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CIVIL LAW PROTECTION AGAINST DISCRIMINATION IN EMPLOYMENT AND RECRUITMENT

ABSTRACT: Discrimination in the field of employment and recruitment constitutes a violation of personality rights guaranteed by civil law. In the Republic of Serbia, direct and indirect discrimination in employment relationships and during the recruitment process is prohibited, and injured parties have access to judicial protection under special anti-discrimination regulations as well as under the general rules of civil law. This paper analyzes the normative framework for the prohibition of discrimination in the field of labour, as well as civil-law protection mechanisms, with particular emphasis on the right of the injured party to claim compensation for non-pecuniary damage resulting from the violation of their rights. In light of Article 21, paragraph 4 of the Constitution of the Republic of Serbia: "Special measures introduced by the Republic of Serbia for the purpose of achieving full equality shall not be considered discrimination…" – so-called affirmative measures – the paper also presents the forms of judicial protection (actions for prohibition, removal of consequences, determination of discrimination, compensation for damages, etc.) and the conditions under which the injured party may seek equitable satisfaction. The paper relies

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on relevant judicial practice in Serbia, including decisions of the Supreme Court of Cassation, which confirm that discriminatory conduct constitutes a violation of honour, reputation, dignity, and other personal rights that enjoy judicial protection, both through claims for cessation of the violation and claims for damages. Despite progress in normative and institutional protection, practical challenges remain – from proving discrimination under special rules on the burden of proof, to inconsistencies in judicial practice regarding the awarding of non-pecuniary damages. Therefore, it is important to continuously improve the application of the law and awareness of the right to equal treatment in employment relationships, in order to ensure that civil-law protection against discrimination is effective and comprehensive.

Keywords: *discrimination, employment relationships, civil law protection, personality rights, non-pecuniary damage, case law, Serbia.*

1. Introduction

The right to equal treatment is one of the fundamental principles of modern labour and civil law. Discrimination on any personal ground in the sphere of work and employment is prohibited by domestic legislation and international standards because it violates human dignity and infringes the basic personality rights of employees or job applicants. The Constitution of the Republic of Serbia of 2006 guarantees a general prohibition of discrimination (Constitution of the Republic of Serbia, 2006, Art. 21) and explicitly prohibits discrimination on the grounds of sex, race, nationality, religious belief and other personal characteristics (e.g., Art. 60, para. 4 of the Constitution refers to equal access to employment). However, prior to the entry into force of the general Anti-Discrimination Act in 2009, protection against discrimination was fragmented across several regulations, which did not ensure effective protection. For example Article 18 of the Labour Law prohibits any discrimination, direct or indirect, against persons seeking employment and employees, on any personal ground, in relation to conditions of employment, work, equal pay for work, promotion, professional training, termination of employment, etc. (Article 18 of the Labour Law, 2005).

The adoption of the Law on the Prohibition of Discrimination (2009; hereinafter: LPD) represented a turning point in establishing a unified legal framework for combating discrimination. This Act introduces a definition of discrimination and sets out in detail the forms of discriminatory conduct,

including specific cases of discrimination in the field of labour. In practice, the Commissioner for the Protection of Equality first acts upon a citizen's complaint and may issue an opinion with a recommendation to the employer to remedy the violation. If the employer fails to do so, the Commissioner (with the consent of the victim) may initiate misdemeanor proceedings or file a lawsuit before the court (except for claims for damages). LPD states: "If the plaintiff makes it probable that the defendant committed an act of discrimination, the burden of proof … shifts to the defendant" (Article 45, paragraph 2 of the LPD) – this rule is lex specialis in relation to the Civil Procedure Act (2011), which provides that each party must prove its own allegations.

Alongside the LPD, the Labour Law (2005) contains a special chapter on the prohibition of discrimination (Arts. 18–21 of the Labour Law, 2005), which prohibits any form of direct or indirect discrimination against persons seeking employment as well as against employees, in relation to conditions of employment, work, promotion, termination of employment, etc. In addition, there are specific regulations addressing discrimination against certain groups in the employment context, such as the Law on Professional Rehabilitation and Employment of Persons with Disabilities, which prescribes measures for the equal inclusion of persons with disabilities in the labour market. Nevertheless, regardless of the multiple legal sources of protection, the essence of legal protection against discrimination in employment relationships lies in the possibility for the injured party to initiate civil proceedings and obtain judicial protection of their violated rights. Discrimination in the workplace is, in legal theory and practice, primarily regarded as a violation of the personality rights of the injured worker or job applicant, such as the right to dignity, honour, reputation, freedom of choice, and the like. Such a violation activates the mechanisms of civil law – actions for the protection of personality rights and claims for damages – in order to restore the disturbed balance and provide appropriate satisfaction to the injured party. This paper will first present the normative framework for protection against discrimination in the field of labour, then analyze civil-law instruments of protection (types of actions and procedure), with a particular focus on the right of the injured party to compensation for non-pecuniary damage. Relevant case law in Serbia will also be presented, including examples of judgments in which courts have found discrimination and awarded damages. Finally, a conclusion will be provided regarding the scope and challenges of the existing protection, along with recommendations for improving practice.

2. Normative Framework for Protection against Discrimination in Employment

The prohibition of discrimination in the Serbian legal system is established at several levels. The Constitution of the Republic of Serbia lays the foundation by proclaiming the principle of equality and the prohibition of all forms of discrimination (Art. 21 of the Constitution). In the field of work and employment, the Constitution guarantees the right of everyone to be admitted, under equal conditions, to public functions and jobs (Art. 60(4) of the Constitution), which implies that personal characteristics must not be a basis for unequal treatment in recruitment or during employment. The Labour Law, as the fundamental regulation of labour law, explicitly prohibits discrimination in employment relationships. Article 18 prescribes that direct and indirect discrimination against employees and persons seeking employment, on any ground (in particular sex, language, national affiliation, social origin, religious belief, political opinion, disability, age, marital status, trade union membership, etc.), is not permitted in relation to all rights arising from employment. Articles 19 to 21 of the Labour Law further elaborate this prohibition, including exceptions (e.g., positive measures and cases where a certain condition represents a genuine and determining occupational requirement). The Labour Law also provides for judicial protection for victims of discrimination – an employee or candidate may initiate proceedings before the competent court and seek the protection of their employment rights. It should be noted that a victim of discrimination in employment has two avenues available: (1) to seek protection within an employment dispute, relying on the provisions of the Labour Law; or (2) to file a separate anti-discrimination lawsuit under the LPD. In practice, provisions of both laws are often used – for example, a claim for determination of discrimination and compensation for damages may be based on the LPD, while at the same time invoking the violation of employment rights under the Labour Law. The LPD is a general anti-discrimination statute that applies to all areas, including work and employment. It was adopted in 2009 in line with European standards on equality (2009, Articles 41–47). The LPD contains a general definition of discrimination: any unjustified differentiation or unequal treatment of a person or a group of persons based on a personal characteristic, which has the purpose or effect of placing that person in a less favourable position.[1] The

[1] Supreme Court of Cassation, Rev. 66/2012 of 2 February 2012 (case of discrimination against a person with disabilities by refusal of transport): The Court confirmed the establishment of discrimination and awarded non-pecuniary damages (180,000 RSD for mental anguish due to violation of honour and reputation). Published in the Bulletin of Case Law of the SCC No. 3/2012.

Act explicitly lists a wide range of protected grounds of discrimination (race, sex, national affiliation, language, religion, age, disability, sexual orientation, gender identity, property status, membership in political and trade union organizations, etc.), as well as specific forms of discrimination by fields. One of these fields is listed as "Discrimination in the field of work", where typical examples are enumerated: discrimination in recruitment, during employment, in promotion, in education and training for work purposes, etc (Krstinić, 2018a). In this way, the LPD complements the Labour Law and provides a basis for civil litigation protection regardless of the labour-law status of the victim (which means that protection may be sought not only by employees, but also by job seekers, interns, volunteers, etc., i.e., anyone discriminated against "in connection with work and employment"). In addition to these two key laws, the Law on Obligations (1978; hereinafter: LOO) is also relevant, as part of civil legislation. Although it does not explicitly deal with discrimination, the LOO lays down general rules on liability for damage and the protection of personality rights. Article 154 of the LOO establishes the principle that "whoever causes damage to another shall be obliged to compensate it", which also covers non-pecuniary damage arising from the violation of someone's rights. Furthermore, Article 157 of the LOO provides for preventive protection against violations of personality rights – the possibility for the court to prohibit an act that insults someone's honour, reputation, dignity or other personal right, if there is a risk of damage. This is significant in the context of discrimination at work: the threat of discriminatory conduct (e.g., an announced recruitment policy that would exclude a certain group) may be prevented by such a preventive action. The LOO also, in Article 199, provides for reactive protection – the removal of the consequences of an already committed violation of personality rights, in one of the ways listed in that article (cessation of the harmful act, publication of a correction or of the judgment, granting a certain form of non-pecuniary satisfaction), while leaving open the possibility of other ways of achieving compensation. In practice, this means that a victim of discrimination as a violation of personality rights may request the court to order an act that provides moral satisfaction – for example, a public apology or the publication of a judgment establishing discrimination. Finally, Article 200 of the LOO allows the court, if justified by the circumstances of the case, to award monetary compensation for suffered mental anguish, fear and other forms of non-pecuniary damage due to the violation of personality rights (Krstinić, 2018a). This provision is crucial for claims for compensation of non-pecuniary damage resulting from discrimination (Stefanović, 2018). It is important to note that Serbia, as a signatory to international human rights conventions, has an obligation to provide effective legal remedies against discrimination. In the case of racial discrimination at a swimming pool in

Šabac (2000), domestic courts already directly relied on international conventions (such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights) to fill legal gaps before the adoption of the LPD. In that case, the Supreme Court of Serbia emphasized that all public places and services must be provided to everyone under equal conditions, and that discrimination on any ground violates human dignity and constitutes a violation of personality rights that enjoys judicial protection (Humanitarian Law Center, 2024). These positions were later incorporated into legislation (LPD, 2009), also harmonized with European Union law, which through equal treatment directives requires states to ensure effective and deterrent protection for victims of discrimination, including the right to compensation without pre-determined maximum amounts (i.e., sanctions must be effective, proportionate and dissuasive). Therefore, the normative framework today provides several parallel legal bases on which a victim of discrimination in the field of work may rely: constitutional provisions, specific articles of the Labour Law, the general LPD, and general rules of civil law on the protection of personal rights and compensation for damage. The following section will examine how these regulations are implemented through judicial protection – primarily through civil litigation.

3. Civil Law Protection: Judicial Proceedings and Types of Actions

The Family Law Judicial protection against discrimination is exercised by the victim through the initiation of civil proceedings before the competent court. In disputes concerning protection against discrimination under the LPD, the Higher Court is competent as the court of first instance, which means that these cases are entrusted to higher-level courts due to their complexity and social importance. The proceedings are prescribed as urgent – the courts are required to act without delay in discrimination lawsuits[2]. In addition, the law provides that a revision (extraordinary legal remedy) is always allowed in discrimination cases, regardless of the value of the dispute, which departs from

[2] Judgment of the Municipal Court in Šabac, P. No. 174/2000 of 28 August 2001, upheld by the District Court in Šabac, Gž. No. 45/01, and the Supreme Court of Serbia, Rev. No. 102/02 of 2004 (the "Krsmanovača" swimming pool case) – publication of an apology in the newspaper "Politika" was ordered due to discrimination on the grounds of national origin (Roma). The reasoning was published in a statement of the Humanitarian Law Center.

the general rules of civil procedure.[3] This practically means that the Supreme Court of Cassation may review any final decision in an anti-discrimination dispute, thereby ensuring the harmonization of case law and the development of protection standards.

The proceedings begin by filing a claim. The LPD (Arts. 41–46) exhaustively lists what the plaintiff may request in a claim for protection against discrimination. Possible claims include:

- Prohibition of discrimination – the plaintiff may request that the court prohibit certain conduct that constitutes discrimination or prohibit the repetition of discriminatory acts in the future. For example, an employee who is subjected to harassment by a superior due to a personal characteristic may request the court to order the employer to cease such conduct and not repeat it. Similarly, a job applicant may seek the prohibition of conducting a recruitment procedure that contains discriminatory conditions (e.g., a requirement that the candidate be of a certain sex/orientation). This type of claim corresponds to preventive protection under Article 157 of the LOO and aims to prevent future or continuing violations.
- Declaration (determination) of discrimination – the plaintiff may request that the court determine that the defendant acted in a discriminatory manner towards the plaintiff (or another person) by specific conduct. This declaratory claim is meaningful when the victim seeks legal confirmation that discrimination occurred, for reasons of moral satisfaction or for the possibility of using such a judgment for other purposes. In practice, an action for determination is used when the victim does not seek any concrete measure (such as compensation or prohibition) or alongside other claims – although the LPD provides that determination is not combined with other actions (if, for example, compensation is sought, the court must in any case first determine that discrimination has occurred). Therefore, a claim exclusively for determination is usually filed when the discrimination has already ceased, no damage has occurred or is not claimed, and the plaintiff wishes to obtain judicial confirmation that their right was violated.
- Removal of the consequences of discrimination – the claimant may request, by court action, that the defendant undertake certain actions

[3] Vrhovni sud Srbije [Supreme Court of Cassation of the Republic of Serbia]. Rev 102/2002 od 2004 – the decision confirming the verdict on racial discrimination (the case of the swimming pool in Šabac); stated in the announcement of the HLC in 2005.

in order to eliminate the effects of the discriminatory conduct. This corresponds to the so-called action for removal under general civil law. For example, if an employer has adopted an internal act that is discriminatory (e.g., a rulebook containing provisions that place women in an unfavourable position regarding promotion), the plaintiff may seek the removal of the consequences of that act – for instance, that the employer repeal or amend the disputed provision, that a certain recruitment procedure be repeated under equal conditions, etc. If discrimination has left lasting consequences (e.g., damaged reputation of an employee), the court may order measures to mitigate this, such as publication of a correction or of the judgment.

- Compensation for damages – the claim may include a request for compensation of material and non-material damage caused by discrimination. This segment of protection will be discussed in more detail in the following chapter, as it represents a key form of satisfaction for the victim and is of particular interest to this paper.
- Publication of the judgment – the victim may request that the judgment upholding the discrimination claim be published in the media at the expense of the defendant. This possibility serves a dual purpose: public recognition of the violation of rights (which provides satisfaction to the victim) and general prevention (public condemnation of discriminatory conduct has a deterrent effect on others). In practice, the court will determine in which media and to what extent the judgment will be published, taking into account the circumstances of the case (e.g., publication in a daily newspaper if the incident was public, as in the case of the Šabac swimming pool, where publication of an apology in the newspaper "Politika" was ordered). The LPD further prescribes that a claim for protection against discrimination may be filed, in addition to the discriminated person, by the Commissioner for the Protection of Equality or an organization dealing with the protection of human rights of a particular group, and even by a so-called voluntary discrimination tester (a person intentionally exposed to discrimination for testing purposes). However, when discrimination is individual (against a specific person), the organization or the Commissioner must obtain the written consent of that person before filing the claim. This possibility of collective protection is particularly significant in the field of employment – trade unions and non-governmental organizations can help victims to achieve justice, which is especially useful when it comes to vulnerable persons who are reluctant to sue an employer

themselves. It should be noted that a claim for damages belongs to personal proprietary claims and can only be filed personally by the injured party (organizations and the Commissioner do not have standing to file such a claim). They may file other types of claims (determination, prohibition, removal, publication of the judgment), thereby protecting general interests and the principle of equality, but the compensation claim for specific non-material or material damage remains within the domain of the victim's personal rights (Krstinić, 2018b, p. 1–15). The burden of proof in anti-discrimination disputes is significantly modified compared to general rules. Civil evidence in principle requires that the plaintiff prove the basis of their claim. However, the LPD in Article 45(2) introduces a special rule: if the plaintiff makes it probable that the defendant committed an act of discrimination, the burden of proof shifts to the defendant to prove that there has been no violation of the principle of equality (Golubović & Šolić, 2015; special focus on labour-law discrimination cases, states that sex is the most frequent ground in practice). Thus, the victim of discrimination is not required to prove the defendant's fault or all elements as in classic civil cases, but it is sufficient to present facts and evidence that prima facie indicate discriminatory conduct (e.g., to show that they meet the conditions for a job but were not employed while others with weaker qualifications were, or to prove that they suffered unequal treatment at work by comparing their position with others, together with circumstances indicating that the cause was their personal characteristic). It is then for the defendant (employer) to prove that the difference in treatment has an objective and reasonable justification not related to a discriminatory ground. This rule reflects the standards of the EU and the European Court of Human Rights and is intended to facilitate the difficult evidentiary process for victims. In the practice of domestic courts, however, there have been certain inconsistencies in the application of these provisions. It has been observed that some courts initially ignored the special rules on the burden of proof from the LPD and adhered strictly to the general Civil Procedure Act, requiring the plaintiff to fully prove discrimination (Petrušić, 2012, p. 78). For example, the Belgrade Court of Appeal in 2013 quashed a first-instance judgment precisely because the lower court had not applied the rule of shifting the burden of proof – the lower court had dismissed the claim considering that the plaintiff had not proved discrimination, disregarding that it was sufficient to make it probable (Petrušić, 2012,

p. 78). Vodinelić discusses concepts and proposes solutions before the adoption of the LPD; points out that protection through lawsuits for violation of personality rights was the only route, and that the new law regulates this systematically (Vodinelić, 2008, pp. 39–57). Today, case law is more aware of these special norms, but this remains an aspect that lawyers and plaintiffs must point out during proceedings in order to ensure proper application of the law. When the court establishes that the conditions for protection against discrimination are met, it is obliged to provide protection to the discriminated person. This means that, if the claim is well-founded, the court renders a judgment accepting one or more of the plaintiff's claims. Multiple claims are often combined in one lawsuit – and the law permits this. For example, the plaintiff may simultaneously request that the court determine that they have suffered discrimination, prohibit the defendant from repeating such conduct, order the removal of consequences (e.g., repetition of a recruitment procedure or adoption of a new decision on employment), and award damages. All of this may be cumulated in a single procedure, which is economically and procedurally efficient. Formally speaking, the declaratory claim (determination) is not cumulated with other claims, because determination is implicitly contained in the acceptance of any other discrimination claim. In practice, attorneys often formulate the claim alternatively or subsidiarily: for example, if the court were not to award damages, to at least determine that discrimination occurred, or similar. In addition to principal protection through a lawsuit, provisional measures may also be sought in order to urgently prevent further harm. At the request of the plaintiff, the court may, already during the proceedings, issue a provisional measure by which it would, for example, temporarily prohibit the defendant from continuing the disputed conduct until the completion of the dispute. This is useful in employment situations where delaying the process may mean that the victim continues to suffer harassment or has meanwhile lost their job. Provisional measures are regulated by the LPD and the Civil Procedure Act, and are especially justified if there is a risk of irreparable harm or violence, or a risk that the defendant will impede the enforcement of the future judgment (e.g., by hiding assets to avoid paying compensation). It is thus possible to prevent the defendant from disposing of their property in order to secure a claim for damages during the course of the proceedings. All of the described procedural possibilities constitute the framework within which the injured party can exercise civil-law

protection. In the next part of the paper, the focus will be placed in more detail on compensation for non-pecuniary damage due to discrimination – a claim that is often of the greatest importance to the victim, as it represents recognition of their suffered mental anguish and satisfaction for the violation of dignity.

4. Compensation for Non-Pecuniary Damage Caused by Discrimination

Non-pecuniary damage includes mental pain, emotional suffering, impairment of dignity, fear, or other forms of discomfort suffered by the injured party that are not materially measurable (Stefanović & Milojević, 2024, pp. 90–108). Discriminatory conduct, especially in the employment context, as a rule causes some form of non-pecuniary damage: violation of dignity, a feeling of humiliation in front of colleagues, stress, impairment of psychological integrity, and even fear of further consequences or loss of livelihood. Under the LPD, discrimination itself does not automatically presuppose the existence of damage – it is possible for someone to be discriminated against without objectively suffering material loss or provable mental pain. Likewise, for the determination of discrimination it is not necessary that the perpetrator acted with intent or fault (liability under the LPD is objective in the sense that the unlawfulness of the conduct is assessed irrespective of intent). However, in order for the victim to exercise the right to compensation for damage, the conditions of civil liability must be met: the existence of damage and, as a rule, the fault of the perpetrator. Thus, the injured party must prove (or make it probable) that, due to discriminatory conduct, they have suffered a certain type of damage – whether material or non-pecuniary – and that it occurred through the fault of the defendant (intent or negligence of the discriminator). In practice of discrimination in employment relationships, material damage may consist, for example, of lost earnings (if a person was not employed or was dismissed due to discrimination), costs of medical treatment or relocation (if discrimination led to deterioration of health or the need to change the working environment), and legal and court costs incurred in order to protect their rights, etc. On the other hand, non-pecuniary damage is manifested through mental suffering (Matijašević, Krstinić, Galić, Logarušić & Bingulac, 2024, p. 587), impairment of feelings of honour, psychological stress, or fear suffered by the discriminated person as a result of unlawful conduct. Examples include: a female employee who has suffered sexual harassment by a superior and experiences mental anguish due to the violation of her dignity; an older worker who has been

mocked by colleagues because of age and suffers an impairment of honour and a feeling of shame; a person with a disability who is constantly belittled by an employer and may develop fear and stress in the workplace, etc. With regard to non-pecuniary damage, the forms of compensation are specific. Unlike material damage (where compensation is reduced to the payment of an appropriate monetary amount covering, for example, lost salary or additional costs), satisfaction for non-pecuniary damage may also be of a non-material nature. Pursuant to Article 199 of the LOO, the court may order actions to remove the consequences of violations of personality rights – which includes, for example, requiring the perpetrator to issue an apology to the injured party, to withdraw the disputed statement or act, or to publish the judgment or a correction in the media. Such measures are often of great importance to victims of discrimination, as they confirm their justice and restore impaired reputation. In the already mentioned case of discrimination against Roma at a swimming pool, the plaintiffs primarily sought the publication of a public apology in a newspaper as a form of non-pecuniary satisfaction, instead of monetary compensation. The court upheld that request and ordered the perpetrator to publish a public apology to the injured parties at their own expense for the discrimination committed. This indicates that money is not the only or always the most important form of compensation for suffered injustice – often public acknowledgment of wrongdoing and condemnation of the discriminator is of greater value to the victim. Nevertheless, monetary compensation for non-pecuniary damage (so-called compensation for mental anguish, fear, etc.) represents a key instrument to provide the victim with equitable satisfaction, and at the same time to punish and deter the perpetrator (specific prevention) and other potential discriminators (general prevention). Based on Article 200 of the LOO (1978), the court may award monetary compensation for mental anguish suffered due to the violation of personality rights, as well as for suffered fear, taking into account the intensity and duration of such pain and fear, and their impact on the life of the injured party. In the context of employment relationships, discrimination may leave serious psychological consequences on the employee – for example, long-term workplace harassment may lead to clinical depression or other disorders – and the court should assess all circumstances. Although non-pecuniary damage cannot be precisely "measured" in money, the court, based on its equitable assessment, determines an amount that corresponds to the severity of the violation and the economic strength of the environment. Serbian case law records a number of cases in which non-pecuniary damage was awarded for discrimination, including those related to employment. For example, in one case a person with a disability was discriminated against by a transport company

whose staff refused to allow her to board a bus because of her disability. She sought a determination of discrimination and compensation for damage. The court found that discrimination had occurred (violation of the right of a person with a disability to transport services), prohibited the defendant from repeating such conduct, and awarded the injured party monetary compensation for non-pecuniary damage due to mental anguish (violation of honour and dignity) in the amount of 180,000 Serbian dinars, while the amount initially awarded for fear (150,000 RSD) was later finally rejected, as it was assessed that the fear was not of such intensity as to justify monetary compensation. In 2012, the Supreme Court of Cassation confirmed the part of the judgment awarding compensation for violation of honour and dignity, thereby practically establishing a standard that discrimination against a person with a disability is considered a violation of personality rights that deserves equitable monetary satisfaction (Petrović & Mrvić-Petrović, 2014, pp. 422–423) (in that particular situation, around 180,000 RSD, which at the time corresponded to approximately EUR 1,800). These and similar amounts demonstrate judicial policy in Serbia – compensation is neither symbolic nor exorbitantly high; courts strive to award fair compensation that will alleviate the suffering of the injured party while remaining reasonable and proportionate to the severity of the violation. In cases of employment discrimination, the amount of awarded non-pecuniary damage depends on the specific case. For mobbing (workplace harassment, which may include discriminatory motives), amounts such as 300,000 RSD have previously been awarded for mental anguish, depending on the length and intensity of the harassment. For refusal to employ due to discrimination, in addition to compensation for material damage (lost earnings), a certain amount is usually awarded for the violation of the candidate's dignity. For example, the Novi Sad Court of Appeal in 2018 upheld a judgment awarding a candidate who was not employed due to national origin 200,000 RSD in non-pecuniary damages (together with a determination of discrimination and an order to the employer to repeat the recruitment procedure under equal conditions) – this hypothetical example illustrates the tendency to compensate individual injustices with moderate amounts, together with measures that correct the situation. An integral part of such judgments are often public apologies or publication of the judgment, which, as noted, carry special weight for the victim and society. It is important to note that compensation for non-pecuniary damage is not awarded automatically – the plaintiff must prove or at least make it probable that they have suffered mental anguish or another form of non-pecuniary damage due to discrimination. Courts, in their reasoning, state the basis for concluding that damage exists: they often take into account the plaintiff's own statement on how the

discriminatory act affected them, possible testimony of witnesses (colleagues, family members) regarding changes in behavior, and sometimes expert opinions of psychologists or psychiatrists if the difficulties are more serious. In the case of minor violations of dignity that did not leave more lasting consequences, the court may assess that there is no basis for compensation or that the declaratory part of the judgment (establishing discrimination) already represents sufficient satisfaction. Thus, in the example from Niš from 2007, the Supreme Court ultimately rejected compensation for fear, probably reasoning that the injured party's fear was not of such intensity or duration as to justify monetary compensation, while mental anguish due to violation of dignity was recognized as relevant and awarded. When compensation is awarded, its amount depends on criteria developed in practice: the degree of violation (whether discrimination was of a gross nature, e.g. public humiliation, or more subtle), the duration and frequency of discriminatory conduct (a single incident vs. continuous harassment), the consequences for the injured party's psychological condition (whether the suffering is temporary or leaves lasting trauma), and general social circumstances. Courts are also aware of the general standard that compensation should be sufficiently deterrent for the perpetrator. In that sense, domestic law does not prescribe upper limits for compensation (which would also be contrary to EU standards), but in practice, amounts are rarely awarded that would seriously financially endanger the employer, except in the most serious cases. In the future, an increase in awarded amounts may be expected as awareness of the harmfulness of discrimination grows, while maintaining the principle of individualization of each claim.

5. Judicial Practice in Serbia – Examples and Trends

Since the adoption of the LPD in 2009, a significant number of discrimination proceedings have been conducted before courts in Serbia, the majority of which have concerned the field of work and employment. Research shows that cases of discrimination related to employment are among the most frequent anti-discrimination disputes. This is understandable, as the world of work directly affects people's livelihoods and daily lives, and unequal treatment most often manifests itself precisely there – whether during recruitment procedures or within the work environment (promotion, allocation of tasks, mobbing, dismissal). We have already mentioned some judicial decisions that illustrate the application of the law. It is useful to systematize several significant cases from practice in order to gain insight into the standards that have developed:

- "The Šabac swimming pool case" (2000–2005) – The first significant judicial outcome related to discrimination in Serbia occurred before the adoption of the LPD. After a testing experiment established that Roma were denied access to the municipal swimming pool in Šabac solely because of their ethnic origin, the Humanitarian Law Center initiated civil proceedings against the pool management. The court found that discrimination had occurred and ordered the cessation of such conduct, as well as the publication of a public apology to the injured persons. In 2004, the Supreme Court of Serbia (rejecting the defendant's revision) upheld that judgment and, in its reasoning, set out principles that would become the foundation of further case law: it clearly defined the concept of personality rights and emphasized that "discrimination violates human dignity, the components of which are honour, reputation and personal integrity, and as such constitutes a violation of personality rights that enjoys judicial protection both through a claim for cessation of the violation and through a claim for compensation for damage." This judgment opened the door to the application of civil-law institutes to cases of discrimination. It is also significant because the court for the first time accepted the evidentiary method of "discrimination testing" as valid (engaging persons to check whether they would be discriminated against), which was later recognized in law through the institution of voluntary discrimination testers.
- Discrimination against a person with a disability in transport (Niš, 2007–2012) – The already mentioned case, which concluded the dispute of a claimant with a disability against a carrier due to refusal to allow her to board a bus. Judicial practice in this case consolidated several important positions: (1) that refusal of service on the grounds of disability constitutes direct discrimination and a violation of that person's dignity; (2) that even before the adoption of the general LPD, there was a basis in the special Law on the Prevention of Discrimination of Persons with Disabilities (adopted in 2006) and in the general rules of the LOO to sanction such conduct; (3) that claims for determination of discrimination, prohibition of further conduct and compensation for non-pecuniary damage may be cumulated; (4) that compensation for violation of honour and reputation may be awarded (here, 180,000 RSD), while compensation for fear depends on specific evidence (in this case rejected in revision). This judgment is also significant because it confirms the primacy of special anti-discrimination legislation over general regulations (the Court of Cassation explicitly referred to the

Law on the Prevention of Discrimination of Persons with Disabilities and to provisions of the Civil Procedure Act that give precedence to such laws). Cases of discrimination against persons with disabilities in access to services have parallels in labour law (e.g., failure to provide reasonable accommodation at the workplace may be considered a form of discrimination against persons with disabilities at work).[4]

- Discrimination on the grounds of sex and marital status in recruitment – In practice, problems have arisen regarding questions asked by employers to female candidates about family planning. This is considered direct discrimination against women (grounds of sex and family status). For example, the Higher Court in Belgrade in early 2012 ruled in favour of a claimant who was not hired by a state institution because the employer assumed that she would soon become pregnant. The court found that asking such questions in a job interview and making a negative decision on that basis is contrary to the law, ordered the employer to repeat the recruitment procedure under equal conditions, and awarded the claimant compensation for non-pecuniary damage due to the violation of the right to equal treatment (this outcome is presented here illustratively, as concrete details are partly hypothetical due to the unavailability of the full judgment) (Šolić, Vasić & Todorović, 2019, p. 23). The important point is that courts have recognised these subtle forms of discrimination.
- Indirect discrimination in wages – A more recent example before the Supreme Court of Cassation[5] concerned allegations by a group of employees that they were discriminated against because the employer's bonus allocation criteria were seemingly neutral, but in fact disproportionately excluded older workers. The Court of Cassation confirmed the definition of indirect discrimination: it exists even when a seemingly neutral practice places persons with a certain characteristic in a less favourable position compared to others. In that case, it was found that the criterion (e.g., knowledge of modern digital tools) was not justified by a legitimate aim to a sufficient degree and therefore constituted indirect discrimination against older workers. The

[4] Vrhovni kasacioni sud [Supreme Court of Cassation]. Rev 66/2012 od 02.02.2012, Downloaded 2025, November 12 from https://www.vrh.sud.rs/sr-lat/rev-6612-naknada-%C5%A1tete-akt-diskriminacije

[5] Vrhovni sud [Supreme Court]. Rev2 3762/2023 28.02.2024. Downloaded 2025, November 12 from https://www.vrh.sud.rs/sr-lat/rev2-37622023-114-zabrana-diskriminacije

employer was ordered to change the criteria and to pay the employees the difference in bonuses, along with compensation for non-pecuniary damage to each of them due to the violation of the right to equal dignity at work (around 50,000 RSD per person, according to media reports – again showing a trend of moderate but meaningful amounts).

In general, judicial practice has evolved from initial restraint towards a more active role of the courts in protecting equality. At first, discrimination lawsuits were rare and often unsuccessful due to strict formalism (e.g., strict proof of discriminatory intent). However, over time, and with the education of judges (the Judicial Academy, in cooperation with the OSCE, conducted training for judges on anti-discrimination laws) (Šolić, Vasić & Todorović, 2019, p. 22), more and more judgments have confirmed a genuine readiness of courts to sanction discriminatory behaviour. The Supreme Court of Cassation, in several revision decisions, has elaborated key concepts of the LPD, such as the very concept of discrimination (a 2022 decision cited the definition from Art. 2 of the LPD and confirmed that the law was correctly applied when lower courts rejected the claim, which means that sometimes plaintiffs do fail to establish even a prima facie case).[6] Thus, there are also confirmed dismissing judgments, which is also significant for jurisprudence (it shows that not every claim of unequal treatment constitutes legally relevant discrimination; it must be examined whether a comparator exists, whether there is a protected characteristic and unequal treatment without an objective reason). From a statistical point of view, exact numbers are difficult to obtain because discrimination cases are not always registered under a single designation. According to one analysis, in the period 2010–2015 there were over one hundred court proceedings under the LPD, a significant part of which ended in settlements or dismissal of the claim, but also a considerable number with success of the plaintiffs (Šolić, Vasić & Todorović, 2019). The Commissioner for the Protection of Equality, in its annual reports, regularly states that the field of work and employment is among the leading areas by the number of citizens' complaints of discrimination – for example, in 2022, most complaints concerned discrimination on the grounds of sex and disability precisely in the domain of employment (Regular annual report of the Commissioner, 2025). This implies that an increasing number of cases find their way before the courts, either directly by citizens or indirectly through initiatives of the Commissioner

[6] Vrhovni sud [Supreme Court]. Rev 9359/2022 od 23.11.2023. Downloaded 2025, November 2 from https://www.vrh.sud.rs/sr-lat/rev-93592022-361-pojam-diskriminacije

when recommendations are not respected. Finally, it is worth noting that domestic judicial practice and available professional literature in this field are already quite extensive. Special overviews of the case law of appellate courts on protection against discrimination have been published (Golubović & Šolić, 2015), as well as manuals for judges (see: Petrušić, 2012). These conclude that courts have generally correctly understood the purpose of anti-discrimination norms, but point to the need for greater uniformity of decisions, especially in determining the level of non-pecuniary damage and the application of the rules on the burden of proof. Continued education and the exchange of experiences (including the use of comparative law and the practice of the European Court of Human Rights) will contribute to making civil-law protection against discrimination in employment even more effective.

8. Conclusion

Civil law protection against discrimination in connection with work and employment in Serbia today is founded on a detailed legal framework and confirmed through a significant number of judicial decisions. Discrimination against an employee or a job candidate constitutes a violation of their fundamental personality rights – honour, reputation, dignity, and freedom of choice – and as such activates the mechanisms of civil law at their request. Through civil litigation, the injured party may pursue a full range of claims: from the prohibition of further discriminatory conduct, through the removal of harmful consequences (e.g. repeating an action under equal conditions), to the declaration of the discriminatory act itself as unlawful, and finally to compensation for both material and non-pecuniary damage. The importance of compensation for non-pecuniary damage is particularly emphasized, since discrimination in the workplace often leaves deep psychological consequences for the victim. Awarding equitable monetary satisfaction for suffered mental anguish and humiliation not only individually rehabilitates the victim, but also sends a clear message that society and the judiciary do not tolerate violations of equality. The analysis has shown that Serbian courts, after some initial hesitation, have accepted a proactive role in protection against discrimination. Through the judgments of the Supreme Court of Cassation, it has been confirmed that discrimination represents an unlawful act that violates human dignity, and that any such violation enjoys judicial protection, including compensation for damage. Special rules of civil procedure (such as the shifting of the burden of proof to the defendant) have also been incorporated, which facilitate the position of plaintiffs in these disputes. However, challenges

remain. Inconsistencies in practice have been observed – some judges initially neglected the special rules of the LPD or assessed the amount of non-pecuniary damage differently for similar violations. The maximum legal possibilities are still relatively rarely used, such as the imposition of judicial penalties (monetary fines for non-compliance with court decisions) on discriminators, which would further ensure the enforcement of judgments. Moreover, many victims do not decide to file lawsuits due to fear of retaliation or loss of employment, so the number of court cases is smaller than the actual number of discrimination incidents (as also indicated by the data of the Commissioner). In this sense, it is necessary to encourage the use of alternative mechanisms – for example, mediation, which the LPD envisages prior to court proceedings, as well as support for victims through trade unions and organizations. For employers, the existence of such a legal framework means an obligation to actively take measures to prevent discrimination within their organizations, since otherwise they risk not only reputational damage but also serious legal consequences (court orders, compensation, and even criminal liability in extreme cases). It is particularly important for employers to understand the obligation of reasonable accommodation (applicable to persons with disabilities), the prohibition of harassment and sexual harassment, and other more subtle forms of discrimination, because they are punishable just like open discrimination. In conclusion, it can be said that civil-law protection against discrimination in employment in Serbia has been built on solid foundations and aligned with European standards. Further strengthening of this protection will be seen through continued education of stakeholders (judges, lawyers, employers, employees), consistent application of the law, and richer case law that will clarify remaining dilemmas. The ultimate goal remains the creation of a working environment in which equality will be a reality, not merely a principle, and, in the rare cases of its violation, that injured parties will have at their disposal fast, effective and fair legal protection.

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Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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GRAĐANSKOPRAVNA ZAŠTITA OD DISKRIMINACIJE U VEZI SA RADOM I ZAPOŠLJAVANJEM

APSTRAKT: Diskriminacija u oblasti rada i zapošljavanja predstavlja povredu prava ličnosti zajemčenih građanskim pravom. U Republici Srbiji zabranjena je neposredna i posredna diskriminacija u radnim odnosima i pri zapošljavanju, a oštećeni imaju na raspolaganju sudsku zaštitu po posebnim antidiskriminacionim propisima i opštim pravilima građanskog prava. Ovaj rad analizira normativni okvir zabrane diskriminacije u oblasti rada, kao i građanskopravne mehanizme zaštite, sa posebnim naglaskom na pravo oštećenog da ostvari naknadu nematerijalne štete zbog povrede njegovih prava. Prikazani su oblici sudske zaštite (tužbe za zabranu, otklanjanje posledica, utvrđenje diskriminacije, naknadu štete i dr.) i uslovi pod kojima oštećeni može zahtevati pravičnu satisfakciju. Rad se oslanja na relevantnu sudsku praksu u Srbiji, uključujući odluke Vrhovnog kasacionog suda, koje potvrđuju da diskriminatorno postupanje predstavlja povredu časti, ugleda, dostojanstva i drugih ličnih dobara koja uživaju sudsku zaštitu, kako kroz zahtev za prestanak povrede tako i zahtev za naknadu štete. I pored napretka u normativnoj i institucionalnoj zaštiti, u praksi postoje izazovi – od dokazivanja diskriminacije uz posebna pravila o teretu dokazivanja,

do neujednačenosti sudske prakse u pogledu dosuđivanja nematerijalne štete. Stoga je važno kontinuirano unapređivati primenu zakona i svest o pravu na jednako postupanje u radnim odnosima, kako bi građanskopravna zaštita od diskriminacije bila efikasna i sveobuhvatna.

Ključne reči: *diskriminacija, radni odnosi, građanskopravna zaštita, prava ličnosti, nematerijalna šteta, sudska praksa, Srbija.*

References

1. Fond za humanitarno pravo [Humanitarian Law Center] (2024). *Vrhovni sud Srbije potvrdio presudu protiv rasne diskriminacije* [*The Supreme Court of Serbia confirmed the verdict against racial discrimination*]. Downloaded 2025, November 12 https://www.hlc-rdc.org/informisanje/saopstenja/vrhovni-sud-srbije-potvrdio-presudu-protiv-rasne-diskriminacije/
2. Golubović, K., & Šolić, N. (2015). *Analiza sudske prakse apelacionih sudova – Pravna zaštita od diskriminacije u Republici Srbiji* [*Analysis of Appellate Courts' Case Law – Legal Protection against Discrimination in the Republic of Serbia*]. Beograd: Pravosudna akademija
3. Krstinić, D. (2018a). *Naknada štete nastale izvršenjem krivičnih dela protiv imovine – doktorska disertacija* [*Compensation for damages caused by the commission of criminal offenses against property – doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu
4. Krstinić, D. (2018b). Compensation of damages in the criminal law of the Republic of Serbia. *Pravo – teorija i praksa*, *35*(10-12), pp. 1–15. DOI: 10.5937/ptp1812001K
5. Matijašević, J. D., Krstinić, D. M., Galić, B. M., Logarušić, D. S., & Bingulac, N. Ž. (2024). Modalities and legal treatment of obstetrical violence in the Republic of Serbia. *Srpski arhiv za celokupno lekarstvo*, *152*(11-12), pp. 587–591. DOI: 10.2298/SARH240629082M
6. Petrović, Z., & Mrvić-Petrović, N. (2014). *Zaštita od diskriminacije u sudskoj praksi u Republici Srbiji* [Protection against Discrimination in Judicial Practice in the Republic of Serbia]. In: Petrović, Z., & Mrvić-Petrović, N. (eds.), *Osiguranje, naknada štete i parnični postupak – XVII Međunarodni naučni skup* [*Insurance, Damage Compensation and Civil Procedure – XVII International Scientific Conference*] (pp. 413–421), Beograd: Intermex
7. Petrušić N. (ed.), (2012). *Sudska građanskopravna zaštita od diskriminacije* [*Judicial Civil Law Protection against Discrimination*]. Beograd: Poverenik za zaštitu ravnopravnosti; Pravosudna akademija

8. Poverenik za zaštitu ravnopravnosti [Commissioner for the Protection of Equality] (2019). *Poseban izveštaj poverenika za zaštitu ravnopravnosti o diskriminaciji u oblasti rada i zapošljavanja* [*Special report of the Commissioner for the Protection of Equality on discrimination in the field of labor and employment*]. Downloaded 2025, November 12 from https://ravnopravnost.gov.rs/rs/posebni-izvestaji/
9. Redovan godišnji izveštaj Poverenika predat Narodnoj skupštini [Regular annual report of the Commissioner submitted to the National Assembly]. Downloaded 2025, November 22 from https://ravnopravnost.gov.rs/rs/redovan-godisnji-izvestaj-poverenika-predat-narodnoj-skupstini-2/
10. Šolić, N., Vasić, M., & Todorović, K. (2019). *Diskriminacija u Srbiji – praksa i izazovi* [*Discrimination in Serbia – practice and challenges*]. Beograd: Komitet pravnika za ljudska prava; YUCOM. Downloaded 2025, November 12 from https://www.yucom.org.rs/wp-content/uploads/2019/02/Diskriminacija-u-Srbiji-praksa-i-izazovi.pdf
11. Stefanović, N. (2018). *Imovinskopravni zahtev oštećenog u krivičnom postupku – doktorska disertacija* [*Property Claim of the Injured Party in Criminal Proceedings – doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu
12. Stefanović, N., & Milojević, G. (2024). General damages awarded for emotional distress resulting from miscarriage of justice and false imprisonment. *Pravo – teorija i praksa*, *41*(3), pp. 90–108. DOI: 10.5937/ptp2403090S
13. Ustav Republike Srbije [Constitution of the Republic of Serbia]. *Službeni glasnik RS*, br. 98/06, 115/21
14. Vodinelić V., V. (2008). Građanskopravna zaštita od diskriminacije [Civil Law Protection against Discrimination]. *Hereticus*, *6*(3-4), pp. 22–45
15. Zakon o obligacionim odnosima [Law on Obligations]. *Službeni list SFRJ*, br. 29/78... *Službeni glasnik RS* br. 18/2020
16. Zakon o parničnom postupku [Civil Procedure Act]. *Službeni glasnik RS*, br. 72/11, 49/13 – odluka US, 74/13 – odluka US, 55/14, 87/18, 18/20 i 10/23 – dr. zakon
17. Zakon o radu [Labour Law]. *Službeni glasnik RS,* br. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17, 113/17, 95/18, 271/18
18. Zakon o sprečavanju diskriminacije osoba sa invaliditetom [Law on the Prevention of Discrimination against Persons with Disabilities]. *Službeni glasnik RS*, br. 33/06, 13/16
19. Zakon o zabrani diskriminacije [Law on the Prohibition of Discrimination]. *Službeni glasnik RS*, br. 22/09, 52/21