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THE RELATIONSHIP BETWEEN DISCIPLINARY AND DISMISSAL PROCEDURES IN THE LABOR LAW OF THE REPUBLIC OF SERBIA[**]

ABSTRACT: In the labor law of the Republic of Serbia, in the general employment regime, the institute of disciplinary liability is regulated within the institute of termination of employment, i.e., legal provisions on termination of employment contracts due to violation of work obligations and non-compliance with work discipline. However, the process of establishing employees' liability for severe breaches of work obligations and failure to adhere to work discipline during the employment contract termination notice period may not constitute an adequate solution. Firstly, this is due to the relevant regulations not addressing, even at a fundamental level, the specifics of the disciplinary procedure. Instead, they establish liability for work obligation breaches and failure to comply with work discipline within the termination procedure, where disciplinary actions are also determined and applied. Given that the mechanisms that limit the abuse of the employer's disciplinary powers are significantly weakened, the author points out the necessity of re-examining the concept of disciplinary liability and disciplinary

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procedure. Although disciplinary and dismissal procedures have certain similarities, they are two distinct labor law institutes with different objectives. By applying the normative and comparative legal methods, and analyzing the results obtained through empirical research and case law, the author will present the observed problems related to the current regulation of these institutes and propose potential solutions *de lege ferenda*.

Keywords: breach of work obligation, non-compliance with work discipline, disciplinary liability, disciplinary procedure, dismissal procedure

INTRODUCTORY REMARKS

The general and special regimes of the employment relationship encompass distinct systems of legal norms governing work discipline and disciplinary liability, both within and related to the workplace. This includes procedures for establishing disciplinary liability and imposing sanctions for violations. While in the special employment regime, disciplinary liability and procedure are governed by specific laws (*lex specialis*) as a separate legal institute, in the general regime, these are regulated by the Labor Law[1] within the framework of employment termination. This raises questions about the legislator's focus on this institute. Is this field sufficiently regulated, or are employees under the general employment regime lacking proper protection? Answering these questions requires a conceptual analysis of disciplinary liability, disciplinary and dismissal procedures, and comprehensive normative legal, comparative legal, and empirical research, the findings of which the author will detail in the paper.

The paper is structured in three sections. The first and second sections explore the theoretical and legal framework of the discussed institutes, focusing on their interrelationship. Comparing past legal regulations with current legal provisions enriches the understanding of the subject matter, suggesting that comparative law may inspire improvements in domestic legislation. The third and most crucial section revolves around empirical research aimed at thoroughly comprehending the necessity of properly regulating disciplinary and dismissal procedures. Techniques such as detailed interviews, analysis of online surveys, and examination of case law will help conclude the hypothesis that determining employee liability for severe work obligation breaches and work discipline violations in the termination process is not an effective

[1] See: Art. 179 and 179a of the Labor Law, *Official Gazette of the RS*, no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017. – decision of the Constitutional Court and 113/2017. and 98/2018. – authentic interpretation.

solution. To safeguard employee rights and uphold the principles of *in favor laborem*, it's imperative to revise and elaborate on the legal provisions, ensuring more comprehensive regulation of these institutes. Addressing this topic may further contribute to the adoption of more suitable regulations, where highlighting specific flaws and oversights in the positive legal framework, referencing comparative labor law, and utilizing empirical research findings, appropriate solutions are proposed *de lege ferenda.*

THE CONCEPT OF DISCIPLINARY LIABILITY AND DISCIPLINARY PROCEDURE IN DOMESTIC LABOR LAW

From the beginning, labor law has been focused on establishing employment status as a pivotal factor around which employee rights evolved, aiming to level the inherent economic and social inequalities in employment relationships characteristic of this branch of law.[2] The intrinsic inequality between employee and employer is an essential element and fundamental to the employment relationship, serving as a key criterion for determining an individual's employment status.[3] While work, central and crucial for both the individual and society, is primarily based on freedom, it inherently involves aspects of discipline and coercion. Consequently, an employee's subordination to the employer implies that the employer, whether directly or indirectly, controls various aspects of work performance, such as the manner, content, timing, and conditions, utilizing not only normative and managerial powers but also disciplinary authority.[4] However, it's important to note that the exercise of this disciplinary authority is susceptible to misuse and could be employed as a form of pressure on employees. To prevent such abuse, the implementation of certain normative and legal mechanisms is necessary. Given that work is fundamental to human and societal survival, disciplinary liability becomes a vital and significant form of liability, and the employer's disciplinary authority – a

[2] In the Belgian theory, labor law is defined as a set of norms governing subordinate work, work under the authority of the employer. See: Humblet, P., Rigaux, M. (2004). sous la direction de*, Apercu du droit du travail Belge*. Brussels, 15.

[3] Jašarevic, S. (2015). Uređenje radnog odnosa u Srbiji u kontekstu novih okolnosti u svetu rada. *Zbornik radova Pravnog fakultata Univerziteta u Novom Sadu.* 49 (3), 10 66.

[4] As personal subordinate work is a key characteristic of an individual employment relationship, there exists a range of definitions suggesting that labor law comprises a set of norms regulating contractual work under the authority of the employer. Kalleberg, A. L. (2009). Precarious Work, Insecure Workers: Employment Relation in transition. *American Sociological Review*, 74 (1), 341.

segment requiring appropriate regulation through legal norms. Earlier labor law legislation addressed these institutes more thoroughly. However, current positive legal legislation exhibits some deviations, indicating a need for reform in this area.

Development of the Concept of Disciplinary Liability in Domestic Labor Law

Disciplinary liability, a unique form of legal liability, is integral in all institutions to ensure adherence to internal order and facilitate the work process.[5] It is based on the violation of special rules of conduct, which are the result of the need for work discipline, which employees should adhere to at work and in connection with work. It arises from breaches of specific behavioral rules, born from the necessity of work discipline, which employees are expected to follow at work and in relation to their work. However, under the Basic Law on Labor Relations of 1965[6], work discipline wasn't regulated, reflecting an era that emphasized the strengthening of workers' self-management within the workforce, inspiring lawmakers to abolish elements associated with discipline, such as repression and punishment. Instead, a system with moral implications was introduced, where the concept of repression was replaced by the awareness of voluntarily fulfilling work duties. Following the Employment Relations Act of 1967 and the Law on Mutual Relations of Workers in Associated Labor, it was only with the Law on Associated Labor[7] that the concept of work discipline, along with the attribute "disciplinary" as a prefix for liability, procedures, bodies, and measures, was reintroduced into labor legislation. This approach also applied to subsequent labor-related laws, under the belief that disciplinary powers were exercised on behalf of society and the state.[8] Over time, there was a resurgence of the contractual nature of employment relationships, predicated on the notion that penalizing employees for work obligation breaches is one facet of the employer's power, derived from the employment contract. This concept implies that employers should only discipline employees to the same extent as they have the authority

[5] Riviero, J., Savatier, J. (1987). *Droit du travail*. P.U.F. Paris, 198.

[6] *Official Gazette of the SFRY*, no. 17/65.

[7] *Official Gazette of the SFRY*, 1976.

[8] Kovačević, Lj. (2015). Uređivanje disciplinske odgovornosti u okviru instituta prestanka radnog odnosa, osobeno nomotehničko ili koncepcijsko rešenje u srpskom Zakonu o radu. *Pravna Riječ,* 42. XII, 510.

to organize their work.[9] However, employers do not shy away from exerting much greater factual influence on employees than their right authorizes them, which requires an appropriate legal response.[10] Despite its significance, the current positive Labor Law does not explicitly regulate work discipline, nor do employers establish work conditions (such as motivational tools and work incentives) that would encourage employees to voluntarily submit to work discipline.[11]

Regarding the special employment regime, where this subject is thoroughly regulated, it is evident that employees under the general employment regime are at a disadvantage compared to civil servants who benefit from numerous guarantees in the disciplinary process. Specifically, previous labor laws in the Republic of Serbia detailed disciplinary liability within the general employment regime. More accurately, the last labor law that encompassed complete substantive and procedural standards for disciplinary liability and its establishment was the Labor Relations Act of 1996. This abandoned notion, the "classic disciplinary trial for a disciplinary offense," was first questioned with the enactment of the Labor Law in 2001, as it lacked any clauses about the disciplinary liability of employees. This approach continued with the adoption of the Labor Law in 2005. Even the latest amendments to this law in 2014 have made only minor changes.[12] Consequently, newer legislation has substantially reduced the practice of managing disciplinary liability, leading to the determination of disciplinary liability and the execution of disciplinary proceedings being condensed into an abridged process, encapsulated in what is known as the termination procedure.[13] In contrast, the Law on Civil Servants includes many provisions focused on the disciplinary liability of civil

[9] Savatier, S. (1982). Pouvoir patrimonial et direction des personnes. *Droit social*, 3; Treu, T. (2007). *Labor law and industrial relations in Italy*. Kluwer Law International Alphen aan den Rijn, 70.

[10] Kovačević, Lj. (2014). Ključne novine Zakona o radu i njihov *ratio legis. Pravo i privreda*. 10 – 12/ LII, 190.

[11] Tintić, N. (1972). *Radno i socijalno pravo* – book one. Labor relations II. Zagreb: *Narodne novine*, 578.

[12] Kovačević, Lj. (2008). *Disciplinska vlast poslodavca i njene granice*, Pravo i privreda, vol. 45, no. 5–8/2008, 1059; According to *the Law on Joint Labor* (1976), the disciplinary commission was responsible for establishing disciplinary liability, and in the second instance, in the complaint procedure, the appellate disciplinary commission. The involvement and participation of the trade union in the disciplinary procedure were present. One of the hypotheses in this paper, which has been previously confirmed by many authors in domestic labor law, is the absence of internal protection and the need for its reinstatement, as well as the two-instance decision-making process.

[13] Kovačević Perić, S. (2020). Odgovornost u radnom odnosu – osobenosti disciplinske odgovornosti u opštem i posebnom režimu radnih odnosa. *Zbornik radova Pravnog faulteta u Nišu,* (89), 285.

servants and the principles of the "classical disciplinary process," along with procedural rules governing the "disciplinary trial" for a disciplinary offense. It also addresses procedural matters concerning the initiation and execution of disciplinary proceedings, the recording of disciplinary sanctions in personnel files, and their removal.[14] The law also "deals" with defining the conditions for employees' disciplinary liability, organizing the disciplinary process and ensuring employees' basic procedural rights, such as the right to defense, right to legal recourse, union support, etc.

The Concept of Disciplinary Procedure in Domestic Labor Law

The disciplinary procedure, seen as a form of due process of law within the scope of disciplinary labor law, should aim to protect employees from unlawful actions by employers, or abuses of power by disciplinary authorities.[15] This procedure, which determines the liability of an employee, should include: acquainting employees with procedural rules (for instance, by posting these rules at the employer's premises)[16], creating conditions for effectively exercising their right to defend and to object, and ensuring the obligation to issue a warning to the trade union[17], as well as establishing brief deadlines for initiating disciplinary proceedings and for imposing disciplinary measures. None of these rights is comprehensively regulated by the current Serbian Labor Law, as the legislator has not specifically addressed the regulation of the disciplinary process.[18] It appears that under the current provisions of the Labor Law, the disciplinary process has been reduced to a termination proce-

[14] Art. 107 et seq., Law on Civil Servants. *Official Gazette of the RS,* no. 79/2005, 81/2005, 83/2005, 54/2007, 65/2007, 116/2008 104/2009, 99/2014, 94/2017, 95/2018, 157/2020, 142/2022.

[15] Wedderburn, L. (1987). *The Worker and the Law*. London: Penguin Books, 191. Nav. according to: Lubarda, B. (2020). *Radno pravo, rasprava o dostojanstvu na radu i socijalnom dijalogu.* Belgrade: Faculty of Law, University of Belgrade. Center for publishing and information, 657.

[16] International Labor Conference. 67 th Session. (1981). *Report VIII (1). Termination of employment at the initiative of the employer*. Geneva: International Labor Office, 31.

[17] The protection of employees should be a priority, hence the significant role of employee associations. See: Adlercreutz, A., Nystorm, B. (2015). *Sweden*. The Hague: Wolters Kluwer, 30.

[18] "Disciplinary procedures are founded on the principle that the sanction of disciplinary dismissal should not be imposed unless accompanied by a procedure that ensures the employee's right to defense and that the sanction is proportionate to their behavior." International Labour Conference. 82nd Session. (1995). *Protection against unjustified dismissal*. Geneva: International Labor Office, st. 152. in: Kovačević, Lj. (2015).

dure where disciplinary measures are imposed on employees.[19] The existing Labor Law does not even mention the requirement to initiate disciplinary proceedings but only refers to a written warning that must be delivered to the employee.[20] Essentially, there is an abbreviated disciplinary process which is the employer's procedural duty to provide a written warning to the employee about the reasons for terminating the employment contract before its termination, giving them an eight-day period to respond, as well as the employer's obligation to consider the union's opinion, if provided by the employee.

Therefore, the termination procedure can be characterized as a "specific disciplinary procedure." To summarize, the 2005 Labor Law explicitly outlines the process for an employer to terminate an employment contract but does not address disciplinary liability, disciplinary procedures, disciplinary measures, relevant authorities, or other critical aspects associated with these concepts.[21] Despite criticisms aimed at previous rules governing disciplinary liability, such regulations offered greater protection for employees under the general labor relations regime. The current legal framework raises questions about compliance with international labor standards, the employee's right to defense, and the possibility of conducting hearings before a disciplinary body.[22] In line

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Uređivanje disciplinske odgovornosti u okviru instituta prestanka radnog odnosa, osobeno nomotehničko ili koncepcijsko rešenje u srpskom Zakonu o radu. *Pravna riječ*. 42. XII, 511.

[19] Kovačević, Lj. (2012). T Prestanak radnog odnosa kao disciplinska mera u opštem režimu radnih odnosa. Thematic monograph *Kaznena reakcija u Srbiji*. Second part. Faculty of Law, University of Belgrade, 225; Kovačević Perić, S. (2016). Otkaz od strane poslodavca. *Pravo i privreda*. 4–6, 643.

[20] Ivošević, M. (2013). Otkaz ugovora o radu od strane poslodavca. Collection of papers *Zaštita prava u oblasti rada.* Belgrade, 319; Lubarda, B. (2020). *Radno pravo, rasprava o dostojanstvu na radu i socijalnom dijalogu*. Belgrade: Faculty of Law, University of Belgrade. Center for publishing and information, 660.

[21] "The Constitutional Court, when assessing the legality of provisions in collective labor agreements and work regulations related to disciplinary liability, held that general acts cannot regulate disciplinary liability, bodies, and measures, as the law does not provide for such possibilities." Decision of the Constitutional Court of the RS, IU – 213/2004 of June 23, 2005, *Official Gazette of the RS,* no. 68/2005. and Decision of the Constitutional Court of the RS, I U–494/2004 of July 14, 2005, *Official Gazette of the RS,* no. 68/2005. However, this interpretation by the Consitutional Court effectively reduced the employer's disciplinary authority to just the power of dismissal. Recognizing the practical need for mechanisms to prevent abuse of the employer's disciplinary powers, the 2014 legislative amendment "confirms that disciplinary liability" exists. See: Kovačević, Lj. Uređivanje disciplinske odgovornosti u okviru instituta prestanka radnog odnosa – osobeno nomotehničko ili koncepcijsko rešenje u srpskom Zakonu o radu. *Op. cit.,* 511.

[22] See. Article 4 and 7 of Convention No. 158 on Termination of Employment at the Employer's Initiative, *Official Gazette of SFRY – International Agreements* No. 4/84 and 7/91; The practice of the European Court of Human Rights also contributes to the special

with this, according to ILO Convention No. 158 on the termination of employment at the initiative of the employer [23], the grounds for termination must be valid (Article 4) and justified. For these reasons to be considered as such, the employer must have implemented a procedure to verify their truthfulness. It's apparent that the legislator, by the norms on issuing written warnings and considering union opinions, meets the «minimum threshold» of standards set by Article 4 of Convention No. 158/1982. This approach significantly simplifies the more comprehensive system of disciplinary procedures that were familiar to our labor law until the 2000s.[24] However, the basic principles of disciplinary procedures are not stipulated, employee participation is limited, necessary procedural guarantees are not provided, and a significant shortcoming is the absence of a two-instance system that would allow for internal protection by the employer, as is available in the special labor relations regime. Specifically, the Law on Civil Servants explicitly regulates the disciplinary liability of civil servants from both substantive and procedural aspects – it establishes the framework for disciplinary liability and outlines the disciplinary process conducted before a disciplinary body. This process includes several stages: the initiation of the procedure, the management of the process, oral hearings, record-keeping, two-instance decision-making, the right to appeal, suspension from duty, imposing sanctions, and then the recording and eventual removal of these sanctions, etc. The statute of limitations for conducting disciplinary proceedings for minor duty breaches is one year from the initiation of the procedure, while for more severe breaches, it is two years. As previously stated, the disciplinary procedure is conducted under the guidelines of the Law on Civil Servants, supplemented by the Law on Police, the Law on the Army, and, for issues not addressed in these specific laws, the Law on General Administrative Procedure is applied.

protection of employees by expanding the scope of application of Art. 6 on the right to a fair trial. See: Sanders, A. (2010). Article 6 and workplace disciplinary procedures. *Industrial Law Journal*. No. 2. Oxford, 172.

[23] *Official Gazette of the SFRY - International Agreements*, no. 4/84.

[24] Kovačević Perić, S. (2020). Odgovornost u radnom odnosu – osobenosti disciplinske odgovornosti u opštem i posebnom režimu radnih odnosa. *Zbornik radova Pravnog fakulteta u Nišu,* (89), 291.

THEORETICAL FRAMEWORK OF THE DISMISSAL PROCEDURE IN THE LABOR LAW OF THE REPUBLIC OF SERBIA AND SELECTED FOREIGN COUNTRIES

Termination of Employment in Domestic Law on Disciplinary Grounds

In domestic labor law, the employment relationship most often ends on disciplinary grounds, namely: violation of work obligations and non-compliance with work discipline. However, dismissal, as the most severe disciplinary sanction, should be reserved only for such serious violations of work obligations and breaches of work discipline that justify terminating the employment relationship.[25] For the termination of an employment contract to be executed properly, it must be not only justified but also lawful. According to ILO Convention No. 158 on the termination of the employment relationship at the employer's initiative, the reasons for termination must be justified, a determination which requires a procedure to ascertain their truthfulness.[26] The identification of grounds for dismissal based on the employee's conduct and breach of work discipline occurs within the dismissal procedure, which functions as a form of "summary disciplinary procedure."[27] The legislator appears to have forsaken the regulation of disciplinary liability and procedure in an effort to leave dispute resolutions to the courts and to alleviate the workplace from complex, lengthy, and costly disciplinary procedures.[28] The process

[25] Nenadić, B., Bezbradica, R. (2006). Disciplinska odgovornost u Zakonu o radu i opštim aktima poslodavca. *Pravni informator.* Beograd. 6, 50; Urdarević, B. (2014). Disciplinska odgovornost zaposlenih u svetlu novih zakonskih rešenja. *Radno i socijalno pravo.* 1/ XVIII, 199.

Kovačević, Lj. (2014). Skrivljeno ponašanje zaposlenog i otkaz ugovora o radu – razgraničenje povrede radne obaveze od sličnih razlog. Thematic monograph. *Kaznena reakcija u Srbiji*. Belgrade: Law Faculty of the University of Belgrade, 227; Work duties cannot be determined arbitrarily by the employer. Banderet, M. E. (1986). Discipline at a workplace: A comparative study of work and practice – The sources and substance of disciplinary law. *International Labor Review*. Vol. 125, 3. 262.

[26] Kovačević Perić, S. (2020). Uloga sindikata u postupku otkaza ugovora o radu. *Zbornik radova Pravnog fakultata Univerziteta u Novom Sadu*. LIX /86, 128; Berenstein, A., Mahon, P., Dunand, J. P. (2011). *Switzerland*. The Hague: Walters Kluwers, 148.

[27] Ivošević, Z. (2012). Otkaz ugovora o radu od strane poslodavca. Collection of papers *Zaštita prava u oblasti rada*. Belgrade, 1 85; "Non-observance of labor discipline is a general clause under which any act of indiscipline may lead to termination of the employment contract", Verdict of the Supreme Court of Cassation of the RS, Rev. 406/06 of 13 July 2006.

[28] Kovačević, Lj. Uređivanje disciplinske odgovornosti u okviru instituta prestanka radnog odnosa, osobeno nomotehničko ili koncepcijsko rešenje u srpskom Zakonu o radu. *Op. cit.,* 512.

conducted prior to announcing dismissal and disciplinary measures is not thoroughly regulated. The existing provisions only refer to warnings, notices before dismissal for insufficient performance or incapacity, the imposition of disciplinary actions, and the union's opinion.[29] The objective of protection should be to limit the employer's arbitrariness, which can lead to employee dismissals and job losses.[30] Therefore, it is crucial to ensure adequate protection and provide a range of legal tools for employees to assert their violated rights.[31]

In comparative law, there are approaches where employers are allowed to establish disciplinary sanctions through work regulations or employment agreements (thereby reserving dismissal as an *ultima ratio*). Employers are required to inform employees about these regulations and obtain the approval of the employees' council. This significantly restricts the employer's disciplinary authority, which is lost if the employees' council disagrees with the disciplinary sanction (in such cases, the employee's disciplinary liability is decided by an arbitration panel).[32] This indicates the significant role of employee associations in protecting employees. Given this, perhaps domestic labor law should consider a similar approach, especially since the union's decision (which an employee may include in their response to a pre-dismissal warning) is not binding for the employer.[33]

EMPIRICAL RESEARCH ON THE RELATIONSHIP OF DISCIPLINARY AND DISMISSAL PROCEDURES

During the research process, an in-depth interview and an internet survey were used as the chosen method. The in-depth interview, as a method, includes more general questions and is well-suited for gathering data for qualitative

[29] Art. 180, Labor Law*;* Ivošević, Z. (2016). Prestanak radnog odnosa. Collection of papers *Najznačajnije novine u propisima o radu i na osnovu rada*. Belgrade, 200.

[30] Simonović, D. (2009). *Radnopravna čitanka*. Belgrade: "*Official Gazette of RS*", 23; The aim of harmonizing with the labor law of the European Union is to increase flexibility in labor law, which includes, among other aspects, simplifying the hiring and firing of employees. However, despite these changes implying the development of protection for equality and dignity at work, the rights of employees are not fully safeguarded. See. Jašarević, S. (2013). Harmonizacija radnog prava Srbije sa pravom EU u svetlu iskustava Mađarske i drugih zemalja u tranziciji. Thematic collection *Harmonizacija srpskog i mađarskog prava sa pravom Evropske Unije*. Novi Sad, 294.

[31] Kovačević Perić, S., Obradović, G. (2014). Subordinacija i disciplinska vlast poslodavca*. Pravo i privreda, Časopis za privrednopravnu teoriju i praksu*. 7–9. Београд, 429.

[32] Weiss, M., Schmidt, M. (2008). *Labor Law and Industrial Relations in Germany*. Kluwer Law International, 92 – 93.

[33] Stojanović, M. (2007). *Radni sporovi*. Kragujevac, 93.

analysis. Particularly important are interviews with questions designed to allow respondents to freely share their experiences and insights on the subject. This is intended to enable researchers to form an initial understanding and a foundation for more comprehensive research that demands resources beyond the reach of independent researchers.[34] On the other hand, considering the relevance of the views of both professionals and the wider public for the research topic, online surveys with close-ended questions were also employed. Decisions of the Constitutional Court and verdicts of the Supreme Court of Cassation were analyzed to develop a "real" picture of the challenges faced by our judiciary, which is burdened with disputes due to summary – disciplinary proceedings.

Results of the Analysis of In-depth Interviews

Judge Trifunović, the long-standing president of the Supreme Court of Cassation, initially emphasizes:

> "Despite the existence of many theoretical opinions favoring the view that disciplinary procedures should not be regulated within the institute of employment termination, I personally believe that disciplinary and dismissal procedures should not be separated. All of this is basically a disciplinary procedure. It includes provisions for a warning, the opportunity for defense, mandatory decisions and justifications, evidence, facts, statutes of limitations, and all other integral parts of the procedure. However, its shortcomings, such as the summary nature of the procedure, lack of discussion, and possible flaws in the explanations, can be rectified in a court or another alternative legal process."

The judge's "affirmation" that certain unregulated legal issues can be resolved in court indicates that resorting to the judicial system is the sole method for protecting certain rights and resolving specific issues.[35] Would this be

[34] Primarily interviewed was Predrag Trifunović, a retired multi-decade judge of the Supreme Court of Cassation. With his extensive experience, he is one of the most relevant individuals providing insights related to the research topic. Ivica Lazović, director of the Agency for Peaceful Resolution of Labor Disputes of the RS, was also interviewed, providing information on the state of practice and the percentage of peacefully resolved labor disputes in cases of employment termination. Additionally, Mrs. Željka Jorgić Đokić, a long-time professional associate at the Association of Independent Trade Unions of Vojvodina, provided answers from the perspective of the trade union. Finally, Mrs. Svetlana Budimčević from the Union of Employers of Serbia shared employers' views on the existing legal framework and its practical application in the area of employees' disciplinary liability.

[35] The judge emphasizes that as many as 60 % of the cases resolved by the Supreme Court of Cassation are related to employment. Both he and the representative of the Union

necessary if the legal regulations of these institutes were more divided and comprehensive? Particularly, if labor law legislation incorporated mandatory internal protection and a two-instance system, and if approaches such as mediation, conciliation, and other peaceful dispute-resolution methods were considered between employers and employees. In the context of certain cases of comparative legal practice[36] and domestic labor law, we can question whether disciplinary sanctions are proportionate to the severity of the work obligation breaches for which they are imposed[37]– and critically, whether the employee had an opportunity to defend themselves. It is imperative to stress the need for proportionality and justification when imposing disciplinary sanctions, especially dismissal, the most severe of these sanctions.

The director of the sector for legal affairs and social dialogue of the Union of Serbian Employers believes that the Labor Law should fundamentally regulate the disciplinary procedure.

> "If positive legal provisions were read and interpreted by an employer who is not acquainted with labor law, he might equate any disciplinary offense with dismissal. On the other hand, our employers think that excessive regulation can restrict them in many situations. Although, during collective bargaining, the stance of employers sometimes doesn't allow much room for legal changes and amendments, I believe that a more detailed regulation of these institutes would greatly assist employers."[38]

A professional associate in the association of independent unions of Vojvodina notes:

> "Considering my involvement in the union during certain changes, it was the employers who initiated the "removal" of the disciplinary procedure. They saw it as additional administration and paperwork, particularly during

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of Employers of Serbia interviewed express a positive view on resolving disputes through the Agency for Peaceful Settlement of Labor Disputes.

[36] In German law, in the case of *Barbara Emme (2009)* where she was dismissed for misappropriating bottles left by the employer's clients, valued at 1.3 euros, and for charging her mobile phone in the employer's business premises, the Federal Court of Germany deemed it a justified reason for dismissal on disciplinary grounds. See. Radé, Ch. (1997) . *Droit du travail et responsabilite civile*. LGDJ, Paris, 11.

[37] Particularly important is the broader catalog of disciplinary measures, which aims to create conditions for progressive punishment and individualization of disciplinary measures. See.: Lubarda, B. (2001). Disciplinska odgovornost i harmonizacija prava. *Pravo i privreda*. 5–8, 249.

[38] She also highlights that the employer invests capital and has the right to oversee employees. "We have some provisions that regulate this, but they are not properly and completely organized. This is certainly an oversight, and if we make a comparison between the general and special regimes of labor relations, we can conclude that employees in the general labor relations regime face discrimination."

> the easy dismissal phase due to the collapse of companies and privatization. It is like they set a trap for themselves. In my view, the court should really be the last resort.[39] Until then, all mechanisms contributing to dispute resolution should be exhausted. It is my opinion that forming labor courts would be a good solution to alleviate the burden on general jurisdiction courts. These don't have to be conventional labor courts; some countries have effective models where, besides judges, representatives of employers and employees also participate in resolving disputes.[40] In Serbia, there should also be an elevation of workers' rights, as there is a trade union infrastructure that enables this."[41]

The director of the Republic Agency for Peaceful Settlement of Labor Disputes advocates that the lack of provisions on disciplinary liability and procedure can lead to significant problems.

> "It's very problematic, both logically and legally, when you have poor and incomplete provisions. Even partial attempts to address these issues often don't end well in practice, creating more problems than benefits. Penalties are often too harsh, leading to the closure of the workplace, with employees being punished beyond legally expected and desirable procedures, through some process of penalty assessment. Therefore, I favor standardizing these procedures, coupled with informal discussions at the employer's initiative."

Termination of employment contracts is common due to strained relationships between employers and employees, but such disputes are rare before the RAPSLD. Employees frequently approach the Agency, yet there is often no consensus from employers to resolve these disputes amicably. Employers, aware of their faults in terminating employment contracts, tend to reject

[39] Particularly because of the psychological pressure exerted on an employee when they receive a warning about the termination of their employment contract. Even if dismissal does not occur, the fear and uncertainty experienced in the meantime are unacceptable. 'Employment security involves the creation and implementation of certain instruments that contribute to preserving the employment relationship, ensuring that its termination is a last resort.' See: Kovačević, Lj. (2016). *Valjani razlozi za otkaz ugovora o radu*. Belgrade: Faculty of Law, University of Belgrade. Center for Publishing and Information, 18; Blancpain, R. (2012). *Belgium*. The Hague: Walters Kluwer, 50.

[40] In developed countries, trade unions and workers' councils, as well as associations that protect employees, really "pay a lot of attention" to their activities. Hasselbalch O., (2019). *Denmark.* The Hague: Wolters Kluwer, 228.

[41] Art. 181 of the Labor Law. A practical issue is the lack of an employer's obligation to submit to the employee's trade union a warning about the existence of reasons for employment contract termination. Instead, it has been established that "the employee may submit the trade union's opinion along with their statement." If the trade union's opinion is provided, the employer must consider it. This is significant, as this requirement can act as a barrier against unjustified employee dismissals. See: Verdict of the Supreme Court of Cassation, Rev2. 1044/2012, dated November 6, 2013.

peaceful resolution methods. Related to this, it should be noted that in 2020, 100 cases were initiated before RAPSLD, with employer consent missing in as many as 95 disputes. Although confidence in the Agency's work is increasing, a potential solution is mandating an attempt to amicably resolve disputes before resorting to legal proceedings.

Results of the Analysis of Case Law

In local case law, it is affirmed that the termination of an employment contract initiated by the employer is illegal if it lacks a factual basis for the termination or if a written warning to the employee is missing.[42] Additionally, there have been verdicts stating that a written warning, as a part of the employment contract termination process due to reasons pertaining to the employee's behavior, is an essential condition for legally terminating the employment relationship on these grounds.[43]

The assessment of the legality of a decision to terminate an employee's employment contract implies:[44]

> "The termination of the employment relationship is legal if the employee, for breaching a work obligation, was heard before the dismissal and was provided an opportunity to defend themselves and state their case regarding the reason for the employment contract termination."[45]

Additionally, the employer may terminate the employee within six months from becoming aware of the facts constituting the grounds for dismissal, or within one year from the occurrence of such facts.[46] Therefore, the employer is obligated to terminate the employment contract in accordance with these time frames, which are defined as preclusive deadlines.[47]

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[42] Verdict of the Appellate Court in Belgrade Gž1. 5508/10 of July 14, 2010; Verdict of the Supreme Court of Cassation, Rev2 1688/2018, of February 12, 2020.

[43] Verdict of the Appellate Court in Belgrade Gž1. 5700/11 of January 18, 2012.

[44] According to the International Labour Organization's Convention No. 158, which applies to all employees in the RS, an employee's employment cannot be terminated by the employer for reasons related to their behavior or performance before they are given an opportunity to defend themselves against the allegations. See. Verdict of the Appellate Court in Belgrade Gž1. 6227/10 of December 15, 2010.

[45] Verdict of the Supreme Court of Cassation, Rev. 1216/03 of December 4, 2003.

[46] The sentence from the verdict of the Supreme Court of Cassation Rev2 213/2019 of February 20, 2019, established on the sessions of the Civil department on December 10, 2019; Verdict of the Appellate Court in Niš, Gž 1. 872/10. of June 23, 2010; However, many theorists believe that these timeframes should be shorter.

[47] Case Law of the Supreme Court of Cassation, Rev. 2 1393/2014, breach of work obligation.

The case law and existing regulations suggest that a particular *in favorem laboratoris* approach has been applied to the liability of employees in state bodies compared to those working for private companies. The favoritism primarily manifests in the establishment of a classic disciplinary procedure involving the participation of the subjects of the procedure in discussions. Furthermore, breaches of work obligations are categorized into minor and major, allowing for a gradation of liability and enabling the individualization of punishment. Enhanced protection is also offered through the gradation of rights protection, initially internally through complaints within the state body, followed by external means. This represents a precedent in deviating from the principle of uniformity in the employment relationship system and serves as a starting point and hypothesis for potential reforms in labor legislation concerning the protection of employees under the general employment regime.

Additionally, the impact of Constitutional Court decisions on the legal system is significant, with the human rights protection system under the European Court of Human Rights presenting a notable limitation. This is crucial for protecting employees' rights in Serbia, considering the substantial number of cases where the right to a fair trial has been violated. This is especially true when it comes to the timeliness of trials.[48]

Results of the Internet Survey Analysis

In order to determine the prevalence, causes, and existence of abuses of the employer's authority during disciplinary or termination proceedings, the author of this paper conducted an internet survey among 100 respondents. The survey also covered issues related to employees' awareness of methods to protect their rights and their attitudes toward positive legal regulations. Respondents were predominantly employed individuals 53 %, 16 % were under a contract outside the employment relationship, while a certain number of respondents were currently unemployed 12 %, students 16 %, and entrepreneurs 6 %.[49]

[48] *Razumevanje disciplinske i krivične odgovornosti zaposlenih u jurisprudenciji Ustavnog suda Republike Srbije*, in: Darja Senčur Peček (ed.), "Theory in practice, law and life: *liber amicorum* Etelka Korpič-Horvat", Univerza v Maribor, Pravna Faculty/Institution Dr. Šiftarjeva foundation/ Pomurska akademska znanstvena unija (PAZU), Maribor, 2018, 129.

[49] Individuals of both genders were surveyed, with 57 % of respondents being female and 43 % male, across various age groups, educational, and professional profiles (law 50 %, economics 8 %, trade 8 %, and others), selected through a "random sample" system.

Although every one of the hundred respondents knew that upon starting work, they must respect the work discipline and organization established by the employer, 29 % of them answered that not respecting work discipline is not synonymous with every behavior that is contrary to the employer's orders.[50] According to the responses, disciplinary sanctions were imposed on 21.3 % of respondents. For 16.3 %, it was a measure of removal from work without wage compensation, for 19.4 % a monetary fine, and for 22.6 %, it was a warning with a notice of potential dismissal. As many as 19.4 % of respondents reported being in situations where their employment was terminated illegally, and 19.3 % were dismissed without adherence to proper termination procedures. A significant percentage of respondents, 83 %, acknowledged that a warning is a precursor to dismissal. During the assessment of disciplinary liability and proceedings, 54 % of respondents noted that a hearing is scheduled, while 67 % indicated that employees are granted the right to a hearing. Although the warning, the employee's statement, and the employer's decision are key elements of the summary disciplinary procedure in the general work regime, a notable flaw is the lack of internal protection (two-instance approach).[51] The reform to strive for is that employers should provide a hearing if requested by the employee. Legal provisions governing disciplinary and dismissal procedures should be enhanced to more comprehensively protect the right to work and establish a fairer relationship between the employee and employer, a sentiment agreed upon by 67 % of respondents.

CONCLUSION

Regarding the reform of labor law legislation and certain necessary changes in the regulation of disciplinary and termination procedures within the general employment relationship regime, it is a fact that a plethora of norms is not required to achieve the desired goal in this area. These norms should not only be adequate and consistent but also sufficiently reliable in safeguarding the legitimate interests of both parties in the employment relationship. Based

[50] As many as 31 % of respondents indicated that employees are held responsible for violations of work discipline not previously defined by law, collective agreements, or employment contracts, highlighting the lack of adequate information among employees and other parties involved.

[51] Trifunović, P. (2016). Disciplinski postupak u opštem radnom režimu – neophodnost promena. *Pravni informator*. 3, 8; In such cases, a collegial body, comprising representatives of both employees and the employer, would be responsible for deciding on the employee's accountability for breaching work obligations or failing to adhere to work discipline.

on the conducted research, it is concluded that there is indeed a need to strive for amendments and supplements to the Labor Law. Perhaps, and I dare say, the drafting of a new Labor Law is warranted, one that would "remedy" all oversights and be more in tune with the needs of the labor market. In the case of the special employment regime for civil servants, the situation is markedly better. The Law on Civil Servants has attempted to establish a comprehensive system of disciplinary liability. This law includes numerous provisions that regulate disciplinary liability in a special regime of labor relations, including the initiation of proceedings, the conduct of proceedings, oral hearings, taking minutes, two-instance decision-making, the right to appeal, removal from work, the imposition of sanctions, and then the recording and deletion of these sanctions, among other aspects.

On the other hand, in the general employment relationship regime, the regulation of disciplinary liability and procedures is significantly diminished. The objective of labor law should aim for greater standardization while avoiding entanglement in the realms of politics, liberalism, and the constant changes in the labor market, as protecting labor rights ought to be a priority. Considering the large number of cases before the courts and the need to foster healthy relationships at work and in matters related to work, it would be beneficial to reintroduce the concept of internal protection and a two-instance system in the general employment regime, particularly regarding the termination of employment, which is the most severe sanction. This should apply, if not universally, then at least to employers with a larger workforce. It is also essential to ensure a more comprehensive right of defense for employees in line with international labor standards, including shorter preclusive deadlines for initiating proceedings, potentially reducing them from six months to one year. Additionally, establishing specialized labor law courts, drawing inspiration from our former system of joint labor courts and models in countries like England, France, and Germany, would be significantly beneficial for the field of labor law.

Additionally, the role of trade unions and employee associations in protecting employees should be strengthened. Specifically, according to the provisions of the Labor Law on termination procedures, the union's response to a termination warning is not binding, even though earlier provisions required employers to inform the union, as the collective representative of the employee, about the reasons for termination. Now that this is no longer the case, it is evident that current legal solutions contribute to the weakening of employee associations' positions. The findings of the conducted research suggest that trade unions can indeed play a larger role in protecting employees' rights, an effort that should be supported through education and raising awareness about the significance of union work. Moreover, the author leans towards the viewpoint that the Union of Employers of Serbia, Employers'

Associations, the Chamber of Commerce of Serbia, human resources personnel, and other representatives on the employer's side, who are involved in negotiations regarding amendments to the Labor Law, should conduct a thorough needs analysis to understand the direction of necessary changes. The practice has shown that it is unacceptable for the insufficient standardization of certain institutions to compromise employee rights, consequently weakening their position in the labor law relationship.

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