



Sarajevo Office

No: **Ž-SA-06-870/10**

Date: 02.02.2011

Radio-Television of the Federation of BiH
12 Bulevar Meše Selimovića
71 000 Sarajevo

R E C O M M E N D A T I O N

upon complaint of Duška Jurišić

Radio-Television of the Federation of Bosnia and Herzegovina

I. INTRODUCTION

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter referred to as: the Institution), on 22.06.2010 received a complaint of **Duška Jurišić** and registered it under number: Ž-SA-06-870/10 for mobbing at workplace committed by the Radio-Television of the Federation of Bosnia and Herzegovina (hereinafter referred to as: RTV FBiH).

Provisions of the complaint indicate that complainant, having her unexpectedly dismissed from her position of RTV FBiH's Informative Program Editor at the TV Program Production and Broadcasting Department (hereinafter referred to as: IP), based on a decision of General Director no.: 4110-02/29 of 18.01.2010, was exposed to public, unargued attacks targeting her private and professional life. According to the allegations of this complaint, this included a whole series of actions committed by the RTV FBiH that caused stress, and health problems to complainant and in general, reflected adversely to her keeping abreast with professional challenges. These actions had negative impact to complainant's economic status since it caused a drastic reduction of her salary associated with threats of being fired. What raised particular concerns, according to the allegations of this complaint, was the fact that RTV FBiH as an employer, not only took actions jeopardizing the rights of complainant, but also failed to include parties which were supposed to ensure that the rights of complainant were observed, such as the relevant Trade Union and the Employees' Council,

which deteriorated her position even further. This way complainant was separated from her working environment and distanced from her colleagues.

The complaint of Duška Jurišić was examined by the Institution of Human Rights Ombudsman within the framework of provisions of the Law on Prohibition of Discrimination¹ and the Law on Gender Equality², and international standards ratified by BiH, which comprise prohibition of discrimination, such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on Prohibition of all Forms of Discrimination against Women (CEDAW), European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol 12 to the European Convention.

II. AS TO THE FACTS

2.1. Procedure before the Ombudsman Institution

1. The Ombudsman Institution, pursuant to the provisions of Article 23 and 25 of Law on Human Rights Ombudsman of Bosnia and Herzegovina³ and Article 17 of the Rules of Procedure for the functioning of the Institution of the Ombudsman,⁴ and acting upon complaint of Duška Jurišić on 23.06.2010 asked RTV FBiH to plea as to the allegations of the complaint at hand indicating that, pursuant to Article 15 of the Law on Prohibition of Discrimination *alleged offender has a duty to prove that the principle of equal treatment or prohibition of discrimination has not been breached.*
2. On 20.07.2010, the Ombudsman Institution received an answer of the RTV FBiH, document no.: 4110-02/429 of 16.07.2010 whereby it is claimed, inter alia, *“that allegations of complainant about mobbing were not correct* pursuant to the Law on Prohibition of Discrimination, *but it is a classical dismissal normally available to an employer* and within the powers vested in him by the Statute of RTVFBiH.”
3. In the mentioned plea, the RTV FBiH points out further that *„frequent change of working posts and environments in the essential institutions of BiH, as well as media houses undisputably demonstrate quality of work done by Ms Jurišić in capacity of a journalist and editor. For such undisputable qualities Ms Jurišić was appointed to the position of an IP Editor at the TV*

¹ European Convention for the Protection of Human Rights and Fundamental Freedoms CETS No.005, opened for signing on 4/11/1950 and entered into force on 3/9/1953

² “Official Gazette of BiH” no. 59/05

³ “Official Gazette of BiH” no.: 19/02, 35/04 i 32/06

⁴ “Official Gazette of BiH” no.: 45/04.

Program Production and Broadcasting Department on 15.04.2008, and her appointment was confirmed on 10.11.2008. The said position is the most prominent editorial position at the RTV FBiH“.

4. RTV FBiH as an employer holds that ***complainant’s claims of being subjected to discrimination in the form of mobbing for the fact that the employer was entitled to offer her contract under modified circumstances*** and that complainant was offered a higher ranked and a better paid position of an Editor – Producer compared to the position of an Editor to which the employee is fully entitled.
5. RTV FBiH in its explanation sent in reply to the inquiry of the Ombudsman Institution did not put in question quality of work of its employee in question, but her relationship to the other employees and her methods of work, as they claim that her method of work was a decisive element for her appointment to the position of an IP Editor at the TV Program Production and Broadcasting Department to be recalled. This standpoint was confirmed further in the pleas of Executive Manager of the TV Program Production and Broadcasting Department, Zvonimir Jukić and the current IP Editor Željko Tica, and Reporter Sinan Šarić.
6. Although the RTVFBiH claims in its plea that the said employee was offered a higher ranked and a better paid position, emphasizes that a drastic decrease of her salary is logical since ***„the change of contract means change of salary as well, and it is also logical that a managerial position be better paid than an individual position“***.
7. RTVFBiH also denies jeopardizing of employment related legal status and the existence of threats of being fired since they claim such allegations cannot be documented, as they deny the existence of mobbing ***asking the elements of mobbing against the said employee to be reasoned and their motives to be revealed***.
8. RTVFBiH attached to its reply an explanation given by Executive Manager of the TV Program Production and Broadcasting Department of 01.07.2010 whereby he said that *„weekly show ‘Pošteno’ which was conducted by complainant Duška Jurišić was finished according to the schedule of all the periodical shows termination prior to the summer broadcasting scheme, which commenced earlier this year because of the World Football Cup (which makes complainant’s claim of „premature and unexplainable termination of the show)“*. Furthermore, in Executive Manager Jukić’s reply, with regard to the allegations of complainant about the budget of the show, it is asserted that *„in the whole period the budget was planned according to*

the quality and ratings of the show, in addition to the general expenditure plans including the savings plans imposed by the hierarchical units within the House involving the budget decrease“.

9. Statement of newly appointed IP Editor Željko Tica related to the Program Scheme fully supported the identical statement of Executive Manager of the TV Program Production and Broadcasting Department Zvonimir Jukić.
10. RTVFBiH also attached a statement of Sinan Šarić, journalist who was transferred from the production team of the show „Pošteno“ to be the Newsdesk based on an oral decision of Editor-in-Chief Željko Tica, which took place, according to the statement of journalist Šarić, two weeks following the dismissal of Duške Jurišić from her position of IP Editor with an explanation that *„there occurred redundancy in labor force in the „Pošteno” show production team.“* Journalist Šarić was also told that this decision was final and binding and not subject to delay or modification regardless to the request of complainant Jurišić for journalist Šarić to remain in the production team of the show „Pošteno“, and journalist Nadžida Čano to be appointed to „Newsdesk“. This request of complainant was refused by Editor Tica since a male voice is more necessary for the Dnevnik 2/News 2.
11. Reviewing the internal structure of the RTV FBiH, in particular its executive positions, the Institution of the Ombudsman notices that the executive function holders of the FTV are dominantly of one sex, that is, male, notably, Managing Board members, General Manager, Executive Manager, and newly appointed IP Editor replacing complainant (according to the new organizational scheme it is TV Program and Multimedia Editor), which indicates the existence of discrimination of complainant based on gender.

2.1. Proceedings before court

12. In addition to her addressing the Ombudsman Institution and having exhausted all legal remedies available internally within RTV FBiH complainant sought court protection lodging petition before the Municipal Court in Sarajevo for cancellation of the challenged Decision on Cancellation of Appointment No.: 4110-02/29 of 18.01.2010 and Decision No.: 4110-21-03/407 of 18.01.2010.
13. Acting upon request of the Association “BHN journalists” the Ombudsman Institution did monitoring of these court proceedings and found that it was fully carried out in compliance with

the provisions of Article 6 of European Convention for the Protection of Human Rights and Fundamental Freedoms, that is, complainant enjoyed her rights to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

14. On 08.11.2010 the Municipal Court in Sarajevo delivered its Judgment No.: 65 0 Rs 130008 10 Rs whereby the Court ***“finds the Decision on Cancellation of the Appointment of IP RTVFBiH Editor No.: 4110-02/29 of 18.01.2010 illegal and void, so that petitioner has to have all her rights reinstated as deriving from her Employment Contract No.: 4110-25-03/10 of 01.12.2008 ”.***

15. On 15.12.2010 the Municipal Court in Sarajevo adopted an interim measure No.: 65 0 Rs 130008 10 Rs whereby the RTV FBiH ***“is ordered to return petitioner to her position of IP Editor at the TV Program Production and Broadcasting Department at the FTV and reinstate all the rights she had enjoyed prior to the adoption of the Decision on her Dismissal”.*** This was reinforced by the Decision on the Issuance of an Interim Measure by the Municipal Court of Sarajevo of 14.01.2011 No. 65 0 Rs 130008 10 Rs. In this Decision it is highlighted that ***an appeal shall not suspend or stop the enforcement.*** In relation to this, on 17.01.2011, the Municipal Court in Sarajevo adopted its Conclusion No. : 65 0 I 182117 11 ordering the enforcement of safeguarding measures as determined by the Decision 65 0 Rs 130008 10 Rs of 14.01.2011.

2.3. Procedure after the adoption of the Court’s Judgment

16. Although the Court by its judgments ordered the RTV FBiH to return complainant to her position stressing that pending appeal would not delay the enforcement, ***the RTV FBiH, fully ignoring the court decisions and the court mechanism which is the highest system mechanism for the protection of citizens whose rights are violated in a state, refused to comply with the court decisions,*** justifying such non-compliance with its planned internal re-organization, as underlined in the Appeal from the Decision on Determination of Safeguarding Measure No.: 65-0-RE-130008-10-RS lodged before the Municipal Court of Sarajevo on 21.01.2011.

17. However, having reviewed other relevant documents, the Ombudsman Institution found that by such assertions presented in their Appeal, the FTV tries to “mislead” the court since this re-organization, at the moment of filing of their Appeal, although done in violation of the legally prescribed procedure (for such reorganization the consent of the Founder – the Parliament of the FBiH had not been obtained, and the Independent Trade Union had not been involved in

accordance with the law), had already been finished. According to this re-organization, Informative Program's Desk of the FTV FBiH TV Program Production and Broadcasting Department seized to exist including complainant's position to which she is supposed to be returned according to the Court's decision. This way, ***although in possession of the relevant court decision, complainant is additionally victimized, which sends a message that any attempt to attain one's rights will be additionally "sanctioned"***.

III. RELEVANT LAW

3.1. International standards

The International Covenant on Economic, Social and Cultural Rights⁵

Article 2

*2. The States Parties to the present Covenant undertake to guarantee that **the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.***

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(...)

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

The International Covenant on Civil and Political Rights⁶

Article 26

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, **the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.***

⁵ Adopted and opened for signing, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

⁶ Adopted and opened for signing, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

The Convention on Prohibition of all Forms of Discrimination against Women ⁷

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 11

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;(...)"

European Convention for the Protection of Human Rights and Fundamental Freedoms:

Article 14 (Prohibition of Discrimination)

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms:

Article 1 General prohibition of discrimination

1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

⁷ Adopted and opened for signing, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979. Convention entered into force on 3 September 1981.

3.2. Legislation of BiH

Constitution of Bosnia and Herzegovina⁸

Article II paragraph 1

„Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms“.

Article II/4 (Non-discrimination)

"The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Law on Prohibition of Discrimination

Article 2

(Discrimination)

Discrimination, in terms of this Law, shall be every different treatment including every exclusion, limitation or preference based on real or assumed features towards any person or group of persons on grounds of their race, skin colour, language, religion, ethnic affiliation, national or social origin, connection to a national minority, political or any other persuasion, property, membership in trade union or any other association, education, social status and sex, sexual expression or sexual orientation, and every other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or realization, of rights and freedoms in all areas of public life.

Prohibition of discrimination shall be applied to all public bodies, all natural and legal persons, in public and private sector, in all spheres, especially: employment, membership in professional organisations, education, training, housing, health, social protection, goods and services designated for public and public places together with performing economic activities and public services.

Article 3

(Forms of Discrimination)

Every different treatment on grounds defined in Article 2, i.e. every action or failure to act when a person or a group of persons is put, has been or could be put into a less favourable position unlike some other person or group of persons in similar situations shall be considered to be direct discrimination.

Every situation, in which, an apparently neutral provision, criteria or practice has or would have the effect of putting a person or group of persons into an unfavourable or less favourable position comparing to other persons shall be considered to be indirect discrimination.

Article 4

(Other Forms of Discrimination)

(...)

Mobbing shall be considered every form of non- physical harassment at working place with repetitive actions that have humiliating effect on a victim and aim for or has degradation of employee's working conditions or professional status as a consequence.

(...)

⁸ „Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina“

Article 6

(Scope of Application)

*This Law shall apply to actions of all public bodies at the level of the state, entity, canton and Brcko District of BiH, municipal institutions and bodies, and legal persons with public authorities, as well as to the action of all legal and natural persons, in all spheres of life, but especially in the following fields: Employment, work and working conditions, including access to employment, occupation and self-employment, **working conditions, remuneration, promotions and dismissals;***

(...)

h) Public information and media; (...)

Article 7

(Central Institution for Prevention of Discrimination)

*Central institution competent for protection from discrimination is the Ombudsman for Human Rights of Bosnia and Herzegovina (hereinafter: **BiH Ombudsman**). (...)*

Within its competences, the BiH Ombudsman shall have the competence to:

(...)

Give opinions and recommendations aiming to prevent and combat discrimination, and suggest appropriate legal and other solutions to the competent Institutions in BiH; (...)

Article 15

(Burden of Proof)

In cases when a person or group of persons provide facts in proceedings from Article 12 of this Law, corroborating allegations that prohibition of discrimination is violated; alleged offender shall have a duty to prove that the principle of equal treatment or prohibition of discrimination has not been breached.

Article 18

(Protection of Persons who Report Discrimination or Participate in Proceedings)

A person who reported discrimination or participated in legal proceedings for protection from discrimination shall suffer the consequences of such report or participation.

The Law on Gender Equality in Bosnia and Herzegovina

Article 1

This Law governs, promotes and protects gender equality and guarantees equal opportunities for all in both public and private domain, and prohibits direct and indirect discrimination on the grounds of gender.

Article 2

The sexes have equal rights.

Full gender equality is guaranteed in all sectors of society, particularly in the fields of education, economy, employment and labour, social welfare, health care, sport, culture, public life and the media, regardless of marital or family status.

Discrimination on the grounds of gender and sexual orientation is prohibited.

Article 3

For the purposes of this Law, discrimination on the grounds of gender is defined as all juridical or effective, direct or indirect distinction, privilege, exclusion or restriction on the grounds of gender as a result of which the recognition, exercise or enjoyment of a person's human rights and freedoms in the political, educations, economic, social, cultural, sports,

civil and all other domains of public life are denied or curtailed.

Discrimination may be direct or indirect.

Direct discrimination on the grounds of gender occurs when a person has been, is, or may be treated less favourably on the grounds of gender than another person in the same or a similar situation.

Indirect discrimination on the grounds of gender occurs when apparently neutral legal standards, criteria or practices that are equal for all have the effect of leaving a person of one sex disadvantaged by comparison with a person of the other sex.

Standards, criteria or practice that may be objectively justified by the achievement of a lawful aim proportion to necessary and justified measures shall not be regarded as discrimination on the grounds of gender.

(...)

Article 7

Everyone shall be equal on the basis of gender in the employment process.

All forms of discrimination on the grounds of gender in the employment process, the advertisement of vacancies, selection procedures, employment and dismissal are contrary to the provisions of the Law other than in the cases stipulated by Article 3 paras. 5 and 6 of this Law.

Article 8

Prohibited discrimination on the grounds of gender at work and in employment is defined as:

- *failure to pay equal wages and other benefits for the same work or work of equal value;*
- *failure to ensure promotion at work on equal terms;*

(...)

- *failure by an employer to provide work premises, ancillary facilities and equipment appropriate to the biological and physical needs of employees of both sexes;*

(...)

- ***organizing work, the allocation of tasks or other conditions of work or dismissal from work so that on the grounds of gender or marital status an employee is left in a less favourable position than other employees;***

- *any other act constituting any form of direct or indirect discrimination as defined in Article 3 paras. 3 and 4 of this Law.*

An employer is required to undertake effective measures to prevent harassment, sexual harassment and gender discrimination at work and in employment as set out in para. 1 of this Law, and may undertake no measures against an employee by reason that that employee has brought proceedings for harassment, sexual harassment or discrimination on the grounds of gender.

Article 9

General and specific collective agreements should comply with the provisions of this Law and ensure equal opportunities regardless of gender.

Trade unions and associations of employers will have a particular role to play in ensuring equal protection of the right to work and equal conditions of recruitment and shall ensure that there is no discrimination on the grounds of gender among their members, both direct or indirect.

The Law on Human Rights Ombudsman of Bosnia and Herzegovina

Article 1

1. The Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the Constitution of Bosnia and Herzegovina and the international treaties appended thereto, monitoring to this end the activity of the institutions of Bosnia and Herzegovina, its entities, and the District of Brčko, in accordance with the provisions of the present Law.

Article 2

1. The Institution shall consider cases involving the poor functioning of, or violations of human rights and liberties committed by, any government body.

2. The Institution shall act either on receipt of a complaint or ex officio.

VII. Obligation to Co-operate with the Institution

Article 25

1. Government bodies are obliged to provide the Institution with preferential assistance in its investigations and inspections.

X. Recommendations

Article 32

1. An Ombudsman may make recommendations to government bodies...

I. FINDINGS AND OPINION BY THE OMBUDSMAN

As it could be concluded from the facts presented, in concrete case there are two legal issues: violation of right from area of labour relations, which is subject to court dispute and existence of discrimination in form of mobbing on the ground of sex and victimization. Ombudsman Institution, following its mandate of central institution for protection against discrimination, set forth by Article 7 of the Law on Prohibition of Discrimination, focused its attention at existence of discrimination and proofs from other procedures were used only where necessary for ombuds-investigation. Allegations contained in complaint filed with Ombudsman Institution are primarily related to the period following dismissal of the complainant from position of editor-in-chief of informative program and are exclusively related to discrimination. Ombuds-investigation has shown the following:

Although the Institution in its request forwarded to RTV FBiH underlined provisions of Article 15 of the Law on Prohibition of Discrimination, according to which, where there is suspicion of discrimination, burden of proof is on responsible party alleged, RTV FBiH in its explanation completely ignored this legal provision and even requested *argumentation as to what elements of mobbing were pointed against the employee, and what was the motive. The Law on Prohibition of Discrimination, and in particular international standards, are explicit regarding the burden of proof, which particularly applies to identification of motive, since it is completely irrelevant for proofing existence of discrimination.*

1. FTV, as indicated perpetrator, in its explanation failed to prove that act of dismissal from the position of editor-in-chief of IP and timely earlier stop of talk show “Pošteno”, particularly in relation to similar TV shows of such type, explaining this act by summer TV scheme, an through introduction of two new extraordinary shows in the same term, removal of cooperators, non-allocation of new concrete working tasks, as well as individual acts did not disturb the complainant, which, due to their continuity, short-term frequency, are considered to be mobbing as an form of discrimination. RTV FBiH failed to prove that all actions, for which the complainant believes that they constitutes mobbing, are false and that they have never happened. Unfortunately, proofs presented by the complainant show that the responsible party did everything to make the complainant feels “undesirable” in its working surroundings and that she has to go away. Because of this the complainant felt fear

amplified by the fact that she was even exposed to certain media attacks based on ethnic ground and complainant's employer did not do anything to protect her, and this resulted in stressful experiences of the complainant, negatively reflecting on her physical and psychological health, due to which she had to seek a medical assistance.

2. Particularly problematic is contradictory statement by RTV FBiH, according to which the complainant is of outstanding professionalism and, accordingly, was allocated to the post of editor-in-chief of IP, and that the problem actually comes from communication with her collaborators. This is quite significant, since executive director stated and confirmed before court that arrangement of interpersonal relationships and managing of human resources is in his job description and working tasks, consequently, that "executive director is competent for human resources". This leads to conclusion that executive director, failing to ensure professional management of human resources, accused the complainant for poor interpersonal relationships, which was argumentation for her dismissal and removal from her working surroundings.
3. Although Ombudsmen Institution focused on discrimination in concrete case, it is still important to say that Labor Inspector of Canton Sarajevo determined certain employer's omissions in application of regulations from labor area, and these are in connection with Article 23 of the Law on Employee Council⁹ From aspect of discrimination this is an important fact, since it points the finger at existence of intention for creation of environment in which complainant started to feel bad and became undesirable at work, and since those persons who, according to Article 23 of the Law on Employee Council, has to be consulted were excluded from consultative process.¹⁰

⁹ „Official Gazette of FBiH”, no:38/04

¹⁰ Article 23.

“Before taking decision essential for the rights and interests of the employees an employer shall consult the Employee Council on intended decision, particularly in the cases of:

- adoption of work rules;*
- employer's intention to, due to economic, technical or organizational reasons, cancel the contracts of work to more than 10% employees, at least five of them;*
- plan of employment, relocations and dismissals;*
- measures for protection and safety at work;*
- essential changes or introduction of new technology;*
- annual leaves plan;*
- working hours schedule;*
- work at night;*
- remuneration for innovations and technical improvements;*
- other decisions for which collective contract envisages consultation with Employee Council on the occasion of their adoptions.”*

4. Such attitude of RTV FBiH has been continued even after taking of decision on reinstatement of complainant to her job and tasks of editor-in-chief of IP, which leads to conclusion that RTV FBiH not only failed to undertake any measures to protect the complainant but undertakes further actions, primarily concerning change of internal organization, by which working post to which the complainant should have been reinstated does not exist anymore. Accordingly, RTV FBiH does victimization of the complainant in the terms of Article 18 of the Law on Prohibition of Discrimination.

II. CONCLUSION

There is no doubt that RTV FBiH, following dismissal of complainant from the position of editor-in-chief of IP, did a series of individual actions of harassing character and which, due to their continuity in a certain time period, intensity, frequency, including exclusion of Employees Council and trade union from the procedure related to status of the complainant, are considered to be mobbing. In its explanation TRV FBiH did not offer relevant proofs, by which, in accordance with Article 15 of the Law on Prohibition of Discrimination, RTV FBiH would prove different situation.

Apart from aforementioned, RTV BiH failed to take care on equal gender representation in management hierarchy, and duty previously performed by complainant is staffed by a male, aware that complete managing hierarchy is staffed mainly by men, which constitutes discrimination in sense of provisions referred to in the Law on Prohibition of Discrimination

Non-undertaking measures for protection of the complainant, on contrary, reorganized internal organization by abolishing IP, and by this very fact working position of the complainant, too, without establishment of equivalent working post for the complainant, process of victimization of the complainant has begun.

All aforementioned affected the complainant in the way that she feels that employer treats her differently in relation to other employees of her rank and that she is exposed to a constant pressure. Such behaviour of employer results in her anxiety and certain health problems, because of which she still has to undergo medical treatment.

Human Rights Ombudsmen of BiH, based on above mentioned and in accordance with Article 7, paragraph 2, issue the following:

RECOMMENDATION

- 1. RTV FBiH should take measures to ensure implementation of court decision, Decision of Municipal Court, no: 65 0 Rs 130008 10 Rs of 08.11.2010, Decision on determination of interim safeguarding measure, no: 65 0 Rs 130008 10 Rs of 15.12.2010, Decision on determination of interim safeguarding measure, no: 65 0 Rs 130008 10 Rs of 14.01.2011 and Conclusion on determination of implementation of safeguarding measure, no: 65 0 I 182117 11 3 of 17.01.2011, and should be reinstated to her working post, which was subject to court dispute, or, in accordance with internal structures established following reorganization, should be offered an equivalent working post, which would eliminate all elements of discrimination.**
- 2. RTV FBiH, with consent of the complainant, should with Mediators Association initiate procedure of mediation to resolve all other disputable issues occurred as consequence of discrimination, which primarily applies to financial and non-financial damage suffered by the complainant, which would make a stop for further expensive court proceedings and protect dignity of both parties involved.**
- 3. RTV FBiH is to inform Ombudsmen Institution on implementation of present recommendation within 20 days upon delivery.**

Ombudsmeni BiH

Jasminka Džumhur

Nives Jukić

Ljubomir Sandić

Cc:

1x RTV BiH

1x File documentation

1x Complainant