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“EQUALITY CODE OF PRACTICE“

Guidelines for developing the Antidiscrimination Policy for employers in Serbia

GLOSSARY



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This publication was drafted in the framework of the IPA 2013 Twinning project „Support to the Advancement of Human Rights and Zero Tolerance to Discrimination“. The overall objective of this Twinning project is to strengthen and implement the relevant legislative framework in the area of human rights and protection of minorities and to further promote its harmonization with European standards. This is done by way of strengthening the existing capacity of the two beneficiary institutions – the Office for Human and Minority Rights (OHMR) and the Commissioner for Protection of Equality (CPE), other relevant national institutions and key stakeholders for the implementation of human rights and of anti-discrimination policies at the national and local level.

The Instrument for Pre-accession Assistance (IPA) provides assistance within the framework of the European Partnership of the potential candidate countries and the Accession Partnership of the candidate countries.

IPA is created as a flexible instrument made up of 5 components, with its main objective to support institution-building and the rule of law, human rights, including the fundamental freedoms, minority rights, gender equality and non-discrimination, both administrative and economic reforms, economic and social development, reconciliation and reconstruction, and regional and cross-border cooperation.

The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.



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All terms used in the masculine grammatical gender include the masculine and feminine genders of the persons they are referring to

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IN CASES OF DISCRIMINATION IN THE WORKPLACE, SOCIAL TENSIONS ARE INEVITABLE, AND THEY MAY RESULT IN A DISRUPTION OF THE WORKING ENVIRONMENT AND DROP IN PRODUCTIVITY, WHICH MAY ALSO LEAD TO THE DESTABILIZATION OF THE EMPLOYER’S POSITION IN THE MARKET. CONTRARY TO THIS, CORPORATE SOCIAL RESPONSIBILITY AND ACCEPTING THE PRINCIPLE OF EQUALITY, TOLERANCE AND NON-DISCRIMINATION AS A STANDARD FOR DOING BUSINESS IS NOT A BURDEN FOR EMPLOYERS, BUT RATHER REPRESENTS A CHANCE TO PROSPER ON MULTIPLE FRONTS, WHICH SHOULD BE THE END GOAL OF ANY RATIONAL AND SUSTAINABLE CORPORATE POLICY	27

FOREWORD

Guidelines for development of antidiscrimination policy for employers in Serbia (Equality Code of Practice) are the result of activities realized as part of the Twinning project “Support to the advancement of human rights and zero tolerance to discrimination” funded by the European Union, with the Office for Human and Minority Rights of the Government of the Republic of Serbia and the Commissioner for Protection of Equality as project beneficiaries. Twinning project partners are Ludwig Boltzmann Institute of Human Rights from Austria and the Office for National Minorities of the Republic of Slovenia.

Guidelines for development of the Equality Code of Practice represent an operative manual for employers in the Republic of Serbia. It is the intention of this document to enable the implementation of the principle of equal opportunity in employment and labour and to improve the work process at the employer.

Implementation of these guidelines during the process of development of the Equality Code of Practice and following instructions and terminology described for certain procedures in chapters of this document should enable employers in the Republic of Serbia to, simply and practically, develop a comprehensive document titled “Equality Code of Practice”, which will, among other things:

- Cover priorities defined in the Constitution of the Republic of Serbia, in international documents concerning human rights, the EU integration process, the Law on the Prohibition of Discrimination and other local regulations which include anti-discriminatory provisions pertaining to employment and labour;
- Improve human resources policy planning and create conditions for a stimulating working environment;
- Serve as grounds for an improved system for exchanging information;
- Ensure better communication between employers and employees;
- Serve as grounds for improving the system of delivering services to the end user.

A WORD FROM THE COMMISSIONER FOR PROTECTION OF EQUALITY

Dear partners,

Business and human rights are not pitted against each other; they are on the same side. The success of a company involves so much more than merely making profit. That is why I would like to thank each of you for your wish and intention to work together on continuing to build Serbia as a modern, democratic and just society, creating an environment where each of us to live in and work with dignity and equality.

The most successful companies take care of their employees, and are aware of the necessity of having a good and harmonic environment. The working environment is not simply a place where employees work, and business results are not the only thing that matters, there is also that invisible connection linking employees, which is the way everyone in this process treat us and the kind of atmosphere we create at work. A stimulating environment helps create better working results for every employee. In other words, as Zoltan Valcsicsak, Corporate Director of Levi Straus & Co., once said: *“The unit of measurement should not be the quantity of money we earn, but the quantity of positive change we bring to the company.”* This is why the right to equality is not somewhere far away, on an imaginary horizon, but in places where people interact and connect, which primarily and typically happens in companies and enterprises. Besides, it is a fact that we live in a time when our co-workers are like our housemates, as we spend a significant portion of the day with them, and our place of work is our other home. And if we honour and respect each other in our home, shouldn't we do the same in our other home? This is why your role in promoting and observing human rights is crucial. One of the fundamental rights of every working woman and man is the right to non-discrimination and equality.

I am sure that it is well known that discrimination is prohibited by law, but it is still good to be reminded that it harms everyone and that its consequences are many: it causes productivity and employee efficiency to drop, it leads to stress and demotivation, destabilizes relationships, initiates and stimulates conflict and creates a negative atmosphere, company image suffers, and court cases for protection from discrimination can become very costly. In short, it can undermine the entire economy.

Caring for employees means caring for people and for each person. For example, if we allow a pregnant woman to rest during her working day, or to do some of her work from home, if we give her assurances that once she returns from maternity leave she will come back to the same, and not to a junior, less paid position, this woman will be productive, dedicated to her

work and absolutely loyal, and her effort and dedication will make a contribution, as the phrase goes, of more than 100 per cent.

The principle of equality and equal opportunity are axioms in contemporary society, confirming the belief that the rights of all people are equal and that all people are worthy of equal treatment, irrespective of their differences. It is my deep conviction that you are our sincere and dedicated partners in creating the kind of society where all people can have the opportunity make their living with dignity.

I would like to share an inspirational thought with you on morality and humanity being the key factors of success in business: *“It is the function of economic moral to bring harmony to various economic activities, creating a situation which everyone is happy with.”* (Wang Xiaoxi, Chinese philosopher).

Brankica Janković
Commissioner for the Protection of Equality

INTRODUCTION

Analysis of indicators from the many years of practice of the Commissioner for the Protection of Equality unequivocally indicates that the type of discrimination most frequently reported by citizens is related to employment and labour. Wishing to continue working on the prevention of discrimination and improving employers' perception of the prohibition of discrimination, as well as an increase in their responsibility and understanding for respecting differences as an imperative for an equitable working environment, the Commissioner is offering employers a new form of partnership which may bring multiple benefits for all actors; employers and employees, service users and business partners.

In the spirit of this partnership, the Commissioner recommends employers in Serbia to develop an antidiscrimination policy code of practice, as an example of good business practice and an efficient method for establishing an internal mechanism for recognizing and preventing discrimination¹. Although there is no legally prescribed obligation of employers in the Republic of Serbia to adopt this type of document, establishing this mechanism would emphasize their determination and dedication to creating a working environment based on principles of equality and tolerance, as the main principles of human rights, guaranteed by international and local law.

In addition to the implementation of the prohibition of discrimination in respect of employment and labour being a legal obligation, this is also an important segment of good business ethics, and a tool which can result in significant business profits, through increased productivity and innovation. An equitable working environment and the prohibition of discrimination in respect of employment and labour is inseparable from the contemporary trend of corporate social responsibility, a concept where companies consciously and voluntarily go beyond their primary function of earning and distributing profit. In other words, corporate social responsibility means that the employer practices responsible and ethical treatment of everything which may be impacted by their business and taking care of the natural and social environment in which they operate.

By observing antidiscrimination regulations and requirements for corporate social responsibility, employers significantly contribute to their reputation and the capacity to attract motivated and trained staff, as well as affirm and motivate their existing workforce, which considerably improves employees' efficiency. On the other hand, refusing to implement legal requirements and good work ethic can cause significant damage to an employer's reputation

¹An employer is any local or foreign legal or natural person employing one or more persons, or the Republic of Serbia for employees of state bodies, autonomous region for employees of provincial bodies and local government units for employees of local government bodies.

in the community and bring into question his business success as a result. Equality in the workplace raises the level of team spirit. It is highly likely that employees exposed to some form of discrimination will be dissatisfied, which will inevitably be reflected in their productivity, as well as the productivity and interpersonal relations of the entire team. The ability of the employer to create a working environment where all employees are truly equal, i.e. a working environment free from all forms of discrimination also determines his reputation in the labour market.

The international community has recognized the importance of protection of human rights in the context of corporate social responsibility. The Secretary-General of the United Nations (UN) in 1999 launched the world's largest initiative in the area of corporate social responsibility - the UN Global Compact². The initiative on establishing the platform was adopted by the 191 UN member states at the UN General Assembly in December 2005. At this time, the Global Compact was joined by about 12 thousand companies from 170 countries. *Principle 6 of the Global Compact* states: "Businesses should uphold the elimination of discrimination in the workplace." The reasons why companies decide to participate in this platform are universal, but their priority for changing from year to year, as studies show.³ The Global Compact was approached about seventy members from Serbia, which supported the application of the principles of corporate social responsibility, contained in its principles, including the principle of non-discrimination and promotion of equality.⁴

In addition to this, acting in keeping with UN sustainable development goals which need to be achieved by 2030 is an important obligation of the state⁵. Sustainable development is development which takes into account resource limitations, relationships between the economy, the society, culture and the environment, but also the right of all citizens to participate in development processes and enjoy benefits of development. Dignified work for everyone has an important place in the development goal which states: "Promote inclusive and sustainable economic growth, full and productive employment and decent work for all."

As our country began the process of harmonizing its development policy with UN sustainable development goals adopted in 2015⁶, it was important for the state to provide conditions for achieving these goals, and among others, conditions for decent work for all. In this process, employers should recognize the Commissioner for the Protection of Equality as a partner for achieving equality and eradicating discrimination in respect of employment and labour, which

²UN Global Compact is a strategic initiative of socially responsible business to align their business processes and activities with ten universally recognized principles in the area of human rights, labour standards, environmental protection, and-corruption measures. This is a voluntary platform and includes representatives of companies, academic institutions, civil society, cities and trade unions who commit their activities to the ten universal principles. The aim is to provide, by respecting these principles, market, business, technological and financial progress for all participants and also create a better social environment that would meet the challenges expected trends. Source: <https://www.unglobalcompact.org/>

³According to research conducted by McKinsey&Company from 2004, as the main reasons for joining the global Compact, companies said, in order of priority, the issue of equality and human rights in general. Source: McKinsey Report Highlights Impact of Global Compact, Available in English at:

http://www.unglobalcompact.org/newsandevents/news_archives/2004_06_09.html

⁴ Source: <http://www.ungc.rs/globalni-dogovor/osnivanje-globalnog-dogovora-u-srbiji/>

⁵After the period when development policies at the global level were directed by the Millennium Development Goals, the UN developed a new global development agenda for *sustainable development*, which should guide development policies in the coming decades. The Agenda is the result of global participative consultations where citizens and numerous actors declared their needs and their vision of global development.

⁶Source: "Sustainable development goals", at: <http://www.ciljeviodrzivograzvoja.net/>

will, among other things, send the international community an affirmative picture of our country's progress.⁷

The business culture in Serbia should include a non-discriminatory approach to employees, partners and customers so that these international standards can be implemented in the best possible way. One of the recommendations of the 2013 Regular Annual Report⁸ of the Commissioner for the Protection of Equality is that it is necessary to revise the Strategy on Development and Promotion of Corporate Social Responsibility (2010–2015) by introducing special measures for eliminating social exclusion and discrimination against members of vulnerable groups. Special measures need to be in place to ensure that employers implement the principle of equal opportunity and non-discrimination in respect of employment and labour⁹, following the example of a number of companies which observe these principles in doing business, contributing both to the economic development of the Republic of Serbia, and creating a society which benefits all its citizens.

One's profession is not the only dimension of one's life

"We, who differ", Veselin Marković

⁷It is good to mention here the standard of the Social Accountability International Organization SA8000 covers widely accepted human and labour rights, including the management system specification necessary to ensure continuous conformity and improvement. The SA8000 standard deals with the issues of discrimination, disciplinary practices, working hours and compensation, child labour, forced labour, health and safety, freedom of association and collective bargaining.

⁸Commissioner for the Protection of Equality, Belgrade, 2014, p.12. Available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2012/11/images_files_Redovan_izvestaj_2013.pdf

⁹Although in Serbia, there is no ministry or dedicated unit of a ministry to deal exclusively with promotion and development of corporate social responsibility, the Government, through the ministry responsible for labour and employment, established public policy in this field, which has not been reviewed. It is important to prepare the text for a new strategy, which will take into account the importance of the prohibition of discrimination and indicate certain dangers in the context of vulnerable groups, as recommended by the Commissioner.

I. THE CONCEPT AND FORMS OF DISCRIMINATION

1. What is discrimination?

The word discrimination means *differentiation*, and is used to designate making an unwarranted distinction. *The terms “discrimination” and “discriminatory treatment”*, designate any unwarranted discrimination or unequal treatment, that is, omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as members of their families or persons close to them, be it overt or covert, on the grounds of personal characteristics.

The principle of equality and prohibition of discrimination is one of the main principles of human rights. It means, first of all, that all persons are equal before the law and are worthy of respect. Everyone is obligated to respect this principle. Furthermore, there is an obligation to refrain from discrimination, applicable to both legal and natural persons.

2. Personal characteristic as grounds for discrimination

In order for unequal treatment to be considered discrimination, it must be based on a specific *personal characteristic*. *For example, a person is treated unequally only because they are a citizen of a particular country, or belongs to a particular nation or ethnicity, regardless of whether the personal characteristic is actually present, or the discriminator only presumes it.* The term for the personal characteristic which discrimination is based on is ***discrimination grounds***. Personal characteristics that are grounds for discrimination and expressly set forth in the Law on the Prohibition of Discrimination are following:

- Race
- Skin colour
- Ancestors
- Citizenship
- National affiliation or ethnic origin
- Language
- Religious or political beliefs
- Gender
- Gender identity
- Sexual orientation

- Financial position
- Birth
- Genetic characteristics
- Health
- Disability
- Marital and family status
- Previous convictions
- Age
- Appearance
- Membership in political, trade union and other organisations
- Other real or presumed personal characteristics

Legislative bodies left the list of protected personal characteristics open, which means that in practice, certain personal characteristics may prove to be important grounds for discrimination which must be protected. The fact that the list of grounds for discrimination remains open, on the other hand, does not mean that any characteristics we associate with a particular person can be the grounds for discrimination. In order for a certain characteristic, not specifically recognized by the legal system to be considered a personal characteristic for the purpose of prohibiting discrimination, it is necessary for it to be defined as such, either by amending the law and passing a new one, or through the practice of authorities responsible for acting in cases of discrimination.¹⁰

3. Intent to discriminate

The **intent to discriminate** is not recognized by either law or theory as a relevant element of discrimination, and certain behaviours may be categorized as discriminatory, regardless of whether the person exercising discrimination wanted to do it or whether this was their goal. In Serbia, employers are often not aware that antidiscrimination legislation prohibits them from issuing a certain act or acting in a certain way towards an employee.

***Example:** employers often, without any intent to discriminate, indicate in a job posting that they are looking for a specific gender, although the job can be performed by both women and men (e.g. women are sought as cashiers for a grocery shop or secretaries).*

4. Direct and indirect discrimination

The basic theoretic division into two main **types** of discrimination is direct and indirect discrimination. This classification serves to better understand the essence of discrimination and its multiple forms of appearance.

Direct discrimination occurs if an individual or a group of persons, on the grounds of their

¹⁰In this instance, the Commissioner for the Protection of Equality, the Constitutional Court and regular courts deciding on matters of protection from discrimination have the most important role. At the global level, the European Court of Human Rights based in Strasbourg has the biggest influence on formulating norms and setting standards for human rights and the prohibition of discrimination.

personal characteristics, in the same or a similar situation, are placed or have been placed or might be placed in a less favourable position through any act, action or omission.

Example: an employer advertises in a job posting that he will not employ Albanians.

Example: a manager fires an employee for organizing a trade union in the company.

Indirect discrimination occurs if an individual or a group of individuals, on account of their personal characteristics, is placed in a less favourable position through *an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination*, unless it is justified by a lawful objective and the means of achieving that objective are appropriate and necessary. Indirect discrimination does not recognize only the activity, but also the consequences which are disproportionately unfavourable for a specific group of persons or specific individuals belonging to such group of persons¹¹.

Example: an employer demands that all applicants should be tested to determine their physical strength and endurance, although physical strength is not a determining factor for performing the job; this demand may discriminate against older persons if the test is tailor made for persons in prime physical condition.

5. Forms of discrimination

5.1. Association for the purpose of exercising discrimination

Association for the purpose of exercising discrimination is prohibited, and so is the activity of organisations or groups that are aimed at violating freedoms and rights guaranteed by the Constitution, rules of international law and the law, or at inciting nationally, racially, religiously or otherwise motivated hatred, divisions or enmity.

Example: groups of people who exercise violence, incite and spread hatred against, for example, Roma, Albanians or other national minorities, or members of the LGBT population, etc. It is not necessary for these groups to be registered, it is enough for individuals to associate and incite racial, religious or other hatred, division or enmity by their actions.

5.2. Calling to account (victimization)

Calling to account exists if an individual or a group of persons is unwarrantedly treated worse than others are treated or would be treated, solely or predominantly on account of requesting or intending to request protection from discrimination, or due to having offered or intending to offer evidence of discriminatory treatment.

The goal of this legal provision is to prevent negative consequences for persons who have called attention to discrimination, or have requested protection from discrimination, or have given evidence or intend to give evidence on behalf of a victim of discrimination. In practice,

¹¹ The Law on the Prohibition of Discrimination ("Official Gazette of RS", no.22/09) states in Article 7 that indirect discrimination occurs if an individual or a group of individuals, on account of his/her or their personal characteristics, is placed in a less favourable position through the application of apparently neutral rule (criteria, conditions, practices) .

people who express their intention to seek protection from discrimination are often subjected to various types of unpleasantness and are treated worse than others. This prohibition of calling to account or *victimization* (a term often used for this type of discrimination), protects the victim of discrimination and third parties who have helped the victim of discrimination or are ready to help them obtain legal protection from discrimination.

Example: a young man living with HIV files for protection from discrimination, as he is the victim of constant mobbing at work. Other employees avoid contact with him, often making negative comments and sometimes insult him. Management treats him in a similar manner. After filing for protection from discrimination, the manager moved him to another office where he is alone.

5.3. Harassment and humiliating treatment

Harassment and humiliating treatment is the violation of the dignity of an individual or a group of persons, on the grounds of their personal characteristics, especially if it induces fear or creates a hostile, humiliating or offensive environment. Harassment and humiliating treatment can be exercised in various ways – verbally (e.g. by saying insults), non-verbally (e.g. by making gestures) or by taking action (e.g. sexual harassment).

Example: a co-worker told his colleague that a valuable pen was stolen from his office: “It must have been that Gypsy from the first floor, you what they are like!” The negative context of the entire statement where all Roma people are accused of being thieves, and using the derogatory term “Gypsies” is a violation of the dignity of members of the Roma national minority and creates a humiliating and offensive environment.

5.4. Hate speech

Hate speech is the expression of ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of their personal characteristics, in public journals and other publications, in gatherings and places accessible to the public, by writing and displaying messages or symbols, and in other ways. In other words, hate speech is the public announcement of messages of hate or enmity towards a racial, national, ethnic, religious, sexual or any other social group or its members. This kind of speech incites, justifies or glorifies discrimination based on gender, religion, race, nationality, ethnicity, sexual orientation or other personal characteristic. Some severe forms of hate speech constitute a criminal act.

Example: a local community leader N., during a rally of residents in village N, organized to protest the move of a Gypsy family into their village, made the following statement: “Our village is going through very difficult times. Earthquakes and floods did not degrade N. as much as this migration of Roma from Kosovo. We are not racist, but we simply cannot live together with them, as our peace will be disturbed. Residents of village N. ran to the hills in times of Turkish occupation, and it seems we shall have to do the same now. We cannot mix with them.”

6. Discrimination in respect of labour and employment

Discrimination in respect of labour and employment is strictly prohibited.

Violating equal opportunity for gaining employment or enjoying under equal conditions all the rights pertaining to the sphere of labour, such as the right to employment, free choice of employment, promotion, professional training and professional rehabilitation, equal compensation for work of equal value, fair and satisfactory working conditions, paid vacation, joining a trade union and protection from unemployment (Article 16 (1) of the Law on the Prohibition of Discrimination).

The right to protection from discrimination shall be enjoyed not only by a person who is employed (employment agreement), but also a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a contract of employment, a volunteer or any other person who works on any grounds whatsoever (Article 16 (2) of the Law on the Prohibition of Discrimination).

Not every differentiation is discrimination. Sometimes in life, someone is treated unfairly, without it being discrimination, as it was not based on a personal characteristic (*e.g. level of education or profession are not personal characteristics*). Furthermore, not every differentiation based on personal characteristics necessarily has to be discrimination. An employer may treat employees differently in exceptional cases, when it is legal and justified by a legitimate goal, and when the means are proportionate to the end.

Different treatment, exclusion or giving priority on account of the specific character of a job, when an individual's personal characteristic constitutes a genuine and decisive precondition for performing the said job, if the objective to be achieved is justified, shall not be considered to constitute discrimination, nor shall undertaking protective measures towards certain categories of persons (women, pregnant women, women who have recently given birth, parents, underage persons, disabled persons and the like) be considered to constitute discrimination – Article 16, Paragraph 3 of the Law on the Prohibition of Discrimination.

***Example:** a woman with a disability applied for a job and did not get it, and she files a complaint as she thinks that the employer is obligated to employ her pursuant to the Law on Professional Rehabilitation and Employment of Persons with Disabilities, in view of the fact that she is the only person out of all the applicants who has a disability. The Law on Professional Rehabilitation and Employment of Persons with Disabilities does prescribe the obligation of the employer to employ persons with disabilities as a certain percentage of his staff, but this law does not stipulate the obligation of the employer to favour persons with disabilities when hiring. Therefore, the fact that she has a disability does not constitute an obligation for the employer to hire her. Discrimination would only exist if the complainant, when applying for the job, had had the best results for a certain job, and the employer then refused to hire her only because she has a disability.*

***Example:** a Roma woman filed a complaint for not getting a job in an institution where she had completed her internship. She believed that the employer should have hired her, as there are no Roma employees available in her trade, and Roma are the majority population in this region. The Law on Labour stipulates that the employer has full autonomy, in keeping with valid applicable regulations, and on the grounds of objective criteria, to decide independently which individuals they will employ or engage for work, by assessing their professional knowledge, competences and abilities, and there is no obligation for the employer to hire individuals after having completed their internship.*

6.1. Mobbing and discrimination – similarities and differences

The practice of the Commissioner for the Protection of Equality indicates that a large number of citizens do not understand **the difference between workplace discrimination and workplace mobbing**. That is why the main differences between these two phenomena will be presented here.

Discrimination and workplace mobbing have traditionally been around for as long as employment in the modern sense of the word has, but a lot of time passed before these phenomena were characterized as harmful and legal protection was provided. Workplace mobbing and discrimination at work are not the same. They can have similar forms, but are usually incited by different motives, have different consequences, different actors, and their disputes are resolved in different procedures at different state authorities.

In order to conclude whether an action constitutes discrimination, mobbing or violation of another right, we should bear in mind that discrimination is the violation of only one right – the right to equality. Further to the main definition of discrimination as unequal treatment on the grounds of a personal characteristic, the most important characteristic of discrimination at work is that the discriminator is, as a rule, either the employer or another employee who is, either authorized by the employer, or by the authority of their status, in a position to decide on hiring, dismissal, professional training and job promotion, as well as other rights of employees. Thus, discrimination is when the discriminator treats an individual or a group unequally only on the grounds of a personal characteristic (gender, appearance, nationality, sexual orientation, disability, etc.).

***Example:** an employer pays lower salaries to women employees only because they are*

female (personal characteristic), while they work in the same positions as men do, under equal working conditions, with the same results.

Example: a company owner refuses to hire a married woman as a secretary, with the explanation that unmarried women are preferred due to frequent travelling being required.

Example: an employer assigns employed women junior and less paid positions after their return from maternity leave.

Workplace mobbing is prohibited by a specific law – the Law on Prevention of Mobbing at Work.¹² In practice, various actions may at first seem like workplace mobbing but are not.

For example, the following is not considered to be workplace mobbing:

- *An individual act issued by the employer (Decision, offer of Annex to the Employment Contract, etc.) which contains a decision on individual rights, obligations and responsibilities of the employee, pertaining to employment;*
- *Withholding a right prescribed by law, statutory instrument or Employment Contract (non-payment of salaries and other income, imposing overtime contrary to the law, withholding the right to daily or weekly rest or annual leave);*
- *Work discipline intended for better organization of work (restriction of Internet access during working hours, unless it is used for work purposes);*
- *Activities which are justified to ensure workplace safety and health (prohibition of alcohol or obligation of wearing helmets on site);*
- *Discrimination, i.e. unjustified differentiation between employees for their personal characteristics; behaviour which may be characterised as workplace mobbing, but which is not repeated;*
- *Differences in opinion and conflicts arising from work issues.*

Workplace mobbing means any active or passive behaviour towards an employee or group of employees which has been repeated, and aims to harm the dignity, reputation, personal and professional integrity, health or position of the employee, incites fear or creates a hostile, degrading or offensive environment, aggravates working conditions or causes the employee to become isolated or impels them to terminate their employment or cancel their Employment Contract or other contract.¹³

The generally accepted criterion for differentiating between discrimination at work and workplace mobbing is *the motive of the perpetrator*. The motive for mobbing is personal animosity towards the victim (anger, jealousy...). Workplace mobbing is expressed in a different way and with different objectives. The other criterion for distinction is based on the condition that it is necessary for the disputed action to be repeated if it is to be considered

¹²The Law on Prevention of Mobbing at Work ("RS Official Gazette" No. 36/10)

¹³Individuals are not properly covered in cases of workplace mobbing, because provisions of the Law on Prevention of Mobbing at Work only provide protection for employed individuals and individuals engaged for work, but not for individuals seeking employment.

workplace mobbing. One isolated action, regardless of its magnitude, cannot be characterised as workplace mobbing.

In order for workplace mobbing to be identified, its consequence is a necessary condition, while this is not the case with discrimination at work. The purpose of workplace mobbing is creating fear, discomfort, humiliation, and if workplace mobbing does not produce the desired effect, or if the potential victim is not aware of these actions, there can be no workplace mobbing in that particular case, while discrimination can be present independently of whether the victim is aware of discrimination. Workplace mobbing also requires intent, while discrimination exists independently of the intent of the discriminator.

Example: an employee, who suffered daily punishment from their superior in a company, unrelated to any personal characteristic (gender, nationality, appearance, age, sexual orientation, etc.), has been transferred to a new, junior position, with a lower salary, and is not assigned tasks described in the job description. This type of behaviour of his superior has been going on for some time and is being repeated. This situation is a case of workplace mobbing.

II. LEGAL FRAMEWORK FOR THE PROHIBITION OF DISCRIMINATION IN RESPECT OF EMPLOYMENT AND LABOUR

The prohibition of discrimination is a universally recognized principle, which means that discriminatory behaviour is prohibited by the highest legislative acts in most countries. Serbia has joined countries which place great importance to combating discrimination and achieving equality, trying to integrate the highest international standards in this field by ratifying international human rights treaties and passing required laws. Over the past several years, many laws on the prohibition of discrimination have been adopted and legal mechanisms for prevention and protection from discrimination have been regulated.

Standards in the field of human rights, as well as in the area of workplace discrimination, have been set by the most important documents of the United Nations such as the United Nations Charter (1945)¹⁴, Universal Declaration of Human Rights (1948)¹⁵, International Covenant on Economic, Social and Cultural Rights (1966)¹⁶, the International Covenant on Civil and Political Rights (1966)¹⁷, the Convention on the Elimination of All Forms of Racial Discrimination (1965)¹⁸, the Convention on the Elimination of All Forms of Discrimination against Women (1979)¹⁹, the Convention on the Rights of Persons with Disabilities (2006).²⁰

¹⁴ Source: http://www.ius.bg.ac.rs/prof/materijali/krsiva/povelja_un.pdf

¹⁵ Universal Declaration of Human Rights, adopted on 10 December 1948

¹⁶ International Covenant on Economic, social and Cultural Rights ("Official Gazette of SFRY – International treaties", no. 7/71)

¹⁷ International Covenant on Civil and Political Rights ("Official Gazette of SFRY – International treaties", no. 7/71)

¹⁸ Convention on the Elimination of All Forms of Racial Discrimination ("Official Gazette of SFRY – International treaties", no. 31/67)

¹⁹ Convention on the Elimination of All Forms of Discrimination against Women CEDAW ("Official Gazette of SFRY – International treaties", no. 11/81)

The International Labour Organization has been addressing prevention of discrimination in respect of employment and labour ever since its inception. The Declaration of Philadelphia says: "All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity." The Declaration on Fundamental Principles and Rights at Work (1998) highlights the significance of eliminating discrimination in its preamble. The International Labour Organization, through its Conventions, introduced the most important instruments with regard to the prohibition of discrimination in respect of employment and labour: Convention No. 111 concerning discrimination in respect of employment and occupation (1958) and Convention No. 100 on equal remuneration (1951).

Documents of the *Council of Europe* are certainly among the most relevant when it comes to the prohibition of discrimination, particularly employees and job seekers. In addition to the European Social Charter (1961), and the revised European Social Charter (1996)²¹, also known as the Social Constitution of Europe, discrimination is also prohibited by the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)²², particularly Protocol no. 12 which provides for a general prohibition of discrimination.

A number of documents passed by *the European Union* aim to create conditions which will help implement the principle of equal treatment regardless of personal characteristics in practice with respect to employment and labour as much as possible. In this regard, Directive 2000/78/EC²³ was very important for establishing a general framework for equal treatment in employment, Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)²⁴, as well as the Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity²⁵.

Through ratification, relevant international standards became part of the *antidiscrimination legislation of the Republic of Serbia*. Pursuant to Article 16 Paragraph 2 of the Constitution of the Republic of Serbia²⁶ universally accepted rules of international law and confirmed international treaties became integrated into the legal system of the Republic of Serbia and are being directly exercised. The Constitution in Article 21 states that all are equal before the Constitution and law and that everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited. Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.

²⁰ Convention on the Rights of persons with Disabilities ("Official Gazette of RS – International treaties", no. 42/2009)

²¹ European Social Charter of the Council of Europe ("Official Gazette of RS – International treaties", no. 42/2009)

²² European Convention for the Protection of Human Rights and Fundamental Freedoms ("Official Gazette SM – International treaties", no. 9/2003)

²³ Adopted on 27 November 2000

²⁴ Adopted on 5 July 2006

²⁵ Adopted on 7 July 2010

²⁶ "Official Gazette of RS", No. 98/2006

Many local regulations pertaining to employment and labour issues contain antidiscrimination provisions. Article 18 of the Law on Labour²⁷, prohibits direct and indirect discrimination of individuals seeking employment as well as employed persons on the grounds of gender, birth, language, race, skin colour, age, pregnancy, state of health, disability, nationality, religion, marital status, family obligations, sexual orientation, political or other beliefs, social background, financial status, membership in political organizations or trade unions or other similar personal characteristic.

The latest amendments to the Law on Labour²⁸ from 2014 introduced several new elements significant for prohibition of discrimination. Improvements have been made in protection of employed women, with the rule that a pregnant or breastfeeding woman cannot work overtime and night shifts, if this type of work is detrimental to her health and the health of the child, and the rule which recognizes that an a pregnant woman has the right to paid leave from work during the day for doctor's appointments related to her pregnancy, as determined by her GP, in keeping with the law, about which she is obligated to inform the employer on time.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities²⁹ regulates, among other things, incentives for employment of persons with disabilities in order

Furthermore, the Law on Occupational Safety and Health³⁰, Article 42 (5), prohibits the use of data obtained by employee medical check-ups for the purpose of discrimination of employees. Prohibition of discrimination and implementation of equal opportunities for all are among the main principles of the Civil Servants Law³¹ and the Law on Employees of Autonomous Provinces and Local Government Units.³²

The Law on Employment and Unemployment Insurance³³, the Law on Whistle-blower Protection³⁴ and the Law on Volunteering³⁵, the Law on the Prevention of Workplace Harassment³⁶, Law on Peaceful Settlement of Labour Disputes³⁷, Law on Strike³⁸, the Law on the Salary System of Employees in the Public Sector³⁹, the Law on Anti-corruption Agency⁴⁰, the Law on Conditions for Assignment of Employees to Temporary Work Abroad and their Protection⁴¹ are, among other things, directed at achieving the principle of equal treatment and non-discrimination.

In addition, Article 4 of the Law on Employment of Foreigners⁴² stipulates that foreigners

²⁷"Official Gazette of RS", nos. 24/05, 61/05, 54/09, 32/13 and 75/14

²⁸"Official Gazette of RS", no. 75/14

²⁹"Official Gazette of RS", nos. 36/09 and 32/13

³⁰"Official Gazette of RS", nos. 101/05 and 91/15

³¹"Official Gazette of RS", nos. 79/05, 81/05-corr., 83/05-corr., 64/07, 67/07-corr., 116/08, 104/09 and 99/14

³²"Official Gazette of RS", no. 21/16

³³"Official Gazette of RS", nos. 36/09, 30/10-other law, 88/10 and 38/15

³⁴"Official Gazette of RS", no. 128/14

³⁵"Official Gazette of RS", no. 36/10

³⁶"Official Gazette of RS", no. 36/10

³⁷"Official Gazette of RS", nos. 125/04 and 104/09

³⁸"Official Gazette of RS", nos. 29/96-53, 101/05-28 other law and 103/12- YC

³⁹"Official Gazette of RS", no. 18/16

⁴⁰"Official Gazette of RS", nos. 97/08, 53/10, 66/11-YC, 67/13-CC, 112/13-authentic interpretation and 26/15-CC

⁴¹"Official Gazette of RS", no. 91/15

⁴²"Official Gazette of RS", no. 128/14

employed in the Republic of Serbia have the same rights and obligations pertaining to work, employment and self-employment as citizens of the Republic of Serbia, provided that they comply with all requirements, in keeping with the law. Also, a foreigner is considered to be unemployed according to regulations on employment and unemployment insurance and can exercise the same rights as citizens if they meet all legal requirements of this law.

The Government of the Republic of Serbia adopted important strategic documents on employment and labour, and some of them are based on the principle of the prohibition of discrimination – National Employment Strategy 2011-2020⁴³ pays special attention to the issue of equal opportunities on the labour market; Strategy on Career Guidance and Counselling in the Republic of Serbia⁴⁴ in which one of the principles of career guidance and counselling is, among others, the principle of equal opportunity for all. The foundation of the Strategy on Occupational Safety and Health in the Republic of Serbia 2013-2017⁴⁵ is in the constitutional right to respect of personal dignity at work and protection of work.

“In many cases, service to consumers and product quality are the main goal, and profit is incidental” (Guofu Zhou)

III. COMMISSIONER FOR THE PROTECTION OF EQUALITY OF THE REPUBLIC OF SERBIA

1. Role and competences of the Commissioner

The Commissioner for the Protection of Equality (the Commissioner) is an independent, autonomous and specialized state authority established pursuant to the Law on the Prohibition of Discrimination from 2009. The normative framework for the work of the Commissioner for the Protection of Equality consists of the Constitution of the Republic of Serbia, relevant international documents and general and special antidiscrimination laws of the Republic of Serbia.

The role of the Commissioner is to prevent all forms, types and cases of discrimination, to protect the equality of natural persons and legal entities in all spheres of social relations, to oversee the enforcement of antidiscrimination regulations, and to improve implementation and protection of equality. **Independence and autonomy** of the institution of the Commissioner are the main postulates and key requirements for the successful implementation of its social role and mission. The Commissioner has no command or repression authority and does not decide on the rights and obligations of legal subjects, and realizes its legal role by issuing recommendations, cautions, warnings, reports, legislative initiatives, etc.

The Commissioner, pursuant to the Law on the Prohibition of Discrimination, has a

⁴³Official Gazette of RS", no. 37/11

⁴⁴Official Gazette of RS", no. 16/10

⁴⁵Official Gazette of RS", no. 100/13

Professional Service for assistance in performing duties. The Professional Service consists of sectors as main organizational units, the Office of the Commissioner as a separate internal unit, departments and groups. In her work, the Commissioner is obligated to establish and maintain collaboration with authorities in charge of implementing equality and protecting human rights on the territories of the Autonomous Province and local government units.

The Commissioner for the Protection of Equality **is competent** to:

Carry out the procedure upon receiving complaints in cases of discrimination against persons or groups of persons with the same personal characteristic. The Commissioner is competent to receive and consider complaints of discrimination, to issue opinions and recommendations in concrete discrimination cases, and to order measures pursuant to the Law. In addition, the Commissioner is obliged to *inform* the complainant about their rights and possibilities to initiate a court procedure or seek another protection measure, including a reconciliation procedure and to file complaints for protection from discrimination, with the approval of the discriminated person.

In the public interest, the Commissioner is authorized to file so-called strategic lawsuits for protection from discrimination.

These lawsuits are initiated and engaged in by the Commissioner in public interest, with the objective of contributing to consistent implementation of regulations and improving legal practice, additionally encourage and urge victims of discrimination to file antidiscrimination lawsuits, and to legally educate and sensitize the public to the problem of discrimination. Furthermore, it is the Commissioner's goal to use legal action to obtain favourable court rulings, which, further to providing legal protection for discriminated persons, sends a clear message to the public that discrimination is prohibited and that it is being efficiently sanctioned. The goal of strategic lawsuits should also be to provide proper interpretation or proper implementation of antidiscrimination regulations in practice, and clarify the meaning of specific rules through case law, or use it as an opportunity to draw attention to the fact that certain regulations should be amended, expanded or improved.

***Example:** a complaint was filed on 18 July 2014 against an employer for discrimination in respect of employment by a member of the Roma national minority. This employer, hiring people for picking raspberries, in a document titled "Note" stipulated that "Roma workers should not be hired (as they do not get along with other nationalities and potential difficulties may arise during their stay together with others at the employer)!!!" The Commissioner for the Protection of Equality, in her complaint, petitioned the court to issue a temporary injunction to withdraw the document "Note" from use immediately. The court issued a decision accepting the requested measure, and this was to remain in power until the court procedure is completed in the final disposition. The Higher Court in Belgrade, on 22 October 2015, issued a ruling which fully acknowledged the complaint from the Commissioner for the Protection of Equality. It was established that the defendant denied the right to work to members of the Roma national minority, thereby exercising discrimination at work on the grounds of nationality. The ruling je ordered the defendant to remove provisions excluding members of the Roma minority from employment specifications, to refrain from repeating this act of discrimination in the future, to offer a written apology to the injured party and to publish the ruling in a newspaper with nationwide distribution at his own cost. This ruling was appealed by the defendant, and the Commissioner for the Protection of Equality submitted a response to this appeal to the court on 11 December 2015. The case is currently with the*

Appellate Court in Belgrade, which is deciding on the appeal.

The Commissioner is authorized to:

- ✓ **File charges for both minor offenses and criminal charges**
- ✓ **File proposals for assessment of constitutionality and legality**

Using her legal authority, aiming to improve equality in respect of employment and labour, the Commissioner has initiated **proposals for the assessment of constitutionality** of certain legal provisions.

Example: *after the adoption of the Law on the method for determining the maximum number of employees in the public sector, the Commissioner received 97 complaints from women, trade unions, professional associations and civil sector organizations because of the discriminatory provision in this law. All complaints drew attention to the fact that implementation of Article 20 of this law will cause the termination, by force of law, of the employment for all women employed in the public sector who meet the age requirements for old age pension as prescribed by pension and disability insurance regulations. Thus, women employed in the public sector would no longer have any choice on whether they want to retire; it would automatically become an obligation, which, however, would not be applicable to men employed in the public sector. Realizing that a large number of women would be affected by this discriminatory provision, the Commissioner for the Protection of Equality, together with the Ombudsman, filed a proposal for the assessment of constitutionality on 29 September 2015. The final Decision on the proposal for the assessment of constitutionality was made by the Constitutional Court on 4 October 2016, establishing that provisions of Article 20 of the Law on the method for determining the maximum number of employees in the public sector are not in compliance with the Constitution of the Republic of Serbia. In justifying the Decision, the Constitutional Court stated that converting the legal right of women to retire under more favourable conditions into grounds for termination of employment is a violation of the constitutionally guaranteed principle of the prohibition of direct and indirect gender based discrimination. The Constitutional Court also brought attention to the fact that the Constitution guarantees the equality of men and women, and that the state guarantees the implementation of the equal opportunities policy. Finally, the Constitutional Court established that the disputed legal solution is indirectly also contrary to the provision of the Constitution which guarantees availability of all jobs to everyone, under equal conditions⁴⁶.*

One segment of the Commissioner's competences is to monitor *the situation with respect to* protection of equality.

The Commissioner is also authorized to:

- ✓ **Warn the public about the most common, typical and severe cases of discrimination**
- ✓ **Monitor the enforcement of laws and other regulations, to initiate the adoption or amendment of regulations for better enforcement and improvement of**

⁴⁶Constitutional Decision No. IUz 244/201546 abrogated provisions of Article 20 of the Law on the method for determining the maximum number of employees in the public sector. This decision abrogated Decision IUz-244/2015 dated 8 October 2015 which suspends the execution of an individual act or action undertaken on the grounds of provisions of Article 20 of the Law on the method for determining the maximum number of employees in the public sector ("Official Gazette of RS", No. 68/2015).

protection from discrimination and to provide opinions on draft laws and other regulations pertaining to the prohibition of discrimination

- ✓ **Recommend measures for achieving equality to public authorities and other relevant parties.**

In her work so far, the Commissioner has made a large number of **recommendations for measures** to public authorities and legal persons with regard to achieving equality. *Among others, the Commissioner for the Protection of Equality and Ombudsman of the Autonomous Province, in 2010, issued a recommendation to the National Employment Service to comply with the prohibition of gender based discrimination, and to refrain from explicitly stating in job postings that jobs are open for both men and women, unless differentiating, excluding or favouring one gender for a specific job is allowed due to the nature of the job being such, or the job being performed under such conditions, that the gender represents a real and deciding factor for performing such job, and the objective which is achieved by this is justified.*

The Commissioner submits a Regular Annual Report to the National Parliament of the Republic of Serbia, which includes an evaluation of the situation concerning the protection of equality, and if especially important reasons arise, she can submit special reports, either on her own initiative or at the request of the National Parliament. Every Report contains recommendations for undertaking measures aiming to resolve any observed weaknesses or to make preventing and suppressing discrimination more effective.

The Commissioner *establishes and maintains collaboration* with authorities in charge of implementing equality and protecting human rights on the territories of the Autonomous Province and local government units, as well as civil society organizations, international and local organizations and institutions working to protect human rights.

2. Complaints procedure before the Commissioner

One of the main competences of the Commissioner is to handle complaints of discrimination. In the complaints procedure, the Commissioner for the Protection of Equality issues **an opinion** on whether provisions of the Law on the Prohibition of Discrimination were violated, issues **recommendations** on the method for eliminating the violation of rights and imposes measures provided by law if the discriminator does not act on the Commissioner's recommendation.

The complaints procedure is simple, devoid of excessive formalities and is completely free.

The Commissioner **acts on a complaint** if court proceedings on the same matter have not already been initiated or completed in the final disposition. **The Commissioner does not act on a complaint** if it is evident that no violation of rights claimed by the person having lodged the complaint has actually occurred, if she has already taken steps concerning the same matter and no new evidence has been provided, and if she establishes that, in view of the time elapsed since the violation of rights in question, no useful purpose will be served by

acting upon the complaint.⁴⁷The Commissioner offers information to the complainant about their rights and the possibility of initiating court proceedings or other procedure for protection and on ways of protecting their rights, and is authorized to recommend mediation if she judges that the case is eligible for mediation.

A complaint should contain the following information:

- ✓ Who was discriminated against
- ✓ Who was the discriminator
- ✓ What is the grounds for discrimination
- ✓ A description of the discrimination act
- ✓ Evidence of the discrimination act (documents, witnesses, etc.)

The complaint must be signed. The Commissioner does not act on anonymous complaints.

The complaint is submitted **in writing**. It can also be filed by fax, email containing attached scanned complaint and electronic signature of applicant, and **orally on record**, without paying fees or other charges.

A complaint for discrimination may be filed by:

- ✓ Any natural or legal person or group of individuals who believe that they were discriminated against
- ✓ Organizations for protection of human rights or other persons, on the behalf and with the consent of the person who was discriminated against
- ✓ In case of discrimination against a group of individuals, an organization for protection of human rights may file a complaint on its own behalf, without the consent of the person who was discriminated against.

The Commissioner first examines whether the complaint may be acted on⁴⁸ pursuant to the Law on the Prohibition of Discrimination.

➔ If there are no obstacles for proceeding further, the Commissioner delivers the

⁴⁷Law on the Prohibition of Discrimination ("RS Official Gazette" No. 22/09), Article 36

⁴⁸Law on the Prohibition of Discrimination ("RS Official Gazette" No. 22/09), Article 36

complaint to the alleged discriminator within 15 days. The alleged discriminator has 15 days to give their statement on the allegations from the complaint, although the Commissioner will continue with the procedure if such statement is not provided.

- In order to establish the facts, the Commissioner may take statements from other persons (e.g. witnesses). The Commissioner may suggest reconciliation, if legal conditions for this procedure are met.
- After analysing the case and establishing facts, within 90 days from receiving the complaint, the Commissioner gives **an opinion** on whether discrimination did occur, of which she shall inform the complainant and the person against whom the complaint was filed. Along with the opinion that a violation of the law did occur, the Commissioner **recommends** ways for redressing this violation to the person against whom the complaint was filed.
- If the discriminator does not act on the recommendation within 30 days (they are obligated to inform the Commissioner on recommended measures taken), the Commissioner will issue a **caution** and a new deadline for action. If the discriminator does not act on the caution, the Commissioner can inform the public.

During the seven years of continuous work, more than one third of complaints to the Commissioner were for discrimination in respect of employment and labour, on the grounds of gender, marital and family status, disability, age and other similar personal characteristics. An increase in the number of complaints from year to year indicates that citizens are increasingly encouraged to report discrimination and that confidence in the institution and its authority is growing.

“Lessons learned” from the extensive practice of the Commissioner in solving concrete cases of discrimination in respect of employment and labour should open up to space for pre-emptive action. Employers who decide to “learn through the example of others” can successfully prepare their company for all discrimination challenges in the workplace.

***Example:** the Commissioner issued a recommendation to an Internet portal, as an advertising medium, to take action to prevent the restriction of equal opportunities for employment and prevent any type of discrimination against persons looking for employment, on the grounds of any personal characteristic, including gender, age and physical appearance.*

The National Employment Service and Internet portals which mediate by advertising job postings are an important link in the partnership between employers and the Commissioner for preventing discrimination in the process of recruitment and they must be involved in the process of consultation and activities for creating an equitable working environment.

The Commissioner is not authorized to punish discriminators for not acting on recommendations, but can persuade them to act by the authority of the institution she represents, by force of arguments and by public pressure.

IV. GENDER EQUALITY IN THE WORKING ENVIRONMENT

Equality of women and men in respect of employment has not yet been achieved, although existing legislation clearly proclaims the principle of equality of men and women in the labour market, with regard to equal availability of jobs and positions, equal opportunity and conditions for signing an employment contract or entering into other type of work engagement, equal benefits from all rights pertaining to employment and equal protection from unemployment. Data available to certain state institutions and independent public authorities, as well as the results of research carried out so far, indicate that women are still in an unequal position compared to men, and that they face various forms of discrimination when applying for a job and in the workplace.

The practice of the Commissioner for the Protection of Equality shows that far more complaints for gender based discrimination are filed with the Commissioner by women, especially in respect of employment and labour. Women mostly filed complaints because they were not promoted at work due to the fact that they were women or because of their family status, or because, during their childcare leave from work, their contracts were terminated or they were assigned other positions, usually lower ranking and with a lower salary. Also, in the public opinion survey "Attitude of citizens towards discrimination in Serbia", 16% of respondents mentioned women as their first association to most discriminated groups. As one of the first associations to the term discrimination, citizens mentioned gender based discrimination in the process of job recruiting and lower salaries for women for the same job. It can therefore be concluded that women still face numerous difficulties and obstacles in exercising their right to equality, and women from marginalized social groups such as Roma women, women with disabilities, single mothers, refugees and internally displaced women, impoverished women and women from villages are in a particularly difficult position.

Although they make up more than one half of working age population, women are a minority among employees, and are the largest vulnerable group in the labour market of the Republic of Serbia. Women are disproportionately more burdened with activities and responsibilities concerning the care of family members and the household, and this traditionally founded stereotype of the gender role of women additionally deepens gender segregation in the educational system and in the labour market. The practice of the Commissioner for the Protection of Equality shows that gender based discrimination appears early in the job recruitment procedure. When a job is advertised, advantage is directly or indirectly often given to only one gender, and questions about marital status and family planning are frequently asked at job interviews.

It is more difficult for women to get promoted at work and they less frequently have the opportunity for professional development. Their knowledge and skills are often undervalued, they are sometimes considered insufficiently competent to hold high positions, and if job hierarchy is analysed, the higher position, the less women there are. In addition to poor availability of management and highest paid jobs, the problem is also the traditional categorization of jobs to "male" and "female" (often less paid and less prestigious), a high concentration of female workforce in poorly paid jobs, which leads to an almost total

feminization of certain occupations, and the lack of women in important domains of work. The difference in salaries between men and women is 16%.

Results of the survey on the prevalence of discrimination of women in the labour market show that 61% of women faced some form of discriminatory behaviour or situation in the labour market. In addition to this, more than two thirds of women respondents said that they know a woman who was discriminated against in the process of job recruitment or in the workplace.

Data indicates that, after exercising their right to maternity leave and leave from work for childcare, employers often assign women to lower ranking positions, reduce their salary or declare her to be redundant. In early 2014, a large number of pregnant women who were temporarily employed and whose contracts were not renewed when employers found out that they were pregnant filed complaints with the Commissioner. Although it was clear that pregnancy was the reason that their employment was not extended, according to the Law on Labour valid at the time, the employer was not obligated to renew the employment contract to pregnant women. The large number of complaints, among other things, indicated that some employers had developed a discriminatory practice of not renewing temporary employment contracts to pregnant women. The Commissioner for the Protection of Equality cautioned against this phenomenon and supported initiatives for changing the Law on Labour, which was amended in 2014, and now employers have an obligation to renew temporary employment contracts of women when they fall pregnant, and their contracts remain valid until they return from maternity leave or from childcare leave.

Women rarely approach courts for protection of their employment rights. Survey results indicate that the main reason is fear of losing their jobs and permanent or long lasting inability to find another job. Also, reasons are insufficient knowledge of the law, high costs of the procedure and lack of mechanisms to prevent victimization. On the other hand, for several years now, most of the complaints filed with the Commissioner for Protection of Equality concern these matters. In 2016, out of the total number of complaints filed, 33.9% were filed for discrimination in respect of employment and labour. Out of this number, gender as the personal characteristic was cited in 15.4% of complaints, with women who filed complaints by far outnumbering men (29 women and 5 men). It can therefore be concluded that women are still the most discriminated group in respect of labour and employment, and that the situation in this regard has not significantly changed compared to the previous year when 36.3% complaints were filed in this respect, and most complainants were women. In 2015, one of the key factors which affected the number of complaints was the disputed discriminatory provision of the Law on the method for determining the maximum number of employees in the public sector which prescribed the retirement age for women.

It is evident that women mostly filed complaints because they were not given promotions at work due to their gender and family status, or because their contracts were terminated or they were assigned junior and less paid positions after their return from childcare leave. There is no comprehensive and publicly available statistical data on the implementation of legal obligations (adoption of action plan and submission of reports) of employers pertaining to eliminating and diminishing unequal representation of genders.

V. SPECIAL (AFFIRMATIVE) MEASURES

Measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position *do not constitute discrimination* and are called *affirmative* or *special measures*. The goal of affirmative measures is to reduce inequalities among individuals and groups (e.g. women, Roma, persons with disabilities). The implementation of affirmative measures is regulated by the Constitution of the Republic of Serbia⁴⁹, the Law on the Prohibition of Discrimination⁵⁰, Law on Gender Equality⁵¹, while some articles pertaining to these measures can be found in the Law on Professional Rehabilitation and Employment of Persons with Disabilities⁵².

Affirmative measures actually provide a certain advantage to vulnerable social groups in order for them to be at the same “starting point” with other citizens. That creates conditions for members of these groups to enjoy all the rights that other members of the society have.⁵³ Affirmative measures are introduced and implemented by the state. In respect of labour and employment, the National Employment Service provides programs which employers can join to achieve multiple benefits.

There are several types of affirmative measures in this area:

- ✓ **Measures for eliminating causes of unfavourable treatment of particular groups of persons;**
- ✓ **Policies which increase the participation of underrepresented groups in employment (e.g. minimum “quotas” for employment);**
- ✓ **Programs designed to attract candidates from underrepresented groups;**
- ✓ **Measures introducing preferential treatment of specific categories;**
- ✓ **An effort to set more objective criteria for employment and professional development of employees (e.g. to make them more directly related to job performance), thereby reducing the chance of subjective valuation and therefore discrimination as well.**

Examples of affirmative measures are most frequently linked to protection of persons with disabilities, women in the process of job recruitment, during their employment or during maternity leave, childcare leave or special childcare leave. Also, affirmative measures can refer to special rights of parents, adoptive parents, guardians and foster parents, but also persons living with HIV/AIDS, LGBTI persons, etc.

For example, because the number of women in the National Parliament was not satisfactory,

⁴⁹ Article 21 (4) of the Constitution states that special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.

⁵⁰ Article 14 of the Law on the Prohibition of Discrimination stipulates that measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position shall not be considered to constitute discrimination.

⁵¹ The Law on Gender Equality contains numerous provisions pertaining to the implementation of affirmative measures.

⁵² Articles 23 and 24 of the Law on Professional Rehabilitation and Employment of Persons with Disabilities prescribe affirmative measures for employment of persons with disabilities.

⁵³ These measures can, however, be the subject of abuse or immoderation. According to EC and EU judicial practice, in order to be justified and legal, affirmative action measures must be temporary, necessary, proportionate (i.e. not unconditional and automatic) and directed at eliminating existing inequalities or preventing imbalances in the future.

a rule was introduced that every third place in the electoral lists for the National Parliament must be reserved for women. This special measure resulted in women being more present and better represented in the legislative authority. The rule of minimum quotas for the underrepresented gender to be appointed in company boards of directors or to management positions in corporations is a good example of the implementation of affirmative measures.

In the context of labour and employment it is particularly important to acknowledge the purpose of reasonable adjustment, in terms of necessary and adequate modification and adjustment to avoid imposing disproportionate or unnecessary burden, where required in a concrete case, in order to allow persons with disabilities to enjoy and exercise all human rights and freedoms equally with others. Reasonable adjustment may refer to working hours, amendments of the employment contract, but also significant spatial adaptations of the office building in order to provide full accessibility to persons with disabilities. *Good examples of adjustment is the introduction of parking bays reserved for persons with disabilities and a working environment without architectural barriers, and adaptation of toilets, ramps and lifts.*

In addition to being in an unequal position, persons with disabilities are an underutilised economic and social potential. As a result, many are receiving welfare, which additionally and unnecessarily burdens the economy. By adopting the Law on Professional Rehabilitation and Employment of Persons with Disabilities, the state has introduced affirmative measures for employing this category of citizens. All employees on the territory of the Republic of Serbia who employ more than 20 permanent staff are obligated to employ at least one person with disability. This number grows proportionately to the number of permanent staff.

Equality of opportunity is achieved by affirmative measures, so that persons who are in an unequal position are able to work, learn and develop their talents and skills. This way they become socially included and equal, and the society has an opportunity to use its full development potential.

Example: 249 business actors applied for the Program for support of sustainable employment of Roma by mapping good practices financed by the European Union and the OSCE Mission in Serbia. In 2014, the Program supported 18 companies doing various types of business, from manufacturing, textile and food, to offering services. Over the following 18 months, 62 Roma citizens were employed, which exceeds set goals by 25%.

Implementation of affirmative measures in employment through equal opportunity policy is proposed by the *National Employment Strategy 2011-2020*.⁵⁴ It states that the implementation of the equal opportunity policy for all in the labour market will allow social inclusion and create conditions for employing unemployable and vulnerable categories. Based on the *Law on Employment and Unemployment Insurance*⁵⁵, the Rulebook on criteria, method and other issues relevant for implementations of active employment policy measures, including affirmative measures, was adopted. The *National Employment Action Plan*⁵⁶ is the main instrument for implementation of active employment policy on an annual level.

Annual goals and priorities in this document define the category of unemployable persons. For 2017, unemployable persons with priority for employment include, among others, those

⁵⁴"Official Gazette of RS", no. 37/2011

⁵⁵"Official Gazette of RS", nos. 36/2009, 88/2010 and 38/2015

⁵⁶"Official Gazette of RS", nos. 102/15, 5/17

younger than 30 or older than 50, persons with disabilities, Roma, women, victims of family violence, refugees and internally displaced persons, single parents, etc. The main goal of these measures is to enable their integration into the labour market and improve their quality of life.

Example: *one of the programs and active employment policy measures being implemented in 2017 for stimulating employment is the Subvention for employing persons from the unemployable category. Employers from the private sector, mainly small and medium enterprises, are eligible to receive a subsidy for employing persons from the unemployable category at new available job positions. The subsidy is paid to the employer as a one off payment, but the end user of the subvention is an unemployed person who will be employed as a result of this measure.*⁵⁷

“A true leader/manager/executive must have emotional intelligence, EQ, which involves two things: first, you are not employing computer software, but a living person; secondly, it is not merely important for you to know how to lead your team, but also to know how to be a good member of that team.” (David Goleman)

VI. EQUALITY CODE OF PRACTICE

In cases of discrimination in the workplace, social tensions are inevitable, and they may result in a disruption of the working environment and drop in productivity, which may also lead to the destabilization of the employer's position in the market. Contrary to this, corporate social responsibility and accepting the principle of equality, tolerance and non-discrimination as a standard for doing business is not a burden for employers, but rather represents a chance to prosper on multiple fronts, which should be the end goal of any rational and sustainable corporate policy.

In a discriminatory working environment, employees will be more likely to change jobs, while attracting new staff will be significantly more difficult. In addition, eliminating all types of discrimination from the working environment and the recruitment process considerably alleviates legal risks, such as the risk from filing internal complaints and disciplinary actions, and the risk from filing complaints at courts and other institutions, which may harm the reputation and the business success of the company. Respecting differences increases capacities for innovation, because staff which is varied in terms of personal characteristics, has better abilities for looking at problems from various angles, thereby increasing the chances of recognizing innovative solutions which may result in business success for the employer.

Adopting the *Equality Code of Practice* is a way for employers to improve their standing with their staff and potential employees and is an opportunity for being recognized as a desirable employer. In addition, adopting the Code of Practice benefits raising the awareness of the harmful effects of discrimination in respect of employment and labour and meets some of the crucial requirements for corporate social responsibility. By establishing this internal mechanism for protection from discrimination employers emphasize their resolution and

⁵⁷Page 20 of 2017 NEAP. Text available at: <http://sociojalnoukljucivanje.gov.rs/wp-content/uploads/2017/01/Nacionalni-akcioni-plan-zaposljavanja-za-2017.-godinu.pdf>

commitment to creating a working environment based on principles of equality and tolerance and become partners of the Commissioner in the fight against discrimination.