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EMPLOYMENT OF FOREIGN NATIONALS IN THE REPUBLIC OF SERBIA

National regulations on employment of foreigners reflect (and take into account) national circumstances and needs, in terms of the shortage or surplus of workers in the labour market (in general and/or in specific occupations), the objectives of migration, demographic, economic and employment policies and the like. The first instances of organized employment of foreigners in Serbia date back to the nineteen-twenties, when refugees from Russia reached Serbian territory after the October Revolution. The status of these and other immigrants was governed by the Regulation on the Employment of Foreign Workers of November 24, 1925. However, this issue was extensively regulated by the Regulation on Employment of Foreign Nationals (1935)¹, which included provisions on the issuance of work permits to foreigners, as well as provisions on the protection of domestic labour market from increasing influx of foreign workers during economic crisis. After World War II, the employment of foreigners was under the responsibility of the Federal Labour Administration, which was formed under the auspices of the Ministry of Labour of the Federal People's Republic of Yugoslavia, or rather under the authority of the Labour Administration of the People's Republic of Serbia. The practice of certifying contracts and giving work licences continued in the decades to come, with these tasks becoming the responsibility of the republican employment bureaus, and with special regulations established for the employment of foreigners in the field of construction². Further development of the Yugoslav economy caused the employment of foreigners, for the first time, to be regulated by a separate law. This was the Law on Requirements for Entering into an Employment Relationship with a Foreign National (1978)³, which was in force for 27 years. This law introduced the regime of grants for entering into an employment relationship with a foreigner and a work permit became a prerequisite for their employment. On the other hand, this law did not provide for the right of priority of domestic workers over foreigners.

1 *Official Gazette of the Kingdom of Yugoslavia*, 11 April 1935.

2 The Law on Concession of Development of Infrastructure to Foreign Contractors (*Official Gazette of the SFRY*, no. 24/76).

3 *Official Gazette of the SFRY*, no. 11/78 and 64/89, *Official Gazette of the FRY*, no. 42/92, 24/94 and 28/96 and *Official Gazette of the RS*, number 101/2005.

A need to respond to the changes that have taken place in the world of work, especially as a result of the intensified globalization process, became apparent at the beginning of the new millennium. During this period, the National Employment Service (NES) issued on average about 2,500 permits for entering into an employment relationship with a foreigner annually. This shows that the Republic of Serbia wasn't an immigration country, especially as this number was much lower than the number of work permits issued to foreigners in the surrounding countries. However, Serbian legislator believed that this trend can change and that it would be necessary to regulate the issue of employment of economic migrants in accordance with the new tendencies, especially as the accession processes of the Republic of Serbia to the European Union (EU) as well as to the World Trade Organization necessitated the introduction of new solutions, for the purpose of harmonizing the Serbian law with the standards of the aforementioned organizations. Hence, the Law on Employment of Foreign Nationals was adopted in 2014 and is still in force to this day⁴. Its provisions are in line with International Labour Organization conventions number 97 and 143, ratified by Serbia. Besides, in accordance with the Stabilization and Association Agreement between the European Communities and their Member States and the Republic of Serbia⁵, the Law on Employment of Foreign Nationals is, in principle, in line with the Directives 2003/109/EC and 2004/38/EC. This law also regulates the employment of foreigners who have applied for asylum, refugees who have been granted asylum, as well as foreigners who have been granted subsidiary protection. It has been shaped by EU law, or, more specifically the Directives 2001/55/EC, 2004/81/EC, 2009/52/EU, 2011/95/EU and 2013/33/EU. Finally, the Law on Employment of Foreigners incorporated the requirements for completion of the accession of the Republic of Serbia to the World Trade Organization. This included the introduction of rules on provision of services through individuals, whether they are foreigners working in a company, persons temporarily residing in the Republic of Serbia in order to establish business contacts or foreign employers preparing to start their activity here. The same applies to persons referred by their employer to temporarily work in the Republic of Serbia, as well as to independent professionals, i.e. self-employed persons registered abroad, who, based on a contract with their employer or the end user of services in Serbia, carry out business activity on the territory of Serbia.

An amendment to the Law on Employment of Foreigners⁶ was adopted in April 2019 and will come into force on 01 January 2020. It is primarily aimed at simplifying the procedure for issuing work permits to foreigners, with the objective of developing a more favourable business environment in Serbia, since attracting foreign investments has been identified as one of the priorities of the Government of the Republic of Serbia.

4 *Official Gazette of the RS*, no. 128/14, 113/17, 50/18 and 31/19.

5 *Official Gazette of the RS*, no. 83/08.

6 *Official Gazette of the RS*, no. 31/19.

In the Republic of Serbia, a *dual permit regime* applies, which means that a foreigner can enter into an employment relationship only if he or she fulfils two cumulative conditions. The first condition is the possession of a temporary or permanent stay permit for the Republic of Serbia and the second condition is the possession of a work permit⁷. The *temporary stay permit* (regardless of the length of stay) and the *permanent stay permit for the territory of the Republic of Serbia* is issued by the Ministry of Interior in accordance with the Law on Foreigners⁸, where they check for obstacles for stay in Serbia, such as being a threat to the public order or public health and safety. In addition, this condition for employment of foreigners is aimed at checking if he/she has the financial means to support himself/herself and his/her family members during their stay in Serbia. On the other hand, a *work permit* is a legal document on the basis of which a foreigner may be employed in the Republic of Serbia and is issued by the National Employment Service. Personal work permit is issued at the request of a foreigner and a work permit is issued at the request of the employer.

A *personal work permit* will allow a foreigner to freely take employment, be self-employed or exercise unemployment rights. It can only be issued in the following three cases: a) if a foreigner has a permanent stay permit (permit is issued for the period of duration of the foreigner's ID card); b) if a foreigner has refugee status (for the duration of his ID card for people who have been granted asylum); c) if a foreigner belongs to a special category. The last case, more precisely, applies to asylum seekers⁹, persons granted temporary protection, victims of trafficking and persons granted subsidiary protection. In addition, a personal work permit is issued for the purpose of family reunification, at the request of a member of the immediate family of a foreigner with permanent stay visa, as well as at the request of a member of the immediate family of a foreigner who has refugee status and who has been issued a permanent or temporary stay visa. The same applies to foreigners who are members of the immediate family of a Serbian citizen as well as to foreigners of Serbian descent to the third degree of lineal kinship. In each of these cases, a work permit is issued to a member of the foreigner's immediate family for the duration of the stay visa.

On the other hand, a foreigner with a *work permit* in the Republic of Serbia can only do the jobs for which he has been granted a permit. Unlike a personal work permit, a work permit is a type of permit issued at the request of the employer, namely as a work permit for employment, self-employment or special employment cases. Special employment cases include employment of foreigners posted by their employer to temporarily work in the Republic of Serbia, movement of foreigners within a company registered abroad and employment of independent professionals.

7 In addition to the restrictions on employment of foreign workers, protection of national interests is ensured with a ban on employment of such persons in state authorities. Law on Civil Servants (*Official Gazette of the RS*, no. 79/05, 81/05, 83/05, 64/07, 67/07, 116/08, 104/09, 99/14, 94/17 and 95/18), article 45, para 1.

8 *Official Gazette of the RS*, no. 24/18 and 31/19.

9 For example, 5.702 people intended to seek asylum in Serbia in 2017, but only 280 requests for asylum were submitted to the authorities. This happened because majority of people who stated their intention to seek asylum never submitted their requests because they left Serbia in the meantime and because some were placed into transition centres in Serbia, without documents and without a proper legal procedure.

A work permit may be issued to a foreigner who has a temporary stay visa and fulfils all the employment conditions established by the employer's rulebook on organization and systematization of jobs. This permit is issued to a foreigner for the planned period of employment, or, at most, for the duration of the temporary stay visa¹⁰. We should have in mind that the dual permit regime has further limitations. One of the limitations is the requirement stating that it wasn't possible to find among national workers someone with necessary qualifications for the job, ten days before submission of the request for a permit, or within an even shorter timeframe, in special cases. The same applies if an employer, during the aforementioned timeframe, couldn't find suitable candidates for the job amongst the people who have free access to the labour market, or amongst the foreigners with a personal work permit who are in the NES database. The lawmakers even went a step further regarding work permits for employment, by requiring that the employer, prior to submitting the request for a work permit, hasn't laid off workers due to technological, economic or organisational changes in jobs for which work permits have been requested.

A foreigner working in Serbia, in accordance with the Law on Employment of Foreigners, has the same rights and obligations as a Serbian citizen. However, the Government of the Republic of Serbia may decide to *limit the number of foreigners who are issued work permits*, in the event of disruption in the labour market, in accordance with the migration policy and the situation and movements in the labour market. The quota is established at the proposal of the ministry in charge of employment, with previously obtained opinion of the Social Economic Council of the Republic of Serbia and the NES. However, the quota will not apply to the foreigner, or the employer hiring the foreigner, who is submitting the request for a personal work permit, unless the personal work permit is issued at the request of a special category of foreigners. The quota also won't be applied to work permits for movement of foreigners within a company.

10 8.990 work permits were issued to foreign nationals in Serbia in 2018 through the National Employment Service branch offices, in the first instance of the administrative proceedings. 1.254 personal work permits were issued and 7.736 work permits. Out of all the personal work permits issued, 300 were issued to foreigners with permanent stay, 7 to the refugees, 66 to the special category foreigners, 17 to foreigners of Serbian descent, 856 to foreigners who are members of the immediate family of a Serbian citizen and 8 to members of the immediate family of a foreigner. On the other hand, out of the total number of issued work permits, 3.851 permits for employment were issued, 1.012 permits for movement of foreigners within a company, 11 permits for independent professionals, 2.256 permits for self-employment, 572 permits for posted workers and 34 permits for training and development (according to: *Report on the performance of the National Employment Service for 2018*). In 2018, the highest number of foreign workers with temporary stay in Serbia came from China (27%), Russia (8,6%), Turkey (6,8%), Ukraine (6,5%), Romania (4.6%), Italy (4,1%), Northern Macedonia (3.9%), Bosnia and Herzegovina (3,1%), Greece (2,8%) and Croatia (2,5%). The remaining 30,1% are citizens of Germany, Montenegro, Great Britain, Slovenia, Israel, Bulgaria, USA, France, Hungary, Poland etc. As for the permits issued to foreigners with permanent stay, Chinese citizens had the highest number of permits issued - 88, citizens of North Macedonia held second place and Russian citizens third place. The highest number of work permits was issued by the Belgrade NES branch office. On the other hand, near the end of 2018, there were 733 unemployed foreigners registered at NES, which is 0,13% of the total number of unemployed people in the Republic of Serbia. 80,5% of unemployed foreigners are women. According to: *Migration profile of the Republic of Serbia for 2018*, pp. 20-28.

The possibility of issuing a work permit to a foreigner who has been granted a long-stay visa based on employment also contributes to the improvement of the procedure for issuing work permits to foreigners. This solution was included in the Amendment to the Law on Foreigners from 2019, and it concerns the simplification of the procedure for granting a temporary stay visa as well as long-stay visa based on employment. The employer is, in fact, allowed to initiate the procedure for issuing a work permit before the NES, during the procedure for granting a long-stay visa based on employment which is conducted before the relevant diplomatic/consular mission¹¹. Work permit issued on the basis of a long-stay visa based on employment is issued for the duration of the visa, at the longest.

The Amendment to the Law on Employment of Foreign Nationals stipulates a consolidated procedure of the NES for extending the work permit for movement of foreigners within a company and the work permit for persons posted to work in the Republic of Serbia. In both cases, the work permit can be extended for up to two years, with the consent of the ministry responsible for employment, and with a previously obtained opinion of the ministry responsible for the field of work in which the employer operates. NES shall obtain the approval and opinion of the relevant ministries *ex officio*. By consolidating the procedure of obtaining approvals and opinions, the process of extending the aforementioned work permits has been considerably facilitated and accelerated, whereas, until 2019, the opinion of the competent ministry had to be obtained by the applicant for extension, before initiating the procedure for extension of the work permit before the NES.

Finally, we should bear in mind that, in the spirit of the provisions of Directive 2004/38/EC, EU citizens will have free access to the Serbian labour market from the date of accession of the Republic of Serbia into the EU, unless an international treaty that is binding for the Republic of Serbia does not provide otherwise. The same goes for family members of EU citizens, who are non-EU nationals but hold a temporary stay visa or a permanent stay visa in those countries, which proves their right to free access to the labour market. The aforementioned persons will not need a work permit to get a job in the Republic of Serbia, but they must have sufficient resources to support themselves and their family members. EU citizens, as well as their non-EU family members shall have free access to the labour market in Serbia even if they, through no fault of their own, lose their jobs, provided that their employment in Serbia lasted for at least one year, that they are in the NES database, and that they are involved in further education and training programs.

On the other hand, in the spirit of the provisions of Directive 96/71/EC, an employer with a domicile in an EU Member State, a Member State of the European Economic Area or the Swiss Confederation, will be able to refer a non-EU foreigner to work in the Republic of Serbia without a work permit. This possibility is conditioned by the requirement that a contract has been concluded with the employer or the end user of the services, and that an employment contract has been concluded with a foreigner referred to work in Serbia. In addition, an act on referral for temporary work in Serbia must be drafted and must establish how the rights and obligations of

11 This is important due to the fact that the National Employment Service will be informed, based on the direct exchange of official information with the diplomatic or consular representatives, that the conditions for issuing a work permit to a foreigner have been met. This will significantly speed up the procedure for issuing work permits and enable foreign nationals to start working as soon as they arrive in Serbia. This is significant when hiring highly qualified experts, who are working in positions of interest for the Republic of Serbia.

the employee will be regulated, as well as their room and board during their stay in Serbia. The foreigner must have a stay visa and a work permit in the country where the foreign employer is domiciled.

Special conditions for employment of foreigners do not apply to a foreign national who, during his stay on the territory of the Republic of Serbia, is engaged in employment for seasonal jobs, in accordance with the Law on Simplified Employment in Seasonal Jobs in Certain Economic Sectors¹². It is important to keep in mind that the aforementioned law only regulates work engagements without entering into an employment relationship.

12 *Official Gazette of the RS*, no. 50/18.