

UDK: 349.2(497.2)
005.962:364.633/.634(497.2)
DOI: <https://doi.org/10.46763/BSSR2321071>

CHALLENGES TO PRESERVING THE DIGNITY OF THE WORKER OR EMPLOYEE IN THE REPUBLIC OF BULGARIA

Nikoleta LAZAROVA

Chief Assistant, Faculty of Law and History, SWU “Neofit Rilski”
Blagoevgrad, Republic of Bulgaria
E-mail: nikoletalazarovap@gmail.com

Georgi MIHAYLOV

E-mail: mihaylov.swu@gmail.com
Chief Assistant, Faculty of Law and History, SWU “Neofit Rilski”
Blagoevgrad, Republic of Bulgaria

Abstract

This article aims to analyze the Bulgarian labor law and regulations regarding the dignity of the worker or employee and the challenges to their protection in case of harassment by the employer. In the Republic of Bulgaria, many cases of disrespect for the dignity of work. Harassment in the workplace, as the most common cause of trampling on the dignity of the worker or employee, affects every aspect of their life. The Labor Code of the Republic of Bulgaria does not contain an explicit legal regulation of the concepts of “harassment” and “sexual harassment”, nor an explicit prohibition of these activities in the workplace. Sexual harassment and the harassment of certain protected characteristics are regulated in the anti-discrimination legislation, in particular the Protection Against Discrimination Act, which will be discussed in the article. In the article also discusses the Convention No. 190 of 2019 Concerning the Elimination of Violence and Harassment in the World of Work. The authors propose to ratify Convention No. 190 of 2019. The ratification of Convention No. 190/2019 by the Bulgarian state will require a subsequent addition and amendment of the Labor Code, such as the introduction of an explicit legal text in the Labor Code, through which to ensure the protection of the labor right of every

worker and employee to exercise their labor rights and obligations in the workplace, without violence and harassment; introduction of an obligation for the employer to develop appropriate rules to combat violence and harassment in the workplace, as well as procedures to protect workers or employees in the event of harassment and etc.

Keywords: *labor rights; labor law dignity; discrimination; workplace harassment; sexual harassment; protection from discrimination; employees, employers, Republic of Bulgaria.*

Introduction

This article aims to analyze the labor law and regulations regarding the dignity of the worker or employee and the challenges to their protection in case of harassment by the employer. At its core, the entire labor legislation in the Republic of Bulgaria is based on the worker's or employee's dignity, since wage labor places the worker or employee in economic and legal dependence on the employer. The dominant figure of the employer gives rise to a number of trials and dangers for the protection of the worker's or employee's dignity. In Bulgaria, many cases of disrespect for the dignity of workers or employees by their employer within the framework of the labor process are known. The reason leading to the most frequent cases of trampling on the worker's or employee's dignity is harassment in the workplace. In this regard, realizing the importance of the problem, we chose a more unconventional approach to analyze the issue of protecting the dignity of the worker or employee through the lens of workplace harassment. Although the labor legislation in the Republic of Bulgaria traditionally aims to protect the dignity of the worker or employee, it makes an impression that it contains explicit legal regulations regarding harassment in the workplace, nor does it deal with the concept of "harassment in the workplace". The specified gap in the Labor Code necessitates finding a way to legally protect the dignity of the worker or employee, in cases of harassment in the workplace, through the interpretation of several Bulgarian normative acts - the Labor Code (LC), the Protection Against Discrimination Act and the Health and Safety at Work Act (HSWA).

Harassment in the workplace may be committed by the employer to the worker or employee (vertical harassment) or by a worker or employee to another worker or employee located at the same hierarchical level in the enterprise (horizontal harassment). There is a hypothesis in which the harassment can be carried out by a third party who is not in an employment relationship with the respective employer. For example, harassment from a customer to an employee serving the customer. The subject of this article will be harassment in the workplace, carried out by the employer, as one of the most frequent hypotheses observed in Bulgarian reality.

I. Human dignity as a moral category.

Human dignity is an intangible good that is inherent in every person, without being determined by subjective qualities or capabilities¹. Dignity is a fundamental good necessary for human life. And while not intrinsically linked to a physiological function of life, dignity is necessary to give meaning to our existence.

Human dignity represents an intangible value that, according to the moral characteristics of society, is given a certain degree of respect, therefore it can be quantitatively evaluated. Different moral systems around the world honor human dignity with varying degrees of respect, and for some societies, there are gender, religious, ethnic and other criteria according to which human dignity is valued differently.

In contemporary legal states, respect for human dignity is unconditional and equally important for all people, regardless of the objective differences among them. According to Tencho Kolev, “recognition of the dignity of every person is a universal value, transformed into a fundamental legal principle on which all human rights are based” (Колев, 2015, p. 106)². Dignity is a good of an intangible nature that has a value to its possessor, measurable on a par with goods such as human life and health.

In the Preamble of the Constitution of the Republic of Bulgaria (CRB), as a supreme principle, along with the rights of the individual, their dignity is also exalted. As a continuation of this principle, there is the provision of Art. 4, para. 2 of the CRB, which states: “The Republic of Bulgaria shall guarantee the life, dignity and rights of the individual and shall create conditions conducive to the free development of the individual and of civil society”.

The importance of human dignity as a fundamental good, presupposing other fundamental human rights, is also emphasized in the Universal Declaration of Human Rights of the United Nations, the preamble of which exalts dignity as a fundamental right inherent to all representatives of the human race. The provision of Art. 1 of the same international normative act states that all people are born equal in dignity and rights.

Elevated as a fundamental intangible good in state law, as well as in international law, human dignity becomes the basis on which modern democratic rule-of-law states build their legislation. Following this natural law regularity, labor legislation also institutionalizes dignity as a foundation around which the main objectives of labor law, regulated in the provision of Art. 1, para. 3 of the Labor Code (LC) are affirmed, freedom and protection of labor, fair and decent working conditions, and social dialogue between the state,

¹ The etymological origin of the word “dignity” comes from the Latin concept “dignitas”, which means respect, merit.

² The English translation is by the authors.

workers, employees, employers and their organizations to settle labor and directly related relations.

II. The dignity of the worker or employee as the foundation of the basic labor rights of workers or employees.

In the Labor Code, the issue of the dignity of the worker or employee finds its explicit legal regulation through two provisions - Art. 1, para. 3 of the LC and Art. 127, para. 2 of the LC.

According to the provision of Art. 1, para. 3 of the LC one of the main objectives of the code is to ensure decent working conditions for workers or employees.

The Labor Code does not contain a legal definition of the term “decent working conditions”. In labor law doctrine, there is an opinion adopted that decent working conditions are those working conditions that provide the worker or employee with respect for their dignity within an employment relationship and their dignified existence (Мръчков, Средкова, Василев, Мингов, 2021, с. 28)

In this regard, we should also point out the international definition of decent working conditions, introduced by the International Labor Organization (ILO), according to which – decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for all, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men³.

The employer owes respect to the personality of the worker or employee, regardless of the fact that the latter is in an economic and legal dependency that puts them in a vulnerable position. Economic dependence is determined by the fact that the worker or employee receives from the employer the opportunity to work, respectively to receive labor remuneration, with which to satisfy their needs. Legal dependence is expressed in the fact that the worker or employee must obey the legal orders of their employer, and comply with the established labor discipline. It is this subordinate position of the worker or the employee that necessitates their enhanced protection in the Bulgarian labor legislation.

Prof. Atanas Vasilev⁴ notes that labor law arose as a “right to labor protection” (Василев, 1997, p. 28). Labor protection is declared in the

³ The definition is visible on the page of ILO:
<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

⁴ The translation from Bulgarian into English is by the authors.

provisions of Art. 16 of the Constitution of the Republic of Bulgaria (CRB) and Art. 1, para. 3 of the LC. Labor protection, in particular for workers or employees, consists in Is the legal regulation of rules of conduct to protect the life, health, ability to work and dignity of workers or employees⁵. The Labor Code establishes minimum standards for working conditions, such as working hours, vacations, days off, wages, termination of employment. The legislature's main goal in introducing the specified minimum standards is actually the protection of the dignity of the worker or employee within an employment relationship. 'Decent work is unattainable and unthinkable without decent working conditions. The protective function of labor law is a social value, as it provides legal protection to the worker or employee and ensures equality between the parties to the employment relationship, which aims to protect the dignity of the worker or employee in the conditions of dependent work.

According to the provision of Art. 127, para. 2 of the LC, the employer is obliged to protect the dignity of the worker or employee during the performance of their work under the employment relationship.

The obligation within the meaning of Art. 127, para. 2 of the LC has as its subject the attitude of the employer towards the personality of the worker or employee. Argument from the contrary (*per argumentum a contrario*) from the provision of Art. 127, para. 2 of the LC follows that the employer cannot behave rudely, indecently or in a domineering manner toward the worker or employee. It is unacceptable for the employer to humiliate the human self-esteem and dignity of the worker or employee. The use of physical, psychological and sexual violence against the worker or employee by the employer is also inadmissible. On the contrary, according to the provision of Art. 127, para. 2 of the LC the employer owes the worker or employee respect for their human dignity. The employer's obligation under Art. 127, para. 2 of the LC exists in a certain period of time, during the performance of work under the employment relationship.

It is important to note that the employer's obligation under Art. 127, para. 2 of the LC also applies in cases where the worker or employee violates the established labor discipline in the enterprise, committing disciplinary violations. The labor legislation provides legal options for the employer in such scenarios, to impose the corresponding disciplinary punishment, but not to violate the dignity of the worker or employee. Even in the case of the most serious and daring violations of labor discipline on the part of the worker or employee, it is not permissible to violate the provision of Art. 127, para. 2 of

⁵ In this sense are: Decision No. 312 of 26.01.2016 under the city d. No. 107 / 2015 of the Supreme Court of Cassation of the Republic of Bulgaria; Decision No. 754 of 11.04.2000 under City Decree No. 1816 / 1999 of the Supreme Court of Cassation of the Republic of Bulgaria.

the LC. To do otherwise would exceed the statutory limits of employer power.

The provision of Art. 127, para. 2 of the LC was introduced in connection with the ratification of the European Social Charter (ESC)⁶. According to Part one, point 26 of the ESC, all workers have the right to respect for their dignity at their workplace.

In order to ensure the effective exercise of the right of all workers to respect for their dignity in the workplace, the provision of Art. 26 of the ESC stipulates that the contracting parties undertake, in consultation with employers' and workers' organizations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.⁷

It is noteworthy that the European Social Charter outlines sexual harassment and any other humiliating or highly negative conduct within the meaning of Art. 26, item 2 of the ESC, which we could actually define as harassment in the workplace, as the main cause endangering the dignity of the worker or employee. Harassment in its various manifestations is the most common reason for harming the dignity of the worker or employee. In this regard, the provision of Art. 26 of the ESC is introduced, which is incorporated into the national legislation [of Republic of Bulgaria] through the provision of Art. 127, para. 2 of the LC.

The Labor Code of the Republic of Bulgaria does not contain an explicit legal regulation of the concepts of “harassment” and “sexual harassment”, nor an explicit prohibition of their exercise in the workplace (Todorova, B. 2019, p. 3). Sexual harassment and the harassment of certain protected characteristics are regulated in the anti-discrimination legislation, in particular the Protection Against Discrimination Act, which will be discussed in the following section. The various forms of harassment harm the dignity of the worker or employee, which is why they can represent a direct

⁶ The European Social Charter (ESC) entered into force for Bulgaria on August 1, 2000. The text was promulgated in no. 43 of May 4, 2001, of the State Gazette. According to the provision of Art. 5, para. 4 of the Constitution of the Republic of Bulgaria, the ESC is part of the internal law of the Republic of Bulgaria.

⁷ The text is from an official translation.

violation of the provision of Art. 127, para. 2 of the LC, as well as circumvention of the law.

An example of a direct violation of the provision of Art. 127, para. 2 of the LC are the cases in which employers address workers or employees with insulting or mocking qualifications, damaging their dignity. In the example given, the employer's verbal actions would constitute harassment because they harm the dignity of the worker or employee and create an unfavorable work environment. Unwanted behavior on the part of the employer will also become a psychosocial risk factor of the work environment, causing negative psychological, physical and social consequences for the worker or employee who is the subject of employer harassment. Each of the mentioned negative consequences of harassment implicitly contains a violation of the dignity of the worker or employee.

In this regard, we think that there will be non-fulfilment of the obligation under Art. 127, para. 2 of the LC and in cases where the harassment was carried out by another worker/ employee or a third party, but the employer did not take action to protect the victim's dignity after discovering similar illegal actions.

In view of the issues under consideration, we will also present an example representing a circumvention of the provision of Art. 127, para. 2 of the LC from the employer.

The employer makes a decision to carry out continuous inspections of a certain worker or employee, in order to establish whether they observe labor discipline. In the considered hypothesis, part of the workers or employees perceive the indicated behavior as harassment, damaging their dignity. Some examples of similar employer behavior can be listed from practice: the employer checks every the respective worker or employee arrival and departure time daily; the employer requires daily detailed written reports of the work from the worker or employee, which further complicates the work of the worker or employee concerned; the employer makes surprise checks on the worker or employee within the working day, which aim to establish whether the same person is at their place of work. In some cases, employers issue legal orders to perform the agreed work, according to the person's job description, which contain overwhelming tasks for the worker or employee in extremely short terms (Perić, 2019, p. 105). These orders are in accordance with the current legislation and with the course of the labor process, that is, they cannot be qualified as illegal in the general case, but they actually put the worker or the employee in front of the impossibility of fulfilling the assigned task. At the same time, failure to perform these tasks will constitute a violation of labor

discipline according to Art. 187, para. 1, item 7 of the LC and will be grounds for imposing disciplinary sanctions, including disciplinary dismissal⁸.

In this connection, the following question arises: Can this behavior of the employer be qualified as employer harassment that harms the dignity of the worker or employee within the meaning of Art. 127, para. 2 of the LC?

At first reading, the exercise of control by the employer in the examples given cannot be considered as employer harassment, for several reasons. The employment relationship is bilateral, as it gives rise to reciprocal obligations for both sides of the employment relationship, the employer and the worker or employee. Therefore, to the labor duties of the worker or employee, regulated in the provision of Art. 126 of the LC, corresponds the employer's right to seek accurate and timely performance. The provision of Art. 186 of the LC expressly states that the culpable failure to fulfil labor obligations is a violation of labor discipline. The violator is punished with the prescribed disciplinary penalties. The provision of Art. 187 of the LC also regulates the types of labor discipline violations for which the employer can impose disciplinary penalties. The types of violations are actually realized in case of non-fulfilment of the labor obligations of the worker or employee, regulated in Art. 126 of the LC. From here one can draw the conclusion that the employer has the right to take any legal action to ensure compliance with labor discipline. Although in such cases the workers or employees complain that they experience daily stress, fear, a sense of oppression, with their dignity violated by the humiliating and negative behavior of the employer, the case-law accepts that there is no harassment in cases where the employer commits legally relevant actions pursuing a legitimate purpose.

In most of the cases, there is an additional factor, the real motive of the employer for carrying out the control in relation to the worker or employee. Many cases are known in which the employer carries out daily checks on the worker or employee, due to the desire to “convince” them to terminate the employment relationship on their own initiative. In fact, the employer wishes to avoid the heavy termination procedures, the preliminary protection in case of dismissal under Art. 333 of the LC and/ or payment of benefits. On the one hand, there is the employer and their subjective goal of ensuring an easy and trouble-free termination of the relevant employment relationship with the worker or employee. On the other hand, there is the worker or employee who does not wish to leave on their own initiative or by mutual agreement. The clash in the wishes of the parties gives rise to a deep labor law conflict, which can

⁸ The disciplinary penalties that can be imposed on the worker or the employee according to the provision of Art. 188 of the LC are reprimand, warning for dismissal and dismissal. Disciplinary sanctions imposed by the employer are considered legal until they are expressly canceled by the court or the employer themselves.

lead to a referral to the court by the worker or employee. In such a situation, many employers decide to “convince” the worker or employee and guide them to the correct decision to terminate their employment relationship unilaterally, that is, at their request (Art. 326 of the LC) or by mutual agreement (Art. 325, para. 1, item 1 of the LC). Employers use their legal standing to monitor compliance with labor discipline on the part of the worker or employee, but for their behavior to be lawful, the goal they pursue is also important. In the considered hypotheses, the real objective of the employer is not to monitor compliance with the labor obligations of the worker or employee, but to exert pressure on them to force them to terminate their employment relationship. The result, evident from practice, is that in many cases workers or employees prefer to give notice or sign an agreement by mutual consent to terminate their employment relationship than to continue working under the conditions of humiliating and negative behavior by the employer.

In the mentioned hypotheses, there is a circumvention of the law on the part of the employer, since with their behavior they aim to achieve a result prohibited by law, without explicitly violating a legal prohibition, by using a loophole in the law. The gap in the law is expressed in the absence of a legislative prohibition on employer harassment, which is explicitly regulated in the Labor Code.

Circumvention of the law is always a deliberate violation of the legal requirements, meaning the relevant actions of the employer are illegal. For example, if the employer imposes overwhelming tasks and/ or deadlines for a particular worker or employee, in order to force them to leave work, and not because the labor process requires such actions, then it can be said that these orders are illegal. In fact, the employer is working in bad faith to achieve their goal by creating an unfavorable and hostile work environment that causes mental discomfort to the worker or employee and/ or harms their dignity. In such a scenario, there will be both a circumvention of the law and an abuse of rights by the employer, which is also a violation of the provision of Art. 8, para. 1 of the LC.

According to the provision of Art. 8, para. 1 of the LC, “labor rights and obligations are carried out in good faith in accordance with the requirements of the law”. The “requirements of the law” should be understood as the exercise of labor rights and obligations by the parties to the employment relationship in accordance with the letter and spirit of the law. Under “good faith” within the meaning of Art. 8, para. 1 of the LC the legislature has in mind ethical good faith, also known from Roman law as “bona fides”⁹. Therefore, the bona fide performance of labor rights and obligations means their benevolent and honorable realization according to their purpose, determined by the

⁹ In translation, the concept of “bona fides”, in its legal sense, means faithfulness, integrity, sincerity.

legislature. There is no doubt that an employer who, exercising their right to control the labor process, tries to force a worker or an employee, against their will, to terminate their employment relationship, is unscrupulous.

The provision of Art. 8, para. 2 of the LC governs the presumption that good faith in the implementation of labor rights and obligations is assumed until the contrary is established. This presumption is rebuttable. The worker or employee can rebut the presumption under Art. 8, para. 2 of the LC, proving that the employer exercises their respective rights in bad faith and contrary to the meaning and direction set by the law. The process of judicially proving the employer's bad faith in the considered hypotheses is difficult, but not impossible.

Therefore, given the lack of explicit legal regulation to date, the worker or employee can protect themselves against employer harassment, through the provision of Art. 127, para. 2 of the LC, having performed the following actions:

1. To refer the Executive agency “Labor Inspectorate” to establish whether there is a violation of the provision of Art. 127, para. 2 of the LC¹⁰.

The problem that arises in practice is that workers or employees refer the Labor Inspectorate with the claim that their dignity has been violated because the employer has practised employer harassment. Due to the fact that there is no legal regulation on workplace harassment in the Labor Code, the Labor Inspectorate refuses to consider reports, accepting that it does not have the necessary competence in cases of workplace harassment. The Labor Inspectorate refers the worker or employee to the Commission for Protection against Discrimination, as only the Protection Against Discrimination Act contains legislation on workplace harassment.¹¹

We think that the way out in such a situation is to refer the Labor Inspectorate with the allegation of a violation of the provision of Art. 127, para. 2 of the LC by describing the undesirable behavior of the employer, with which the dignity of the worker or employee was violated, without using the term

¹⁰ The Labor Inspectorate is the national institution that carries out comprehensive control of compliance with labor legislation in all branches and activities. In the event that the Inspectorate finds that there is a labor dispute between the worker or the employee and the employer regarding the provision of Art. 127, para. 2 of the LC, it will indicate to the parties that they should refer the court as the only competent authority within the meaning of Art. 360, para. 1 of the LC.

¹¹ Online consultations of the Labor Inspectorate in connection with a violation of labor rights, including two cases of reporting harassment in the workplace, respectively the consultation by the Inspectorate, can be viewed at the indicated link:
<https://messages.mlsp.government.bg/messages/faq.php?c=1&i=4868>

“harassment in the workplace” in the report. In the event that the Labor Inspectorate finds a violation of the provision of Art. 127, para. 2 of the LC, there should be imposed a fine on the employer under the terms of Art. 414, para. 1 of the LC, as well as to issue an order to stop the violation of the labor legislation according to Art. 404, para. 1, item 1 of the LC.

In the event that the Labor Inspectorate considers that there is a labor law dispute regarding the violation of Art. 127, para. 2 of the LC, it instructs the worker or employee to go to the civil court on the basis of an argument from Art. 360, para. 1 of the LC. The provision of Art. 360, para. 1 of the LC states that labor disputes are dealt with by the courts.

2. To bring a claim before the court for violation of the provision of Art. 127, para. 2 of the LC. Within the legal proceedings, the claimant (worker or employee) must describe specifically what actions the employer has taken to harm their dignity, as well as attach evidence for them. Although the provision of Art. 127, para. 2 of the LC provides a legal opportunity for protection, the difficulty of proving the employer's unwanted behavior is one of the reasons that deter workers or employees from bringing such a claim. This is the reason why such cases are extremely rare in the legal practice of the Republic of Bulgaria¹².

¹² In the case in which Decision No. 7601 of 10.01.2020 was issued under Civil Case No. 57098 / 2017 of Sofia District Court, the worker or employee claims that the employer violated the provision of Art. 127, para. 2 of the LC, by not informing him of the order and method of performing the assigned work, which caused the employee to be objectively unable to perform exactly the assigned work under the employment contract and his dignity was damaged. The worker claimed that he experienced worry, stress and anxiety, and therefore claimed compensation for non-pecuniary damages. The court rejects the claim, assuming that it is groundless and unproven.

In the case in which Decision No. 5366 of 08.08.2018 was issued under Civil Case Appeal No. 9327 / 2017 of Appellate II Chamber of Sofia City Court, the employee brought a claim against her employer under Art. 49 of the Protection Against Discrimination Act in connection with Art. 127, para. 2 of the LC for compensation for non-property damages, expressed in public humiliation on the part of the employer in front of the labor team. The court instructed the employee to indicate exactly which actions led to non-pecuniary damages, as a result of the public humiliation, respectively to attach evidence for her claims. The employee does not provide evidence and does not indicate specific actions. The court accepts that the claim is not individualized by specifying the specific actions or statements that are allegedly wrongful and giving rise to the right to the claimed tort compensation and rejects it as inadmissible and without merit.

In the Decision dated 04.01.2016 under Civil Case No. 50380/2015 of Sofia District Court, the court accepted that the employer's behavior violated the provisions of Art. 127, para. 2 of the LC and violated the dignity of the worker or

3. The Labor Code does not provide legal option for the payment of compensation for the damages suffered by the worker or employee as a result of the violation of Art. 127, para. 2 of the LC. This legislative gap must be overcome by *de lege ferenda* establishing an express right to compensation for the worker or employee for the pecuniary and non-pecuniary damages caused by the violation of Art. 127, para. 2 of the LC by the employer. The introduction of property liability for the employer in the mentioned hypotheses would promote the protection of the dignity of the worker or employee.

At this stage, the worker or employee has the option to file a claim before the court for non-pecuniary damages within the meaning of Art. 52 of the Obligations and Contracts Act (OCA). The negative aspect for the worker or the employee in such a scenario will be that the court proceedings will develop according to the general civil procedure, and not as a labor law dispute, which is why the worker or the employee will not have the legal opportunity for free proceedings in the sense of Art. 359 of the LC. According to the provision of Art. 359 of the LC proceedings in labor cases are free of charge for workers or employees, which means that they do not pay the fees and costs of proceedings.

4. In the event that the harassment by the employer is carried out on the basis of protected characteristics or there is sexual harassment, then we will be faced with discrimination against the worker or the employee, and the procedure for protecting the victim is regulated in the Protection Against Discrimination Act.

III. For the sake of completeness of what has already been presented, we should look at the legal framework on harassment and sexual harassment contained in the Protection Against Discrimination Act within the context of protecting the dignity of the worker or employee.

The Bulgarian anti-discrimination legislation is based on the idea of protecting human dignity, to ensure protection against discrimination for all Bulgarian citizens before the law (Lazarova, 2016, p. 140-146).

According to the provision of Art. 5, para. 1 of the Protection Against Discrimination Act harassment on the basis of the characteristics under Art. 4, para. 1 of the Protection Against Discrimination Act, sexual harassment, incitement to discrimination, persecution and racial segregation, as well as the construction and maintenance of an architectural environment that makes it difficult for persons with disabilities to access public places, are considered discrimination.

employee, which is why the court awarded compensation for non-pecuniary damage to the employee.

The provision of Art. 4, para. 1 of the Protection Against Discrimination Act introduces a ban on direct or indirect discrimination based on gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status or any other characteristics established by law or in an international treaty to which the Republic of Bulgaria is a party (Poposka, 2013, p. 134).

The legal definition of the concept of “harassment” is included in the provision of § 1, item 1 of the additional provisions (AP) of the Protection Against Discrimination Act, according to which “harassment is any unwanted behavior based on the characteristics under Article 4, paragraph 1, expressed physically, verbally or otherwise, which has the purpose or effect of offending the dignity of the person and creating a hostile, degrading, humiliating, insulting or threatening environment.” Although not specifically distinguished, workplace harassment also falls on a general basis within the substantive scope of the legal definition.

The analysis of the provision of § 1, item 1 of the AP of the Protection Against Discrimination Act requires several clarifications regarding the prerequisites that must be present in order to assume that there is harassment in the workplace:

1. The harassment should be carried out within the framework of an existing employment relationship, during, in, or on the occasion of the performance of the worker's or employee's work functions, since only in this case will the parties have the status of employer and worker or employee.

The term “harassment in the workplace” is indicated only in the provision of Art. 17 of the Protection Against Discrimination Act. A legal definition of “workplace” is contained in § 1, item 8 of the AP of the LC, according to which provision “workplace” is premises, workshop, room, location of a machine, facility or another similar territorially determined place in the enterprise, where the worker or employee under the instruction of the employer performs their work in fulfilment of the obligations under the employment relationship, as well as a place determined by the user enterprise”. When performing work from home and remote work, the workplace is the home of the worker or employee or other premises of their choice outside the enterprise. The specified definition is intended for the legal framework contained in the Labor Code, but it could be applied by analogy to harassment falling within the scope of the Protection Against Discrimination Act.

2. The harassment was committed by the employer to the worker or employee (vertical harassment), by a worker or employee to another worker or employee located at the same hierarchical level in the enterprise (horizontal

harassment) or by a third party. Therefore, there must be a functional connection between the harassment and the work performed by the victim.

3. There must be unwanted behavior by an employer, another worker/employee or a third party, expressed physically, verbally or in any other way;

4. The unwanted behavior must have the purpose or result of harming the dignity of the person.

According to the permanent jurisprudence of the Supreme Administrative Court in the Republic of Bulgaria, the definition of the term "harassment" requires unwanted behavior expressed physically, verbally or in any other way, which has the purpose or result of harming the dignity of the person and creating a hostile, offensive or threatening environment¹³.

5. The unwanted behavior must have the purpose or result of creating a hostile, degrading, humiliating, offensive or threatening environment;

6. Last, but not least, we will indicate the essential premise that distinguishes harassment under the Protection Against Discrimination Act from any other actions that harm the dignity of the worker or the employee, the unwanted behavior of the employer or of another employee or the worker must be based on the characteristics under Art. 4, para. 1 of the Protection Against Discrimination Act. According to an argument from the provision of § 1, item 8 of the AP of the Protection Against Discrimination Act, "on the basis of the characteristics under Art. 4, para. 1" means on the basis of the actual, present or past, or alleged presence of one or more of these characteristics in the person discriminated against or in a person with whom they are related, or is presumed to be related, where that relationship is the cause of the discrimination.

Therefore, not every unwanted behavior of the employer constitutes harassment in the sense of § 1, item 1 of the AP of the Protection Against Discrimination Act, but only that which is based on some of the characteristics under Art. 4, para. 1 of the Protection Against Discrimination Act. Per *argumentum a contrario*, there is no harassment within the meaning of the Protection Against Discrimination Act if the employer carries out unwanted

¹³ In this sense: Decision No. 5983 of 18.05.2021 under Adm. e. No. 626 / 2020 of the Supreme Administrative Court; decision No. 5999 of 22.05.2020 by adm. e. No. 12288 / 2019 of the Supreme Administrative Court; decision No. 11163 of 18.07.2019 by adm. e. No. 7605 / 2018 of the Supreme Administrative Court; decision No. 11163 of 18.07.2019 by adm. e. No. 7605 / 2018 of the Supreme Administrative Court; decision No. 7522 of 06.06.2018 by adm. e. No. 12209 / 2016 of the Supreme Administrative Court; Decision No. 7522 of 06.06.2018 under Adm. No. 12209 / 2016 of the Supreme Administrative Court.

behavior which, although infringing on the dignity of the worker or employee and creating a hostile, unedifying, humiliating, insulting or threatening environment, is not based on any of the characteristics under Art. 4, para. 1 of the Protection Against Discrimination Act. For the reason stated, there are many cases that will not qualify as harassment on work place because the unwanted behavior is not based on a protected characteristic¹⁴. Therefore, in the absence of evidence establishing the presence of a specific protected feature, it cannot be assumed that the employer has committed harassment within the meaning of the Protection Against Discrimination Act. In such cases, the worker or employee will not have a legal mechanism to protect themselves under the Protection Against Discrimination Act, which is proof of the need to introduce an explicit legal framework for workplace harassment, the Labor Code.

Sexual harassment is another example of behavior that damages the dignity of the worker of employee. However, the practice of the Bulgarian court and that of the Commission for Protection against Discrimination show that the cases in which sexual harassment is reported in the workplace are extremely rare. The reasons for this trend are complex: the fear of the victim of sexual harassment of public reaction and/ or the reaction of their relatives; mistrust of institutions; the fear of not being able to find a new job; and public stigma.

The legal definition of the concept of sexual harassment is contained in the provision of § 1, item 2 of the AP of the Protection Against Discrimination Act, according to which “sexual harassment is any unwanted behavior of a sexual nature, expressed physically, verbally or in any other way, which violates dignity and honor and creates a hostile, degrading, insulting, humiliating or threatening environment and, in particular, when the refusal to accept such conduct or the coercion thereof may influence decision-making affecting the person”.

¹⁴ In the jurisprudence of the Supreme Administrative Court in the Republic of Bulgaria, there are numerous court decisions according to which, in order to assume that there is harassment in the workplace, it is not enough to establish the unfavorable treatment of a certain person or persons, but it is necessary to prove further, that this unfavorable treatment was carried out according to one of the signs outlined in Art. 4, para. 1 of the Protection Against Discrimination Act, Decision No. 13471 of 29.10.2020 under Administrative Case No. 8595 / 2020 of the Supreme Administrative Court, Decision No. 9448 of 16.09.2021 under Administrative Case No. 4372 / 2020 of the Supreme Administrative Court, Decision No. 2031 of 10.02.2012 under Administrative Case No. 2055 / 2011 of the Supreme Administrative Court, Decision No. 11163 of 18.07.2019 under Administrative Case No. 7605 / 2018 of the Supreme Administrative Court, etc.

Sexual harassment may be committed by the employer, by another worker or employee in the enterprise or by a third party, but it must always be functionally related to the work performed by the injured worker or employee.

As noted, harassment of a protected characteristic and sexual harassment are considered discrimination, which also determines the scope of protection for the worker or employee. According to the provision of Art. 17 of the Protection Against Discrimination Act, an employer who has received a complaint from a worker or an employee who is considered to be subjected to harassment, including sexual harassment, in the workplace, is obliged to immediately carry out an inspection, take measures to stop the harassment, as well as to impose disciplinary liability, if the harassment was committed by another worker or employee.

However, in many cases, harassment, including sexual harassment, is carried out by the employer, which raises the question, What are the legal means of protection for the injured worker or employee? The legal remedies for the protection of a worker or employee under the current Bulgarian legislation are the following:

1. Filing a complaint to the Commission for Protection against Discrimination, initiating proceedings to establish whether the violation has been committed, who the offender is, and to determine the type and amount of the sanction and to apply coercive administrative measures to the employer¹⁵. The Commission for Protection against Discrimination does not have the competence to award the injured worker or employee compensation for the damages suffered in the considered scenarios.

In the event that the Commission issues a decision by which it accepts, as established, the commission of harassment within the meaning of Art. § 1, item 1 of the AP of the Protection Against Discrimination Act or sexual harassment by the employer, the injured worker or employee has the right to file an action before the civil court for performance for the damages suffered.

2. In the conditions of alternativeness, the injured worker or employee can file a claim before the court, with which they request:

2.1 to establish the violation;

2.2 to order the employer to cease the violation and restore the situation before the violation, as well as to refrain from further violations in the future;

2.3 to order the employer to compensate the injured worker or employee for the accumulated damages.

¹⁵ The Commission for Protection against Discrimination is an independent specialized state body for the prevention of discrimination, protection against discrimination and ensuring equality of opportunity; the Commission exercises control over the implementation and compliance of this or other laws regulating equality of treatment.

In connection with the referral to the court, it is necessary to note that the injured worker or employee can seek assistance from the trade union organization of which they are a member, to file a claim on behalf of the persons whose rights have been violated at their request (Art. 71, para. 2 of the Protection Against Discrimination Act).

IV. The dignity of the worker or employee within the context of health and safety working conditions.

Infringement of the worker's or employee's dignity by the employer, outside of the hypotheses under the Protection Against Discrimination Act, can also be considered a violation of health and safety working conditions. As has been emphasized, the violation of the worker's or employee's dignity is primarily the result of harassment carried out by the employer.

Safety and health at work are a fundamental human right for every worker. In 2022, they were included in the ILO Framework on Fundamental Principles and Rights at Work, with a summary adopted today by the General Affairs Committee at the 110th session of the International Labour Conference.

According to the provision of Art. 5 (1) of Directive 89/391/EEC on safety and health at work, the employer is obliged to ensure safe and healthy conditions for workers in all aspects related to work. From the interpretation of the cited provision, the conclusion is drawn that the employer's obligation also covers the mental health of the worker or employee at their workplace. One of the main causes of damage to the mental health of the worker or employee is harassment in the workplace, which is why in 2007 the social partners of the EU concluded a framework agreement on harassment and violence in the workplace. According to the Framework Agreement, harassment occurs when one or more workers or managers are repeatedly and deliberately insulted, threatened and/or humiliated in work-related circumstances. The provision of Art. 1 of the Additional Provisions (AP) of the Health and Safety at Work Act (HSWA) in Republic of Bulgaria contains a legal definition of the term "health and safety working conditions, ... according to which these are working conditions that do not lead to occupational diseases and accidents at work and create a prerequisite for the full physical, mental and social well-being of working persons". According to the provision of Art. 127, para. 1, item 3 of the LC, the employer is obliged to provide the worker or employee with healthy and safe working conditions. The introduction of an obligation of the employer in the sense of Art. 127, para. 1, item 3 of the LC aims to protect the life, health (physical and mental) and working capacity of the worker or employee, as well as the protection of the dignity of the human person.

It is indisputable that harassment by the employer during work can harm the physical and mental health of the worker, which can negatively affect

their social well-being. Life practice shows that the most frequent manifestations of harassment are verbal, which is why they have an adverse effect primarily on the psyche of the worker or employee (Demirag and Ciftci, 2017, p. 2) The most frequent manifestations of verbal harassment on the part of the employer are expressed in insults, raising the tone, mockery, which are aimed at the personality of the worker or employee and harm their dignity.

Although often only verbal, employer harassment can also indirectly affect not only the mental but the physical health of the worker or employee. In this sense, we will recall the Latin sentence, “A healthy mind in a healthy body” (*Mens sana in corpore sano*). Psychological harassment in the workplace is a psychosocial risk factor of the work environment, therefore it can contribute to the development of chronic disorders and diseases. The European Agency for Safety and Health has indicated psychological harassment in the workplace as one of the examples of working conditions leading to psychosocial risks. In the Handbook on Work organization and stress, prepared by the World Health Organization, it is stated that one of the main causes of stress in the workplace is bullying, and stress adversely affects the physical and mental health of workers or employees¹⁶.

In the context of the above considerations, it can be concluded that employer harassment, regardless of its form, constitutes a violation of the provision of Art. 127, para. 1, item 3 of the LC, according to which the employer is obliged to provide the worker or employee with healthy and safe working conditions.

The work of workers and employees, in the absence of healthy and safe working conditions, ensuring their physical, mental and social well-being, harms their dignity. Harassment in the workplace deprives workers of their fundamental labor right to decent working conditions, proclaimed in the provision of Art. 1, para. 3 of the LC.

V. Convention Concerning the Elimination of Violence and Harassment in the World of Work, 2019 (No. 190) of the International Labor Organization (ILO), in force since June 2021.

In the context of the issues under consideration, we should mention Convention No. 190 of 2019 on the elimination of violence and harassment in the field of work. The Convention was adopted at the General Conference of the International Labor Organization (ILO), held in June 2019 in Geneva. It is the first international document that declares the labor right of every person to a workplace free of violence and harassment. For the first time, the Convention sets concrete, globally applicable standards to combat work-related harassment and violence, and specifies the measures required of states and other relevant actors. The Convention also creates an international definition of violence and

¹⁶<https://apps.who.int/iris/bitstream/handle/10665/42625/9241590475.pdf>

harassment in the area/ field of work. On 22.01.2022, the European Commission prepared a proposal for a Council Decision to authorize Member States to ratify the convention. The proposed Council Decision will enable Member States to ratify the Convention Concerning the Elimination of Violence and Harassment in the World of Work of the International Labor Organization (ILO). The Convention has not yet been ratified in the Republic of Bulgaria. Bulgarian trade unions, as well as the non-governmental sector, express an opinion on the need to ratify the convention¹⁷.

Ratification of the Convention will require the transposition of the principles of the Convention into national legislation in such a way as to reach the ultimate goal - the protection of all individuals included in its scope from violence and harassment related to their workplace. In this regard, it is essential that this process should be carried out in the conditions of cooperation and partnership with representative organizations of workers and employers, as well as with civil society organizations.

Conclusion

Harassment in the workplace is the most significant reason for the violation of the dignity of the worker or employee, which necessitates the urgent need to update the current labor legislation in the Republic of Bulgaria, through which to ensure the legal protection of workers or employees in the case of various forms of harassment at workplace. In this regard, we think that the following changes and additions should be made to the Bulgarian legislation (Mihaylov, 2018, p. 51).

1. We share the conclusion reflected in the Preamble to Convention No. 190 of 2019 Concerning the Elimination of Violence and Harassment in the World of Work that violence and harassment in the workplace may constitute a violation of human rights or abuse and that violence and harassment are a threat to the principle of equality of opportunity, unacceptable and incompatible with decent work. Therefore, we consider that ratification of Convention No. 190 of 2019 concerning the elimination of violence and harassment in the field of work of the International Labor Organization (ILO) by the Republic of Bulgaria is imperative;

2. The ratification of Convention No. 190/2019 by the Bulgarian state will require a subsequent addition and amendment of the Labor Code, expressed in:

2.1 introduction of an explicit legal text in the Labor Code, through which to ensure the protection of the labor right of every worker and employee to exercise their labor rights and obligations in the workplace, without violence

¹⁷ The countries that have ratified the Convention can be seen at the given link: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:3999810

and harassment. In this regard, the provision of Art. 127 of the LC should be supplemented de lege ferenda by introducing an express obligation for the employer to provide the worker or employee with a workplace free of violence and harassment.

2.2 supplementing the provision of Art. 127 of the LC de lege ferenda with an explicit obligation for the employer to develop appropriate rules to combat violence and harassment in the workplace, as well as procedures to protect workers or employees in the event of harassment.

2.3. supplementing the provision of Art. 127 of the LC de lege ferenda with an express obligation for the employer to inform all workers and employees about the rules for combating violence and harassment in the workplace and to keep the relevant texts available to workers and employees.

2.4 creation and introduction in the Labor Code of a legal definition of “harassment in the workplace” and “violence in the workplace”.

2.5 designation of a state body that is competent to consider cases related to harassment in the workplace, apart from the Bulgarian court. It is recommended that this competence be expressly provided for the Executive Agency “General Labor Inspectorate”, which exercises overall control for compliance with labor legislation in all branches and activities according to the provision of Art. 399 of the LC;

2.6 regulation in the Labor Code of compensation payable by the employer to compensate the material and non-material damages suffered by the worker or employee, which occurred in a cause-and-effect relationship with harassment in the workplace.

3. Regulation in the Labor Code of compensation payable by the employer to compensate the material and non-material damages suffered by the worker or the employee, which occurred as a result of a violation of the provision of Art. 127, para. 2 of the LC.

References

- Василев, Ат. (1997). Трудово право. Бургас, Бургаски свободен университет; [Vasilev, At. (1997). Labour law. Burgas. Burgas free university]
- Колев, Т. (2015). Правото и правата като културен феномен, София, Сиела. [Kolev, T. (2015). Law and rights as a cultural phenomenon, Sofia, Siela]
- Lazarova, N. (2016). Discrimination against temporary workers and employees under the Bulgarian Labor Law. Rev. Incl. Vol. 3. Num. 4, Octubre-Diciembre, ISSN 0719-4706, pp. 140-146. (online), Available at: <https://www.archivosrevistainclusiones.com/gallery/8%20oficial%20vol%203%20num%204%20octubre%20%20%20diciembre%202016%20rev%20inc.pdf>
- Mihaylov, G. (2018). Regulatory assessment of the legislative process. Rev. Incl. Vol. 5. Num. Especial, Enero-Marzo, ISSN 0719-4706, pp. 49-55 (online). <https://www.archivosrevistainclusiones.com/gallery/3%20vol%205%20num%20esp%20%202018%20ene%20marzo%20rv%20inclusiones.pdf>
- Мръчков, В., Средкова, Кр, Василев, Ат., Мингов, Е. (2021). Коментар на Кодекса на труда, 13 издание, София, Сиела, с. 28 [Mruchkov, V., Sredkova, Kr, Vasilev, At., Mingov, E. Commentary on the Labor Code, 13th edition, Sofia, Siela]
- Perić, Sl. 2019. Employee warning notice prior to employment termination in the legislation of the Republic of Serbia – purpose, scope and legal consequences. Balkan Social Science Review, vol. 13 [online] Available at: <https://js.ugd.edu.mk/index.php/BSSR/article/view/3036>
- Poposka, Z. (2013). Shift in the Burden of Proof – Mechanism to Ensure Enforcement of Anti-Discrimination Legislation. Balkan Social Science Review, vol. 2 [online] Available at: <https://js.ugd.edu.mk/index.php/BSSR/article/view/760>.
- Todorova, B. Mobing in labor legislation of the Republic of Macedonia vs. the regulation of the EU, (online). Available at: <https://dokumen.tips/documents/biljana-todorova-mobing-in-labour-legislation-of-republic-of-macedonia-vs.html>
- Demirag, S., Ciftci S. (2017). Psychological Intimidation at Workplace (Mobbing). (online), Journal of Psychology & Psychotherapy (2017) Volume 7, Issue 3, doi: 10.4172/2161-0487.1000305. Available at: <https://www.longdom.org/open-access/psychological-intimidation-at-workplace-mobbing-2161-0487-1000305.pdf>

Acts

- Закон за защита от дискриминацията [Protection Against Discrimination Act of the Republic of Bulgaria]. Retrieved from: <https://lex.bg/laws/ldoc/2135472223>
- Закон за здравословни и безопасни условия на труд [Act on health and safety at work]. Retrieved from: <https://legislation.apis.bg/doc/10539/0>
- Закон за задълженията и договорите [Obligations and Contracts Act]. Retrieved from: <https://lex.bg/laws/ldoc/2121934337>
- Конституция на Република България [Constitution of the Republic of Bulgaria]. Retrieved from: <https://www.justice.government.bg/home/normdoc/521957377>
- Кодекс на труда [Labor Code of the Republic of Bulgaria]. Retrieved from: <https://lex.bg/laws/ldoc/1594373121>
- Convention Concerning the Elimination of Violence and Harassment in the World of Work, 2019 (No. 190) of the International Labor Organization. Retrieved from: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190
- European Social Charter. Retrieved from: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=035>
- ILO Declaration on Fundamental Principles and Rights at Work. Retrieved from: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf
- Universal Declaration of Human Rights of the United Nations. Retrieved from: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>