

Seasonal and Informal Workers' Rights in Serbia: Exploitation, Unsafe Conditions, and Legal Insecurity



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Seasonal and Informal Workers' Rights in Serbia: Exploitation, Unsafe Conditions, and Legal Insecurity

Proclaimed workers' rights often diverge significantly from workers' lived experiences. Guarantees outlined in the Constitution and laws frequently exceed their practical enforcement, particularly for workers engaged in temporary and seasonal jobs or in the informal economy.

Although labor inspectors are responsible for supervising the application of the contract of performing temporary and occasional jobs, there is often self-limitation of inspection jurisdictions only to employees.

In Serbia, seasonal workers are legally entitled to retain social benefits while performing seasonal jobs. However, conflicting regulations have led to the reduction or loss of benefits. Once these discrepancies were removed from relevant bylaws, similar issues persisted due to inconsistent practices among social workers, limiting opportunities for life of dignity for persons engaged in seasonal jobs.

This report aims to examine global regulatory practices to identify mechanisms suitable to prevent labor exploitation and to explore effective models for safeguarding seasonal and informal workers' rights. Emphasis will be placed on solutions that allow seasonal workers to retain social protection and that offer practical and replicable approaches for reducing exploitation risk in Serbia and beyond.

The report begins with introductory remarks on the position of seasonal workers in Serbia, with a particular focus on those employed in the construction sector. In order to identify the main challenges and

highlight rights violations experienced by seasonal workers, the A 11 Initiative conducted interviews and focus groups with seasonal construction workers on 3 July 2024.¹ The motivation for focusing on this sector was the particularly harsh working conditions they endure, frequent workplace injuries, and even fatalities faced by these workers. Seasonal workers in construction, especially those from marginalized communities such as Roma, face systemic violations of labor rights, precarious employment conditions, and unsafe working conditions. Despite their vital role in the industry, they remain invisible to legal protections, social security, and stable employment contracts. Their testimonies reveal an alarming situation that demands urgent attention.

¹ The A 11 Initiative for Economic and Social Rights conducted direct interviews with seasonal workers in 2024, as part of the implementation of activities within the project "Labor Exploitation in Serbia from the Perspective of Economic and Social Rights", with the support of the Olof Palme International Center.

Seasonal Workers in Serbia — main findings from focus groups with construction workers

● Precarious Work and Lack of Contracts

The interviewed workers emphasized that employment in construction is mostly informal, with many of them working without contracts. *"We show up at the construction site, and if there is work, we work. If not, we go home with empty hands,"* one worker explained. The absence of formal agreements exposes them to exploitation, sudden dismissals, and non-payment of wages. Those who dare to demand better conditions or unpaid wages risk being blacklisted or faced by threats by employers. One of the interviewed workers pointed out that there are no set working hours on construction sites: *"I was working until 9 p.m. yesterday — there are simply no fixed hours. Basically, you work until the job is done."*

● Unsafe Working Conditions

A major concern raised by workers is the lack of safety measures. Protective equipment is rarely provided, and safety protocols are ignored. Without health insurance or paid sick leave, injuries mean financial ruin for these workers. Many return to the construction site before fully recovering, fearing job loss. *"We're not allowed to get sick. It's just work, work, work — 24 hours a day. You know about his back injury — I had to carry him to the Military Medical Academy. He kneels while working, even though he's not supposed to — it's strictly forbidden. But if he works today, he'll earn something; if he doesn't, he won't."* When asked how others cope when they're unwell, one of the workers says, *"if it's just a cold, we still show up and work"*. Another worker recalls, *"It was freezing — winter, December — and we were 20 meters up on a rooftop, building an entire structure without any safety equipment."* A different worker adds, *"At some of the sites we worked on, we had no protective*

gear — no helmets, no proper shoes — you could easily get hurt stepping on a nail.”

Reports indicate that Serbia has a high number of workplace fatalities in construction. According to the Labor Inspectorate, dozens of construction workers die annually due to inadequate safety measures. However, due to the informal nature of employment, many injuries and deaths go unreported.²

● **Delayed and Unpaid Wages**

One of the most pressing issues is delayed or completely unpaid wages. Employers often pay workers only part of their earnings, making them dependent on continuing to work under exploitative conditions. *“We work for weeks, and then they tell us they have no money to pay us. We wait and wait, and sometimes we never get paid,”* said a worker. An additional issue they face is the lack of secure payment for the work they perform. Seasonal workers report that they have even been subjected to threats and offensive language when they ask to be paid for their work. It is also common for them to receive less money than was originally agreed upon. As one of the interviewed workers explains: *“I worked for a company in Belgrade — they said they’d pay me 5,000 dinars a day, but that never happened. Instead, they gave me 20 euros per day. (...) We didn’t get the full amount and ended up returning home.”* Another worker explains: *“He and I worked for the same company — we did a roofing job that was billed at 930,000 dinars, but the employer only gave us 180,000. He was paid in advance, but we didn’t receive anything upfront. After we completed half the job, he gave us 60,000 dinars, and after that, he handed out 5,000 or 10,000 here and there. (...) In the end, he still owes us 70,000 dinars.”*

The absence of written agreements makes legal recourse nearly impossible.

² Statistical Office of the Republic of Serbia, Work Report, Analysis of Occupational Injuries, 2023. available at: <https://www.minrzs.gov.rs/sites/default/files/2024-03/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%BE%20%D1%80%D0%B0%D0%B4%D1%83%20%D0%B7%D0%B0%202023.%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D1%83.pdf>

● **Social Marginalization and Discrimination**

Roma workers face additional discrimination. *"They pay us less than others, even though we do the same work,"* a worker shared. Their marginalized position in society makes it even harder for them to seek legal assistance or organize for better conditions. One of the interviewed workers noted that when both Roma and non-Roma workers are doing the same job, *"they're more likely to say they're satisfied with the Serb, even if we do the job ten times better. No matter how much we do, the owner is never satisfied. If his guy unloads 10 trucks, he'll say he's pleased. But if I unload 50, he'll still say he's not satisfied."*

However, another worker shared a different experience when it comes to the perception of Roma workers and discrimination: *"I personally haven't encountered that. They only cared about the quality of work. You just have to work — it doesn't matter whether you're black or white. They judge based on how well the job is done. (...) My own brother (who is Roma) was even recognized as one of the best workers. He started working when he was 14 or 15, traveling across Montenegro, Bosnia, and Belgrade, gaining valuable experience. (...) He starts at 7 a.m. and keeps working until there's no daylight left. For him, there are no working hours."* While this testimony does not indicate the presence of discrimination, it is yet another example of the harsh working conditions faced by seasonal workers.

● **Unlawful denial of social benefits for seasonal workers**

Among the few positive provisions of the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities is the stipulation that remuneration from seasonal work does not affect the financial social assistance eligibility, nor does it lead to removal from the unemployment register, thus preserving social protection and social insurance rights.³ The purpose of this solution is to encourage citizens without other employment opportunities to engage in these jobs. However, due

³ Article 9, paragraphs 2 – 3 of the Law on Simplified Employment in Seasonal Jobs.

to the inconsistency of the Rulebook, this provision had little practical effect, leading to increased risk of labor exploitation (due to verbal agreements) and loss of social protection rights. This problem arises from the inconsistency of the Rulebook on Forms in the Process of Obtaining Financial Social Assistance⁴ (hereinafter: Rulebook) with the Law on Social Protection, the Regulation on Income and Earnings Affecting the Financial Social Assistance Eligibility, and the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities. The Rulebook inappropriately includes income from seasonal work in the assessment of income for financial social assistance eligibility,⁵ contradicting the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities⁶ which explicitly states in Article 9, Paragraph 3 that "remuneration for work earned in accordance with this law does not affect the financial social assistance entitlement acquired under social protection regulations." On the contrary, the Rulebook includes income from seasonal work in the application forms for financial social assistance, which are an integral part of the Rulebook, as the income of the applicant and their family is considered when deciding on the application for financial social assistance. When prescribing the content and findings of the opinion of the Center for Social Work, whose form is also an integral part of the Rulebook, it is again stipulated that income from seasonal work should be mentioned, even though, according to the law regulating seasonal work, this income does not affect financial social assistance.

Following an appeal by the A 11 Initiative, in May 2023, the Minister of Labor, Employment, Veteran and Social Affairs amended the Rulebook on Forms Used in the Procedure for Exercising the Right to Financial Social Assistance. The changes were reflected in the application forms for financial social assistance (FSA), constituting an integral part of the Rulebook. In the section listing income considered when deciding on the right to FSA, the original statement *"income from seasonal and other jobs"* has been adjusted to *"income from seasonal and other jobs exclud-*

4 "Official Gazette of RS" no. 39/2011.

5 See the Application for Financial Social Assistance (Form NSP-Z) and Form NSP-NM - Form containing Findings and Opinion of the Center for Social Work, constituting an integral part of the Rulebook on Forms Required in the Process of Obtaining Financial Social Assistance (Official Gazette of RS, No. 39/2011).

6 "Official Gazette of RS", No. 50/2018.

ing earnings from seasonal jobs acquired in accordance with the law governing seasonal employment”⁷

Although this is a positive step that could help beneficiaries of financial social assistance (FSA) secure a more dignified life through seasonal work, a significant issue remains: when assessing eligibility for FSA, some social welfare centers continue to count income from seasonal work. For instance, a three-member family from Vranje was denied access to FSA solely because of earnings from raspberry picking, even though such income should not affect eligibility for this right.⁸ Similarly, in November 2024, a family from Obrenovac was denied FSA due to income earned from seasonal work — specifically, sorting peppers in a cold storage facility in Novi Sad.⁹ In doing so, social welfare centers continue to penalize individuals and families — unlawfully denying them the right to FSA — simply for seeking income even in other towns in an effort to secure a more dignified existence.

● **Call for Urgent Reforms**

The testimonies of these workers highlight the need for urgent reforms. Strengthening labor inspections, ensuring mandatory employment contracts, enforcing safety standards, and introducing mechanisms to combat wage theft are essential steps toward protecting these vulnerable workers. Additionally, specific measures must be taken to address the discrimination faced by Roma workers.

Without systematic change, seasonal construction workers will remain trapped in a cycle of exploitation, insecurity, and poverty. Their voices must be heard, and their rights must be protected.

This poor position of this category of workers prompted the development of a brief comparative legal analysis of the way the position of

7 See Form NSP-Z and Form NSP-NM, constituting an integral part of the Rulebook. For more information, see the A 11 Initiative, “Income from seasonal work no longer affects eligibility for financial social assistance,” June 28, 2023, available at: <https://www.a11initiative.org/prihod-od-sezonskog-rada-vise-ne-utice-na-ostvarivanje-novcane-socijalne-pomoci/>.

8 Decision of the Vranje Social Welfare Center, no. 553-01-25151/2023 dated 15 January 2024.

9 Decision of the Belgrade Social Welfare Center, Obrenovac branch, no. 553-01-12876/2024-01 dated 25 November 2024.

seasonal workers is regulated in several other countries. After presenting the main findings on the position of construction workers in Serbia, the following part of the report explores possibilities to improve the rights of seasonal and informal workers in Serbia, mainly based on lessons learned from Denmark, Portugal and New Zealand.

Seasonal and Informal Workers' Rights in Serbia: Lesson Learned from Denmark, Portugal and New Zealand¹⁰

● Introduction

This research aims to provide an overview of the situations and rights of seasonal and temporary workers in Serbia. This will be done by comparing the situation of Serbia to other countries and providing policy recommendations on how to reform Serbia's legislation protecting these workers. Seasonal workers are defined as those whose employment is temporary and dependent on seasonal changes, leading to fluctuating demand for labor.¹¹

Seasonal and temporary workers can be employed in two ways in Serbia: through fixed-term employment contracts and through contracts for temporary and occasional work.¹² The former types of contracts give workers full employment rights under general labor regulations. The latter, on the other hand, do not provide the workers with such rights but only make social insurance mandatory for the workers for risks such as sickness and unemployment.¹³ The specific laws governing these types of contracts are the Labour Law and the Law on Simplified Work Engagement in Seasonal Jobs in Certain Activities (LSWE). The former is a general law allowing for temporary and occasional workers to be em-

10 This part of the report was researched and drafted by Martina Semino, Yunah Kang, Luisa Hoffmann, Ramiro Ruiz Martinez.

11 Ljubinka Kovacevic, "Seasonal Workers in the Republic of Serbia - between New Flexibilization (and Precarization of Work), and Catalogue of Minimum Rights for All Workers" [2024] SSRN Electronic Journal https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4720783, 1.

12 Ljubinka Kovačević, "Legal Position of Seasonal Workers in the Republic of Serbia" [2021] *Revue De Droit Comparé Du Travail Et De La Sécurité Sociale* 244 <https://journals.openedition.org/rdctss/2776>, 244.

13 Ibid

ployed for a maximum of 120 working days per calendar year. The latter is a specific law that covers seasonal works in the areas of agriculture, forestry and fishery.¹⁴ Under this law written contracts are not required and the social insurance of the workers covers very limited areas.

The legal framework around the rights of seasonal workers has been criticised as being insufficient to protect these individuals.¹⁵ Indeed, the LSWE allows for the possibility of oral contracts which can cause issues when it comes to clarity and enforceability of the workers' rights and obligations, causing an easier mechanism of exploitation of these workers.¹⁶ Furthermore, such legislation has resulted in a lot of undeclared work since the nature of the current legislation frameworks still allows for it to be abused and the workers to be exploited.¹⁷ For the past few years a new draft of the LSWE has been worked on but it has not yet been approved.

Considering the current situation of seasonal and temporary workers in Serbia questions arise on how to provide protection for these workers' rights. Since a new legislation is currently being debated it is important to analyze the situation in other countries to provide with recommendations to Serbia on what to implement in the new legislation.

To do this, this report aims at answering the question: what labour laws and policies exist to protect seasonal and temporary workers around different countries of the world and what best practices can be taken from them and be applied in Serbia?

To answer this question this paper will first provide the methodology it will follow. Then the situation of seasonal workers in New Zealand, Denmark and Portugal will be presented. Policy recommendations and

14 Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities" Official Gazette of RS, no. 50/2018 https://www.minrzs.gov.rs/sites/default/files/2018-11/zakon_o_pojednostavljenom_radnom_angazovanju_na_sezonskim_poslovima_u_odredjenim_delatnostima_50-18.pdf

15 Ljubinka Kovačević, "Legal Position of Seasonal Workers in the Republic of Serbia" [2021] *Revue De Droit Comparé Du Travail Et De La Sécurité Sociale* 244 <https://journals.openedition.org/rdctss/2776>.

16 Ljubinka Kovacevic, "Seasonal Workers in the Republic of Serbia - between New Flexibilization (and Precarization of Work), and Catalogue of Minimum Rights for All Workers" [2024] SSRN Electronic Journal https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4720783.

17 Ibid

lesson learned from these countries will consequently be provided to give options on what to do to solve the issue in Serbia.

● **Methodology**

To answer the research question this paper will precede with a case-study analysis. The case studies consist of looking at the situation and rights of seasonal and temporary workers across the jurisdictions of New Zealand, Denmark and Dublin. For each country the legal framework around these worker's rights will be provided by conducting a doctrinal analysis. Specifically for Denmark and Portugal not only the national framework but also the European framework will be analysed.

The doctrinal analysis will then be followed by a sociolegal analysis of how these laws play out in practice and the reality of these workers' rights in the specific country. Both best and worst practices will be looked at in order to find out what are the ideal situations around the rights of seasonal workers that can be used to provide policy recommendations to Serbia.

● **Exploitation Risks for Informal and Seasonal Workers**

The International Labour Organisation (ILO) defines informal employment as "all remunerative work that is not recognised, regulated, or protected by existing legal or regulatory frameworks"¹⁸ and seasonal (temporary) employment as employment "whereby workers are engaged for a specific period of time"¹⁹ such as task-based contracts, fixed-term employment contracts, or projects. Informal and seasonal workers are seen in diverse sectors – agriculture, construction, manufacturing, home-based, and transportation. These workers are particularly susceptible to various forms of exploitation due to the precarious nature of

18 Rockefeller Foundation, 'Health Vulnerabilities of Informal Workers' (May 2013) 3 <https://www.rockefellerfoundation.org/wp-content/uploads/Health-Vulnerabilities-of-Informal-Workers.pdf> accessed 14 February 2025

19 International Labour Organization, Conditions of Work and Equality Department, *Non-Standard Forms of Employment: Report for Discussion at the Meeting of Experts on Non-Standard Forms of Employment (Geneva, 16–19 February 2015)* (ILO 2015)

their employment. Exploitation risks commonly faced by these workers include low and irregular wages, lack of social protections, hazardous working conditions, debt bondage, and social isolation. Many informal workers receive minimal compensation without guarantees of consistent payment, leading to financial instability. According to the OECD, informal economy workers face greater risks than formal economy workers due to their unprotected status and inferior working conditions.²⁰ The absence of formal employment contracts often results in a lack of access to health insurance, unemployment benefits, or pensions, thereby leaving workers vulnerable during health crises or economic downturns. Furthermore, informal employment frequently involves unsafe environments without adherence to safety regulations, increasing the risk of injury or illness.²¹ Debt bondage is also a prevalent issue, with some workers incurring debts through recruitment fees or travel expenses, binding them to employers under exploitative conditions until the debt is repaid.²² Moreover, the migrant status of the informal and seasonal workers may also increase the risk of human trafficking as they often face insecure legal status, limited knowledge of their rights, and dependence on employers through tied visas. Due to these factors, there is a high possibility that the workers are trapped in exploitative jobs accompanied by their concerns of deportation or job loss, which leads to the prevention of seeking help. Although the United Nations Trafficking Protocol identified abuse of a position of vulnerability as a key method of human trafficking, policies that criminalise undocumented work often empower abusive employers who know the precarious situation of the informal and seasonal workers. Furthermore, migrant workers may experience social isolation due to language barriers and separation from their communities, exacerbating their vulnerability to exploitation.

Ovi rizici se različito manifestuju među pojedinim ranjivim grupama.

20 OECD and ILO, *Tackling Vulnerability in the Informal Economy* (Development Centre Studies, OECD Publishing 2019) 19 <https://doi.org/10.1787/939b7bcd-en> accessed 14 February 2025

21 Rockefeller Foundation (n 1)

22 Focus on Labour Exploitation (FLEX), *The Risks of Exploitation in Temporary Migration Programmes: A FLEX Response to the 2018 Immigration White Paper* (FLEX 2019) <https://labourexploitation.org/publications/the-risks-of-exploitation-in-temporary-migration-programmes-a-flex-response-to-the-2018-immigration-white-paper/> accessed 14 February 2025

Žene i deca često su izloženi polno zasnovanoj diskriminaciji, pri čemu su žene češće mete seksualnog uznemiravanja, a deca radne eksploatacije.²³ Osobe s invaliditetom neretko su suočene sa isključenošću sa tržišta rada ili ograničene na niske zarade i nisko kvalifikovane poslove. Poslodavci često ne uspevaju da prilagode uslove rada specifičnim potrebama ovih radnika, čime se povećava rizik od povreda. Otklanjanje ovih rizika od eksploatacije zahteva sveobuhvatne pravne intervencije, kao i intervencije javnih politika, koje uključuju dosledno sprovođenje radnih prava, obezbeđivanje socijalne zaštite i podsticanje socijalnog dijaloga između radnika, poslodavaca i državnih organa. Pravni okviri koji štite neformalne i sezonske radnike od eksploatacije, uz istovremeno omogućavanje njihove integracije u formalno tržište rada, od suštinskog su značaja za unapređenje radnih prava i podsticanje pravičnih radnih standarda na globalnom nivou.

23 International Labour Organization (ILO), *Curriculum on Building Modern and Effective Labour Inspection Systems: Module 9 – Dealing with Vulnerable Groups of Workers* (ILO 2015) <https://www.ilo.org/resource/ilo-curriculum-building-modern-and-effective-labour-inspection-8> accessed 14 February 2025

Country Example — Denmark

● International Law

a. International Labour Organization (ILO) – International framework

Denmark is one of the founding member states of the International Labour Organization (ILO). As a UN agency, the International Labour Organization (ILO) promotes internationally recognised labour rights and human rights. ILO initiates the cooperation of governments, employers, and workers of 187 member states to set labour standards, and develop programmes and policies to promote a decent working environment and social justice for every employer around the world without any discrimination.

Denmark has ratified 74 conventions and 2 protocols, including all the fundamental conventions²⁴ to uphold the workers' rights. Among the conventions that Denmark has ratified, there are conventions that are directly or implicitly related to seasonal workers and vulnerable groups in working environments. Those conventions include the elimination of all forms of forced and compulsory labour, the elimination of discrimination, freedom of association, and the right to collective bargaining.²⁵ As Denmark's legal system is not characterised by the direct incorporation of international treaties into its domestic legislation, Denmark goes through the process of ensuring that its national law embodies the principles and rules of those conventions. This process allows Denmark to actually adapt the international standards to their specific national, social, and cultural context which allows them to provide more effective protection for employers including the seasonal and temporary workers.

24 International Labour Organization (ILO), 'Country Profile: Denmark' https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102609 accessed 14 February 2025

25 International Labour Organization (ILO), *The International Labour Organization's Fundamental Conventions* (2nd impression, ILO 2003) ISBN 92-2-112761-3

● EU Directive

Not only within the framework of the ILO, but Denmark also has to keep the standards and rules of the European Union as a member state. While Denmark has the opt-outs in Justice and Home Affairs, Directive 2008/104 on Temporary Agency Work is binding on Denmark. As EU directive does not have a direct effect on the member states, but the choice is left to the member states to transpose it to their domestic law, it is less authoritative. Denmark incorporated Directive 2008/104 by making adjustments to its existing national law.

Due to Denmark's history of Edinburgh Agreement, they have the choice to opt out to EU directives. Indeed, there are some directives that Denmark has not ratified and regarding ILO conventions, there are some significant conventions such as Convention No. 181 – Private Employment Agencies Convention, 1997 and No. 96 – Fee-Charging Employment Agencies Convention Revised, 1949 Denmark has not ratified. However, this does not imply that Denmark lacks interest in safeguarding the rights of seasonal and informal workers, as the country maintains a robust and comprehensive labour legal framework.

Denmark's domestic law

Legislations

Law No. 595 of 2013, titled 'Act on the legal status of temporary workers when sent by a temporary employment agency, etc'²⁶, is the Danish domestic legislation that incorporated EU Directive 2008/104/EC on Temporary Agency Work. The Act ensures that the posted temporary workers have equal working conditions – such as working hours, breaks, holidays, and pay – to those who are directly employed by the user company to perform the same work.²⁷ This underscores Denmark's commitment to fair labour practices, ensuring that temporary agency workers are not disadvantaged compared to their directly employed counterparts. Moreover, the Working Environment Act emphasizes

26 Act on the Legal Status of Agency Workers when Posted by a Temporary Work Agency (Lov om vikarers retsstilling ved udsendelse af et vikarbureau m.v.), Lov nr 595 af 12 June 2013

27 Ibid

health and security for employees in Denmark. Although it does not explicitly state the term 'seasonal workers' or 'posted temporary workers', it is implied that the Act applies to all types of employees working in Denmark as the language did not specify any type of employment²⁸. The Act emphasizes the role of the Working Environment Authority (WEA) which supervises and sets guidelines for working environments. The WEA conducts regular inspections across workplaces, ensuring that they comply with the Working Environment Act and employers provide healthy and safe working environments²⁹. As WEA works under the Ministry of Employment, it has the right to enter any businesses in Denmark and has the authority to penalise workplaces which do not comply with the rules³⁰. It also has various helplines to support foreign workers from third countries and ensure that they have the right to equal treatment to health and security as Danish employees. The amendment of the Working Environment Act in 2018 allowed WEA inspectors to interview employees without the presence of employers.³¹ This encouraged creating a safe space for open discussion to discuss their workplace conditions, especially for the informal and foreign workers afraid of retaliation or threat by their employees. Moreover, under the formal agreement to conduct joint inspections, the WEA collaborates with the Police and the Danish Tax Agency and targets sectors prone to undeclared work and social dumping³², which is a situation where companies employ workers, often foreign or temporary employees, under worse conditions than the local labour conditions. By 2023, a total of 6,793 companies had been inspected, revealing 3,835 violations of the Working Environment Act.³³ WEA found gross violations, where foreign workers work under deplorable conditions. Thus, to strengthen

28 Working Environment Act (Arbejds miljøloven), Consolidated Act No 2062 of 16 November 2021

29 Workplace Denmark, 'The Danish Working Environment Authority's Role and Tasks' (Workplace Denmark) <https://workplacedenmark.dk/health-and-safety/arbejdstilsynets-role-and-tasks> accessed 14 February 2025

30 Danish Working Environment Authority (Arbejdstilsynet), 'Hvilke Former for Tilsyn Findes Der?' (Arbejdstilsynet) <https://at.dk/tilsyn/hvilke-former-for-tilsyn-findes-der/> accessed 14 February 2025

31 Ogletree Deakins, *Amendment Increases the Power of the Danish Working Environment Authority* (25 September 2018) <https://ogletree.com/international-employment-update/articles/october-2018/denmark/2018-09-25/amendment-increases-the-power-of-the-danish-working-environment-authority/> accessed 24 February 2025

32 European Labour Authority, *Factsheet on Undeclared Work - Denmark* (March 2023) 10 <https://www.ela.europa.eu/en/tackling-undeclared-work> accessed 24 February 2025

33 Ibid 11

workplace safety and tackle social dumping, WEA has allocated 452.4 million (DKK) for 2023-2026 to enhance working environment initiatives and research³⁴.

● The Danish Model

The Danish labour market is often referred to as the “Danish Model”. The elements of the Danish model include strong tradition of collective agreement and social dialogue, and the “flexicurity” system. Denmark has a strong tradition of collective bargaining and social dialogue. In other words, working environments in Denmark are often shaped and regulated by collective agreements between the organisations of employers and trade unions rather than legislations imposed by the government. This ensures fair treatment and protection for all workers, demanding their actual needs and protections. Collective agreements play a crucial role in employment as it sets wages, working hours, and other employment conditions. As mentioned above, companies and business operating in Denmark must comply with the Danish Acts on temporary workers and working environment, which also aligns with the EU Directives. Thus, foreign workers, including seasonal and temporary workers employed in companies with collective agreements, receive fair treatment and the same protections and benefits as Danish workers³⁵. Regarding the flexicurity system, the term “flexicurity” combines flexibility and security, meaning that the Danish model underscores flexibility for employers and security for employees³⁶. The flexicurity model is a combination of flexible labour market regulations based on collective agreements between social partners³⁷ and income support during unemployment and active labour policies to promote job mobility. The flexibility in the Danish labour market facilitates employers to hire temporary workers without overly restrictive rules or regulations while ensuring fair treatment and secure working environments. This can result more employment opportunities to seasonal workers and temporary workers

34 Arbejdstilsynet, Agreement on Working Environment Efforts 2023 (2023) <https://at.dk/en/about-us/about-arbejdstilsynet/agreement-2023/> accessed 24 February 2025

35 Confederation of Danish Employers (DA), Danish Trade Union Confederation (FH), and Ministry of Employment, *The Labour Market in Denmark* (October 2021) <https://bm.dk/the-ministry-of-employment/the-danish-labour-market> accessed 14 February 2025

36 Ibid 16

37 Ibid 16

as employers can adapt working hours and job roles to meet seasonal project needs based on collective agreements with the trade unions. The flexibility also supports industries like agriculture and hospitality which often rely on seasonal and temporary labour forces. The inclusive approach of the Danish model thus ensures that all workers, regardless of their employment duration or origin, benefit from the flexible and secure working circumstances that are inherent in the labour market.

● Others

Denmark's Active Labour Market Policies (ALMP) are a set of programs that helps maintain a well-functioning labour by supporting unemployed people to find work and provide services for employers who are seeking labour³⁸. Municipalities have the flexibility to create and implement ALMPs that are suited to the needs of local labour markets, including seasonal or temporary workers. ALMP offers various services to workers, such as job training and education programs that help workers enhance their skills and find stable employment. As long as seasonal and temporary workers meet the eligible qualifications – such as registration with job centres – they can have access to these services. Moreover, the Employment Council monitors trends in foreign labour and international recruitment frameworks, which may indirectly affect migrant workers³⁹. Moreover, the Danish Agency for Labour Market and Recruitment (STAR) assist businesses with recruitment efforts, including international hiring, to address labour shortages in various sectors⁴⁰. STAR's role in facilitating recruitment of foreign labour impacts seasonal and migrant workers. Once the foreign labour is recruited, the agency ensures that the workers are integrated into the Danish labour market under fair legal conditions⁴¹.

38 Danish Agency for Labour Market and Recruitment (STAR), 'Active Labour Market Policy Measures' (STAR) <https://star.dk/en/active-labour-market-policy-measures> accessed 14 February 2025

39 Anne Lauringson and Marius Lüske, 'Institutional Set-up of Active Labour Market Policy Provision in OECD and EU Countries: Organisational Set-up, Regulation and Capacity' (OECD Social, Employment and Migration Working Papers No 262, OECD Publishing 2021) <https://doi.org/10.1787/9f2cbaa5-en> accessed 14 February 2025

40 Danish Agency for Labour Market and Recruitment (STAR), 'About the Danish Agency for Labour Market and Recruitment' (STAR) <https://star.dk/en/about-the-danish-agency-for-labour-market-and-recruitment> accessed 14 February 2025

41 Ibid

● Comparison to Serbia

Serbia is also a member state of the ILO. In fact, Serbia has ratified more conventions and protocols than Denmark. However, seasonal and informal workers in Serbia are more exposed to the risk of exploitation and lack of protection and equal treatment. The significant difference between Denmark and Serbia is in how international treaties or regulations are incorporated into domestic law. While Denmark indirectly incorporates international law into their national law, Serbia's legal system is characterised by direct incorporation. According to Article 16 of the Serbian Constitution, "ratified international treaties shall be an integral part of the legal system of Republic of Serbia and directly applicable."⁴² As long as the ratified international treaties do not violate the Constitution, they are automatically enforceable without further examination. This shows a clear difference from Denmark, where the international treaties are incorporated into the domestic law with thorough examination and scrutiny by going over whether the treaties can harmonise with the existing domestic law, and if not, by amending them. This legislative shortcoming of Serbia has further marginalised informal and seasonal workers, excluding them from fundamental social protections. Furthermore, the Serbian government took a passive approach on the implementation of the EU Directive on Adequate Minimum Wages as part of the EU accession process.⁴³ Despite adopting an action plan in 2020, the government has neither taken an active role in initiating the reform of the legislature nor prioritised labour rights improvements.

However, the superior working conditions for seasonal and temporary workers in Denmark are not solely due to how Serbia incorporates international labour standards. The core issue is the lack of economic stability, strong institutions, union influence, and a deeply ingrained culture of social welfare and dialogue. In Serbia, despite the direct incorporation of international labour standards, weak enforcement, economic challenges, and high informality prevent these standards from

42 Sanja Djajić, 'Serbia' in Dinah Shelton (ed), *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion* (OUP 2011, online edn, 19 January 2012) <https://doi.org/10.1093/acprof:oso/9780199694907.003.0022> accessed 14 February 2025

43 Center for Democracy Foundation, *National Report on Development of Collective Bargaining in Serbia* (October 2024) <http://www.centaronline.org/en/publication/1947/national-reports-on-collective-bargaining-in-serbia-ceecaw> accessed 14 February 2025

being effectively implemented, leading to poorer working conditions for vulnerable workers. The National Report on the Development of Collective Bargaining in Serbia⁴⁴ examined the state of collective bargaining and industrial relations in Serbia. The report focuses on the precarious condition of the Serbian labour market, characterised by high levels of informal and vulnerable employment. The lack of social dialogue and the limited effectiveness of the Socio-Economic Council due to the displacement of trade unions and employer associations by lobbying groups and chambers of commerce weakens the labour policies which could protect vulnerable workers. Even the existing trade unions and employers' association are not obligated to register the agreements between workers and employers with a public authority.⁴⁵ This lack of transparency and organization hampers the effectiveness of social dialogue and the implementation of collective bargaining. Moreover, unlike Denmark, Serbia tends to have a high exclusion rate of informal and non-standard workers from collective bargaining rights. Serbian labour legislation restricts union representation to those with formal employment contracts, which deprives the non-standard workers' right to negotiate better working conditions collectively and renders them more susceptible to labour exploitation and abuse.

● **Conclusion – Policy Recommendations for Strengthening the Legal and Social Protection Framework for Informal and Seasonal Workers in Serbia**

The precarious working conditions of informal and seasonal workers in Serbia lie in systematic issues of legal and institutional frameworks. Comparative analysis with Denmark indicates the importance of robust institutional frameworks, including collective bargaining and social dialogue, in securing fair labour standards. Hence, it is necessary to underscore the need for comprehensive reform tailored to Serbia's socio-economic context and enhancing the protection of these workers.

44 Ibid

45 Ibid

Extension of Collective Bargaining Rights

When the Serbian government formally acknowledges the existence and contributions of informal workers, it will mark a pivotal shift towards inclusivity within labour policies and social security frameworks. This recognition would pave the way for extending legal protections, access to social benefits, and formulating policies aimed at gradually integrating informal work into the formal economy. The government should encourage the formation of sector-specific trade unions tailored to informal and seasonal workers, particularly in agriculture, construction, and service sectors such as retail and hospitality. Moreover, the government will have to facilitate the registration of informal worker organisations in public authorities and ensure their recognition in social dialogue forums.

The recognition of the informal economy and union representation will directly impact informal and seasonal workers by enhancing their socio-economic security and reducing their vulnerability to exploitation. Inclusion in labour policies can lead to the establishment of minimum wage standards, occupational health and safety regulations, and protections against arbitrary dismissal, all of which have been traditionally inaccessible to informal workers in Serbia. Additionally, organizing and joining trade unions will empower the vulnerable workers themselves, acknowledging their legal and social rights through participating in active social dialogues and amplifying their collective voice.

Strengthening Enforcement and Inspection Mechanisms

As seen in Denmark's case, organisations like the WEA which conducts systematic inspections across various workplace sectors, play a significant role in safeguarding non-standard workers' rights. On the other hand, Serbia's Labour Inspectorate is underfunded and understaffed, with fewer than 250 inspectors responsible for monitoring⁴⁶ labour standards – whether they are appropriately taking place or not. Moreover,

46 Ljubinka Kovačević, 'Legal Position of Seasonal Workers in the Republic of Serbia' (2021) 4 *Revue de droit comparé du travail et de la sécurité sociale* 244 <https://doi.org/10.4000/rdctss.2776> accessed 14 February 2025.

workers are hesitant to report violations due to fear of retaliation and Serbia lacks a whistleblower protection mechanism specifically for the informal and seasonal workers.⁴⁷ Thus, Serbia should increase funding and staffing for the Labor Inspectorate to ensure adequate supervision across workplace that involves informal and seasonal jobs. Regarding rural and remote areas, where many agricultural and construction sites are located in, the government could support mobile labour inspection units and expand the whistleblower protection system to include informal and seasonal workers so that they could work in a safe space without the fear of retaliation.

Promotion of Social Dialogue and Public Awareness

A culture of social dialogue as exemplified by Denmark can enhance labour market stability and ensure that the rights and interests of all workers are upheld. Serbia could revitalise the Socio-Economic Council⁴⁸, by ensuring equal representation of unions including those that represent informal and seasonal workers and establish a dedicated working group that particularly focuses on the challenges these workers face. The group should facilitate active social dialogue between government entities, employer associations and non-standard worker representatives in order to create or reinforce policies that ensure that the concerns of these workers are prioritised in the broader social dialogue framework. Moreover, various organisations such as the Ministry of Labour, trade unions, and NGOs can cooperate to launch public awareness campaigns regarding the labour exploitation risks that the informal and seasonal workers face and raising awareness of their legal rights and available social protection mechanisms.

47 In Serbia, the Law on Protection of Whistleblowers (Official Gazette RS, No. 128/2014) provides general whistleblower protection, however the general law covers employees in the formal sector while informal workers may not be fully covered under this law due to their ambiguous employment status.

48 Center for Democracy Foundation (n 23).

Country Example – Portugal

In 2017, the European Labour Authority estimated informal work, or undeclared work, in Portugal to be around 27% of all labour nationwide. Further, the country's Labour Code falters in its protection of informal workers, unaided by its lack of clear definition for informal work.⁴⁹

Portugal, signatory to the International Covenant of Economic, Social and Cultural Rights (CESCR), was in 2021 requested to provide evidence to the OHCHR of integration of informal workers into the formal economy.⁵⁰ In response in 2023, the nation outlined amendments to its Labour Code, specifically Law nº 100/2019 of 6th September. This approved the Estatuto do Cuidador Informal (Statute of the Informal Caregiver), which regulates the rights and duties of the informal caregiver and the cared person.⁵¹

Notwithstanding the pandemic, the burden of dependency for a close relative with declining health is an immutable phenomenon, concerning many people. Full-time caregiver duties often signal an end to paid, secure employment elsewhere – either by decision of the worker or by pressure from the employer.⁵² Informal caregivers are a significant case, with their vulnerability exposed by an absence of contract, an inherent financial instability, and an interruption of their career progression.

The Statute seeks to restore dignity to these workers suffering situational exploitation through protection from the state. Crucially, the measures offer two solutions: promising financial security through social

49 ACT and others, "Factsheet on Undeclared Work - PORTUGAL" (2016) https://www.ela.europa.eu/sites/default/files/2024-02/PT_UDW_Factsheet_2017-Portugal.pdf.

50 Committee on Economic, Social and Cultural Rights, "List of Issues in Relation to the Fifth Periodic Report of Portugal" (2021) report <https://undocs.org/E/C.12/PRT/Q/5>.

51 Da República D, "Lei n.º 100/2019" (*DR*, September 6, 2019) <https://diariodarepublica.pt/dr/detalhe/lei/100-2019-124500714>.

52 Ikeda S and The Japan Institute for Labour Policy and Training, "Family Care Leave and Job Quitting Due to Caregiving: Focus on the Need for Long-Term Leave" (2017) https://www.jil.go.jp/english/JLR/documents/2017/JLR53_ikeda.pdf.

benefits and establishing support measures for industry reintegration post-caregiving. Attention will be given to the second, more pragmatic set of support measures, to understand their applicability to similarly defend Serbian informal workers' employment and career. Although not a direct solution, facilitated reintegration into the workforce post-caregiving is an imperative safeguard, and can serve to mitigate the consequences of labour exploitation.

To note the financial security, beyond monthly social security payments, eligibility extends to Social Integration Income (RSI) benefit and entitlement to the informal caregiver support allowance, subject to a means test. Equally, they may enroll in the Voluntary Social Insurance scheme for additional support. If a principal caregiver ceases their professional activity, they can register for social security for continued coverage during the agreed caregiving period, while being registered as unemployed to receive these benefits. This support is crucial in the absence of salary and with the need to support the dependent.

Beyond all social benefit remuneration, caregivers who have provided care for at least 25 months are classified as long-term unemployed under Portuguese law, granting them access to specific hiring incentives for employers (Article 21).⁵³ Employers who hire these caregivers within six months after caregiving ends may be eligible for exemptions from social security contributions, provided the caregiver is hired on a permanent contract. Conditions for these reintegration benefits include registration with an employment centre after the caregiving period, and a record of effective caregiving. Time limits and age conditions for certain unemployment benefits are waived for registered caregivers, facilitating their transition back into formal employment.⁵⁴

A relevant study of dementia caregivers at the University of Lisbon in 2023, noted that the workers were disenfranchised with the Statute's effectiveness, citing the application process to receive reintegration

53 Micaela DMRFC, "Cuidadores de Pessoas Com Demência: O Contributo Do Estatuto Do Cuidador Informal - ProQuest" <https://www.proquest.com/docview/2700777516?%20Theses&fromopenview=true&pq-origsite=gscholar&sourcetype=Dissertations%20, 25>.

54 Da Silva Neves Dos Santos Almeida H and Da Silva MDM, "Estatuto Do Cuidador Informal, Percepções Sobre Os Direitos Do Cuidador Informal" (*Estudo Geral*, June 24, 2021) <https://estudogeral.uc.pt/handle/10316/95102>, 34-35.

benefits as bureaucratic and time-consuming, mainly referring to the extensive documentation involved.⁵⁵ Often, potential beneficiaries of this support measure have employed the help of a 3rd party, such as a lawyer or accountant, to evade bureaucratic obstacles. In certain cases, they were completely deterred and did not pursue the application.⁵⁶ Difficulties in securing the financial backing from social security in this early stage, does not bode well for success in effective assistance from the reintegration benefits later down the line.

Another significant drawback of the Statute is its lack of explicit protection of informal caregivers who are involuntarily dismissed. The OHCHR have highlighted in their 73rd Session, 16-17th February 2023, that significant legislative legwork remains to be done in Portugal to propose a more universal integration of varying informal workers across the economy.⁵⁷

To conclude, although the purported positive outcomes of industry reintegration may help curb the consequences of informal labour exploitation, the laws which reflect this ambition fall short in practice. The enforcement of this safeguard would necessitate the modernisation of available technology to streamline the application system and the encouragement for potential beneficiaries to utilise the support once offered. Alternatively, a wider recognition of informal workers should be pursued, starting with universal definition of undeclared work in the legal framework.

55 Micaela DMRFC, "Cuidadores de Pessoas Com Demência: O Contributo Do Estatuto Do Cuidador Informal - ProQuest" <https://www.proquest.com/docview/2700777516?%20Theses&fromopenview=true&pq-origsite=gscholar&sourcetype=Dissertations%20,V> (Resumo).

56 Micaela DMRFC, "Cuidadores de Pessoas Com Demência: O Contributo Do Estatuto Do Cuidador Informal - ProQuest" <https://www.proquest.com/docview/2700777516?%20Theses&fromopenview=true&pq-origsite=gscholar&sourcetype=Dissertations%20,V>.

57 Committee on Economic, Social and Cultural Rights. (2023). Concluding observations on the fifth periodic report of Portugal. In *United Nations: Vol. GE.23-04645* (Report E/C.12/PRT/CO/5; p. 2).

Country Example – New Zealand

With 9.7% of Public Service employees on fixed-term contracts in 2021⁵⁸ and an increase of the cap on the number of annual seasonal workers under the Recognised Seasonal Employer (RSE) Visa Limited scheme to 20,750 in 2024/25⁵⁹ to 'help meet industry projections for growth, particularly in wine and kiwifruit exports, and related plans to expand their operations,'⁶⁰ a large amount of workers in New Zealand are in temporary or seasonal employment. Unsurprisingly, domestic employment law long reflects this trend by heavily regulating any type of fixed term employment and thus under New Zealand law temporary and seasonal employees largely enjoy the same rights and protections as permanent employees.

● The Law & Policies Governing Fixed-Term Employment

New Zealand is a common law legal system based, therefore, both on statutes and on case law. Section 66 of the Employment Relations Act 2000⁶¹ provides the legal basis for a fixed-term employment ending 'at the close of a specified date or period,'⁶² 'on the occurrence of a specified event'⁶³ or 'at the conclusion of a specified project'⁶⁴ if there exists 'genuine reason based on reasonable grounds for specifying that the em-

58 Te Kawa Mataaho Public Service Commission, 'Workforce Data – Conditions of Employment 2021' <https://www.publicservice.govt.nz/research-and-data/public-service-workforce-data-2021/workforce-data-working-in-the-public-service-2021/workforce-data-conditions-of-employment-2021> accessed 01 January 2025.

59 New Zealand Immigration, 'Recognised Seasonal Employer Limited Visa' <https://www.immigration.govt.nz/new-zealand-visas/visas/visa/recognised-seasonal-employer-limited-visa> accessed 01 January 2025.

60 New Zealand Immigration, 'News Centre – Announcements' <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/improvements-for-recognised-seasonal-employers-scheme-announced#:~:text=The%20Government%20has%20also%20announced,a-vailability%20of%20accommodation%20for%20workers>. accessed 01 January 2025.

61 Employment Relations Act 2000, s 66.

62 Employment Relations Act 2000, s 66(a).

63 Employment Relations Act 2000, s 66(b).

64 Employment Relations Act 2000, s 66(c).

ployment of the employee is to end in that way⁶⁵ and provided that the employee has been informed in writing⁶⁶ of the time and way of their employment ending and the reasons thereof.⁶⁷ Fixed-term employment explicitly cannot be justified 'to exclude or limit the rights of the employee under this Act,'⁶⁸ to establish the suitability of the employee for permanent employment⁶⁹ or to circumvent holiday entitlements owed to an employee⁷⁰ under the Holidays Act 2003.⁷¹ Jobs in compliance with these regulations commonly exist in the viticulture, silviculture, horticulture, fishing, hospitality and tourism industries due to their dependency on seasons and highly irregular demand throughout the year.⁷² An employer's failure to comply with any of these provisions will result in the employee being able to treat the fixed-term as ineffective and operate as if the employment was permanent⁷³ and consequently requiring an ordinary justification for a dismissal. Accordingly, Section 66⁷⁴ expressly prohibits the use of fixed-term employment for the exclusion or limitation of workers' rights and protections and provides for a significant safeguard against abuse.

The principle of equal treatment is embedded in various key legislations such as the Minimum Wage Act 1983,⁷⁵ the Holidays Act 2003,⁷⁶ the Immigration Act 2009⁷⁷ or the Health and Safety at Work Act 2015⁷⁸ also apply to all workers and employees⁷⁹ and often explicitly state casual and fixed-term employees enjoy the same rights and protections and are not disadvantaged due to the temporary or seasonal nature of their employment.⁸⁰

65 Employment Relations Act 2000, s 66(2)(a).

66 Employment Relations Act 2000, s 66(4).

67 Employment Relations Act 2000, s 66(2)(b).

68 Employment Relations Act 2000, s 66(3)(a).

69 Employment Relations Act 2000, s 66(3)(b).

70 Employment Relations Act 2000, s 66(3)(c).

71 Holidays Act 2003.

72 PickNZ, "Home - PickNZ" (PickNZ, February 6, 2023) <https://www.picknz.co.nz/#:~:text=If%20you%20want%20to%20take,see%20if%20you%27re%20eligible>.

73 Employment Relations Act 2000, s 66(5-6).

74 Employment Relations Act 2000, s 66.

75 Minimum Wage Act 1983.

76 Holidays Act 2003.

77 Immigration Act 2009.

78 Health and Safety at Work Act 2015.

79 Holidays Act 2003, s 5; Immigration Act 2009, s 4; Health and Safety at Work Act 2015, s 16.

80 Immigration Act 2009, s 351; Holidays Act 2003, s 28.

Broadly speaking then this means that every employee in New Zealand, namely 'any person of any age employed by an employer to do any work for hire or reward under a contract of service'⁸¹ as per Section 6 of the Employment Relations Act 2000,⁸² enjoys the same rights and protections regardless of whether the employment agreement is permanent or temporary. These rights and guarantees are based on the key principles of good faith, fair process and mediation⁸³ and include minimum employment standards such as minimum wage,⁸⁴ written employment agreements, rest and meal breaks as well as holidays and leave,⁸⁵ the equal pay for equal work,⁸⁶ protection from harassment and discrimination based on *inter alia* race, gender, nationality or employment status,⁸⁷ equality, conditions of a safe workplace including necessary training, safety equipment and a hazard-free environment,⁸⁸ protection against unjustified dismissal, rights of collective bargaining and union membership,⁸⁹ parental leave⁹⁰ as well as recourse for disputes.⁹¹ The rights of migrant workers, including those on temporary visas such as the RSE scheme, are the same as those of New Zealand citizens and residents⁹² and employers must comply with the specific terms of the worker's visa and ensure fair treatment under the Immigration Act 2009.⁹³ Migrant workers facing exploitation may access support and protections against unfair practices under the Immigration (Visa, Refugee, and Protection) Amendment Act 2019.⁹⁴

Furthermore, New Zealand is also a signatory to various International Labour Organisation (ILO) conventions, such as the ILO Forced Labour Convention (C029)⁹⁵ and the ILO Equality of Treatment Convention

81 Employment Relations Act 2000, s 6(1)(a).

82 Employment Relations Act 2000, s 6.

83 Employment Relations Act 2000.

84 Employment Relations Act 2000; Minimum Wage Act 1983.

85 Employment Relations Act 2000; Holidays Act 2003.

86 Equal Pay Act 1972.

87 Human Rights Act 1993; Employment Relations Act 2000.

88 Health and Safety at Work Act 2015.

89 Employment Relations Act 2000.

90 Parental Leave and Employment Protection Act 1987.

91 Employment Relations Act 2000.

92 Employment Relations Act 2000; Human Rights Act 1993.

93 Immigration Act 2009.

94 Immigration (Visa, Refugee, and Protection) Amendment Act 2019.

95 International Labour Organisation Forced Labour Convention (C029).

(C097),⁹⁶ which significantly influence domestic laws on worker protection and equal treatment.

Being a common law jurisdiction, some weight must be given to judicial precedent which further affirms that seasonal and temporary workers enjoy the same rights, protections and minimum standards as those in permanent employment and that no worker is unfairly disadvantaged due to the nature or duration of their employment.⁹⁷

● **The Rights and Protections of Fixed-Term Employees in Practice**

While the legal framework in New Zealand guarantees all fundamental workers' rights and provides for robust protections for fixed-term employees some problems remain in practice regarding enforcement and compliance.

In response to this the Labour Inspectorate is the regulatory body established for enforcing and monitoring the compliance with minimum employment standards and their inspectors enjoy broad powers of investigation and implementation.⁹⁸ Though there is a strong initial focus on mediation between the parties,⁹⁹ the Employment Relations Authority enjoys exclusive jurisdiction to hear any claim concerning employment relationships and disputes.¹⁰⁰ Furthermore, the Human Rights Commission handles complaints of workplace discrimination¹⁰¹ and WorkSafe New Zealand enforces health and safety standards at workplaces.¹⁰²

Legal challenges arise especially regarding the criteria under Section 66(2) of the Employment Relations Act 2000 that there must be 'genuine

96 International Labour Organisation Equality of Treatment Convention (C097).

97 *Labour Inspector v Matangi* [2020] NZEmpC 43; *Idea Services Ltd v Dixon* [2012] NZCA 14.

98 CIPD HR-inform, 'Employment Law in New Zealand' <https://www.hr-inform.co.uk/employment-law/employment-law-in-new-zealand> accessed 01 January 2025.

99 Employment Relations Act 2000.

100 CIPD HR-inform, 'Employment Law in New Zealand' <https://www.hr-inform.co.uk/employment-law/employment-law-in-new-zealand> accessed 01 January 2025; Employment Relations Act 2000.

101 Te Kahui Tika Tangata Human Rights Commission, 'Making A Complaint' <https://tikatangata.org.nz/resources-and-support/make-a-complaint> accessed 01 January 2025.

102 WORKSAFE Mahi Haumaru Aotearoa, 'Who We Are' <https://www.worksafe.govt.nz/about-us/who-we-are/> accessed 01 January 2025.

reasons¹⁰³ which justify fixed-term opposed to permanent employment. In *Kwik Kiwi Cars Ltd T/A Mark Cromie Motor Group V Kerry Crossley* the Employment Court unequivocally stated that an employer's sincere belief that circumstances warrant a fixed-term agreement does not automatically translate into the required genuine reason but that for the criteria to be satisfied the reasons must be objectively genuine.¹⁰⁴ The Court's ruling also affirmed that fixed-term employment for the purposes of future staffing requirements and anticipated role duplication falls under the Section 66(3) prohibition of using fixed-term employment to assess the employee's suitability for permanent employment.¹⁰⁵

● **Some Issues, Criticisms & Reflections in Respect of Fixed-Term Employment**

Though generally New Zealand's laws and policies guarantee seasonal and temporary workers the same rights as permanent workers and largely provide comprehensive and accessible information and support for employees¹⁰⁶ thus being very progressive compared to many other States, some issues must nevertheless be highlighted.

Some entitlements such as paid holiday or parental leave and sick pay are, though irrespective of the type of employment nevertheless dependent on the length of the employment to date¹⁰⁷ and thus seasonal and temporary workers often never reach the length of employment required. In these cases the annual entitlement is commonly paid out rather than taken as leave¹⁰⁸ such as for instance in the case of 'pay-as-

¹⁰³ Employment Relations Act 2000, s 66(2).

¹⁰⁴ *Kwik Kiwi Cars Ltd T/A Mark Cromie Motor Group V Kerry Crossley* [2020] NZEMPC 142.

¹⁰⁵ *Kwik Kiwi Cars Ltd T/A Mark Cromie Motor Group V Kerry Crossley* [2020] NZEMPC 142; Ford Sumner Lawyers, 'Legal Updates – Employment Court Clarifies Criteria for Fixed Term Employment Agreements' <https://www.fsl.nz/insights/legal-updates/employment-court-clarifies-criteria-for-fixed-term-employment-agreements.html> accessed 01 January 2025.

¹⁰⁶ Employment New Zealand, 'Permanent or Fixed-Term' <https://www.employment.govt.nz/starting-employment/types-of-worker/permanent-or-fixed-term> accessed 01 January 2025; New Zealand Ministry of Business, Innovation & Employment, 'Recognised Seasonal Employer (RSE) Policy -Employment Fact Sheet' <https://webapps.ilo.org/dyn/migpractice/docs/120/Factsheet.pdf> accessed 01 January 2025.

¹⁰⁷ Holidays Act 2003; Parental Leave and Employment Protection Act 1987.

¹⁰⁸ Employment New Zealand, 'Permanent or Fixed-Term' <https://www.employment.govt.nz/starting-employment/types-of-worker/permanent-or-fixed-term> accessed 01 January 2025.

you-go' annual holiday payments.¹⁰⁹ Ultimately however a worker going from one temporary or seasonal employment to the next will likely still be at disadvantage compared with a worker who has worked the same amount in permanent employment. This is not least due to the uncertainty and stress often related to ensuring one receives all benefits in every employment.

A common risk is also that temporary and seasonal employments, which by law ought to be consistent with the entitlements, rights and protections of permanent employment, are mistaken for and confused with those of casual employment types taking place on an *ad hoc* basis.¹¹⁰ Thus casual employment contracts must never be used as fixed-term agreements.

Despite New Zealand's elaborate legal framework providing for strong protection and rights guarantee for temporary and seasonal workers, challenges remain particularly for migrant workers under the RSE scheme. Reports of exploitation, underpayment, poor living conditions and abuse¹¹¹ and claims of 'modern day slavery'¹¹² due to unreasonable pay deductions, denial of personal and cultural freedoms, poor access to healthcare, grossly inadequate housing and discrimination¹¹³ highlight the need for enhanced monitoring and enforcement by the Labour Inspectorate, simplified complaint mechanisms for vulnerable workers and better education about workers' rights. Indeed a review by the State's Public Service Commission¹¹⁴ found that the RSE visa scheme had been hastily and poorly planned thus leaving multiple gaps allow-

109 Holidays Act 2003, s 28; Employment New Zealand, 'Pay-As-You-Go' Annual Holiday Payments' <https://www.employment.govt.nz/pay-and-hours/pay-and-wages/leave-and-holiday-pay/pay-as-you-go-annual-holiday-payments> accessed 01 January 2025.

110 Employment New Zealand, 'Permanent or Fixed-Term' <https://www.employment.govt.nz/starting-employment/types-of-worker/permanent-or-fixed-term> accessed 01 January 2025; Peninsula employmentsure, 'Seasonal Employees and Agreements' <https://employmentsure.co.nz/guides/employment-contracts-legislation/seasonal-employees-agreements> accessed 01 January 2025.

111 Caritas Aotearoa New Zealand, 'Migrant Exploitation in New Zealand' https://www.caritas.org.nz/advocacy/migrant-exploitation-nz?utm_source=chatgpt.com accessed 01 January 2025.

112 RNZ, 'RSE Worker Treatment Like 'Slavery'; Says Equal Employment Opportunities Commissioner' https://www.rnz.co.nz/news/national/480556/rse-worker-treatment-like-slavery-says-equal-employment-opportunities-commissioner?utm_source=chatgpt.com accessed 01 January 2025.

113 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ Human Rights, December 2022).

114 New Zealand Public Service Commission, 'Review Into Administration of Work Force Visa Scheme Released' <https://www.publicservice.govt.nz/news/review-into-administration-of-work-for-visa-scheme-released> accessed 01 January 2025.

ing for the mistreatment and exploitation of workers employed through the visa.¹¹⁵ In its 2022 report¹¹⁶ the New Zealand Human Rights Commission identified various risks for human rights violations under the RSE visa scheme with one of the most significant one being that the worker's visa is always tied to one specified employment thereby prohibiting workers to change employment without their employers permission.¹¹⁷ Contrary to ILO principles and guidelines¹¹⁸ this creates fear, uncertainty and unreasonable power imbalances and constitutes an obstacle to access to justice and other essential services. Further significant human rights implications were identified in relation to *inter alia* deductions from wages,¹¹⁹ the early return home and the system for repayment of migrant related debt,¹²⁰ restrictions on personal freedoms,¹²¹ adequate accommodation and rent,¹²² restrictions on kava (plant native to New Zealand),¹²³ union membership, barriers in access to health services and justice.¹²⁴ Accordingly, the Human Rights Commission urged the Government 'to urgently review the RSE Scheme and implement human rights-based changes'¹²⁵ and advocates for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹²⁶ as well as relevant ILO in-

115 New Zealand Public Service Commission, 'Review Into Administration of Work Force Visa Scheme Released' <https://www.publicservice.govt.nz/news/review-into-administration-of-work-force-visa-scheme-released> accessed 01 January 2025.

116 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022).

117 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022) 13 ff.

118 International Labour Organisation, 'General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs' (ILO, 2019) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_703485.pdf Part 1(iii) [12].

119 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022) 14 f.

120 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022) 15 f.

121 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022) 16.

122 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022) 17 f.

123 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022) 18.

124 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022) 19.

125 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (NZ *Human Rights*, December 2022) [100].

126 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.

struments.¹²⁷ In accordance with the ILO's findings¹²⁸ the Commission recommends the use of standard forms for offers of employment and contracts, ensuring free choice of employment by changing the RSE visa being tied to one specified employer, keeping deductions minimal, transparent and in line with legislation,¹²⁹ the establishment of a clear system for workers wishing to return home early and related debt, the improved enforcement of accommodation standards, ensuring reasonable rent and transport costs, providing pastoral care, ceasing all practices curtailing personal freedoms, improvements to access to healthcare and justice, better information about the right to join trade unions.¹³⁰ It furthermore suggests the inclusion and participation of worker representatives in consultations with industry and union leaders and urges all RSE providers and business to 'take greater responsibility of their workers.'¹³¹

● Takeaways for the Republic of Serbia

New Zealand's robust legal framework provides a good example as it – at least in theory – repeatedly and consistently affords fixed-term employees the same fundamental rights and protections as it does those in permanent employment and actively acknowledges the specific situation of temporary and seasonal workers through initiatives such as 'pay-as-you-go' annual holiday payments.¹³² Remarkable are also the easily accessible information provided by various government author-

127 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (*NZ Human Rights*, December 2022) [101].

128 International Labour Organisation, 'Seasonal Worker Schemes in the Pacific Through the Lens of International Human Rights and Labour Standards – Technical Report' (*ILO*, 2022) <International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families> accessed 01 January 2025.

129 Wages Protection Act 1983; Minimum Wage Act 1983.

130 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (*NZ Human Rights*, December 2022) 20 f.

131 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (*NZ Human Rights*, December 2022) 21.

132 Holidays Act 2003, s 28; Employment New Zealand, 'Pay-As-You-Go' Annual Holiday Payments' <https://www.employment.govt.nz/pay-and-hours/pay-and-wages/leave-and-holiday-pay/pay-as-you-go-annual-holiday-payments> accessed 01 January 2025.

ities¹³³ which consistently highlight the rights and protections owed to fixed-term employees and the fact that there are independent monitoring bodies such as the Labour Inspectorate,¹³⁴ the Employment Relations Authority¹³⁵ or the Human Rights Commission¹³⁶ which monitor implementation and compliance of the relevant laws and policies and hear related claims. Particularly the criteria that fixed-term employment must be justified with 'genuine reasons'¹³⁷ or else the employment is assumed to be permanent¹³⁸ constitutes a notable safeguard against exploitation and the fact that fixed-term employees cannot be unfairly dismissed and then simply compensated but that same laws apply as in respect of temporary employment provides a fundamental guarantee for seasonal and temporary workers. The by the Human Rights Commission identified gaps and shortcomings in respect of seasonal workers under the RSE Scheme¹³⁹ highlight the potential for human rights violations and exploitation in practice and thus particular attention should be paid to their specific recommendations for a human-rights based approach. Similarly conformity with the guidelines, principles and works of the ILO¹⁴⁰ and the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁴¹ should be considered when establishing a farmwork

133 Employment New Zealand, 'Permanent or Fixed-Term' <https://www.employment.govt.nz/starting-employment/types-of-worker/permanent-or-fixed-term> accessed 01 January 2025; New Zealand Ministry of Business, Innovation & Employment, 'Recognised Seasonal Employer (RSE) Policy -Employment Fact Sheet' <https://webapps.ilo.org/dyn/migpractice/docs/120/Factsheet.pdf> accessed 01 January 2025.

134 CIPD HR-inform, 'Employment Law in New Zealand' <https://www.hr-inform.co.uk/employment-law/employment-law-in-new-zealand> accessed 01 January 2025.

135 CIPD HR-inform, 'Employment Law in New Zealand' <https://www.hr-inform.co.uk/employment-law/employment-law-in-new-zealand> accessed 01 January 2025; Employment Relations Act 2000.

136 Te Kahui Tika Tangata Human Rights Commission, 'Making A Complaint' <https://tikatangata.org.nz/resources-and-support/make-a-complaint> accessed 01 January 2025.

137 Employment Relations Act 2000, s 66(2).

138 *Kwik Kiwi Cars Ltd T/A Mark Cromie Motor Group V Kerry Crossley* [2020] NZEMPC 142.

139 New Zealand Human Rights Commission, 'The RSE Scheme in Aotearoa New Zealand: A Human Rights Review' (*NZ Human Rights*, December 2022).

140 International Labour Organisation, 'General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs' (*ILO*, 2019) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_703485.pdf Part 1(iii); International Labour Organisation, 'Seasonal Worker Schemes in the Pacific Through the Lens of International Human Rights and Labour Standards – Technical Report' (*ILO*, 2022) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families accessed 01 January 2025.

141 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.

for the adequate protection of the rights and guarantees in respect of fixed-term employment. Notably however Serbia's policies are already progressive in respect of work permits as it issues these for a fixed time period rather than in relation to a specific employment thus not requiring an employer's permission to end or change employment.

● **Novi Zeland — Zaključak**

Ultimately it can be concluded that New Zealand's laws and policies in respect of fixed-term employment aim at balancing the needs, rights and protections of its temporary and seasonal workforce while promoting equity and fairness. In practice however they still show significant gaps and risks for exploitation and human rights violations especially for seasonal workers employed via the RSE visa scheme. Nevertheless, despite these shortcomings, characteristics such as the robust legal framework, easily accessible information and various monitoring bodies are notable features which Serbia should strengthen and implement within their own scheme.

Conclusion

This paper explored the situation around the rights of seasonal and informal workers in Serbia. By using Denmark, Portugal and New Zealand as case studies the paper explored possibilities to improve the rights of seasonal and informal workers in Serbia. Generally, Serbia should extend collective bargaining rights to informal workers, strengthen workplace inspections, and promote social dialogue. Enhancing whistleblower protections, increasing funding for labour inspections, and public awareness campaigns are critical to ensuring better working conditions for seasonal and informal workers. Keeping in mind regional differences the three case studies showcase how some of these solutions can be implemented and how effective they can be and should be used as a point of departure for Serbia to improve the current legal status of seasonal and informal workers.

