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PREVENTION OF HARASSMENT – INTERNATIONAL LAW PRACTICES

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The Article contains the author's view of the harassment phenomenon in the Republic of Moldova. This research aims to identify mechanisms to prevent and combat harassment at national and international level through research, understanding and learning of the concept and phenomenon of harassment. Research methods used or based on the study of different laws, scientific works of domestic and foreign authors, observation, analysis of the material subject to the investigation, conclusion and examination of CEDO judgements. At the same time, the national legislative framework has been analyzed, gaps have been identified and recommendations have been developed. An important aspect of research is taken over by international policies and their beneficial impact on defeat zones.

Keywords: harassment; human rights; legislation; society.

The ban on harassment and inciting discrimination as part of EU non-discrimination law is relatively new developments that have been introduced to allow for more comprehensive protection.

Harassment is a specific type of discrimination under EU non-discrimination directives. It had previously been treated as a concrete manifestation of direct discrimination. Its approach as a separate subject in the directives is based on the importance of drawing attention to this particularly harmful form of discriminatory treatment rather than on a change in concept. [1] Although the CEDO does not expressly prohibit harassment or inciting discrimination, it contains certain concrete rights related to this area. Harassment may thus fall within the scope of the right to respect for private and family life, protected by Article 8 CEDO, or the right not to be subjected to inhuman or degrading treatment or punishment, pursuant to Article 3, while inciting discrimination may be covered by other articles, such as freedom of religion or assembly, on the basis of article 9 or 11, depending on the context. Where these acts reveal a discriminatory reason, the CEDO will examine alleged violations of the relevant articles in conjunction with Article 14, which prohibits

discrimination [2].

EU law takes an objective/subjective flexible approach. First, the perception of that treatment by the victim is taken into account in order to determine whether an act of harassment has taken place. Secondly, even if the victim does not actually feel the consequences of the harassment, a conclusion can be drawn as long as the plaintiff is the target of the conduct [3].

To illustrate harassment, I will refer to some general considerations about harassment:

A) Moral harassment (Mobbing)

It refers to abusive or psychological behavior which lasts over time, occurs in the workplace and is manifested by repeated acts, orders or words, intended to discredit, disregard or isolate a person so that he or she voluntarily renounce his or her post and causes progressive and continuing damage to dignity or mental integrity [4].

An aggravating circumstance is when the harasser has a certain hierarchical authority in the company's structure over the alleged victim.

Moral harassment can take three forms: Descendant, when the harasser occupies a higher position than the alleged victim of harassment. Horizontal, when it occurs between employees of the same hierarchical level. Usually the harasser seeks to hinder the work of the victim, to damage his professional image and even to attribute the merits to others. Ascendant, when the harasser holds a higher hierarchical position than the alleged victim [5].

B) Sexual harassment

Sexual harassment shall be deemed to be a situation where any verbal, non-verbal or physical conduct of a sexual nature occurs which has the purpose or effect of undermining the dignity of a person, in particular where an intimidating, hostile, degrading, humiliating or offensive environment is created [6].

(c) Gender harassment

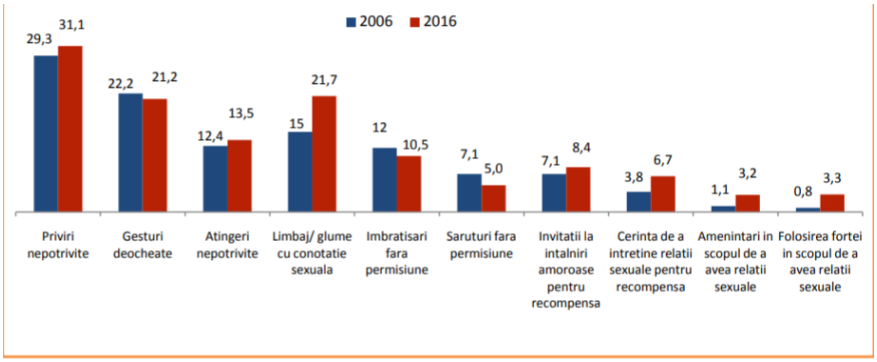
It is behavior related to the sex of a person, which has as its purpose or effect the undermining of the dignity of that person and the creation of an intimidating, hostile, degrading, humiliating or offensive environment [7].

The phenomenon of sexual harassment in the republic of moldova

Statistical data shows that every fifth female employed in the Republic of Moldova is subjected to subtle forms of sexual harassment in the workplace, and 4 out of 100 face serious forms of harassment. Although the legal framework explicitly prohibits sexual harassment in all social spheres, including in the workplace, reality shows that employed women often face abusive behavior.

According to the 2016 Gender Barometer, around 21% of employed women faced subtle forms of sexual harassment (looks, inappropriate gestures, sexual language, etc.), around 13,5% said that they had been touched in an inappropriate way, and 6,7% said they were offered sexual relations for certain rewards or favors [8].

The incidence of sexual harassment has increased over the last ten years. The comparative analysis of the data for 2006 and 2016 shows that sexual harassment has taken on proportions. Worrying is the fact that over the last decade, the share of employed women who have been subjected to serious forms of sexual harassment has increased, such as the requirement to maintain sexual relations with the promise of a reward, the use of threats or the application of force. The evolution of the phenomenon over time shows that the current legislation does not provide effective mechanisms to prevent and combat harassment in employment relationships, which determines the vulnerability of employees, particularly women [9].



Share of employed women who have been subjected to sexual harassment in the workplace, by form and by year, % source: Gender Barometer estimates, 2006 and 2016.

National legislative framework

Problem. The real magnitude of the phenomenon of sexual harassment at national level in the Republic of Moldova is difficult to identify in the light of the existing regulatory framework.

The mechanisms of protection against sexual harassment are not covered in a comprehensive and clear way because the Republic of Moldova does not have a complex regulatory framework in this area. While some legislation includes additional provisions and the obligation of different institutions to contribute, directly or indirectly, to the protection of victims of sexual harassment,

institutional and administrative measures do not provide sufficient scope for action and a sufficient strategic approach to achieve the objective of prevention and assistance.

Another problem is that the legislation of the Republic of Moldova does not explicitly prescribe the powers of the institutions empowered by law to prevent sexual harassment and to assist victims, and the imperfections of the legal framework are sometimes compensated only by institutional practices. Similarly, institutions responsible for investigating cases of sexual harassment have not approved methodical instructions or other internal acts, leading to situations of inconsistency in their actions. It is certainly difficult for specialists in this situation to take effective action to prevent sexual harassment and to assist victims, even more in partnership. The task of establishing and examining sexual harassment shall be directed at a number of officials at the same time. In accordance with national legal provisions, the person who considers himself a victim, regardless of the place where the offense occurred, may refer at least 5 authorities to initiate the procedure for examining and finding the case of sexual harassment, namely: The Police Inspectorate, the prosecution Office, the Court of Law, the Council for preventing and eliminating discrimination and Equality (CPPEDAE) and the Advocate of the People (Ombudsman) [10].

At the moment, there are no clearly regulated procedures that would allow the victim to determine the institution to which the complaint of harassment may be filed. This situation can be qualified as a positive aspect, as it gives the person more opportunities to report harassment to the authorities. At the same time, the situation in question can have negative effects: A concrete case is analyzed at the same time by two or more responsible with equal powers (the exception is the case of sexual harassment classified as a criminal offense under the Penal Code, Article 173. The express is redirected by all those responsible to the Prosecutor's Office, which has exclusive authority to examine and sanction the facts given) [11].

Policy documents on the prevention of gender-based violence do not contain clear and concrete approaches to pre-welcome and fight against sexual harassment for each institutional actor, but also for every employee of institutions involved in the prevention and assistance of victims. Regulations dealing with the prevention of sexual harassment are fragmented and confusing, with only some general terms included in various annual plans, strategies, but there is no comprehensive policy document focused on the prevention of sexual harassment. That situation creates confusion for both the competent institutions and victims in the case reporting process [12].

Harassment is qualified as a form of discrimination if the following elements are present cumulatively: (1) unwanted conduct, (2) based on a protected criterion, (3) leading to the creation of an intimidating, hostile, degrading, humiliating or offensive environment, (4) has the purpose or effect of violating dignity. (7) Law No 121 on equality, in force since 01.01.2013, lays down the following criteria protected from discrimination: Race, color, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political membership or any other similar criterion) [13].

The current Council mandate for preventing and eliminating discrimination and ensuring equality makes it difficult to investigate cases of sexual harassment. The Council is an autonomous public authority that examines complaints of all forms of discrimination, including gender. The analysis of the Regulation of its activity, established on the basis of Law No 121 on equal opportunities, pointed out that the CPPEDAE is not empowered to investigate cases of sexual harassment in the territory at the time of the report or the self-determination of the victimization. The legislation provides that upon request, members of the Council may receive more detailed information on sexual harassment within 10 working days. Thus, we note that the lack of legal provisions which would extend the Council's mandate to investigate the offense at the time of the referral/self-referral is a major impediment to finding, correctly qualifying the case of sexual harassment and establishing the examination procedure.

Problem. The current legislation does not contain a typology of acts of sexual harassment that would allow victims to identify the institution empowered to investigate the case.

The legislator considered sexual harassment to be such a serious form of harassment that it regulated it separately, qualified it as discrimination based on other protected grounds than sex. Since 2006, in Moldova Law no. 5 was adopted on gender equality, through which, for the first time at national level, the notion of sexual harassment has been defined. Sexual harassment is defined from 2010 by Law No 5 on ensuring equal opportunities for women and men and by the Labor Code as ‘any form of physical, verbal or non-verbal conduct of a sexual nature which harms the dignity of the person or creates an unpleasant, hostile, degrading atmosphere, humiliating or insulting’ [14].

At present, the division of forms of sexual harassment can only be inferred according to the purpose of the harassment: (i) where the act of sexual harassment is intended to induce a person to sexual relationships or other unwelcome sexual actions committed by threat, coercion, Blackmail (under the Penal Code, Article 173), the act is classified as a criminal offense (we can infer

that it is serious), by the subsequent application of the sanctions stipulated in the Penal Code, and (ii) when the purpose of sexual harassment is different from that indicated above, Under Law No 121 the act is classified as an act of gender discrimination (subtle and medium form), thus applying sanctions other than those provided for in the offense.

Classification of sexual harassment by its severity is not clearly provided for by national law. Dividing cases of sexual harassment according to the forms of this phenomenon is as follows: (i) subtle forms - the action takes place verbally, (ii) medium forms - the application of physical actions, but not endangering the sexual life of the aggressor, and (iii) serious forms - the action endangers the sexual life of the aggressor. The analysis of the national legislative framework, in the light of this division, has made it possible to find that the attribution of sexual harassment to any of these forms is left to the discretion of those legally mandated to establish and examine the act of harassment, but is not expressly provided by the national regulatory framework. [15]

Including regulatory provisions that would allow for the classification of forms of sexual harassment by severity level, would encourage victims to report sexual harassment. Furthermore, the designation of the responsible authority, separately for each form of harassment, will allow: (i) more specific and in-depth examination of cases of harassment and the development of separate recommendations/decisions/sanctions of a deterrent nature for the continuation of the phenomenon concerned, (ii) failure to examine the same case of sexual harassment concurrently by several authorities, (iii) to encourage victims to report all forms of sexual harassment, including subtle and medium-sized ones [16].

The specific legal framework against sexual harassment in the workplace does not expressly provide for clear tools to monitor the incidence and prevalence of abuse of employment relationships. Questioning employees/employees would be an effective way of checking the level of employment security of employed persons. At the stage of the planned controls, the State Labor Inspectorate could check whether the internal procedures provide for specific measures to combat sexual harassment at work and whether they have the effect of creating a safe working environment. This would be possible by applying anonymous employee/employee survey. Currently, the question is not provided for by national legislation, but it is not prohibited to be applied by the monitoring officers. However, as long as this evidence tool for sexual harassment is not provided for by applicable law, courts may give them critical consideration during the examination of those cases. However, in cases of

discrimination, examined both before the Council for the Prevention and elimination of discrimination and the equal opportunities and by the Court of first instance, the statistical data obtained in the result of the inquiry may be used as evidence.

Legislative gaps have also been identified in the tripartite cooperation between employers, employees and trade unions. Article 10 of the Act No 5 on equal opportunities for women and men specifies provisions for cooperation between the employee, the employed person and the trade unions [17], including with regard to ensuring gender equality in employment relations. However, specific provisions to integrate measures to combat sexual harassment into employment relationships either in collective agreements or in collective agreements are not provided for in the national regulatory framework. We note that trade Union bodies have the right to monitor employers' compliance with regulations which contain labor law provisions at all establishments, including cases of discrimination on grounds of sex, and collective agreements would come as a solution for employers to comply with measures to combat sexual harassment in employment relationships [18]. At the same time, the experience of European countries (Slovenia, Italy, Denmark, France, Bulgaria) shows good practices to be followed in this respect.

Over the last decade, the specific legal framework for the phenomenon under consideration has not changed fundamentally compared to international practice. At international level, the following regulatory adjustments have been introduced to facilitate the process of identification and subsequently the fight against sexual harassment: (i) more specific definition of sexual harassment, including the concepts such as bullying, Mobbing, boss (e.g. Germany, Italy, Poland, Olandaşi Malta); (ii) in addition to verbal and physical sexual harassment, it has included virtual abuse, which is increasing recently due to the increased use of social networks and information technologies (Denmark). It should be noted that national practice has shortcomings in this chapter [19].

International policies and their impact

At European level, 3 types of government intervention to prevent harassment in the workplace are distinguished, divided by the complexity and impact of the measures implemented: (i) fragmented interventions (early-stage development policies), (ii) non-systematic policies (there is a developed legislative framework but less reinforced job-specific policies), (iii) systematic policies (well-strengthened public policies specific to violence and harassment issues, with long-term effects. The Republic of Moldova ranks among the

countries with fragmented interventions. While there is a legislative framework that addresses workplace harassment, interventions are general, policies are at an early stage of development and specific measures or procedures are missing at company level to prevent or remedy the effects of harassment [20].

In countries with reinforced policies to prevent sexual harassment, a high level of reporting of these cases is testifying. The European working conditions Survey (EWCS) 2015 provides information on the European adverse social behavior reporting rate (ASB). A detailed analysis of these data shows that there is a direct link between the type of policies implemented and the reporting rate. Thus, in countries with reinforced anti-harassment policies, the reporting rate of adverse behavior in the workplace is high, which also shows a high level of awareness of the phenomenon (a model typical of Scandinavian countries, the Netherlands, etc.).

The more consolidated national policies to prevent sexual harassment, the more frequently strategies and procedures are developed at company level. If we look at the relationship between the legislative measures per country and the policies applied, we see that countries that have adopted strategies to prevent long-term harassment are characterized by a large number of companies that put in place internal procedures to deal with harassment and violence at work.

European Union Member countries apply specific procedures and measures to prevent harassment in the workplace, which could also be taken up by the Republic of Moldova. In line with Directive 2002/73/EC, EU [21] countries have made clear commitments to prevent and reduce the prevalence of sexual harassment in the workplace by applying different measures or procedures at both national and company level.

At national level

Clear judicial and administrative enforcement procedures ("enforcement") compensation or rehabilitation measures (including financial compensation)" means national equality agencies/institutions empowered to investigate cases of harassment.

At enterprise level

"Preventive measures (adoption of codes of practice within companies, Specifically addressing workplace harassment: Definitions, forms/behaviors considered abusive, rights and obligations of managers and employees, complaint procedures, penalties, etc.; publication and dissemination of the policy document to employees and managers) there are also the following measures: Remedial measures, formal or informal complaints measures, advice and assistance/person of "trust" at company level, periodic investigations, collective agreements [22].

General recommendations

Developing and adopting the regulatory framework for the prevention of sexual harassment, which would lead to: The concept of sexual harassment (including the definition of all forms of sexual harassment, as well as bulliyng, virtual harassment, etc.); the institutions responsible and those to be involved, their powers at central and local level; how to plan and carry out activities to prevent and combat sexual harassment; how to carry out actions in partnership, including involving non-state actors and private individuals in actions to prevent and combat sexual harassment. The development process is to be participatory.

Review of existing legal acts with a view to clearly dividing the responsibilities and powers of the institutions responsible for preventing, investigating and combating sexual harassment, according to the place where the act takes place (in public, at work, educational establishments, etc.), but also providing concrete tools to monitor the implementation of the legislation indicated and its effects. The exercise requires that powers be clearly specified in the basic laws of public institutions and that too-general regulations are excluded.

We suggest that national public policies, specific to tackling sexual harassment, should provide for prevention, intervention and rehabilitation. At European level, a generic model is proposed grouping in 3 steps actions to help overcome the incidence of sexual harassment: (i) primary intervention stage (prevention actions) - organization of information campaigns on the phenomenon and its effects, carried out in all fields of activity and at all levels of employment; organization of surveys of opinions to identify the population's perception of the phenomenon and its incidence; developing and implementing internal anti-discrimination, anti-harassment and anti-violence procedures by both private companies and public institutions, etc.; (ii) secondary phase (intervention actions) – compulsory inclusion in the curriculum for all levels of education of subjects relating to the reduction and elimination of all forms of discrimination, harassment, sexual abuse, violence; Training of both those responsible for investigating harassment cases (police, public prosecutors, Council for Prevention, elimination of discrimination and Equality, the Ombudsman) and the public on the stages of reporting and examining the case of harassment; development and implementation of mediation and conflict clearance procedures, etc. (iii) the tertiary phase (rehabilitation actions) – development and provision of psychological counselling services to victims; organization of counselling activities for victims and abusers/aggressors [23].

Adoption of the operational plan (by the responsible central institution and the institutions attracted/involved) to prevent and combat sexual harassment for

a given calendar year. Review and specify in regulations and job records of specialists the specific tasks in the field of prevention, investigation and combating sexual harassment. The development and adoption by the central institutions of methodological instructions for each category of specialists and, where appropriate, the training of specialists in the investigation of cases of sexual harassment and victim assistance.

We recommend extending the mandate of the Council for preventing, eliminating discrimination and ensuring equality by (I) complementing Law No 121 on equality, Chapter III, with investigative powers in the territory at the time of the referral or self-referral of harassment, (ii) mandatory enforcement of recommendations/decisions given by the Council to the subject of the discrimination case [24].

As a result, supplementing Law 5 on ensuring gender equality with the obligation of the employer/employee to stipulate in collective labor agreements the provisions that come directly to reduce the manifestation of harassment in the field of work, we consider it to be an urgent necessity. Currently, Article 10 of that law provides for employer cooperation with employees and trade Union representatives, including by specifying the mandatory insertion of gender equality procedures in individual labor agreements, collective agreements and collective agreements. Sexual harassment is a subject that trade unions should actively address, as it often concerns subordinate relationships in the workplace. Thus, the addition of Article 10, point 2 of Law No 5 with the express provision of the obligation to integrate into collective labor agreements and collective agreements the procedures necessary to reduce the manifestation of sexual harassment in employment relationships must be completed. It is worth noting that more than 1/3 European countries have incorporated specific provisions to combat the phenomenon of collective labor (the case of Slovakia, Denmark, France, Italy, etc.). In Denmark, around 80% of workers (100% in the public sector and 70% in the private sector) are protected by collective agreements, which specific address violence, hardware and stress in the workplace.

International practices:

France

Legislative act - French Labor Law criminal code

The institution responsible - Police, the prosecutor of the Republic (Procureur de la Re´publique).

Monitoring mechanism, policies - harassment complaints are addressed to the police who present them to the prosecution de la re´publique. He may order an inquiry on a particular case. Depending on the results of the investigation, the

prosecutor either continues proceedings or no longer takes action in this respect. Enterprises with at least 50 employees must conclude a collective Unit Labor Agreement (CBA) or adopt a Gender Action Plan at work, otherwise they are subject to financial penalties.

Good practice in combating the phenomenon - in France, violence and harassment at work are included in sectoral collective agreements as well as in the company-wide gender equality negotiations. In 2013, the public sector adopted the first collective bargaining agreement (CBA) on the issue of "gender equality at work", including provisions on the employer's obligation to prevent any gender-based violence at work. In addition to defining concepts, legal obligations and sanctions, the agreement provides for training sessions for all civil servants and managers. [25]

Cyprus

Law on the equipment treatment for men and women in Employment and Voctional training Law (No. 205), and in Article 2002 thereof.

The institution responsible - the Committee on Gender Equality in the field of employment and vocational training shall be an advisory body.

Monitoring mechanism, policies - the Gender Equality Committee records complaints from employees and sends them to the Labor Inspectorate to initiate investigations.

The Labor Inspectorate is responsible for carrying out equality inspections at work and for the practical application of the law.

Good practice in combating the phenomenon - information and awareness-raising courses for employers and management have been carried out in Cyprus. With regard to the establishment of complaints procedures, the Gender Equality Committee shall be responsible for examining matters falling within the scope of the equal opportunities legislation. He shall accept and represent complaints which he shall, if necessary, submit to the Chief Inspector for proper consideration. Collective agreements apply in Cyprus, but they are not a legal obligation.

Conclusion.

In the light of the above, I find it hard to believe that a problem is easier to prevent, rather than to combat. For this reason, I support the idea that in order to stop and reduce the harassment rate among the Republic of Moldova's population, it is necessary to create a synergy between the legislator, civil society, private institutions, in order to develop a structured plan to improve the existing problem. Only through joint efforts will we be able to contribute to the achievement of a healthy Community in the Republic of Moldova.

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