



The Southeast Europe ESG in Employment 2022/2023

Chapter II: Workplace Discrimination





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The image features a light gray map of Southeast Europe and surrounding regions. In the top left corner, there is a blue circle containing the text 'SEE' in white, followed by the word 'Legal' in a dark gray font. The map includes several colored dots representing different jurisdictions: a gold dot in the northwest, a dark blue dot in the north, a light blue dot in the central-north, a black dot in the center, a green dot in the northeast, a dark blue dot in the east, a light blue dot in the south, an orange dot in the south, a dark orange dot in the south, a red dot in the south, and a dark blue dot in the south. The dots are scattered across the map, indicating the presence of the SEE Legal Group in various countries.

SEE Legal

“THE SOUTHEAST EUROPE LEGAL GROUP (SEE LEGAL) IS AN ORGANISATION OF 10 LEADING NATIONAL LAW FIRMS FROM 12 SOUTHEAST EUROPEAN JURISDICTIONS AND IS THE LARGEST PROVIDER OF LEGAL SERVICES THROUGH THE SEE REGION. OUR COMMITMENT REMAINS TO BE YOUR LEADING SOURCE FOR BUSINESS SUPPORT IN THE REGION.”

MEMBERS



ALBANIA

KALO & ASSOCIATES

Kavaja Avenue
Tirana Tower
5th Floor, Tirana
T: +355 4 2233 532
info@kalo-attorneys.com
www.kalo-attorneys.com



GREECE

Kyriakides Georgopoulos Law Firm

28, Dimitriou Soutsou Str.
115 21 Athens
T: +30 210 817 1500
kg.law@kglawfirm.gr
www.kglawfirm.gr



KYRIAKIDES GEORGOPOULOS
Law Firm



ROMANIA

Nestor Nestor Diculescu Kingston Petersen

201 Barbu Vacarescu Str.
Globalworth Tower, 18th Floor
District 2, 020 276 Bucharest
T: +40 21 201 12 00
office@nndkp.ro
www.nndkp.ro



BOSNIA & HERZEGOVINA

Maric & Co

Mehmeda Spahe 26
71000 Sarajevo
T: +387 33 566 700
contact@mariclaw.com
www.mariclaw.com

MARIĆ & Co



KOSOVO

KALO & ASSOCIATES

Qyteza Pejton, Mujo Ulqinaku
5/1 Str.
10000 Pristina
T: +383 38 609181
pristina@kalo-attorneys.com
www.kalo-attorneys.com



SERBIA

BDK Advokati

Bulevar kralja Aleksandra 28
11000 Belgrade
T: +381 11 3284 212
office@bdkadvokati.com
www.bdkadvokati.com



BULGARIA

BOYANOV & Co.

82, Patriarch Evtimii Blvd.
1463 Sofia
T: +359 28 055 055
mail@boyanov.com
www.boyanov.com

BOYANOV & Co.



MONTENEGRO

BDK Advokati

11, Cetinjska, The Capital Plaza
81000 Podgorica
T: +382 20 230 396
office.cg@bdkadvokati.com
www.bdkadvokati.com



SLOVENIA

SELIH & PARTNERJI Law Firm

36, Komenskega Str.
1000 Ljubljana
T: +386 1 300 76 50
info@selih.si
www.selih.si



CROATIA

Divjak Topic Bahtijarevic & Krka

EUROTOWER, 18th Floor
Ivana Lucica 2A
10000 Zagreb
T: +385 1 5391 600
info@dtb.hr
www.dtb.hr

DTB

DIVJAK TOPIC BAHTIJAREVIĆ & KRKA
Law Firm



REPUBLIC OF NORTH MACEDONIA

Polenak Law Firm

98 Orce Nikolov Str.
1000 Skopje
T: +389 2 3114 737
info@polenak.com
www.polenak.com



TÜRKİYE

Kolcuoğlu Demirkan Kocaklı Attorneys at Law

Saglam Fikir Sokak
Kelebek Cikmazi No. 5
34394 Esentepe, Istanbul
T: +90 212 355 99 00
info@kolcuoglu.av.tr
www.kolcuoglu.av.tr

KOLCUOĞLU DEMİRKAN KOÇAKLI
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PREFACE

Dear Partners and Friends of SEE Legal Group,

Starting last November, our Employment & Immigration Practice Group embarked on creating a series of publications focused on the regulatory status of the ESG's social element in Southeast Europe. We believe this is an important and timely topic, and are confident that it will be a valuable resource for those interested in this area. We also appreciate the positive feedback and are delighted that the interest in the first chapter, discussing Work Flexibility and Work-Life Balance, exceeded our expectations.

We are now pleased to introduce our second chapter in the series, the topic of which is *Workplace Discrimination*. As its name reveals, this is the form of discrimination which primarily occurs in the workplace setting. It, generally, includes any type of discrimination based on an individual's race, gender, age, disability, religion, sexual orientation, or any other protected characteristic, and can manifest itself in many different shapes, from unequal pay or unequal access to promotions and job opportunities, to unfair treatment in the workplace.

As much as it is reassuring that most of the jurisdictions in our region have taken somewhat similar approach to regulating this particular area, the challenges of one's equal access to employment opportunities, regardless of one's differences, continue to be present. Furthermore, workplace discrimination can have a major impact on individuals and organizations, creating an environment that is not conducive to success. Depending on the severity of the violation, the impacts can be long-lasting and far-reaching on those involved. It is, therefore, important to understand the legal implications of this type of discrimination and how to properly handle it when it occurs.

This publication is part of the various initiatives undertaken by our Employment and Immigration Practice Group to promote the member firms' capacity and profile in the region, and maintain SEE Legal Group's strong presence in the legal market. It also serves as our statement of the continuing commitment to further assist you in your legal and business matters in the Southeast Europe region.

Should you have any specific questions regarding employment and immigration matters in Southeast Europe, we would be pleased to hear from you.

Sincerely,

Maral Minasyan

Head of the SEE Legal Employment and Immigration
Practice Group



Borislav Boyanov

Co-Chair of SEE Legal Group



Disclaimer

This publication is intended to provide a general guide to the Workplace Discrimination regulations in Southeast Europe. Each section has been prepared by the relevant SEE Legal Group member law firm covering the particular jurisdiction(s). This publication is not meant to be a treatise on any particular legislation and is not exhaustive but is meant to assist the reader in identifying the main principles governing the subject matter in the various jurisdictions in Southeast Europe, and to provide helpful guidance in this respect. Legal advice should always be sought before taking any action based on the information provided herein. The information contained in this publication is based on the respective legislation as of 28 February 2023. No part of the publication may be reproduced in any form without our prior written consent.



ALBANIA

1. Legislation

The two main pieces of legislation in Albania that address the issue of discrimination in the workplace are:

- Law No. 7961, dated 12 July 1995, the “Labour Code of the Republic of Albania” (the “**Labour Code**”), and
- Law No. 10 221, dated 04 February 2010, “On protection from discrimination” (the “**Law on Protection from Discrimination**”), as amended.

The Law on Protection from Discrimination offers a broader perspective for the protection from discrimination and provides for the types of discrimination, forms of manifestation, procedure for complaints, responsibilities of various private and public actors in this regard and administrative measures for individuals who engage in discriminative behaviours in various areas, including in the workplace. On the other hand, the Labour Code reiterates the principles and forms of manifestation provided in the Law on Protection from Discrimination, limited only to the workplace context.

The latest amendments of the Law on Protection from Discrimination, adopted on 15 October 2020, have introduced some new forms of discrimination, such as structural discrimination, intersectoral discrimination, multiple discrimination, segregation, etc. In addition, for the first time, the concept of “hate speech” has been introduced to the discrimination legislation in Albania as a form of manifestation of discrimination. Finally, the foregoing amendments expanded the list of grounds protected from discrimination, which now also includes an individual’s citizenship, HIV infection and outer appearance.

The foregoing amendments, which aim to harmonize the Albanian legislation on discrimination with the European Convention on Human Rights, have brought a more comprehensive concept of discrimination, with the ultimate goal of providing a more effective protection to marginalized groups. It should be noted that the above changes are applicable to discrimination in all areas and are not limited to the workplace discrimination.

With the purpose of being more inclusive in the workplace, Albania has adopted the following laws to regulate the process of hiring and the employment relationship of various marginalized groups:

- Law No. 15/2019, “On encouraging employment”, and
- Law No. 9970, dated 24 July 2008, “On gender equality in Albania” (the “Law on Gender Equality”).

The former legislation aims to instigate the employment of disabled people by determining a minimum number of disabled people per a predetermined number of employees while the latter regulates prevention of gender-based discrimination in the workplace.

The regulations mentioned above aim to prevent discrimination in the workplace in general and do not exclude any categories of employees.

In addition to those, a reference to the principle of non-discrimination may exist in other sector-specific regulations, such as in the Law No. 152/2013, “On civil servants”, whose scope is to regulate procedures of recruitment and an employment relationship of civil servants in the public administration of Albania. The law, however, covers very superficially the foregoing principle, while the previously enumerated regulations are broader and regulate all aspects of discrimination, including its definition and concept, obligations of various actors in the prevention of discrimination and remedy measures.

Furthermore, the principles laid down in the above laws are also applicable in relation to the conditions for admission to certain professions/professional chambers and obtaining permits to practice a profession, especially in cases where an individual is self-employed.

2. Enforcement Authority

The ministry responsible for labour and social affairs is the responsible authority for drafting of policies aiming to prevent discrimination in the workplace and for raising awareness of the discrimination issue.

The Commissioner for the Protection from Discrimination (the “**Commissioner**”) is an independent public entity responsible for raising awareness for the discrimination phenomenon and overseeing the implementation of the regulations in this area. Employees that have been subjected to discrimination may seek protection from the Commissioner, as a main authority in the field, by filing written complaints.

3. Prohibited Practices

The Law on Protection from Discrimination includes the following non-exhaustive list of grounds, not limited to the workplace environment, protected from discrimination: race, ethnicity, colour, language, nationality, political, religious or philosophical beliefs, economic, educational or social status, gender, gender identity, sexual orientation, gender characteristics, HIV infection, pregnancy, parental affiliation, parental responsibility, age, family status, marital status, residence, health state, genetic predispositions, outer appearance, disability, affiliation with a marginalized group or any other cause.

Based on the Law on Protection from Discrimination, employers are obliged to raise awareness amongst their employees concerning discrimination. The employers are also required to take measures to prevent the employees from manifesting discriminating behaviour towards other employees in the workplace through the application of disciplinary measures. Furthermore, the Law on Gender Equality provides that employers are obliged to take preventive measures and explicitly determine disciplinary measures (sanctions) in their internal regulations for the prohibition of discrimination on the grounds of gender.

4. Employee Rights

In case an employee has been the subject of discrimination in the workplace, the employee may choose to file a complaint with the employer, the Commissioner or with a court of law. It should be noted that filing a complaint with either the employer or the Commissioner is not a precondition to filing a lawsuit in a court of law. The employee may choose, at the employee's own discretion, on the most suitable remedy to address his or her complaint.

In case an employee decides to file a complaint with the employer, the employer is obliged to review the employee's request within one month upon its receipt. In the case of failure to do so, the employer may be subject to fines for discrimination, as determined by the Commissioner. In addition, the employee may seek compensation for damages in a court of law.

5. Sanctions for Non-Compliance

As mentioned above, an employee that has been the subject of discrimination in the workplace, may choose to file a complaint with his or her employer, the Commissioner or with a court of law.

In case the affected employee files a complaint with the Commissioner and the employer is found to be liable for practices of discrimination, the employer may be subject to the following fines by the Commissioner:

- if the employer is a natural person, from ALL 10,000 to ALL 60,000 (approximately, from EUR 85 to EUR 510);
- if the employer is a legal entity, from ALL 60,000 to ALL 600,000 (approximately, from EUR 510 to EUR 5,100);
- if a natural person within the employer that is a legal entity is responsible for the violation, from ALL 30,000 up to ALL 80,000 approximately, from EUR 255 to EUR 690);
- if the violation has been committed by the person who exercises a public function, from ALL 30,000 to ALL 80,000 (approximately, from EUR 255 to EUR 690), and
- if any of the foregoing natural persons or legal entities commits one or more of the serious forms of discrimination, twice the amount of the fine provided above. In this regard, a serious form of discrimination shall be considered any behaviour that is either motivated by more than one cause, committed more than once, lasted for a long period of time or has been particularly harmful to the victim.

In light of the above, both an individual who has been engaged in a discriminatory behaviour and the employer (in cases of actions or omissions enabling such discriminatory behaviour) remain responsible towards the discriminated person.

Should an employer fail to pay the fine within the term determined by the Commissioner, the employer may be subject to suspension of its activity. Employers that do not agree with an administrative measure issued by the Commissioner may file a lawsuit with the relevant administrative court.

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BOSNIA AND HERZEGOVINA

1. Legislation

The Constitution Act of Bosnia and Herzegovina provides for the general prohibition of discrimination based on any ground. It specifies that the exercise of the rights and freedoms provided for by the Constitution or international agreements set forth in Annex I thereof, is granted to all persons in Bosnia and Herzegovina, without discrimination on any basis, such as gender, race, colour, language, religion, political and others opinion, national or social origin, association with a national minority, property, birth or other status.

In addition to the Constitution, in 2019, Bosnia and Herzegovina adopted the Law on the Prohibition of Discrimination (the “LPD”), which regulates the issue of discrimination and applies on the entire territory of the country. that the LPD, which was amended in 2016, defines discrimination as any different treatment, including any exclusion, limitation or preference based on actual or presumptive grounds against any person or a group of persons, and those who are with such persons in kinship or other relationship, based on their race, skin colour, language, religion, ethnicity affiliation, disability, age, national or social origin, connections with a national minority, political or other belief, property status, membership in a trade union or other association, education, social position, gender or gender identity, sexual orientation or characteristics, as well as any other circumstance that has the purpose or the consequence of impeding or threatening any person to enjoy or realise his or her equal rights and freedom from discrimination in all areas of life. The prohibition of discrimination applies to all public institutions as well as to all individuals or legal entities, both in the public and private sectors, in all areas, and more particularly with respect to employment, membership in professional organizations, education, training, housing, healthcare, social protection, goods and services intended for the public and public places, and the performance of economic activities and public services.

The LPD applies to actions of all public institutions at the level of the state, both constituting state entities, cantons and Brčko District of Bosnia and Herzegovina, municipal institutions and bodies, and legal entities with public authorities. It also applies to actions of all legal and natural persons in all areas and especially in the area of employment, work and work conditions, including the access to employment, occupation and self-employment,² compensation, promotions and employment dismissals.

The LPD recognises other forms of discrimination, such as harassment, which is defined as any unwanted behaviour, as determined by the law, intending or actually constituting a violation of dignity of a person, and creating intimidating, hostile, degrading, humiliating or abusive environment.

As to the specific types of harassment, the LPD recognises the following:

- Sexual harassment, which represents any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, the aim or effect of which is to injure the dignity of a person, especially when it is used to create an intimidating, hostile, degrading, humiliating or offensive environment.
- Mobbing, which is a form of non-physical harassment at the workplace that entails a repetition of actions that have a humiliating effect on the victim, whose purpose or consequence is a degradation of working conditions or professional status of the employee.
- Segregation, which is an act by which a (natural or legal) person separates another person on the basis of one of the grounds enumerated in Article 2 of the LPD and in accordance with the definition of discrimination contained therein.

Issuing orders, inciting, or aiding or abetting others to carry out discrimination, is considered a form of discrimination. Furthermore, discrimination of a certain person committed on multiple grounds, as specified in Article 2, paragraph 1 of the LPD, is designated as multiple discrimination, discrimination committed more than once (repeated discrimination) and discrimination that exists for a long time (prolonged discrimination).

The Federal Labour Law of Bosnia and Herzegovina prescribes the prohibition of discrimination in relation to:

- conditions for employment and a selection of candidates for performing a specific job,
- work conditions and
- all rights from the employment relationship, education, training and development, job advancement and termination of the employment contract.

The Federal Labour Law does not consider discrimination to be taking place in instances of making a difference, exclusion or priority in relation to a specific work, when the particular nature of the work, or conditions in which the work is performed, represent the actual and decisive condition for performing the work, and the condition is justified by a legitimate interest.

The prohibition of discrimination is also regulated by the Labour Law of the Federation of Bosnia and Herzegovina and the Labour Law of Republika Srpska.

The Labour Law of Republika Srpska provides that an employee, as well as a person seeking employment, cannot be placed in an unequal position in the realisation of his or her right to employment, or on the rights arising out of employment relationship, due to race, ethnicity or national affiliation, skin colour, gender, language, religion, political or other opinion and conviction, social origin, property status, membership or non-membership in a trade union or political organization, physical and mental health, and other characteristics that are not directly related to the nature of the employment relationship. The provisions of an employment contract, for which it is determined that are discriminatory on one or more of the grounds prescribed by this law, are deemed null and void. The law deems that discrimination is not taking place if an unequal position or the provision of a special protection to certain categories of employees is a result of the nature of the work and the conditions under which it is performed, and in accordance with the law, a collective agreement and an employment contract.

In Bosnia and Herzegovina, workplace discrimination is not specifically regulated as a criminal offence as neither the Criminal Law of the Federation of the Bosnia and Herzegovina nor the Criminal Law of Republika Srpska mention it. Discrimination as an institute is defined in the Law on Prohibition of Discrimination in B&H. The said law does not explicitly mention work-related discrimination; however, it specifies the nature of the institute of discrimination that can be applied for work-related discrimination, on a case-by-case basis. More specifically, this law states, in Article 6, that workplace relations are an applicable area of this law. In addition, the law defines the term mobbing and envisages two exceptions to the principle of equal treatment (i.e. a maximum age adequate for termination of work and employment/membership at a religious organization). Nevertheless, the Criminal Law of RS does mention the term discrimination in Articles 149 and 363, which prescribe abuse and torture, and a violent behaviour on sporting events, respectively, in the context that such criminal deeds shall also be punished if they are committed by means of discriminating someone. The Criminal Law of FB&H, in a similar fashion, mentions discrimination when describing the criminal deed of abuse or torture committed by an official of B&H.

Legislation that is applicable on the territory of Bosnia and Herzegovina does not, in principle, foresee a limitation of its applicability to different categories of employers and it applies to both private and government-controlled enterprises.

2. Enforcement Authority

According to the LPD, the central institution responsible for the protection against discrimination is the Ombudsman for Human Rights of Bosnia and Herzegovina. Since LPD is applicable on the entire state level (unlike labour laws), its implementation is conducted by an office with the state-wide jurisdiction (i.e. the Ombudsman for Human Rights of Bosnia and Herzegovina). A federal or cantonal inspector performs the supervision of the implementation and observance of the Labour Law of the Federation of Bosnia and Herzegovina, including the other regulations on labour relations, collective agreements and work regulations (which stipulate rights, obligations and responsibilities of employees).

3. Prohibited Practices

According to both entity laws, it is prohibited to discriminate against an employee, as well as a person seeking employment based on race, ethnicity or nationality affiliation, skin colour, gender, language, religion, political or other opinion and conviction, social origin, property status, membership or non-membership in a trade union or political organization, physical and mental health, and other characteristics that are not directly related to the nature of the employment relationship.

Employers are not obligated to adopt internal policies regulating discrimination or conduct training or periodical assessments with respect to workplace discrimination matters. If workplace discrimination is regulated in your jurisdiction, please advise what rights and remedies does an individual, subject to workplace discrimination, have.

4. Employee Rights

In cases of discrimination in terms of the provisions of the Labour Law of FB&H, an employee as well as a person seeking employment can demand protection from the employer within 15 days from the day of learning about discrimination.

If the employer, within 15 days from the date of submitting the request for protection from discrimination does not comply with that request, the employee can file a claim before a competent court within 30 days.

In cases of discrimination, harassment, sexual harassment, violence based on gender harassment, sexual harassment, violence based on gender, as well as mobbing at work or in connection with work, not a single provision of this law can be interpreted as limiting or diminishing rights to conduct civil proceedings or criminal proceedings.

According to the Labour Law of Republika Srpska, in cases of discrimination arising out of the provisions of Articles 19, 22, 23 and 24 thereof, the employee or a person seeking employment can initiate a lawsuit before a competent court demanding the protection of his or her rights, and seek compensation for damages from the employer in accordance with the law. According to the foregoing law, the employee or a person seeking employment is entitled to initiate a court proceeding immediately after leading an internal proceeding within the employer. None of the above mentioned influences the employees' right to file a criminal report before the competent authority. If the employee or a person seeking employment state facts which justify the suspicion that the employer acted discriminatory, the burden of proof shifts on the employer to prove that there no discrimination took place or the existing difference, exclusion or priority was not discriminatory and it had an objective justification.

5. Sanctions for Non-Compliance

Unfortunately, entity labour laws do not contain penal provisions related to the prohibition of discrimination. Fines are provided exclusively in the LPD. For legal entities committing the acts of discrimination, the fine ranges from BAM 1,500 to BAM 2,000 (approximately, from EUR 750 to EUR 1,000). A person working in the state (entity, cantonal) administration committing such acts may be fined from BAM 700 to BAM 1,500 (approximately, from EUR 350 to EUR 750) while any other natural person may be fined between BAM 550 and BAM 1,500 (approximately, from EUR 225 to EUR 750). If an offense is committed by the omission to act upon the request of the Ombudsman for Human Rights, a responsible legal entity may be fined between BAM 2,500 and BAM 6,500 (approximately, from EUR 1,250 to EUR 3,250), and a responsible person working in the state administration or any other natural person from BAM 1,000 to BAM 3,000 (approximately, from EUR 500 to EUR 1,500). In instances the foregoing persons refuse to cooperate with the Ombudsman for Human Rights, legal entities may be fined between BAM 1,000 and BAM 5,000 (approximately, from EUR 500 to EUR 2,500), a responsible person working in the state administration between BAM 500 and BAM 1,500 (approximately, from EUR 250 to EUR 750) and any other natural person between BAM 450 and BAM 1,000 (approximately, from EUR 225 to EUR 500).

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BULGARIA

1. Legislation

The Constitution of the Republic of Bulgaria proclaims that all citizens shall be equal before the law. It provides that neither any limitations of rights nor any privileges whatsoever shall be admissible on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliation, personal and social status, or property status.

Moreover, the prohibition of discrimination and workplace discrimination, in particular, is regulated by the Protection Against Discrimination Act (“**PADA**”), which was initially adopted in 2003, last amended in 2018 and further by the Bulgarian Labour Code.

The rules of the Constitution of the Republic of Bulgaria and PADA are applicable to all categories of employers (e.g. private companies, government-controlled enterprises, etc.).

2. Enforcement Authority

The Commission for the Protection Against Discrimination (the “**Commission**”) is an independent specialised state body for the prevention of, and protection against, discrimination, and which ensures equal opportunities, and exercises control over the implementation of, and compliance with, all pieces of legislation regulating equal treatment.

The Commission consists of nine individual members, five of whom are elected by the National Assembly and four appointed by the President of the Republic of Bulgaria. In the election or appointment of the Commission members, the National Assembly and the President must observe the principles of balanced participation of women and men, and of participation of persons belonging to ethnic minorities. The members of the Commission shall serve a five-year term.

3. Prohibited Practices

PADA prohibits workplace discrimination based on any of the protected grounds in the area of:

- recruitment,
- work conditions,
- pay,
- performance-evaluation criteria,
- vocational training,
- qualification,
- career,
- disciplinary measures, and
- the most common types of unilateral dismissal.

When announcing a vacancy, the employer may not set employment requirements or conditions relating to any of the protected grounds. Furthermore, as a requirement or condition for an employment contract to be entered into, the employer may not request or demand from the employee candidate an information concerning the protected grounds, nor the employer may refuse to employ a candidate on the grounds of pregnancy, maternity or bringing up a child.

There is a rule that employees are entitled to an equal pay for equal or equivalent work, and the employer has the obligation to apply identical work evaluation criteria, which must be set out in the collective labour agreement, the internal salary rules, or in the legislative acts. ‘Equal work’ means work performed by different persons who have the same qualities (qualification, skills, etc.), and ‘equivalent work’ means different work which has equivalent value and usefulness. The concrete factors that are taken into account in the assessment of the work include its specific features, required education, qualification, skills, volume and a level of performance and results. The requirement for equal pay encompasses all direct and indirect payments, in cash or in kind, regardless of the duration of the employment contract or the length of the work time.

There can be cases where employers impose internal rules or requirements which are neutral and apply equally to all employees but have a disproportionate negative effect on a protected group. Whether or not these rules will be considered unlawful discrimination depends on whether the specific rule or requirement is objectively justified in view of a lawful aim and whether the means of achieving this aim are appropriate and necessary.

In certain circumstances, a different treatment is permissible (e.g. if it is based on genuine occupational requirements). Other examples include special treatment of pregnant women or women in an advanced stage of in-vitro treatment, disabled employees, etc. Subject to all other employment conditions being equal, the employer is also obliged to promote employment as well as vocational development of a gender or an ethnic group that is less represented at the enterprise.

PADA requires employers to post, in a place within the enterprise accessible to all employees, the text of PADA, as well as all provisions of the internal rules and the clauses of the collective labour agreement relating to protection against discrimination. There is no explicit requirement to adopt specific internal rules/policies for the prevention of discrimination.

4. Employee Rights

In the event an employee believes that he/she has been the subject of discrimination or breach of rights and duties in an employment relationship, including the subject of one or more types of harassment (e.g. sexual harassment), the employee may file a complaint with the employer. In this case, the employer shall be obliged to immediately conduct an investigation of the employee's allegations, take adequate measures to stop the harassment, if warranted, as well as to issue disciplinary measures against an employee who caused the harassment.

In the event of discrimination or breach of rights and duties in an employment relationship, the employee or the employee applicant may further file a claim before the Commission requesting the cessation of the breach, remediation of the consequences thereof, and compensation for any material or non-material damages incurred. On the basis of such a filed claim, the Commission initiates the proceedings and collects evidence with the assistance from the Ministry of Interior.

5. Sanctions for Non-Compliance

Employers violating their obligations under PADA can be penalised with sanctions of an amount varying between BGN 250 and BGN 2,000 (approximately EUR 125 – 1,000), while the managers of the employer who has allowed the violation to occur will be penalised with a fine of BGN 200 to 2,000 (approximately EUR 100 – 1,000), unless they are liable to more severe punishment.

A person who fails to implement a decision of the Commission or the court issued under PADA shall be punished by a fine of BGN 2,000 to 10,000 (approximately EUR 1,000 – 5,000) unless he/she is liable to more severe punishment. Should the violation continue three months after the entry into force of the decision or judgment, a fine of a minimum of BGN 5,000 but not exceeding BGN 20,000 shall be imposed (approximately EUR 2,500 – 10,000).

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Law Firm

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CROATIA

1. Legislation

The Constitution of the Republic of Croatia (OG No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10 and 05/14, hereinafter: the “**Constitution**”) determines the protection of human rights and fundamental freedoms, by prescribing that all persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other status.

The rights and obligations regarding the protection against discrimination, including workplace discrimination, are regulated by the Anti-Discrimination Act (OG No. 85/08 and 112/12, hereinafter: the “**Anti-Discrimination Act**”), which contains provisions in relation to the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia, creates prerequisites for the realisation of equal opportunities and regulates protection against discrimination.

The provisions of the Labour Act (OG No. 93/14, 127/17, 98/19 and 151/22 hereinafter: the “**Labour Act**”) do not regulate the concept of discrimination as such, but rather the procedure for the protection of the dignity of employees at the employer. According to the Labour Act, any form of a direct or indirect discrimination in the field of employment is prohibited, including selection criteria and conditions for employment, promotion, professional guidance, professional training, development and retraining, in accordance with the applicable law. Furthermore, the employer is obligated to protect the dignity of the employee during the performance of work from the behaviour of superiors, associates and persons with whom the employee regularly comes into contact in the performance of duties, if such behaviour is unwanted and contrary to the applicable law.

Workplace discrimination is also regulated by the Gender Equality Act (OG No. 82/08, 125/11, 20/12, 138/12 and 69/17 hereinafter: the “**Gender Equality Act**”) which lays down a general framework for the protection and promotion of gender equality as a fundamental value of the constitutional order of the Republic of Croatia and defines and regulates the method of protection from discrimination on grounds of sex and establishment of equal opportunities for women and men.

The workplace discrimination can be a subject of the criminal offence which is regulated by the Criminal Code (OG No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21 and 114/22), according to which anyone who insults, humiliates, abuses or otherwise harasses another person at work or in relation with work, and thus damages his/her health, shall be punished by imprisonment for up to two years.

Since the Republic of Croatia is a member of the European Union, the abovementioned regulations are compliant with the *acquis communautaire*. Although the Republic of Croatia adopted the substantial changes and amendments to its Labour Act which came into force on 1 January 2023, there were no significant changes in relation to the workplace discrimination. As for the other regulations, there are no pending adoptions of a new legislation in the field of workplace discrimination.

All employers, both in the public and private sector, must comply with the above referenced laws and regulations, representing the minimum requirement and standard from an employment law standpoint.

2. Enforcement Authority

The central authority responsible for the suppression of discrimination, including workplace discrimination, in the Republic of Croatia is the Ombudsman (Croatian: *Pučki pravobranitelj*).

Within the scope of his/her work, the Ombudsman shall:

- receive reports of all the natural and legal persons;
- provide necessary information to natural and legal persons that have filed a complaint on account of discrimination with regard to their rights and obligations and to possibilities of court and other protection;
- if the court proceedings have not yet been initiated, examine individual reports and take actions falling within his/her competence required for elimination of discrimination and protection of rights of discriminated persons;
- warn the public about the occurrence of discrimination;
- with the parties' consent, conduct mediation with a possibility of reaching an out-of-court settlement;
- file criminal charges related to discrimination cases to the competent state attorney's office;
- collect and analyse statistical data on discrimination cases,

- inform the Croatian Parliament on the occurrence of discrimination in his/her annual and, when required, extraordinary reports; and
- conduct surveys concerning discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government of the Republic of Croatia.

In addition to the Ombudsman, the Republic of Croatia has three special ombudsmen who also represent state authorities for the suppression of discrimination in their respective areas of activity, including workplace discrimination. The special ombudsmen are:

- Ombudsman for Children;
- Ombudsman for Gender Equality; and
- Ombudsman for Persons with Disabilities.

Furthermore, the State Inspectorate of the Republic of Croatia (hereinafter: the “**State Inspectorate**”) is the governing body responsible for the inspection supervision of the implementation and enforcement of the Labour Act and other regulations that deal with relations between employers and employees in the field of employment, including workplace discrimination.

Furthermore, the administrative supervision over the implementation of the Labour Act and the regulations adopted on its basis, as well as other laws and regulations governing relations between employers and employees, is performed by the state administration body responsible for labour affairs (currently, the Croatian Ministry of Labour, Pension System, Family and Social Policy).

3. Prohibited Practices

The Anti-Discrimination Act contains a *numerus clausus* system, i.e. a closed list of enumerations of prohibited grounds for discrimination, which also refer to the workplace discrimination. The Anti-Discrimination Act regulates protection against discrimination on the following grounds:

- race or ethnic affiliation or colour;
- gender;
- language;
- religion;
- political or other belief;
- national or social origin;
- property;
- trade union membership;
- education;
- social status;
- marital or family status;
- age;
- health condition;
- disability;
- genetic heritage;
- native identity; and
- expression or sexual orientation.

4. Employee Rights

An individual may submit a complaint to the State Inspectorate, which must initiate an inspection *ex officio*. Also, an employee may submit a complaint to the (special) Ombudsman, who may give a legal advice and request a statement from the employer.

Furthermore, an employee may contact and submit a request/complaint for the protection of dignity to the employer’s authorized person for the protection of dignity, if such authorised person is appointed (please see answer under previous question). The procedure and measures for the protection of dignity of employees from harassment and sexual harassment may be regulated by the law, a collective bargaining agreement, an agreement concluded between the works council and the employer, or in the employment rulebook.

The employer or a person authorized for the protection of dignity must, no later than within eight days from the delivery of the complaint, investigate the complaint and take all necessary measures appropriate to the individual case in order to prevent the continuation of harassment or sexual harassment, if such harassment exists. If the employer does not take the measures to prevent harassment or sexual harassment, or if the measures that the employer has taken are clearly inappropriate, an employee who is harassed or sexually harassed is entitled to stop working until he/she is protected, provided that the employee has requested a protection before the competent court within a further period of eight days.

If there are circumstances due to which it is not justified to expect that the employer will protect the dignity of the employee, the employee is not obligated to submit a complaint to the employer and has the right to stop working, provided that the employee has requested protection before the competent court and informed the employer about the request within eight days from the day of the stoppage of work.

Lastly, an employee may seek legal protection before the competent court through a regular civil procedure or pursuant to special legal actions for the protection against discrimination in accordance with the Anti-Discrimination Act.

Pursuant to the Anti-Discrimination Act, any person who considers that his/her right has been violated on the account of discrimination may request protection of that right in the proceedings deciding upon that right as the main issue, and he/she may also request protection in special legal proceedings via special legal actions for the protection against discrimination. The latter special legal actions for the protection against discrimination include the following requests to be performed:

- to establish that the defendant has violated the plaintiff's right to equal treatment or that the action the defendant has undertaken or failed to undertake may directly result in the violation of the right to equal treatment (action for determination of discrimination);
- to prohibit the undertaking of activities which violate or may violate the plaintiff's right to equal treatment, or to carry out activities which eliminate discrimination or its consequences (action for prohibition or elimination of discrimination);
- to compensate for proprietary and non-proprietary damage caused by the violation of the rights protected by this Act (action for damages); and
- to publish in the media the ruling establishing the violation of the right to equal treatment, at the defendant's cost (provided that the violation of the right to equal treatment took place through the media, or that the information on the conduct violating the right to equal treatment were published in the media, and that the publishing of the ruling is necessary for the purpose of complete damage compensation or protection against unequal treatment in future cases).

In case of non-compliance with the provisions of the Gender Equality Act, a monetary fine may be imposed in the amount of up to HRK 350,000 (EUR 46,453) for the employer that is a legal entity. Also, a monetary fine of up to HRK 40,000 (EUR 5,309) may be prescribed for the responsible natural person within the legal entity.

5. Sanctions for Non-Compliance

In general, employment law legislation prescribes sanctions in the form of administrative measures for minor violations, and monetary fines for serious violations of the law.

In case of a minor non-compliance with the provisions of the Labour Act, administrative measures may be imposed to the employer by which the employer is due to make a correction within a prescribed deadline.

In case of a serious violation of the Labour Act provisions, a monetary fine may be imposed in the amount of up to EUR 7,960 for a legal entity. A monetary fine of up to EUR 790 is also prescribed for the responsible natural person within the legal entity or for the employer who is a natural person (such as, e.g. craft, sole proprietorship, etc.). If a violation was committed with regard to an employed minor, the amount of a monetary fine is doubled.

In case of non-compliance with the provisions of the Anti-Discrimination Act, a monetary fine may be imposed in the amount of up to HRK 350,000 (EUR 46,453) for the employer that is a legal entity. Also, a monetary fine of up to HRK 40,000 (EUR 5,309) may be prescribed for the responsible natural person within the legal entity.



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Law Firm



GREECE

1. Legislation

The basic principle of equal treatment is regulated under the Greek Constitution and Law No. 4443/2016 which transposed EU Directives 2000/78/EC, 2000/43/EC and 2014/54/EU into Greek law. The relevant law provides for the implementation of the principle of equal treatment irrespective of racial or ethnic origin, and establishes a general framework for the protection of equal treatment in the workplace.

In accordance with the provisions of Law No. 4443/2016, any direct or indirect discrimination on the grounds of race, colour, national or ethnic origin, genealogical descent, religion or other belief, disability or chronic condition, age, social status, sexual orientation, gender identity or gender characteristics in the field of work and employment is prohibited.

As per the provisions of the law, direct discrimination occurs when an employee is treated less favourably than other employees of the same or comparable employment status. Indirect discrimination occurs when a provision, practice, or criterion puts an employee at a disadvantage when compared to other employees of the same status. Indirect discrimination can be justified only by a legitimate purpose and in case the means of achieving the purpose are considered appropriate and necessary (e.g. justified by business or operational needs).

Harassment is also considered as a discriminatory behaviour, including behaviours which violate the dignity of a person and create an intimidating, hostile, degrading, humiliating or offensive environment.

In compliance with the guidelines of ILO Convention 190 regarding the eradication of violence and harassment in the workplace, Law No. 4808/2021 was issued in Greece (in June 2021). The relevant law provides for a stricter legal framework regarding the prevention of violence and harassment in the workplace. Based on the relevant provisions, all companies must combat violence and harassment in the workplace, by introducing both preventative and disciplinary measures for those who engage in such behaviours. More specifically, companies with more than 20 employees are obliged by the new law to have an anti-violence and anti-harassment policy in place.

Furthermore, Law No. 3896/2010 provides for the implementation of the principle of equal opportunities and equal treatment of men and women in the workplace. In accordance with the relevant law, any direct or indirect discrimination on grounds of sex, especially with regard to family status, is strictly prohibited. The relevant law contains provisions for the implementation of the principle of equal treatment in relation to:

- access to employment, including promotion, and to vocational training;
- working conditions, including pay; and
- occupational social security schemes.

Law No. 4443/2016 applies to all persons, in both the public and the private sector and covers:

- the terms of access to work and employment, including selection criteria and recruitment terms, including promotion;
- access to all types and levels of vocational guidance, apprenticeship, vocational training, including practical work experience;
- the terms and conditions of employment, particularly as regards to remuneration, dismissals, health and safety at work and in the event of unemployment, reintegration and re-employment;
- membership status and participation in a trade union of workers or employers or any professional organisation, including the advantages and obligations arising from participation in them, and, in particular, the right to vote and stand as a candidate.

The relevant provisions:

- do not cover reasonably justified differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the legal status of third country nationals outside EU or stateless persons living in the territory of Member States;
- do not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes and is without prejudice to measures which are necessary for the assurance of public safety and public order, the prevention of criminal offences, the protection of health and rights and freedoms of others;
- do not apply to the armed forces with regard to different treatment on grounds of age, disability and chronic illness relating to service; and
- do not apply to persons, whose tax residence lies outside EU, with regard to the provision of tax concessions or advantages.

Thus, the different treatment does not constitute inadmissible discrimination when, due to the nature or context of the professional activities, it constitutes an essential and fundamental professional prerequisite, and provided that the objective in question is legitimate and the condition is proportional.

Furthermore, the provisions of Law No. 4808/2021, as regards the prohibition of violence and harassment within the workplace as well as the employer's relevant obligations for the prevention and treatment of such discriminatory behaviours, applies to all employers of both the public and private sector and covers their employees irrespective of their contractual status, including individuals engaged through a project agreement, a services agreement, a salaried mandate agreement, third party services providers, trainees, interns and apprentices, volunteers, workers whose employment has been terminated, job applicants and bogus employees.

2. Enforcement Authority

In accordance with the provisions of Law No. 4443/2016, the competent authority for overseeing and promoting the implementation of the principle of equal treatment is the Greek Ombudsman.

Moreover, the responsibility for monitoring implementation of equal treatment policies in the field of employment lies with the competent department of the Ministry of Labour and Social Affairs.

The Authority responsible for the implementation of the provisions of Law No. 4808/2021, regarding the eradication of violence and harassment at the workplace, is the Greek Labour Inspectorate Authority.

3. Prohibited Practices

The respective legal framework prohibits discrimination on the grounds of race, colour, national or ethnic origin, genealogical descent, religion or other belief, disability or chronic condition, age, social status, sexual orientation, gender identity or gender characteristics in the field of work and employment.

In accordance with the provisions of Law No. 4443/2016, all employers shall ensure the implementation of the principle of equal treatment and cooperate with the competent authorities for all related matters.

Based on the provisions of Law No. 4808/2021, which ratified the Convention 190 concerning the elimination of violence and harassment in the workplace, companies with more than 20 employees are obliged to adopt an anti-violence and anti-harassment policy, and create internal channels for handling relevant claims.

4. Employee Rights

Law No. 4443/2016 protects employees who filed a relevant complaint with regard to the application of the equal treatment principle, against dismissal or any other retaliation act on behalf of their employer. The affected employee may seek legal protection before the Greek Labour Inspectorate, the Greek Ombudsman and the competent courts even after the termination of the respective employment relationship.

Associations, organizations or other legal entities, including trade unions, which aim to ensure the compliance with the principle of equal treatment regardless of race, colour, nationality, origin, religion or other belief, disability or age, social status, sexual orientation, identity or gender, may represent and support the employee before the competent courts and administrative authorities, following the complainant's written consent.

In accordance with Law No. 4808/2021, an employee who has suffered an incident of violence or harassment at the workplace is entitled to seek legal protection before the Greek Labour Inspectorate and the Greek Ombudsman even after the termination of the respective employment relationship. Furthermore, the affected employee may also file a relevant complaint to the employer by following the procedure reflected in the employer's anti-harassment and anti-violence policy (if such exists).

In any of the abovementioned cases, the affected employee is entitled to seek full compensation for damages suffered as well as compensation for moral damages.

The burden of proof in the abovementioned civil cases lies with the employer and not the employee. More specifically, the employer is obliged to prove the non-existence of any discriminatory behaviour, provided that the employee has presented valid evidence which leads to the presumption that a discriminatory behaviour has taken place.

5. Sanctions for Non-Compliance

The Labour Inspection Authority may impose an administrative fine, following a random audit at the company's premises or a relevant employee complaint, to any employer company, which violates the legal provisions regarding the principle of equal treatment as well as the provisions related to prohibition of harassment and violence at workplace. The amount of the fine that might be imposed is specified by a relevant ministerial decision, and ranges between EUR 1,800 to EUR 10,500 per infringement and per employee.



KS

KOSOVO

1. Legislation

Article 5 of the Kosovo Labour Law contains the prohibition of all forms of discrimination in employment and occupation, including such related to recruitment, training, promotion of employment, terms and conditions of employment, disciplinary measures, cancellation of an employment contract or other matters arising out of the employment relationship. The foregoing legislation also provides that the Law No. 05/L-021 on the Protection from Discrimination shall be directly applicable with regard to the employment relationship concluded between the employee and the employer.

Since its promulgation in November 2010, the Kosovo Labour Law has not been amended and no significant changes occurred regarding this area of ESG.

The Law on the Protection from Discrimination applies to any acts or omissions committed by any employer (including state or local institutions, natural or legal persons, public or private sector), which result in the violation of rights of any natural or legal person in any areas of life, especially related to:

- conditions for accessing employment, self-employment and occupation, including employment conditions and selection criteria, regardless of the type of activity, and at all levels of the professional hierarchy, including promotions;
- conditions for accessing all types and levels of vocational guidance, vocational training, advanced vocational training and re-qualifications, including internship experience;
- employment and working conditions, including a discharge or termination of the employment contract and compensation; and
- membership and involvement in labour or employers' organizations, or any organization whose members exercise a particular profession, including the benefits provided for by such organizations.

Employers must apply the principle of equal treatment at all times and may not discriminate, either directly or indirectly, in the sense of any of the above-mentioned grounds.

2. Enforcement Authority

The Ombudsperson is a state institution primarily charged with the promoting, monitoring and protecting human rights and freedom of legal and natural persons from unlawful activities of the public authorities. In addition, the Ombudsperson handles cases related to discrimination, pursuant to its competences determined by the Law No. 05/L-019 on Ombudsperson.

Any person or group of persons may file a complaint to the Ombudsperson regarding the discriminatory behaviour on the grounds mentioned above. Filing a complaint with the Ombudsperson is not mandatory and does not preclude the same person to file a lawsuit before the competent court.

3. Prohibited Practices

The Kosovo Labour Law prohibits all types of workplace discrimination. Moreover, the Kosovo Law on Protection from Discrimination establishes a general framework for the combating and prevention from discrimination, based on nationality or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment.

However, any distinction, dismissal or giving priority, or relation to any designated place of work, which is based on certain criteria required for that work is not considered discrimination.

Employers are encouraged to adopt and implement internal policies related to the prohibition of all forms of discrimination; however, no mandatory provisions exist related to the adoption of internal policies and/or conducting training or periodical assessment with respect to workplace discrimination matters. Nevertheless, as previously mentioned, employers are required to follow the principle of equal treatment.

4. Employee Rights

For instance, in order to guarantee the principle of equal treatment in relation to persons with disabilities, a reasonable accommodation during employment should be provided for those employees. Unless this measure constitutes a disproportionate burden, the employer should take appropriate measures to enable the employees with disabilities to have access and participate in the training and advance in the employment.

Further to this, in the case of hiring new employees, the Kosovo Labour Law guarantees the principle of equal treatment of male and female candidates as the employer is obliged to create equal opportunities and criteria to them.

An individual subject to workplace discrimination has the right to file a complaint to the Ombudsperson regarding the discriminatory behaviour and/or to file a complaint before the competent court.

5. Sanctions for Non-Compliance

According to the Kosovo Labour Law, any person (i.e. the employer) who discriminates against an employee or a person seeking employment in violation of the law will be fined up to three times the amount from EUR 100 to EUR 10,000.



ME

MONTENEGRO

1. Legislation

Prohibition of discrimination against employees and employee candidates is regulated by the Labour Act of 2019, and the general Prohibition of Discrimination Act of 2010 provides protection to employee candidates, employees, and staff performing work outside employment. General prohibition of discrimination based on gender, including such discrimination in the workplace, is also regulated in the Gender Equality Act of 2007. There is also a special law on prevention of discrimination against persons with disabilities, which contains specific provisions of relevance to the workplace environment, as well as a special law on protection of employed citizens of Montenegro who are temporarily seconded to work abroad, which imposes an obligation on the employer to ensure equality of men and women, and protection against discrimination on any basis to the temporarily seconded employees.

Prohibition of discrimination applies to all categories of employers and there are no exemptions for any particular category of employers.

2. Enforcement Authority

Employer compliance with the labour-related legislation, including with the prohibition of workplace discrimination, is supervised by the Labour Inspection within the Ministry of Labour through *sua sponte* audits or upon complaint.

3. Prohibited Practices

The Labour Act prohibits direct and indirect discrimination of job candidates and employees based on race, skin colour, nationality, social or ethnical background, relationship with a national minority or national minority community, language, religion or belief, political or other opinion, sex, sex change, gender identity, sexual orientation, medical condition, disability, age, financial status, marital or family status, pregnancy, membership or assumed membership with a group, political organisation, trade union or other organisation, or *some other personal status*.

The Labour Act further prohibits discrimination in relation to possibility of access to professional orientation, vocational training and development, and retraining, including practical work experience. It also prohibits discrimination in relation to membership or participation in employee or employer organisations, or professional organisations, including in relation to benefits provided by such organisations.

The Prohibition of Discrimination Act prohibits any type of discrimination, on any basis, and contains a similar list of examples of protected personal characteristics as the Labour Act and a catchall phrase *other personal status*.

Employers are not required to have any specific internal policies, trainings, or periodical assessments with respect to workplace discrimination matters.

4. Employee Rights

An employee who believes he or she has been a victim of discrimination can file a lawsuit against the alleged discriminator only after first initiating the proceedings before the Agency for Peaceful Labour Disputes Resolution or before the Centre for Alternative Dispute Resolution. An employee candidate and terminated employee can directly file a lawsuit.

A person filing a lawsuit can seek the following remedies:

- prohibition of an act which threatens to be discriminatory, or prohibition of repeated discrimination;
- declaration that discrimination occurred;
- removal of the consequences of a discriminatory action;
- damages; and/or
- publication of the judgement.

Certain third parties can file a lawsuit on behalf of the victim of discrimination.

A person who believes that he or she has been a victim of discrimination can also contact the Commissioner for Protection of Human Rights and Liberties, elected by the National Assembly of Montenegro, who may, amongst other measures:

- upon receiving a complaint, provide to a person, who believes that he or she has been a victim of discrimination, an information on such person's rights and obligations, as well as on possibilities of judicial or other type of protection;
- act upon a complaint, and undertake measures and actions for removal of discrimination and protection of a victim, if the court proceedings have not been initiated;
- conduct mediation between a person who believes that he or she has been a victim of discrimination and the alleged discriminator;
- initiate court proceedings for protection against discrimination or participate as an intervener under certain conditions.

Finally, a person who believes that he or she has been a victim of workplace discrimination can file a complaint to the Labour Inspection within the Ministry of Labour.

5. Sanctions for Non-Compliance

Different laws governing workplace discrimination prescribe different penalty ranges in the event of non-compliance – the highest fine being prescribed by the Prohibition of Discrimination Act, in the amount of up to approx. EUR 20,000 for the non-complying employer, and up to approx. EUR 2,000 for the chief responsible officer of the employer.



REPUBLIC OF NORTH MACEDONIA

1. Legislation

The Macedonian Constitution guarantees the equality of the rights and obligations of all citizens in North Macedonia, regardless of their gender, race, skin colour, national and social origin, political and religious belief, property and social position.

Moreover, the prohibition of discrimination and workplace discrimination, in particular, is regulated with several laws, such as:

- the Law on Labour Relations (“LLR”),
- the Law on Protection against Discrimination (“LPD”),
- the Law on Equal Opportunities of Men and Women (“LEOMW”),
- the Law on Protection against Harassment at the Workplace (“LPHW”), and
- the Macedonian Criminal Code.

While the LLR only provides a general framework on the workplace discrimination, the particularities of the process of protection and the specific aspects in this area are regulated in the LPD.

With regard to recent developments, an expanded definition of “discrimination” is being prepared as a part of the working version of a new Law on Labour Relations. In the draft version, the definition of discrimination refers to all forms of discrimination, including those currently not regulated by the LLR, *inter alia*, a denial of adequate accommodation and of accessibility and availability of the employer's infrastructure, goods and services to employees and employee applicants.

The implementation of the mentioned legislation is mandatory to all categories of employers and, in general, no exceptions exist with regard to the type thereof (e.g. private companies, government-controlled enterprises, etc.).

However, the following exceptions to the definition of what is considered as “workplace discrimination” exist:

- any distinction, exclusion or preference in respect to certain work when the nature of the work, or the conditions in which it is performed, are such that the characteristics represent real and decisive requirement for performing the work, provided that the goal that is aimed to be accomplished by any of the foregoing measures is legitimate and the requirement therefor is proportionate;

- all measures referring to a special protection and assistance to specific categories of employees, especially those measures for the protection of disabled, elderly or pregnant employees, and female employees exercising any of the rights to the motherhood protection, as well as the provisions referring to the special rights of parents, adoptive parents and dependents;
- a different treatment of employees employed on definite and indefinite period of time, justified by objective reasons.

2. Enforcement Authority

The implementation and compliance of the provisions for the protection against workplace discrimination is, in general, monitored by:

- the Labor Inspectorate, which performs inspections and may impose misdemeanour fines and orders in case of discrimination and non-compliance with the legal obligations, and
- the Commission for Protection and Prevention Against Discrimination (the “**Commission**”).

The Commission is an autonomous and independent body whose members are appointed by the Macedonian Assembly. Apart from its other functions, the Commission undertakes the following activities:

- promotes and protects equality and human rights, and prevents discrimination;
- monitors the implementation of the LPD, and gives opinions and recommendations thereto;
- recommends and initiates amendments to regulations for the purpose of implementing and improving protection against discrimination;
- acts on petitions, and delivers opinions, recommendations and conclusions on specific cases of discrimination; and
- at a request of a party in court proceedings, or on its own initiative, appears as an intervener in court proceedings for the protection against discrimination.

3. Prohibited Practices

The Macedonian legislation regulates the protection from several types of workplace discrimination – discrimination based on racial or ethnic origin, colour, gender, age, health condition (i.e. disability), religious, political or other belief, membership in trade unions, national or social origin, family status, property situation, sexual orientation, or other personal circumstances.

In addition, the principles of equal opportunities and treatment between women and men must be ensured in connection with:

- access to employment, including promotion and work-related vocational and professional training;
- work conditions;
- equal pay for equal work;
- occupational social security schemes;
- absence from work;
- work hours; and
- termination of an employment contract.

The principle of equal treatment means the prohibition of a direct and/or indirect discrimination with regard to an employee or an employee candidate.

In terms of the LLR, workplace discrimination is prohibited with respect to:

- employment requirements, including the criteria for the selection of candidates for carrying out certain work, in any branch or department and at all levels of the professional hierarchy, in accordance with the National Classification of Business Activities, and;
- promotion at work;
- access to all types and levels of professional training, retraining and upskilling;
- work conditions and all rights deriving from and pertaining to the labour relation, including equal pay;
- termination of an employment contract; and
- rights of the employees to be members or associated with unions or any other professional organization, including the privileges resulting therefrom.

Regardless that there is no particular internal policy, or training/assessment which the employers should generally implement with respect to workplace discrimination matters, from the aspect of protection against harassment at the workplace, the employers are obliged to familiarize the employees with the measures and the procedure related to the protection against harassment at the workplace in accordance with the LPHW, and with the rights, obligations, and responsibilities of the employer and the employee at the beginning and during the course of the employment.

4. Employee Rights

Individuals subject to workplace discrimination can submit a petition to the Commission, in writing or verbally, free of obligation to pay a fee and other charges. Before the Commission, the individual petitioner may be represented by an association, foundation or trade union with his/her prior consent.

Associations, foundations, trade unions or other organizations from a civil society and institutions, which have a justified interest in the protection of interests of a certain group of individuals or, within the scope of their activity, deal with the protection against workplace discrimination, can also submit a petition to the Commission against an employer, in case a large number of employees are discriminated.

Moreover, the Commission may initiate a procedure *ex officio* if, based on the circumstances and facts obtained through the available (i.e. public) information, it could be reasonably inferred that the employer has committed workplace discrimination.

Additionally, all employees or employee candidates who consider that an employer has committed an act of discrimination against them may file a lawsuit in front of a competent court and request that the court:

- establish that the employer performed an act of discrimination;
- prohibit the employer from taking actions that violate or may violate the employee's or the employee candidate's rights;
- oblige the employer to take actions that remove the discrimination or its consequences;
- require the employer to compensate the employee or the employee candidate for any material and non-material damage caused by the violation of the rights protected by the LPD; and
- publish in the media, in an accessible format and at the expense of the employer (defendant), a dispositive of the judgment which established discrimination.

Associations, foundations, unions or other organizations from a civil society, and informal groups that have a justified interest in protecting the interests of a specific group or are engaged in the protection against discrimination within their activity, can also file a lawsuit for the protection of the public order (*actio popularis*), if it is likely that a larger number of employees have been discriminated against by an employer.

On a separate note, in the event of workplace harassment (mobbing), the LPHW provides for the employee protection through a specific internal procedure conducted at the employer level.

5. Sanctions for Non-Compliance

In case of a non-compliance with the obligations deriving from the protection against workplace discrimination, the employer that is a legal entity may be fined for a misdemeanour with a monetary fine from EUR 400 to EUR 10,000, depending on the type of breach and the employer size.

Committing an act of discrimination is also prescribed as a criminal offense in the Criminal Code, which provides for the possibility of imposing a prison sentence to a responsible individual at the employer, with the duration from six months to five years. The same Code also provides that the employer, that is a legal entity, may be charged with a monetary fine.

In addition, the employee, or the employee candidate subject to discrimination, may request damage compensation for the act of discrimination committed by the employer in a litigation procedure in front of a competent Macedonian court, as well as imposing of the other measures, previously described above.



ROMANIA

1. Legislation

Discrimination and harassment at the workplace are widely regulated in Romania, from constitutional principles (such as equal pay for equal work and general equality before the law) to a more in-depth analysis of the core notions within primary and secondary legislation (in the Romanian Labour Code, Romanian Administrative Code, Romanian Criminal Code, Government Ordinance No. 137/2000 on the prevention and punishment of all forms of discrimination, Law No. 202/2002 on equal opportunities and equal treatment for women and men and other relevant enactments with a wider scope or aimed at implementing the above-mentioned provisions).

In the recent years, legal amendments of considerable impact in the employment area introduced a specific framework for “moral harassment at the workplace”, aiming to address recurring issues in the current fast-paced, stress-susceptible social and economic reality, in the context of scarce national regulation in this specific field until these legal amendments.

Concretely, the provisions on moral harassment at the workplace and the corresponding means of protection against such behaviours focus on defining and identifying behaviours that fall under its scope, indicating the specific liability that could be triggered for perpetrators of moral harassment acts, establishing the particular role of the employer in preventing, identifying and sanctioning moral harassment at the workplace, as well as associated sanctions in case of non-compliance with the rules established in this field (prohibition of retaliation included).

As such, the main aim of the detailed regulation of moral harassment has been, in principle, to bring the Romanian legislation and means of protection in line with the EU-level directions and strategies, thereby focusing on the protection of mental health at the workplace against specific forms of harassment, violence and hostility that pose a threat on the dignity, physical or mental integrity of employees, endangering their activity or degrading the working climate.

The legal framework regulating discrimination and harassment at the workplace is, in principle, of general applicability, thus targeting both the private and the public domains, regardless of the category to which they belong depending on industry, sector of activity, control, etc.

On the other hand, particularization of certain concepts from the base legislation mentioned above can be identified by reference to specific professional bodies regulated by their particular legislation – e.g. ethical principles, professional dignity etc.

2. Enforcement Authority

The implementation, application and, as case may be, sanctioning in case of non-compliance in this area of employment law are essentially overseen by the National Council for Combating Discrimination (“**CNCD**”), the autonomous state authority with quasi-judicial powers in the fields of discrimination and harassment. The CNCD renders decisions ruling on cases of discrimination and harassment referred thereto under a specific procedure and applies administrative sanctions to perpetrators of discrimination and/or harassment. Access to court proceedings in this field is not conditioned upon addressing the matter firstly in front of CNCD and neither does it depend on CNCD’s decision on the matter.

There are also other government agencies responsible in this area, such as: (i) the National Agency for Equal Opportunities for Women and Men (ANES), a specialised body of the central public administration that, *inter alia*, receives complaints concerning violations of normative provisions relating to the principle of equal opportunities and treatment between women and men and non-discrimination on the basis of sex, forwarding them to the institution competent to solve them; or (ii) the Labour Inspectorate, which ensures control of the application of measures for the observance of a wide variety of provisions in the labour arena.

3. Prohibited Practices

Under Romanian law, as a rule, workplace discrimination is defined as any distinction, exclusion, restriction or preference with the purpose or effect of denial, restriction or withdrawal of recognition, use or exercise of rights provided for in labour law, by reference to a series of criteria provided non-exhaustively by law, the main ones being: race, nationality, ethnicity, colour, language, religion, social category, genetic traits, beliefs, sex, sexual orientation, age, disability, chronic non-contagious illness, family situation, HIV infection, membership of a disadvantaged group, family situation or responsibility, trade union membership or activity.

By reference to these criteria, the law defines and ensures protection against the following main types of behaviours in this field: direct discrimination, indirect discrimination, discrimination by association, harassment (with subtypes such as sexual harassment, moral harassment, etc.), victimization and order to discriminate.

The legislator has entrusted employers with an active role when it comes to the prevention of discrimination and harassment phenomena, requiring them to take preventive measures, as well as to sanction employees with non-compliant behaviours. In terms of typology of preventive measures, employers generally have freedom to decide, but there are certain statutory rules that any employer must follow.

Firstly, we mention that employers must include in their internal regulations, as a mandatory content, rules on observance of the principle of non-discrimination and the elimination of any form of violation of dignity (including express disciplinary sanctions for moral harassers, rules on express prohibition of sex-based discrimination and disciplinary sanctions for employees who violate the personal dignity of other employees by creating degrading, intimidating, hostile, humiliating or offensive environments, or by gender/sex-based discriminatory and harassment actions), as well as the procedure for the amicable settlement of individual labour disputes, requests or individual complaints of employees.

In gender/sex related matters, employers should also have a special anti-harassment policy, and, if in place, collective bargaining agreements must contain clauses prohibiting acts of discrimination and, respectively, clauses on how to deal with complaints made by persons harmed by such acts, specifically to prevent sex-based discrimination. Special legislation actually goes even further, providing for the employers' obligation to inform the public authorities responsible for enforcing and monitoring compliance with the legislation on equal opportunities and equal treatment of women and men immediately after such a matter has been referred to them.

Last but not least, in terms of employees' training in the field of equality, non-discrimination and non-harassment, the following preventive measures, incumbent upon the employer, are also specified by statute:

- to repeatedly inform employees of the rights they have in terms of respecting equal opportunities and treatment between women and men in employment relations – through all possible means of communication, such as: meetings, briefings, messages sent by e-mail or posted on intranet networks, etc.;
- to carry out projects, training programmes, actions, informative, educating and awareness-raising campaigns among employees to ensure a common understanding of the internal anti-harassment policies and how to report such situations; and

- to provide specialised information and training sessions on equal opportunities and treatment between women and men for the management of the institution and other management positions.

4. Employee Rights

As a potential pathway to be followed, employees considering themselves victims of discrimination at the workplace have the option to address the matter internally, following the specific procedure and steps outlined in the anti-discrimination and anti-harassment policy of the employer and/or, as case may be, the provisions of the internal regulation applicable at the employer level.

In practice, the individual considering himself/herself as discrimination victim should be given the opportunity to present all arguments and means of proof considered necessary, e.g. during a hearing organized by the employer. While an amicable solution can be found through the employer's internal proceedings, the employer may nevertheless commence an internal disciplinary proceeding to discipline the perpetrator, as the case may be.

Going beyond the internal approach in such situations, potential victims of discrimination have further remedies to access, regardless of having addressed the matter internally as per the above. As such, employees considering themselves discriminated may refer the matter to the CNCD within the maximum one year from the date on which the respective acts/deeds were committed or from the date on which they became aware thereof. While a prejudice reparation cannot be obtained from the CNCD, this authority can order a fine and the publication of an excerpt of its ruling in mass-media. The cost of psychological counselling, as well as the cessation of illegal practice can also be ordered against the employer in case moral harassment is ascertained.

Regardless of having reverted to any of the means outlined above, the individual considering himself/herself a victim of discrimination and/or harassment may bring a related claim in front of the competent court of law. The burden of proof that there has been no breach of the principle of equal treatment lies with the person against whom the complaint is made. The potential victim has the right to request a removal of the consequences of the discriminatory and/or harassment acts, the restoration of the situation prior to the illegal practice or the annulment of the situation created through discrimination. The court is authorised to rule in principle on:

- cessation of illegal practices;
- material and moral damages,
- specific measures by reference to the action taken by the employer (e.g. annulment of the measure, potential reinstatement of the illegally dismissed employee, amendment of disciplinary record),

- specific measures by reference to the type of deed ascertained (e.g. costs of psychological counselling for morally harassed employees),
- publication of the court ruling in the mass-media,
- upon the victims' request, withdrawal or suspension, by the issuing authorities, of the operating licence of legal persons that have caused, through discriminatory actions, significant damage, or, while causing non-significant damage, have repeatedly violated the applicable legal provisions.

If the harassment represents a criminal offence (e.g. sexual harassment), the victim may also file a criminal complaint against the perpetrator.

Nevertheless, as anticipated, the law also protects employees against any adverse treatment in response to a complaint or legal action concerning a violation of the principle of equal treatment and non-discrimination, generally retaliation measures being sanctioned in return, as per the law.

5. Sanctions for Non-Compliance

If, within its internal regulations, the employer fails to include certain minimum mandatory content related to the subject of discrimination at the workplace, it may be subject to hefty fines, depending on which of the specific element(s) have not been included (e.g. a fine can be ordered up to approx. EUR 10,000 for not providing the required content regarding moral harassment). Generally, the failure of the employer to adopt and implement the legally required internal policies may, at minimum, prompt a measure of compliance ordered by the labour inspection requiring the employer to adopt, prepare/amend and implement its internal procedures within a certain time and, in case of a non-compliance with respect thereto, the employer may be subject to a fine up to approx. EUR 2,000. In any case, employers establishing, in any form, internal rules or measures that oblige, induce or incite employees to commit acts of moral harassment in the workplace may suffer fines of even up to EUR 40,000.

Going further, if the CNCD finds that the employee's discrimination claim is sustained, in principle, it may order administrative fines against the employer (generally, up to approx. EUR 6,000, if discrimination concerned an individual, and up to approx. EUR 20,000, if discrimination concerned a group of persons) and order the employer to publish an excerpt of its ruling in the mass-media.

In particular, the CNCD may also order the employer to take all necessary measures to stop any acts of moral harassment at the workplace in respect of the employee concerned and/or order the employer to pay the employee the sum necessary for the psychological counselling required by the employee for a reasonable period as determined by the occupational physician. For clarification purposes, the foregoing may be also ordered by a court of law.

A failure by the employer to comply with the measures ordered by the CNCD represents an administrative misconduct sanctioned by fines of up to approx. EUR 40,000. In case of ruling in favour of the victim of discrimination, a court of law may order, in principle, that the employer:

- puts an end to the illegal practices;
- reinstates the previously applicable situation (status quo ante);
- compensates the employee victim of discrimination for the material and non-material damages;
- publishes the court ruling in the mass-media;
- is withdrawn or suspended, by the issuing authorities, the operating licence (upon request of the victims and if, through discriminatory action, causes significant damage or, although causing a non-significant damage, repeatedly violates the applicable legal provisions);
- is imposed other sanctions as may be relevant to the particular form of breach (e.g. payment of psychological counselling in the case of moral harassment, as indicated above) or the particular situation at hand (e.g. reinstatement of an illegally-dismissed employee who has been the subject of discrimination, harassment or reprisals, amendment of the employee's disciplinary record).



SERBIA

1. Legislation

Prohibition of discrimination in the workplace is regulated by the 2005 Labour Act, specifically applicable to employees and employee candidates, and the general 2009 Prohibition of Discrimination Act, applicable to everyone participating in work on any basis (i.e. employees and staff engaged outside employment).

General prohibition of discrimination based on gender, including such discrimination in the workplace, is also regulated in the 2021 Gender Equality Act. There is also a special law on prevention of discrimination against persons with disabilities, which contains specific provisions of relevance to the workplace environment.

Prohibition of discrimination applies to all categories of employers and there are no exemptions for any particular category of employers.

2. Enforcement Authority

Employer compliance with the labour-related legislation, including with the prohibition of workplace discrimination, is supervised by the Labour Inspection within the Ministry of Labour through *sua sponte* audits or upon complaint.

The Commissioner for Protection of Equality, elected by the National Assembly of the Republic of Serbia, monitors the implementation of anti-discrimination laws and is authorized to file a motion for initiation of misdemeanour proceedings against entities in breach of the statutory provisions which prohibit discrimination.

3. Prohibited Practices

The Labour Act prohibits direct and indirect discrimination of job candidates and employees based on sex, birth, language, race, skin colour, age, pregnancy, medical condition or disability, nationality, religion, marital status, family obligations, sexual orientation, political or other belief, social background, financial status, membership in political organisations and trade unions *or any other personal status*.

The Prohibition of Discrimination Act which protects any person participating in work on any basis contains a similar list of examples of protected personal characteristics and a catchall phrase *any other personal status, or assumed personal status*.

Employers are not required to have any specific internal policies, trainings, or periodical assessments with respect to workplace discrimination matters. The employers have the obligation to file to the Ministry of Human Rights annual reports on gender equality representation, as a measure of policy efforts to ensure a better balance of gender representation at the workplace.

4. Employee Rights

A person who believes he or she has been a victim of discrimination can file a lawsuit against the alleged discriminator seeking the following remedies:

- prohibition of an act which threatens to be discriminatory, prohibition of further discrimination or prohibition of repeated discrimination;
- declaration that discrimination occurred;
- removal of the consequences of a discriminatory action;
- damages; and/or
- publication of the judgement. Certain third parties can file a lawsuit on behalf of the victim of discrimination.

A person who believes that he or she has been a victim of discrimination can also contact the Commissioner for Protection of Equality, who may, amongst other measures:

- provide information and advice to a person who believes that he or she has been a victim of discrimination;
- act upon a complaint, give an opinion and recommendation to the person alleged to be the discriminator;
- warn the discriminator who failed to remedy a violation established by the Commissioner for Protection of Equality's recommendation, and (potentially) inform the public about the discriminatory act;
- file a lawsuit on the victim's behalf (subject to the victim's consent) against the alleged discriminator; and/or
- submit a motion for initiation of misdemeanour proceedings for the breach of statutory provisions prohibiting discrimination.

Finally, a person who believes that he or she has been a victim of workplace discrimination can file a complaint to the Labour Inspection within the Ministry of Labour.

5. Sanctions for Non-Compliance

Different laws governing workplace discrimination prescribe different penalty ranges in the event of non-compliance – the highest fine being prescribed by the Gender Equality Act, in the amount of up to approx. EUR 17,000 for the non-complying employer, and up to approx. EUR 1,300 for the chief responsible officer of the employer.



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SLOVENIA

1. Legislation

In Slovenia, the equality before the law is guaranteed to everyone at the constitutional level. Equal human rights and fundamental freedoms shall be, according to the Constitution of the Republic of Slovenia, guaranteed regardless of someone's nationality, race, gender, language, religion, political or other belief, wealth, birth, education, social status, disability or any other personal circumstance. This constitutional right is the basis for respective sectoral legislation.

The main acts which are currently in force and are directly relevant for the specific area of Workplace Discrimination in Slovenia are:

- Employment Relationships Act ("**ZDR-1**"),
- Public Employees Act ("**ZJU**"),
- Health and Safety at Work Act ("**ZVZD-1**"),
- Employment, Self-employment and Work of Foreigners Act ("**ZZSDT**"),
- Protection Against Discrimination Act ("**ZVarD**"),
- Equal Opportunities for Women and Men Act ("**ZEMŽM**"), and
- Criminal Code ("**KZ-1**").

At the present time, the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law is pending to be implemented into the Slovenian Reporting Persons Protection Act, which will, *inter alia*, aim to prevent retaliation and other forms of maltreatment towards whistle-blowers.

There have been no significant changes in this specific area in Slovenia in last five years or any other notable private or public initiatives, apart from general population equality movements, which are not labour law specific. In this particular area, the Advocate of the Principle of Equality, as an independent state authority, verifies employers' compliance with the anti-discrimination laws, but is not authorized to issue any penalties. Its decisions are public and may offer grounds for potential court or inspectorate proceedings, and also serve as general guidelines on the prevention of discrimination.

In some cases, a different treatment based on any of the personal characteristics or circumstances does not constitute discrimination if, (i) owing to the particular nature of the work or circumstances in which the work is performed, the characteristic represents a significant and decisive requirement for performance of the work, and (ii) such a requirement is in proportion to and justified by a legitimate objective. The described legal standard applies to all employers in general and can be used in individual situations which derive from the employment relationship.

ZDR-1 includes a chapter which is dedicated to the protection of certain categories of employees, which is essentially a positive discrimination approach. For example, it specifically forbids female employees to perform underground work in mines (mining sector), with the exception of key employees, authorized for autonomous decisions, educational traineeship and healthcare and social services employees. ZDR-1 also protects the categories of employees due to their pregnancy/parenthood, employees under 18 years of age, employees with disabilities and older employees.

ZEMŽM adopts a principle of equal gender representation on government level and government employees, which means the Slovenian government is obliged to ensure at least 40% representation of each gender when assembling the state bodies under its organization (except when assigning a single person to a position/function).

ZJU encompasses a principle of equal availability of public work posts to every candidate who is to be chosen only under the criteria of such candidate's professional qualification.

ZZSDT stipulates that a foreigner, who has obtained a single permit, may perform work under the same conditions as Slovenian citizens.

2. Enforcement Authority

The employers are subject to the anti-discrimination rules and are supervised by the Labour Inspectorate, which has the state authority to impose sanctions and an obligation on employers to comply with the law.

The employers are obliged to prohibit any discriminatory behaviour in the workplace, and prevent and sanction any maltreatment or mobbing amongst employees which may derive therefrom, as they can be held liable for such discriminatory actions. In case of a breach of the foregoing obligations, the employer and its responsible person may be subject to a fine ranging from EUR 3,000 to EUR 20,000, for the employer, and from EUR 450 to EUR 2,000, for the responsible person at the employer.

The employer may also be liable to the employee for not preventing discrimination, harassment or victimisation/retaliation under the general rules of civil law.

As previously mentioned, the Advocate of the Principle of Equality verifies employers' compliance with the anti-discrimination laws; however, it is not authorized to impose any sanctions.

In addition, harassment in the workplace is treated as a criminal offense under the Slovenian law. Therefore, the employee is also protected against the responsible person at the employer under the provisions of the criminal law.

3. Prohibited Practices

ZDR-1 adopts the constitutional provision of equality before law and adjusts them to the area of employment law. Employers must therefore ensure that job candidates and employees are given equal treatment, especially when employing, promoting, training, educating, paying, etc. certain individuals. ZDR-1 contains a general clause whereby discrimination on any personal circumstance is prohibited. Additionally, ZDR-1 specifically lists the following characteristics of personal circumstances:

- nationality, race, skin colour or ethnic origin;
- national or social background;
- gender;
- state of health;
- disability;
- faith or beliefs;
- age;
- sexual orientation;
- family status;
- trade union membership; and
- financial standing and other personal circumstances.

The other employment legislation, such as ZJU, redirects to the use of ZDR-1's provisions if not stipulated otherwise.

Employers are required to adopt and implement relevant internal policies from the areas of protection of dignity of employees, prevention of sexual and other harassment and maltreatment at workplace, and the measures for promotion of employees' health, as demanded by ZVZD-1. Employees shall also be entitled to periodical medical assessments in accordance with health and safety risks at their work posts.

The employer must also adopt and implement internal procedures addressing its employees' complaints alleging potential discrimination or harassment, and is required to take such complaints seriously and investigate them. Usually, the employer will argue in court that the employee did not use the internal procedures to raise a complaint about any prohibited or unwanted behaviour, but this does not necessarily insulate the employer from liability.

Generally, employers have a duty to prevent discrimination and workplace harassment in order to protect employees' mental health. If the employer fails to do so, it may be liable to the employee for damages under the general rules of civil law.

There is no specific law which requires employers to adopt and implement a workplace discrimination training program.

4. Employee Rights

The prevention of discrimination, which is often manifested in an employee's maltreatment or harassment, is one of the employer's fundamental obligations. In case it happens, it transfigures into a situation in which the employer does not fulfil its obligations towards the employee and is regarded as a breach of such employee's rights in the employment relationship. The employee is entitled to demand that the employer fulfil its obligations or remedy the infringements within a certain period. If the employer fails to comply with such demand, the employee may seek protection by initiating court proceedings against the employer.

A non-selected employee candidate may also seek judicial protection after receiving the employer's notice of non-selection, if the candidate claims that the employer's decision was based on discrimination. However, in such case, the candidate may only claim damages and cannot request employment.

An employee may also claim an extraordinary termination of the employment contract, if the employer fails to provide the employee with an equal treatment, or protection from harassment or maltreatment. In this case, the employee must notify, in writing, the employer, demanding the cessation of the foregoing violations, and the Labour Inspectorate. If the employer does not fulfil its obligation within the legally required timeframe, the employee may submit an extraordinary termination of the employment contract in the following 30 days. In such case, the employee is entitled to the severance payment and compensation for the lost profit for the termination period as if the employee were given an ordinary termination of the employment contract due to business reasons.

An employee who is a victim of discrimination may also claim non-pecuniary damages from the employer under the general rules of civil law.

On the basis of ZVarD, an individual can file a proposition for examination of a discriminatory event with the Advocate of the Principle of Equality, who can issue a declaratory decision which may serve as grounds for potential further proceedings.

Furthermore, an employee can submit a report of the breach of anti-discrimination rules to the Labour Inspectorate, which can decide to impose a sanction on the employer and the responsible person at the employer after the inspection procedure, if the report is rendered as founded.

The protection of employees' rights from discriminatory actions or behaviours is included in two criminal acts: violation of employees' fundamental rights and bullying at workplace. If they are found guilty of either of the foregoing acts, the employer and its responsible person can be subjected to the criminal procedure and criminal sanctions.

5. Sanctions for Non-Compliance

As explained above, the Labour Inspectorate can impose a fine ranging from EUR 3,000 to EUR 20,000, for the employer, and from EUR 450 to EUR 2,000, for the responsible person at the employer. Additionally, an employer can suffer damages to its good-will because the decisions, issued by the Advocate of the Principle of Equality, are published publicly.

If an employer, who is a natural person, or a responsible person at such employer are subjected to a criminal procedure and ultimately found guilty of the violation of employees' fundamental rights, they can be sentenced to prison for up to three years and a fine, and if they are found guilty of bullying at workplace, they can be sentenced to prison for up to two years. If an employer is a legal entity, it may be fined up to EUR 500,000 for the foregoing violations.

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TÜRKİYE

1. Legislation

The Turkish Constitution lays the foundation for the prevention of discrimination by setting forth that all individuals are equal before the law without being subject to any discrimination due to their language, race, colour, sex, political opinion, philosophical belief, religion and sect, or similar reasons.

Law on the Human Rights and Equality Institution of Türkiye details the lawmaker's approach on discrimination both in general terms and from the employment perspective. It sets forth that all are equal in the exercise of legally recognized rights and freedoms. It also prohibits discrimination against persons based on the grounds of sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnical origin, wealth, birth, marital status, health status, disability and age. It makes a categorization for the types of discrimination as follows: segregation, instruction to discriminate and implementing such instructions, multiple discrimination, direct discrimination, indirect discrimination, mobbing, failure to make reasonable accommodations, harassment and discrimination based on an assumed ground. It further states that unfavourable treatments sustained by persons who launch administrative or judicial proceedings, or take part in such proceedings, in order to ensure the respect of the principle of equal treatment and prevent discrimination, as well as by the representatives of such persons on account of such proceedings also constitute a discrimination. From an employment point of view, it mainly stipulates that an employer cannot make a discrimination against an employee or an employee candidate, in any of the work-related processes. These include but are not limited to the knowledge acquisition, application, selection criteria, employment conditions, and employment and termination processes. It further ensures that employers cannot reject employment applications on the grounds of pregnancy, maternity or childcare. Lastly, where the principle of non-discrimination is violated, it requires relevant competent and responsible public institutions and agencies, and public professional organizations with a public institution status to take necessary actions with a view to putting an end to the violation, remedying its consequences, preventing its repetition and ensuring the launch of administrative and judicial proceedings into it.

The Turkish Labour Law repeats the same rules with a specific focus on employment relationships. It ensures that an employer complies with an equal treatment principle and does not make a discrimination in the employment relationship based on language, race, skin colour, sex, disability status, political opinion, philosophical belief, religion and sect, or similar reasons. The reference to similar reasons is deliberately made to cover different criteria that are not listed in the law yet as they may constitute discrimination. It is worth noting that there may be cases where the Turkish Labour Law dedicates the provision of a job to a specific sex. For example, works to be provided underground or underwater, such as mining and cable laying as well as sewerage and tunnel construction, may only be carried out by men over 18 years old. Women may not carry out such works. In this regard, as it is regulated under the legislation, non-hiring of a woman to such jobs would not be considered as a violation of the equal treatment principle. The Turkish Labour Law further ensures, unless there are substantial reasons to do so, that an employer may not treat its full-time employees and part-time employees, as well as its definite-term employees and indefinite-term employees, differently. Likewise, it puts forth that an employer may not treat its employees differently while drafting, concluding, executing and terminating employment contracts, either directly or indirectly, due to relevant employees' sex or maternity status, save for the cases where it is necessary due to biological reasons or reasons related to the nature of the job. Lastly, it adopts the principle of equal pay for equal work, by stating that an employer and an employee may not agree on a lower salary for the same work only due to such employee's gender. It provides that if an employer violates the principle of equal treatment, either during or while terminating the employment relationship, the employee subject to discrimination may demand compensation.

That being said, the Turkish Labour Law does not explicitly regulate mobbing, which may be deemed as a type of workplace discrimination. That is why the general provisions of the Turkish Code of Obligation apply for mobbing claims. For clarification purposes, the Turkish Code of Obligation sets forth that an employer is obligated to:

- preserve the personal rights of its employees,
- maintain reliable and fair order within the workplace,
- preserve the employees from psychological and sexual harassment, and
- take any necessary precautions to preserve employees who have been subject to such harassment from further damages.

It further sets forth that that, if an employee's personal rights are violated or his/her physical or mental integrity is harmed due to the employer's failure to fulfil the above-listed obligations, the employer will be obligated to compensate the employee's pecuniary and non-pecuniary damages. Turkish courts assess the mobbing claims from the above perspective. In this regard, mobbing is defined by Turkish courts as a psychological terror appearing at the workplace due to systematically exposing someone to a hostile and immoral communication (such as humiliation, belittlement, exclusion, damage to the personality and dignity, maltreatment, intimidation), for a period. The most significant elements of mobbing are as follows:

- The person accused of mobbing shall be knowingly and intentionally engaged in the mobbing.
- The behaviour that is deemed mobbing shall be repeated systematically and practiced for a certain period of time (this period is examined on a case-by-case basis by relevant courts but, practically, the behaviour constituting mobbing during a relevant period must be continuous and not incidental).
- The intention of the mobbing shall be intimidating, excluding, pacifying the employee or forcing him/her to resign from his/her job.
- The mobbing shall harm the personality values, professional status, social relations and especially the mental health of the victims. It shall have an unbearable weight and intensity in terms of its impact on the victim's life.

Providing the employee with tasks more than they can carry out (i.e. overburdening the employee), cutting off communication with the employee, constantly criticizing the employee, scolding the employee, ignoring the employee's position or field of expertise while assigning him/her the tasks, and avoiding granting the rights and powers the employee deserves may be given as examples for mobbing. Law on Trade Unions and Collective Labour Agreements adopts a more specific approach focusing on union relations. It provides prevention of discrimination for both the pre-hiring term as well as the employment term. For the pre-hiring term, it puts forth that hiring an employee cannot be conditional on being or not being a member of any union, joining or not joining a specific union, maintaining a membership in or withdrawing such membership from a specific union. It provides more detailed regulations for the employment term. It stipulates as a rule that an employer cannot make a distinction between its employees, based on their membership in a union, in terms of working conditions or termination of employment. It further designates that employees cannot be dismissed or subjected to a different treatment because they are union members or because they participate in the activities of employee organizations within working hours with the employer's permission or outside working hours, or because they engage in union activities. Employees may otherwise demand compensation on the basis of discrimination.

The Turkish Penal Code regulates the outcomes of discrimination from a criminal perspective. It explicitly states that a person who hinders another person from (i) the sale, transfer or lease of a movable or immovable property, (ii) benefiting from a specific service, (iii) being hired or (iv) carrying out an ordinary economic transaction because of hatred arising from the differences in language, race, nationality, skin colour, sex, disability, political opinion, philosophical belief, religion and sect, such person shall be sentenced from one to three years of imprisonment.

The above legislation sets forth the general framework for workplace discrimination. There have been no recent changes in this regard. Yet, the perception on the scope of workplace discrimination slightly changes over time, as the Court of Cassation precedent is reformed based on the recent changes in our daily lives and moral values.

In general, the legislation on workplace discrimination does not provide a limitation on its applicability to different categories of employers, per se. The Turkish Labour Law, on the other hand, sets forth that its provisions would not apply to certain employee groups. For clarification purposes, as a rule, the following employee groups are exempt from the scope of the Turkish Labour Law: employees working in sea and air transport activities, employees working in establishments or enterprises with at most 50 employees where agricultural and forestry work is carried out, people working for any construction work related to agriculture which falls within the scope of family economy, people carrying out works and making handicrafts in home with members of their family or close relatives (up to a third degree) without any outside help, employees working in domestic services, apprentices, sportsmen, people undergoing rehabilitation, employees working in establishments employing three employees within the scope of legislation applicable to merchants and craftsmen, and employees in public institutions and organizations.

2. Enforcement Authority

As a rule, the Ministry of Labour and Social Security is the main government agency which is authorised to oversee the implementation and compliance with the legislation on workplace discrimination; however, there may be subject-specific matters in which an authorised government agency is determined otherwise. On the other hand, it is worth noting that employees who experience workplace discrimination may always refer the issue to labour courts, according to the relevant procedure. Besides, each person who claims to have suffered from violations of non-discrimination can apply to the Human Rights and Equality Institution of Türkiye, provided as a rule that the employee first demanded that the relevant party remedy the practice alleged as discriminatory, but such demand has been turned down or not responded to within thirty days.

3. Prohibited Practices

Different legislation provides similar provisions against workplace discrimination. The Turkish Constitution sets forth the main principle for the prevention of workplace discrimination due to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or similar reasons. Likewise, the Law on the Human Rights and Equality Institution of Türkiye aims to mitigate against workplace discrimination based on the grounds of sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnical origin, wealth, birth, marital status, health status, disability and age. Additionally, the Turkish Labour Law lays the foundation for the protection against workplace discrimination based on a great variety of reasons, including, but not limited to, language, race, skin colour, sex, disability status, political opinion, philosophical belief, religion and sect, as well as being a part-time employee against a full-time employee, or being a definite-term employee against an indefinite-term employee. Law on Trade Unions and Collective Labour Agreements details the scope of protection against workplace discrimination based on union related matters. Lastly, the Turkish Penal Code provides protection against workplace discrimination at hiring due to language, race, nationality, skin colour, sex, disability, political opinion, philosophical belief, religion and sect.

There is no specific regulation explicitly setting forth the requirement for employers to adopt and implement internal policies, or conduct training or periodical assessments with respect to workplace discrimination matters. Nevertheless, as explained above, the Turkish Code of Obligation sets forth that an employer is obligated to:

- preserve the personal rights of its employees,
- maintain reliable and fair order within the workplace,
- preserve the employees from psychological and sexual harassment and
- take any necessary precautions to preserve employees who have been subject to such harassment from further damages.

Accordingly, in practice, employers tend to adopt and implement internal policies and guidelines on preventing workplace discrimination. It is something that is usually encountered at foreign employers. Such internal policies and guidelines mainly include the definition and conditions of workplace discrimination, actions to be taken to prevent workplace discrimination and rights of the employees in this regard. However, the adoption of such internal policies and guidelines is not obligatory. Similarly, conducting training or periodical assessment with respect to workplace discrimination is discretionary for the employer.

4. Employee Rights

Right to Termination with Just Cause: An employee being subject to workplace discrimination may claim that such situation constitutes a just cause for termination and thus terminate his/her employment contract accordingly. In such case, the discriminated employee would be entitled to the statutory severance pay, in addition to the other termination payables.

Discrimination Compensation: An employee being subject to workplace discrimination during the employment or at the termination of employment may demand a discrimination compensation in addition to the rights the employee was deprived of. The upper limit for such discrimination compensation is set to a four months' salary. On the other hand, in a possible dispute, the court will determine the applicable amount of the discrimination compensation, taking into account the variables, such as the relevant employee's seniority, job, title and the degree of the violation. It is worth noting that, as a rule, the burden of proof to claim this type of compensation rests with the employee. However, if the employee presents the case which strongly indicates a possible workplace discrimination, the burden of proof will shift to the employer.

Union Compensation: If an employer makes a discrimination based on the abovementioned union related matters such as an employee's freedom to unionization, the relevant employee may claim a union compensation, the amount of which will not be less than one year's salary of such employee.

5. Sanctions for Non-Compliance

Administrative Fines:

- The Human Rights and Equality Institution of Türkiye stipulates an administrative fine for the violation of the non-discrimination obligation. Such administrative fine ranges from TRY 5,958 to TRY 89,571 (approximately from EUR 291.15 to EUR 4,376.90)¹ (depending on the gravity of the effects and consequences of such violation, financial situation of the perpetrator and aggravating effect of the multiple discrimination).
- The Turkish Labour Law stipulates an administrative fine of TRY 885 (in 2023) (approximately EUR 43.25)² for each employee subject to workplace discrimination by means of an employer's non-compliance with the equal treatment principle.

¹ As of 25 January 2023.

² As of 25 January 2023.

Imprisonment: Article 122 of the Turkish Penal Code stipulates that a person who hinders another person from being hired because of hatred arising from the differences in language, race, nationality, skin colour, sex, disability, political opinion, philosophical belief, religion and sect, such person shall be sentenced from one to three years of imprisonment.

Workplace discrimination is a regulated concept under Turkish legislation. The legislation is deterrent; however, it does not prevent workplace discrimination completely. In practice, several non-governmental organizations and associations adopt organizational strategies to prevent workplace discrimination. The aim is to change male-dominated organizational culture as well as to embrace flexible working hours harmonious with individuals' physical ability and family life. Such organizational strategies may result in positive discrimination; however, they are safeguards against discrimination based primarily on gender and disability. For example, within the scope of the "Disabled Discrimination Monitoring and Prevention Platform Project", non-governmental organizations operating in various regions of Türkiye unite around a platform. One of the aims of the project is to prevent discriminatory behaviours towards disabled people who are employed within the scope of the obligation to employ people with disabilities.

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CONTACTS

REGIONAL CONTACTS

Maral Minasyan
mminasyan@kolcuoglu.av.tr

ALBANIA

Shirli Gorenca
sh.gorenca@kalo-attorneys.com

BOSNIA & HERZEGOVINA

Employment
Dzana Smailagic-Hromic
dzana.smailagic-hromic@mariclaw.com

Immigration
Dijana Ivanovic
dijana.ivanovic@mariclaw.com

BULGARIA

Violeta Kirova
v.kirova@boyanov.com

CROATIA

Ema Mendjusic Skugor
ema.skugor@dtb.hr

GREECE

Ioanna Kyriazi
i.kyriazi@kglawfirm.gr

KOSOVO

Gazmend Nushi
g.nushi@kalo-attorneys.com

MONTENEGRO

Marija Gligorevic
marija.gligorevic@bdkadvokati.com

REPUBLIC OF NORTH MACEDONIA

Anastazija Sazdovska
asazdovska@polenak.com

ROMANIA

Employment
Roxana Abrasu
roxana.abrasu@nndkp.ro

Immigration
Alexandru Lupu
alexandru.lupu@nndkp.ro

SERBIA

Marija Gligorevic
marija.gligorevic@bdkadvokati.com

SLOVENIA

Darja Miklavcic
darja.miklavcic@selih.si

TÜRKİYE

Maral Minasyan
mminasyan@kolcuoglu.av.tr



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