DOI https://doi.org/10.63356/spm.2024.006 UDK 342.729:331.109.3

PREGLEDNI NAUČNI ČLANAK (REVIEW SCIENTIFIC PAPER)

THE RIGHT TO STRIKE AND ITS SIGNIFICANCE AS A MEASURE OF DIRECT INDUSTRIAL ACTION

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"Humanity has no goal yet!"
Thus Spoke Zarathustra

Abstract: *The strike as a legal, sociological, collective, political phenomenon rooted in labor law, began to realize its full potential in labor relations and to yield its first significant outcomes at the beginning of the 20th century. It reached its peak and flourished in the early 21st century. As a collective (industrial) action, the strike - along with all its unique characteristics and procedures - has survived to this day as the most powerful tool in the hands of labor unions and "independent workers" alike. Its strength actually lies in the pressure of the collective exerted on the employer. The new millennium has introduced numerous challenges that workers can only confront by holding in their hands today's fundamental labor right: the right to strike. The flexibilization and deregulation of the labor market, which entails significant unemployment problems, have weakened the collective power of individuals to protect their interests. This, in turn, underscores the urgent need to awaken awareness among workers - that the strength of every nation has always rested and will continue to rest in the hands of its workforce.*

In the first part of this paper, the authors emphasize the importance of the reaction of the collective action (primarily through unionized employees) in protecting workers' interests, as well as the significance of the strike and its possible

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political implications. In the continuation of the paper, we look at the normative definition of the right to strike in the Republic of Serbia and in the countries of the Western Balkans. The second part explores three additional models of industrial action, which serves as precursors to the modern right to strike.

Keywords: *collective organization, strike, unions, union organization, boycott, picketing.*

1. INSTEAD OF AN INTRODUCTION

Creators were first the peoples, and only later individuals; indeed, the individual is still the youngest creation.[3] This statement by Nietzsche serves as an apt introduction to the topic illustrating the collective power of groups—nations—whose organization represents a precursor to the right to strike. In contemporary labor relations, the erosion of collective organization and the weakening of rights protection have become increasingly pervasive, rendering employees a particularly vulnerable category.[4] The right to strike has existed for as long as civilization itself.[5] Collective action was the only means to protect existential interests. The evolution of this right can be divided into three epochs: up to the 19th century, from the 19th century to World War II, and the third epoch from

[3] Fridrih Niče, *Tako je govorio Zaratustra*, (Podgorica, Nova Knjiga 2021), 90.

[4] Scattered, isolated, unprotected, vulnerable, fearful, and antagonistic individuals enter the competition for jobs, striving to prove that they are more adaptable and flexible than their competitors. Zoran Stojiljković, "Život pod neoliberalnompresom: imal li izlaza", *Kultura polisa*, god XVI, br 39, (2019): 23.

[5] A strike is a work stoppage organized by employees to protect their professional and economic interests related to their employment. Employees freely decide whether to participate in the strike. Zakon o štrajku ("Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br. 101/2005 - dr. zakoni 103/2012 - odluka US). The right to strike can be defined in various ways, but over time, this definition has tended to change. Bob Hepple, The Right to Strike in an International Context, *Cdn. Labour Employment Law Journal*, (2009): 133; According to Professor Končar, the current law defines a strike as an organized work stoppage (in the sense of a cessation of work by workers). From the aspect of strict legal formality, such a definition does not take into account newer forms of strikes, such as slowdowns, work-to-rule actions, sit-ins or white strikes, sequential strikes, bans on overtime work, etc., known in our practice. In these cases, workers typically do not stop working. The question remains whether all forms of strikes or some new trends in the evolution of future strikes could fall under this definition. In any case, it will be necessary to consider whether the law should explicitly provide for solidarity strikes. Polonca Končar, "Excerise of the right to strike in Slovenia: on some controversial issues and compliance with the European social charter", *Zbornik Pravnog fakulteta u Zagrebu*, (2023): 320; Judge Pinto de Albuquerque provides one of the most precise definitions of the right to strike in one of his rulings. He asserts that the right to strike "encompasses any work stoppage, no matter how brief or limited, aimed at defending and advancing the interests and rights of workers by exerting pressure on the employer, including sympathy or secondary strikes in cases where workers take action to support colleagues employed by another employer." Leyton Garcia & Jorge Andres, " The right to strike as a fundamental human right: recognition and limitations in international law", *Revista Chilena de Derecho*, vol. 44 Nº 3, (2017): 793-794.

World War II to the present.[6] The right to strike is a civilizational achievement that represents the right to rebellion[7] and the right to express an opinion[8]; today it is a fundamental aspect of labor rights in the hands of employees, and its significance is primarily reflected in its recognition by numerous constitutions, including the Constitution of the Republic of Serbia.[9] Over time, this right has become an indispensable tool for achieving workers' collective goals, now represented by unions.[10] Trade union organizations primarily realize their full potential through various forms of protest—such as strikes—advocating for those who are oppressed and disadvantaged.[11] A strike is considered a precursor to

[6] In those years, participation in strikes and other forms of collective conflict was considered a crime against the homeland, a crime of rebellion, and a crime against state security. Luis Cardenas, Wages and Labor Relations during Francoist Developmentalism: The Role of the New Unionism, *International Labor and Working-Class History* (2024) 238. In Germany, there was no cross-party consensus for including this right in the constitution at that time. What made the situation even worse was the fact that the unions themselves were not advocating for the inclusion of this right in the German Constitution. Ruth Dukes, Authoritarian liberalism: A labour law perspective, *European Law Open* (2022): 154.

[7] In England and the United States, authorities continued to hold that a strike was a conspiracy before 1842, and there were many reasons supporting this theory. Moorfield.Storey, The right to strike, *Yale Law Journal*, Vol. XXXII,No 2,(1922): 106.

[8] Many authors emphasize that the right to strike is directly related to the fundamental right of today, which is "freedom of speech and expression."

[9] Employees have the right to strike in accordance with the law and collective agreements. The right to strike can only be restricted by law, in accordance with the nature or type of activity.Ustav Republike Srbije ("Sl-glasnik RS", br. 98/2006 i 115/2021);. Ustav Republike Slovenije ("Uradni list RS", št. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a in 92/21 – UZ62a); Employees have the right to strike. This right may be restricted for employees in the military, police, government institutions, and public services in order to protect the public interest, in accordance with the law. Thus, the Montenegrin Constitution defines the right to strike and is notably more restrictive with regard to the security sector. Ustav Republike Crne Gore ("Sl-list CG", br. 1/2007 I 38/2013, Amandmani I- XVI) čl. 65-66;A similar provision is included in the Croatian Constitution, which guarantees the right to strike. However, in the armed forces, police, civil service, and public services designated by law, the right to strike may be restricted. Ustav Republike Hrvatske (NN,56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14

[10] Those who advocate for the concept of the right to strike emphasize that industrial action is an essential part of the freedom of association. Without it, workers and unions lack the power to defend their positions against the economic and political power of employers. Leyton Garcia, Jorge Andres, " The right to strike as a fundamental human right: recognition and limitations in international law" 782; The nature of the demands made through a strike can be categorized as professional (aimed at guaranteeing or improving workers' working and living conditions), union-related (seeking to advance the rights of trade unions and their leaders), or political. Bernard Gernigon, Alberto Odero & Horacio Guido, ILO principles concerning the right to strike, *International Labour Geneva*, Vol 137, No 4 ,(1998): 13; Workers who are employed by an employer outside of an employment relationship do not have the right to strike, as they do not have collective rights guaranteed by labor law. Bojan Urdarević, "*Assessment of ecomomic and social rights in te Republic Serbia – Report on the implementation of the covenant on economic , social and cultural rights"*, (Centar za dostojanstveni rad, Beograd 2019), 90-103.

[11] Richard Hyman, "The future of trade unions",: In: Anil Verma Thomas A. Kochan, *Unions in the 21st Century : An International Perspective,* (2004): 17-29

trade union organization[12] ranging from the slave revolts in Egypt under Ramses III and Spartacus' slave rebellion in Rome to modern mass worker strikes. The conflict has never been only between employees and management or owners, but also involves economic interests of employees that are often in conflict with the economic interests of owners and management.[13] Given that the right to strike, as one of the trade union rights, has had a varied historical development depending on different social systems of individual countries, the stance of legislators on recognizing and regulating the right to strike has also varied. Although by the late 19th century and in the early 20th century the right to strike was recognized for workers in nearly all countries, the methods and extent of its implementation were regulated differently.[14] Countries such as Great Britain, France[15], Germany, and the United States[16] are today considered pioneers of this

[12] Piotr Grzebyk, Justifications of the right to strike: from the rule of force to the rule of law, Hungarian labour law, *E-Journal* 2/(2016): 45;It is justified to say that, in a certain sense, unions are the result of strikes rather than the other way around. At the very least, the question of which came first—unions or strikes—is as significant as the age-old question of "the chicken or the egg."Karl Freunds, *Labour and the Law,*Third edition, (1984), 294;

[13] Ivica Lazović,"Ima li sindikata međudržavnim službenicima:analiza prisustva sindikalnog organizovanja u državnoj upraviu Srbiji", *Srpska politička misao* god. 25 vol. 61, 3/(2018): 141-156.

[14] MarijaTorman, Zakonsko regulisanje prava na štrajk, Anali Pravnog fakulteta u BeograduVol. 44 °3-4, (1993).

[15] In France, unions began to develop outside of companies and workplaces. The trade union movement responded to the hostility of the state and employers with hostility toward both bourgeois democracy and the capitalist movement. The initial unionist orientation was based on a revolutionary unionist program. Udo Rehfeldt, Catherine Vincent, France: Fragmented trade unions, few members, but many voters and much social unrest, (eds.) Jeremy Waddington, Torsten Müller and Kurt Vandaele *Trade unions in the European Union Picking up the pieces of the neoliberal challenge,*Vol 86, (2023): 422;

[16] The influence of Wagner's Law on the use of strikes and picketing as methods of organization was first manifested in Section 8(b)(4) of the Taft-Hartley Act, which provides that it is an unfair labor practice for a labor organization to encourage employees to strike or refuse to perform their usual services. It requires any employer to recognize or negotiate with a particular labor organization if authorized by another representative. Archibald Cox, "The Landrum-Griffin Amendments to the National Labor Relations Act," *Minnesota Law Review*, 53, (1960): 263-264; The best document on the historical use of the discourse on rights in the United States is by James Pope, who argued that early in the 19th century, American workers and the American labor movement were based on a "constitution of freedom" grounded in concepts of emancipation and legal rights. Kevin Kolben, "Labour Rights and Human Rights," *Virginia Journal of International Law*, Vol. 50, (2010): 449-484; The right to strike is also addressed, either directly or indirectly, in the acts of certain international organizations. Under the UN framework, according to the International Covenant on Economic, Social and Cultural Rights of 1966, member states are obligated to ensure the right to strike through their national legislation. A state may only restrict this right by law, in a manner consistent with the nature of this right and solely to enhance the general welfare in a democratic society. The ILO has adopted several conventions and recommendations related to trade union freedoms and rights, from which the right to strike is derived. Notably, the right to undertake industrial action, particularly the right to strike, is a fundamental axiom of the right to organize. This is especially reflected in ILO Convention No. 87 on Trade Union Freedom and Protection of Trade Union Rights of 1948, under which ILO supervisory bodies have recognized the right to undertake strike action as an essential result of the right to organize. Predrag Jovanović, "Labour Standards Regarding Collective Bargaining," *Zbornik Pravnog fakulteta u Novom Sadu* 2/(2009): 112. In recent jurisprudence by the European Court

fundamental workers' right. Great Britain, in particular, should be regarded as the precursor to the right to strike, being the first among nations to spearhead the industrial revolution in late 18th century.[17] The strengthening and development of industry in the 19th century led to the expansion of the working class and increasing worker unrest. Through collective organization and assembly, workers sought to defend their economic and social rights.[18] The 20th century - marked by two world wars and the rise of communism- saw the suppression of the right to strike and became a "forbidden" tool in the hands of employees.[19] The exercise of this right and its usage largely depended on the political system in power. What has led both trade unionism and its resistance through strikes to face challenges by the end of the 20th century is seen by many legal experts in the flexibilization[20] and deregulation[21] of the labor market, where trade union power, and thus the power of strikes, has diminished.[22]

of Human Rights, the right to strike is also present in the indications. Although this right is not explicitly provided for in Article 11, the Court has nevertheless classified the right to strike under trade union freedom and examined whether a ban on strikes infringes rights guaranteed by Article 11 of the Convention. Violeta Beširević et al., *Komentar Konvencije za zaštitu ljudskih prava i osnovnih sloboda*, (Službeniglasnik, Beograd, 2017), 315; see more in the judgment: UNISON v. The United Kingdom, no. 53574/99, 10.1.2002. It is true that European courts have advanced beyond the international community's stance by recognizing that freedom of association includes not only the right to effective collective bargaining but also the right to strike. Tonia Novitz, "Connecting Freedom of Association and the Right to Strike: European Dialogue with the ILO and Its Potential Impact," *Law & Political Science*, (2010): 17; The practice of the European Court of Justice and its interpretation of "wildcat strikes" and whether they can be considered as sudden circumstances is also noteworthy. Judgment of the European Court of Justice in joined cases C-195/17, C-197/17 to C-203/17, C-226/17, C-228/17, C-254/17, C-274/17, C-275/17, C-278/17 to C-286/17, and C-290/17 to C-292/17, dated April 17, 2018.

[17] Chris Wrigley, "Trade unionists and the labour party in Britain: the bedrock of success*", Revue Française de Civilisation Britannique* XV-2, (2009): 59-72.This is especially true given that the trade union scene in Great Britain has been unitary and centralist since the mid-19th century, with the Trades Union Congress (TUC) representing the vanguard in trade union organization.

[18] Walter Milne-Bailey, *Trade Union Documents*, (G. Bell & Sons Ltd, London,1929).

[19] The union was thus linked to the Communist Party, not only ideologically but also practically—at the level of implementing state policies. As one advanced within the union's structure, the proportion of party members also increased. Mario Reljanović, "The Position of Trade Unions in the SFRY in the Second Half of 1980," in: *Gradove smo vam podigli* (Center for Cultural Decontamination, Belgrade, 2018), 61.

[20] Simply put, the crisis has five external causes and a sixth internal trade union dimension, i.e., consequence. The first dimension is the radically altered framework of globalization and the changed hierarchy of power favoring corporate capital. National governments, either willingly or unwillingly, follow these interests in deregulation, flexibilization, and lowering labor standards. Zoran Stojiljković, "Sindikati i tranzicija- jedna do kraja neispričan apriča", *Sociološki pregled*, vol. LIII, no. 3, (2019): 861-862.

[21] According to Professor Stojiljković, on a flexibly deregulated labor market, the same message always prevails: that everyone today is replaceable and no job is for a lifetime. Zoran Stojiljković, "Život pod neoliberalizmom: ima li izlaza", 23;

[22] The key internal problem of trade unions is the challenge of maintaining and innovating organizational patterns and successfully mobilizing a fragmented and marginalized world of work. Declining union membership rates, as well as staffing and material resources and the degree of influence and trust, are the best arguments supporting the thesis of a deep crisis within trade unions. Sam Gindin, "*Rethinking trade unions - mapping out socialism*". (Centar za politike emancipacije, Beograd, (2016). Zoran Stojil-

In this paper, we focus on this fundamental right, which has not lost its relevance. However, a crucial question arises: "Do trade unions today have the qualitative and quantitative strength to carry out and successfully conclude a strike?"[23]

2. STRIKE AND ITS SIGNIFICANCE (RELEVANCE)

The term "strike" in the Serbian language originates from the English word "strike," which emerged in the late 18th century and essentially means the cessation or suspension of work.[24] This right has been incorporated into many contemporary legal documents, including international[25], regional, and national laws (constitutionally guaranteed rights). Its significance and relevance[26] are recognized by the broader international community, which often seeks to prevent the activation and application of this legal mechanism through various societal activities.[27] Strikes, as a means of protecting rights, are not a popular measure,

jković, "Sindikati i tranzicija-jedna do kraja neispričana priča", *Socioloski Pregled*, Vol 53, Issue, (2019): 861;The current global transfer of work through modern technology means that globalization reshapes our workplaces much more decisively than our available legal instruments can meaningfully regulate. John D. R. Craig, Michael S. Lynk, Globalization and the Future of Labour Law (*Cambridge University Press*, 2006): 2; In the trade union scene in Serbia and the region, the neo-corporatist model of "social partnership" and the values and ideas of social dialogue and "social-economic councils" are widely accepted. However, in terms of organizational power, unions most closely resemble the Anglo-Saxon model of industrial relations, characterized by decentralized and highly fragmented unions. Regarding rivalry and weak inter-union cooperation, there are also similarities with the conflictual Mediterranean model of industrial relations. Zoran Stojiljković, "Sindikati i zaposleni u lavirnitim apolitike" *Srpska politička misao*, god. 25, vol.61, br. 3/ (2018): 108.

[23] Professor Urdarević also expresses doubt about the strength of trade unions to bring a strike to a successful conclusion, suggesting that the right to strike has become a subject of collective bargaining. Bojan Urdarević, "Klauzula o čuvanju socijalnog mira kao sastavni deo kolektivnog ugovora", *Radno i socijalno pravo* 2/ (2017), 24.

[24] Bojan Urdarević, "*The changing nature of the right to strike in the Republica Serbia*", Law in the process of globalisation, (2018): 566.

[25] "Industrial actions" can be considered synonymous with "strikes"; this broader interpretation has also been adopted by the International Labour Organization. Breen Creighton & Catrina Denvir & Shae McCrystal, Defining Industrial Action. *Federal Law Review*, 45 3/ (2019): 386.

[26] https://www.bbc.com/serbian/lat/svet-67403400; https://www.vijesti.me/vijesti/drustvo/694691/krenuo-strajk-prosvjetnih-radnika; https://forbes.vijesti.me/biznis/zasto-tesla-tuzi-svedsku-i-zasto-mask-strajk-radnika-naziva-suludim/; https://rs.bloombergadria.com/biznis/kompanije/46933/strajk-teslinih-radnika-i-u-danskoj/news; https://www.slobodnaevropa.org/a/strajk-pravosudje-hrvatska/32502405. html https://www.vijesti.me/svijet/evropa/694718/strajk-radnika-lufthanse-20-februara, Accessed on June 15, 2024; these headlines demonstrate that the topic of strikes is widespread and current on a daily basis; Once again, Professor Novaković's thesis is confirmed that employees in education typically threatened or went on strike either at the beginning or at the end of the school year, and used the same means at the start of the second semester. Nada Novaković, "Štrajkovi u Srbiji od 2000-2005 godine" , Социолошки преглед, vol. XXXIX , no. 3, (2005): 316-317;

[27] For more on the potential problem of migrant workers and their collective organization to protect their interests, see:Anne Lisa Carstensen, The chronos of class conflict. The relevance of the temporal dimension in conflicts related to labour migration, *The Economic and Labour Relations Review* (2023): 421-424.

and even unions are reluctant to resort to them. Historically, strikes are a legal legacy and the only tool in the hands of the collective designed to protect their rights[28]. However, the question arises: what would employees do without this right? How could they resist the power and force of the state apparatus and, later, private entities? How could they challenge unilateral labor standards?[29] The answer to these questions is clear – through strikes. These very questions highlight the importance of strikes both as a social phenomenon and as a concept. Therefore, the significance of strikes from legal, political[30], sociological, and psychological perspectives is undeniable.

A crucial issue remains: do employees, and ultimately unions, actually have the collective power to carry out and successfully conclude a strike in the Republic of Serbia, given the fact that there are currently 26,000 registered unions. This extreme fragmentation of unions is not advantageous for organizing strikes and any collective action, especially where multiple unions exist within a single employer (specifically in the public sector). Therefore, some recommendations would be that for employers with more than 100 employees, the thresholds for representativeness and the establishment of unions should be accompanied by appropriate numbers, i.e., percentages, as the current legal solution has led to the aforementioned figures.[31]

[28] "Few other social phenomena have shown such deep roots in economic and political reality, such a rare combination of innovation and conservation, such a mixture of spontaneity and organizational capacity, such a close connection between the logic of interest and the logic of solidarity, such diversity in their concrete manifestations, and such significance in the culture and history of nearly two centuries of the labor movement."Lorenzo Bordogna & Gian Primo Cella, Decline or transformation? Change in industrial conflict and its challenges, *European Review of Labour and Research*, Vol. 8 Issue 4, (2002): 586.

[29] 1) Of course, workers do not have the right to self-defense against employers who engage in unfair labor practices. 2) employers enjoy the right to permanently replace economic strikers; 3) the National Labor Relations Board does not have the authority to prevent unfair labor practices; 4)employers can exclude union organizers from their property; 5) employers can shut down their businesses. For more on the decline of the American right to strike, see: James G. Pope, "How American workers lost the right to strike, and other tales, and Other Tales, Michigan Law Review Vol. 103, NO.3 (2004): 518;The right to strike is closely linked with rights such as freedom of association, freedom of speech, the right to life, the right to dignity, the right not to be subjected to slavery, and the right to property. Moreover, the right to strike is an integral part of the right to life. A number of American court rulings have equated the right to strike with freedom of speech. If workers are denied the right to strike for their livelihood, they also would not be able to afford other basic necessities such as education, healthcare, and housing, etc. Mohamed A. Chicktay, "Placing the right to strike within a human rights framework", *Nelson Mandela University Law Journal* (2006): 347; https://journals.co.za/doi/pdf/10.10520/EJC85180

[30] That a strike can sometimes also be politically motivated, for more on political strikes see: Bojan Urdarević, "*Assessment of economic and social rights in te Republic Serbia – Report on the implementation of the covenant on economic , social and cultural rights"*, 104-105

[31] An interesting solution is offered by the Croatian Labor Law, which stipulates in Article 205, paragraph 2, that in the case of a dispute regarding the conclusion, amendment, or renewal of a collective agreement, the right to call and conduct a strike belongs to unions that have been established as representative for collective bargaining and the conclusion of collective agreements, in accordance with a special regulation, and that have negotiated the collective agreement.

Serbia's Strike Law, enacted in 1996 with subsequent amendments, has long been considered by many legal experts outdated as the strike legal framework; they also maintain that a new law is required, especially given that it dates back to the time of the FRY (Federal Republic of Yugoslavia) and that the terminology is aligned with that legal status. Thus, one reason for changing and enacting a new law would be terminological, while another reason would be the urgent need to define other industrial actions within the legal framework. According to the existing law, a strike is defined as a work stoppage organized by employees to protect their professional and economic interests related to work.[32] Employees freely[33] decide on their participation in a strike. Strikes can be organized at three levels: within a company or other legal entity, in a sector or industry, or as a general strike. A strike can be organized as a warning strike lasting up to one hour.[34] The decision to go on strike varies across these levels and depends exclusively on the union and the relevant body responsible for making such a decision. The decision is a crucial document that ensures the legality of the strike. It provides the employer and the public with details such as employees' demands, the strike's start date, and the gathering place of participants if the strike involves assembling employees in a strike committee representing their interests and conducting the strike on their behalf. The strike committee, the central body managing the strike, is required to notify the employer of the strike decision at least five days before the strike's start date, or twenty-four hours before a warning strike, unless otherwise stipulated by law.

[32] Strikes can be a means of action open only to unions (as in Sweden), or they can be recognized as an individual worker's right (as in France). The fear of restricting the freedom of relations between employers' and workers' organizations, and the fear of limiting the possibilities for direct action, seem to be one of the main reasons why so few ILO standards have been adopted regarding the resolution of industrial disputes. Moreover, it has proven difficult to reconcile the Anglo-American legal vision of work stoppages with that of continental Europe, let alone with the complete prohibition of such stoppages in communist systems, and to develop the consequences of these different approaches in terms of legitimacy. Jean - Michael Servais, ILO Law and the Right to Strike*, Cdn labour & employement law*, (2009): 148-149. According to Professor Učur, "a strike is a collective work stoppage. Other industrial actions are generally not. The goal is the same: 'the protection and promotion of the economic and social interests of union members (workers).' The cause and reason can be the conclusion, amendment, or renewal of a collective agreement. In that case, it is precisely stipulated which union(s) can organize a strike." Marinko Đ. Učur, Cilj industrijikih akcija- očuvanje i daljnje ostvarivanje ljudksih prava i temeljnih sloboda, *Radno pravo*, 14 (2019): 72.

[33] Our liberal thinker Vladimir Jovanović named his son, our great jurist and political sociologist, Slobodan, and his daughter Pravda. With freedom and Slobodan, we have had various experiences, but justice, neither as a name nor as a practice, simply did not take root in Serbia. Zoran Stojiljković, "Trakt o socijalnoj pravdi i pravičnosti", *Srpska politička misao,* god 25, vol.59, br. 1/(2018): 41.

[34] According to the method of execution, there are: warning strikes, surprise strikes, rotating strikes, and slowdowns. According to the focus of the strike: primary, secondary, and solidarity strikes. For more details on these, see: Radoje Brković, Bojan Uradarević, *Radno pravo sa elementima socijalnog prava*, (Službeni glasnik, Beograd, 2022), 326-329.

The decision to strike in a sector, industry, or general strike is submitted to the relevant employer association, founder, and competent state authority. If the strike involves a gathering, the designated place cannot be outside the business premises or the area where the striking employees work.[35] A key obligation is that the strike committee and the body to which the strike is announced must resolve the resulting dispute through appropriate institutions for peaceful dispute resolution. If the union is not the primary initiator or participant in the strike, it may still engage in resolving the dispute alongside employer representatives, state authorities, and local self-government bodies. This legal provision allows for broader agreement and dialogue, which is commendable for fostering good relations and practices. The strike committee and employees participating in the strike must organize and conduct the strike in a manner that does not endanger the safety of individuals and property, health, or cause immediate material damage. Furthermore, they must ensure that work is resumed smoothly after the end of the strike. The question arises as to which individuals the law refers to when it states that safety must not be jeopardized. Should this be understood broadly, concerning people outside the strike or also those within and outside the strike? Additionally, the strike committee and employees participating in the strike cannot prevent the employer from using resources to conduct business or stop employees who are not participating in the strike from working.[36] The outcome of a strike can take one of two forms: a "successful strike" when an agreement is signed between the parties involved, and an "unsuccessful strike," where the union or the majority of employees decide to end the strike.[37] Each new initiation of a strike requires a new decision.[38] Constitutionalizing this right within our constitutional system implies that there are certain limitations, which

[35] Zakon o štrajku ("Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br. 101/2005 - dr. zakoni 103/2012 - odluka US) čl. 1-5;

[36] Zakon o štrajku ("Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br. 101/2005 - dr. zakoni 103/2012 - odluka US) čl. 6-7;

[37] Labor struggle is legitimate (all forms of lawful industrial actions and pressures). Unions must conduct it exceptionally, effectively, professionally, and in an organized manner. When it comes to strikes, and thus to other forms of industrial actions, it is crucial to emphasize that unions must achieve "positive learning" from successfully conducted strikes, and draw lessons from those that did not succeed, so they can achieve better results in future industrial actions. This also helps them avoid unwanted occurrences and thereby increase the strategic capabilities on the union in relation to the employer. Marinko Đ. Učur, Vanja Smokvina, " Industrijske akcije kao sindikalna prava i slobode" *Zbornik Pravnog Fakulteta Rijeka*, Vol. 31, br. 2/(2010): 674; Whereas previously there was a broad understanding that unions and collective bargaining were integral parts of the social market economy, they are now primarily seen as institutional "rigidities" that hinder employer discretion.Torsten Müller & Kurt Vandaele & Jeremy Waddington, Collective bargaining in Europe: towards an endgame", (*European Trade Union Institute* Brussels, 2019), 625;

[38] Zakon o štrajku ("Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br. 101/2005 - dr. zakon i 103/2012 - odluka US) čl.8

are exclusively provided by law or collective agreements.[39] To initiate a strike, employees performing public interest tasks must establish a minimum service level in agreement with the relevant state, company, or local government authorities. In determining the minimum service level, the founder or director is required to consider the opinions, comments, and proposals of the union. The method of ensuring the minimum service level is determined by the employer's general act, in accordance with the collective agreement. Employees designated to work during a strike to ensure the minimum service level must be named by the director, based on the strike committee's opinion, at least five days before the strike begins.[40] If these conditions are not met at least five days before

[39] The right to strike is not an absolute right.Darko Simović, Slobodan Orlović, *Komentar Ustava Republike Srbije*, (Službeni glasnik, Beograd, 2023): 435; It has also been established that the right to strike can be restricted only by law, and in accordance with the nature or type of activity in which the strike is organized. James J. Brudney, The right to strike as customary international law,Yale Law School Legal Vol. 46, Issue 1/(2021): 12.It appears that the intention of the constitution-makers was to regulate this social right more comprehensively through a new, special strike law. This law should be aligned with relevant international standards and the economic conditions in society. However, nearly 15 years after the adoption of the new Constitution, such legislation has still not been enacted. As a result, the right to strike in the Republic of Serbia continues to be governed by the Strike Law enacted in 1996 in the Federal Republic of Yugoslavia. Filip Bojić, "Konstitucionalizacija prava na štrajk", *Pravo i privreda* 4/(2020): 83;In activities of public interest or in activities where a work stoppage could jeopardize people's lives and health or cause significant damage due to the nature of the work, the right to strike for employees can be exercised only if specific conditions established by this law are met. An activity of public interest, for the purposes of this law, includes activities performed by employers in the areas of: electric power, water management, transportation, information (radio and television), postal services, communal services, production of basic food products, health and veterinary care, education, social care for children, and social protection. Activities of public interest, according to this law, also include those of particular importance for the defense and security of the Federal Republic of Yugoslavia as determined by the competent authority in accordance with federal law, as well as tasks necessary for fulfilling the international obligations of the Federal Republic of Yugoslavia. Zakon o štrajku ("Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br. 101/2005 - dr. zakoni 103/2012 - odluka US) čl.9S uch legal arrangements are also found in Germany, Austria, Belgium, Bulgaria, Denmark, Estonia, Hungary, Latvia, and Poland.Industrial Relations in Europe, 2012, 117 file:///C:/Users/Korisnik/Downloads/DGEMPL_Industrial_relations_report_All_Accessibility.pdf; Accessed on June 18, 2024.The right to strike could be restricted in cases where it serves no purpose other than to cause economic damage to the employer. Mohamed A. Chicktay, "*Placing the Right to Strike Within a Human Rights Framework,"* p. 345; thus, some countries have enacted laws that prohibit police associations and strikes, which is highly problematic from a labor-constitutional perspective. Lilach Litor, "Collective Labour Rights of Police Officers: Global Labour Constitutionalism and Militaristic Labour Constitutionalism," *Global Constitutionalism*, Vol. 12, No. 1 (2023): 175. According to the Committee of Experts and the Committee on Freedom of Association, the right to strike can only be denied to public officials performing functions of authority on behalf of the state. The criterionis the nature of the function, Alberto Odero, Horacio Guido, & Bernard Gernigon, "Les Principes de Loi sur le Droit de Grève," *Revue Belge de Droit International*, Éditions Bruylant, Brussels, 1/ (2000): 50. Despite the visible and increasingly frequent strikes across the international community and within the United States itself, labor law scholars have acknowledged, sometimes reluctantly, that the right to strike is not well protected by established American constitutional standards. James J. Brudney, "The Right to Strike as Customary International Law," *The Yale Journal of International Law*, Vol. 46, No. 1 (2021): 2.

[40] During a strike, not only is the fundamental right of employees to collective action relevant, but public interests must also be taken into account. In this context, the principle of proportionality applies. Karl

the strike starts, the competent state authority or local self-government must determine measures and methods to meet these conditions before the strike's start date.[41] German lawmakers and the German constitutional court have an interesting perspective, stating that career civil servants cannot go on strike.[42]

The significance of the strike is enormous for labor law as a science and as a tool directly in the hands of employees. As a social phenomenon with labor law characteristics, the strike connects this field with many others, including economic, sociological, political, psychological, and other sciences. This highlights the essence of collective rights aimed at collective action, with the strike being a prominent and representative example of such collective action. The

Abelshausen, Simon Claessens, Stefanie Francken, & Yoko Mondelaers, "Belgium," *in: The Right to Strike: A Comparative Perspective. A Study of National Law in Six EU States,* eds. Arabella Stewart & Mark Bell (2009): 14.

[41] In public interest activities, a strike must be announced to the employer, the founder, the relevant state authority, and the local self-government authority at least ten days before the start of the strike. This is done by delivering a decision to strike and a statement on how the minimum operational process will be ensured. The strike committee, the employer, and representatives of the relevant state authority or local self-government are required to offer a proposal for resolving the dispute from the announcement of the strike until the specified start date, and to inform both the employees who announced the strike and the public of this proposal. A similar provision is found in the Slovenian Strike Law (Uradni list SFRJ, št .23/91) čl. 9. The strike committee is obliged to cooperate with the employer during the strike to ensure the minimum operational process. Employees are required by law to follow the employer's instructions during the strike. Organizing or participating in a strike does not constitute a breach of employment obligations and cannot serve as grounds for disciplinary or financial liability procedures against the employee, nor can it result in termination of employment. Employees participating in a strike retain their fundamental employment rights, except for wages, and their social insurance rights in accordance with social insurance regulations. Organizers of a strike or participants in a strike not conducted in accordance with the law will not enjoy protection. During an organized strike, the employer cannot hire new personnel to replace strikers, except in cases where the safety of individuals and property, maintaining the minimum operational process ensuring the safety of property and individuals, and fulfilling international obligations are at risk. The employer must not prevent employees from participating in the strike or use coercive measures to end the strike, nor offer better wages or working conditions to employees who do not participate in the strike. The relevant state authority is obligated to take necessary measures prescribed by law if there is a risk of imminent danger or exceptionally severe consequences for human life, health, safety, property, or other irreparable damage. The inspection authority oversees compliance with the provisions of this law and issues decisions requiring the rectification of identified violations. A professional member of the Yugoslav military loses employment if found to have organized or participated in a strike. A member of the strike committee or a participant who organizes and leads the strike in a way that endangers the safety of individuals and property, or health, or prevents non-striking employees from working, or hinders the continuation of work after the strike, or obstructs the employer's use of resources for conducting business, commits a breach of employment duties that may lead to termination of employment. Employees in activities of public importance who refuse to comply with the employer's order issued to ensure the minimum operational process commit a breach of employment duties, which may also result in termination of employment. Zakon o štrajku ("Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br. 101/2005 - dr. zakoni 103/2012 - odluka US) čl.10-18; Our strike law more or less resembles the strike law of the Republic of Slovenia (1991), which predates our law (1996)

[42] Matthias Jacobs & Mehrdad Payandeh, The Ban on Strike Action by Career Civil Servants under the German Basic Law: How the Federal Constitutional Court Constitutionally Immunized the German Legal Order Against the European Convention on Human Rights, *German Law Journal* (2020): 223.

significance of strikes can be observed in multiple dimensions. Primarily, the importance of this "tool" lies in its historical continuity of over two centuries. Importantly for collective rights, and for this right in particular, the creator of this right is neither a scientist, an industrialist, nor a statesman, but exclusively the collective—employees-workers. This is one of the defining characteristics of collective rights, and its historical significance is undeniable. Another direction promoting the right to strike, and thus its significance, is the promotion of freedom of speech and many other labor law principles that are embodied in this right. Politically, the significance of strikes is indirect and can be a catalyst for certain positive changes, as history has witnessed in recent past. Strikes can also exert pressure on the executive branch (particularly in the case of strikes in public administration, governmental bodies, and local self-government), sometimes compelling the executive to act, which is certainly an added value that this right contributes. Since strikes are primarily focused on economic issues, it is not surprising that they impact the economy of a country. Besides their enormous importance, strikes remains the most radical means, and their role is to guarantee workers' rights, which workers should not relinquish.[43]

3. IMPACT OF STRIKES AND TRADE UNIONS AS LABOUR LAW INSTITUTIONS ON POLITICS

Whether we consider labor conflict as a direct result of poor working conditions and forms of value extraction, or as part of popular movements against the precarization of work and life, understanding the nature of labor conflict and its role within capitalism is crucial for analyzing socio-political changes.[44] Daily protests and strikes that shape social life are partly a product of political upheavals, making our region distinctive.[45] However, the issue is not merely

[43] The strictness of "peace clauses" in collective agreements can further explain the differences in the use of the union's most powerful weapon during its time. Müller, Vandaele & Waddington, *Collective Bargaining in Europe: Towards an Endgame,* p. 638; The peace clause represents a contractual provision in the collective labor agreement whereby the union agrees not to organize a strike during the validity of the collective agreement, while the employer agrees not to resort to a lockout. Essentially, by agreeing to such a clause, the employer is aware that it effectively removes from the union its most crucial weapon in labor disputes—the right to strike—which often results in significant financial losses for the employer. Thus, the employer is highly motivated to conclude a collective agreement containing such a clause. Bojan Urdarević, "Klazula o čuvanju socijalnog mira kao sastavni deo kolektivnog ugovora o radu" *Radno i socijalno pravo* br. 2/(2017): 27.

[44] Jenny Chan, Class, labour conflict, and workers' organization, *The Economic and Labour Relations Review* (2023): 383.

[45] 1876 is considered the year of the victory of the labor movement in Serbia. More about this and its political impact:https://www.vijesti.me/bbc/695957/kad-su-kragujevacki-radnici-uz-crveno-barjace-slavili-osporavanu-pobjedu-na-izborima-1876-godine, accessed June 26, 2024 .

national but also international, as evidenced by labor instability across the global community. What professor Stojiljković finds particularly interesting is that the actors in these instabilities, especially trade unions as the primary means of addressing labour issues, often call upon the government[46] to act as a moderator. The government has both the power and reasons to meet demands and solve problems, particularly when trade unions represent public administration, public institutions, public enterprises, etc.[47] There is substantial evidence that organized labor, including unionism, plays a significant causal role in replacing authoritarian democratic regimes. Within democratic politics itself, there are various ways in which trade unions[48] can influence informal power relations that shape political processes.[49] Besides representing their members at the workplace, trade unions serve as a broader form of "countervailing power" against wealthy and corporate interests.[50] The influence of trade unions and strikes on political events and even the field of political science is substantial.[51] This is evident in political models, such as the "communism-socialism" of our past, where the ruling elites benefited from trade unions as a mechanism for recruiting personnel. This situation determined the right to strike, often brutally suppressing any attempt at striking, which is also an impact of politics on union organization

[46] Governments facing a high risk of defeat (such as during extraordinary elections or a confidence vote in the parliament) have strong incentives to adjust their policies to avoid open confrontations with unions. Johannes Lindvall, "Union Density and Political Strikes," *Cambridge University Press*, Vol. 65, No. 3 (2013): 539; Strikes often evolved into demonstrations, protests, and blockades of public spaces. Their effectiveness depended on the significance of the striking group for maintaining the political elite and the strategic position of the strikers in the social division of labor. Nada Novaković, "Žene, tranzicija i štrajkovi u Srbiji", *Zbornik radova Filozofskog fakulteta u Prištini,* XLIV, 2/(2014): 52; As Mihailović notes, decisions about working conditions are political decisions, as unions, by negotiating with capitalists and the state, participate in the making of political decisions. Srećko Mihailović, "Politizacija vs marginalizacija sindikata" *u Sindikati i politika*, ured: Srećko Mihailović, Zoran Stojiljković, (Službeni glasnik, Beograd, 2012), 7.

[47] Zoran Stojiljković, "*Socijalni dijalog i kriza, i/ili kriza dijaloga*", Analiza politike-Centar za Demokratiju, Beograd, 13.

[48] Professor Urdarević also reminds us of this in one of his papers.

[49] This is especially true when we consider that contemporary unions are, by their nature, both interest organizations and actors in civil society. Aleksandar Milosavljević, Predrag Terzić, Politička funkcija sindikata: teorijiske osnove i praktična dimenzija, *Srpska politička misao*, god 24, vol 56, br. 2/(2017): 96;

[50] John K. Galbraith, *American Capitalism: The Concept of Countervailing Power* (Houghton Mifflin Company, 1993); Sidney Verba, Jae-on Kim, & Norman Nie, Participation and Political Equality: A Seven-Nation Comparison (*Cambridge University Press*, 1978); see also Wolfgang Streeck& Anke Hassel, "Trade Unions as Political Actors," in John T. Addison & Claus Schnabel (eds), *International Handbook of Trade Unions* (Edward Elgar Publishing Ltd, 2003). In countries where a decline in unionization and labor movements has been observed, there has also been a decrease in voter turnout in elections, which is another causal link between unions and direct politics. Union power checks and limits the authority of employers. Martin Patrick O'Neill & Stuart White, Trade Unions and Political Equality, in Trade Unions and Political Equality, (*Philosophical Foundations of Labour Law, Oxford University Press,* 2018), 8.

[51] Darko Marinković, "Štrajkovi", *u Sindikati i društvo u tranziciji*, ured: Darko Marinković, (Institut za političke studije, Beograd, 1995), 243;

and strikes.[52] Historically, trade unions have been associated with the "winning sides," with executive powers attempting to co-opt them as electoral machinery, convinced that the unions would not initiate strikes to maintain social peace. The situation changes with globalization, and politics turns towards capitalists, neglecting the power of trade unions and later, strikes. Here, we primarily refer to securing more favorable positions for employers-capitalists (private sector) through a set of legal measures that allow them to resist any union action, i.e., employees' right to strike. The analysis of union struggle over time confirms that changes in social conditions have posed increasingly complex challenges to unions, which they could only successfully address through various forms of political involvement, influencing decision-makers in the political process.[53]

4. OTHER TYPES OF INDUSTRIAL ACTIONS

4.1 Boycott

Advisory sources describe the boycott as a "chameleon" that is difficult to define.[54] As an industrial action, the boycott is relatively recent in labor law.[55] In contemporary social processes, it is commonly seen alongside strikes, though it is rarely used as a standalone industrial action. The legal nature of a boycott is not a work stoppage, which disqualifies it from being categorized as a direct industrial action. Its impact on the employer is indirect, primarily affecting the employer's customers and partners, aiming to portray its status and discouraging them from purchasing goods or collaborating with the employer.[56] The main

[52] More about the influence of unions in political processes: Wolfang .Anke, *Trades unions as political actors*, 335-365;

[53] Darko Marinković, "Sindikati i političke stranke u Tranziciji- Slučaj Srbije", *Politička revija,* no. 2/ (2009), 5;

[54] Robert C. Barnard, RobertW. Graham, " Labor and the Secondary Boycott", *Washington Law. Review & State Bar Journal,* (1940): 137.

[55] Today, the concept of the right to strike, picket, and boycott independently of any regulatory regime seems fantastic. However, amid the industrial unrest of the 1930s, a broad spectrum of civil liberties advocates within and outside the government believed that protecting workers' collective rights would prevent the more extreme violence associated with labor struggles abroad. Laura Weinrib, "*The Right to Work and the Right to Strike*," University of Chicago Legal Forum: Article 20, Vol. 2017, (2018): 526; The argument that a boycott must be altruistic to be constitutionally protected misses the point that workers have a constitutional right to advocate for their interests. Richard Blum, "Worker Collective Action in the Time of Fissuring: Independent Contractor Labor Boycotts, the Thirteenth Amendment, and Antitrust Law," *Nevada Law Journal*: Vol. 19: Iss. 2, Article 2. (2018): 388.

[56] Granting consumers the right to engage in coordinated refusal to purchase does not logically imply granting businesses comparable rights to refuse to trade or employees comparable rights to refuse to work. The right should encompass only boycotts aimed at influencing decision-making on objectives, not the status of the targets.

challenge regarding the right to boycott lies in its scope and effectiveness. This right is not legally regulated, and its use is highly risky for employees because the threshold for disciplinary responsibility[57] is quite low, potentially even leading to the most severe form of disciplinary action, including termination of employment. Consequently, boycotts as an industrial action is not as significant or frequently used by employees. The boycott lacks the tradition and impact of the right to strike, and from both psychological and sociological perspectives, it generates less "qualitative" resistance against the employer and attracts fewer employees willing to support it. This is particularly true given the flexibilization and deregulation of labor markets, where employees are reluctant to "antagonize" employers by engaging in a right that is not defined in many countries and where capital and power are concentrated in the hands of employers. Due to these circumstances, we return to Professor Stojiljković's view that today's labor market demonstrates that everyone is replaceable and there are no lifelong employments.[58] The absence of a defined legal framework for the right to boycott in the Republic of Serbia is a significant issue, as is the nature of this right, which is primarily applicable in the context of private enterprises and public enterprises under state ownership.

4.2 Picketing

Picketing, or a strike picket, is a form of collective action by a group of employees or unions at or near the employer's business premises with the aim of psychologically (but not physically) influencing other employees to support the collective action and informing the broader public about the nature of the dispute between the employer and the strikers.[59] Participants in this legal action

[57] Archibald Cox, *"Freedom of expression*"; in: Connick v. Miers, 103 S. Ct. 1684, 1690 (1983), 47-48; The Court held that the state may discipline its employees for speech about the conditions of employment but not for speech concerning "matters of public concern." However, the Court made it clear that its stance did not diminish the right to protect speech related to employment issues but merely ensured that public employers can exercise disciplinary control over public sector employees comparable to their private sector counterparts.

[58] In support of these claims, Professor Novaković notes that Serbia has implemented neoliberal policies in the realm of labor and social legislation. These policies have legalized the flexibilization of labor relations and wages to the detriment of workers and in favor of capitalists. Nada Novaković, "Tranzicija i nestajanje radničke klase Srbije", *Nacionalni interesi*, god. XVII vol. 40,br. 1/(2021): 162;

[59] Branko Lubarda, *Uvod u radno pravo sa elemntima socijalnog prava*, Pravni fakultet Univerziteta u Beogradu, Beograd, (2013), 416; Picketing is directly addressed in the TULRCA provision which deems it "lawful" for a person (i) contemplating or supporting a trade dispute (ii) to attend their place of work or nearby for the purpose of "peacefully obtaining or communicating information or peacefully persuading any person to work or to abstain from working." The Code of Practice on Picketing limits the number of pickets who can be present at any single entrance to six—in the eyes of the courts, a larger number might serve as evidence that the workers had purposes beyond peaceful communication or persuasion, thereby bringing their actions outside the bounds of lawful picketing. Ruth Dukes, Nicola Countouris, "Pre-Strike

can be unions or employees designated by the union. Generally, the number of picketers is limited to avoid elements of coercion, which is prohibited by law. This right must be spatially confined and should not jeopardize the employer or obstruct their business processes.[60] The purpose of picketing is conceived as a form of "marketing" for the strike, aiming to gain support from both employees who are not on strike and the public, which can also exert pressure on the employer. The benefits of picketing are twofold: it influences employees (by raising awareness) and informs the public (through media pressure, executive authorities, etc.).[61]

4.3 Lockout

A lockout is defined as a temporary work stoppage by an employer for all workers or a specific group of workers to force employees or unions to abandon their strike intentions and accept the employer's offer regarding the dispute.[62] Many legal theorists debate the legitimacy of this right and whether it is an equivalent to the right to strike. A lockout results in the suspension of the employment contracts but does not grant the employer the right to terminate it. Employees are denied access to their workplaces and cannot perform their duties, which means that they are also not entitled to wages.[63] The goal of a lockout is to exert economic (existential) pressure on employees, so that, due to the prolonged nature of this action, they are compelled to accept the demands proposed by the employer. A lockout must be aimed at collective labor disputes and working conditions. Four types of lockouts have emerged in labor law prac-

Ballots, Picketing and Protest: Banning Industrial Action by the Back Door*?", Industrial Law Journal, Volume* 45, Issue 3, (2016): 337-362.

[60] Picketing is the only practical method by which the facts of a labor dispute can be communicated near the place of the employer's business. Joseph Tanenhaus, "Picketing-Free Speech: The Growth of the New Law of Picketing from 1940 to 1952," 38 *Cornell L. Rev*. 1, (1952).

[61] Many legal experts portray the right to picket as "more than speech." Professor Cox attempted to clarify this issue by contrasting picketing that "appeals only to reason, loyalty, and other emotions" with "picketing with threats." Cox argued that the former, "public picketing," involved informing potential consumers of a labor dispute, whereas the latter, "signal picketing," typically served as a signal of union employees' agreement to strike, often accompanied by the threat of union discipline or ostracism. Judge Stevens similarly argued that "picketing is a mixture of conduct and communication" and that in the labor context, it is the conduct element, rather than the specific idea being expressed, that often serves as the most compelling means of deterring third parties from entering the business premises. Picketing calls for a response to a signal, rather than a reasoned response to an idea. Michael C. Harper, "The Consumer's Emerging Right to Boycott NAACP v. Claiborne Hardware and Its Implications for American Labor Law, 440.

[62] Paul Horion, "Rapport de synthese", in*: COLLECTION DU DROIT DU TRAVAIL 2.- LE DROIT DU TRAVAIL DANS LA COMMUNAUTÉ - Greve et lock-out,* ed: G. BOLDT - P. DURAND P. HORION - A. KAYSER L. MENGONI - A. N. MOLENAAR ,Luxemburg, (1961), 71. Predrag Jovanović, *Radno pravo*, Pravni fakultet Novi Sad, (2015), 413.

[63] Branko Lubarda, *Radno pravo sa elementima radnog prava*, 419.

tice: defensive, preventive, subsequent, and solidarity lockouts.[64] This labor law mechanism is not yet included in the legislation of the Republic of Serbia.[65]

5. CONCLUSION

Over the past two centuries, the right to strike, or the act of rebellion-resistance, has maintained its significance and become a central tool for employees in protecting their rights. The daily influence of various currents on this right, as well as on labor rights themselves, cannot erase its cultural and historical foundation in modern society. Trade unionism has attempted to negotiate this right in key political situations, but they have never been able to suppress or eliminate it.

It is important to emphasize that the strength of trade unions is directly proportional to the power of strikes. Given the current fragmentation of the union scene and the decline in union membership in Serbia and other countries, the capacity of unions to influence social developments within a country is minimal, if not negligible. The current strike law is a normative act that urgently needs to be the subject of social dialogue and agreement to implement innovative solutions. The historical foundation of the right to strike is its greatest cultural, legal, sociological, and psychological phenomenon—a legacy that current generations owe to the working class, which has stood as the guardian of workers' rights through this labor law institution. More or less, countries in the

[64] Radoje Brković, Bojan Urdarević, *Radno pravo sa elementima socijalnog prava,* 338.

[65] For example, in the Republic of Montenegro, this right is recognized in the Law on Strikes, which in Article 14 stipulates that the employer can exclude employees who do not participate in the strike from the work process (lockout) if at least 30 days have passed since the start of the strike. Employees from paragraph 1 of this Article cannot be individuals who are guaranteed special protection, in accordance with the special law. The number of employees excluded from the work process cannot exceed one-third of the employees participating in the strike. The exclusion from the work process lasts no longer than the duration of the strike. Employees excluded from the work process are not entitled to wages, but the employer is obliged to pay contributions for social security as if they were working, in accordance with social security regulations. Exclusion from the work process cannot be organized in the activities listed in Articles 18, 19, and 20 of this law. Zakon o štrajku ("Sl-list CG" br. 11/2015);

An interesting solution is provided by the Croatian Labor Law in Article 213, which specifies a defensive type of lockout, stating that "employers may exclude workers from work only in response to an already commenced strike." Another interesting solution is found in the Labor Law of the Republic of North Macedonia, which in Article 237 stipulates: "The employer may remove workers from the work process only as a response to an already commenced strike. The number of workers removed from work must not exceed 2% of the number of workers participating in the strike. The employer may only remove from the work process those workers who, through their behavior, encourage violent and undemocratic actions, which prevents negotiations between workers and the employer."Закон за работните односи („Службен весник на РепубликаМакедонија" бр. 62/2005; 106/2008; 161/2008; 114/2009; 130/2009; 149/2009; 50/2010; 52/2010; 124/2010; 47/2011; 11/2012; 39/2012; 13/2013; 25/2013; 170/2013; 187/2013; 113/2014; 20/2015; 33/2015; 72/2015; 129/2015 и 27/2016);

region (some through specific laws, others through labor laws) and the international community have similarly conceptualized this right and other industrial actions, though with some restrictions. Strikes, as a method of pressure on the executive branch (the government), particularly in the public sector, have their political confrontations and impacts. Thus, strikes have been drivers of social change over the past two centuries. Other types of industrial actions, which accompany the right to strike, are not recognized within our labor law framework, and their application remains questionable. However, as alternative measures, they should be more thoroughly developed by legislators to ensure effectiveness. This suggests that labor relations are in dire need of a new legal framework concerning strikes; hence, the currently applicable laws are on "life support" and are nearing "the end of their usefulness."

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PRAVO NA ŠTRAJK I NJEGOV ZNAČAJ KAO MJERA DIREKTNE INDUSTRIJISKE AKCIJE

Rajko Raonić, ma[66]
Upravni sud Crne Gore

Olgica Raonić[67]
Upravni sud Crne Gore

"Još čovečanstvo *nema cilj!"*
Tako je govorio Zaratustra

Apstrakt: Štrajk *kao pravni, sociološki, kolektivni, politički fenomen koji je iznjedrilo radno pravo svoju punoću bitisanja u radnim odnosima i prve plodove počinje da ubira početkom XX vijeka. Svoj vrhunac i procvat doživljava početkom XXI vijeka.* Štrajk *kao kolektivna (industrijiska) akcija sa svim svojim osobenostima i procedurom i danas je opstao kao najjače sredstvo u rukama sidnikata, iliti "samostalnih radnika". Njegova snaga zapravo leži u pritisku kolektiva ka poslodavcu. Novi milenijum je za sobom donio i mnoštvo pošasti sa kojima su se zaposleni jedino mogli izboriti dok im je u rukama danas fundamentalno pravo koje crpe iz radnih odnosa, a to je pravo na* štrajk*. Fleksibilizacija i deregulacija tržišta radne snage koja za sobom vuče i velike probleme nezaposlenosti oslabila je kolektivnu moć pojedinaca da sa* željom *pristupe odbrani svojih interesa. To sa sobom vuče veliki problem budjenja svijesti kod radne snage, odnosno to da je snaga svake zemlje bila, jeste i biće u rukama radne snage-zaposlenih.*

Autori u prvom djelu rada žele *da naglase važnost reagovanja kolektivne frakcije (sindikalno organizovanih zaposlenih "pretežno") u* žaštiti *svojih interesa, kao i sami značaj* štrajka *kao i njegove moguće političke konekcije. U nastavku rada osvrnućemo se i na normativnu definisanost prava na* štrajk *u Republici Srbiji kao i u zemljama Zapadnog Balkana. U drugom dijelu nastoji se približiti i ostala tri modela industrijske akcije, kao supstrati-prethodnici, pravu na* štrajk

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Ključne riječi*: kolektivno organizovanje,* štrajk*, sindikati, sindikalno organizovanje bojkot, picketing.*