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Sexual Harassment and Its Differentiation from Other Criminal Offences

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The publication focuses on the concept of sexual harassment. Its aim is to clarify the understanding of this concept and its place within the system of criminal law. To achieve this aim, the authors have analysed international and national regulation, regulation of other countries, as well as the legal doctrine of the branch, case law and statistical data.

Keywords: sexual harassment, sexual violence, discrimination, criminal offence, criminal law.

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Introduction

The #MeToo movement resounded in 2017 when many victims of sexual harassment or violence – both women and men – shared publicly their negative experience in workplaces when a colleague or an employer had made sexual comments or acted in a way that made the victim feel uncomfortable or humiliated.

Already in 2001, Members of the European Parliament warned that the precariousness of adult employment might cause sexual harassment and urged the Member States of the European Union to adjust their legal acts to solve this problem, as well

as to introduce measures for ensuring gender equality and increasing economic possibilities for women, which would facilitate elimination of the problem. Members of the European Parliament continued debating this issue also in the coming years, adopting several resolutions condemning such behaviour and calling for introduction of a mechanism that would help to prevent it.¹

The issue of sexual harassment has been foregrounded in the UN Convention on the Elimination of All Forms of Discrimination against Women, the Council of Europe Convention on preventing and combating violence against women and domestic violence, in several Directives of the European Parliament and the Council, defining the States' obligation to envisage liability for sexual harassment.

In view of the relevance of this problem also in Latvia, the aim of the article is to elucidate the understanding of sexual harassment and review the valid legal regulation to establish whether it ensures liability of perpetrators of sexual harassment and, if necessary, to outline possible improvements to the legal regulation.

1. The concept of sexual harassment

As noted by the Council of Europe Steering Committee for Equality between Women and Men, European States began tackling the problem of sexual harassment at work only in the 1980s, whereas in the North America it was for several years already considered to be discrimination among labour force and circles of governance.

In one of the first European studies of sexual harassment, conducted by two Belgium teams, sexual harassment was defined as “unpleasant behaviour or propositions which the person concerned knows or should know are not welcome. Sexual harassment includes unsolicited sexual advances, the request for sexual favours and other verbal or physical behaviour of a sexual nature”.²

It was also noted that the definition of sexual harassment usually comprises three components: 1) description of several examples of actions, gestures, treatment or verbal behaviour; 2) description of the victim's feelings: confusion, irritation, sense of humiliation, which may turn into a sense of being blackmailed; 3) principles, on the basis of which this conduct is condemned, e.g., the principle of prohibition of discrimination, a person's right to dignity, possibilities of equal employment, etc.³

The relevance of the issue of sexual harassment was foregrounded in the Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.⁴ It is noted in para. 8 of the Preamble to the Directive: “Harassment related to the sex of a person and sexual harassment are contrary to the principle of equal treatment between women and men; it is therefore

¹ EP plenārsesijā tiek apspriesta seksuāla uzņēmšanās Eiropas Savienībā [Sexual harassment: MEPs debate situation in the EU in plenary]. Available: <https://www.europa.eu/news/lv/headlines/society/20171023STO86603/ep-plenarsesija-tiek-apspriesta-seksualu-uzmaksanas> [last viewed 08.04.2022].

² Sexual violence against women – Contribution to a strategy for countering the various forms of such violence in the Council of Europe member states. European Committee for Equality between Women and Men. EG (91) 1. Strasbourg, 1991, p. 21.

³ Ibid.

⁴ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Official Journal, 5.10.2002 L 269/15.

appropriate to define such concepts and to prohibit such forms of discrimination. To this end it must be emphasised that these forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training, during employment and occupation”.

The concept of sexual harassment is provided also in the Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation⁵. In the context of this Directive, actions are qualified as sexual harassment “where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment”.

In the meaning of Section 29 (7) of the Labour Law⁶, the harassment of a person is the subjection of a person to such action which is unwanted from the point of view of the person, associated with his or her belonging to a specific gender, including action of sexual nature, if the purpose or result of such action is violation of the person’s dignity and creation of an intimidating hostile, humiliating, degrading or offensive environment.

Sexual harassment is a variety of sexual violence; moreover, it is characterised by taking physical or/and verbal actions of sexual nature against the victim in work or study environment, where, most often, certain subordination between the perpetrator and the victim exists. Sexual harassing need not be motivated by gratification of sexual desire.⁷ Often, the perpetrator’s motivation is creating humiliating and unpleasant conditions for the victim, most often – due to gender, to emphasize their role as an authority in the work or study environment, creating such conditions that would hinder the victim’s possibilities of growth in the case of refusal, etc. Namely, sexual harassment may also be a type of discrimination.

Division of sexual harassment into physical and verbal manifestations usually serves to emphasize the greater harmfulness of physical sexual harassment; however, verbal sexual harassment may be as harmful as physical one. I.e., as the result of verbal sexual harassment a person may experience the same feelings as following a physical offence, e.g., feelings of shame and humiliation.⁸

The examples referred to above are not exhaustive. The institution of sexual harassment is interdisciplinary and experts representing various fields express their opinions regarding it. The psychological, sociological and legal interaction of this concept is undeniable, therefore, sexual harassment can be divided into several sub-types. For example, *quid-pro-quo*, the literal translation of which is “something for something”, characterises a situation where a person, who holds hierarchic power over the victim, either provides respective benefits (e.g., concludes legal labour relations) or deprives of them (e.g., discontinues legal labour relations) for favours of sexual nature. Notably,

⁵ Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). Official Journal, 26.7.2006 L 204/23.

⁶ Darba likums: LV likums [Labour Law: Law of the Republic of Latvia]. Latvijas Vēstnesis, No. 105, 06.07.2001.

⁷ Supreme Court of the United States of America, *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 1998. Available: <https://supreme.justia.com/cases/federal/us/523/75/#tab-opinion-1960325> [last viewed 12.03.2022].

⁸ *Luzon, G. Criminalising Sexual Harassment*. In: *The Journal of Criminal Law*, 81 (5), p. 360. Available: https://heinonline.org.databases.lanet.lv/HOL/Page?collection=journals&handle=hein.journals/criml2017&tid=351&men_tab=srchresults [last viewed 09.03.2022].

in the sub-type of creating hostile environment, the relationship of subordination is not mandatory, and a person who makes comments or actions of sexual nature may not be an authority in work environment. For example, sexual harassment may be perpetrated by a colleague. Likewise, there is such a sub-type of sexual harassment as the contrapower harassment, where a person, who is in a hierarchically lower position, harasses a person occupying a higher position in work or study environment.⁹ Whatever sub-type of sexual harassment would be present in the specific case, regularity is not a pre-condition of sexual harassment, and the perpetrator and the victim need not belong to opposite genders.¹⁰

The aforementioned statements are confirmed by the comments made by the Committee on the Elimination of Discrimination against Women (hereafter – CEDW) on the UN Convention on the Elimination of All Forms of Discrimination against Women New York¹¹, explaining that sexual harassment includes such unwelcome behaviour as physical contact and advances, sexually coloured remarks, showing pornography, and sexual demands, whether by words or actions. Manifestation of sexual harassment may be humiliating and cause health and safety concerns. A case where the woman has reasonable ground to believe that her objection to sexual harassment would cause inconvenience in working environment, including, with respect to entering into legal labour relations or promotion, or when it creates a hostile working environment, is to be considered as being discriminatory.¹²

2. Legal regulation and differentiation of the concept

It was noted in the Directive of the European Parliament and the Council of 5 July 2006 2006/54/EC, reconfirming the statements made in the Directive of 23 September 2002, that sexual harassment is contrary to the principle of equal treatment of men and women, and that it is discrimination on the grounds of gender, that this type of discrimination “should be prohibited and should be subject to effective, proportionate and dissuasive penalties”.

On 18 May 2016, Latvia signed the Council of Europe Convention on preventing and combating violence against women and domestic violence or, as generally better known, the Istanbul Convention (hereafter – the Istanbul Convention)¹³. The Istanbul Convention was drafted with the aim of setting united standards for protecting women against violence and domestic violence, and the minimum measures that the State has to introduce to ensure this protection. In addition to protection against stalking, sexual violence, forced marriages, the Istanbul Convention defines the State’s

⁹ Maass, A., Cadinu, M., Galdi, S. Sexual Harassment: Motivations and Consequences. In: The SAGE Handbook of Gender and Psychology, 1st edition. Editors: M.K. Ryan and, N.R. Branscombe. [B.v.]: Sage publications, 2013, p. 342.

¹⁰ Luzon, G. Criminalising Sexual Harassment, p. 362.

¹¹ Convention on the Elimination of All Forms of Discrimination against Women New York. Signed in New York, 18.12.1979. Available: <https://www.refworld.org/docid/3ae6b3970.html> [last viewed 06.04.2022].

¹² Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003). Available: <http://hrlibrary.umn.edu/gencomm/gener19.htm> [last viewed 09.03.2022].

¹³ Council of Europe Convention on preventing and combating violence against women and domestic violence. Signed in Istanbul, 11.05.2011. Available: <https://rm.coe.int/168008482t> [last viewed 06.04.2022].

obligation to envisage liability for sexual harassment.¹⁴ The Istanbul Convention has caused widespread response not only within the international community but also in Latvia; moreover, at the time when this article was written, Latvia had not ratified the Istanbul Convention yet.

In view of the high level of prevalence of violence against women, at the beginning of 2020, CEDW, which has been established in accordance with the UN Convention on the Elimination of All Forms of Discrimination against Women, called upon Latvia to ratify the Istanbul Convention as soon as possible. By responding to the concerns expressed by CEDW, the Latvian delegation pointed out that, within recent years, Latvia had achieved significant progress in combatting violence against women and that Latvia had planned to criminalise harassment.¹⁵

Namely, Latvia already at present should ensure to a person protection against sexual harassment; however, certain problems can be discerned in both legal regulation and practice.

Section 161 of the Labour Law defines liability for violation of prohibition of differential treatment in the field of employment relationship. Pursuant to Section 161 of the Labour Law, liability sets in if the violation has been committed in the context of legal labour relationship but not within study environment, as well as only in the case where the respective situation is not regulated by the Criminal Law, in accordance with the principle of the priority of criminal proceedings, enshrined in Section 5 (2) of the Administrative Liability Law¹⁶.

In view of the explanation of sexual harassment and the regulation of Criminal Law, liability for such criminal offence should be set out in Section 149¹ of the Criminal Law, which defines liability for violation of the prohibition of discrimination, which jeopardises persons' equality in various areas of public life.¹⁷

Egils Levits explains that "prohibition of discrimination means that, with respect to exercise of an individual's rights, it is prohibited to legally differentiate between people, i.e., to define certain groups of people on the basis of a criterion included in the prohibition of discrimination, thus – a prohibited criterion." Further, it is concluded that a person's biological gender is one of the prohibited criteria, which are defined in the catalogue of the Charter's prohibited criteria, included in Article 21 of the European Charter of Fundamental Rights.¹⁸

Thus, analysis of the content of Section 149¹ of the Criminal Law allows concluding that sexual harassment is such violation of prohibition of discrimination due to gender, which is committed by a general subject or a public official [in this

¹⁴ See Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 40.

¹⁵ Committee on Elimination of Discrimination against Women. In dialogue with Latvia, Committee on the Elimination of Discrimination against Women calls for specific gender equality legislation. Available: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25546&LangID=E> [last viewed 10.03.2022].

¹⁶ Administratīvās atbildības likums: LV likums [Administrative Liability Law: Law of the Republic of Latvia]. Latvijas Vēstnesis, No. 225, 14.11.2018.

¹⁷ *Krastiņš, U., Liholaja, V. Krimināllikuma komentāri. Otrā daļa (IX–XVII nodaļa). Trešais papildinātais izdevums [Commentaries on the Criminal Law. Part Two (Chapter IX–XVII). 3rd supplemented edition]. Rīga: Tiesu namu aģentūra, 2022, 442. lpp.*

¹⁸ *Levits, E. 91. Visi cilvēki ir vienlīdzīgi likuma un tiesas priekšā. Cilvēka tiesības tiek īstenotas bez jebkādas diskriminācijas [91. All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind]. Grām.: Latvijas Republikas Satversmes komentāri VIII nodaļa Cilvēka pamattiesības. Sagatavojis autoru kolektīvs prof. R. Baloža zin. red. Rīga: Latvijas Vēstnesis, 2011., 99., 102., 111. lpp.*

context – with whom the victim is in relationship of subordination – the authors' note] or a responsible employee of an undertaking (company) or an organisation.

If this criminal offence is committed by a general subject liability sets in only if substantial harm has been caused. In this case harm that can be measured in monetary terms is not caused, but other lawful interests are significantly jeopardised.¹⁹

The Supreme Court has recognised that “[...] not every infringement upon the rights, guaranteed in the *Satversme* of the Republic Latvia, *per se*, without assessment of the infringement, can be recognised as substantial harm in the meaning of Section 23 of the law “On the Procedures for the Coming into Force and Application of the Criminal Law”. Substantial harm is to be determined on the basis of evidence, verified in the court, assessment of the type on threat to interests, [...] traits of the person, against whom threats had been directed.”²⁰ Namely, the assessment of substantial harm in cases where the harm cannot be measured in monetary terms can be subjective. In view of the nature of the criminal offence, in the case of sexual harassment it is not necessary to establish that substantial harm had been caused to the person, *inter alia*, but not only because sexual harassment may infringe upon several interests, which *per se* points to the harmfulness of the criminal offence.

Although sexual harassment is a sub-type of discrimination, the fact that sexual harassment is also a sub-type of sexual violence. In view of the above, in a case of sexual harassment, several interests are infringed upon, Section 149¹ of the Criminal Law, however, sets out liability only for violation of prohibition of discrimination.

Thus, currently, even if in practice Section 149¹ (2) of the Criminal Law could be applicable also to cases of sexual harassment, this regulation could not ensure punishment for all manifestations of sexual harassment.

Section 161 of the Labour Law defines liability for violation of prohibition of differential treatment in the area of legal labour relations, whereas Section 149¹ of the Criminal Law – for violation of prohibition of discrimination, protection of persons against sexual harassment is not ensured in practice. Namely, in accordance with the data provided by the Information Centre of the Ministry of the Interior, at the time when this article was written, no person had been made liable in accordance with Section 161 of the Labour Law, whereas, since 1 October 2005, one criminal proceeding had been initiated in accordance with Section 149¹ of the Criminal Law, which later was terminated pursuant to para. 2 of Section 377 of the Criminal Procedure Law; moreover, the description of the situation allows concluding that, in this case, another violation of prohibition of discrimination and not sexual harassment had been examined.²¹ Neither can such data be found in judicature.

It has been argued that persons could be made liable for sexual harassment in accordance with Section 11 of the Law on Administrative Penalties for Offences in

¹⁹ Luzon, G. Criminalising Sexual Harassment, pp. 359–366.

²⁰ See Article 23 of “Par Kriminālikuma spēkā stāšanās un piemērošanas kārtību”: LV likums [On the Procedures for the Coming into Force and Application of the Criminal Law: Law of the Republic of Latvia]. Latvijas Vēstnesis, No. 331/332, 04.11.1998.

²⁰ Latvijas Republikas Augstākās tiesas Kriminālietu departamenta 2016. gada 29. septembra lēmums lietā Nr. SKK-190/2016, kriminālieta Nr. 11816003310 [Supreme Court of the Republic of Latvia decision in the case No. 11816003310, SKK-190/2016]. Available: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/kriminallietu-departaments/hronologiska-seciba?year=2016> [last viewed 03.04.2022].

²¹ Data from the Information Centre of the Ministry of the Interior. Unpublished.

the Field of Administration, Public Order, and Use of the Official Language²², which defines liability for petty hooliganism, Section 231 of the Criminal Law, which sets out liability for hooliganism, as well as Section 160 of the Criminal Law, which defines liability for sexual violence, as well as Section 132¹ of the Criminal Law, which sets out liability for stalking.²³

Although sexual harassment is characterised by violation of generally accepted rules of conduct, in order to classify it as hooliganism or petty hooliganism, it must be established that, as the result of these actions, person's peace, operations of institutions or undertakings (companies) had been hindered. Thus, sexual harassment should be such that not only injures the victim but had affected also other persons. A situation like this could occur in public spaces; however, this comprises only a small number of potential cases, in view of the fact that the basic trait of sexual harassment does not have to be public character of actions or the fact that it affects also other persons, repeatedly underscoring that, most often, sexual harassment occurs in working or study environment, where relationships of subordination between the perpetrator and the victim are typical. The direct object of hooliganism as a criminal offence is public interests; however, in the case of sexual harassment, the victim's interests will always be the direct object. Hence, even if hooliganism could comprise sexual harassment, Section 231 of the Criminal Law does not cover cases where sexual harassment has occurred privately or publicly but did not affect other persons.

Likewise, Section 160 of the Criminal Law that envisages liability for sexual violence will not be appropriate grounds for making a person criminally liable for sexual harassment. Firstly, although sexual harassment may be also physical, significant feature of Section 160 of the Criminal Law is the perpetrator's motivation, i.e., gratification of sexual desire. There might be another motivation in a sexual harassment case. Namely, the aim of sexual harassment might be to humiliate or have negative impact on the victim by actions of sexual nature or comments due to gender, therefore, in the case of sexual harassment, it is of no importance whether this has been the motivation for its perpetration.²⁴

Secondly, basic feature of the criminal offence, defined in Section 160 of the Criminal Law, is physical contact with the victim's body. As noted above, sexual harassment may be also verbal, and, in such a case, Section 160 of the Criminal Law cannot ensure the respective protection.

Likewise, although in the case of sexual harassment unwelcome communication can be identified, the pre-condition of sexual harassment is not regularity of such actions, as it is in cases of stalking. Thus, the assertion that a person could be made criminally liable for sexual harassment in accordance with Article 132¹ of the Criminal Law does not withstand criticism.

Foreign criminal laws reveal diverse understandings of the definition of sexual harassment. For example, in France, sexual harassment is an injury to a person

²² Administratīvo sodu likums par pārkāpumiem pārvaldes, sabiedriskās kārtības un valsts valodas lietošanas jomā: LV likums [Law of the Republic of Latvia Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language]. *Latvijas Vēstnesis*, No. 96, 20.05.2020.

²³ Bez miesas bojājumiem neskaitās? Atbildība par seksuālo uzmākšanos – robs Latvijas likumos [Does not count without bodily injuries? Liability on sexual harassment – a gap in legislation of Latvia]. Available: <https://www.lsm.lv/raksts/zinas/latvija/bez-miesas-bojajumiem-neskaitas-atbildiba-par-seksualo-uzmaksanos-robs-latvijas-likumos.a346358/> [last viewed 10.03.2022].

²⁴ *Maass, A., Cadinu, M., Galdi, S. Sexual Harassment*, p. 342.

with the aim of obtaining favours of sexual nature.²⁵ Such criminal offence entails a sentence of deprivation of liberty up to two years, as well as monetary fine in the amount of EUR 30 000. In some cases (for example, if the victim is below the age of 15 or sexual harassment had been committed in a group), a sentence of deprivation of liberty up to even three years and monetary fine in the amount of EUR 45 000 are envisaged.²⁶ Evidently, the French legislator qualifies sexual harassment as a concept that is separate from discrimination; moreover, the type and scope of the uncompromising penalty, i.e., both the sentence of deprivation of liberty and the monetary fine, point to the understanding of the concept and harmfulness of this criminal offence in France.

In Germany, in turn, only the physical aspect of sexual harassment has been criminalised; i.e., a person is to be made criminally liable, if they have touched another person in a sexual manner and, thus, caused infringement.²⁷ The definition of sexual harassment is provided by the General Act on Equal Treatment²⁸, which states that, in the context of this Act, sexual harassment is deemed to be discrimination when an unwanted conduct of sexual nature takes place, including unwanted sexual acts and requests to carry out sexual acts, physical contact of sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, takes place with the purpose or effect of violating the dignity of the person concerned, in particular, where it creates intimidating, hostile, degrading, humiliating or offensive environment. Thus, the General Act on Equal Treatment provides that, in order to consider sexual harassment discrimination, the respective actions of sexual nature should be taken with the purpose of leaving negative impact upon a person in the particular environment.

The perpetrator's obligation to compensate for damages sets in only if the employee has complained about this type of discrimination to the respective department of the company or to the public authority. Compensation for sexual harassment at workplace does not exceed the amount of 3 monthly salaries. If sexual harassment is repeated but the employer has not ensured the protection of the person concerned against the colleagues or third persons in work environment, then the employee has the right to demand compensation for damages from the employer.

The above shows that the German legislator distinguishes the physical manifestation of sexual harassment as an action entailing criminal punishment, whereas civil law liability for other manifestations of sexual harassment, if it has happened within the framework of legal labour relations, is set out in the Federal Act on Equal Treatment, which defines the legal framework for discrimination. At the same time, the Federal Act on Equal Treatment contains the phrase "sexual action", the content of which should be clarified. In view of the restriction on the length of this article, the authors will not elaborate on it, returning to this discussion at another time.

In Lithuania, a person is to be punished for sexual harassment if, in searching for sexual contact or gratification, the perpetrator harasses a person who is in relationship

²⁵ Code pénal [Penal Code of the Republic of France]. Available: <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070719/> [last viewed 03.04.2022].

²⁶ Sciences Po, Guidelines on Dealing with Sexual Harassment. Available: https://eige.europa.eu/sites/default/files/sciencespo_guidelines_on_dealing_with_sexual_harassment_2.pdf [last viewed 07.04.2022].

²⁷ Strafgesetzbuch [Criminal code of the Federal Republic of Germany]. Available: https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html [last viewed 03.04.2022].

²⁸ General Act on Equal Treatment. Available: https://www.gesetze-im-internet.de/englisch_agg/englisch_agg.html#p0101 [last viewed 03.04.2022].

of subordination with the perpetrator, in office environment or otherwise, or in other vulgar or similar manner, or by propositioning or making insinuations. In Lithuania, the respective criminal proceedings are initiated on the basis of an application by the victim or their representative, or request made by the prosecutor's office.²⁹ Sexual discrimination as a form of discrimination is regulated by "Law on Equal Opportunities for Women and Men"³⁰, which provides that sexual harassment is a form of discrimination, characterised by unwanted and insulting verbal, written or physical conduct of a sexual nature with a person, with the purpose of effect of violating the dignity of a person, in particular, when creating an intimidating, hostile, humiliating or offensive environment. As can be seen, this definition is similar to the one set out in the German Federal Act on Equal Treatment; however, the Lithuanian legislator has chosen to criminalise both verbal and physical manifestations of sexual harassment in the respective environment of subordination. If sexual harassment has occurred, for example, in working environment but without existing relationship of subordination, criminal liability does not set it. In such a case, the Labor Code of Lithuania³¹ provides that sexual harassment in working environment is a gross breach of work duties, for which unilateral termination of legal labour relation is possible.

Examination of regulation of foreign countries allows to conclude that cases of sexual harassment are criminalised on the basis of different criteria. I.e., in Germany, criminal liability is envisaged only for physical manifestations of sexual harassment, whereas France and Lithuania envisage criminal liability for sexual harassment also without a physical contact. Although legal regulation on sexual harassment differs in various Member States of the European Union, the majority of States have consolidated the concept of sexual harassment as a form of discrimination, which entails certain legal consequences, even if the respective manifestation has not been criminalised. In the majority of States, at least some manifestations of sexual harassment have been criminalised.

Presumably, the Latvian legislator should develop such criminal law regulation that would comprise all possible types of sexual harassment, irrespective of their objective manifestations and purpose that the perpetrator wanted to achieve by their actions, thus ensuring protection to a person both in a situation where sexual harassment occurred with the aim of gratifying one's sexual desires, as well as in situations where it is linked to violation of the prohibition of discrimination and manifests itself as an infringement upon equality and self-respect.

Summary

1. In view of the considerations presented in the article, the authors hold the opinion that the Latvian legislator should decide on both defining sexual harassment as a separate criminal offence in the Criminal Law and on specifying Section 1491 of the Criminal Law, providing that sexual harassment in environment where raising objections to respective comments or actions could influence the victim's legal labour or any other relations (e.g., the study process) or in any other way worsen the victim's role in the respective environment should be deemed discrimination.

²⁹ Criminal Code of the Republic of Lithuania. Available: https://www.legislationline.org/download/id/8272/file/Lithuania_CC_2000_am2017_en.pdf [last viewed 04.04.2022].

³⁰ Republic of Lithuania Law on Equal Opportunities for Women and Men. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/488fe061a7c611e59010bea026bdb259> [last viewed 04.04.2022].

³¹ Labour Code of the Republic of Lithuania. Available: <https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.391384/> [last viewed 07.04.2022].

If subordination in relations between the perpetrator and the victim is established, in view of the perpetrator's more privileged position, a more severe liability should be envisaged.

2. In such a case, the purpose of the criminal offence should be worsening the position of the other person in the respective environment. If the criminal offence has been committed with the aim of gratifying one's sexual desires, then there are no grounds for discussing sexual harassment as violation of prohibition of discrimination, in view of the fact that the purpose is one of the most significant line of demarcation between sexual harassment as a sub-type of discrimination and sexual harassment as a separate criminal offence. Moreover, such unwelcome verbal and physical manifestations should be penalised as sexual harassment also in the cases, when there is no relationship of subordination between the persons.
3. This would ensure that any form of sexual harassment is targeted, whether assessed as manifestation of discrimination or unlawful action aimed at gratifying sexual desire.

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