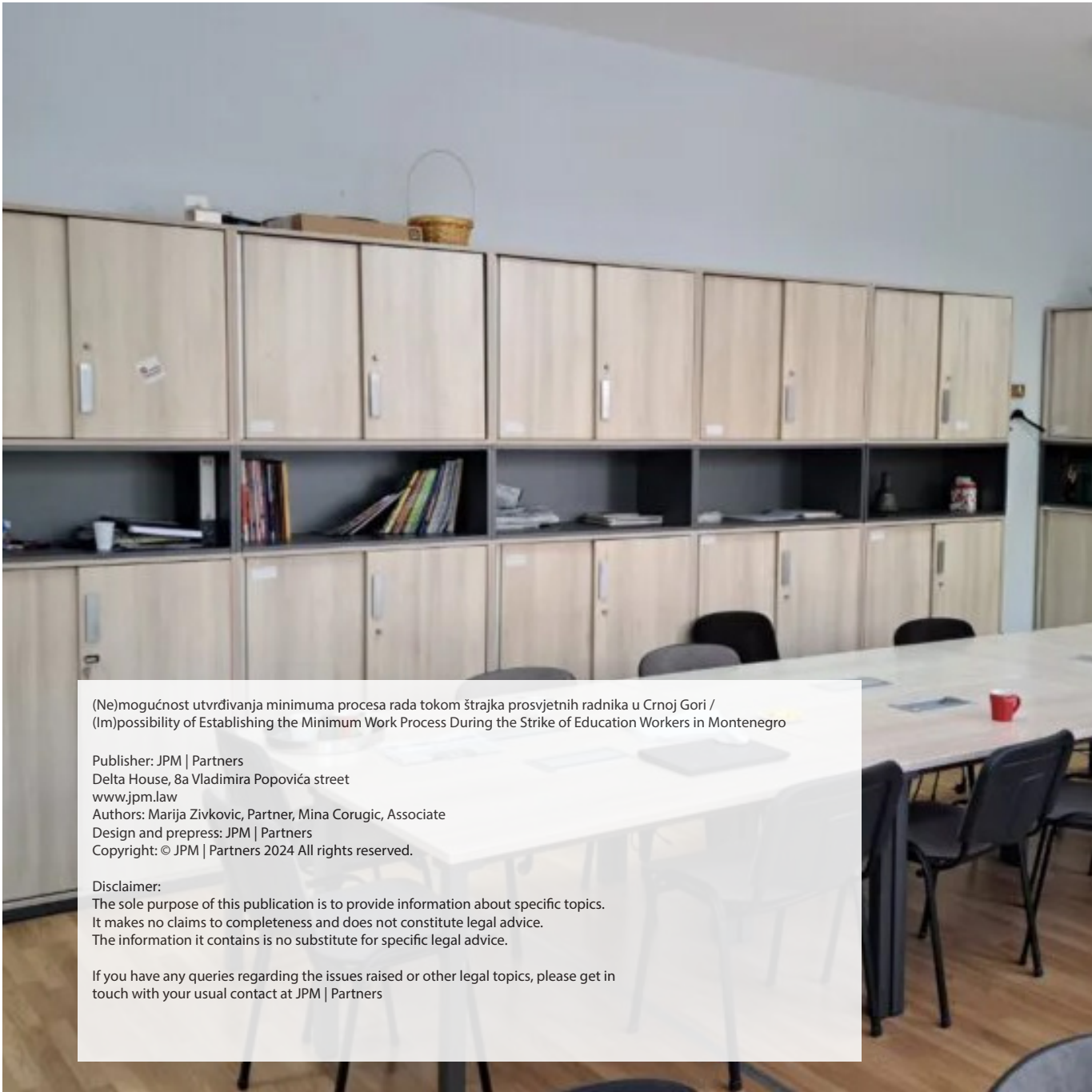




**(Ne)mogućnost utvrđivanja minimuma procesa rada tokom štrajka
prosvjetnih radnika u Crnoj Gori**
**(Im)possibility of Establishing the Minimum Work Process During the
Strike of Education Workers in Montenegro**

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(Im)possibility of Establishing the Minimum Work Process During the Strike of Education Workers in Montenegro

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Ministarstvo prosvjete Crne Gore i Sindikat prosvjete Crne Gore su 30.12.2022. godine zaključili Granski kolektivni ugovor o izmjenama i dopunama Granskog kolektivnog ugovora za oblast prosvjete čija je primjena počela 01.01.2023. godine, a kojim su izmijenjeni koeficijenti složenosti poslova za utvrđivanje zarade za osnovne grupe poslova, kao i uvećanja istih.

Nakon brojnih neuspjelih pregovora sa Ministarstvom prosvjete, nauke i inovacija Sindikat prosvjete je 07.02.2024. godine donio Odluku o stupanju u granski štrajk, dok je uporedo sa tim formirana i Radna grupa za pregovore i razmatranje izmjena i dopuna Granskog kolektivnog ugovora za oblast prosvjete, i pokrenut je postupak pred Agencijom za mirno rješavanje radnih sporova.

Ova situacija je povod da podjelimo svoje viđenje novonastale situacije sa aspekta zakona i međunarodnih konvencija.

On December 30, 2022, the Ministry of Education of Montenegro and the Trade Union of Education of Montenegro concluded the Branch Collective Agreement on Amendments to the Branch Collective Agreement for the Field of Education, which entered into force on January 1, 2023, and which amended the coefficients of job complexity for determining salaries for basic job groups, as well as their increases.

After numerous unsuccessful negotiations with the Ministry of Education, Science, and Innovation, the Trade Union of Education made the Decision to go on a branch strike on February 7, 2024, while at the same time, a Working Group was formed for negotiations and consideration of amendments to the Branch Collective Agreement for the field of education, and proceedings were initiated before the Agency for Peaceful Resolution of Labor Disputes.

This situation is an opportunity to share our view of the newly created situation from the aspect of law and international conventions.

Pravo na štrajk je pravo zagantovano Ustavom i ratifikovanim međunarodnim dokumentima, koje se može ograničiti samo zakonom, pa tako Zakon o štrajku predviđa posebna pravila koja se odnose na štrajk u djelatnostima od javnog interesa, u koje spadaju predškolsko i osnovno obrazovanje, dok se djelatnost pružanja usluga u oblasti srednjeg i visokog obrazovanja smatra djelatnošću od javnog interesa, ukoliko štrajk zbog njegove dužine trajanja i obima ugrožava realizaciju tekuće školske godine. Dakle, zaposleni u tim djelatnostima od javnog interesa (konkretno predškolsko i osnovno obrazovanje, i u određenim slučajevima srednje i visoko obrazovanje) mogu stupiti u štrajk ako se prethodno utvrdi minimum procesa rada.

Zakonom o štrajku koji je na snazi od 2015. godine predviđeno je da će nadležni organ državne uprave i reprezentativni sindikat u roku od 90 dana od dana stupanja na snagu istog sporazumno utvrditi akt o minimumu procesa rada, što nije učinjeno, te se shodno čl. 39 Zakona o štrajku do donošenja akta o utvrđivanju minimuma procesa rada primjenjuju propisi koji su bili na snazi do dana stupanja na snagu tog zakona, a to je Uredba o minimumu procesa rada i načinu njegovog obezbjeđivanja u ustanovama javnog obrazovanja koja je donijeta 2006. godine na osnovu tada važećeg Zakona o štrajku.

Ova uredba na krajnje uopšten način određuje što spada u minimum procesa rada koji treba da bude obezbijeden, pa tako, primjera radi, minimum procesa rada koji se mora obezbijediti u ustanovama osnovnog i srednjeg obrazovanja i vaspitanja obuhvata izvođenje redovne nastave po dnevnom rasporedu časova u skladu sa obrazovnim programom i godišnjim programom rada škole, a nastavnik je dužan da izvodi nastavu, da provjerava znanje učenika, da ocjenjuje i saopštava ocjene učenika, da vodi propisanu evidenciju na času; da učestvuje u radu stručnih organa kada se utvrđuje pojedinačni i opšti uspjeh učenika, da sarađuje sa nadležnim institucijama koje vrše vrednovanje rada, škole, nastavnika i učenika i da obavlja ispite, što i inače spada u redovan rad.

The right to strike is a right guaranteed by the Constitution and ratified international documents, which can be restricted only by law. Thus, the Strike Law prescribes special rules concerning strikes in activities of public interest, which include preschool and primary education, while the activity of providing services in the field of secondary and higher education is considered an activity of public interest if the strike, due to its duration and scope, jeopardizes the realization of the current school year. Therefore, employees in these public interest activities (specifically preschool and primary education, and in certain cases secondary and higher education) can go on strike if the minimum work process is determined in advance.

The Strike Law, which has been in force since 2015, stipulates that the competent state administration body and the representative trade union shall determine the minimum work process by agreement within 90 days from the day of its entry into force, which has not been done. Pursuant to Art. 39 of the Strike Law, until the adoption of the act on determining the minimum work process, the regulations that were in force on the day of entry into force of this law shall apply, which is the Regulation on the minimum work process and the manner of its provision in public education institutions adopted in 2006 based on the Strike Law in force at that time.

This regulation defines in a very general way what is included in the minimum work process that must be provided, so for example, the minimum work process that must be provided in institutions of primary and secondary education includes the performance of regular classes according to the daily class schedule in accordance with the educational program and the annual work program of the school, and the teacher is obliged to teach classes, test students' knowledge, grade and announce students' grades, keep prescribed records in class; to participate in the work of professional bodies when determining the individual and general performance of students, to cooperate with the competent institutions that evaluate the work, school, teachers and students and to take exams, which is also part of the regular work.

Direktor odnosno organ rukovođenja ustanove javnog obrazovanja nadležan je da na bliži način obezbijedi minimum procesa rada, donošenjem posebnog akta, što nije učinjeno.

Kod ovakvog stanja stvari u javnosti, a posebno među roditeljima se, sa pravom, kao najvažnije postavilo pitanje na koji način će se štrajk realizovati, što tačno predstavlja minimum procesa rada i kako će biti obezbijeđen, jer postoji opravdana bojazan da će se štrajk prosvjetnih radnika negativno odraziti na učenike.

Imajući u vidu da akt o minimumu procesa rada nije donijet na zakonom predviđen način, Sindikat prosvjete je direktorima škola uz Odluku o stupanju u štrajk dostavio i Akt o minimumu procesa rada koji je donio Štrajkački odbor.

Ovaj akt, u bitnom, propisuje obaveze nastavnog kadra u ustanovama osnovnog i srednjeg obrazovanja da za vrijeme štrajka obavljaju administrativno-tehničke poslove u vremenu od 8 do 12 časova, dok ne izvode nastavu. Ustanove predškolskog vaspitanja i ustanove u kojima se obavlja vaspitanje i obrazovanje djece sa posebnim obrazovnim potrebama su dužne da od 7 do 14 časova obezbijede prijem, smještaj, boravak, zdravstvenu zaštitu i ishranu djece.

Sa druge strane po informacijama iz medija Ministarstvo prosvjete, nauke i inovacija je od direktora obrazovnih i vaspitnih ustanova zahtijevalo da oni, u skladu sa Uredbom iz 2006. godine donesu akte o bližem načinu obezbjeđivanja minimuma procesa rada. Shodno toj Uredbi pomenutu akti je trebalo da budu donijeti u roku od 30 dana od dana stupanja na snagu Uredbe, što nije učinjeno sve do sada pa se stiče utisak da Ministarstvo na ovaj način pokušava da prebaci odgovornost na vaspitno-obrazovne ustanove.

The director or the governing body of the public education institution is responsible for providing the minimum work process in more detail, by adopting a special act, which has not been done.

In this state of affairs, the public, and parents in particular, have rightly raised the crucial question of how the strike will be conducted, what exactly constitutes the minimum work process and how it will be ensured, because there is a justified fear that the strike of education workers will negatively affect students.

Given that the minimum work process act has not been adopted in the manner prescribed by law, the Trade Union of Education submitted to school principals, along with the Decision on going on strike, an Act on the minimum work process adopted by the Strike Committee.

This act, in essence, prescribes the obligations of teaching staff in primary and secondary education institutions to perform administrative and technical tasks from 8 am to 12 pm during the strike, while not teaching. Preschool institutions and institutions for the education of children with special needs are obliged to provide reception, accommodation, care, health care, and meals for children from 7 am to 2 pm.

On the other hand, according to media reports, the Ministry of Education, Science, and Innovation has demanded that the directors of educational institutions, in accordance with the 2006 Regulation, adopt acts in a more detailed manner of providing the minimum work process. Pursuant to that Regulation, the aforementioned acts should have been adopted within 30 days from the day the Regulation entered into force, which has not been done until now, so there is an impression that the Ministry is trying to shift responsibility to educational institutions in this way.



“
This situation, like many previous in various spheres, demonstrates the importance of timely, adequate, and comprehensive legal regulation of all segments of social life, as well as continuity in the work of institutions, because the opposite prevailing practice, leads to negative consequences for fundamental values, and in this case, it is the upbringing and education of our children.
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Kod ovakvog stanja – nepostojanja sporazumno i zakonito utvrđenog akta kojim je definisan minimum procesa rada u obrazovnim i vaspitnim ustanovama; suštinski sadržajno sporne sadržine Uredbe iz 2006. godine; Ustavom zagaranovanog prava na štrajk i prava na školovanje; jednostranog Akta o minimumu procesa rada koji je donio Štrajkački odbor a koji suštinski u ustanovama osnovnog i srednjeg obrazovanja propisuje obavezu izvršavanja poslova koji nemaju direktnu vezu sa njihovom osnovnom funkcijom već predviđaju obavljanje sporednih, administrativnih poslova, te kod prebacivanja odgovornosti na direktore obrazovnih ustanova došli smo u krajnje apsurdnu situaciju, iz koje je jedini smislen i efikasan izlaz dogovor Sindikata prosvjete i Ministarstva prosvjete, nauke i inovacija, za koji se ne stiče utisak da je sada moguć.

Na samom kraju kao roditelji i profesionalci možemo zaključiti da i ova situacija, kao i niz prethodnih u raznim sferama, pokazuje važnost pravovremenog, adekvatnog i cjelovitog zakonskog uređivanja svih segmenata društvenog života, te kontinuitet u radu institucija jer smo svakodnevno svjedoci da suprotna praksa, koja preovladava dovodi do negativnih posljedica po temeljne vrijednosti, a u ovom slučaju to je vaspitanje i obrazovanje naše djece.

In this state of affairs - the lack of an agreed and legally determined act defining the minimum work process in educational institutions; the substantially controversial content of the 2006 Regulation; the constitutionally guaranteed right to strike and the right to education; the unilateral Act on the minimum work process adopted by the Strike Committee, which essentially prescribes in primary and secondary education institutions the obligation to perform tasks that are not directly related to their basic function, but envisage the performance of ancillary administrative tasks, and with the shifting of responsibility to the directors of educational institutions, we have come to an extremely absurd situation, from which the only meaningful and effective solution is an agreement between the Trade Union of Education and the Ministry of Education, Science and Innovation, for which the impression is that it is not possible now.

In the very end, as parents and professionals, we can conclude that this situation, like many previous ones in various spheres, demonstrates the importance of timely, adequate, and comprehensive legal regulation of all segments of social life, as well as continuity in the work of institutions, because we witness daily that the opposite practice, which prevails, leads to negative consequences for fundamental values, and in this case, it is the upbringing and education of our children.

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