

*Danica Radovanović\**  
Faculty of Law, University of Belgrade  
ORCID: 0000-0002-3813-4608

## SOME LEGAL DILEMMAS REGARDING THE MORATORIUM ON EMPLOYMENT IN THE PUBLIC SECTOR\*\*

**ABSTRACT:** In 2013, the National Assembly of the Republic of Serbia passed amendments to the Budget System Law prescribing the measure of the moratorium on employment in public services. The implementation of this measure was directed towards controlling (i.e. cutting) expenses and reducing the number of employees in the organizations financed from the government budget. Despite the analysis of the measure under scrutiny pointing out a lack of systematic, argumented and reliable reports and objective analyses of both positive and negative consequences of this decision, it appears that its application was associated with more negative consequences than positive ones whilst the largest and most significant effects were suffered by the sectors of healthcare, social protection and education. In addition, the negative consequences of the measure had a direct impact on women and young members of the workforce. The extension of this measure, in several iterations, has manifested itself through significant obstacles in the provision of services as well as a

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\* radovdanna@gmail.com, Ph.D. Student at the Faculty of Law, University of Belgrade, Department of Public Law.

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reduction in the quality of these services. Therefore, it is worthwhile to examine the content and the consequences of the application of the measure of the moratorium on public employment, certain legal dilemmas in relation to it, as well as whether the autonomy of public services has been restored following its repeal.

**Keywords:** moratorium on public employment, public services, healthcare, education.

## INTRODUCTORY REMARKS

The causes<sup>1</sup> of the global economic crisis which started in 2007 are quite complex, which justifies the fact that they figure as the subject of research in several scientific disciplines. Kovačević is of the view that the global economic crisis is in reality a reflection of a social crisis, the crisis of the value system and international institutions. In that regard, he points out that it is highly important to accept the conclusion that this is a general crisis of contemporary Western civilization which has spilled over into the rest of the world because otherwise, all the measures aimed at overcoming this crisis would not come to fruition.<sup>2</sup> Namely, in mid-2007, the so-called subprime crisis or mortgage crisis emerged in the United States of America.<sup>3</sup> The relevant experts from other parts of the world were convinced that this problem will not encompass other countries. The reason that was cited for this was the fact that extending loans of this kind was a technique that had been developed in the United States and in Europe, where the practice of extending loans was more conservative, there was no room for this kind of problem. However, the negative pressure of the crisis intensified, which was felt in other countries already at the middle of the following year. In the Republic of Serbia, the economic crisis unfolded in almost the same way as in the other countries in transition where the concept

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<sup>1</sup> On the causes and the character of the crisis, see: Antevski, M. (2010). Svetska ekonomska kriza i njen uticaj na privredu Srbije. *Economic Horizons*, 12, 48 – 52.

<sup>2</sup> For more on this, see: Kovačević, M. (2009). *Uzroci i posledice svetske ekonomske krize i efekti na Srbiju*. [Causes and consequences of the global economic crisis and the effects on Serbia]. Accessed on March 1, 2022, from <http://www.nspm.rs/pdf/ekonomska-politika/uzroci-i-posledice-svetske-ekonomske-krize-i-efekti-na-srbiju.pdf>

<sup>3</sup> About this type of loan, see: *Velika kreditna kriza i ponovo regulisanje finansijskog sistema*. Accessed on March 1, 2022, from: <http://www.ekof.bg.ac.rs/wp-content/uploads/2014/05/KRIZA-2008.pdf>. For more details on the causes and consequences of the global economic crisis and subprime mortgages, see: Kojucharov, N., Martin, C. F., Martin, R. F., Xu L. (2008). *The subprime mortgage crisis: irrational exuberance or rational error?*. Accessed on March 1, 2022, from <https://www.frbsf.org/economic-research/wp-content/uploads/sites/4/Kojucharov-Martin-Martin-Xu.pdf>

of reforms and economic policies following the neoliberal capitalist model was enforced.<sup>4</sup> The first signs of the crisis appeared in the Republic of Serbia towards the end of 2008. The emerging crisis had an impact on the labour market, among other things. Bronstein also observes that labour law was hit by the combination of neoliberalism and other numerous challenges in relation to global changes.<sup>5</sup> The world economic crisis confronted countries with the need to reduce expenses as well as create favourable conditions for maintaining the continuity in the activity of all producers and service providers, including those in public services.<sup>6</sup> The measures that were undertaken in response to the crisis in the majority of countries were similar and as such, they followed the policies implemented by the federal authorities of the US.<sup>7</sup> Some of the measures that were undertaken by the countries of the southeastern region of the Balkans presupposed financial reforms while others were of a more general economic nature and as such, they affected the labour market directly.<sup>8</sup> Besides the moratorium on the growth of wages, the repeal of the so-called 13th wage, the reform of the bonus system, the reduction of wages, and other budgetary restrictions, these measures also affect the possibility of employing new individuals in public services.<sup>9</sup> In light of the abovementioned, it is useful to consider the status of the institute of employer's autonomy in establishing employment relations as well as extremely exceptional cases in which it can be restricted, and then point to the solutions from domestic law with a special focus on public services. Related to this, it is useful to note that the right to work<sup>10</sup>, as one of the basic human rights which is protected as such by the Constitution of the Republic of Serbia<sup>11</sup>, is one of the most complex eco-

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<sup>4</sup> At the beginning of 2001, Serbia adopted this model of economic policy.

<sup>5</sup> More directly on this subject, see: Bronstein, A. (2009). *International and comparative labor law*. International Labor Organization.

<sup>6</sup> Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law, 284.

<sup>7</sup> Blankart, Ch. B., Fasten E. R. (2009). Financial Crisis Resolution – The State as a leader or last resort. *Economic Affairs*, 12 (3), 47.

<sup>8</sup> “A large number of responses focused on overcoming or restricting budgetary deficits and tended towards highly restrictive policies in various domains of public spending including wages,” Arandarenko, M., Avlijaš, S. (2011). *Uticao krize na zarade u Republici Srbiji*. Budapest: International Labor Organization – Office for Central and Eastern Europe, 14.

<sup>9</sup> Kovačević, Lj. (2021). *Op. cit.*, 284.

<sup>10</sup> For more on the development of the idea of the right to work, see: Jovanović, P. (2012). *Kompleksnost sadržine i relativizacija prava na rad*. *Radno i socijalno pravo*, 1, 15 – 34.

<sup>11</sup> The Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No. 98/2006, Article 61. When it comes to international legal instruments, it is useful to point out that the right to work was affirmed in the Universal Declaration on Human

conomic rights. One of the ways of realizing this right is the institute of entering into the employment relation as a special kind of social-economic relationship (and property relationship), which represent the result of using labour and capital in circulation.<sup>12</sup> Jovanović argues that the institute of entering into the employment relation is actually an instrument of adapting the right to work to the given social and economic conditions and needs, which is useful to have in mind when considering the application of the employment moratorium as a measure of reaction against the negative consequences of the global economic crisis.<sup>13</sup>

In the Republic of Serbia, six years after the beginning of the world economic crisis, a Law on the Amendments to the Budget System Law was passed. By this law, the publicly financed organizations were denied the right, though not in absolute terms, to enter into employment relations with new employees in order to fill vacancies.<sup>14</sup> The mentioned Law served as a starting point in the further, multi-year state intervention in the domain of labour relations, which, among other things, manifested itself in the passage of the Law on the Manner of Establishing the Maximum Number of Employees in Public Services<sup>15</sup> and the Regulation on the procedure of obtaining approval for new hirings and additional work engagement in public service organizations.<sup>16</sup> Even though it can be seen as a justified way of for a state to fight during critical situations in the domain of the economy that can have direct impacts on the domain of labour, the problems that are associated with this approach and its negative consequences must not, or at least should not, be ignored. This is especially relevant for certain sectors, such as primary or secondary education, healthcare, social protection, childcare, culture and certain oversight agencies, as well as some public enterprises in which these measures of employment restriction would create an obstacle to creating beneficial conditions and ulti-

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Rights, the International Covenant on Civil and Political Rights – ICCPR, the Revised European Social Charter, The European Union Charter on Fundamental Rights, the African Charter on Human and People’s as well as in The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights.

<sup>12</sup> Jovanović, P. (2012). *Radno pravo*. Novi Sad: Faculty of Law, 158.

<sup>13</sup> Jovanović, P., et al. (1987). *Zapošljavanje kao način ostvarivanja sloboda, prava i dužnosti građana*. Bačka Palanka, 24.

<sup>14</sup> The Law on the Amendments to the Law on the Budget System, *Official Gazette of the Republic of Serbia*, No. 108/13, Article 1.

<sup>15</sup> The Law on the Manner of Establishing the Maximum Number of Employees in Public Services, *Official Gazette of the Republic of Serbia*, No. 68/2015, 81/2016 – Decision of the Constitutional Court and 95/2018.

<sup>16</sup> Regulation on the procedure of obtaining approval for new hirings and additional work engagement in public service organizations, *Official Gazette of the Republic of Serbia*, No. 113/13, 21/14, 66/14, 118/14, 22/15, 59/15, 62/19 and 50/20

mately ensuring the proper functioning of those working environments. Given all of this, it is important to consider the contents of the employment moratorium as an austerity measure as well as its consequences for public services.

## THE PUBLIC SERVICE AS AN EMPLOYER

Our lawgiver responded to the global economic adversity by introducing a decision to implement austerity measures in the form of the employment moratorium or the authorization of employment in organizations financed from the government budget. The Rules on the List of Users of Public Funds<sup>17</sup> defines who the direct and indirect users of the government budget are. These include public services that can be organized as institutions, enterprises, or other forms of organization defined by the law.<sup>18</sup> For this reason, it is important to point out that the government as an employer is different from the government as a founder of public services. A public service or another legal person that employs individuals to carry out work in the domain of public service is in the role of an employer in public services, whose founder is the Republic of Serbia, an autonomous province, a municipality, city or city municipality. This applies also to the institutions that are the carriers of obligatory social insurance in the Republic of Serbia as well as to legal persons that are founded or run in accordance with the regulations on public services (e.g. the Solidarity Fund).<sup>19</sup> The role of an employer of a person who is employed in a public service, therefore, is filled by the public service in question independently of the fact that a part of the funds for their wages is secured from the government budget. It is interesting that public services enter into employment

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<sup>17</sup> The Rules on the List of Users of Public Funds, *Official Gazette of the Republic of Serbia*, No. 130/2021

<sup>18</sup> The Law on Public Services, *Official Gazette of the Republic of Serbia*, No. 42/91, 71/94, 79/2005 – other law, 81/2005 – amendment to the other law, 83/2005 – amendment to the other law and 83/2014 – other law, Article 1. “With regard to the differentiation between public institutions and public enterprises, the starting point is the type of basic activity that a particular organization carries out. In that sense, if the basic activity that the organization in public service engages in is of a commercial character (a commercial activity), it will be considered as a public enterprise, conversely, if the basic activity that the organization carries out is not commercial (so-called social activity), it will be considered an institution”. Lilić, S. Milenković, D. (1998). *Javne službe u jugoslovenskom pravu*. Belgrade: The Council of the Project Constituting Serbia as a Rule of Law State and the Center for Publications of the Faculty of Law in Belgrade, 126. For comparison, see: Lilić, S. (1998). *Upravno pravo*. Belgrade: Faculty of Law, 17.

<sup>19</sup> The Law on the Employees in Public Services, *Official Gazette of the Republic of Serbia*, No. 113/2017, 95/2018, 86/2019, 157/2020 and 123/2021, Article 2.

relations with their employees based on an employment contract. In that sense, an employment relation in public services is closer to the general legal regime of employment relations. Nonetheless, there do remain some features of the specific legal regime of employment relations in government bodies as well as local officials in the bodies of territorial autonomy and local self-government. When it comes to public enterprises, as a rule, special laws on employment relations are passed. For instance, in Japan, both the Law on Employment Relations in Public and State Enterprises and the Law on Legal Relations in Local Public Enterprises are applied.<sup>20</sup> Lubarda points out that employers and employees (professional public servants) are in the legal regime of employment relations in state organs or in a *sui generis* legal regime which is defined by law for a public service or institution in question.<sup>21</sup>

### **NEGATIVE CONSEQUENCES OF THE MORATORIUM ON EMPLOYMENT WITH A SPECIAL FOCUS ON WOMEN, YOUNG EMPLOYEES, AND EXAMPLES FROM JUDICIAL PRACTICE**

In 2014, the global economic crisis led to the introduction of the decision on the changes in the budget system of the Republic of Serbia by which a two-year moratorium was introduced on the employment of new workers in public services in order to fill vacancies.<sup>22</sup> Interestingly, this moratorium did not carry the attribute of being absolute, primarily because a new employment contract could be established following the approval of an authorized body, the Government Commission of the Republic of Serbia in charge of approving new hirings or additional work engagements in the users of public funds.<sup>23</sup> The abso-

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<sup>20</sup> Hanami, T. A. (1985). *Labour law and industrial relations in Japan*. Boston: Kluwer law and taxation publishers, 37.

<sup>21</sup> For more on public services as employers, see: Lubarda, B. A. (2012). *Radno pravo: rasprava o dostojanstvu na radu i socijalnom dijalogu*. Belgrade: Faculty of Law, 91 – 92.

<sup>22</sup> The Decision on the Amendments to the Law on the Budget System was passed in the National Assembly of the Republic of Serbia on December 6, 2013.

<sup>23</sup> The procedure for obtaining the approval of the Commission is extremely complex according to the original text of the Regulation. Namely, the employer, as a user of public funds, is obliged to submit a request addressed to the Ministry or another relevant authority to fill a vacant position and to receive permission to engage the additional workforce. The Regulation also prescribes a form that is used to submit this request. Moreover, it prescribes the time windows for submitting a request as well as for the Commission to make a decision on a particular request. A request submitted to the Ministry in charge or some other organs of authority is forwarded to the Ministry of Finance in order to obtain their opinion. After the opinion is received, the Ministry in charge or another organ of

luteness of the moratorium was avoided because its purview excluded, among others,<sup>24</sup> instructors and researchers in higher education, managers of public enterprises, limited liability companies and corporations, institutions and public agencies founded by the Republic of Serbia or units of territorial autonomy or local self-government.<sup>25</sup> The implementation of the moratorium on employment was extended several times creating a fertile ground for the intensification of the insecurity of (un)employed individuals in the labor market. In parallel with what was mentioned above, it is important to consider the mutual impacts of the moratorium on employment and the legal underpinnings of the transformation of the employment relation. If, for instance, one takes it as indicative that while the moratorium was in place a person entered into a temporary employment relation and their contract was extended beyond the legally-defined limit, then, it is questionable whether that employment relation can be transformed into permanent employment. Here, one must not overlook the fact that the issue concerns users of public funds, and the employees in public services are subject to the Budget System Law. This further entails that the provisions of the Budget System Law which prescribe the moratorium on entering into employment relations with new persons in order to fill vacancies represents a *lex specialis* in relation to the provisions of the Labour Law, which prescribe the transforma-

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authority supplies to the Commission a proposed act on granting approval to establish an employment relation. Following its meeting, the Commission makes the decision on the approval of the request in question. It is very important to point out that the Regulation does not grant the status of an administrative act to the decision. Given this fact, if the Commission does not make a decision in a timely manner, the requesting party (the employer) does not have a legal basis to appeal to a higher authority. Simultaneously, there is no legal basis to initiate an administrative dispute before a court.

<sup>24</sup> With the exception of the abovementioned cases, the request for approval was not necessary for filling a vacancy by means of a transfer, or the reassignment of an employee to another position within the same user of public funds or the transfer from one state organ following an internal application procedure, on the basis of an agreement on readmission from another organ, for establishing a temporary employment agreement to secure a substitute for an absent employee until their return to work, as well as for filling a vacancy by establishing an employment relation with a person whose permanent employment relation with some other user of public funds has been terminated consensually with the purpose of establishing an employment relation with another user of public funds. The same applies to establishing an employment relation with a disabled person, engagement of unemployed individuals with the aim of implementing the measures of active employment policies via the National Employment Service, for engagement of participants in projects financed using the funds of the European Union or donations which provide the funding source for their salaries and associated taxes and benefits. For more on this, see: Kovačević. LJ. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law, 284 – 285.

<sup>25</sup> See: Regulation on the procedure of obtaining approval for new hirings and additional work engagement in public service organizations, *Official Gazette of the Republic of Serbia*, No. 113/13, 21/14, 66/14, 118/14, 22/15, 59/15, 62/19 and 50/20

tion of a temporary employment relation into a permanent one, which is what follows from the Budget System Law. Interestingly, the Supreme Court of Cassation has repeatedly pointed out the oversights of lower courts. Namely, in their practice, they made positive decisions on the requests aimed towards the recognition of the transformation of the employment relation from a temporary to permanent one relying on the provisions of the Labour Law while neglecting the provisions of the Budget System Law. The actions of the Supreme Court of Cassation in response to the misapplication of material law on the part of lower courts speak in favour of the tendency toward the establishment of a balance between theory and practice.<sup>26</sup> It is useful to also point out that another obstacle was the rule that a total number of temporarily employed persons as well as persons engaged on the basis of contracts on temporary or fixed-term work or some other form of engagement cannot exceed 10% of the total number of permanent employees. The approval to go beyond this number could be obtained from the Committee of the National Assembly of Serbia in charge of administrative and budget-related questions.<sup>27</sup> However, when it comes to this kind of restriction, one should point to the decision which presupposes the establishment of a maximum number of temporarily employed persons in government bodies, public services, autonomous provinces, and local self-government. Namely, the Law on the Manner of Establishing the Maximum Number of Employees in Public Services,<sup>28</sup> which entered into force two years after the passage of the decision on the application of the moratorium on employment, established the mechanism of determining the maximum number of persons in the organizations that utilize the budget funds as well as the scope and deadlines within which the number of employees should be reduced until the established maximum is achieved for each calendar year. An array of decisions of this kind resulted primarily in a greater difficulty in the functioning of working environments in which they were applied such as primary or secondary education, healthcare, social work, childcare, and certain public enterprises. The author is of the opinion that this was primarily due to the insufficient number of employees who would carry out the work for the employers. The insufficient number of employees actually creates an additional obligation for the persons

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<sup>26</sup> Ruling of the Supreme Court of Cassation, Rev2 2562/2018 from July 9, 2020. The Ruling of the Supreme Court of Cassation, Rev2 1894/2019 from February 4, 2021.

<sup>27</sup> The Law on the Budget System, *Official Gazette of the Republic of Serbia*, No. 54/2009, 73/2010, 101/2010, 93/2012, 62/2013 – amendment, 108/2013, 142/2014, 68/2015 – other law, 103/2015, 99/2016, 113/2017, 95/2018, 31/2019, 72/2019, 149/2020 and 118/2021, Article 27k, paragraph 4 and paragraph 9.

<sup>28</sup> The Law on the Manner of Establishing the Maximum Number of Employees in Public Services, *Official Gazette of the Republic of Serbia*, No. 68/2015, 81/2016 – Decision of the Constitutional Court and 95/2018.



who are (still) employed, which has a direct impact on the quality of work of those employees and consequently the quality of the services provided by the employer within the scope of its activity, the weakening of capacities of public services as well as the impossibility of improving their work. The application of this measure had especially harsh consequences for women, which was pointed out by the Commissioner for Protection of Equality by submitting an initiative for a change or repeal of the Law on the Manner of Establishing the Maximum Number of Employees in Public Services. This is to point out that austerity measures in the form of employment moratoriums have a significantly greater impact on women than on men.<sup>29</sup> Namely, the Law in question has certain unfavourable effects on the possibility of maintaining or starting employment relations on the part of women who have been absent from the labour force due to pregnancy, delivery or maternity leaves. It also has adverse effects both on women who were temporarily employed before taking a leave of this kind and women who were employed as substitutes until permanent employees returned from such leaves. In addition, according to the abovementioned research cited in the Initiative, the application of this law increased the probability that women who were close to retirement would retire earlier as well as the probability that women under 30 would become unemployed. Speaking on the probability of unemployment, the Commissioner points to the negative effects that the employment moratorium has on the employment of young people, which can be directly linked to migrations and a drain of the young workforce from the country. The text of the Initiative, among other things, highlights the issues that the measure under consideration created in the domain of healthcare, social work, childcare, science, culture, and education. In support of this, it is useful to mention the initiative to repeal the moratorium on employment in the domain of education submitted by the Minister of Education, Science, and Technological Development, thereby pointing to the fact that in the system of primary and secondary education, women make up more than 90% of employees.<sup>30</sup> As a reaction to the submitted Initiative, the state announced that it was planning to repeal the moratorium on employment in the public sector. This has not happened to the full extent prior to the moment of writing this article.

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<sup>29</sup> *Commissioner for Protection of Equality, the Initiative for the amendment or repeal of the Law on the Manner of Establishing the Maximum Number of Employees in Public Services*, no. 011-00-6/2019-02. Published on March 22, 2019. Accessed on March 14, 2022, from <http://ravnopravnost.gov.rs/inicijativa-zaizmenu-zakona-o-nacinu-odredivanja-maksimalnog-broja-zaposlenih-u-javnom-sektoru-cir/>

<sup>30</sup> *Ministar zatražio ukidanje zabrane zapošljavanja u prosveti. [Minister demands the repeal of the employment moratorium in education]*. Accessed on March 13, 2022, from <https://www.politika.rs/sr/clanak/426339/Ministar-zatrazio-ukidanje-zabrane-zaposljavanja-u-prosveti>

In the context of the negative consequences of the application of the amendments to the law pertaining to the employment moratorium, it is interesting to mention research carried out by the Foundation of the Center for Democracy. Namely, by analysing this amendment as a measure that was introduced to reduce public sector spending, the authors point out the lack of systematic, argued, reliable and objective analyses about both negative and positive consequences of this decision.<sup>31</sup> What is more, it is stated that the implementation of the moratorium entailed merely a non-selective reduction in the number of employed individuals meaning that there were no clear criteria either for layoffs or for new hirings based on the permission of the Commission of the Government of the Republic of Serbia, and consequently, a reform and improvement in the quality of public services have not been achieved. This could lead to a conclusion, which might not be fully justified, that since the beginning of its implementation, the measure under consideration entailed a degree of arbitrariness regarding the particular services in which it would be applied as well as the scope of its application. This form of government response to the global economic crisis has, therefore, de facto produced certain negative consequences for the quality of public services, especially in the domains of healthcare and education, whose domains of activity lie in direct communication with citizens.<sup>32</sup> This could be further supported if one takes into account the fact that the services that these organizations provide carry the attributes of the principles of fairness and universal availability of services. This actually means that given that these services are financed from public funds, it is understood that citizens have equal rights to access and quality of these services. According to Digi, the government is indeed a set of public services that satisfy the vital interests and needs of the citizens. In this context, the state is no longer the sovereign that relies on the use of force, but instead, this force can be used only for the purpose of organizing and managing public

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<sup>31</sup> Petrovar, K. (2015). *Zabrana zapošljavanja u javnom sektoru – posledice u sektoru zdravstvena zaštita građana*. Accessed January 11, 2022, from <http://www.centaronline.org/userfiles/files/publikacije/fcd-ksenija-petovar-zabrana-zaposljavanja-u-javnom-sektoru-posledice-u-sektoru-zdravstvena-zastita-gradjana.pdf>

<sup>32</sup> According to the statements of individual representatives of professional associations, unions and local self-government organizations, as well as the assessments based on expert analyses, it can be concluded that the most severe consequences were felt in those areas in which direct communication with citizens takes place and whose activities are directed towards meeting the needs of citizens - healthcare, education, public utilities, and others. Petrovar, K. (2015). *Zabrana zapošljavanja u javnom sektoru – posledice u sektoru zdravstvena zaštita građana*. Accessed January 11, 2022, from <http://www.centaronline.org/userfiles/files/publikacije/fcd-ksenija-petovar-zabrana-zaposljavanja-u-javnom-sektoru-posledice-u-sektoru-zdravstvena-zastita-gradjana.pdf>, 4.

services.<sup>33</sup> This understanding of government is also suggested by Lilić, who refers to public service as the public service of the citizens,<sup>34</sup> which further justifies the right to equal access and quality of public services that the citizens enjoy. In relation to this, it is important to bear in mind that here we are not only dealing with issues surrounding the establishment of employment relations but also with a potential threat to the access and quality of services, which could be regarded as one of the negative consequences produced by this measure.

The changes in the public service workforce structure, as well as the negative consequences that followed them, should be considered from the perspective of the implementation of the employment moratorium. This is primarily because it seems that this measure produced more harm than good when it comes to the quality of work and the provision of public services which was not the purpose of its application. Assuming that the education and healthcare sectors are in the most direct communication with citizens, it is important to bear in mind that the changes to the workforce structure are not affected merely by the employment moratorium. The potential impact of other factors is also significant.<sup>35</sup>

### **COUNTER-MEASURE ON THE URGENT ESTABLISHMENT OF PERMANENT EMPLOYMENT RELATIONS WITH HEALTHCARE WORKERS DURING THE PERIOD IN WHICH THE EMPLOYMENT MORATORIUM WAS IN FORCE**

Organizations in sectors of healthcare and social care are among the users of public funds that have suffered most negative consequences in the

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<sup>33</sup> Digi, L. (1929). *Preobražaji javnog prava*. Belgrade: Geca Kon. Cited in: Lilić, S. (Ed.) (2002). *Pravne Teme*. Belgrade: Magna Agenda, 97.

<sup>34</sup> Lilić, S. (2006). *Uticao sovjetske doktrine o državi i pravu na našu teoriju upravnog prava*. Belgrade: Legal Capacities of Serbia for European Integration, Scientific Project of the Ministry of Science of the Republic of Serbia and the Faculty of Law in Belgrade, 1–27.

<sup>35</sup> The factors with significant impact on the change in the workforce structure include the reduction in the number of students, the termination of certain classes, the closure of schools due to an insufficient number of students, etc. These factors can result in the so-called surplus of employees and therefore, the decision on the employment moratorium does not necessarily have to be the case of the negative consequences on the quality and availability of services. For more on this, see: Lilić, S. (2006). *Uticao sovjetske doktrine o državi i pravu na našu teoriju upravnog prava*. Belgrade: Legal Capacities of Serbia for European Integration, Scientific Project of the Ministry of Science of the Republic of Serbia and the Faculty of Law in Belgrade, 4.

period in which the employment moratorium was in force. Moreover, the reduction in the number of employed individuals was more intense than in other public services on the national level.<sup>36</sup> When one considers the number of employed individuals in this sector, it is useful to mention that since 2015 the official number of employed individuals in the healthcare sector, in addition to doctors and nurses, includes individuals who are not in employment relations and are instead hired on short-term contracts or contracts for the completion of specific tasks. The purpose of this change in the official statistics regarding the number of employed individuals is questionable. More precisely, the question is whether its purpose was to create a sense that it is possible for the healthcare sector to function properly despite the application of the austerity measure under consideration. If the answer to this question is affirmative, it is unavoidable to note that there is a problem with the increase in the number of people per doctor, which is not an indicator of positive changes brought about by the measure under consideration. There is certainly a direct impact of the measures undertaken by the Government with the aim of reducing public spending, which has manifested itself through highly uneven access to healthcare workers and associates. Nevertheless, one should not neglect the fact that other factors might have an impact on the quality of the healthcare system. Among these are, for example, the number of doctors in a particular healthcare facility, the number of healthcare facilities, the overall public health situation – seasonal flu, epidemics, pandemics, war, climate disasters, etc.

Unplanned situations such as the pandemic of COVID-19, which took place in the Republic of Serbia while the measure under consideration was in force, can have exceptional impacts on the functioning of public services. This case is perhaps the best indicator of a multi-year problem of the insufficient number of healthcare workers. The Ministry of Health responded to the problems of the healthcare sector by issuing an order, which could (perhaps wrongly) be interpreted as being in violation of the employment moratorium which was supposed to remain in force until the end of 2020. That the application of this order was justified while the employment moratorium was in force is indirectly suggested by the Alliance of Unions of Serbia “Sloga” [Unity]. Namely, the unions repeatedly appealed to the Ministry of Health and

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<sup>36</sup> Certainly, there are differences in the intensity, i.e. the percentages of the reduction in the number employees in the sector of healthcare according to regions. “The total number of doctors in the Republic has, in the period between 2011 and 2017 been reduced by 5 %. The number of general practitioners has declined by 18.2 %; the number of specialists and specialist interns declined by 2.5 % The reduction in the number of doctors has not been equally distributed according to regions and the regions of Southern and Eastern Serbia, which are the last developed in the country, have been hit the most severely. The number of dentists has declined by more than a quarter.”, Lilić, S. (2006). *Op. cit.*, 10.

the directors of healthcare organizations to act in accordance with the order.<sup>37</sup> According to the order, which was put into force immediately, healthcare organizations were instructed to urgently establish permanent employment relations with doctors and nurses-technicians involved in the struggle against the spread of the virus<sup>38</sup> It is interesting that only a week before the order was issued, following an increase in workload, the Clinical Center of Serbia invited job applications for a large number of doctors and nurses-technicians promising them temporary contracts for periods of three months.<sup>39</sup> It is important to point this out because this order potentially meant permanent employment and job security, which the employment moratorium did not permit, and this applied both to those individuals who were employed based on a flexible contract as well as those who sought employment in this sector. However, the application of the order under consideration did not reach its full scope, which again points to potential arbitrariness and selectiveness of application of the measures that are directed at public services. According to a study carried out by BIRN<sup>40</sup>, certain healthcare organizations did not implement the order of the Ministry of Health or they implemented it selectively, among other things, because it was formulated imprecisely,<sup>41</sup> and consequently it left room for

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<sup>37</sup> Sloga (2021). *Direktori zdravstvenih ustanova da primaju u radni odnos*. [Heads of healthcare institutions to start establishing employment relation]. Accessed on April 9, 2022, from <https://sloga.org.rs/sloga-direktori-zdravstvenih-ustanova-da-primaju-u-radni-odnos/>

<sup>38</sup> The order on the establishment of permanent employment relations with healthcare workers (doctors and nurses-technicians) under an emergency procedure was issued on the basis of Regulation on the Organization of the Work of Employers in the State of Emergency, *Official Gazette of the Republic of Serbia*, No. 31/2020, Article 1 and the Law on Public Administration, *Official Gazette of the Republic of Serbia*, No. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 and 30/2018, Article 15, Paragraph 1. For a review of the Order, see: *The order on the establishment of permanent employment relations with healthcare workers (doctors and nurses - technicians) under an emergency procedure*. Accessed March 9, 2022, from <https://zdravko.org.rs/wp-content/uploads/2020/03/Naredba-Ministarstvo-zdravlja.pdf>

<sup>39</sup> For more on this, see: *Konkurs za prijem u radni odnos na određeno vreme*. Accessed on January 13, 2022, from <http://www.kcs.ac.rs/index.php/oglas-i-konkursi/4810-konkurs90>. Other healthcare institutions in the country reacted in a similar way.

<sup>40</sup> As a non-profit, non-governmental organization, BIRN is also a member of the National Alliance for Local Economic Development, within which it champions reform of public administration and creating a better business environment.

<sup>41</sup> The lack of an explicit definition of the notion of an “indispensable healthcare worker” is emphasized as a justification for the claim that the order under discussion is formulated imprecisely, which can have a direct impact on the decision on the employer as to whether a person will be accepted into a permanent employment relation. Furthermore, the response to the question of whether the order on employment according to an emergency procedure refers only to those healthcare workers who are directly involved in treating patients suffering from COVID-19 or it can be applied to other healthcare workers as well. There is no explanation about whether the order refers only to those healthcare workers who entered

employers to interpret who could be considered a (indispensable) healthcare worker in a period of crisis.<sup>42</sup> This should, indeed, be approached with utmost care because it entails the establishment of a standard employment relation. It is questionable, namely, whether healthcare workers who were not able to enter into permanent employment relations even after the order was put into force can challenge their employers' decisions in relation to the choice of individuals who would be permanently hired. Healthcare workers have the ability to initiate a labour dispute against their employer. In relation to this, the court will be obliged to establish what would be considered the criteria for designating an individual as an "indispensable healthcare worker".<sup>43</sup> Interestingly, the establishment of these criteria would eliminate, to a certain extent (it not entirely), the arbitrariness on the part of employers when it comes to interpreting the content of the order. A healthcare worker, therefore, has the right to challenge both the inactions and actions of their employer. By challenging inaction, they would point to the failure to establish a standard employment relation, while by challenging actions, they would point to the fact that an inadequate worker was hired on a permanent contract based on the established criteria. Interestingly, in the period in which these measures were analysed, it was impossible to find case law pertaining to initiated labour disputes in relation to the mentioned imprecise formulation of the order, i.e., in relation to actions and inactions of employers. Independent interpretation of the order on the part of the employers is has been reflected also in its selective application. However, it was not possible to find the answer to the question of whether employers who did not implement the order were held accountable and in what way and scope. Another important factor that can have an impact on the analysis of the mutual impact of the employment moratorium and the order on urgent employment in the healthcare sector is the statement contained in the order of the Ministry of Health which required healthcare institutions to submit reports on the realized hirings of healthcare workers before a set deadline. This is important to mention because, despite the authorities' claims about the successful implementation of the order, there is no publicly available data to confirm those claims. Therefore, it remains questionable whether this countermeasure about the urgent employment in healthcare had a real impact on the mitigation of the employment moratorium. Additional pressure on the

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into employment relations in the period since the emergence of the COVID-19 pandemic or it also covers those workers who entered into temporary employment relations before that.

<sup>42</sup> For more on this, see: *Korona i zapošljavanje: Novi ljudi u srpskom zdravstvu*. Accessed on January 13, 2022, from <https://birn.rs/korona-i-zaposljavanje-novi-ljudi-u-srpskom-zdravstvu/>

<sup>43</sup> Specialist knowledge, experience or even increased workload could be considered as relevant under this criterion.

functioning of the healthcare sector is created by inadequate compensation for healthcare workers. Namely, according to the Fiscal Council, insufficient wages of healthcare workers are one of the main reasons behind the drain of the employees in this sector, which, among other things, has a negative impact on public health in the country.<sup>44</sup> In such a situation, the healthcare sector is forced to work according to the principle “more citizens per one doctor”. This was especially problematic in the period in which the employment moratorium was in force because vacancies could not be filled (at least sufficiently quickly) without going through a long and complex administrative procedure of obtaining the approval of the Commission.

### **THE NEGATIVE IMPACT OF THE EMPLOYMENT MORATORIUM ON WOMEN AND YOUNG WORKERS FROM THE PERSPECTIVE OF THE EDUCATION SECTOR**

The education sector, i.e., primary and secondary schools, were also on the list of the users of budget funds, which suffered the highly detrimental consequences as a result of the implementation of the employment moratorium. In this regard, this sector will also necessarily face the problem of the inability to hire new individuals even despite the existence of a genuine need on the part of the employer.<sup>45</sup> In such cases, to solve the problem, the employers would resort to more flexible ways of maintaining their operations. In this way, the impact of the measure under analysis would affect not only the functioning of primary and secondary education but also the economically dependent side in the employment relation. When it comes to the economically dependent side of the employment relation, one important data point to bear in mind is that women make up the highest percentage of the teaching profession in the Republic of Serbia (as many as 70%). Also, among the teachers in primary and secondary education, it is possible to observe a higher percentage of employees younger than 40.<sup>46</sup> This is especially useful to consider bear-

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<sup>44</sup> For more on this, see: Fiscal Council of Serbia (2018). *Zarade u državnom sektoru: stanje i smernice za reformu*. Accessed on January 13, 2022, from <http://www.fiskalnisanavet.rs/doc/analize-stavovi-predlozi/Zarade-u-drzavnom-sektoru-stanje-i-smer-nice-za-reformu.pdf>

<sup>45</sup> This is relevant if the Commission does not approve the request or if it is not obtained in a timely manner.

<sup>46</sup> “Since the Regulation entered into force, the highest number of teachers were employed in elementary education while the lowest number of them found employment in college-bound high schools (“gimnazija”). The largest share of teaching staff younger than 40 was employed in lower grades in elementary education (93.8%) while the lowest share

ing in mind that an employment moratorium has an especially adverse effect on young workers and women.<sup>47</sup> Regarding employees, as an economically dependent side in the employment relation and regarding the ensurance of secure employment, it is important to mention the impossibility of the application of the institute of the transformation of the employment relation (from a temporary into a permanent one) due to the relevant provisions of the Law on the Manner of Establishing the Maximum Number of Employees in Public Services. All of this suggests that it would not be a mistake to say that the government's austerity measures were consistently applied in the education sector as well as in the sectors of healthcare and social protection.<sup>48</sup>

The implementation of the Regulation resulted in a higher number of temporary contracts, which is an indicator of the reduction in the scope of planning as well as the control over employment processes in public services additionally complicated through elaborate administrative procedures. The absence of the principle of security and permanence of employment is, in reality, only one more stumbling block that the employment moratorium created in the education sector. This is perhaps even the most obvious in relation to the portion of young individuals employed in education. One should not lose sight of the average age of teachers, according to which it would be possible to conduct a relevant sample analysis to establish the indicators of the “advantage” enjoyed by those who succeeded in securing permanent employment before the Regulation was passed. One could say that young individuals<sup>49</sup> in the Republic of Serbia start to work immediately after their finish their education, regardless of whether they complete primary, secondary, or higher education, even though there are doubts as to whether this is truly the case in practice. Given the fact that the employment moratorium concerns young people directly, one must ask whether it had a disproportionately higher impact

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was recorded in vocational schools (75 %). Simultaneously, in lower grades of elementary schools, not a single teacher older than 60 was employed while the largest number of such teachers were employed in secondary education (56 persons),” Skočajić, T. (2018). *Analiza podataka o nastavnicima u osnovnom i srednjem obrazovanju – demografski podaci, zapošljavanje, napuštanje profesije. Dialogues in Education 2017 – Collection of Papers*, 18.

<sup>47</sup> Kovačević, LJ. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law, 286.

<sup>48</sup> The austerity measures in the public sector initiated by the government were implemented consistently in the public administration as well as where the majority of the workforce are women. This is, however, not the case in public enterprises where the number of men is higher than the number of employed women. Žarković Rakić J., Vladislavljević, M., Prokić I., Poljak I. (2018). *Gender inequality in the labour market outcomes in times of austerity*. Belgrade: Partnership for Economic Policy, 1.

<sup>49</sup> According to the Law on the Youth, in the Republic of Serbia, the term “youth” refers to a person between 15 and 30 years of age. The Law on the Youth, *Official Gazette of the Republic of Serbia*, No. 50/2011 Article 3, Paragraph 1.



on their (in)ability to find employment as compared to the other sections of the workforce, e.g. women. In support of the abovementioned dilemma, one could cite National Employment Agency's data that shows that those who seek employment can spend more than a decade waiting for teaching positions.<sup>50</sup> This discussion should also include the presence/absence of the issue of ageism (youngism). Namely, to achieve a fuller understanding of the problems that young people face every day, it is useful to approach them from the perspective of employers as well. If one accepts as realistic the assumption that employers most often avoid establishing employment relations with young people, it is justified to search for an answer to the question of whether this is the result of a negative impression about their work obtained in practice. The potential reasons that could (perhaps) support an affirmative answer are different and numerous.<sup>51</sup> A negative answer would, however, create a fertile ground to consider the question of whether employers can, nonetheless, recognize an investment opportunity in hiring young individuals.<sup>52</sup> If this is correct, there is no grounds for a conclusion about the existence of ageism but it is unquestionable that the employment moratorium did not bypass the young. Nevertheless, this should be taken with a degree of reserve given the fact that the establishment of employment relations in the education sector, especially in primary and secondary education can be affected by other factors as well. One of them is the reduction in the number of students, the elimination of certain classes/courses, even the closing of entire schools owing to the lack of students. All of this leads to the development of a different problem, i.e. the surplus of employed teachers as well as administrative and other staff, which is not directly linked to the employment moratorium under analysis. Among the other significant factors that (can) affect employment in this sector, it is not a mistake to consider the financial aspect which is manifested in the form of teachers' earnings. Namely, according to the Fiscal Council, the problem with

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<sup>50</sup> About this, see: Skočajić, T. (2018). Analiza podataka o nastavnicima u osnovnom i srednjem obrazovanju – demografski podaci, zapošljavanje, napuštanje profesije. *Dialogues in Education 2017 – Collection of Papers*, 20. Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law, 286.

<sup>51</sup> The reasons for a potential negative stance towards the work performance of young people on the part of the employer might be the lack of awareness on the importance of the role of the employer in the further education and development of employed individuals, stricter criteria that have to be met in order to find employment, the lack of readiness on the part of older employees to engage in mentorship, etc. Buković N., Kamenko J., Pekica P., Šehić Relić L., Travar M. (2013). *Neudoban položaj*. Zagreb: Croatian Youth Network, 65 – 68.

<sup>52</sup> *Ibid.*, 66 – 67.

the wages in the education sector is not their height but there are other problems in this sector that assert themselves as priorities for reform.<sup>53</sup>

Continual changes in the labour market which entail those that are directly related to economic crises demand adjustments in the establishment of employment relations commensurate with the new circumstances. However, austerity measures in public services such as employment moratoriums can leave long-lasting consequences for the functioning of the education system (specifically, primary and secondary education), which are difficult to repair. The creation of obstacles for job seekers in this sector, primarily among women and the young, could lead to the widening of the already existing gap when it comes to gender equality as well as more intense emigration of workers. This could mean that the education sector remains in the hands of older employees and it is difficult to see how the lack of working age individuals seeking employment in this sector could be resolved.

## THE EXPIRATION OF THE MORATORIUM ON EMPLOYMENT IN PUBLIC SERVICES

Even though the duration of the amendments to the Budget System Law, the Regulation and the Law on the Manner of Establishing the Maximum Number of Employees in Public Services was restricted to two years, the expiration deadlines were extended, and the reduction of the expenses incurred by the users of public funds was cited as the main reason for the extension. Probably driven by the conviction that the employment moratorium and the reduction in the number of employees in public services were the measures that contributed the most to the success of the fiscal consolidation and the reduction in public spending, the government of the Republic of Serbia made recommendations to the National Assembly to extend the application of the measure under analysis on several occasions.<sup>54</sup> However, in opposition to the

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<sup>53</sup> For more details on this, see: Fiscal Council of Serbia (2018). *Zarade u državnom sektoru: stanje i smernice za reformu*. Accessed on January 13, 2022, from <http://www.fiskalnisavet.rs/doc/analize-stavovi-predlozi/Zarade-u-drzavnom-sektoru-stanje-i-smernice-za-reformu.pdf>

<sup>54</sup> On certain initiatives of the Government of the Republic of Serbia to extend the application of the public sector employment moratorium, see: *The Law on the Budget System: the Government of the Republic of Serbia considers the possibility of extending the public sector employment moratorium*. Accessed on January 12, 2022, from <https://www.paragraf.rs/dnevne-vesti/091115/091115-vest5.html> See also: *The moratorium on public sector employment until the end of 2017*. Accessed on January 12, 2022, from <https://www.pravniportal.com/zabrana-zaposljavanja-u-javnom-sektoru-kraja-2017-godine/>

Government initiatives, there were appeals by the Fiscal Council to repeal the moratorium because the Government of the Republic of Serbia failed to submit the requested data on the realized savings and the rationalization of the public administration in the period in which the measure was in force. For this reason, the explanation for the appeal offered by the Fiscal Council contained the claim that the reform of public enterprises and public administration did not produce results and despite the stabilization of the public finances, the government failed to implement pay grades and rationalize the number of employees in public services in the preceding period. In addition, according to the assessment by the Fiscal Council, the employment moratorium had the strongest impact on the sectors of healthcare and education in the sense of reducing the quality of services.<sup>55</sup> Judging by this, it is justified to conclude that the legal innovation under analysis introduce more harm than good and its repeal created a fertile ground for ensuring a higher degree of quality of public services.

Toward the end of 2020, the National Assembly of the Republic of Serbia passed a Law on the Amendments to the Law on the Budget System. After seven years of the moratorium on employment in public services, the users of public funds were allowed to employ new workers. However, this was not unconditional. The beginning of 2021 brought about significant facilitatory measures introduced by the moratorium under analysis. The changes to this law made it possible to find a job in public service but only by meeting certain conditions. Apart from this, the control of the Commission remained in place.

The amendments to the Budget System Law prescribe a somewhat more flexible procedure of oversight over public sector employment in accordance with the existing staff needs. Namely, since the beginning of 2021, employers financed from public funds have been allowed greater freedom to employ new staff (i.e. job seekers) and this measure expires at the end of 2023. If the prescribed preconditions are met, it will be possible to initiate an employment relation without the approval of the Commission. This creates the ability of public institutions, organizations, and enterprises to hire, in the period of one year, permanently or temporarily, a new employee or more of them, in accordance with their needs and financial means at their disposal. However, this ability is restricted to 70 % of the total number of persons whose employment relations have ceased on any grounds (deducted for the number of newly employed persons, both permanently and temporarily, and as interns within that calendar year). For example, if in 2020, employment relations with 10

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<sup>55</sup> See: Petrovar, K. (2015). *Zabrana zapošljavanja u javnom sektoru – posledice u sektoru zdravstvena zaštita građana*. Accessed January 11, 2022, from <http://www.centaronline.org/userfiles/files/publikacije/fcd-ksenija-petovar-zabrana-zaposljavanja-u-javnom-sektoru-posledice-u-sektoru-zdravstvena-zastita-gradjana.pdf>, 4 – 6.

persons have ceased, without obtaining the approval of the Commission, the employer is allowed to hire 7 new employees.<sup>56</sup> If, however, there is a need and the possibility for the employer to hire new persons going beyond the prescribed condition of 70 %, they will be required to obtain the approval of the Commission issued at the request of the ministry in charge of the sector in question and with the consent of the Ministry of Finance.<sup>57</sup> However, there are exceptions to the restriction under analysis.<sup>58</sup>

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<sup>56</sup> For example, in one public utility enterprise in the Central Serbia, in 2020, the permanent employment contracts of six individuals were terminated (three due to retirement, two following consensual readmission by other enterprises, and one due to the sudden death of the employee). During that year, immediately following the approval of the Commission, a permanent employment relation was established with one person who received the position of a driver of a public utility vehicle. In this case, in 2021, the public utility enterprise is allowed to enter into permanent employment relations with 3 persons (70 % x 6 persons = 4.2 persons deducted for 1 person who was hired with a permanent contract in 2020). *The employment moratorium extended until the end of 2023*. Accessed on January 13, 2022 from <http://www.ttigroup.co.rs/wp-content/uploads/28-Zabrana-zapo%C5%A1ljavanja-u-2021-oj-godini.pdf>

<sup>57</sup> “The proposed bill states that employment will be possible if a public enterprise or institution has secured funds for wages, i.e. salaries with associated taxes and benefits for the newly employed individuals as well as under the conditions and procedures prescribed in specific regulations.” *From January 1, 2021 until December 31, 2023, the users of public funds will be allowed to enter into employment relations with new employment relations*. Accessed January 12, 2022 from <https://www.propisi.net/od-1-1-2021-do-31-12-2023-godine-korisnicima-javnih-sredstava-bice-dozvoljeno-da-bez-posebnih-dozvola-i-saglasnosti-vlade-srbije-prime-nove-ljude-u-radni-odnos/>

<sup>58</sup> The exceptions are persons with temporary employment for the purpose of substituting for an absent employee, persons hired via the National Employment Agency as part of the implementation of active employment measures (public works and additional education and training), persons engaged for the purposes of the realization of projects financed with EU funds or from donations if these funds are used to cover the salaries, as well as persons hired by the users of the training programs organized under the auspices of the National Academy for Public Administration. These rules do not apply to teaching staff in higher education and scientific and research staff in research organizations, heads of public enterprises, companies with share capital, institutions, and public agencies founded by the Republic of Serbia or the units of territorial autonomy and local self-government as well as persons with disabilities (in the sense of the employment quota) and judges, prosecutors and deputy prosecutors. Kovačević, L.J. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law, 288. See also: *From January 1, 2021 until December 31, 2023, the users of public funds will be allowed to enter into employment relations with new employment relations*. Accessed January 12, 2022 from <https://www.propisi.net/od-1-1-2021-do-31-12-2023-godine-korisnicima-javnih-sredstava-bice-dozvoljeno-da-bez-posebnih-dozvola-i-saglasnosti-vlade-srbije-prime-nove-ljude-u-radni-odnos/>

On the additional restrictions prescribed by the lawmaker and in relation to the prevention of false self-employment, see: Kovačević, L.J. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law, 287.

## CONCLUSION

The opposing views of the Government of the Republic of Serbia and the Fiscal Council regarding the continuation of the implementation of the employment moratorium have seemingly been bridged by the decision of the Government of the Republic of Serbia to adopt the amendment to the Budget System Law and thereby finally abandon the principle of control over employment in public services. Following multi-year prolongations, this measure, which was undertaken to reduce public sector spending, has apparently produced the desired results. Even though the appeals of the Fiscal Council emphasized the failure of the Government of the Republic of Serbia to supply the data on the achieved spending reductions, the decision to put the measure under analysis out of force indicates that the necessary spending reductions have been achieved and the number of public sector employees has been reduced. The introduction of a more flexible employment system, in accordance with the employer's needs for new staff, the Law on the Manner of Establishing the Maximum Number of Employees in Public Services is no longer in force. Therefore, instead of the recent system of control or the obligation on the part of employers to obtain the approval of the Commission for each newly hired employee, public services can make decisions on employment independently in accordance with the demand for new employees and the financial means at their disposal. However, the act of putting the employment moratorium out of force is, according to the relevant legal provisions, analysed facts, and available literature, as well as according to the available data, only a limited reduction of this form of control over public spending. It is clear that the state enforces the right to exercise control over public services. Therefore, even though the fact that the repeal of the measure in question allows employers almost complete autonomy over employment decisions is emphasized as the most important, the existence of the prescribed conditions and procedures for bypassing those conditions does not support this idea.

This claim is evidenced by the provision that retains the mechanism of control that was in place before the latest amendments to the law. Namely, it prescribes the obligation of the employer to, in case there is a need to exceed the 70% threshold for the number of newly employed individuals, obtain the approval of the Commission. Therefore, it remains questionable whether the repeal of the employment moratorium is indeed the consequence of headway regarding the question of the reduction of public sector spending or if it is merely a modification of it (with the purpose of an apparent approximation towards employment safety and permanence which is of vital importance to many individuals). The author is of the view that the repeal of the employment moratorium and the introduction of new restrictions actually creates a false

sense that progress has been made in the sense of the restored autonomy of public services as employers but certainly, and to a greater extent, in the sense of ensuring employment safety and permanence for job seekers and employed individuals.

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