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EMPLOYEE REASSIGNMENT AS A MEASURE FOR RESOLVING REDUNDANCY**

ABSTRACT: Redundancy has become an increasingly prevalent problem in many sectors and organizations. The reasons for redundancy are numerous. Technological advances, which often replace labor with machines and software, as well as inefficient work organization within a company or economic and financial crises, such as the crisis caused by the COVID-19 pandemic, can lead to a situation where a certain number of employees become redundant. The consequences of this situation are profound, as individuals who lose their jobs face financial difficulties, while society faces rising unemployment. However, there are solutions to this problem. This applies in particular to the various instruments for dealing with redundancy, the most important of which are employment measures, including employee reassignment, which is the focus of this paper. Reassignment is one of the key measures used for effective human resource management, thereby preventing collective dismissals. This practice allows employees to move from one position to another, within the same organization or even within a broader system. Therefore, this paper will analyze measures for resolving redundancy, with particular emphasis on employee reassignment,

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** The paper was received on January 27, 2025, and it was accepted for publication on June 13, 2025.

The translation of the original article into English is provided by the *Glasnik of the Bar Association of Vojvodina*.

while identifying issues related to concluding an employment contract amendment, what is considered another “suitable” position, and the abuse of the employer’s powers related to determining employment measures.

Keywords: employee reassignment, job change, redundancy, employment contract amendment

INTRODUCTION

A job is a key element in building an employee’s professional and personal identity. Moreover, the importance of a job goes beyond the individual sphere and has far-reaching consequences for organizational success and social stability. That is why managing jobs through their systematization, improving working conditions, and adapting to the needs of employees, as well as to the needs of employers, is one of the key elements of the modern labor market. An employment contract, as a written legal instrument, governs the employment relationship between an employer and an employee, that is, their mutual rights and obligations. However, it is not merely a legal instrument but also a symbol of trust and agreement between two parties. As such, an employment contract is not immutable, and in certain situations, it can be amended because the business environment and the needs of employees are not static. Sometimes such changes are desirable, such as a higher salary and better working conditions, and sometimes such changes to the employment contract may be compelled by the employer’s poor economic situation or other reasons. The most important element of any contract is the consent of the contracting parties, and the same is required for amending it. In any event, amending an employment contract under contemporary labor market conditions is not a rare occurrence. Changes in the work environment, the labor market, or the personal circumstances of employees often require adapting the provisions of the employment contract to new circumstances so that it remains in force in line with actual needs and possibilities.

In this regard, employee reassignment represents one of the grounds for amending the employment contract and, as such, is a tool for managing employees’ work. For this reason, it is increasingly gaining importance in modern organizations and institutions, in both the public and private sectors, and it can significantly contribute to reducing unemployment and increasing work efficiency. On the other hand, there are circumstances in which reassignment can be abused, such as inadequate application of relevant legal regulations, insufficient transparency of the employment process, and insufficient capacity for training aimed at enabling employees to adjust to new work

tasks. In any event, resolving redundancy by reassigning employees whose work is no longer needed to another position is one of the main methods of preventing termination of employment.

The starting hypothesis of this paper is that employee reassignment is an effective mechanism for achieving flexibility in the labor market, improving employment, and resolving redundancy, but that in Serbia it requires additional efforts in terms of improving the legal framework and strengthening the capacity of the labor inspectorate.

THE CONCEPT OF REDUNDANCY

In Serbia, the process of economic transition was often accompanied by the emergence of redundancy in a large number of companies, which resulted in employment termination. In that respect, authors are virtually unanimous in concluding that, in the event of such changes in the work environment, termination constitutes an *ultima ratio*.¹ Therefore, employment termination due to collective dismissal is a last resort, when it is not possible to apply a measure that would preserve employment or minimize the number of dismissed workers if dismissal is necessary. However, theory and practice have raised the question of how to define the concept of collective dismissal. In this regard, the Serbian legal system does not use the term “collective dismissal,” but rather the expression “redundancy.”² The question of the content of the concept of collective dismissal can also be found in the case law of the Court of Justice of the European Union, since the qualification of collective dismissal necessarily implies that, first, there is an employer who, due to economic, technological, structural, or similar changes in the company, no longer requires the work of a certain number of employees.³ Therefore, collective dismissal is one of the particularly delicate issues in labor law, *inter alia*, due to the problems that modern countries face in aligning employment with the development needs of the economy and society.⁴ The Court defined collective dismissal as

¹ Kovačević, LJ. (2016). *Valjani razlozi za otkaz ugovora o radu*. Belgrade: University of Belgrade, Faculty of Law, Publishing Center, 414.

² 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, 113/2017. and 95/2018. – authentic interpretation, Part XI.

³ Kovačević, LJ. (2016). *Op. cit.*, 417.

⁴ *Ibid.*, 414.

“...any termination of contract of employment not sought by the worker, and therefore without his consent. It is not necessary that the underlying reasons should reflect the will of the employer.”⁵

Redundancy is thus a natural consequence of the organization of work and the combination of factors of production, in accordance with market principles of work and business, in order to ultimately avoid the employer’s insolvency or to preserve business continuity or increase the company’s competitive capacity.⁶ Redundancy, therefore, means an economic and legal situation arising as a consequence of changes in the employer’s technological, economic, structural, or organizational position, which leads to the need for a significant reduction in the number of employees, where the reasons for redundancy are not related to the professional abilities or quality of work of an individual employee.⁷ Therefore, collective dismissal is the opposite of the dismissal of an individual employee. Regulations on collective dismissal differ significantly from those on individual dismissals, not only in terms of the types of statutory procedures, but also in terms of their economic objectives.⁸ Regulating collective dismissals for economic reasons is one of the key pillars of employment protection legislation.⁹ The consequences of collective dismissals go beyond individual employers and employees and affect the economic “health” of society as a whole.¹⁰ A situation in which an employee resigns and thereby initiates termination of employment of their own accord cannot be classified as collective dismissal. Likewise, the concept of collective dismissal excludes cases of termination of employment for reasons attributable to the employee, such as culpable violation of work obligations, failure to comply with work discipline, and other “disciplinary” grounds for dismissal, or reasons related to the employee’s abilities.¹¹ The reasons that can lead to redundancy may vary depending on labor market conditions and the employer’s business situation.

⁵ Judgment of the Court of Justice of the European Union (CJEU) in Case C–55/02 (*Commission of the European Communities v. Portuguese Republic*) of October 12, 2004, ECLI:EU:C:2004:139, para. 50.

⁶ Jovanović, P. (2009). Pitanje viška zaposlenih u međunarodnom i našem pravu. *Collected Papers of the Faculty of Law in Novi Sad*, 43(3), 48.

⁷ Lubarda, B. (2013). *Radno pravo – rasprava o dostojanstvu na radu i socijalnom dijalogu*. Belgrade: Faculty of Law, University of Belgrade, Publishing Center, 560.

⁸ Aleksynska, M., Muller, A. (2020). *The regulation of collective dismissals: Economic rationale and legal practice*. Geneva: International Labour Organization (ILO) Working Paper 4, 1.

⁹ *Ibid.*, 4.

¹⁰ *Ibid.*

¹¹ Kovačević, LJ. (2016). *Valjani razlozi za otkaz ugovora o radu*. Belgrade: University of Belgrade, Faculty of Law, Publishing Center, 417.

These may include reasons of a technological or technical nature, when new machines and programs are introduced into the production process. Collective dismissal can be the consequence of introducing new technologies, when the employer no longer needs to employ a certain number of employees, which is referred to as “technological redundancy.” Job security can also be jeopardized by digitalization, since the introduction of digital technology can lead to the cessation of the need to perform certain work tasks, that is, to a reduction in the workload, but also the cessation of the need for certain jobs.¹² In this sense, some authors affirm a technological-deterministic approach to this topic, i.e., the view that employment termination should be viewed as the price of technological development, which in its extreme variants is linked to the notion of the end of human labor, while the main task of academia is the assessment of the number of workers who will be made redundant due to technological changes in companies.¹³ Certainly, no institute of the employment relationship has remained immune to the problems brought about by the application of information technologies in the work process, and the institute of employment termination is no exception.¹⁴ Namely, it is increasingly emphasized that digitalization is changing the functioning of the employment relationship, and the newly emerging socio-economic circumstances have, *inter alia*, resulted in the destabilization of the concept of the employment relationship.¹⁵ Furthermore, the reasons for redundancy can be structural, i.e., organizational, and they occur when there is a disruption in the employer’s operations. Economic reasons can also appear as a consequence of the employer’s lower economic activity and a decline in sales. However, termination of an employment contract for economic reasons can only occur if the employer, in response to the occurrence of certain real circumstances, has made a certain business decision concerning economic, technical, technological, organizational, production, or other similar changes in the company.

In any event, redundancy is primarily caused by a company’s negative business results, i.e., a negative economic situation, which is manifested in existing or anticipated losses, or in a long-term decrease in regular income

¹² Kovačević, L.J. (2024). Digitalizacija i automatizacija rada kao predmet kolektivnog pregovaranja, in: Jelena Perović-Vujačić (ed.), *Pravo na pravdu – Izazovi savremenog doba. Zbornik radova 37. susreta Kopaoničke škole prirodnog prava „Slobodan Perović“*, Vol. II, Belgrade: Kopaonička škola prirodnog prava „Slobodan Perović“, 6–7.

¹³ *Ibid.*, 6.

¹⁴ Božičić, D. (2022). Upotreba softvera za praćenje rezultata rada zaposlenih i otkaz ugovora o radu. *Glasnik of the Bar Association of Vojvodina*, 94(2), 382.

¹⁵ Jašarević, S. (2013). Radni odnos – tendencije u praksi i regulativi. *Collected Papers of the Faculty of Law in Novi Sad*, 47(3), 244.

or sales.¹⁶ Therefore, the need for collective dismissal can also arise independently of the introduction of new technologies, in the event of economic difficulties in business operations, the overcoming of which requires a reduction in costs.¹⁷ Therefore, collective dismissal can be a prerequisite for preserving the employer's business operations; it can be a mechanism for survival in the market but also a way to retain the remaining employees. In addition, employee reassignment contributes to protecting the employer's business reputation because reassignment prevents employment termination.¹⁸

MEASURES FOR RESOLVING REDUNDANCY

Every country strives to create legal and institutional mechanisms to protect vulnerable groups and thus ensure social peace and welfare.¹⁹ In cases of collective dismissal, the Serbian Labor Law provides a number of measures for protecting the position of employees, which is endangered in such circumstances. Protection is reflected in the requirement of real and serious grounds for declaring redundancy and the lawfulness of the collective dismissal procedure, with the application of the concept of preserving employment stability.²⁰ One of the protection mechanisms in such situations is the involvement of employee representatives in the collective dismissal process. In cases of redundancy, Serbia recognizes employees' right to information and consultation; accordingly, the Labor Law stipulates that the employer, in cooperation with the representative trade union at the employer and the National Employment Service (hereinafter: NES), before adopting a program for resolving redundancy, must take appropriate measures for the reemployment of redundant employees.²¹ The Labor Law also stipulates that the trade union must submit its opinion on the draft program within 15 days from the day it receives the draft,²² and that the NES must, within 15 days, submit to the

¹⁶ Kovačević, L.J. (2016). *Valjani razlozi za otkaz ugovora o radu*. Belgrade: University of Belgrade, Faculty of Law, Publishing Center, 402–403.

¹⁷ Lubarda, B. (2013). *Radno pravo – rasprava o dostojanstvu na radu i socijalnom dijalogu*. Belgrade: Faculty of Law, University of Belgrade, Publishing Center, 559.

¹⁸ Borghouts–van de Pas, I., Bosmans, M., Freese, C. (2021). Unemployment prevention: The role of Human Resource Management in job–to–job transitions in the event of redundancy. *European Journal of Social Security*, 23(2), 104.

¹⁹ Kovačević, T. (2022). Delotvornost domaćeg sistema zaštite potraživanja zaposlenih u slučaju stečaja poslodavca. *Glasnik of the Bar Association of Vojvodina*, 94(2), 349.

²⁰ Lubarda, B. (2013). *Op. cit.*, 559.

²¹ Art. 154 of the Labor Law.

²² Art. 156, para. 1 of the Labor Law.

employer a proposal for measures aimed at preventing or at least minimizing the number of employment terminations, i.e., ensuring retraining, additional training, self-employment, and other measures for the reemployment of redundant employees.²³ Accordingly, the Labor Law takes the position that termination of employment due to redundancy is only a last resort, which is taken when none of the prior measures aimed at preserving employment have succeeded. In this way, the legislator seeks to establish the highest possible degree of legal protection for employees and their family members, bearing in mind that, for the majority of employees, the salary they earn working for the employer is their sole or predominant source of income. However, in order for the legal regime applicable to collective dismissal to be applied, the following conditions generally have to be met: the condition regarding the size of the employer and the dismissal time limits.²⁴ The Serbian Labor Law stipulates that an employer must adopt a program for resolving redundancy if it determines that, due to technological, economic, or organizational changes, the need for the work of a certain number of employees employed for an indefinite term will cease within 30 days.²⁵ Therefore, the Labor Law clearly states that the program for resolving redundancy can only be applied to employees who are employed for an indefinite term, which indicates that employees with a fixed-term contract are not protected in cases of redundancy; this leads to the conclusion that their legal security in the event of collective dismissal is insufficient. Following the model of European Union law, the Labor Law specifies that a program for resolving redundancy is required when there is no longer a need for the work of at least: 1) 10 employees at an employer who employs more than 20 and fewer than 100 employees for an indefinite term; 2) 10% of employees at an employer who employs at least 100 and no more than 300 employees for an indefinite term; 3) 30 employees at an employer who employs over 300 employees for an indefinite term.²⁶ In addition, the program must be adopted if the employer determines that there will no longer be a need for the work of at least 20 employees within 90 days, regardless of the total number of employees.²⁷

Furthermore, the Labor Law specifies what the program for resolving redundancy must contain, stating: 1) the reasons for the cessation of the need for employees' work; 2) the total number of employees at the employer; 3) the number, qualification structure, age, and insurance service record of redundant

²³ Art. 156, para. 2 of the Labor Law.

²⁴ Lubarda, B. (2013). *Radno pravo – rasprava o dostojanstvu na radu i socijalnom dijalogu*. Belgrade: Faculty of Law, University of Belgrade, Publishing Center, 560.

²⁵ Art. 153, para. 1 of the Labor Law.

²⁶ *Ibid.*

²⁷ Art. 153, para. 2 of the Labor Law.

employees, and their jobs; 4) the criteria for determining redundancy; 5) employment measures: reassignment to another position, working with another employer, retraining or additional training, part-time work but not shorter than half of full-time hours, and other measures; 6) funds for addressing the socio-economic status of redundant employees; 7) the period within which employment contracts will be terminated.²⁸ However, the Serbian Labor Law does not define the meaning of the term “employment measures,” which may be the cause of potential misunderstanding and possible abuse by employers, as the stronger party in the employment relationship. These measures can, in theory, be defined as alternative employment with the same employer or another employer, which the employer offers to redundant employees where suitable positions are available, with the aim of avoiding termination due to technological, economic, or organizational changes that caused the cessation of the need for employees to do in the jobs for which they have an employment contract.²⁹ The reason for prescribing these measures is to avoid termination of employment contracts or at least minimize the number of terminations. In essence, adopting these measures has a preventive function, that is, it seeks to prevent terminations through mobility agreements and other new arrangements intended to ensure alternative employment and work engagement.³⁰ At the same time, the statutory listing of employment measures implies that the list of these measures is not finally determined under the *numerus clausus* principle; in other words, the number of employment measures is not exhaustively enumerated, but rather reflects an *exempli causa* approach, so the legislator lists only some of the measures that an employer can take, while leaving room for other measures that can be implemented and adapted to a specific work environment. Therefore, by prescribing employment measures in this manner, the legislator takes into account the specificities that may arise among different employers and different branches of the economy, leaving room to tailor such measures to each situation in which redundancy occurs. However, the current Labor Law does not set the criteria based on which the employer decides which employment measure to apply to an employee who has been identified as redundant, because it does not specify in any way whether the employer has discretionary authority when applying available employment measures to redundant employees, or whether they are nevertheless obligated to offer employment measures by applying certain criteria; and if criteria must be

²⁸ Art. 155, para. 1 of the Labor Law.

²⁹ Lazarević, A. (2019). „Radni sporovi u vezi sa kolektivnim otpuštanjem zaposlenih i metodi za njihovo rešavanje“, doctoral dissertation (unpublished). Belgrade: University of Belgrade, Faculty of Law, 280–281.

³⁰ Kovačević, T. (2024). „Izmene elemenata ugovora o radu“, doctoral dissertation (unpublished). Belgrade: University of Belgrade, Faculty of Law, 361.

applied, whether these should be the criteria used in determining redundancy in jobs where the number of positions is being reduced or whether the employer can establish some other criteria.³¹ The absence of clear criteria on the basis of which an employer could, without any rules, give preference to certain employees in order to retain them, leaves too much room for potential abuse, thereby undermining the legal protection that the legislator seeks to establish in such cases. When it comes to the criteria for determining redundancy, employers should take into account the employee's prior work performance, thus ensuring that the best employees remain. For example, when two employees were equally successful in the same job, preference should be given to the employee in a more difficult financial situation, then to the employee with more dependent family members, poorer health, longer length of service, or more children in school. In any event, in order to ensure transparency in the procedure for resolving redundancy, it is necessary for criteria to be established in advance in the employer's internal regulation, such as a collective bargaining agreement; when there is none, then in the employment rulebook, thereby enabling predictability of the outcome of the procedure and increasing the level of security for employees and their families. The Labor Law also specifies what cannot constitute a criterion for determining redundancy, such as absence from work due to temporary work incapacity, pregnancy, childbirth, and (special) childcare leave.³² This provision is important because it constitutes a form of legal protection against employment termination in cases of collective dismissal for those persons who find themselves in these life circumstances, for which reasons these criteria are considered impermissible. In addition to the economic and psychological dimensions for the terminated employee, the negative consequences of termination are also reflected on their family, the economic well-being of their children, and the ability to provide support to other relatives who depend on them.³³ The consequences of employment termination for pregnant women and women on maternity leave are even greater because, during pregnancy and immediately after childbirth, women are vulnerable, and it is difficult for them to find employment.³⁴

Furthermore, in practice, the authority to determine the criteria, which the legislator leaves to the employer, can be used by the employer to establish "fake" employment measures, and thus actually put the employee in a

³¹ Lazarević, A. (2019). „Radni sporovi u vezi sa kolektivnim otpuštanjem zaposlenih i metodi za njihovo rešavanje“, doctoral dissertation (unpublished). Belgrade: University of Belgrade, Faculty of Law, 283.

³² Art. 157 of the Labor Law.

³³ Balnožan, K. (2021). Posebna zaštita zaposlenih s porodičnim dužnostima od otkaza ugovora o radu. *Glasnik of the Bar Association of Vojvodina*, 93(1), 148.

³⁴ *Ibid.*

worse position than if their employment were terminated due to redundancy, in the sense that the employee would not be able to receive severance pay and unemployment benefits upon dismissal. These gaps in the Law are potential problems that can be abused to the detriment of the employee. Therefore, an analysis of the provisions of the Labor Law leads to the conclusion that, on the one hand, a mechanism for resolving redundancy is provided by prescribing certain concrete measures. On the other hand, the legal framework is not entirely clear as it does not define employment measures and also gives employers rather broad powers regarding the types of measures that can be implemented. In addition, the positive legal solution is fairly restrictive, as only employees employed for an indefinite term are afforded legal protection in cases of redundancy.

EMPLOYEE REASSIGNMENT

Employee reassignment introduces changes into the existing work schedule in order to meet new needs in the organization of work or the work process, ensure more appropriate use of work equipment, or otherwise advance the interests of a particular work environment.³⁵ The institute of reassignment can be used in order to adapt to economic conditions when there is a genuine need, but it can also potentially be used contrary to the purpose for which it was introduced into labor legislation. For example, the term “impermissible reassignment” is mentioned in literature, and it occurs in situations of workplace harassment.³⁶ In such cases, reassignment occurs without genuine justified reasons in the work process and the organization of work and aims to place the employee in less favorable working conditions, most often in order to pressure them to initiate employment termination on their own, although such harassment may also take the form of calculated reassignment of the employee to a position that is certain to be abolished in the near future.³⁷ For this reason, in the labor market, the institute of employee reassignment can potentially be used outside the purpose, objective, and framework of the law.

Reassignment to another position in domestic law is one of the active employment measures that affirms employment stability.³⁸ In the collective

³⁵ Kovačević, LJ. (2016). *Valjani razlozi za otkaz ugovora o radu*. Belgrade: University of Belgrade, Faculty of Law, Publishing Center, 453.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Kovačević, T. (2024). „Izmenjena elementa ugovora o radu“, doctoral dissertation (unpublished). Belgrade: University of Belgrade, Faculty of Law, 360.

dismissal procedure, the employer must offer suitable alternative employment to all employees at risk of redundancy if another position is available or becomes available during this procedure.³⁹ In this regard, the difference between reassignment as an employment measure and “ordinary” reassignment carried out for various objective or subjective reasons, depending on the needs of the work process and the organization of work, is that reassignment as an employment measure constitutes “compulsory” reassignment, which the employer is obligated to offer to the employee if it is at all possible, since in some legal systems an employer may terminate an employee for economic reasons only if reassignment to another position was not possible.⁴⁰

In this regard, it is necessary to point out a serious flaw in the Labor Law of the Republic of Serbia, which places employees in an exceptionally unfavorable position by prescribing, as an employment measure, not reassignment to “another suitable position,” but only to “another position,”⁴¹ which gives rise to different interpretations as to whether the omission of the term “suitable” reflects the legislator’s intent or if it is legislative oversight.⁴² The Labor Law, in the part relating to employment measures,⁴³ does not use the term “suitable,” and the same is true of the provisions prescribing possible grounds for offering to an employee an employment contract amendment, associating the term “suitable” with “ordinary” reassignment, but not with an amendment for the purpose of reassignment as an employment measure.⁴⁴ This very definition of employee reassignment as an employment measure calls into question the entire concept of these measures and the purpose for which they are introduced, thereby supporting the view that the position to which the employee is reassigned in order to resolve the redundancy may not be suitable. However, the position of domestic courts is that the absence of the qualifier “suitable” in the statutory provisions nevertheless constitutes legislative oversight, so an unsuitable job can constitute a lawful employment measure only with the consent of the redundant employee.⁴⁵

³⁹ Kovačević, T. (2024). „Izmenе elemenata ugovora o radu“, doctoral dissertation (unpublished). Belgrade: University of Belgrade, Faculty of Law, 361.

⁴⁰ Martinon, A. (2005). *Essai sur la stabilité du contrat de travail à durée indéterminée*. Paris: Dalloz, 48, 119.

⁴¹ Art. 155, para. 1, point 5 of the Labor Law.

⁴² Lazarević, A. (2019). „Radni sporovi u vezi sa kolektivnim otpuštanjem zaposlenih i metodi za njihovo rešavanje“, doctoral dissertation (unpublished). Belgrade: University of Belgrade, Faculty of Law, 287.

⁴³ Art. 155, para. 1, point 5 of the Labor Law.

⁴⁴ *Ibid.*, Art. 171, para. 1, point 1.

⁴⁵ Judgments of the Supreme Court of Cassation in cases: Rev2 620/2016 of October 28, 2016; Rev2 618/2016 of January, 31 2018.

Reassignment to other positions with the employer, as an employment measure for resolving redundancy, is a consequence of a specific concept of redundancy adopted in domestic law, according to which redundancy is tied to the position, rather than to the work environment as a whole.⁴⁶ Therefore, an employer who, due to technological, economic, or organizational changes in the company, has reduced the number of positions, is obligated to determine all employees in those positions as redundant and to offer available jobs, according to pre-established criteria, to employees who meet certain conditions.⁴⁷ It is important that redundant employees transition seamlessly to new jobs in order to avoid long-term unemployment, which emphasizes the importance of preventing unemployment as well as the importance of training and education.⁴⁸

REASSIGNING A REDUNDANT EMPLOYEE TO ANOTHER POSITION

Employee reassignment can have positive aspects, such as more efficient management of the employees' work, because the employer can assign employees to positions that better match their skills and qualifications. Reassignment can encourage employees' professional development, and it can serve as an alternative to dismissal in the event of reorganization. Reassignment can also have negative aspects because employees must adapt to a new position and new work tasks, which can reduce work productivity. By their very nature, changed circumstances must be extraordinary and unforeseeable, so circumstances whose occurrence the employer could have anticipated in the ordinary course of events cannot be considered a valid basis for amending an employment contract. In such situations, the employer may offer the employee a change to the agreed-upon working conditions, i.e., the conclusion of an employment contract amendment. Legitimate grounds are embodied in the employer's business and organizational needs and give rise to a legitimate right to amend the agreed-upon working conditions because otherwise the employer would suffer damage

⁴⁶ Lubarda, B. (2013). *Radno pravo – rasprava o dostojanstvu na radu i socijalnom dijalogu*. Belgrade: Faculty of Law, University of Belgrade, Publishing Center, 581.

⁴⁷ Lazarević, A. (2019). „Radni sporovi u vezi sa kolektivnim otpuštanjem zaposlenih i metodi za njihovo rešavanje“, doctoral dissertation (unpublished). Belgrade: University of Belgrade, Faculty of Law, 286.

⁴⁸ Borghouts–van de Pas, I., Bosmans, M., Freese, C. (2021). Unemployment prevention: The role of Human Resource Management in job–to–job transitions in the event of redundancy. *European Journal of Social Security*, 23(2), 104.

that would directly affect their market position.⁴⁹ In this regard, it should be emphasized that every employment contract has its essential and ancillary elements. The essential elements include the performance of specific tasks, which is why it is important that the employment contract clearly states which specific job the employee will do for the employer. Namely, performing tasks includes the employer's right to issue instructions regarding work tasks and duties, and to supervise the employee's work. The employee's most important work obligation is to perform the agreed-upon tasks for the employer, i.e., to make themselves available to the employer.⁵⁰ When entering into employment, for the sake of transparency and predictability of working conditions, the employer's primary obligation is to provide the employee with one or more written documents containing information on the essential elements of the employment contract, i.e., employment relationship.⁵¹ The same applies in the case of amending an employment contract. Namely, when events occur that disrupt the expectations of the contracting parties regarding regular operation so that the purpose of the contract can no longer be achieved, it should be amended. Since an employment contract not only establishes but also governs the employment relationship, such changed circumstances require amending certain contractual provisions. However, the circumstances under which an employment contract may be amended and the procedure for amending it are precisely defined by legal regulations in a large number of countries, including the Republic of Serbia, in order to protect the interests of employees, as the weaker party in the employment relationship, from possible abuse. Amendments to agreed-upon conditions can relate to two legal circumstances: the first is reassignment to another suitable position (with the same employer or another employer, with the option of the same place of work or another place of work), and the second is amending the agreed-upon conditions regarding how the salary is determined.⁵² For an employment contract to be amended, the law prescribes certain conditions, such as a written offer clearly stating what is being amended in the contract, for what reasons, and a deadline for the employee to respond to the employer's offer. One situation involving the amendment of an employment contract is employee reassignment. The Labor Law of the Republic of Serbia stipulates that an employment contract may be amended only by mutual consent. In this sense, any unilateral imposition of amendments to the employee's

⁴⁹ Kovačević, T. (2024). „Izmene elemenata ugovora o radu“, doctoral dissertation (unpublished). Belgrade: University of Belgrade, Faculty of Law, 354.

⁵⁰ Lubarda, B. (2013). *Radno pravo – rasprava o dostojanstvu na radu i socijalnom dijalogu*. Belgrade: Faculty of Law, University of Belgrade, Publishing Center, 330.

⁵¹ Kovačević, LJ. (2021). *Zasnivanje radnog odnosa*. Belgrade: University of Belgrade, Faculty of Law, Publishing Center, 948–949.

⁵² Kovačević Perić, S. (2015). *Aneks ugovora o radu – izmena ugovorenih uslova rada*. *Radno i socijalno pravo*, 53(7–9), 359.

working conditions constitutes a breach of the employment contract by the employer. An exception to this rule exists only in the case of temporary reassignment,⁵³ when the employee's consent is not required, and a unilateral statement of will by the employer is sufficient. Namely, if a certain task must be performed without delay, an employee may be temporarily reassigned to other suitable positions by a written decision, without an offer of an amendment, for a maximum of 45 working days within a period of 12 months. Therefore, temporary reassignment requires that there be a specific task that must be completed urgently and without delay, and, on the other hand, in order to prevent abuse of this institute, the legislator prescribes a time limit for such reassignment. However, permanent employee reassignment must be the result of genuine needs of the work process and the organization of work, and the offer to conclude an employment contract amendment must contain the grounds that necessitated such reassignment. It is important to note the position of the Supreme Court of Cassation regarding the content of the offer, when the offer does not fully and lawfully include and explain all the elements due to which the employee is offered reassignment, i.e., specific, reasoned grounds for the offer and reassignment are not stated, given that the employer is obligated to explain which changes in the work process and the organization of work constitute the grounds for offering an employment contract amendment, then there is no basis for termination of the employment contract.⁵⁴ Namely, employee reassignment must be the result of genuine needs of the work process and the organization of work,⁵⁵ and the offer to conclude an employment contract amendment must also contain those grounds, which constitute a condition for employee reassignment. In addition, these grounds must be specified by stating facts from which the needs of the work process and the organization of work arise, and it is necessary to state the facts that justify the reassignment.⁵⁶ Thus, the Supreme Court of Cassation concludes that when the employer offered the employee the conclusion of an employment contract amendment for the purpose of reassignment, stating that the grounds include a reduced workload and the needs of the work process and the organization of work, this constitutes a general formulation without an explanation of those grounds and must be linked to what, in the particular case, served as the actual grounds for the reassignment.⁵⁷ Therefore, it is important to point out that, when delivering an offer for the conclusion of an

⁵³ Art. 172a of the Labor Law.

⁵⁴ Judgment of the Supreme Court of Cassation, Rev 2 No. 968/2017 of May 25, 2017.

⁵⁵ Art. 171 of the Labor Law.

⁵⁶ Judgment of the Supreme Court of Cassation, Rev 2 No. 968/2017 of May, 25 2017.

⁵⁷ *Ibid.*

employment contract amendment, the employer is obligated to explain in detail what changes in the work process and the organization of work are the grounds for making this offer (for example, an increased workload in the positions where the employee is being reassigned and, at the same time, a reduced workload in the positions where the employee is currently working; more rational use of the employee's work capacity; amendments to the rulebook on the organization and systematization of jobs; etc.). This serves to prevent abuse of the employer's discretionary right to offer the employee amendments to the agreed-upon working conditions on this basis.⁵⁸ The employee can either conclude the amendment in order to remain employed and then seek a judicial assessment of its lawfulness or refuse the offer to conclude the amendment. Acceptance or non-acceptance of the offer and signing the amendment is not a condition for judicial protection in a dispute seeking annulment of the decision to terminate the employment contract. The Labor Law has not conditioned or limited the employee regarding how they can present reasons for the unlawfulness of the amendment, regardless of the content of Article 172, paragraph 4 of the Labor Law, because the purpose of this rule is to strengthen the protection of the employee, as the weaker contracting party, not to restrict their rights. Therefore, after accepting the amendment, the employee may seek its annulment by filing a lawsuit and may assert that it is unlawful both in the lawsuit and throughout the entire civil proceedings seeking annulment of the decision on terminating the employment contract.

The Labor Law precisely determines the steps that an employer must take in the event of concluding an employment contract amendment. It provides that the employer is obligated to provide the employee with a written notice together with the amendment.⁵⁹ The written notice must contain: 1) the grounds for the proposed amendment; 2) the deadline within which the employee must respond, which cannot be shorter than eight working days; and 3) the legal consequences that may arise from not signing the amendment.⁶⁰ The written notice delivered to the employee serves as an offer to amend the employment contract; thus, when the employer provides the employee with an employment contract amendment without first making an offer to conclude the employment contract under amended conditions and when it does not contain the reasons for such a decision, such an amendment is unlawful.⁶¹ This raises the question as to what happens when an employee refuses to accept the offer

⁵⁸ Ministry of Labor, Employment and Social Policy, Opinion No. 011–00–975/2006–07 of September 6, 2006.

⁵⁹ Art. 172 of the Labor Law.

⁶⁰ *Ibid.*, Art. 172, para. 1.

⁶¹ Judgment of the Supreme Court of Cassation, Rev 2 1379/2013 of December 18, 2013.

of an employment contract amendment. There is a statutory presumption that the employee has refused the offer if they do not sign the amendment within the period specified by the employer in the written offer, which cannot be shorter than eight working days.⁶² If the employee refuses the offer to sign the amendment, the statutory conditions are met for the employer to terminate the employment contract. The employee's refusal to sign the amendment to the employment contract is considered a justified reason for termination relating to the employer's needs.⁶³ The employer is obligated to caution the employee in writing of the legal consequences of refusing to conclude the amendment, namely, the termination of the employment contract.⁶⁴ In doing so, our legislator establishes the employee's duty to respond to the employer's offer and treats the employee's silence as non-acceptance, since the law presumes that the employee has refused the offer if they do not sign it within the prescribed period.⁶⁵

CONCLUSION

Employee reassignment is an important measure in the field of human resource management, aimed at ensuring optimal use of the workforce, increasing productivity, and meeting the needs of employers and employees. This measure is often applied in situations where there is a need to adapt to business changes, resolve internal personnel issues, or improve work organization. Reassignment includes a job change within the same company, which may result in changes in work tasks, responsibilities, work environment, or the place of work. Reassignment can be temporary – when an employee is reassigned for a certain period of time due to exceptional circumstances, and permanent – when the job change is made without a time limit, as a permanent amendment of an essential element of the employment contract. In the first situation, employee reassignment can be carried out without the employee's consent, while in the second situation, the employee's consent is required. As regards reassignment for the purpose of resolving redundancy, although the Labor Law of the Republic of Serbia establishes a certain legal framework

⁶² Art. 172, para. 4 of the Labor Law.

⁶³ *Ibid.*, Art. 179, para. 5, point 2.

⁶⁴ Ministry of Labor, Employment and Social Policy, Opinion No. 011-00-672/2006-02 of October 26, 2006.

⁶⁵ Kovačević, LJ. (2015). Pravne posledice upućivanja ponude za izmenu elemenata ugovora o radu, sa posebnim osvrtom na premeštaj zaposlenog. *Pravo i privreda*, 53(4-6), 831.

for applying this institute, there are still flaws in the statutory solution. The legislator does not define employment measures and does not specify to which positions an employee can be reassigned, which can be a source of abuse by employers. The Labor Law should precisely state that positions offered as an employment measure must be “suitable,” because the absence of such wording is a source of potential ambiguities and abuse by employers. On the other hand, if the legislator believes that an employment measure can also include reassignment to a position requiring lower qualifications than those held by the employee whose work is no longer needed, then this must be stated unambiguously, and an employee who refuses such an employment measure should have the right to severance pay. Another way to improve the position of employees in cases of collective dismissal is to strengthen the capacity of the labor inspectorate. The work of the labor inspectorate improves working conditions and ensures the protection of rights arising from employment.⁶⁶ The labor inspectorate is an indispensable mechanism for promoting decent work and ensuring labor standards in the workplace.⁶⁷

It can be concluded that employee reassignment is an effective mechanism for dealing with redundancy, but it requires careful planning and implementation. Employers should ensure transparency of the process, employee consent, and compliance with legal regulations in order to achieve a balance between employees’ interests and business objectives. When properly implemented, this measure can contribute to the stability and growth of the organization while simultaneously improving employees’ work experience.

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⁶⁶ Radovanović, V. (2023). International standards and authorizations of labor inspection in agriculture in case of termination of employment relationship. *Economics of Agriculture*, 70(1), 323.

⁶⁷ Radovanović, V., Radovanović, J. (2024). Minimum wage – the rule instead of the exception in the labor market. *Pravo – teorija i praksa*, 41(1), 95.

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