143 on migration in terms of abuse and improvement of equality of opportunity and treatment of migrant workers sholud be applied in all four countries signatories to the Dayton Agreement as the basis for bilateral and multilateral regulation of relations in the free movement of workers.

2.2. European Union Acts

Europian Union and European Acquis

Lasting peace, equality, freedom, solidarity and security (including social security) are the core (declared) values of the EU. The EU is founded on four fundamental freedoms: freedom of movement for people, free movement of goods, freedom to provide services and free movement of capital. Limitations exist only in the free movement of people, namely workers and their employment in the member states, up to seven years (2+3+2). After the Croatian accession to the EU, 13 member countries introduced restrictions on free movement for Croatian workers to, for the moment, 2 years. However, some member countries (e.g. Germany) allow local governments (e.g. Bavaria) to exempt from restrictions some (deficit) professions (e.g. medical staff). There are around twenty million unemployed workers in the EU at the moment, and, at the same time, around one million jobs are permanently

vacant (structural unemployment).

Values and fundamental freedoms are ensured through legislations that are defined and arranged in detail. Institutional arrangement of the EU required from the member states to give up part of their sovereignity and powers and to transfer them to the EU, with the aim of strengthening the joint, European interests. In that respect, the EU rules take precedence over national legislations, and some regulations are directly applicable. Under the direct EU jurisdiction are, for example, customs union, internal market, monetary policy, common market policy, fishing policy in a part which applies to marine biological resources preservaton, whereas, for instance, in areas such as transport, energy, environment, freedom, security, justice, the competencies are shared between the EU and member states. The EU provides support and coordination in the areas where there is no harmonization (standardization) of the laws of the member states, such as coordination of social security systems. Namely, each Member state retains its own social security system and is not obliged to harmonize it with those of other member states. Because of their differencies on the one hand, and the need to ensure freedom of movement for citizens and workers on the other, it was necessary to adopt instruments that will allow workers and citizens to exercise their social rights from different national social security systems. In order to connect and coordinate these systems, regulations and decisions of the Administrative Commission and the European Court of Justice are applied.

The EU legal framework (also called acquis communitaire, since the Treaty of Lisbon, only acquis) is complicated and abundant, and it consists of the Treaty of Lisbon (entered into force on 1 December 2009), directives, recommendations, regulations, decisions and rulings of the European Court of Justice.

In addition to the Treaty of Lisbon, other primary legislations include: EU Treaty (TEU), the Treaty on the Functioning of the EU (TFEU) and the Treaty establishing the European Atomic Energy Community (Euroatom Treaty). These are the agreements under which member states have transferred some of their sovereign rights and jurisdiction to the EU.
Secondary legislation consists of directives, recommendations, regulations and decisions.

The Treaty of Lisbon (reformed)

The Treaty of Lisbon amends the EU’s two core treaties, the Treaty on European Union (Maastricht) and the Treaty establishing the European Community (Rome). The latter is renamed the Treaty on the Functioning of the European Union.

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights including the rights of persons belonging to minorities.These values are common to the member states in societies characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men (Art. 2 of the EUTreaty). The main objectives of the Union are to promote peace, the Union’s values and the well-being of its peoples. The Union offers its citizens an area of freedom, security and justice without internal frontiers with adequate measures to external border controls and measures relating to asylum, immigration and the prevention and combating of crime. These general objectives are supplemented by more detailed objectives, such as establishing of the internal market aimed at sustainable development of Europe on the basis of balanced economic growth and price stability, a highly competitive social market economy. The Union combats social exclusion and discrimination, promoting social justice

and protection, equality between men and women, intergenerational solidarity and the protection of children's rights. It encourages scientific and technological progress. The EU promotes the economic, social and territorial cohesion, and solidarity among member states. The Union respects its rich cultural and linguistic diversity. The Treaty establishes economic and monetary union whose currency is the euro. As regards relations between the EU and the world, the Union is managed by the values of sustainable development of the Earth, solidarity and mutual respect among peoples, the principles of free and fair trade. It contributes to the eradication of poverty and protection of human rights and is strictly adhered to the principles of the UN Charter and international law thus contributing to its development (Article 3.TEU).

The Union recognizes the rights, freedoms and principles determined by the EU Charter of Fundamental Rights, which has the same legal force as the Treaties. Fundamental rights and freedoms constitute general principles of the Union. Also, the EU accessed to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6.TEU).

EU citizens have the right to move freely in the national territory of member states (Art.20 of the Treaty on the Functioning of the EU). Also, the freedom of movement for workers within the Union is ensured, and any discrimination based on nationality between workers of member states relating employment, revenues from the labour, working conditions and employment is inadmisible (article 45. of the Treaty on the Functioning of the EU). Coordinated strategies for employment, promotion of skilled, trained and adaptable workforce and labour markets adaptable to economic change are encouraged in order to achieve the objectives of Art. 3 of the Treaty on European Union (article 45. of the Treaty on the Functioning of the EU). In order to increase employment opportunities for workers in the internal market and to improve their standard of living, the European Social Fund (Art.62. of the Treaty on the Functioning of the EU) was established. The aim is to increase geographical and professional mobility, facilitate employment of workers and their adapting to industrial change and production systems (vocational training, retraining…).

The Treaty of Lisbon, on the whole, establishes the institutional framework and mechanisms for the construction, improvement and development of Europe as a unique area of harmonious development of all of its parts (the Social Fund), and predicts the future EU enlargement. It has strengthened the role of the European Parliament. It prescribes complex procedures for coordinating various interests when deciding on the Acts of the Union or adoption / coordination of individual policies (e.g. employment policy). In short, the Treaty establishes the institutional framework and mechanisms for improving European economic and social model. In addition, this social dialogue is recognized as one of the pillars of this model and a tool for social cohesion and resilience (new Art. 152 of the Treaty on the Functioning of the EU). The Economic - Social Committee and the Committee of the Regions help the European Parliament, the European Commission and the Council in their legislative and budgetary functions (advisory role).

Freedom of movement for workers in European Union

Free movement of workers is one of the fundamental freedoms on which the European Union - EU is founded (in addition to freedom of movement of capital, free movement of goods and freedom to provide services). This is confirmed by the fact that the provisions

relating to freedom of movement for workers are contained not only in the founding treaties - which are the most important sources of community labour law, but also and in the so-called secondary legislation of the European Union (rules and directives). The mobility of workers is of paramount importance for the functioning of the European Union because both workers who go to work in another member state and the member states themselves benefit from labour mobility. The host states provide new workforce in this way and with it the continuous production and delivery of services. On the other hand, the benefit for home countries is that the unemployment rate is reduced and social funds out of which a variety of unemployment support is financed are relieved.

Great significance in promoting the free movement of workers within the EU has a network of EURES (European Network of Public Employment Services). EURES is a network of Public Employment Services in partnership with the European Commission (European Economic Area countries plus Switzerland). EURES network was launched in 1993 and is an instrument for improving the mobility and physical and occupational mobility of labour in the European labour market. EURES contributes to a greater mobility of workers by providing information, counseling and mediation services (job -matching) - both for employers and persons seeking employment, and for all citizens who feel that they can contribute to the principle of free movement of people.

The concept of free movement of workers

Free movement of workers in the EU legislation can be defined as the right of the EU citizens to cross, reside and get employment in another member state, without discrimination on the grounds of nationality and other usual formalities designed for workers coming from ''third countries'', i.e. countries that are not member states of the EU.

Freedom of movement for workers within the European Union involves several elements, including: the right to work without a work permit - national legislations of member states cannot predict any quota system in the employment of nationals; equal treatment in employment as the nationals of the member state where the work is performed; the right to the same social benefits as nationals of the member state in which the worker is employed; the right of family members to accompany the employee and to receive family benefits - the free movement of family members refers to spouses, children under the age of 21 or children that are dependant on the employee, as well as to children of the spouse; full coordination of social security systems (rights gained from pension and disability insurance and social security contributions); mutual recognition of qualifications - although the question of regulation of professions is in the jurisdiction of the member states, this element of freedom of movement for workers is of particular importance, since the access to the labour market within the EU would be fairly limited if the qualifications acquired in another Member State were not recognized. It should be noted that a number of directives concerning the mutual recognition of diplomas have been adopted - both those related to the recognition of diplomas in certain sectors and those that deal with these issues in a general way, and which were modified in 2001 by adoption of Directive 2001/19.

Gaining freedom of movement for workers entails the fulfillment of two conditions, namely: the possession of nationality of the EU member state, since the freedom of movement of workers applies only to nationals of countries that are members of the EU and that the employee performs a professional activity, i.e. they are not tourists, sports amateurs or students.

Free movement of workers can be treated in the narrow and the broad sense.

Free movement of labour in the narrow sense involves three basic rights, namely: the right to leave their country of origin and enter another state (the host state); the right of residence in the host country regarding the professional activities and the right to stay in the host country upon termination of employment.

Free movement of workers in the broader sense relates to the equality in exercising labour rights and employment benefits.The exercise of their labour rights implies a prohibition of discrimination - both in exercising a worker's individual employment rights (such as the right to remuneration, the right to rest, the right to safety at work, etc.) and their collective employment rights (the right to union organizing, collective bargaining and related rights). The rights arising from the work include: the old-age and disability pension, the right to receive family pension, disability benefits, benefits in case of sickness, on the birth of a child, unemployment benefits and the right to health care.

What is characteristic for the concept of free movement in the EU legislation is that it had gradually expanded from the early rights workers had in internal markets to personal and fundamental rights of the EU citizens. So this right applies not only to workers but also to persons who are not employed - such as students and pensioners.

Restrictions on free movement of workers

Although the free movement of workers is one of the fundamental freedoms on which the EU is founded, the Treaty on establishing the European Community still envisages restrictions that can be applied to it. These restrictions may relate to the freedom of entry and residence in the host country, as well as the access to certain jobs. When it comes to the restriction of entry and residence, it may involve two aspects:

1) refusal of issuing or renewing a residence document;
2) removal from the territory of a host country (for persons who already have a residence document).

It is obvious that these restrictions must be justified by a certain public interest at national level. Thus, in terms of restrictions on freedom of entry and residence in the host country, the reasons for this are the protection of public order, public security and public health. In addition, the restriction of freedom of entry and residence must refer to a specific person, and be associated with his/her earlier behaviour - when it comes to the protection of public order and public security; that is, when it comes to persons suffering from an infectious disease that is in the defined list of diseases, but not to certain categories of persons in terms of 'general deterrence' from danger to the public interest at national level.

Employment restrictions may be related to employment in the public administration. This restriction was envisaged in the Treaty on European Union and until the mid 80s it included a wide range of jobs in public administration, which were reserved for national employees. However, in recent times this employment restriction has been narrowly interpreted. This is confirmed by the practice of the Court of Justice of the European Communities, which binds this restriction only to jobs that: 'directly or indirectly participate in the exercise of public authority and functions aimed at preserving the general interest of the state and other public collectivities'. Thus defined tasks for which there are employment restrictions for persons who are not citizens of member states, according to the case law of the European Com-

munities do not include the activities in the field of public health; education; distribution of water, gas and electricity; maritime and air transport; public transport; telecommunications and research activities.

In addition to the above restrictions, temporary employment restrictions can be provided for workers coming from new member - states. This limit may not exceed seven years, and aims to preserve the balance, both in the European labour market and the labour market of a member state.

2.2. The European Social Charter

The European Social Charter was adopted within the Council of Europe in 1961 and was revised in 1996. The Additional Protocol (1988) established the European Committee of Social Rights, a body that determines whether or not nationa law and practice in the States Parties are in conformity with the provisions of the European Social Charter.

For the migrant workers issues, two articles are important: article 12 - defines the right to social security, and in particular, Article 19 of the European Social Charter - it defines the right of migrant workers and their families to enjoy protection and assistance.

Bosnia and Herzegovina ratified the revised European Social Charter (1996) on October 7 2008, accepting 51 of its 98 paragraphs. Bosnia and Herzegovina has not signed the Additional Protocol, which regulates the system of collective complaints. BiH has not accepted Article 12, paragraph 3 and 4. Bosnia and Herzegovina adopted Article 19 in its entirety.

Montenegro ratified the revised European Social Charter (1996) on March 3 2010, accepting 66 of its 98 paragraphs. Montenegro has not signed the Additional Protocol, which regulates the system of collective complaints. Montenegro adopted article 12 of the Charter in its entirety. It accepted only paragraphs 11 and 12 of the Article 19 (which relates to the facilitation of learning the local language and the education of children of migrant workers).

Croatia ratified the European Social Charter (1961) and the Additional Protocol to the Charter on 26 February, 2003 accepting 40 out of 72 paragraphs of the Charter and 3 out of 4 articles of the Additional Protocol. On the same day, Croatia ratified the Additional Protocol, which regulates the system of collective complaints. Croatia did not accept Article 12 and Article 19 of the Charter. On 6 November 2009, Croatia signed the Revised European Social Charter, which has not yet been ratified.

Serbia ratified the revised European Social Charter (1996) on 14 September 2009, accepting 88 out of 98 paragraphs of the Charter, including a system of collective complaints. Serbia adopted Article 12 in its entirety and in Article 19 all paragraphs except 11 and 12 (which relate to the facilitation of learning the local language and the education of children of migrant workers).

Recommendations for these countries would be:

- For Bosnia and Herzegovina to accept the Additional Protocol on collective complaints and to accept Article 12, paragraph 3 and 4 of the Charter
- For Montenegro to accept the Additional Protocol on collective grievances, and to accept article 19, paragraphs 1 to 10.
- For Croatia to ratify the revised European Charter (1996), and to accept Article 12 and Article 19 of the Charter.
- For Serbia to accept Article 19, paragraphs 11 and 12 of the Charter

3. Bilateral agreements on employment

Two-sided (bilateral) and multilateral (multilateral) international agreements have been deeply rooted in the regulation of interstate relations. As such, bilateral and multilateral agreements are the oldest segment of the international regulations in the field of labour and social relations.

Bilateral agreements are agreements between two countries, whereas multilateral agreements represent agreements with the participation of more than two designated states and this range may not be extended over the contractual limits, so these agreements can be, in a way, seen as bilateral agreements. Multilateral internstate agreements are agreements involving a large number of states, or agreements that are later joined by a large number of states, or even all the states in the world.

Conclusion of interstate bilateral and multilateral agreements is usually based on solving problems that arise or result from application of ratified international conventions or accepted recommendations. Interstate agreements in the field of labour and employment include labour-legal and social-legal issues regarding the status of migrant workers, or of detached workers starting from their arrival in the country of employment until their return to their home country. Bilateral or multilateral agreements represent efficient and rational way of adaptating national legislations in the field of labour-legal and social-legal status of migrant workers.

Bilateral and multilateral agreements represent the additional international legislation in relation to the ILO conventions and through them, these countries tend to find common legal solutions which, as such, represent a type of the interstate law compromise.

Bilateral agreements on employment are a very good and convenient mechanism for the regulation of labour migration to be carried out in accordance with internationally established and interstate-agreed principles and procedures.

The purpose of bilateral agreements is a multiple one, since by their signing various economic, political, developmental, cultural and other objectives are achieved.

Several instruments of the International Labour Organization emphasize the importance of international cooperation in the field of labour migration, including the adoption of bilateral agreements (Convention 143). The model of the Agreement on the temporary and permanent migration for employment purposes, including the migration of refugees and displaced persons in the Annex of (revised) Recommendation No. 86 (1949) on migration for employment purposes, provides a useful framework for the types of questions that can be regulated by agreements. Bilateral employment agreement should contain the following elements: the competent authority; information exchange, migrants in an irregular situation; notifications of employment opportunities; process of selection of candidates; input documents; residence status (residence and work permit); transport; contract of employment; conditions of employment; mechanism for resolving disputes; the role of trade unions; social security; remittances; provision of accommodation; family reunification; supervision of the agreement implementation; validity and extension of agreements and valid court jurisdiction.

Agreements are usually concluded for an indefinite period of time, with the possibility that each party may, after the expiration of a certain period of time (usually five years) provide the other with a written notice of termination, defining a method of delivery. It is important that agreements are defined on the basis of reciprocity and defined forms of cooperation, information sharing and other activities consistent with the purposes of the agreement and

the national legislation of the signatory countries to the agreement.

Very little research has been done and there are no quantified data on the efficacy of bilateral agreements. Special attention should be paid to transparency of the agreement, starting from its creation to the application monitoring. Many countries believe that negotiations about the conclusion of bilateral employment agreements is a time-consuming and complicated process that is difficult to achieve, especially because of the economic crisis and high unemployment rates, bearing in mind that the objective of the agreement is the privileged access to the labour market of the signatory countries.

The lack of bilateral agreements in the field of labour and employment is due to the partial method that involves solving only certain aspects of labour rights and labour rights of nationals of the signatory states. But this deficiency is not insurmountable because states parties to the treaty may include in a bilateral agreement any work-related issue, and thus do not interfere with the same rights of third countries which are not signatories to the agreement. After all, a number of concluded bilateral agreements in the field of labour and employment of foreign citizens prove that.

4. Nordic Model of Cooperation in the field of free movement of workers

In comparison to other European countries, countries belonging to the Nordic system are specific since they represent entirety in which similar social and economic policies are carried out. In these countries there is a high level of equality, massive public sector and a wide range of public services. The main policy objective in the employment area is to accomplish full employment. These countries are characterized by the establishment of the so-called Scandinavian model of the welfare state, which is characterized by the principle of universality in social security, relatively proper distribution of income and relatively high rates of gender equality.

For sixty years (since 1954) the Nordic labour market has allowed the unlimited mobility of workers within the borders of the Nordic countries. Over the past decade, the integrated labour market has had an impact on the increase in total employment within the Nordic region and has been an important factor in stabilizing the macro-economic trends. Removing barriers to labour mobility within the Nordic region is one of the priorities of the Nordic countries, and therefore, a number of conducted studies and reports have been particularly devoted to this issue issue. Thus, at a meeting held in Finland in 2007, Prime Ministers of the Nordic countries decided to establish a forum that will address issues of the free movement of workers within the Nordic system, with the aim of preserving the rights of citizens and the promotion of economic growth and improvement of the competitiveness of the Nordic countries. The aim of the Forum was to ensure flexible labour markets in the Nordic countries, which would be accessible to both employees and employers. In this regard, an important segment is the provision of a uniform social welfare system, so the citizens of the Nordic countries would not feel trapped because of different regulations in these countries. To overcome these problems, in the framework of the Nordic Commitee of Senior Officials for Health and Social Affairs and the Nordic Committee of Senior Officials for Labour, the Expert Group was formed with a mandate to examine the obstacles that the citizens of the Nordic countries are facing concerning the access to the labour market, social security and the use of social services. The task of the Group was to both identify those obstacles and propose measures to overcome them. One of the crucial problems the Expert Group recog-

nised within the Nordic system was that different regulations were applied to different workers. That was particularly true in the area of social security, which is regulated on national level, so that the volume and types of rights were uneven.

The Expert Group proposed measures relating to three areas, namely: social assistance and social services; social security and the labour market. In this regard, the Group proposed a number of measures relating to:

- *issues that require amendments to national legislation;*
- *issues arising from inadequate informing and inadequate professional qualifications;*
- *issues that can be resolved through bilateral agreements; and*
- *issues relating to the amendment of the EU legislation and better information exchange between the member states.*

In addition to these measures, The Group proposed that the existing institutions in the areas of employment must be further strengthened. Further, it is essential that there is a continuous exchange of information between institutions in the areas of employment within the Nordic system, and other entities that can contribute to a more flexible labour market.

Given that some countries of the Nordic system are also members of the EU, in recent years (especially after the enlargement in 2004), the countries of the Nordic system have been facing the problem of labour influx from the European Union, particularly from the new member countries. In the period from 2003 to 2008, the total inflow of labour from the new member countries to the countries of the Nordic system increased from 8,000 to 58,000 annually. This problem is particularly present in Norway, where after the strong economic growth in 2005 - 2008, there was an unprecedented influx of migrant workers from the new EU member states. This is confirmed by data that during this time about 57,000 immigrants who originated from the newly EU member states, settled in Norway.

However, in the last few years the problem of unemployment - especially among the youth, as a result of the global economic crisis, has also been present in the countries of the Nordic system. In order to overcome it and mitigate the resulting consequences, several projects which are aimed at increasing the mobility of the workforce have been realized. One of these programs is the program of sustainable Nordic Welfare, which was implemented in the period 2013 - 2015 and was aimed at finding new and sustainable solutions in the Nordic welfare system. This program predicts activities related to the increase in employment, especially youth employment, as well as activities related to the mobility and the recognition of professional qualifications in the Nordic system.

One measure that has been given special attention to in order to overcome the economic crisis in the Nordic system is providing highly qualified labour force through regular educational system and continuous vocational training in the course of employment. In this sense, within the framework of the sustainable Nordic Welfare programme, the routine ‘Learning at Work’ was implemented with aim to address the challenges that the Nordic countries are facing and which are related to the introduction of practice work in education, quality learning in the workplace, as well as to increase the number of students who graduate from high schools. The importance of this project lies in the fact that it included the exchange of experiences at national and regional level, as well as the active participation of national institutions dealing with education and employment agencies, employers, professional associations and the like, and all of that with the single aim of exchanging experiences in terms of learning in the workplace.

In January 2014, the Declaration titled 'Together We are Stronger', signed by the Prime Ministers of Denmark, Finland, Iceland and Sweden, as well as the Chairmen of the Faeroe Islands and Greenland, determined that the commitment to the free movement of workers in order to boost job creation and growth of the Nordic countries is one of the challenges the Nordic countries are facing in terms of their cooperation. The goal is to create the best possible conditions for the free movement of capital and people between the countries. It was agreed that efforts should be made to ensure that the national legislations and the methods in which the Nordic countries apply the EU regulations, do not create new barriers to the free movement of capital and labour in the region. The Nordic region without borders, where citizens are treated equally and are able to choose the labour market, is the main objective of the Nordic cooperation.

5. National employment regulations

5.1. Serbia

Serbia was a transition country when the world economic crisis started. Vast majority of people were deeply unsatisfied with the transition, including many of those who lost their jobs, status or social influence, the majority of people whose income was insufficient for mere survival, as well as pensioners with low pensions. The majority of Serbian citizens believe that high unemployment rate is the biggest economic and social problem in Serbia.

Even in such a difficult economic crisis, the Republic of Serbia should be prepared to apply the European formula of a responsible welfare state. The free movement of persons is one of the fundamental European values. The free movement is a broader term and is a precondition for the legal regulation of the free movement for workers. By ratifying the European Social Charter (revised) on May 29 2009 (Atricle 19 of the Charter), Serbia took on some of the obligations it will have as a member of the EU, which relate to provisions prohibiting employment discrimination against migrant workers on the basis of their nationality.

Law on Foreigners of the Republic of Serbia (''Official Gazzette of the RS'', No.97/08) is an umbrella law regulating the legal basis and type of stay of foreigners in the Republic of Serbia. The law provides foreigners access to a temporary and permanent residency. A temporary residence is granted to a foreigner who intends to stay in Serbia for longer than ninety days, for the purposes of education, family reunion or other reasons that are consistent with the law or an international treaty. Permanent residence is granted to a foreigner who has stayed in Serbia continuously for longer than five years from the date of application for a temporary residence; who is married to a citizen of the Republic of Serbia or a foreigner with permanent residence of at least three years: a minor who has a temporary residence in the Republic of Serbia, if one of the parents has Serbian citizenship or permanent residence as a foreigner, with the consent of the other parent born on the Serbian territory. General rights, which can equally be exercised by foreigners, include employment rights.

Employment of foreign nationals in the Republic of Serbia is governed by the Law on Terms and Conditions for the employment of foreign nationals, which was passed in 1978. The law stipulates two separate conditions for the employment of foreign citizens - the existence of a temporary stay or a permanent residence permit and authorization for employment. A permission for permanent residence or temporary residence is not required if a foreign citizen is employed for professional activities that are established by a business and technical cooperation, long-term production cooperation, technology transfer and foreign

investment, as well as contracts on temporary and part-time jobs lasting no longer than 120 days in a calendar year. General provisions stipulated in the Labour Law ("Official Gazette of RS", No. 24/05, 61/05, 54 / 09, 32/13 and 75/14) apply to the employment of nationals of the Republic of Serbia, as well as employment of foreigners, prohibition of employng persons under 15 years of age and the requirements under the General Act - the collective agreement or the Rules of Procedure and Acts on performing a particular job. In accordance with international standards, the provisions on the prohibition of discrimination relate to domestic and foreign citizens in all respects, especially in terms of conditions for the recruitment and selection of candidates for a particular job, working conditions and all rights in employment, education, training and development, promotion and termination of employment.

Termination of employment for a foreign national starts when the validity of a temporary residence expires, in case his/her temporary residence is cancelled or revoked, and the employment can be prolonged if a temporary residence of a foreign citizen is extended and a new authorization for employment is issued.

Ordinance on the conditions and manner of the issuance of work permits for foreigners and stateless persons ("Official Gazette of RS", No.22/10) defines the terms and conditions for issuing work permits to foreigners and persons without Serbian citizenship and the role of the National Employment Service. Permission for a permanent residence or temporary stay is issued by the Ministry of Interior. A foreigner with a permanent residency submits to the National Employment Service a request for a work permit based on the place of his/her residence, which is issued for the time that the permanent residence is issued for. For a foreigner with a temporary residence, the application is filed by the employer together with an explanation why they need a foreigner employee, and a work permit is issued for the time period for which a foreigner has been granted a temporary stay. Pursuant to Article 5 of the Ordinance, the requirement for a work permit can be rejected in the event the National Service evidence shows there is an unemployed local citizen who meets the criteria specified in the request for a work permit.

Bearing in mind that the Law on Conditions for the Employment of Foreign Nationals was adopted in 1978, the Ministry of Labour and Social Affairs has prepared the text of the new Law on Employment of Foreigners. In the Opinion of the Law it is stated that the adoption of the Law would ensure the creation of a favorable climate for foreign investment; it would regulate the employment of foreigners, but also enable the conclusion of other agreements through which labour rights are acomplished; it would establish a procedure of accelerated and simplified issuiance of work permits when they are required for certain categories of foreign nationals; further, the Law would provide the possibility to limit the number of foreigners who can be employed in Serbia, that is, establish quotas in order to conduct an active policy of employment of nationals of the Republic of Serbia; establish procedures of record keeping in a new way in order to obtain an accurate overview of the situation in Serbia when it comes to labour migration, and define effective and specific supervision of the foreign workers' rights to work.

Employment policy is regulated by the Law on Employment and Unemployment Insurance ("RS Official Gazette", No. 36/09). Foreigners who have lawful residence in Serbia and a valid work permit are allowed to register with the National Employment Service and be enlisted as unemployed. In this way they acquire the right to benefit from all the financial and non-financial measures of active employment policy (the right to information on vacancies,

counseling, job matching, inclusion of additional education and training and financial support to employment - the right to use subventions and grants for self-employment). A foreign national enlisted by the National Service is entitled to benefits on such terms and conditions as the nationals of the Republic of Serbia.

Apart from the National Employment Service, employment can also be found through employment agencies. An employment agency must have a license issued by the Ministry of Labour, Employment, Social and Veteran Affairs. The license is issued for a period of five years and may be extended. The Ministry shall keep a register of licenses issued. The list of established employment agencies can be found on the Ministry's website. The number of registered agencies is 64. Migration service centres in Belgrade, Nis, Novi Sad, Novi Pazar, Krusevac, Kraljevo and Bor were established within the National Employment Service. They provide information about employment opportunities, education, residence, acquisition of citizenship. The greatest interest is in labour migration.

Foreigners working in the Republic of Serbia enjoy the same rights as citizens of the Republic of Serbia, apart from the rights that are exclusively recognized only to its own nationals. Health Insurance Act stipulates that foreigners, nationals of countries that have signed a mutual Agreement on social security, have the right to health care in the same capacity as nationals, unless this area is regulated differently by an international agreement. Law on Pension and Disability Insurance recognizes as employed persons all foreigners in employment with domestic legal entities and individuals, international organizations, and diplomatic and consular missions. In case there is a signed contract on social insurance, its provisions shall take precedence in relation to this provision on the principle of lex specialis. Law on Social Security provides for the right to social financial assistance and other forms of social protection to foreigners and stateless persons, in accordance with international treaties and the law. The Law on the Foundations of the Education System, the Law on Preschool Education, Primary School Law, the Law on Secondary Education, Higher Education Law - govern the issues of education of foreigners and stateless persons in the Republic of Serbia, as well as the procedure for the recognition of foreign education documents.

From the contact with the Serbian Chamber of Commerce, we have found out that the Serbian Chamber of Commerce and the Chamber of Commerce of Montenegro, Croatia and Bosnia and Herzegovina do not have data on the recruitment and employment of workers from other countries. A record of the labour movement, as a rule, is lead by the Ministry of Labour and Home Affairs. Serbian Chamber of Commerce receives occasional requests from our business people for an explanation of the circumstances under which they can engage their employees (within the last three years, there were about 10 queries) in temporary work in Montenegro, Croatia and Bosnia. Queries are, as a rule, passed to the Chambers of Commerce of the listed countries, which then provide the requested information through competent institutions.

In conversation with represenatatives of the Branch Union of Civil Engineering, Construction, Furniture and Wood Workers ''Independence'', it was concluded that the Civil Engineering Unions of Serbia, Croatia, Bosnia and Herzegovina and Montenegro, on the issue of labour migration, have achieved the cooperation and signed a protocol commiting to work on development and implementation of the strategy of organization, programs and campaigns to prorect the rights of migrant workers in order to improve their working and living conditions, to work on forming a common network for providing legal advice to migrant

workers, to organize bilateral and sub-regional meetings to analyze the implementation of the bilateral intergovernmental employment agreements, and to promote bipartite and tripartite consultations and decision-making mechanisms for resolving the issues of migrant workers under existing economic-social councils/chambers in the region, with the participation of labour inspection representatives, Centre for Migration and employment Services. Why is the issue of migrant workers so important to the unions? Because migrant workers are, regardless of their status, primarily workers. For trade unions, migrant labour is the question of law, equality, equal treatment and opportunities, it concerns the health protection and workplace safety, jobs, vocational training, social security and union organization.

SUMMARY

The Republic of Serbia should continue to liberalize the procedure for issuing work permits and residence permits to foreign nationals. Administrative procedures should be eased and procedural costs reduced. The new Law on Employment of Foreigners should be put on the agenda of the National Assembly as soon as possible. It is necessary to establish closer cooperation of state institutions on issues of labour migration and make this area more transparent.

5.2. Croatia

European regulations relating the free movement of workers include three subsystems: access to the labour market; EURES - electronic system designed for EU employment and coordination of social security systems. Promotion of free movement of European citizens, especially economically active people, is one of the major (declared) objectives of the EU.

During negotiations for the negotiating Chapter 2 (Freedom of Movement for Workers) what proved challenging was the adaptation of appropriate administrative structures and capacity to implement the relevant EU legislation, especially those related to the coordination of social security (pension insurance, child allowance, health insurance and care, unemployment benefits). By joining the EU, bilateral agreements on social security concluded between Croatia and the states - members of the EU and the countries of the European Economic Area (EEA), which are not EU members (Iceland, Lichtenstein, Norway), were replaced by the EU regulations. Bilateral agreements with Bosnia and Herzegovina, Montenegro, Serbia and Macedonia shall remain in force - until their accession to the EU.

Employment and work of foreigners in the Republic of Croatia is regulated by the Law on Foreigners (Official Gazette No. 130/11 and 74/13), by which a number of EU Directives were transferred into the legal system of Croatia. Employment of foreigners in the Republic of Croatia is mainly related to the temporary stay. A foreigner who is employed in Croatia must have a (unique) permit to stay and work which, on request, can be extended, or a work registration certificate. The number of foreign workers is mostly based on the annual quota, up to one year. Seasonal workers are employed for the period of up to 6 months, and foreigners with a work registration certificate for the period of up to 90 days. As far as the labour and social rights are concerned, a foreign worker has the same rights as a Croatian worker, in accordance with the laws of the Republic of Croatia, collective agreements or legal acts of the employer. However, a worker that a foreign employer assignes to work in Croatia temporarily (distributed worker / posted worker) is guaranteed by the Law on Foreigners the minimum level of rights under the legislation of the Republic of Croatia. The current

imbalance between the employer's freedom of doing cross-border business and the labour and social rights of posted workers has the potential to cause the so-called social dumping (posted workers are paid lower wages for the same jobs, they have less favorable working conditions and working hours, etc.). The complexity of the posted workers' problems is visible through the fact that the proposal for the new Posting of Workers Directive has been under discussion in the EU for the last two years.

The acquisition of a stay and work permit or a work registration certificate is dependant upon a condition of obtaining a temporary residence permit. A foreigner shall be granted temporary residence if they prove the purpose of temporary residence, a valid travel document, means of subsistence, health insurance, that there is no ban on the entry and stay in the Republic of Croatia, he or she does not present a threat to public order, national security or public health. Residence permits and business licenses are issued on the basis of the annual quota and out-of-quota per year. Most migrant workers are employed on the basis of the annual quota. Without a permit to stay and work or a registration certificate, foreigners allowed to work are those who have been granted: a permanent residence; asylum, subsidiary or temporary protection; temporary stay for the purpose of family reunification with a Croatian citizen, permanent foreign resident, asylee, etc.

A foreigner may work only on those jobs for which the residence and work permit was issued, that is, a work registration certificate, and only for the employer with whom he or she is employed. Also, an employer may employ a foreigner only on those tasks for which he or she was granted a permit (or work registration certificate). An employer who employs a foreigner who can work without a stay and work permit or a work registration, shall, within eight days of employment (or the beginning of the work) notify about that the competent police administration or a police station. These provisions also apply to subcontractors (a natural or legal person who has signed a contract for the subcontracted work with another legal or natural person, and has a work contract with a foreigner or makes use of his or her work).

At the end of October of the current year, the Government of the Republic of Croatia shall determine the annual quota for the employment of foreigners in the following year, and the quota comprises permits for new employment and extension of permits already issued. Proposal of the annual quota for the employment of foreigners is prepared by the Ministry for Work and is based on the opinion of the Croatian Employment Service, the Croatian Chamber of Economy, Croatian Chamber of Commerce, and the representatives of social partners (employers and trade unions). The annual quota shall be determined in accordance with the migration policy and labour market situation, and it shall determine activities and professions that allow new employments and the number of licenses for each of the activities and professions. Seasonal employment quotas are determined within the annual quota.

Work and residence out-of-quota permits may be issued to: daily migrants under the condition of reciprocity; foreigners holding key positions in companies; professional athletes, artists, scientific researchers etc.

In the same way as foreign workers employed on the basis of the annual quota, an employer must submit the following: work contract or written confirmation of the contract or other appropriate contract; evidence of acquired educational qualifications and training; proof of registration of the company, subsidiaries, representative offices, trade, association or the institution in the Republic of Croatia; and the explanation on why they are hiring a foreigner, together with the information about professional knowledge, qualifications and experience

of the foreigner, and on what grounds the position can not be filled by the workers from the Croatian labour market.

Police administration or a police station shall, according to the place of residence of the foreigner, decide on a request for a work and stay permit. The permit is issued to an employee for the time needed to perform the job, or the time for which the work contract is concluded, or other appropriate contract is signed for, but not exceeding one year. A foreign employee who has been issued a residence permit and seasonal work permit can stay in Croatia for six months at the longest, within a period of one year and must reside outside the Republic for at least six months before he or she is granted the re-entry permit for work purposes. To foreigners who are employed out-of-annual quota (persons defined by the Protocol of Accession of Croatia to the Marrakesh Agreement Establishing the World Trade Organization), work and residence permits shall be issued for a period of two years. A permission to stay and work shall be delivered by the police department / station to the employer and the regional offices or branches of the Tax Administration by the seat of the legal or natural person using the services of a foreigner or a to the place where the contracted work is performed.

The law anticipates that the permit can be denied, if the employer in any way violates the regulations on labour, health and pension insurance, or in case a foreigner or employer have not settled a pronounced sentence.

Work of foreigners is limited to 90, 60 or 30 days in a calendar year, on the basis of a certificate of registration. These are the foreigners whose work, by its nature, is of limited duration (eg. travel agents and animators, procurators, foreign media correspondents, specialists and teachers within the cultural and educational cooperation, foreigners performing the duties of supervision and inspection, repair and construction of ships, that is, foreigners engaged in supervision or inspection of manufacturing, assembly of equipment, machines and other installations on the basis of export contracts or orders from a foreign client; authors and performers in music, musical - theatrical art and dance, as well as accompanying reporting, organizational or technical personnel, etc.).

Foreigners who have been granted a permit to stay and work and foreigners who work without a work and residence permit (foreigners with a permanent residence permit, asylum seekers ...) are guaranteed the right to enjoy working conditions in accordance with the legislation of the Republic of Croatia, i.e. those collective agreements that are extended to all employers and workers of a particular activity / industry and other social rights (the right to social security, health insurance and pensions, child allowances, maternity and parental support).

Posted worker is a worker that a foreign employer temporarily or occasionaly sends to Croatia (cross-border provision of services) for a limited period of time. The condition is that the sent employee was, at the time of referral, in employment with the employer (this may be a temporary employment agency that has been established or is operating in Croatia). A foreign employer is a legal or natural person with residence in another Member State of the EEA. A posted worker - citizen of a third state and legally employed by a foreign employer, is obliged to regulate temporary residence if sent to work in Croatia for more than 3 months. A worker is guaranteed, in accordance with the legislation of the Republic of Croatia and the collective agreements extended to all employers and workers of certain activities / sectors: the maximum duration of working hours and minimum rest periods; minimum duration

of the paid annual leave; the lowest wages and increased wages for overtime work; health and safety in the workplace; protective measures for working pregnant women, women who have recently given birth or are breastfeeding and minor workers; prohibition of discrimination. The same rights apply to a posted staff member who is not a citizen of the EEA, provided that he or she is legally employed by a foreign employer. For such a worker, the foreign employer is obliged to send a statement to confirm that the posted worker is legally employed under the regulations of the state in which the employer is registered for work. A distributed worker assigned to work in the Republic of Croatia for the period shorter than eight days is not guaranteed a minimum duration of paid annual leave and minimum salary. This partial "suspension of rights" does not apply to workers distributed by foreign employers and sent to Croatia to work in construction (construction, repair, modification or demolition of buildings, works of excavation, earthworks, assembly and disassembly of prefabricated elements, and so on.). If the (previously mentioned) guaranteed working conditions are regulated in the Republic of Croatia in a more favourable way compared to the regulations of the state where the employer is registered for work, the favorable right shall be applied. The employer from the country which is not a member of the EEA must not be placed in a more favourable position than the employer from the EEA Member State.

The length of the period for which the posted worker is assigned to work in RH is calculated on the basis of a reference period of one year from the start of the referral, taking into account all previous periods during which the same work for the same foreign employer had been performed by any other posted worker.

In order to protect and exercise their rights, posted workers can initiate court proceedings against a foreign employer in a competent court in the Republic of Croatia, in accordance with the legislation of Croatia. A foreigner whose employment or other coresponding contract has been terminated with no fault on their part has the right to stay in Croatia until the expiration date of the stay and work permit. A foreign worker is obliged to inform the police administration or a station on these circumstances within 15 days (this obligation applies to the employer, too).

Until recently, before Croatia joined the EU, the Croatian Employment Service (CES) had its Migration Information Centres (MICs) in Zagreb, Rijeka, Split and Osijek, where migrant workers from the region were able to get advice, possible additional training and necessary information. The project (realized with IOM) went off after the Croatian accession to the EU. Today CES hosts EURES offices, primarily oriented to international mediation in employment in the EU. A migrant worker from a state which is not an EU member will receive in EURES offices only some general information and guidance which competent institution he/she should address ragarding a query or a problem they might have. Therefore, the range of services that were once offered by MICs has been significantly narrowed down for the workers in our region.

More significant counceling and legal advice could be obtained from trade unions.

Croatian Construction Union takes care of migrant workers and their specific needs in a more satisfactory way than other unions. This is not surprising since most of the migrant workers are employed in construction. They make effort to register them, explain them what rights they have, what they can expect and provide them with all the information an employee may need. In the event of a dispute with the employer, they provide legal assistance, and if necessary (it is free for workers), representation in court. In collaboration with

the International Federation of Building and Wood Workers Trade Unions (BWI), they have published a Guide for Migrant Workers in the Southeast Europe. The Guide contains short, useful information and contacts if need be.

The advantage that a unionized worker has is the legal and other support that the organisation will provide, if necessary, and the fact that he/she is not alone in the case of some kind of difficulty. The advantage for unions is that in this way they can control employers' practices and prevent (possible future) social dumping.

The general problem for both the Croatian and the migrant worker is the under-capacity of institutions designated to control working conditions, occupational safety, regular payment of wages, prevetion of 'black market for labour', the informal economy etc. Judicial protection of labour rights has been slow and inefficient (although somewhat 'faster' than a few years ago) and very expensive for migrant workers if they have not been unionized.

'Summary': migration policy of the EU (and consequently of Croatia) is so restictive that it 'produces' on the one hand , and 'feeds ' on the other, the public and employers' prejudices that the primary goal of newcomers is to use the social welfare of the developed EU member-states.

5.3. Montenegro

The foundation for regulating this matter is the Law on Foreigners' Labour and Employment (''Off. Gazette of Montenegro", No. 22/08 and 32/11''); by adopting it, the Regulation on Employment of Non-Resident Individuals ("Official Gazette of Montenegro "No. 28/03) was revoked, which represented an interim solution regulating the employment of persons residing in the countries of our region. The main novelty of the Law on Foreigners' Labour and Employment is that it does not recognize the term 'a non-resident person', but regulates the employment of persons who do not have the citizenship of Montenegro, with the exceptions prescribed by law. In terms of the Law on Foreigners (''Official Gazette of Montenegro'', 82/2008, 72/2009, 32/2011 and 53/2011.), a foreigner is any person who is not a Montenegrin citizen, whether he/she is a citizen of another state or is a stateless person. A foreigner may be employed or work in Montenegro, provided that he/she has: a work permit; an authorization for permanent residence or authorization for temporary residence; concluded work contract, i.e. civil-legal contract and that the obliged person for registering the work has registered the foreigner's work, pursuant to the Law.

In terms of employment of foreigners, the Law predicts a quota system, under which the Government of Montenegro determines the annual number of work permits for foreigners. In this process, in terms of legislation, before establishing quotas for the following year, the Government shall obtain the opinion of the ministries responsible for activities for which the quota is to be determined, and the opinion of the Social Council of Montenegro, which is made up of the social partners (employers' union, the representative organizations of employees and Government representatives). Quotas do not apply to certain categories of foreign nationals, such as those employed on the basis of international treaties or entrepreneurs. When it comes to access to jobs in the public sector, a foreign national may work in public bodies such as an employee, while for the position of a civil servants they would need Montenegrin citizenship. It should be noted that Montenegro has not yet concluded a single bilateral agreement that provides favorable conditions for employment in the territory of Montenegro, or employment outside the established quota for the employment of

foreigners. There are only cooperation agreements concluded between the Employment Agency of Montenegro and similar institutions in the region and some of the countries that are members of the EU (cooperation agreements concluded with employment institutions from Serbia, Bosnia and Herzegovina, Macedonia, Croatia, Hungary and Germany). The subject of these agreements is the cooperation in the exchange of information, promotion of active employment policy and employment mediation, and in order to promote employment and combat unemployment in the countries signatories to the agreement.

The process of employment of foreigners consists of six phases, namely: submittion of a request for issuing of a permit - the procedure of work permits issuance is regulated by the Rules of Procedure on the Manner of Issuing Work Permits for Foreigners ('Official Gazette of Montenegro, No. 81/08); obtaining a permanent or temporary residence permit - according to the Law on Foreigners, permanent residence may be granted to a foreigner who had, until the day of the request submission, stayed in Montenegro for five consecutive years on the basis of a temporary residence permit. The exception to this rule applies to a foreigner who, until the date of the request submission, had been granted a temporary residence in Montenegro for less than five years continuously, if this was required for reasons of humanity, or would be of interest to Montenegro. Citizens of the former Yugoslav states who had permanent residence in Montenegro before 3 June 2006, are entitled to permanent residency, with no required request submission and special approval, subject to filing in the application for registration.

A temporary residence permit may be granted to a foreigner who intends to stay in Montenegro for more than 90 days, for the purposes of, among other things, employment and work, and for a business or entrepreneurial activity, as well as the seasonal work. A foreigner may be granted a temporary stay, if he/she meets the following requirements: he/she has means of subsistence, provided accommodation and health insurance; there are no safety threats to Montenegro; and if he/she has submitted evidence justifying the request for a temporary stay (work permit).

- *Applying for work files (workbooks) - a foreigner submits a request for issuance of a workbook to the Municipal Authorities in charge of labour affairs (Secretariat).*
- *Conclusion of the work contract and the mandatory social insurance - the employer concludes a work contract, i.e. civil law contract with a foreigner and registers him/her for the mandatory social insurance (the procedure is the same as for the nationals).*
- *Registration of the starting of employment - the process of registration and termination of a foreigner's work, as well as the evidence that should be submitted according to the Rules of Procedure on the Application for Registration of the Starting and Termination of the Work of a Foreigner (Official Gazzette of Montenegro, No. 81/08).*

A work permit is a document which allows a person to get a job, or to work, in Montenegro. Law on Employment and Work of Foreigners provides for three types of work permits, including: personal work permit; employment permit and work permit. In addition, only one work permit for the same period of time can be issued to a foreigner.

PERSONAL WORK PERMIT is a document that allows a foreigner free access to the labour market, regardless of the state of the market and relations on it. It is issued for an indefinite period of time, exept for a person who has been granted additional protection, in which case it is issued for a period of one year. When issuing a personal work permit, it is

important to note that the procedure for its issuance is carried out after the prior authorization of the permanent residence, i.e. after a foreigner had been acknowledged the status of a refugee or persons granted additional protection. This is an exception to the procedure of issuing of other work permits, since the procedure of the issuance of other work permits is reverse.

EMPLOYMENT PERMIT: is a permit issued to the employer who concludes a work contract with a foreigner (for performing jobs determined by the act on systematization of working posts). They are, as a rule, posts which represent a constant need for the employer. This type of permit is issued for a period up to one year. After the expiry of validity, it may be renewed for a period up to two years. In this case, the restrictions relating the employer are not reviewed.

WORK PERMIT: a permit with the pre-determined time duration, based on which the employer concludes a work contract with a foreigner, a foreigner as a legal person with the seat in Montenegro, or organizational unit of a foreign company registered in Montenegro, provides services, or other forms of work, on the basis of the civil law contract. It is issued for a limited period of time, depending on the purpose. After the expiry, it can be renewed, as required by the Act. Depending on their purpose, the Act provides for four types of work permits, including:

- *Work permit for seasonal work, which is issued for employment for a specified time, within the activities that are seasonal. The period of validity of this permit is up to eight months in a calendar year, and if issued on a short-period it may be extended without checking restrictions for employers which are required by the Law.*
- *Work with posted foreigners: they are persons who are employed by an employer based outside Montenegro but perform certain services on the territory of Montenegro such as: cross-border services (services that are performed by a foreign company under the contract concluded between the companies and legal entities based in Montenegro, for whom the services are performed); further training and development of the posted foreigners can be done if they are a legal entity based in Montenegro and a foreign company, owner or business related; the movement of persons within a foreign company (temporary engagement of foreign employees in an organizational unit of a foreign company registered in Montenegro, provided that the foreigner has been employed in that company at least one year).*
- *Work permit for training and specialization of foreigners (can be issued in case Montenegro has concluded an agreement on training and specialization of foreigners with the country of whose citizen is the foreigner, or, again, without the agreement, if such training and specialization is of interest for Montenegro);*
- *Work permit for provision of contractual services (issued to a foreigner employeed by a foreign company for the purpose of performing contractual services in Montenegro, when the expert knowledge is required).*

5.4. Bosnia and Herzegovina

In accordance with the internal constitutional order of Bosnia and Herzegovina (the existence of two entities with rounded system of constitutional legislature, executive political authority, judicial, and administrative authority and Brcko District of BiH as a separate po-

litical and territorial unit, also with the legislative, executive political authority, judicial and administrative authorities) distribution of competencies between the State of Bosnia and Herzegovina and its political and territorial constituencies has been implemented.

In accordance with the implemented distribution of competencies and from the provisions on exclusive jurisdiction of Bosnia and Herzegovina, it is clear that the questions of labour and social relations are in the exclusive jurisdiction of the Entities and Brcko District of BiH, while Bosnia and Herzegovina, on the same issues, is authorized to regulate the employment status of persons employed in the institutions of Bosnia and Herzegovina according to the personal-organizational principle that addresses issues of immigration, refugees and asylum seekers.

The only competent authority at the state level in the field of labour and employment is the Agency for Labour and Employment of Bosnia and Herzegovina.

Likewise, Bosnia and Herzegovina, as an international legal entity, has the rights and obligations arising from the signed and ratified international agreements and international conventions that are an integral part of its existing constitutional and legal system.

For a complete overview of the role of the Labour Law in Bosnia and Herzegovina in terms of the distribution of competences between BiH as a state and its political and territorial units, it is necessary to review and give an overview of the labour legislation of each of these three units.

In the Federation of Bosnia and Herzegovina, the area of labour and social relations is included in the joint jurisdiction of the federal and cantonal government. The federal government is authorised to enact laws on employment and social relations, but is required to take into account the cantonal jurisdiction, different situations in individual cantons, as well as the need for flexibility in the implementation of laws and regulations in the entire Federation.

In the Republic of Srpska labour legislation is passed at the level of the Republic of Srpska. Labour and other legislation is under exclusive competence of the National Assembly of the Republic of Srpska.

In the Brčko District of Bosnia and Herzegovina, the Assembly of District passes the legislation in the field of labour and social relations.

In conclusion, labour legislation in Bosnia and Herzegovina reflects the specific internal organization of the post-Dayton BiH in which the adoption of labour laws in the Federation of BiH, Republic of Srpska and Brcko District, as political and territorial parts of the country, as well as in the institutions of Bosnia and Herzegovina, and then other regulations, collective contracts, bylaws and autonomous acts regulating working conditions and employment, is distribured to these four regulatory decision-making levels.

According to the labour legislation of Bosnia and Herzegovina, foreign citizens and stateless persons may be employed, in principle, under the same general and specific subjective conditions which apply to the nationals of BiH, but they are also required to meet the additional requirements stipulated by special laws.

General subjective conditions of employment are those conditions that are required for all activities and all persons who are employed.

The first general requirement of the labour legislation of Bosnia and Herzegovina is 15 years of age, when the young person can start to work, and the second general condition is the general medical fitness which implies such health condition of the person that will allow him/her to perform the duties of their job without risk to their health, health of other people

and safety of the property.

Special subjective conditions of employment shall be determined according to the nature, complexity and ways of work performing. They are primarily related to the requirements to be met in respect of expertise (educational background, work experience, knowledge of foreign languages and other personal skills) and and personality traits (age as a specific condition, health condition as a special condition, creativity, communication skills, organizational skills, etc.).

As already mentioned, labour legislation is under the jurisdiction of the Entities and Brcko District BiH, which indicates that the conditions for employment of foreign nationals and stateless persons are regulated by laws that are passed and implemented in the Federation of BiH, the Republic of Srpska and the Brcko District, which means that foreign nationals and stateless persons in the system of labour relations are subsumed under different criteria for employment.

Regulations conducting the work of foreign nationals and stateless persons at the level of Bosnia and Herzegovina are contained in the provisions of the Law on Movement and Stay of Aliens and Asylum and the decisions of the Council of Ministers of Bosnia and Herzegovina, which, according to the migration policies and the status and movement in the labour market, determine the quota of work permits for foreigners every year.

Law on Movement and Stay of Aliens and the Asylum Act prescribes that foreigners who intend to stay in BiH to get paid work, are obliged to have a work permit in accordance with the laws of the Entities and Brcko District of BiH law, unless the law or an international agreement provides that for certain types of jobs a work a permit is not required, as well as a residence permit (temporary residence permit) in accordance with the Law.

Also, this Law prescribes that foreigners shall hold a valid visa to enter and stay in the country unless they enter BiH with a passport issued by a country whose nationals are exempt from visa, but also without fulfilling these two conditions, if so provided by an international agreement to which the contracting party is BiH, and if so determined by the Council of Ministers.

On the basis of this Law, foreigners may be granted with permanent or temporary residence, may be required a viza or enjoy viza-free regime.

Legal and employment status of foreigners and stateless persons in the Federation of bosnia and Herzegovina is regulated by the Law on Employment of Aliens and Asylum.

On the territory of the Federation of Bosnia and Herzegovina, the Law on Employment of Alens and Asylum regulates the additional - special conditions of the employment of foreigners and stateless persons.

In terms of this Law, what constitutes the employment is the starting of work for a definite period of time (hereinafter referred to as the employment) of foreign nationals and stateless persons on the basis of the work contract, work engagement on the basis of temporary and occasional jobs (hereinafter reffered to as work engagement).

The first special - additional requirement for employment, i.e. work engagement of foreign nationals or stateless persons, refers to the compulsory acquisition of a work permit if they meet the general and special conditions of employment and work engagement as determined by the Labour Law or collective bargaining agreements and autonomous and general acts of the employer, which clearly show that the employer cannot conclude a work contract or hire a foreign national or a stateless person before they get a work permit. The

employer obtains a work permit from the competent cantonal employment agency by the seat of the employer, with the approval of the Federal Employment Service, which is issued with a validity of three months to the maximum of one year, according to the number of approved annual quotas for work permits.

The second additional requirement refers to the authorised temporary stay where the fulfillment of this requirement is not a condition for a work permit but for the conclusion of a work contract or work engagement and the begining of the work in the Federation.

When it comes to the ways in which foreigners or stateless persons are employed, it sholud be stated that a foreigner cannot be issued a work permit if there are, at the seat of the employer, registered unemployed persons who meet the job requirements, unless the unemployed person refuses employment in the required profession.

Foreigners employed by local employers (corporate and individuals) have the same rights, obligations and responsibilities as citizens and employees of the Federation in accordance with positive laws and may not be placed at a disadvantage on the basis of gender, sexual orientation, marital status, family responsibilities, age, pregnancy, language, religion, political or other opinion, national or social origin, property, birth, race, colour, or other personal characteristics.

This Law regulates the cases when a work permit can be issued regardless of the fixed annual quota for work permits, the categories of persons who do not need a work permit to work in the Federation and the restictions due to which a work permit cannot be granted.

Legal status of foreign citizens and stateless persons in the Republic of Srpska is regulated by the Law on Employment of Foreign Citizens and Stateless Persons.

In accordance with this Law, what constitutes employment is the begining of the work of foreign nationals and stateless persons on the basis of a permanent or temporary work contract, and work engagement on the basis of a work contract for occasional and temporary work, as well as any other paid work, and work engagement of scientific, cultural and other workers on the basis of cultural, business and technical cooperation.

According to this Law, in addition to the general requirements established by the Law, a collective agreement or autonomous general acts of the employer, foreigners employed by domestic employers (legal and natural persons) must have a work permit issued by the Employment Agency of RS and its relevant subsidiaries at the seat of the employer in order to conclude a work contract, based on the fixed annual quota for work permits in RS.

Just as in the Federation of BiH, the method of employment of foreigners and stateless persons in the Republic of Srpska is conditioned by the fact that these entities can not issue a work permit if there are registered unemployed persons at the seat of the employer who meet the job requirements, unless the unemployed person refuses a job in the required profession.

There are no further differences and special characteristics in the employment of foreign nationals and stateless persons, and everything that is said about the employment and legal status of those persons in the Federation of BiH, mutatis mutandis, is regulated in the same way the Republic of Srpska.

Legal and employment status of foreign citizens and stateless persons in the Brcko District is regulated by the Law on Employment of Foreigner Citizens in the Brcko District.

According to this Law, in addition to the general requirements established by the law, collective agreements or autonomous general acts of the employer, in order to start work

for an employer from the District (legal and natural persons), a foreigner must meet special requirements relating to: temporary residence in the territory of District, i.e. BiH, in accordance with the rules governing the movement and stay of aliens and the asylum; valid work permit issued in accordance with the law on the basis of annual quota by the Employment Service.

Positive legal regulations in the field of labour and employment relations are only partially or entirely in line with the directives of the legal order of the European Union relating to the prohibition of discrimination, the content of the work contract or written confirmation of the work contract for a certain period of time, equal pay for women and men, redundancy, working part-time and maternity protection rights, while other rights under labour legislation do not comply, or are in the process of harmonization with the laws and rules of the European legal system and the legal system of the European Union.

It should be noted that the entity Parliaments are in the procedure of adopting new labour legislations which are, to a large degree, harmonized with the obligations of BiH arising from the process of joining the European Union and stemming from ILO Convention, which will surely later implicate changes in this area.

National sources of law in the legal system of Bosnia and Herzegovina on the movement, stay and work of foreigners in BiH in effect are: the Law on Movement and Stay of Aliens and Asylum (BiH); The Law on the Labour and Employment Agency of Bosnia and Herzegovina; Decisions of the Council of Ministers on the annual quota of work permits; the Law on Employment of Foreigners (F BiH); Employment of Foreign Nationals and Stateless Persons Act (RS) and the Law on Employment of Foreigners in Brcko District.

6. The analysis of existing treaties regarding employment in the countries signatories of Dayton Agreement

6.1. Serbia

In the Republic of Serbia, a treaty that the state has concluded in writing with one or more states or international organizations, and which is regulated by the international law, is considered an international treaty. Protocols, records and other written documents which, in order to fulfill international agreements, are concluded by the authorized bodies, and which do not take on any new responsibilties (administrative contracts) are not considered, in terms of this law, international treaties (Article 1 of the Law on the Conclusion and Enforcement of International Treaties - ''Official Gazzette of SFRJ'', No. 55/78, 2/89 and 47/89).

One of the most important international agreements in the field of labour migration is the international social security agreement. It provides for coordinated implementation of national legislation of the contracting states in the field of social security. These international agreements are concluded with permanent validity, applied directly and are the foundations for the rights of individuals with respect to their performance and security abroad. These contracts guarantee equal treatment of the citizens, i.e. insurers of the both contracting states under national law; determine the applicable legislation (the rules by which, in each case, can be accurately determined whether the legislation of one or the other contarcting state is applied); provide for the maintenance of acquired rights, guarantee the payment (transfer) of benefits in the event of a change of residence to another contracting state. They are specific in way that they are concluded for indefinite period of time, and the rights of individuals achieved through their application continue to last and are executed after their cancellation, i.e. termination date.

The Republic of Serbia has signed with the countries signatories to the Dayton Agreement the Agreements on Social Security, as follows:

- *The Agreement between the Federal Republic of Yugoslavia and the Republic of Croatia on social security of 15 September 1997, in effect from May 1, 2003 (“Off. Gazzette of FRY International Treaties”, No. 1/01);*
- *The Agreement between the Federal Republic of Yugoslavia and Bosnia and Herzegovina on social security of 29 October 2002, effective from January 1, 2004 (“Off. Gazette of Serbia and Montenegro - International Treaties”, No. 7/03);*
- *The Agreement between the Republic of Serbia and Montenegro on social security of 17 December 2006, in effect from January 1, 2008 (“Official Gazette of RS”, no. 102/07).*

The Agreements are based on generally accepted principles, namely: the principle of insurance; principle of the Agreement application to both insured sides, and not just persons with the citizenship; the principle of territorial equity: the principle of preserving acquired and the expected future social security rights and the principle of subsidiary application of the Agreement in relation to national legislations.

The Agreements on social security encompass the following areas of social insurance - pension and disability insurance; health insurance, health care and maternity; insurance against work injuries and occupational diseases; unemployment insurance and child allowance. Only the agreement with Croatia does not include child allowance issue. Pensions, unemployment benefits and other monetary benefits under the legislation of one contracting

state shall be paid to the residents of the other contracting state.

According to data from the National Employment Service in 2013, the National Employment Service sent 562 requests to the Agency for Labour and Employment of BiH for confirmation of the insurance period completed in Bosnia and Herzegovina, in cases where a person is applying for the right to receive financial compensation in case of unemployment in Serbia. During this period, 629 requests were received, the number including the requirements from the previous year.

In the same period, the National Employment Service sent 895 requests to the Croatian Employment Service for confirmation of insurers's years of service in that state for the purposes of exercising the right to receive financial compensation in case of unemployment in Serbia. The Croatian Employment Service submitted 924 receipts to the addressed requirements, with some requirements relating to prior periods.

During the reporting period, the National Employment Service sent 124 requests to the Employment Agency of Montenegro for confirmation of accrued insurance in that country. The Agency submitted 149 request confirmations, with one portion of certificates relating to earlier periods.

On the other hand, the National Employment Service received 169 requests from the Croatian Employment Service, 94 requests from the Agency for Labour and Employment of BiH and 110 requests from the Employment Agency of Montenegro for confirmation of accrued insurance on the territory of the Republic of Serbia, in cases when unemployed persons apply for the financial compensation in cases of unemployment in those countries. In accordance with the submitted requests, the National Employment Service has issued 144 certificates to the Croatian Employment Service, 75 certificates to the Labour and Employment Agency of Bosnia and Herzegovina and 92 confirmations to the Employment Agency of Montenegro, thus confirming that the contribution periods were made in Serbia and the applicants' right to unemployment benefits in those countries.

The issue of labour migration is particularly interesting from the point of pension and disability insurance rights. If we look at payments from the region (former Yugoslavia), pensioners who live in Serbia, are paid most pensions from the countries involved in the project - from Croatia - to 42,471 users, from Bosnia and Herzegovina - to 31,778 users (Republic of Srpska - 16,756, and the Federation of Bosnia and Herzegovina - 15,013 users) and Montenegro - to 3,541 users. The payment of these pensions is done on a monthly basis, in euros.

It is recommended by the Fund that all policy holders who had worked in some of the former Yugoslav Republics, in a timely manner and before the retirement, apply for confirmation of pensionable service, so that later, when they apply for a pension, the procedure would last shorter. Together with the application, it is necessary to submit: all documentary evidence of the service accrued abroad, photocopy of workbooks, proof of military service, photocopy of the identity card, birth certificate. The important note for future retirees is that they should state in the request for mandatory state pension the years of their service abroad, regardless of whether they, at that moment, meet the retirement requests of that state or not.

The Agreement on temporary employment of citizens of the Republic of Serbia in Bosnia and Herzegovina and the citizens of Bosnia and Herzegovina in Serbia refers to migrant workers, or persons who are nationals of a Contracting Party, who legally reside and are

temporarily employed in the territory of the other Contracting Party and do not have permanent residence there. Migrant workers are temporarily employed in the state of employment through the relevant bodies (National Employment Service of Serbia and the Labour and Employment Agency of BiH), at the request of the employer, in accordance with this Agreement and the legislation of the country of employment. The agreement was signed on 9 June 2011. (source - Vecernje novosti - Thursday -9 June 2011 / Tanjug).

6.2. Croatia

The main purpose of the Dayton Agreement, negotiated from 1st to 21st November 1995, was to promote peace and stability in Bosnia and Herzegovina. Its goal and purpose was not to establish regional cooperation between the signatory countries. Only in Annex 1 - Additional Agreement on Human Rights that was to be applied in Bosnia and Herzegovina, and which listed international agreements on human rights which would be applied directly in Bosnia and Herzegovina, under No.13, the Agreement mentiones International Convention on the Protection of the Rights of all Migrant Workers and Their Families (1990).

Since the signing of the Dayton Agreement to day, the signatory countries have solved a number of mutual issues through bilateral agreements. As for the position of migrant workers, of great importance are agreements (contracts) on social secutity, and, indirectly, agreements on avoidance of double taxation.

At present, the situation with bilateral agreements in these two areas is as follows:

a) Social Security Agreements:

- Bosnia i Herzegovina and Croatia signed an Agreementon on Social Security on 4 October 2000. Croatia ratified that Agreement on 1 November 2001 (Official Gazzette – International Treaties No. 14/01).
- Montenegro and Croatia signed a Social Security Agreement on 24 July 2013. Croatia ratified the Treaty on 1 May 2014. (Official Gazette-International Agreements. 3/14).
- Serbia (Federal Republic of Yugoslavia) and Croatia signed a Social Security Agreement on 15 September 1997. Croatia ratified the Treaty on 1 May 2003 (Official Gazette, International Agreements, No. 10/03).

b) Agreements on Avoidance of Double Taxation

- Bosnia and Herzegovina and Croatia signed an Agreement on Avoidance of Double Taxation on Income and Property on 7 June 2004. Croatia ratified the treaty on 22 June 2005. (Official Gazette - International Treaties 11/05).
- Montenegro and Croatia have not signed an agreement on avoidance of double taxation.
- Serbia and Croatia signed an Agreement on Avoidance of Double Taxation on Income and Property on 14 December 2001. Croatia ratified the Contract on 22 April 2004 (Official Gazette - International Treaties, No. 4/04.)

It is evident that there are bilateral agreements that would liberalize the free movement of workers between countries. According to the current legal framework, the employment of foreigners in Croatia is limited by the annual quotas. This is regulated by the Article 74 of the Law on Foreigners (Official Gazette 130/11) which reads:

(1) Pursuant to its Decision, the Government of the Republic of Croatia establishes the annual quota for the employment of foreigners not later than 31 October of the

current year for the following year for the extension of already issued permits and new employment.

(2) Proposal for the annual quota for the employment of foreigners is prepared by the Ministry of Labour based on the opinion of the Croatian Employment Service, the Croatian Chamber of Economy, Croatian Chamber of Commerce and representatives of the social partners.

(3) The annual quota for the employment of foreigners shall be determined in accordance with the migration policy and labuor market situation.

(4) Within the annual quota for the employment of foreigners the activities and professions that allow new employment and the number of permits for each of the activities and professions shall be determined.

(5) Within the annual quota for employment of foreigners, the quota for seasonal employmen shall be determined.

The recession that has affected the Croatian economy since 2010 has decimated the issuance of new work permits (in 2009 there were 4267 new work permits; in 2014 239 new work permits). In a situation where all countries signatories to the Dayton Agreement are facing very high unemployment rates, we believe that it is difficult to expect the liberalization of the employment of foreign workers in these countries. In Croatia, according to data from the Yearbook of the Croatian Employment Service for the year 2012, there were 324 324 thousand unemployed persons, i.e. the average annual unemployment rate was 18.9.

6.3 Montenegro

One of the key issues in the field of employment in Montenegro is the structural imbalance between the supply and demand for the labour in the labour market.

Structural unemployment is one of the most dominant limiting factors for the faster economic growth of Montenegro. The basic characteristics of structural unemployment in Montenegro are:

- *Disparity between the educational structure, staffing needs of employers and job seekers;*
- *Disparity between the supply and demand for labour both in terms of occupational structure and the number of employees in them;*
- *Disparity in the quality of professional training of persons with full-time education and current technical requirements and working conditions in industry and service industry.*

For these reasons, although the total supply in the labour market is higher than the demand for labour in certain periods of the year, the demand for certain professions (especially in the construction, catering industry and agriculture) exceeds the supply. Apart from the structural disparity in supply and demand in the labour market, one of the reasons for this is the character of this type of work engagement, which means that very often, on very short notice, it is necessary to provide required workforce for tourism related activities, catering industry and agriculture.

The priority of employment policy in Montenegro is to reduce the unemployment rate of persons who are registered with the Employment Agency. Although the number of active employment policy measures is directed to this end, official figures indicate that the number of issued work permits for foreigners in Montenegro is higher than the number of employed

persons registered with the Employment Agency. In the first six months in 2014, 5,397 persons registered with the Employment Agency of Montenegro were employed, while in the same period the number of issued work permits within the quota was 9,068.

Given the above, the conclusion of bilateral agreements that aim at providing more flexible environment for the employment of foreign citizens in Montenegro - even the citizens of the countries signatories to the Dayton Agreement, has not been treated as a priority.

On the other hand, Montenegro, as a candidate country for the membership in the European Union, is obliged to harmonize its labour market legislation with the European Union standards. The report of the European Commission for the Negotiation chapter - 2 states: Freedom of movement for workers shows that the existing legislation in this area in Montenegro is still not in line with the EU acquis. For this reason, it is stated that the Montenegrin legislation should be amended to repeal the procedures and practices that violate the freedom of movement of workers. Among other things, Montenegro should ensure that, by the date of the accession, the EU citizens shall not need a work permit and be discriminated on grounds of nationality in relation to access to the labour market.

Apart from creating conditions for labour mobility - which is the obligation arising from the European Union regulations, signing bilateral agreements with neighboring countries would be significant for Montenegro not only because they would thereby further improve economic cooperation with countries from the environment (which is one of the priorities of the foreign policy), but it would create conditions for reducing illegal work of people coming from the countries in the region (which is a problem found, in particular, in the construction and catering industries).

6.4. Bosnia and Herzegovina

Bosnia and Herzegovina and the Republic of Serbia signed the Agreement on temporary employment of citizens of Bosnia and Herzegovina, Serbia and the Republic of Serbia in Bosnia and Herzegovina (hereinafter: the Agreement). The Agreement was signed in Belgrade - Republic of Serbia on 9 June 2011, and was ratified by Bosnia and Herzegovina on 28 December 2011 and published in the Official Gazette of Bosnia and Herzegovina, No. 02/12.

The aim of the Agreement was to develop good neighbourly relations on the one hand, and on the other hand, to develop and improve all-round cooperation in the area of temporary employment of nationals of the signatory states on the territory of both countries.

Concluded Agreement contains basic, special and final provisions. Basic provisions determine the entities to which the Agreement shall apply, the meaning of the basic terms of the Agreement and the relevant holders of the Agreement execution in the signatory countries. Specific provisions include rules on employment of nationals of one country in the territory of another state, rights, obligations and responsibilities of migrant workers and employers arising from the employment relationship and the rights of family members of migrant workers. The final provisions lay down the rules on how to resolve possible differences in the interpretation or application of the provisions of the signed Agreement.

Authorized agents of the Agreement are the countries signatories to the Dayton Agreement, Bosnia and Herzegovina and the Republic of Serbia, and the competent holder of the Agreement (hereinafter reffered to as: Competent Holders) for Bosnia and Herzegovina is the Agency for Labour and Employment of BiH and for the Republic of Serbia the National

Employment Agency (hereinafter: national services).

The obligation of the competent holders of the Agreement is to cooperate and exchange information on regulatory and legislative changes in the area of labour migration of the state of employment and the number of migrant workers, and, at least once a year, to monitor the implementation of the Agreement and to take appropriate measures and actions to achieve and protect the rights of migrant workers and members of their families without discrimination on any grounds.

Entities to which the Agreement applies are the citizens of Bosnia and Herzegovina and the Serbian citizens residing in their home state, but who are temporarily employed in the territory of another state, as well as their family members.

The Agreement does not apply to nationals of the signatory countries who are exercising their right to cross a border in order to meet daily living needs in accordance with special regulations and special permits for border crossing.

Subjects of employment activities in the country of employment are the employer and the migrant worker.

Through the competent national services, an employer expresses the need for migrant workers by submitting bids for their employment. National services then, through their organizational units, take appropriate actions and measures for job recruitment of migrant workers and perform their pre-selection - their pre-selection in accordance with the requirements and needs of the employer, while the final selection is made by the employer who is paying particular attention to the necessary qualifications, work experience, special knowledge and special skills and the like, without discrimination on any grounds.

Prior to the employment of migrant workers and conclusion of the work contract, it is the employer's obligation to secure a work permit for migrant workers in accordance with the regulations of the country of employment.

The employer and the migrant worker are required to conclude a work contract before the starting of the work, which regulates the mutual rights, obligations and responsibilities in accordance with the regulations of the country of employment. The employment contract shall be concluded in writing and shall contain all the elements defined by the regulations of the country of employment.

In addition to the obligations under the employment contract, the employer is obliged to provide the migrant worker with accommodation and food or adequate compensation for these purposes if it is more favorable to migrant workers, pay for doctor visits and other medical services in respect of the employment and pay them for transportation from the place of residence in the home country to the place of work in the country of employment.

During their working time and time that is equated with work engagement (temporary inability to work due to injury or illness, vacation, other forms of absence from work, etc.) workers are provided with the same rights as workers and citizens of the country of employment, with the employer having obligation to, after the expiry of the work contract or its termination on any basis, prior to their departure from the country of employment, pay off all earned and unpaid salaries or wages, and all other payments pursuant to the contract, as well as the travel expenses from the place of work in the country of employment to the place of residence in the home country.

During their temporary work in the country of employment, migrant workers cannot perform any other work for another employer other than those agreed upon with the employer.

Violation of this contractual obligation by a migrant worker entails the cancellation and loss of work permits, and thus the loss of the status of a migrant worker. Also, a migrant worker cannot be hired to work for another employer by their initial employer.

It becomes clear from this analysis that the Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Serbia on temporary employment of citizens of Bosnia and Herzegovina, Serbia and citizens of the Republic of Serbia in Bosnia and Herzegovina, was concluded in accordance with the provisions of the ILO Convention and the Convention No. 97 concerning migration for employment and Convention No. 143 on migrant workers.

Issues relating to the provision of adequate public services which will for free assist and provide services to migrant workers in the exercise and protection of their rights by taking appropriate measures and activities within their jurisdiction to facilitate the arrival and departure, journey and reception of migrant workers are regulated in accordance with the provisions of these conventions.

Also, the Agreement regulates the protection of the rights of workers and members of their families regarding social security, since this Agreement determines the application of the Agreement concluded between Bosnia and Herzegovina and the Federal Republic of Yugoslavia on social insurance, which regulates these rights.

And finally, the national legislations in the countries signatories to the Agreement had a unique basis for legal regulation of the labour rights, employment and social security in the legislation of the former common state, so the national legislations in these areas do not differ significantly, making the application of the Agreement easier and more unique.

7. Applicability of the Nordic model of free movement in countries signatories of Dayton Agreement

The Nordic model of cooperation which is being achieved through the Nordic Council has developed gradually. At the suggestion of Danish Prime Minister Hans Hedtfot at the 28th Delegates Meeting of the Nordic Inter-Parliamentary Association on August 13, 1951 the participants made a decision to establish an advisory body where the parliamentarians would meet on a regular basis. The proposal was ratified by Denmark, Iceland, Norway and Sweden in 1952. The first meeting of the Nordic Council was held in the Danish Parliament on February 13, 1953. Finland joined in 1955 when relations with the Soviet Union improved after Stalin's death, although the provisions of the contract allowed the representatives of Finland to participate in the work of the Council on a voluntary basis. Finland formally became a member of the Council on October 28, 1955.

The free movement of citizens without a passport between the Nordic countries was introduced in 1952, which was replaced in 1958 by a more precise Nordic Passport Union.

The joint Nordic labour market began to act on July 2, 1954.

Nordic Convention on Social Security was implemented in 1955.

A formal agreement establishing the present structure of the Nordic Council was ratified on March 23, 1962 in Helsinki. That is why the Nordic "constitution" is known as the Helsinki Agreement.

In parallel with strengthening thier political ties, the Nordic countries had formed and shared professional bodies, which provide the necessary basis for political decisions. Thus, the Nordic School of Public Health was founded in 1962. The agreement on the Nordic Cultural Fund was signed on October 3, 1966.

In November 1975, the Nordic Investment Bank was established with the headquaters in Helsinki.

Simultaneous interpretation at Nordic Council sessions was introduced in 1977.

Members of the Nordic Council modified the Helsinki Agreement of 1962 six times (1971, 1974, 1983, 1991, 1993, 1995). All these alternations were related to the changed geopolitical circumstances in their environment (fall of the Berlin Wall, the independence of the Baltic States, etc.). These changes to the Helsinki agreements demonstrate a high level of cooperation between the Nordic countries, and their politically-sensitive manner in adapting to new circumstances.

The account above shows that in order to develop a successful regional association, it is necessary to put in a lot of effort and continuous dedicated work during which problems will be solved gradually, and together with the political structure of such an organization, an effort should be put in developing scientific, professional and financial institutions, which can provide a balanced expert basis for the process of political decision-making and the steady progress of the associations.

Concerning the issue of the free movement of labour, it is interesting to take a look at the Croatian case, which became a full member of the European Union on July 1, 2013. Although the free movement of people within the Union is one of the postulates on which the Union is based, the Constitutional Treaty of the Union allows the Member States to waive a new member that right for a limited period of time. In the Coartian case, that is the period until 2020. Thirteen EU countries took advantage of this right (Austria, Belgium, Cyprus, France,

Germany, Greece, Italy, Luxembourg, Malta, Netherlands, Slovenia, Spain and the United Kingdom). None of the Nordic countries which are members of the EU has put on such restrictions. In terms of countries that have put restrictions on free employment of Croatian citizens it is not possible to establish any regularity. Thus, restrictions were put on by Austria with the lowest unemployment rate in the EU (4.7% - May 2014) and Germany (5.1%), but also the countries with the highest unemployment rates such as Spain (25.1%) and Cyprus (15.3%). Germany's attitude is particularly unacceptable. Although the Government put a restriction on Croatian workers at federal level, it allowed its regional governments to permit the employment of Croatian citizens for highly qualified, profirable professions (IT specialists, doctors and others.). So, the first experiences of Croatian membership in the EU, especially for its citizens, are not particularly positive.

As noted above, for the purposes of political discussions between the members of the Nordic Council, simultaneous translation, i.e. free use of their first languages was introduced in 1977. In 1981, the EU adopted the Nordic linguistic Convention, which entered into force in 1987. The essence of the Convention is contained in Article 2, which provides that the contracting parties will make an effort to enable the citizens of one contractual party the use of their mother tongue, when necessary, in contact with the authorities and other public bodies of the other contracting state. This shall apply in contact with courts and also and particularly in contact with public bodies such as those dealing with public health, hospitals, social welfare and the child welfare, and also with the authorities that are responsible for the labour market, taxes, police jobs and education. The costs of interpretation or translation in the covered by Article 2 shall be paid from public funds (Article 3).

We believe that the Nordic linguistic convention is a good example for the beginning of cooperation between the countries of the Dayton Agreement. Firstly, there is a great similarity of languages in all four countries (Bosnia and Herzegovina, Montenegro, Croatia and Serbia), which, at the everyday conversational level, can be marked even as a complete mutual intelligibility. There are differences, not great though, at the level of administrative and judicial technical jargon. For the acception of such a convention there are no formal legal barriers due to the fact that Croatia is a member of the European Union, and the other three countries are not. Additional (mostly technical) problem in this case would be the use of different letters (Cyrillic and Latin). A large number of citizens of the Dayton Agreement countries must interact with the other countries' services (in matters of pension insurance, refugees and displaced individuals' rights that are concerned with rights to housing, restitution of property or compensation for damaged retirement - which is not directly related to the question of free movement of workers, but is a very common problem, pensions and the right to housing of the former members of the Yugoslav People's Army, and other.)

Considering the elements and principles of the Nordic model of free movement for workers, it is certain that this is the model that sholud be pursued taking all necessary steps to apply this model of cooperation in the countries of the region.

The similarity between this regional division and the one of the Nordic countries can be found in the fact that in the area of former Yugoslavia there are still a lot of elements of the single market, as well as cultural, historical, geographical and other ties that still exist and will continue to exist, which everyone can benefit from when used for a common purpose.

8. Importance of bilateral labour agreements

8.1. Serbia

In the last 20 years Serbian economy has gone through various changes and adaptations, where the employees from inefficient public companies have been left without work (technical and other redundancies), or they have been employed (in small number of cases) in the private sector. The transition from public to private sector was not strategically planned and synchronized, and the private sector could not absorb the surplus from the public sector. As a result, the unemployment has increased, especially as a result of privatization and restructuring of public utility companies.

All this has led to a tremendous pressure on the labour market. New jobs required macroeconomic stability, favorable business climate that encourages investment, labour market regulations that will allow the mobility of workers from sectors in decline into those that are developing. At the same time it was necessary to reform the education and vocational training system with the aim of reproducing highly skilled and flexible workforce to meet the needs of local labour markets on the one hand, and opening employment opportunities in other labour markets, especially neighboring countries on the other hand. In this regard, it was necessary to keep social activities in order to increase labour mobility, both within and outside the borders of the Republic of Serbia.

Unfortunately, even after the reforms implemented in 2000 until today, the labour market has not functioned properly. Supply of labour is much greater than the labour demand, and its structure - in terms of qualifications, age and gender is extremely unfavourable, making it ineffective, unsuccessful and non-competitive and the whole situation unsustainable.

The labour market indicators are much worse than the average in the European Union, whose standards we want to achieve.

According to data from the Labour Force Survey, in the first quarter of 2014 in Serbia, the employment rate, which is the percentage of employed persons in the total population aged 15 and over, amounted to 38.4%.

The unemployment rate, which is the share of the unemployed persons in a country's total workforce (employed and unemployed), according to the same source, was 20.8%, with 20.1% for men and 21.6% of the female population. Compared to the same period in the last year, the unemployment rate has increased by 0.7 percentage points.

Informal unemployment rate, which represents the percentage of persons who are working without a formal work contract in total labour force in the first quarter of 2014, increased by 0.2 percentage points compared to October 2013. This category comprises employees of unregistered companies, employees of the registered firms, but without a formal work contract and without social and pension insurance, as well as unpaid household members.

Studies show that almost 30% of enterprises in Serbia, in one segment of their work, operate informally. Mostly, these are companies dealing with construction, trade and agriculture, but there is not a single activity where, to a greater or lesser extent, some form of informality has been manifested.

Formal unemployment, as well as the informal, viewed from the standpoint of labour migration, and the aspect of the countries signatories to the Dayton Agreement, is one of the basic elements for creating employment policy, including the projection of labour migration.

Serbia, as one of those countries, while creating a new policy and adopting concrete meas-

ures for its implementation, must start from the realistic assessment of labour market conditions, objective assessment of redundancy, as well as the possible lack of certain professions. It is necessary to take into account the labour market situation in the neighbouring countries and the mechanisms of inter-state cooperation to face supply and labour demand in these countries, and through adequate migration policy, and specific agreements, negotiate the conditions under which the citizens of Serbia will be employed in these countries, and vice versa. In doing so, it is necessary to start from the principles of equal labour rights for all employees, regardless of whether they are from the home country or they are migrant workers.

According to available data on the condition of employment and unemployment in the region (Croatia, Bosnia and Herzegovina and Montenegro), which are:

- *high unemployment rate (regardless of the rate differences),*
- *high participation of special categories in the unemployment rate (women, youth, older workers, persons with disabilies, Roma),*
- *disturbingly high rates of poverty,*
- *restructuring of large public companies, which represents additional blow on unemployment,*
- *formal approach to the development of strategies and action plans for employment, without relying on real, consensus-adopted strategies of economic development, there is a vast area for the interstate cooperation in this field, especially in the areas (tourism, catering industry, forestry (timber harvest), agriculture and s easonal work), where this kind of cooperation already exists, but in illegal forms.*

Interstate bilateral agreements on employment between the countries signatories to the Dayton Agreement would contribute to faster overcoming of the problem of high unemployment in the region, improve bilateral relations not only in the employment area but also in other spheres of economic and social life, which are directly or indirectly related to employment. This is especially true for education, compulsory social security (health, pension and disability insurance) and culture.

The process of drafting of the agreement should be completely public and transparent and should include, in timely manner and equally, all relevant social actors - the state, social partners, science, i.e. experts on issues of unemployment and employment policy. The agreement must be based on the objective and realistic assessment of the supply and demand for labour in the signatory states and contain specific measurable conditions under which the labour migration is performed, as well as precisely defined instruments for protection of migrant workers. This would enable transparent monitoring of the process of labour migration, prevent (or at least significantly reduce) illegal employment, improve the protection of migrant workers and reduce to the least possible extent any form of discrimination.

Assessments that have been reached in the framework of this project indicate the need for stronger, more meaningful and open cooperation among all relevant institutions in the countries signatories to the Dayton Agreement, in order to alleviate the problem of unemployment as the most prominent problem of economic development in the region, where the solution to this problem will be a priority and prerequisite for faster development and accession to the EU.

8.2. Croatia

Freedom of movement for workers (Section 2 of the acquis) in the EU comprises three major subsystems of regulations and activities:

1. Access to the labour market (it regulates issues of residence and employment of foreigners, the rights of family members in relation to permanent and temporary residence, equal treatment of other EU Member States nationals as well as their own nationals, etc.)
2. EURES – electronic EU system for employment
3. Coordination of social security systems (pension insurance, child benefit, health insurance and welfare, unemployment benefit)

Each Member State retains its own social security system and is not obliged to harmonize it (unify) with the systems of other Member States. Therefore, other legal instruments (the decision of the Administrative Commission, the European Court of Justice) are used to facilitate social security rights to people exercising their rights to freedom of movement within the EU. This is what coordination, i.e.system integration is used for - the simultaneous application of national legislations of two or more states to migrant workers and / or members of their families. Coordination between two countries is based on bilateral agreements, while the EU Regulations coordinate the systems of two or more Member States (the so-called migration clause that states that a person is subject to the legislation of at least two Member States). Procedure for the exercise of rights is conducted exclusively electronically (EESSI).

After the Craotian accession to the EU, bilateral agreements that Croatia had with the Member States have been replaced by regulations, while bilateral agreements with Bosnia and Herzegovina, Serbia, Montenegro and Macedonia remain in force.

Citizens of the EU Member States are also EU citizens. The construction of European citizenship excludes the citizens (and migrant workers) of other countries from European citizenship. Consequently, migrant workers from “third countries” are particularly vulnerable group in the labour market, they are mostly cheap labour, often dependent on favour, arbitrariness and despotism of the employer.

Bilateral agreements on social security concluded between Croatia and the states in our region do not facilitate employment opportunities and the liberalization of the movement of workers. The recession and high unemployment rate in Croatia also complicate free movement of workers. In addition, in the event that there is need for workers of a specific profile that are deficient in the Croatian labour market, Croatia is obligated to inform the competent institutions in EU Member States about the vacancies. Only in case there are not enough free workers from the Member States, it will address the institutions in third countries. The procedure is done through the EURES office working with the Croatian Employment Service.

Every migrant worker who is working legally on the Croatian territory should be familiar with the basic facts: it is good to inquire about the prospect employer, have a written work contract stating the essential clauses on wages, working hours, conditions of accommodation and other and make copies of the documents (passport, residence permit and work contract ...). Documents (and copies) should be kept in a safe, while documents (passport, work permit) should be submitted only to an official. It is good to inform the family about the residence and address of the employer. It is advantageous for the worker to join a union

where he/she can receive information about their rights and support if a problem occurs.

8.3. Montenegro

One of the key problems in Montenegro in the area of employment is structural imbalance between the supply and demand for labour in the labour market.

Stuctural unemployment is one of the most prominent limiting factors affecting economic growth in Montenegro. Basic characteristics of structural unemployment in Montenegro are:

- *disparity between educational structure, staffing needs of an employer and the number of job seekers;*
- *disparity between the supply and demand for labour both in terms of occupational structure and the number of employees in them;*
- *disparity between the quality of professional training of persons with full-time education and current technical requirements and working conditions in industry and service industry.*

For these reasons, although the total supply in the labour market is higher than the demand for labour in certain periods of the year, the demand for certain professions (especially in the construction, catering industry and agriculture) exceeds the supply. Apart from structural disparity in supply and demand in the labour market, one of the reasons for this is the character of this type of work engagement, which means that very often, on very short notice, it is necessary to provide required workforce for tourism related activities, catering industry and agriculture.

The priority of employment policy in Montenegro is to reduce the unemployment rate of persons who are registered with the Employment Agency. Although a number of active employment policy measures are directed to this end, official figures indicate that the number of issued work permits for foreigners in Montenegro is higher than the number of employed persons registered with the Employment Agency. In the first six months in 2014 it was employed 5,397 persons registered with the Employment Agency of Montenegro, while in the same period the number of issued work permits within the quota was 9,068.

Given the above, we can conclude that the signing of bilateral agreements in order to make employment of foreign citizens more flexible - even those who are citizens of the countries signatories to the Dayton Agreement, have not been treated as priority.

On the other hand, Montenegro, as a candidate country for membership in the European Union, is obliged to harmonize its labour market legislation with the European Union standards. The report of the European Commission for the Negotiation chapter - 2 states: Freedom of movement for workers shows that the existing legislation in this area in Montenegro is still not in line with the EU acquis. For this reason, it is stated that the Montenegrin legislation should be amended to repeal the procedures and practices that violate the freedom of movement of workers. Among other things, Montenegro should ensure that, by the date of accession, the EU citizens shall not need a work permit and be discriminated on grounds of nationality in relation to access to the labour market.

Apart from creating conditions for labour mobility - which is the obligation arising from the European Union regulations, signing bilateral agreements with neighboring countries would be significant for Montenegro not only because they would thereby further improve economic cooperation with the countries from the environment (which is one of the priorities

of the foreign policy), but it would create conditions for reducing illegal work of people coming from the countries in the region (which is a problem found, in particular, in the construction and catering industries).

8.4. Bosnia i Herzegovina

The conclusion of bilateral agreenments between the countries emerged from the former Yugoslavia is of great importance since there are a number of elements of the single market, as well as cultural, historical, geographical and other ties that still exist and will continue to exist and which everyone can benefit from when used for a common purpose. After all, all of this is stipulated in ILO Conventions, especially the Migration for Employment Convention (No. 97) and the Migrant Workers Convention (No.143).

Signing of bilateral agreements for Bosnia and Herzegovina is of special significance for many reasons, the most important being:

1. overall economy of Bosnia and Herzegovina is quite related and dependent on the economies of the countries signatories to the Dayton Agreement;
2. unemployment rate in Bosnia and Herzegovina is extremely high due to the failed privatization that led to creation of the army of unemployed people who most often seek employment in neighboring countries because of, inter alia, national, ethnic and religious ties with the population in the countries signatories to the Dayton Agreement, which has resulted in increased migration flows in both directions in these countries, which very often leads to the abuse of labour rights and the rights deriving from law, both for individuals and their families; also legal disorder relating labour and employment is creating financial and other damage to these countries;
3. overall economic development, or rather underdevelopment of Bosnia and Herzegovina, is the cause of greater migration of labour, especially from Bosnia and Herzegovina to Croatia and Serbia, lately to Montenegro, which is why of particular importantance is the conclusion of bilateral labour and employment agreements with these countries (Bosnia and Herzegovina has signed such an agreement with Serbia) and a unique arrangement of social security;
4. and finally, the importance of concluding bilateral agreements between the four states is reflected in the fact that their conclusion will enable the harmonization of their labour laws with the EU standards, which is very important for each of these countries, although Croatia is already a member of the EU and Serbia, Montenegro and Bosnia and Herzegovina are candidates for membership, emphasizing that this is especially important for Bosnia and Herzegovina, since BiH is the least developed country within the EU integration process.

9. Conclusions and recommendation for governments of countries signatories of Dayton Agreement

In the course of the project implementation, through analysis of national legislations in practice in the countries partcipating in the Project implementation, we noticed the following:

P r o b l e m s :

1. Legislation in this part is very rigid, it provides restrictions regarding employment of foreign citizens with no exeptions for nationals originating from the region;
2. High unemployment rate is present in all countries;
3. The rate of informal unemployment (illegal work) is high;
4. There is disparity between educational structure, staffing needs and the number of job seekers;
5. There is disparity between the supply and demand for labour in terms of occupational structure and the number of employees;
6. There is disparity between the quality of professional qualifications of persons completing regular education and current technical requirements and working conditions in industry and service industry;
7. The approach to development of strategies and action plans for employment is formal, without relying on the real, consensus-adopted overall strategy for economic growth;
8. Failure to comply with law and other regulations governing the rights of employees and obligations of employers;
9. The capacities of institutions for controling all kind of working conditions (working conditions, work protection, regular payment of wages, payment of taxes contributions and the like) are insufficient;
10. Relevant state institutions appear uncoordinated;
11. Social dialogue is insufficiently developed and the participation of all stakeholders (trade unions, employers' associations, chambers of commerce, professional associations, non-governmental organizations, national governments and local authorities) in creation of regulatons is inadequate.
12. There is an absence of adequate interstate cooperation in creating coordinated and efficient employment policies between the signatory countries of Dayton Agreement, despite the fact that economic cooperation is all the more intense.

Bearing in mind these identified and ascertained problems, bilateral employment agreements represent a very good and convenient mechanism for the regulation of labour migration to be carried out in accordance with internationally established and interstate agreed principles and procedures.

The purpose of bilateral agreements is multiple, since they could help in achieving economic, political, developmental, cultural and other objectives.

Recommendations for overcoming the above-mentioned problems:

1. Consider the possibilty of setting up an interstate body (council or similar) to deal with the problem analysis and development of regional employment cooperation, following the example of the Nordic system.
2. The Council sholud work on the analysis of existing policies and practices in this area for the purpose of making a declaration that would comprise the initial elements for establishing common guidelines for cooperation, the development of employment policies and establishment of legally regulated labour market.
3. The Council would work on the analysis of labour market requirements and accordingly propose the solutions regarding the cooperation between the four countries in the field of education, science, inovations, energy, agriculture and so on.
4. The Council would work on creating the conditions for a flexible and efficient labour market, faciliating transactions between business entities, improving the position of workers and available labour rights protection. This would give a better overview of labour migrations within the borders of the member countries of the Council which would lead to the establishment of a better system for combating illegal work, which is the common goal of the countries signatories to the Dayton Agreement, given that this is a very significant problem in all countries.
5. A step that could significantly enhance business cooperation and employment is the conclusion of bilateral agreements in the field of labour and employment between the four signatory countries. Agreements should be based on an objective and realistic assessment of supply and demand for certain workforce profile of the signatory countries and include specific measurable conditions under which labour migration is performed, as well as precisely defined instruments for the protection of migrant workers.

Content of Bilateral Agreements on Employment

1. **Subject of agreement** – should be the regulation of the manner of cooperation between the signatory states with regard to the creation of conditions for free movement (and employment) of workers. The basic principle that agreements sholud contain is reciprocity - in terms of rights, obligations and responsibilities of the signatory states.
2. **Definition of terms used in agreement**, such as: ‘state of employment’; ‘country of origin’; ‘employer’; ‘migrant worker’; ‘employment’; ‘work engagement’; ‘permit’, ‘competent authority’; and other.
3. **Defining competent authorities and institutions responsible for the implementation of agreement** - they should be the relevant Ministries in the field of employment, as well as the institutions dealing with employment.
4. **Conditions for employment** (with the applied principle of reciprocity) and in this respect, the capacity for the employment of the signatory countries’ nationals. Given that Montenegro has a quota system for hiring foreign nationals, the agreement could define the ways in which employment quotas would be determined (eg. parameters which will be taken into account), within the framework of the quota system, which is determined by national regulations.

5. **The process of employment of migrant workers** - this section should define the conditions and procedures for the issuance of permits that are necessary for employment, as well as the information and documentation needed for the procedure.
6. **Rights and obligations of employers and migrant workers** - this section should take into account individual employment rights (such as the right to receive salaries and wages, the right to rest, the right to take a leave and other) and collective rights of employees (such as the right to join trade unions, on collective bargaining, the right to go on strike, etc.). In this sense, agreements should define the rule that migrant workers must be provided with the same range of rights as resident workers. This principle is particularly important in relation to their right to receive wages - which must be equal to the wages of resident workers - who do the same type of work, with the same level of education.
7. **Social security for migrant workers** (this section should provide the referral norm, given that there are already agreements on social security dealing with these issues).
8. **The rights of members (immediate family) of migrant workers' families** (free movement, the right to enjoy education, health insurance…)
9. **Termination of employment for migrant workers**. This section sholuld regulate issues concerning the rights of migrant workers in the event of termination of employment, depending on the basis for termination. Special protection should be provided in the event of termination of employment that is not the fault of the workers - migrants, i.e.when it is not a consequence of his/her conduct at work. In this sense, one of the rights that migrant workers should be guaranteed relate to the rights to unemployment benefits - as resident workers.
10. **Mechanisms for protection of migrant workers' rights and settlement of labour disputes** (this section refers to the provision of equal access to protection mechanisms for both migrant workers and resident workers).
11. **Obligations of the signatory countries** related to the process of encouraging migration of workers within the borders of the signatory countries - these obligations would refer to the harmonization of legislations - in accordance with national capacities in order to create more flexible conditions for labour movement.
12. **Ways of return of migrant workers to their country of origin**. This section should define conditions and procedures for renewing work permits that have expired, i.e. conditions for the re-employment of migrant workers.
13. **Record-keeping on migrant workers** – this section refers primarily to the keeping records on issued work permits: the data to be collected, ways in which they will be selected, ways of updating the records, etc.
14. **The method of information exchange** between the relevant holders of the Agreement implementation as well as the types of information to be exchanged (eg. conditions and trends in the labour market, occupations in demand; special requirements of employers in terms of qualifications and other requirements for employment).

15. **Agreement implementation monitoring** by the competent authorities (one of the models that could be applied is establishing a joint commission to monitor the implementation of agreements. In this regard, the composition of the Commission and its powers and duties should be regulated).
16. **Duration of Agreement**: whether it is concluded for a definite (how long) or an indefinite period.

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