SOCIAL DIALOGUE IN BOSNIA AND HERZEGOVINA

Starting from the constitutional and legal arguments that Bosnia and Herzegovina (hereinafter: BiH) is a state composed of two entities - the Republic of Srpska and the Federation BiH - and the Brcko District BiH as a condominium in equally-owned entities - the legal foundations of social dialogue in Bosnia and Herzegovina are contained in the constitutions of the entities and international legal acts which are an integral part of the General Framework Agreement for Peace in BiH, as well as those ratified by the legislative authority of Bosnia and Herzegovina.

Also, closely related to the implementation of social dialogue as a basis for achieving social stability and reducing social conflict, is the right to freely organize trade unions and employers organizations, which is also found in these legal acts in force in Bosnia and Herzegovina. According to the Constitution of BiH, entities have significant jurisdictions, among other things, in the part that relates collective bargaining and labor legislation.

Accordingly, based on the entities’ labor laws and Labor law of the Brcko District BiH, on tripartite principle - government, unions and employers have formed the Economic and Social Council of the Republic of Srpska, Economic and Social Council of the Federation and the Economic and Social Council Brcko District.

1. THE REPUBLIC OF SRPSKA (RS)

Economic and Social Council of the Republic of Srpska (hereinafter: ESS RS) was originally established by the Agreement of the social partners in 1997. 2000th, recognizing the importance of Economic and Social Council as an institution of social dialogue, the Government of the Republic of Srpska (hereinafter: the Government) in collaboration with social partners, regulated the existence of the ESS RS through the entity's Labor Law (Official Gazette of the Republic of Srpska, no. 110/08).

Due to the great importance of this body, the social partners agreed that a special law will govern the composition, scope, financing, operation and other issues relevant to the ESS RS and in 2008. entered into force the Law of Economic and Social Council (Official Gazette of the Republic of Srpska, no.110/08). This Law provides that the ESS RS reviews and takes attitudes to issues of development and promotion of collective bargaining, considers the impact of economic policies and measures for its implementation of social development and stability of employment policy, wages and prices, privatization, labor protection and environment, health, social care and security, improving economic and social policy, etc..

Also, ESS RS reviews the draft and laws proposals and other regulations relevant to the economic and social status of workers and employers.
In order to ensure impartiality and exclude the Government impact, the Law stipulates that the financial resources for ESS RS activities will be provided in the Budget of the RS. Accordingly, ESS RS is a legal entity - has its own bank account for activities financing and employs appropriate staff to perform administrative and technical support. Also, ESS RS in its work may hire experts from different areas or other persons whose knowledge and experience can contribute in work improvement.

ESS RS decisions are taken exclusively and only by the consensus of social partners of all nine members - three representatives of the Government, trade union and employer organizations at the RS level. The members mandate last for four years and there where appointed ahead of social partners represented in the ESS RS.

The representativeness of trade unions and employers representatives in the RS, has funded by special independent commission, formed by the Government. The criteria for determining representativeness are regulated by the Labor Law, on which basis in 2008, founded that the Confederation of Trade Unions of the RS and the Union of Association of Employers of the RS are representative representatives workers and employers in the Republic of Srpska. Accordingly, aforementioned two organizations together with Government representatives participate in the work of the ESS RS.

Thanks to the intensive activities of ESS RS, social dialogue in the Republic of Srpska is evolving constantly as same as mutually bipartite relations between the social partners. The above mentioned claim is supported by the fact that in 1997, at the session ESS RS was signed the first General Collective Agreement in the RS. Also, representatives of all three social partners have participated in drafting of the system legislation, particularly in the labor and social insurance field and also in the process of privatization of state enterprises in the transition period.

Based on its legal jurisdiction and in order to combat against undeclared work in the construction sector and improve safety and health of workers at work place, ESS RS has established two working bodies:

- Committee for Undeclared Work Suppression in Construction Sector in the RS;
- Committee for the Protection and Health at Work of the RS;

The most important issues in the previous year, related to ESS RS work are the follows:

The legislation:

1. Law on the Guarantee Fund of the Republic of Srpska;
2. Law on Mediation in Employment and Unemployment Insurance;
3. Low on Protection at Work;
Thematic part:

1. "Government measures for combating against the negative consequences of World Economic Crisis on the Economy of the Republic of Srpska ";
2. “Budget of the Republic of Srpska for 2010”;
4. "Employment Strategy";
5. "Education Reform Strategy";
6. "Pension System Reform Strategy";

The most significantly achievement in 2010 was the signing of the General Collective Agreement and increasing the minimum guaranteed wage in the RS - the most important legal acts which are regulate the mutual relations between workers and employers in the RS. The signing of these documents was performed at the ESS RS session, after more than a year of efforts and difficulties during negotiations which is of extreme importance bearing in mind that the RS and BiH was suffered from effect of the world economic crisis.

Recognizing the need establishment economic and social council at the state level was held a special session of ESS RS, where Minister for Civil Affairs BiH was attended as a guest. At that meeting it was adopted a conclusion so that economic and social council at the state level should be established so that the entities’ economic and social councils shall appoint per three members ahead representatives employers and also union representatives, the Economic and Social Council of the Brčko District BiH to appoint per one member ahead of unions and also the employers, while the Council of Ministers as the executive organ of the State of BiH to appoint seven members from among the Ministers within the Council of Ministers. Bearing in mind that the above principle of organization proved successful during the establish of similar organizations in the BiH, it should be noted that the aforementioned attitude ESS RS have been supported by the representatives ILO and the Ministry of Civil Affairs BiH.

Based of aforementioned principle of representativeness, has been formed Confederation of Trade Unions of Bosnia and Herzegovina - its founders are the representative trade unions organization the Republic of Srpska, the Federation BiH and Brcko District BiH.

Unlike trade unions, association of employers at the state level is not organized on the basis of these principles and constantly has been denying from the representatives association of employers in the Republic of Srpska - Union of Association of Employers in the RS, which requires that an employers’ association at the state level need to be organized on the basis of the respecting criteria of representativeness.

Summarizing the previous work and the importance of ESS RS as an institution of social dialogue its key role in solving major problems in countries in transition, in which, among other things, includes our, it can be concluded that the ESS RS significantly was provided a consensus of social partners in the Republic of Srpska and appropriately provided participation of social partners in decision-making. The Government
significantly respects the opinions of the ESS RS and enacting of the legislative acts without previous consideration and opinion of the ESS RS is a question of the past, although some of ministries sometimes are not respect above mentioned principles. In addition, it is necessary to emphasize the will of the social partners to achieving a compromise in many important issues related to the workers and employers, and readiness for future action in this direction and continuing with the agreed attitudes practice. Such a relationship of social partners currently has and it will have positive repercussions on the overall socio-political events in the RS and Bosnia and Herzegovina.

2. THE FEDERATION OF BOSNIA AND HERZEGOVINA (FBiH)

Assuming that nature of industrial relations in market economy characterized by a combination of elements of cooperation and conflict among the subjects of these relations, it inevitably requires establishing a framework for the conservation and stabilization of industrial peace in the realization and protection of collective interests and rights of social partners, and protection of the established social order. Regard to this, the cooperation of trade unions, government and employers became inextricably linked to ideas of social dialogue and social partnership, industrial democracy and the essence of this relationship consists of constructive approach to the social partners and government to solves economic and social problems, ie. economic and social policy.'

To this end, 1999, in the Federation of BiH, entered into force the Labor Law of the FBiH, which provides that, in order to achieve the harmonization of economic and social policies, implementation and coordination of the interests of employees and employers, and encouraging, conclusion and application of collective agreements and their compliance with the measures of economic and social policies, may establish economic and social council, in the territory of the Federation, but also in the territory of the cantons. Accordance to the Constitution of the FBiH, jurisdiction in this area divided between the Federation BiH and its 10 cantons that make up whole of the FBiH. Given that, the Labor Law of the FBiH is not determined commitment, but the possibility of creating economic and social councils, in 2001. the Confederation of Independent Trade Unions of Bosnia and Herzegovina was prepared the treaty for establishing the economic and social council of the Federation of BiH, which was accepted by the Government of the FBiH and the Association of Employers of the FBiH. Economic and Social Council for the territory of FBiH (hereinafter: ESV) formed in 2002. year. Accordingly, economic and social councils of the cantons have also been establish until now.

By the Agreement of the formation of ESV it was arranged principles of its activities, relating to the conduction of social dialogue as a system to address the relationship between the social partners and resources to achieve a balance between market economy and social justice, and respecting independence and autonomy of social partners in their work and organization, ensuring free access to adequate and timely information and documentation of significant issues important for the ESV and respecting decisions of the ESV and conclusions and theirs implementation. ESV of FBiH, as the highest tripartite body in the Federation BiH, was established to conduct joint activities of social partners in economic, social and development policies, promotion and protection of economic and
social rights and interests of workers and employers and developing a system of collective bargaining and concluding collective agreements. As a result, they concluded several collective agreements and the main one is General Collective Agreement for the territory of the FBiH and 23. branch collective agreements for industries and other branches in the Federation of BiH. In addition, a large number of collective agreements was concluded at the cantonal level, and in last year an increasing number of collective agreements were concluded at the enterprise level. In addition it's important to note that except collective agreements who has been concluded at the enterprise level, the signatory of all other collective agreements, other than employers and trade unions, is also the government of the FBiH, and cantons' governments. ESV has 15 members, five per each of social partner and Chairman who is independent person with no right to vote and decisions are making by consensus of the social partners. Professional, organizational, technical and material conditions for ESV work and its costs is ensures and covered by the Government of the FBiH, and operations are performed in the Ministry of Labour and Social Policy of the FBiH. According to the Agreement of establishment, ESV is monitoring, review and propose the adoption of new or changes to existing laws, programs and other documents that affecting on the economic and social development and the position of workers and employers and their opinions and views submits to the Government and Parliament of the Federation BiH. In addition and already formed committees for different areas (salary policies and collective agreements, taxation, employment and social policy, privatization, legislation, enforcement of regulations and the exercise of rights protection, public services, foreign investment policy, export incentives, the entities and international economic relations; standardization; international transport and energy policy) in the work of ESV can participate independent experts, and it is possible to engage the various institutions for certain issues. ESV, currently operates on the basis of Agreement on its establishment, but new Law of ESV was prepared and it will be submitted to the Parliament procedure with the consent of all three social partners. After eight years of work and activities of ESV, we can say in generally, that this form of social dialogue becomes a central pillar of the relationship between the social partners and contribute to establishing relationship of balance and partnership. It is felt more constructive approach by all social partners in addressing issues of economic and social making policy and it becomes a regular practice to incorporate the views, opinions and requirements of ESV into laws. Commissions and working groups of the ESV composed of experts from all three social partners together preparing drafts legislation that the Government of the FBiH refers to the parliamentary procedure after their consideration by the ESV. Also, all the common bipartite relations of social partners on issues related to their mutual relationships are often than before. But despite the positive experiences and efforts for further development of relations of equal partners, it needs to stress the fact that, it was attempts from the side of the Government of the FBiH to sent some laws in the parliamentary procedure without previously consideration of the ESV. This was especially evident in the process of concluding arrangements with the International Monetary Fond (IMF) in January 2010, when the Law on Salaries submitted to Parliament procedure with intended to repeal of all collective agreements and the unilateral determination of wages and benefits, with explanation that it was a condition of the IMF to give a first tranche of the loan. After a series of trials and negotiations with the Government of the Federation BiH,
Confederation of Independent Trade Unions of BiH organized a protest before the Parliament of the Federation of Bosnia and Herzegovina, for the purpose to halt the adoption of the said Law, and then was together with the Government of FBiH prepared text of the law and established the basic principles of payroll and benefits which are not considered wages and these regulations to be determined by collective agreements, which adoption was in progress. All this shows that with the right approach and negotiations conducted in good faith and with mutual respect for all social partners, the solution can be find for each question. Therefore, the further development and promotion of social dialogue at all levels and all aspects is extremely important. It presupposes the further education of all social partners, and investment in this type of education should be considered not as a cost but an investment for the construction of economic and social state and development of society and democracy in general.

3. THE BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA

In this part of Bosnia and Herzegovina, Economic and Social Council exist "de jure", but, according to information from the Trade Union of the Brcko District, ESC "de facto" does not work. Social dialogue has been reduced only to collective bargaining and concluding collective agreements and negotiations occurs in possible strikes situations.

FINAL CONSIDERATION

Despite numerous attempts dating from 2002, and international obligations of Bosnia and Herzegovina, Economic and Social Council at the state level has not yet been established. Bearing in mind that the labor and social legislation is on the entities jurisdiction and that the representativeness of the social partners at the entity level based on the legislation of the entities and not on the Constitution of Bosnia and Herzegovina, it is necessary that the Economic and Social Council at the state level be established by the representative trade unions and employers organizations from the entities.