



Guiding Questions for Focus Area: Right to Work and Access to the Labour Market

National Legal and Policy Framework

1. What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?

The **Labour Law of the Republic of Serbia** ("Official gazette", No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – decision of the Constitutional Court, 113/2017 and 95/2018 – authentic interpretation) explicitly prohibits discrimination based on age both in the hiring process and in all aspects of employment (Paragraph 5, Article 18). Article 197 of the same document stipulates that employers may offer pensioners contracts but that these contracts can not be open ended. These contracts should be of the part time nature and may not exceed 120 working days in one calendar year. The 120 days per year stipulation is not specific for this age group and is simply a feature of part time contracts – an attempt to ensure that for work that actually demands more time, workers are provided with open ended contracts.

2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?

According to the available statistics¹, nearly one third of workers aged 60-64 work unregistered in the private sector which is significantly higher when compared to the overall workforce. Additionally, this age group and the 55-64 age group has disproportionately high rates of vulnerable employment and informal employment, including being deprived of the right to pension and health insurance, the right to paid sick leave and paid vacation. For older women the statistics are even worse: 47% of working women in the 55-64 age group are deprived of their rights to pension insurance, 45% are deprived of their rights to health insurance and 50% are deprived of their rights to paid sick leave and paid vacation.

The level of education among older workers and older persons in Serbia seems to be in correlation with the rates of unemployment or inactivity: 41% of inactive women in the 50-64 age group have only primary school education. On the other hand, a quarter of inactive older persons cite health reasons for being unable to participate in the labour market.²

¹ http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2016/09/SILC_001_Maja-Jandric-Svetozar-Tanaskovic_Polozaj-stanovnistva-izmedju-50-i-64-godine-na-trzistu-rada-u-Srbiji.pdf

² Ibid.

3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?

There are no official statistics or reliable data related to older persons and older women engaged in informal work. What is known is that per 2011 national census, more than 60,000 persons over the age of 65 (4.9% of this population) are unable to independently perform activities of daily life, or can only perform them with huge effort. Almost half of this population is over the age of 80. Approximately 93,000 (7.4% of all over 65) need support in performing activities of daily life – 45% of this group is over the age of 80³. Furthermore, a 2012 survey showed that 7% people over the age of 65 need support in performing activities of daily life and 15-18% need support in performing instrumental activities. Following this data, it can be estimated that between 190 and 230 thousand older people need some form of support in performing instrumental activities and that 90 thousand can not perform activities of daily life without support.⁴

The care and support services provided for these older persons are for a small proportion of the population in need provided by trained, registered gerontocarers employed either through municipal government or civil society organisations. For a larger proportion of those in need, these services are provided either by family members/ relatives/ neighbours – informal carers – or are provided by hired carers who may be nurses or untrained women in their forties, fifties or sixties. These women may be pensioners with a small pension and this is the way to increase their income or may have not qualified for pension due to not fulfilling the legal criteria (minimum 15 years of registered work) and this is their sole source of income.

These hired carers are not hired through contracts and the remuneration is unregistered (paid in cash), there are no provisions for pension, social or health insurance or taxes. This is informal work that is also completely unregulated and yet this is an important part of the labour market due to the rising need for care because of demographic changes and especially the economic migration of professional care workers to the EU Countries, notably Germany that has significantly increased in the last two years in the whole region.

Availability, Accessibility, Acceptability and Quality

4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?

National Strategy of Employment for the period 2011-2020 has been adopted in 2011⁵ and among its objectives is encouragement and support to employment of older workers, specifically

³ http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2014/06/sipru_DTNSC_web_jan.pdf

⁴ Ibid.

⁵ <https://www.minrzs.gov.rs/sr/dokumenti/predlozi-i-nacrti/sektor-za-rad-i-zaposljavanje/nacionalna-strategija-zaposljavanja>

those between 55 and 64 years of age. 65 is the cutoff age in Serbia for mandatory age pension, but, as described above, age pensioners have the possibility to be hired via part time contracts for work that can not exceed 120 workdays in one calendar year. The strategy explicitly speaks about raising public awareness of the benefits to the society of including older persons in the labour market, calls for more inclusive employment policies and recommends education and professional training programmes that will allow older workers to remain competitive in the labour market. It furthermore recommends promotion of more flexible forms of employment, ensuring older persons are actively included in the labour market through continuous education and employment clubs and explicitly calls for promotion of active ageing and lifelong learning.

The implementation of the Strategy was evaluated in 2015⁶ and the report shows that the number of unemployed workers over 50 has increased by 7.86% in the records of the National Employment Agency. Unemployed workers over 50 made for 26.74% of all unemployed workers on the record in 2015 and of these 53.19% were women. However the report posits that overall rate of unemployment of workers over 50 has decreased from 13.5% in 2010 to 12% in 2015 which is likely to do with the fact that in the period the official statistics on unemployment switched to the ILO methodology with the criteria that allow for a person to be recorded as employed if they did one hour of remunerated work in the preceding week.

Other sources show that unemployment of older workers rose in the 2008-2014 period from 8.4% to 12.9%⁷ and point out that long term unemployment is very high for workers in the 50-54 age group (53%) and even higher for the 55-64 age group (69%).

5. What steps have been taken to ensure the availability of specialised services to assist and support older persons to identify and find employment?

The **National Action Plan for Employment for 2019**⁸ envisions general measures for increasing employment such as providing mediating assistance with employment, providing advice on professional orientation and ongoing counselling, providing additional education and professional training as well as measures directed at employers, such as subsidies for different categories of workers. The measures of special interest for older workers include training and support for long time unemployed workers and support and training for workers with disabilities. Additionally, the planned subsidies specifically envision, among others, employers who employ workers over 50 who are in the status of “surplus workforce”, that is who have been made redundant due to the Employer determining that the scope of work has reduced.

Programme of Reforms of the Employment Policies and Social Policies in the Process of EU Accession⁹ was adopted by the Serbian Government in 2016 and it recognises the need to define specific programmes for different population groups at a heightened risk of unemployment. Specifically for the 50-64 age group this programme envisions the following measures: promotion of active ageing, information technology training (especially for better educated older

⁶ https://www.minrzs.gov.rs/sites/default/files/2018-11/procena_uspesnosti_nacionalne_strategije_zaposljavanja_za_period_2011-2020_godine_za_prvih_5_godina_primene_2011-2015.pdf

⁷ http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2016/09/SILC_001_Maja-Jandric-Svetozar-Tanaskovic_Polozaj-stanovnistva-izmedju-50-i-64-godine-na-trzistu-rada-u-Srbiji.pdf

⁸ http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2019/02/nacionalni_akcioni_plan_zaposljavanja_2019.pdf

⁹ <http://www.crnonabelo.com/dokumenta/esrp.pdf>

workers), creation of service packages for older workers, creation of special packages for women and persons with disabilities.

6. What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?

The subsidies for employers, professional training for older workers, mediation in the process of job-seeking and employment (including “employment fairs”) as well as specific support packages for women and persons with disabilities, as described above, are put in practice within the framework of Programme of Reforms of the Employment Policies and Social Policies in the Process of EU Accession, National Strategy of Employment for the period 2011-2020 and National Action Plan for Employment for 2019. The effects of these practices are yet to be assessed.

7. What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?

The Labour Law and the **Law on Prohibition of Discrimination** ("Official gazette", No. 22/2009) both explicitly prohibit discrimination based on age with the Labour Law prohibiting discrimination in the hiring process as well as in all aspects of employment, as described above. The applicable legislation provides stipulations that protect the rights to fair wages and equal remuneration for work of equal value as well as the safe working conditions but this only applies to the formal sector while informal sector remains unregulated. Considering that one third of the workers in the 60-64 age group work unregistered and even more of this age group work in the informal sector (as carers for children or older persons etc.), there is a large population of older workers that remains unprotected. Moreover, due to the existing barriers in access to justice – long court trials, high and unforeseeable trial expenses, abuse of procedures – even the existing legal stipulations do not provide adequate protection for many older workers. As listed above, a very high proportion of older workers, especially women are deprived of their entitlements in relation to pension insurance, health insurance, paid sick leave or paid vacation and their job security is comparably low.

Equality and non-discrimination

8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?

Yes, as listed above, The Labour Law and the Law on Prohibition of Discrimination both explicitly prohibit discrimination based on age with the Labour Law prohibiting discrimination in the hiring process as well as in all aspects of employment.

Remedies and Redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?

In addition to judicial system, there are the following mechanisms:

Labour Inspectorate¹⁰ is established by the Ministry of Labour, Employment, Veteran and Social Affairs and its jurisdiction includes monitoring employment relations, safety and health in the workplace. The work of the inspectorate includes combating unregistered work, decreasing the frequency of work-related injury and providing legal protection to employed and working persons (in relation to unpaid wages, failure to provide calculation of wages, discrimination, unpaid overtime work etc.).

National Ombudsman¹¹ is tasked with monitoring the work of public institutions and protecting citizens' rights in this context. Considering that national institutions employ between one third and one quarter of all the employed persons in Serbia (599,247 out of 2,180,420 in October 2019)¹², National Ombudsman is well within its authority to act on complaints related to labour disputes in the public sector. The Ombudsman is authorised to recommend disciplinary action and, recommend filing offence reports against persons working in the public sector who breach rights or break the law.

Commissioner for Protection of Equality¹³ is authorized to act upon complaints of citizens in cases of breaches of human rights and being targeted by discrimination. This may include discrimination in the workplace, in the employment process or in the labour market. Acting upon a complaint submitted by a citizen, the Commissioner informs the complainant about his or her rights and possibilities to initiate a court procedure or another protection measure, including the reconciliation procedure. The Commissioner is also authorised to file offence reports against discrimination acts prohibited by the antidiscrimination regulations. The Commissioner is also authorized to file complaints for protection from discrimination, with approval of the discriminated person.

¹⁰ <https://www.minrzs.gov.rs/sr/struktura/organi-uprave-u-sastavu-ministarstva/inspektorat-za-rad>

¹¹ <https://www.ombudsman.rs/>

¹² <https://publikacije.stat.gov.rs/G2019/Pdf/G20191287.pdf>

¹³ <http://ravnopravnost.gov.rs/>