

## PROTECTION AGAINST HARASSMENT AT WORK— MOBBING

*Slobodanka Kovačević-Perić\* & Vladimir Boranijašević\*\**

*The Republic of Serbia ranks at the very top of European countries concerning mobbing. Two divergent trends may be observed in regard to protection and prevention of mobbing in Serbia. Significant approaching to international standards has occurred in the area of legislation. Nevertheless, when it comes to practical aspects, just like regarding other human rights at workplace, de iure and de facto are evidently out of step. In the paper, the authors analyze the protection against harassment at work before the employer, before the arbitration for labor disputes, and before the court of law. In the last few years, there has been a distinctive tendency of substituting the court procedure with alternative methods of resolving disputes, above all with the arbitration as a form of peaceful resolution of labor disputes.*

INTRODUCTION.....	778
I. THE LEGAL APPROACH TO HARASSMENT AT WORK—MOBBING .....	781
II. PROTECTION AGAINST HARASSMENT AT WORK IN THE LEGISLATION OF THE REPUBLIC OF SERBIA.....	782
III. THE PROCEDURE FOR PROTECTION AGAINST HARASSMENT AT WORK..	783
IV. PROTECTION BEFORE THE ARBITRATION FOR LABOR DISPUTES.....	789
V. THE COURT PROTECTION .....	790
VI. DE FACTO STATE .....	792
CONCLUSION.....	793

---

\* Associate Professor, The Faculty of Law, University of Priština with a Temporary Head Office in Kosovska Mitrovica, Republic of Serbia. Research fields: Labor Law, Social Law, European Union Labor Law.

\*\* Associate Professor, The Faculty of Law, University of Priština with a Temporary Head Office in Kosovska Mitrovica, Republic of Serbia. Research fields: Civil Process Law, Arbitration Law, Executive Proceedings.

## INTRODUCTION

Harassment at work, or colloquially mobbing,<sup>1</sup> according to the definition of the International Labor Organisation is: “Offensive behavior manifested through vindictive, cruel, malicious or humiliating attempts to sabotage an individual or a group of employees”.<sup>2</sup> In that sense, mobbing at work is characterised by a continuous, systematic psychological harassment or humiliation of one individual by another individual or a group (by a supervisor or other employees), with the aim of undermining their reputation (professional degradation), respectability, human dignity, integrity, with the final goal of making the victim quit the job—resign on their own initiative.

Workplace harassment is a specific social phenomenon as it corresponds to a type of social violence. Basically, in theory, *mobbing* is only an expression of social conflicts between two worlds of different powers—the world of labor and the world of capital.<sup>3</sup> Although mobbing has been increasingly gaining in actuality during the last years, it must be emphasized that harassment at work (mobbing) is not a contemporary heritage. Phenomenologically, mobbing has always existed in the communication relations at work, only the modern tendencies (global flows, economic crisis, poverty, unemployment—ruthless fight to keep one’s job, de-collectivization trend, social alienation, etc.) provided conditions for mobbing to have risen. In a word, mobbing is as “old” as human ambition for expression, oppression and domination. It has existed since the existence of feelings of envy, hatred, domination, the yearning for power, etc.<sup>4</sup> Psychiatrists believe that those who harass employees are often psychopaths who suffer from a personality disorder and perform terror upon other individuals out of their own inferiority, most frequently using those persons’ vulnerability.<sup>5</sup> Animals express a very similar behavior marking one of their

---

<sup>1</sup> For harassment at work, an English authentic term *mobbing* is used (*mob*—band, crowd, rabble) meaning literally to attack noisily, to assail in a crowd, to bully someone (*to mob*). The term mobbing is accepted in many countries without being translated (i.e. in Swedish, German and Italian professional literature). Adopting the *lex specialis* law in Serbian legislation for this form of, basically, pathological communication, the term harassment at work is used.

<sup>2</sup> The first definition of mobbing was given by a Swedish psychologist (born in Germany) Heinz Laymann, Ph.D., in 1984, who used this term for a hostile behavior at workplace. H. Leymann, *Mobbing and Psychological Terror at Work Places*, 5 VIOLENCE AND VICTIMS, 119—126 (1990).

<sup>3</sup> P. Jovanović, *Normativni okviri mobinga*, Radno i socijalno pravo (*The Normative Frameworks of Mobbing*, Labor and Social Law), Intermeks, Beograd, 42 (1/2008).

<sup>4</sup> SLOBODANKA KOVAČEVIĆ-PERIĆ, PRISTOJAN RAD (DECENT WORK) 187—189 (1st ed., Pravni fakultet Univerziteta u Prištini, Kosovska Mitrovica, Beograd, 2013).

<sup>5</sup> *Mobbing-Power at the Hands of a Psychopath is a Dangerous Weapon*, <http://www.bznr.org/viewtopic.php?t=556&sid...> (last visited December 2, 2015).

members as unwanted and starting to persecute it. The persecution persists until the victim has been driven out of the herd. For this purpose, in 1963, an Austrian zoologist, ethologist and psychologist *Konrad Lorenz* used the term *mobbing* for the first time to describe aggressive and offensive behavior of a group of animals towards any potential danger from another animal. An American psychiatrist *Carroll M. Brodsky* published a book *The Harassed Worker in 1976* wherein he presented a few dozen cases of workplace harassment where the workers claimed that they had been mentally abused by their employers and he classified these as occupational diseases. That was a revolutionary analysis that helped establishing the concept of workplace harassment, with its subareas—on the basis of gender, race, sexual orientation, age and disability.<sup>6</sup>

Essentially, mobbing is a pathological communication taking place in a work environment. Its goal, one may say the ultimate goal, is the elimination of the harassed individual (the victim, the mobbed person) from the collective, i.e. the resignation of the victim on their own initiative. If our starting point is the attitude that a human being is a social being, *humanum*, social individual (not an autarchic island) that has a distinctive need for permanent communication (pathological symptomatology of suicidal persons is the termination and non-existence of communication with their surroundings), then mobbing represents a “murder” of the person with premeditation by ignoring them, letting them shut themselves up into their own beings, therefore staying all alone with themselves. This way, this person is shut off from their collective, as a community, which is the worst human penalty, and is consciously “pushed into alienation”, outcast and stigmatized. Most frequently, victims are among the most creative employees, as well as among the persons who point out to corruption/exercise the right to whistle-blow.

*Mobbing* represents a multidimensional phenomenon with a wide range of repercussions to almost all the segments of manifestations of a human personality—psychological, sociological, and economic. It is a distinct chain with a domino effect. This is exactly the reason why the first analyses of mobbing were conducted by psychologists; whereas, nowadays, it is dealt with by medical experts, sociologists, economists, criminologists, and lawyers. The researches of Heinz Laymann, one of the pioneers in researching this area, show that the level of stress of people who were exposed to mobbing is equal to post-traumatic disorder of those who were at war. According to the researches of the Serbian Institute of Occupational

---

<sup>6</sup> CAROLL M. BRODSKY, *THE HARASSED WORKER* (Toronto: Lexington Books, D. C. Health and Company, 1976).

Health, implications for victims are the following for: *Individuals*: Weakening of concentration and memory, fear of failure, disturbance of social relations etc; a *work team*—a sense of guilt is created, a fear to help the victim of mobbing, a fear of becoming a victim of mobbing, a breakdown of team work; a *firm* where workplace harassment has occurred—a good working atmosphere disturbed; reduced efficiency and productivity, initiation of law suits, dispute-related costs, and medical leave costs increased. *Social community* feels the negative consequences of mobbing through: Increase of the healthcare and pension insurance funds costs, which is caused by the costs of medical treatments provided to victims of mobbing and their premature retirement.<sup>7</sup> Very often, a personality may be changed permanently due to mobbing, thus the person becomes distrustful, self-destructive, starts to drink heavily, take drugs or isolates themselves. Such a person lacks any motivation, their innovative abilities are decreased, has no ambition, is self-destructive, etc.<sup>8</sup> It would be interesting to explore to which extent mobbing affects other asocial behaviors in a community, both of a victim of mobbing and of the persons in their environment, i.e. children, since mobbing devastates family most—its destructive influence on family relationships is indisputable, to a greater or lesser extent, depending on subjective characteristics of each person. So, according to a research conducted in Croatia, it has been established that the cause of suicide of children was the stress of their parents at work, which was unconsciously transferred to home, at 20% of cases. This is because mobbing affects the accompanying aspects of deviant behavior (use of alcohol, opiates) and the aspects of violence thereof, primarily family violence (increased number of divorces). There are no official researches of those phenomena caused by mobbing in Serbia, but there is an indicative data that in January 2015 all the 15 suggestions for resolving labor disputes submitted to the Agency for Peaceful Resolution of Labor Disputes referred to mobbing.<sup>9</sup>

During 2009, in the heat of the debate on the Law on Prevention of Harassment at Work, according to Gallup's research, it was highlighted that even 45% of the employees were exposed to harassment at work in Serbia. Thus, every second an employee suffers from a form of harassment at work. Out of this number, vertical mobbing happens at 5% of the cases, whereas horizontal mobbing is more prevailing and occurs at 55% of the cases. When we sum up the percentage of employees who suffer harassment at

---

<sup>7</sup> <http://www.pressonline.rs/info/politika/150887/> (last visited November 16, 2015).

<sup>8</sup> Perić, 172—173.

<sup>9</sup> <http://www.ramrrs.gov.rs/> (last visited November 16, 2015).

## 2016 PROTECTION AGAINST HARASSMENT AT WORK 781

work and the consequences that physicians warn about that 33 health symptoms are connected to mobbing, the repercussion over the entire social environment is absolutely evident. It is rightfully emphasised that: “Testing mobbing is not a success, surviving the test is a success.”<sup>10</sup> In that sense, the protection against mobbing must encompass a wide range of activities at all levels. Here we firstly imply prevention; then protection before the employer; then protection before the arbitration, and the ultimate form of protection is in the judicial proceedings. Protection also implies adequate post-treatment—helping a victim of harassment at work for the purpose of reintegration, strengthening the victim of mobbing and their re-inclusion into the work process.

### I. THE LEGAL APPROACH TO HARASSMENT AT WORK—*MOBBING*

The legal approach to mobbing has advanced in a somewhat slower manner. The reasons partly lie in the heteronomy of this phenomenon, as well as the long dominating attitude of the labor legal theory and judicial practice, according to which moral integrity of employees (as an inseparable part of any individual) is of secondary significance as related to their physical side. Such an attitude was a consequence of many decades of marginalization of the right to compensation of non-material damages in the national theory of labor law. It was believed that it was hard to assess and express the amount of mental anguish in money and, when the employment relationship domain is in question, there was a presumption that non-material damage was compensated by returning the employee to workplace.<sup>11</sup> Contrary to the comparative law, in priority of EU countries, the area of mobbing had not been standardized in Serbian positive law for quite a long time. The qualification of mobbing was approached to in an indirect manner. In other words, unlawfulness of mobbing was assessed from the aspect of constitutional-legal, labor-legal, civil-legal and criminal-

---

<sup>10</sup> V. Baltezarović, *Mobbing: komunikacija na četiri noge (Mobbing: Communication on Four Legs)*, Mali Nemo, Pančevo, from the Introduction (2007).

<sup>11</sup> Judicial practice was also unbalanced in relation to this issue. This is also implied by two diametrically opposite judgements. Namely according to the Decision of the Supreme Court of Serbia dated 1999: “The prosecutor shall not be entitled to the right to pecuniary compensation for the suffered mental anguish [...] since their satisfaction shall be in their being returned to workplace with a final judicial decision.” Decision no. Rev 4765/99 dated 27/10/1999. In another judgement, rendered earlier-in 1993, the Supreme Court of Serbia took the opposite attitude: “If the decision which violated the rights from employment relation caused a more serious disturbance of mental and emotional balance of the worker, and particularly if that disturbance is a product of vexation, then the worker, in principle, is entitled to compensation of non-material damages, regardless the fact that the compensation of material damages has already been awarded to them.” Decision no. Rev 5414/92 dated 14/01/1993.

legal provisions. The requests for legal regulation of mobbing matters in Serbia have been increasingly more distinct during the last years, out of the same factual reasons as in the majority of European countries—legislation could not ignore *de facto* state, primarily the negative economic balance that has been occurring for years as a consequence of stress at work, the consequences on work capabilities of employees and the actual state of human rights at work. Namely, according to the reports of the organizations that deal with the position of human rights in Serbia, the rights of a person at work (socio-economic rights) are at the top concerning the degree of vulnerability.<sup>12</sup> On the other hand, an aspiration towards coordination and harmonization of the domestic legislation with the European Union Law (the Republic of Serbia being a pretender for the membership), and the law of the Council of Europe that Serbia is a member of, as well as the fact that harassment at work during the last years has been one of the most frequent forms of violence apart from family violence in Serbia, resulted in the implementation of a set of legislative acts. The Law on Prevention of Harassment at Work of the Republic of Serbia was adopted in 2010,<sup>13</sup> as a *lex specialis* regulation, by the act of which fragmentation was abandoned in the approach to mobbing.<sup>14</sup>

## II. PROTECTION AGAINST HARASSMENT AT WORK IN THE LEGISLATION OF THE REPUBLIC OF SERBIA

LPHW prohibits any aspect of harassment at work and in relation to work, as well as the abuse of the rights to protection against harassment.<sup>15</sup> Harassment, in terms of the article 6 of this Law, “is every active or passive conduct against an employee or a group of employees which repeats, and which aims at or represents violation of dignity, reputation, personal and professional integrity, health, the status of the employee, and which causes fear or creates hostile, humiliating or offensive environment, aggravates working conditions or leads to the isolation of the employee or the employee terminating employment at their own initiative or terminating the contract of employment or another type of contract”. Harassment, according

---

<sup>12</sup> Belgrade Center for Human Rights, Report for 2015. <http://www.bgcentar.org.rs/izvestaji/> (last visited October 22, 2016).

<sup>13</sup> “Službeni glasnik RS”, no. 36/2010. Hereinafter: LPHW.

<sup>14</sup> Serbia is the ninth country in Europe that commenced legal sanctioning for mobbing, besides France, Sweden, Norway, Finland, Denmark, The Netherlands, Belgium, and Switzerland. The Law has suffered a lot of criticism mostly, as stated, because of the incapability of easy proving of mobbing in the very proceedings.

<sup>15</sup> Article 5 of the LPHW.

## 2016 PROTECTION AGAINST HARASSMENT AT WORK 783

to the law, is also inciting or inducing others to such behaviour.<sup>16</sup> In a wider sense, cases of sexual harassment are also the subject of protection under the Law on Prevention of Harassment at Work, according to article 3 of this law. The protection against harassment is mutual, since the protection of employers against harassment is also provided. The regulations of this Law refer to employers, employed in accordance with the law regulating labor, the law regulating the rights and obligations of civil servants and officers and the law regulating the rights and obligations of employees in the territorial autonomy and local self-government units, as well as individuals engaged outside employment relationship, such as individuals performing temporary and casual jobs or jobs under a service contract or other type of contract, persons performing additional work, persons having professional training and specialization with the employer without entering into employment relationship, volunteers and any other individual taking part in the work of the employer on any other basis.

The Law prohibits any type of harassment at work and in relation to work and sanctions the abuse of the right to protection against harassment (therefore, an employer may as well be a victim of harassment, the so-called reverse mobbing). No employee may abuse the right to protection against harassment. In terms of this Law, any employee who commits harassment, as well as any employee who abuses the right to protection against harassment, is responsible for non-compliance with the work discipline, i.e. the violation of work duty. The abuse of the right to protection against harassment is performed by an employee who is aware or must have been aware that there are no justified reasons for instituting proceedings for protection against harassment, and who still institutes or initiates such proceedings aiming to come into possession of material or non-material benefits for himself or another person or to cause damage to another person.<sup>17</sup>

### III. THE PROCEDURE FOR PROTECTION AGAINST HARASSMENT AT WORK

Protection against harassment at work is realized at three levels: 1) Before the employer; 2) in the arbitrary proceedings and 3) before the court of law.

1) The procedure for protection against harassment is primarily realized before the employer. The primary obligation of an employer in relation to harassment is the prevention of harassment and protection against

---

<sup>16</sup> Article 6, paragraph 2 of the LPHW.

<sup>17</sup> Article 11 of the LPHW.

harassment at work. These obligations are realized through a range of activities. First, in terms of prevention of harassment at work, the employer is obliged to notify the employee in writing, before the employee commences work, on the prohibition of committing harassment and the rights, duties and responsibilities of the employee and the employer in relation to the prohibition of harassment, according to this Law.<sup>18</sup> Second, for the purpose of creating conditions necessary for healthy and safe working environment, the employer is obliged to organize work in such a manner as to prevent any occurrence of harassment at work and related to work and provide the employees the working conditions in which they shall not be exposed to harassment at work and in relation to work by the employer, or the responsible person or any persons employed before the employer. Third, with the aim of recognizing and preventing harassment, the employer is obliged to implement the measures related to the notification and training of employees and their representatives to recognize the causes, forms and consequences of harassment.<sup>19</sup> Fourth, according to article 8 of the Law on Prevention of Harassment, the employer is obliged to protect the employee against harassment. The obligation of the employer is to protect the employee against harassment instantly and without delay. From the aspect of the employer's responsibility in relation to harassment at work, the employer is held responsible for the damage that the responsible person or any employee causes by committing harassment to another employee employed by the same employer.<sup>20</sup> The employer who has compensated the damages caused by the responsible person or any employee is entitled to request the compensation of the amount paid for the damages from them (the right of recourse).

Protection before the employer represents a legal mechanism that includes a series of measures and procedures taking place in a number of segments, activities, and all together can be grouped in two procedures: (a) Acting prior to initiating a procedure for protection before the employer (prevention and support procedure); (b) acting when the procedure for protection has been initiated before the employer (the mediation procedure—mediation by a neutral and impartial person and a possibility of determining the responsibility of the employee.

(a) Acting prior to initiating a procedure for protection (prevention): Within the framework of acting prior to initiating a procedure, the first protection phase is reflected in prevention, i.e. in creating the preconditions

---

<sup>18</sup> Article 7 of the LPHW.

<sup>19</sup> Article 7, paragraph 2 of the LPHW.

<sup>20</sup> Article 9 of the LPHW.



## 2016 PROTECTION AGAINST HARASSMENT AT WORK 785

for preventing harassment, and this requires: Creating conditions necessary for a healthy and safe working environment; organizing work in such a way to prevent any occurrence of harassment; informing employees and training employees and their representatives to recognize causes, forms and consequences of committing harassment at work, and preventing activities of harassment at work.<sup>21</sup> Mobbing prevention may be organized on three levels, which are defined as primary, secondary and tertiary prevention. The goal of primary prevention is to prevent this phenomenon and similar aspects of pathological communication. Secondary prevention is acting in case mobbing has already occurred, and here the role of a trustful advisor and mediator is significant in prevention of any “pandemics” of potential cases. Tertiary prevention has the aim to apply adequate measures for elimination of any consequences of mobbing, to help the victim of mobbing establish their mental and physical health and regain their destroyed dignity as fast as possible.<sup>22</sup>

*The support procedure*—The second phase of protection comprises the protection mechanisms when there is a doubt that certain behavior is an act of harassment and when it is certain that harassment exists. Thus, it is important to emphasize that this phase, the so-called support procedure, also precedes the initiation of a procedure for protection against harassment. The employee can appoint a person for support whom the employee who suspects that they are being exposed to harassment may address for the provision of advice and support, for prevention of harassment and the recognition of harassment. This support person should hear the employee, give them advice, direct and inform them and provide support with the aim of resolving the disputed situation. The employer can ask the union for their opinion on appointing a person for support. The employee can also address the person authorized by the employer for submitting a request for protection against harassment, or another person who enjoys their trust, for presenting the problem and providing some advice on the further acting and resolving the disputed situation. If feasible and possible in a concrete case, the employee who believes to be exposed to harassment, should address the individual that they believe is committing harassment (the mobber), to point out that their behavior is unacceptable and that they will ask for legal protection if such behavior does not instantly stop.

---

<sup>21</sup> More precise rules of conduct of employers and employees or other employed persons in relation to harassment at work and sexual harassment are determined in the Rulebook on the rules of conduct of the employer and employees in relation to prevention and protection of harassment at work (“Službeni glasnik RS”, no. 62/2010).

<sup>22</sup> A. Kostelić-Martić, *Prevenција mobinga i vrste pomoći (Prevention of Mobbing and Types of Help)*, 9(4) *Temida* 11—14 (2006).

(b) The request for protection: If the disputed situation cannot be resolved in a support procedure, the employee who believes to be exposed to harassment submits a reasoned request for protection against harassment before the employer. By the act of submitting the request by the employee, the procedure for protection before the employer is initiated. In this phase, the protection against harassment is realized in the procedure of: 1) Mediation before the employer; 2) determining the responsibility of the employee who is charged with harassment before the employer.

*Mediation*—the mediation procedure is initiated by the request. The request must be reasoned. In the request for initiating a procedure for protection against harassment, the following should be stated: The data on the applicant; the data on the employee who believes to be exposed to harassment, if they are not the applicant; the data on the employee who is charged with harassment; a brief description of the conduct justifiably believed to represent harassment; duration and frequency of the conduct held to be harassment, as well as the date when this conduct was committed for the last time; evidence (witnesses, written documentation, medical reports, allowed audio and video records, etc.). The employee submits a request to the responsible person appointed by the employer. The deadline for submitting a request for protection against harassment before the employer is within a six-month period from the day the harassment was committed.<sup>23</sup> The deadline starts to run on the day when the conduct held to represent harassment was committed for the last time.<sup>24</sup> When this time period has expired, the right to submitting a request for protection against harassment expires. During the deadline period and during the course of conducting the mediation procedure, the periods regulated by the law for determining the responsibility of the employee for transgressing the workplace discipline, or for violation of work duties, do not expire.

After receiving the request, within a three days' time period, the employee is obliged to propose mediation as a way of resolving the disputed relation to all the parties in the dispute. Within a three days' time period from the day of receiving the employer's proposal, the parties in the dispute agreeably decide on or select a person for conducting the mediation procedure (hereinafter the mediator). The mediator may be selected among the persons that enjoy trust of the parties in the dispute. The mediator is a neutral person. This means that in the mediation procedure they only help the parties in the dispute to reach an agreement with the aim of settling their disputed relation. The mediator is obliged to act independently and in an

---

<sup>23</sup> Article 22 of the LPHW.

<sup>24</sup> Article 22, paragraph 2 of the LPHW.

## 2016PROTECTION AGAINST HARASSMENT AT WORK787

unbiased way. That is to say, the mediator can give a proposal of various ways of resolving the dispute, but cannot impose any solution to the parties in the dispute. According to the regulation of the article 3, paragraph 2 of the Rulebook on the rules of conduct of the employer and employees in relation to prevention and protection against harassment at work, the employer can provide training, i.e. capacitating to a certain employee or employees for performing mediation as a way of resolving disputed relations related to harassment. Accordingly, the employee is obliged to respond to the employer's invitation to get informed, notified and capacitated for the purpose of recognizing and preventing harassment and abuse of the right to protection against harassment.

The mediation procedure is closed to the public.<sup>25</sup> The representatives of labor unions are exceptions. Namely, at the request of a party in the dispute, a representative of a labor union can also take part in the mediation procedure. The data collected during mediation are considered confidential and may only be communicated to the parties in the procedure and the state bodies in authority in relation to the procedure for the protection against harassment. The mediation procedure is urgent,<sup>26</sup> which has resulted in relatively short deadlines for undertaking individual actions in the protection procedure. The mediation procedure is to be concluded within eight week days starting from the day of deciding on and/or selection of the mediator. Exceptionally, the deadline for concluding the mediation procedure may be extended due to justified reasons to a maximum period of 30 days starting from the day of deciding on and/or selecting the mediator. The mediation procedure is concluded: 1) By concluding a written agreement between the parties in the dispute; 2) by the decision of the mediator, following the consultations with the parties, that the procedure may be terminated since further procedure is not justified; 3) by the declaration of a party in the dispute on withdrawing from further procedure. If the mediation procedure has been concluded with by the agreement between the parties in the dispute, the agreement must contain measures aimed at the termination of the conduct representing harassment and/or preventing the opportunity to continue such conduct (harassment). The agreement may contain recommendations for the employer regarding the elimination of opportunities for continuation of harassment (transfer of the employee to another working environment or other measures concerning the status and rights of the parties in the dispute).

*Determining the responsibility of the mobber*—If the mediation

---

<sup>25</sup> Article 17, paragraph 4 of the LPHW.

<sup>26</sup> Article 17, paragraph 1 of the LPHW.

procedure does not succeed, and there is a reasonable doubt that harassment has been committed or the right to protection against harassment has been abused, the employer is obliged to initiate a procedure for determining the responsibility of the employee for transgressing working discipline and/or violation of working duty. In the procedure of determining the responsibility, the employer may issue one of the following measures to the employee responsible for transgressing work discipline, in addition to the penalties prescribed by the law: 1) Warning; 2) suspension from work for a period from 4 to 30 week days without any wage compensation; 3) permanent transfer to another working environment—to the same or different tasks and/or workplace, in compliance with the law.<sup>27</sup> If the employee, who has been issued a suspension measure due to harassment at work, repeats such a conduct of harassment within a period of six months, the employer may cancel the employment contract and/or issue a measure of termination of employment.

The employer is obliged to provide the employee who is being exposed to harassment the protection of their physical and mental health until the protection procedure before the employer has been completed. If the employee believing to be exposed to harassment is under a threat of immediate harm to health or life according to the opinion of the labor medical service or if the employee is under a threat of irreparable damage, the employer is obliged to impose one of the following measures to the employee charged with harassment until the conclusion of the procedure for protection against harassment before the employer: 1) Transfer to another working environment—to the same or other tasks and/or workplace; and 2) suspension from work with a compensation of earnings, in accordance to the law. If the employer fails to undertake adequate measures towards the employee who is charged with harassment, the employee who is harassed (harassed person, the one being mobbed) has the right to refuse to work.<sup>28</sup> In the case of refusal to work, the employee is obliged, without delay, to notify the employer and the labor inspection. The employee is entitled to a compensation of earnings during the refusal of work period totalling the average salary they earned during the previous three months. The employee who refused to work is obliged to return to work upon the employer's undertaking of measures, not later than the conclusion of the procedure for protection against harassment before the employer. The employee who has refused to work, out of the aforementioned reasons, can not have the labor contract terminated and/or the measure of termination of

---

<sup>27</sup> Article 24 of the LPHW.

<sup>28</sup> Article 26 of the LPHW.

employment imposed on.

#### IV. PROTECTION BEFORE THE ARBITRATION FOR LABOR DISPUTES

The second level of protection against harassment is realized in the arbitration procedure, within the framework of and through the Republic Agency for Peaceful Labor Dispute Resolution. According to the Law on Peaceful Resolution of Labor Disputes,<sup>29</sup> the procedure of peaceful labor dispute resolution is initiated and implemented in accordance with this Law, unless regulated otherwise for the same dispute by labor regulations.<sup>30</sup> In terms of this law, the arbitration is a procedure where the arbitrator decides on the subject matter of the individual dispute.<sup>31</sup> The right to address the arbitration is internationally recognized. According to the ILO Convention no. 58 on Termination of Employment at the initiative of the employer, in 1982, in the C Section-Procedure of Appeal against Termination, it is provided for in article 8 as follows: “A worker who considers that their employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labor tribunal, arbitration committee or arbitrator.”<sup>32</sup> In the domestic law and practice, the arbitration has been gaining in significance during the last years. Primarily, this is because in the arbitration procedure, economic and social aspects are more frequently prioritized and the arguments of fairness are above legal regulations. Its essence is in the selection of the arbitrator—the third party that is entrusted with the dispute resolution. The parties in the dispute are free to voluntarily decide on engaging in a peaceful dispute resolution, unless regulated otherwise by the Law. According to the LPRLD, the arbitrator is obliged to schedule the hearing within three days from the date of receiving the proposal and the documents regarding the subject matter of the dispute and to inform the parties in the dispute about such action.<sup>33</sup> If one of the parties in the dispute unjustifiably fails to attend the hearing, the arbitrator may hold the hearing in absence of that party, taking into consideration the documents submitted by that party. Each party in the dispute can withdraw the proposal for initiation of the procedure before an arbitrator no later than the date of the opening of the hearing. We hold that such a solution is not in accordance with the voluntary principle in the

---

<sup>29</sup> “Službeni glasnik RS”, no. 125/2004 and 104/2009; hereinafter: the LPRLD.

<sup>30</sup> Article 1 of the LPRLD.

<sup>31</sup> Article 4 of the LPRLD.

<sup>32</sup> [http://www.iio.org.rs/files/Mor\\_texts/MOR%20158%20Konvencija%20o%20prestanku%20radnog%20odnosa%20na%20inicijativu%20poslodavca,%201982.pdf](http://www.iio.org.rs/files/Mor_texts/MOR%20158%20Konvencija%20o%20prestanku%20radnog%20odnosa%20na%20inicijativu%20poslodavca,%201982.pdf).

<sup>33</sup> Article 31 of the LPRLD.

arbitration dispute resolution. The arbitrator brings the decision on the subject matter of the dispute within 30 days from the date of the opening of the hearing.<sup>34</sup> No complaint is allowed against the decision.<sup>35</sup> The decision is final and enforceable from the date of delivery to the parties in the dispute. If the decision stipulates that the action that is the subject to enforcement may be enforced within the specified deadline, the decision becomes enforceable from the date of expiry of that deadline. The parties in the dispute are obliged to inform the court about the adoption of the decision if the procedure before the court has been interrupted. Each party in the dispute bears their own costs in the procedure, apart from the costs related to the arbitrator.

#### V. THE COURT PROTECTION

The third level of protection against harassment at work is implemented in a procedure before the court of law (labor dispute). Resolution of disputes related to mobbing according to the Law on Organization of Courts<sup>36</sup> is within the jurisdiction of the Higher Court of the Republic of Serbia.<sup>37</sup> The right to submit a lawsuit to the court in the procedure for protection against harassment is established in two events: 1) When the employee believes to be exposed to harassment by the employer or the responsible person with the employer as a legal entity. In that case, the employer can submit a lawsuit against the employer before the court in authority, without prior submission of the request for mediation to the employer, by the expiry date of the deadline period of prescription for initiating the procedure for protection before the employer; and 2) when the employer believing to be exposed to harassment is not satisfied with the outcome of the procedure for protection against harassment before the employer. The court procedure in litigations for protection against harassment at work is characterized by a series of specificities consisting of the following: 1) The burden of proof falls upon the employer, further implying that if the prosecutor in the procedure makes it likely that harassment has been committed, the burden of proof that such conduct

---

<sup>34</sup> Article 31 of the LPRLD.

<sup>35</sup> Article 36, paragraph 2 of the LPRLD.

<sup>36</sup> "Službeni glasnik RS", no. 116/2008, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013, 106/2015, 40/2015, 13/2016, 108/2016. Hereinafter: LOC.

<sup>37</sup> Article 23 of the LOC. Serbia does not have a system of specialized courts for labor disputes. This jurisdiction is entrusted to the courts of general jurisdiction. Namely, until the social reform of the 90's, that was marked as a period of transition, this jurisdiction was exclusively reserved for the courts of associated labor, as specialized courts separated from regular courts.

## 2016 PROTECTION AGAINST HARASSMENT AT WORK 791

which represents harassment has not occurred falls upon the employer; 2) the urgency of the procedure; 3) the possibility of providing for temporary measures; 4) the revision allowed; and 5) exemption of the court tax.

The employee is entitled to submit a lawsuit before the court against the employer for harassment at work or in relation to work within fifteen days from the date of delivery of notification, i.e. the decision. A dispute conducted before the court in authority for protection against harassment at work is a labor dispute. In disputes for realization of court protection due to harassment at work or in relation to work, the regulations of the law regulating civil procedure are applied. The employee believing to be exposed to harassment may request the following in the procedure before the court in authority: 1) The determining that they have endured harassment; 2) the prohibition of conduct representing harassment, prohibition of further harassment and/or repetition of harassment; 3) performing of the action to eliminate the consequences of harassment; 4) the compensation of material and non-material damage, in accordance to the law; 5) the publication of the verdict rendered.

The procedure in litigations for realization of protection against harassment is urgent.<sup>38</sup> The court shall submit the claim with appendices to the respondent to reply within 15 days from the day of receiving the claim. During the procedure, on the suggestion of the party or ex officio, the court can establish temporary measures<sup>39</sup> in order to prevent violent conduct or eliminate any irreparable damage. The court shall make a decision on establishing a temporary measure upon the suggestion of the party within eight days from the day of submitting the suggestion. Temporary measures include especially the restraining order, as well as the prohibition of access to space surrounding the workplace of the employee who makes it likely that they have been exposed to harassment. No complaint against the decision on establishing a temporary measure may be filed.

The initiation of the procedure for protection against harassment, as well as the participation in the procedure, may not represent a basis for: Putting the employee in a less favorable position regarding realization of their rights and duties based on work; the initiation of the procedure for establishing disciplinary, material or other responsibilities of the employee; the termination of the labor contract and/or termination of the labor or any other contractual relation based on work and declaring the employee redundant, in accordance to the regulations regulating the field of labor. In this sense, the employee, determined to have abused the right to protection

---

<sup>38</sup> Article 32 paragraph 1 of the LPHW.

<sup>39</sup> Article 33 of the LPHW.

against harassment according to the law, does not enjoy the protection.<sup>40</sup>

## VI. DE FACTO STATE

The state prior to passing the Law on Prevention of Harassment at Work in 2009—Harassment at workplace is identified as one of the most frequent forms of victimization in Serbia. Regarding harassment at work, the majority of individuals made an appeal in relation to psychological harassment at workplace. According to the data of the Victimology Society of Serbia (hereinafter: VSS), out of the total number of individuals (224) that contacted the VSS's Info Support Service to Victims, 109, i.e. 48.7%, addressed the service because of harassment at work. This represents a multiple increase in comparison to 2005. Out of 109 recorded individuals, 99 contacted the service because of psychological harassment, 6 because of physical violence, 3 because of sexual violence (harassment), and 1 individual because of all the three forms of harassment at work. Out of the number of persons who had reported mobbing, 73% were female, while 23% were male. In regard to the perpetrator of harassment, 35% were male, 23% female, and 10% both male and female. In 9% of the cases, the perpetrators of harassment were not individuals, i.e. the victim experienced the management of the organization/institution as the overall perpetrator. The harassment victims are mainly female persons. In 35.6% of the cases, women were harassed at work by male persons, in 24.7% by female persons, and in 12.3% by both male and female persons, and the perpetrator was not an individual in 6.8% of the cases. The victims' age mainly ranges from 35 to 66 years of age. Territorially speaking, the highest number of workplace harassment' victims is from Belgrade, in 51% of the cases; and then from other towns in Serbia.

The state after passing the Law on Prevention of Harassment at Work in 2009—Serbia is, still, at the very top of European countries in regard to mobbing. In 2010, approximately 300 mobbing cases were reported to the Labor Inspectorate, which is four times more than in the previous year of 2009. In only one month since the application of the Law, approximately 400 applications have been delivered to the Agency for Peaceful Resolution of Labor Disputes; up to 15 applications daily. The analysts justifiably point out that the employees had been waiting for the application of the Law on Prevention of Harassment at work in a “ready, steady, go” position. Although there are no official researches on the number of employees who are suffering (or are the victims of) harassment at work, the information is

---

<sup>40</sup> Article 27 of the LPHW.



## 2016 PROTECTION AGAINST HARASSMENT AT WORK 793

not negligible that all the 15 proposals for labor dispute resolution submitted to the Agency for Peaceful Resolution of Labor Disputes from January 8, 2015 (the first month) were related to mobbing. According to the research in 2012, conducted by the Association of Independent Unions of Serbia, almost every fourth employee in Serbia was exposed to workplace harassment in the previous six months. Totally, from the date the Law on Prevention of Harassment at Work was entered into force in 2010 to the first quarter of 2015, over 1,000 proposals for peaceful resolution of labor disputes in relation to harassment at work were submitted to the Agency for Peaceful Resolution of Labor Disputes, but not all of them were resolved before the Agency, as the consent of the employer is the condition for that (consent of both parties—voluntary principle) to resolve the dispute in a peaceful manner. The Agency has over 200 decisions that are on-going in relation to mobbing proceedings. It is difficult to say whether the rise of the number of psychological harassment victims that address the Victimology Society and the Agency for Peaceful Resolution of Labor Disputes is conditioned by the rate of the rise of harassment at work, or the reasons may be sought in informing the public on this issue in a better manner. Interestingly, according to the Agency's data on the number of submitted applications and the number of qualified charges for mobbing, only one third of the cases were related to mobbing, violation of other labor and social rights was found out in one third of the cases, and, in one third, there was an indication of abuse of mobbing. Also, a high number of procedural applications referring to mobbing indicate a problem in identifying the conduct which actually represents a mobbing act. Frequently, cases of harassment at work (mobbing) are compared to discrimination and harassment connected to discrimination. Reporting mobbing and mobbers indisputably points to the maturing of awareness on the inviolability of human rights and strengthening of collective and individual responsibility.<sup>41</sup> Bearing in mind the frequency of mobbing, the proposal of the Institute of Occupational Health is to open a special health center for employees who are victims of mobbing.<sup>42</sup>

### CONCLUSION

The Republic of Serbia ranks at the very top of European countries for mobbing. Regarding protection and prevention of mobbing in Serbia, two

---

<sup>41</sup> Within the Victimology Society of Serbia, in 2003 the VSS Info and Support Service was founded which provides help to victims of criminality also including victims of harassment at work.

<sup>42</sup> <http://www.imrs.rs/> (last visited November 2, 2015).

divergent trends may be noticed. In the area of legislation substantial approaching to international standards has occurred. Plenty of relevant documents on human rights have been implemented in domestic legislation. On the other hand, *de iure* and *de facto* are evidently out of step when speaking about the implementation; as well as with the other labor rights. The reason was, primarily, in the entire social and economic environment (economic crisis, poverty, unemployment—fear for one's job, social alienation) which consequently results in the collapse of interpersonal relationships at work. As a form of pathological communication at work, mobbing confirms the limited power of the law (in material sense), insufficient power of the institutions of public law and private law character for absolute protection of human rights in all the segments of realization of one's personality. This brings us to a human being, as the last retreat in the affirmation of public awareness.

Therefore, for prevention of harassment at work and any conduct and actions representing a negation of dignified labor, more than having adequate regulations is necessary. Apart from legal regulations, prevention is necessary for the purpose of preventing mobbing—adequate informing of employees on harmfulness of mobbing, education for implementing communication trainings such as mastering business communication skills and conflict resolution skills with the aim of achieving high quality working atmosphere, facilitating inter-personal relationships, maintaining psycho-physical health of the employees, guaranteeing the rights to employees to efficient legal protection, as well as providing help in the process of reintegration of a mobbing victim. Hence, it is necessary to work on the promotion of culture of living and work, through showing respect and appreciation of human dignity, and discouraging any type of psychological violence. There are no conditions for prevention of conduct leading to harassment at work without having raised awareness on the culture of living, which means culture of human rights and tolerance, respect of deliberation principle, equality of opportunities and treatment, and non-discrimination; in short, cultivating interpersonal relationships at work. Human resources management are responsible for creating such working environment among employees. However, in Serbia, a long transition has given birth to a specific layer of managers, emerged in socialism and mentally brought up on self-governance basis, having authorization and no responsibility, because of which they are unfit for industrial relations and economic democracy. Such “immature—raw” organizational staff, having no ambitions to constitute themselves as socially responsible management, rule the people in a working process instead of managing them as human

## 2016 PROTECTION AGAINST HARASSMENT AT WORK 795

resources. The conditions and opportunities in practice in the majority of private companies are as those at the beginning of the 19th Century. That is to say, it is more embodiment of neoliberalism than of social justice and a fair globalization. At a round table discussion held in Belgrade, there was a comment that mobbing serves an upstart employer as the “exhaustion pipe” for their own aggressiveness and dominance. The latest example is the suicide of A. M. (32), a police inspector with the Department for Suppression of Drug Trafficking of the Police Administration in Niš, who killed herself shooting from her official pistol because of mobbing over her by her superiors, as she alleged in the suicide note. One of the best inspectors had suffered harassment at work for years. She had contacted the regional center for mobbing five times; however, there was no response. The legality of their work was investigated by internal control which found out that there had been omissions and proposed the head of the police administration to punish the responsible individuals. So far, no one has been processed or punished for these charges.<sup>43</sup>

From the aspect of the means of protection against mobbing, during the last few years, there has been a distinctive tendency of substituting a court procedure with alternative methods of resolving disputes, above all, with the arbitration as a form of peaceful resolution of labor disputes. The Agency for Peaceful Resolution of Labor Disputes is contacted by a dozen people on a daily basis, who mainly complain about mobbing at work—ninety percent of all the proposals are related to mobbing. The Agency has rendered over 150 final enforceable decisions in processing such problems so far, indicating to be very successful in resolving such problems (in the court, however, only about thirty such applications have been resolved). However, the significance of the arbitration from the aspect of performance seems insufficient. Alternative resolution of labor disputes is far from utilization of its full potential (both in regard to individual and collective labor disputes). The European Commission Recommendation for Chapter 19 refers to the strengthening of the Republic Agency for Peaceful Resolution of Labor Disputes. The work of the Agency must be more recognizable and visible resulting in a higher number of employees and employers contacting the Agency for Peaceful Resolution of Labor Disputes, so the courts will be unburdened and the number of strikes decreased.

---

<sup>43</sup> <http://www.npss.rs/component/content/article/78-tv-mediji/1353-nema-kaznjjenih-za-mobing-inspektorke-koja-se-ubila.html> (last visited November 29, 2015).