Gender Perspectives in Law 4

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Gender Perspectives in Private Law

Gender Perspectives in Law

Volume 4

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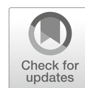

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Abstract The problem of gender-based violence and harassment at work poses a universal threat to the integrity and dignity of people in the world of work, and in particular to disproportionately affected categories of workers, such as women workers, and their equal opportunities in the labour market, including accessing, remaining and advancing in employment. The need for protection against such a universal threat has already been addressed by certain international instruments (including recent international labour standards) and regional instruments. Nevertheless, legal approaches in comparative law are strongly influenced by the concepts of protection against "harassment and sexual harassment" enshrined in the legal systems of the United States on the one hand, and the European Union and various European states on the other.

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The national legislation of North Macedonia addresses the issues of harassment and sexual harassment, as well as psychological harassment (i.e.mobbing) as issues, principally covered by the regulations in the fields of labour and equal opportunity and non-discrimination law. Hence, one of the main goals of this article is to contribute to an improved definition and understanding of the concept of gender-based harassment in the context of the Macedonian national legislation, and particularly of the legal regimes through which it can be addressed. Authors of this article also analyze the no less important elements in the system of protection against harassment, such as prevention and protection and legal remedies and sanctions for perpetrators of harassment.

1 Introduction

Violence and harassment in the workplace is a negative and dangerous phenomenon which can affect all workers, irrespective of their employment status, type of work they perform, sectors in which they work (private or public, urban or rural) and the fact whether they are employed in the formal or informal economy.[1] While the term 'violence' has traditionally referred to certain physical forms of conduct or behavior (e.g. physical attacks, beating, kicking, slapping, stabbing, shooting, pushing, etc.), over the last few decades, more forms of violence and harassment at work that are mainly of non-physical nature, have become subject to regulation, including: psychological forms (e.g. manipulating a person's reputation, isolating a person, slandering and ridiculing, devaluating rights and opinions, setting impossible working goals and deadlines, underutilizing talent, etc., which can also manifest as mobbing and/or bulling) and sexual forms (e.g. all sorts of sexual assaults, blackmails, advances, comments, innuendos, etc.) of violence and harassment at work.[2] Given the wide spectrum of negative and often overlapping behaviors and practices of violence and harassment at work, any attempt to distinguish or treat these terms independently is a complex manipulation. However, despite such a setting, the first international instruments regulating violence and harassment in the world of work in an integral manner were adopted only in 2019.[3] ILO Convention No. 190 defines the term 'violence and harassment in the world of work' (which essentially encompasses two separate but functionally related terms) in the broadest sense, as a 'range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical,

[1] International Labour Organization (2020a).

[2] Chappell and Di Martino (2006); International Labour Organization (2020b).

[3] See International Labour Organization Convention No. 190 and Recommendation No. 206 on Eliminating Violence and Harassment in the World of Work.

psychological, sexual or economic harm, and includes gender-based violence and harassment.'[4]

Historically, regulating the prevention and protection against gender-based violence and harassment at work has been a long-standing aspiration of many workers' organizations, NGOs, women's political movements. Two key factors are frequently mentioned in literature that contribute to creating early normative responses aimed at targeting this phenomenon. Such are: the progress of feminism in industrialized countries (an occurrence which corresponds to the period of adoption of significant regulations in the field of equal opportunities and non-discrimination, but also the publication of various studies related to harassment and sexual harassment at work[5]) and feminization of labour force (whereas, the greater participation of women in the labour market led to more reported incidents of harassment at work and primarily of a sexual nature).[6] As a result of these factors, international human rights instruments and international labour standards have begun to address gender-based violence and harassment (particularly sexual harassment) in the field of employment since the 1980s.[7] Four decades later, the aforementioned Convention No. 190 of 2019 has defined gender-based violence and harassment in the world of work as 'violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment'.[8] Although, it is evident from the text of the Convention that gender-based violence and harassment is a subcategory of violence and harassment in the world of work, the Convention does not exclude the possibility of qualifying these terms as a single

[4] ILO Violence and Harassment Convention, 2019 (No. 190), Art. 1, para. 1, a.

[5] Notable studies which have raised public awareness and strongly influenced the development of movements for protection against moral or psychological harassment in the workplace in Europe, are the publication of the Swedish psychologist Heinz Leymann '*Psychological violence at work places. Two explorative studies*' of 1984, and of the French psychologist Marie-France Hirigoyen '*Le harcelement moral, la violence perverse au quotidien*' of 1998. See Guerrero (2004); Lippelt (2010). In the United States, one of the first sources to use the term 'sexual harassment' is a book by psychiatrist Caroll Brodsky, entitled 'The harassed worker'. See Schultz (1998).

[6] Husbands (1992).

[7] Chronologically, the most significant activities at the international level in relation to protection against gender-based violence and harassment, and in that regard against sexual harassment in employment, are the result of the work of the International Labour Organization and the UN Committee for the Elimination of Discrimination against Women (CEDAW). Although the ILO Convention No.111 of 1958, on Discrimination (Employment and Occupation) does not explicitly mention sexual harassment, the ILO Committee of Experts on the Application of Conventions and Recommendations, in its 1988 General Report, categorizes sexual harassment as a form of discrimination, which can be further subcategorized in the 'quid pro quo' and 'hostile work environment' form. In 1989, the ILO, at the *Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment*, identified the issue of sexual harassment as a health and safety matter. Also worth mentioning is Recommendation No. 19 on Violence against Women, adopted by CEDAW in 1992, which for the first time provides a clear definition of the term sexual harassment and outlines the actions that need to be taken to address this phenomenon.

[8] ILO Violence and Harassment Convention, 2019 (No. 190), Art. 1, para. 1, b.

or separate concepts, depending on the legal approach in national laws.[9] Hence, having in mind the different cultural and normative contexts in which the concepts of 'violence and harassment', i.e. 'gender-based violence and harassment' in the world of work are developed, in the comparative section and the section dedicated to North Macedonia of this paper, we primarily use the more frequently applied term 'harassment' (i.e. 'gender-based harassment', understood as harassment related to sex, i.e. gender and sexual harassment).

Gender-based violence and harassment are often a consequence of circumstances and risk factors that are closely related to social norms, values and stereotypes that cause gender inequalities, discrimination against women and unequal power relations between men and women.[10] While anyone can be victim of such violence and harassment (e.g. persons who do not conform to gender stereotypes or to traditional societal perceptions based on gender, such as LGBTI persons), the greater majority of reported cases concerns women.[11] Women who are particularly exposed to and vulnerable to gender-based violence and harassment in the workplace are: single mothers, divorcees and widows, young women and those entering the labour market and entering into non-standard employment contracts, women from ethnic minorities, women with disabilities, women working in male-dominated jobs, etc.[12] The current health crisis caused by the Covid-19 pandemic has further increased the risks and incidence of gender-based violence and harassment at work or in relation to work. Covid-19 lockdowns, curfews and restricted mobility forces people to stay at home, and when possible work from home. This often leads to spikes in domestic violence, particularly against women.[13]

The issue of recognizing, preventing and protecting against gender-based violence and harassment at work is becoming an increasingly relevant and important issue within the Macedonian society and legal system. The social background of North Macedonia is largely characterized by circumstances and factors such as stereotypical gender roles and norms according to which a woman is expected to be subordinated to her husband, partner, father, brother and all other male family members; to carry out nearly all unpaid care work; to take care of children and other family and household members, etc.[14] These factors have a negative 'echo' in relation to gender equality and slow down the systemic fight against gender-based violence and harassment at work. Gender inequality in the Macedonian labour market is also evident. According to the data of the North Macedonia's State Statistical Office for the second quarter of 2021, the employment and the economic activity rate is significantly lower among women (40.9% and 45.2% respectively)

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[9] ILO Violence and Harassment Convention, 2019 (No. 190), Art. 1, para. 2.

[10] Pillinger (2019).

[11] Pillinger (2019).

[12] Bakirci (1998).

[13] International Labour Organization (2020d).

[14] Dimusevska and Trajanovska (2017).

compared to men (59.1% and 67.2% respectively).[15] Women also receive lower wages compared to men, with the gender pay gap standing at 17.3% according to data from 2015.[16]

The legal framework for addressing gender-based violence and harassment at work in North Macedonia is subject to slow but gradual making over a decade and a half. The term 'violence' is primarily placed in the context of criminal law and regulated in the Criminal code.[17] Its specific forms to which women are disproportionately more exposed than men, such as domestic violence and violence against women, are subject to the regulation of certain special laws. These laws are the Law on prevention, elimination and protection against domestic violence of 2014[18] and the Law on prevention and protection against violence against women and domestic violence of 2021[19] as an implementing act of the Council of Europe Convention on preventing and combating violence against women and domestic violence, ratified by North Macedonia's Assembly in 2018. Instead, Macedonian legal system uses the concept of protection against harassment at work as an integral concept (including gender-based harassment), first within the general regulations on labour relations and equality and non-discrimination, and then with the special regulation on protection against workplace harassment. Anyhow, the legal framework is still characterized by a series of conceptual ambiguities, obscurities and contradictions that refer to almost all the more significant issues related to protection against gender-based harassment at work, starting from the definition and prevention and protection to legal remedies and sanctions for perpetrators of harassment.

2 Gender-Based Harassment at Work Through the Legal Approaches in the United States and the European Union

While the all embracing notion 'violence and harassment', i.e. 'gender-based violence and harassment' in the world of work is of a more recent date, and is an expression of the inclusive, integral and gender-responsive approach of the ILO Convention No. 190, for many years at a comparative level, a number of different terms (e.g. psychological harassment, moral harassment, mobbing, bulling, etc.[20]), have been used, that are usually unified around the terms 'harassment' and 'sexual harassment' at work. In principle, there are two dominant paradigms on which the explanation of the terms harassment and sexual harassment is built. The first paradigm (primarily represented in the US legal system) is based on the concept of

[15] State Statistical Office of the Republic of North Macedonia (2021).

[16] Petreski and Mojsoska-Blazevski (2015).

[17] Official Gazette of the Republic of Macedonia, no. 37/1996.

[18] Official Gazette of the Republic of Macedonia, no. 138/2014.

[19] Official Gazette of the Republic of North Macedonia, no. 24/2021.

[20] International Labour Organization (2020c).

perceiving harassment, solely as a form of discrimination, while the second (primarily represented in EU law and continental European countries), although, treating harassment (and particularly sexual harassment) as a form of discrimination is based on the concept of understanding harassment as a broader issue of protection of dignity.[21] While the US concept is designed to protect against discriminatory harassment (primarily in the fields of racial and sex-based harassment), the concept of the EU and European continental law, although containing an anti-discrimination component, generally develops on a broader scale and leans towards protection against any form of workplace harassment (discriminatory and non-discriminatory) that applies to all workers, not just certain groups of workers (for example, members of minority groups or women).[22]

2.1 Harassment and Sexual Harassment in the United States

The United States is the first country to recognize and prohibit harassment in employment and work since the early 1970s, at the outset, as a form of racial discrimination, i.e. harassment.[23] Despite the initial resignation and reluctance of US courts to classify sexual harassment as sex discrimination,[24] the second half of the 1970s marked the beginning of the first significant judgments which identified sexual harassment (or, more specifically, its 'quid pro quo' form that is always associated with a specific tangible detriment or economic loss for the employee) as prohibited discrimination based on sex.[25] In 1980, the United States Equal Employment Opportunity Commission (EEOC) issued its non-binding Guidelines on Discrimination because of sex, which defines sexual harassment as: 'unwelcome sexual

[21] See Friedman and Whitman (2003).

[22] See Lerouget and Heber (2013).

[23] The first case in which U.S. jurisprudence recognizes a race-based hostile work environment, violating Title VII of the U.S. Civil Rights Act of 1964 (so-called Anti-discrimination Act), which provides for protection against discrimination in employment on the grounds of race, color, religion, sex or national origin is the case of "*Rogers v. EEOC*" (1971). The case is about a plaintiff (Hispanic worker, employed in a hospital) who alleges that her optometrist employers had discriminated against her on the basis of national origin by segregating patients along ethnic lines. See Shultz (1998).

[24] Five of the first seven cases that considered the question related to sexual harassment, found that the U.S Civil Rights Act of 1964, did not cover sexual harassment as a form of sex-based harassment. The positions taken by the courts in explaining the behavior of the defendants (usually male supervisors) in the context of the claims brought by the plaintiffs (usually female subordinates) for protection against sexual harassment were also striking. The courts considered (i.e. relativized) the relationship between the parties concerned, i.e. the behavior of the defendants, as '*nothing more than a personal proclivity, peculiarity or mannerism*' (as in the case of *Corne v. Bausch and Lomb*, (1975), or "*a controversy underpinned by the subtleties of an inharmonious personal relationship*" (as in the case of *Barnes v. Train*, (1974). See Henken (1989).

[25] See *Williams v. Saxbe* (1976); *Barnes v. Costle* (1977).

advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature', which commonly occur in two general forms: '*quid pro quo*' (when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual) and 'hostile work environment' (when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment).[26] The significance and progressive nature of the EEOC Guidelines are reflected in the broad and comprehensive way of defining sexual harassment as unlawful sex discrimination. Namely, the guidelines asserted that in the EEOC's view, sexual harassment does not exist only in cases resulting in employment retaliation (*quid pro quo*), but also in cases where it has the effect of creating an intimidating, hostile or offensive working environment, without there being a specific material or economic loss for the person exposed to such behavior.[27] Under the influence of the EEOC Guidelines US courts begun to adopt the first judgments sanctioning sexual harassment in the hostile work environment form as sex discrimination.[28] Gender-based harassment that occurs in the hostile work environment form, does not always have to be motivated and expressed in a sexual connotation. Female employees also face a broad range of harassing conduct that is motivated by gender, but not by sexual desires (e.g. unwarranted criticism, rudeness, ridicule, insults, and epithets directed at women motivated from a gender-based animus).[29] Gender-based harassment of the hostile work environment type, is more likely to be found in male dominated jobs and professions (e.g. police, firefighting, etc.).[30] US courts protect female employees against this kind of harassment as well,[31] but are reluctant to offer protection against bullying, i.e. workplace harassment in general, unless the perpetrator's conduct is motivated by the victim's membership to a protected class (e.g. race, colour, national origin, religion, sex,

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[26] Hebert (1995).

[27] See Rubenstein (1983).

[28] One of the landmark cases in this regard, where the US Supreme Court first recognized a claim of hostile work environment sexual harassment was '*Meritor Say. Bank v. Vinson*', In *Meritor*, the plaintiff (Ms. Mechelle Vinson, employed as an assistant branch manager with Meritor Savings Bank) alleged that Mr. Sidney Taylor (the manager of the office where she worked) subjected her to a three-year pattern of sexual harassment and abuse. Ms. Vinson estimated that she had sexual intercourse with Mr. Taylor between 40 and 50 times over a three-year period, stressing that her consent to engage in the sexual intercourse was due to fear of losing her job. In addition, Ms. Vinson alleged that Mr. Taylor publicly fondled her, exposed himself to her, and even forcibly raped her. Although the District Court accepted the defendant's argument that no harassment existed because Ms. Vinson 'voluntarily' engaged in sexual intercourse with her supervisor, the Supreme Court rejected the District Court's assessment of 'voluntariness', and instead asserted that the alleged sexual advances were unwelcomed and the plaintiff neither invited nor appreciated them. See Juliano (1992).

[29] Thorpe (1990).

[30] McColgan (2007).

[31] E.g. *Hall v. Gus Construction Co*. See Westman (1992).

age or disability).[32] Although the main difference between sexual harassment and gender harassment is based on the choice of the 'weapon used' (whether or not the perpetrator used conduct of a sexual nature against the victim), all in all, the demarcation line between the two types of harassment is often thin. Both of them are motivated by the same purpose (to 'show' women their place and role in the workforce) and have similar effects (to offend, humiliate and embarrass).[33]

2.2 Harassment and Sexual Harassment in the European Union

The process of regulating harassment and sexual harassment under EU law goes through a long and evolutionary journey. While Council Directive 76/207/EEC on equal treatment for men and women of 1976,[34] did not explicitly recognize the terms 'harassment related to sex' and 'sexual harassment' as forms of sex discrimination, these terms were mentioned in a number of soft-law acts adopted in the late eighties and nineties of the last century.[35] Much of their content that addressed harassment related to sex and sexual harassment was based on the findings and suggestions of the so-called Rubenstein Report from 1987. However, the proposal of the Report for the adoption of a separate Directive on the Prevention of Sexual Harassment,[36] never resulted in the recommended normative solution at the Community level. Instead of a special and purposeful Directive on Sexual Harassment, the European Union, at the beginning of the new millennium, addressed the issue of harassment, including sexual harassment, through several Directives in the field of equal opportunities and non-discrimination: the Council Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin (so-called Race Equality Directive) of 2000 which defines harassment related to racial or ethnic origin,[37] the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (so-called Equality Framework Directive) of 2000 which defines harassment related to religion or belief, disability, age or

[32] Burga de las Casas (2019).

[33] Hebert (1995).

[34] Official Journal L 039, 14/02/1976 P. 0040 – 0042.

[35] During this period, harassment related to sex and sexual harassment is subject to regulation by the EC soft law, through a number of legislative acts, such as: the European Parliament's Resolution on Violence against Women of 1986; the European Council Resolution on the protection of the dignity of women and men at work of 1990; the European Commission's Recommendation on the protection of dignity of women and men at work with the associated Code of Practice on measures to combat sexual harassment of 1991; the European Council Declaration on the implementation of the Commission Recommendation and Code of Practice of 1991; The European Parliament Resolution on a new post of a confidential counsellor at the workplace of 1994; etc.

[36] See Michael Rubenstein (1988).

[37] Official Journal L 180, 19/07/2000 P. 0022 – 0026, Article 2.3.

sexual orientation as regards employment and occupation[38] and the Directive 2002/73/EC of the European Parliament and of the Council of 2002 amending Council Directive 76/207/EEC which defines both the harassment related to the sex of a person and sexual harassment and which in 2006 was amalgamated into the so-called Gender Equality Directive (recast) 2006/54/EC of 2006.[39] The Gender Equality Directive (recast), under the term 'harassment' recognizes 'unwanted conduct related to the sex of a person with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment,[40]' while under the term 'sexual harassment', 'any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment'.[41] The Directive implicitly addresses the so-called form of 'quid pro quo' harassment, defining it as a separate form of 'less favorable treatment based on a person's rejection of or submission to' harassment or sexual harassment.[42] The fluid status of harassment related to sex and sexual harassment (reflecting both the concepts of protection against 'discrimination' and protection of 'dignity') is also mirrored in the way in which these issues are defined and regulated in the Directive in question. Formally, although they are deemed to be types of sex discrimination, they do not entirely reflect the common concept of discrimination which requires the element of actual or hypothetical comparison (i.e. comparator) to exist.[43] Contrastive, this element was considered to be sought at a time when sex-related harassment and sexual harassment were covered only by EU soft law acts[44] which implicitly referred to the application of Council Directive 76/207/EEC on equal treatment.

Although, as evidenced by previous legal acts, harassment and sexual harassment in the EU are regulated in the context of anti-discrimination legislation, the European legislator has never intended to deviate from the perception of these negative behaviors as a violation of the principle of women's, i.e. peoples' dignity. In their regulatory approach, the social partners at EU level are also supporting the perception of harassment and sexual harassment as an integral part of the concept of protection of dignity and integrity (in terms of health and safety at work) of workers. This is evidenced by the Framework Agreements adopted by the European Social Partners, among which, of particular importance in the context of protection against

[38] Official Journal L 303, 02/12/2000 P. 0016 – 0022, Article 2.3.

[39] Official Journal L 204, 26.7.2006, p. 23–36.

[40] Art. 2.1 (c).

[41] Art. 2.1. (d).

[42] Art 2.2. (a).

[43] Ellis and Watson (2012).

[44] See Burga de las Casas (2019).

harassment and sexual harassment in the workplace is the Framework Agreement on Harassment and Violence at Work of 2007.[45]

2.3 Other Significant Issues Related to Harassment and Sexual Harassment

A common denominator of the national legal systems that recognize and regulate harassment and sexual harassment is the definition of these phenomena as 'unwelcome' or 'unwanted' behaviors. Yet, in practice, it could be sometimes difficult to qualify certain behavior as unwelcome if there is no clear and unequivocal resistance by the victim. In some cases, the unwelcome nature of the behavior that qualifies as sexual harassment is more obvious (e.g. sexist epithets, physical violence, touching of intimate parts of the body, etc.), compared to others, (e.g. social invitation that is not inherently offensive).[46] Although the term 'unwelcome' behavior is a reflection of the terminology used in US law, and the term 'unwanted' conduct derives from EU law, there is essentially no significant difference in the qualification of these terms. In the United States, there is a wealth of jurisprudence in determining potential lines of distinction between the criterion of 'unwelcomeness' (which is sometimes deemed to exist even if the victim 'voluntarily' complies with certain behavior of a sexual nature)[47] and what is coined as a 'provocation' by the victim.[48] In these regard, Courts typically use a variety of tests (such as the 'totality of the circumstances test', that takes into consideration all the circumstances in assessing the nature of the behavior, or the 'incitement/solicitation test', that assesses whether the victim incited/solicited the behavior through her choice of clothing, actions or personality),[49] which are often rightfully criticized

[45] The Framework agreement on harassment and violence at work was signed by the social partners: BUSINESSEUROPE, CEEP, UEAPME and the ETUC on 26 Aprlil 2007. The Framework Agreement, *inter alia*, provides a range of different forms of harassment and violence at work such as: physical, psychological and/or sexual; one-off or more systematic patterns; among colleagues, between superiors and subordinates or even by third parties such as clients, customers, patients or students; from minor cases of disrespect to more serious acts of harassment or violence, including criminal offences. See Blanpain (2014).

[46] Husbands (1992).

[47] See *Meritor Say. Bank v. Vinson.*

[48] E.g. in McLean v. Satellite Technology Services, Inc. (1987) where a female employee regularly offered to engage in sexual acts with other employees and often lifted her skirt to show her supervisor that she was not wearing undergarments, a single attempt by her supervisor to hug and kiss her was held not to be sexual harassment. See Cihon and Castagnera (2011).

[49] E.g. in Rabidue v. Oscola Refining Co. (1986), the court found no hostile environment even though the plaintiff was subjected to degrading language and sexually explicit posters. By describing the plaintiff's personality with a list of mostly negative adjectives, the court implied that the plaintiff's personality justified the behavior of the harasser. In Swentek v. USAir, Inc. (1987), the trial court found that the past conduct of Swentek (a flight attendant) and use of foul language meant

by feminist theorists because they pay less attention to social prejudices and shift the jury's focus from the defendant's behavior to that of the plaintiff.[50] What is also important for revealing the true nature of the contested behavior and the sanctioning of the alleged sexual harasser, is to determine whether such behavior is 'severe and pervasive enough' to qualify as sexual harassment. It is necessary to determine whether the victim subjectively perceived the behavior to be, and that it was, indeed, objectively offensive from the perspective of a 'reasonable person', or more precisely, from the perspective of a 'reasonable women' (because women and men may have different perceptions of what constitutes sexual harassment).[51] For a conduct to be considered 'sufficiently severe and pervasive', it does not have to cause serious psychological harm to the victim.[52] The more frequent the harassing conduct occurs, particularly over a short period of time, the more likely the courts are to hold that the conduct created an abusive or hostile environment.[53] Compared to the term 'unwelcome' conduct applicable in US law, in defining harassment and sexual harassment, the EU law uses the similar term 'unwanted' conduct. Considering the dilemma of the 'subjective versus objective' perception of the sexual conduct, the term used in EU law is more in congruence with the victim's 'subjective' view of the conduct, rather than with the more 'general impression' whether the conduct constitutes unwanted sexual harassment through the prism of the harasser.[54] What really matters in the EU law is the effect of the conduct upon the victim rather than examining the effect of equivalent conduct on a reasonable person or the motive of the perpetrator.[55]

Proving that harassment, i.e. sexual harassment, was committed is a complex procedural operation. Compared to the ordinary cases of discrimination in which the existence of two elements (harm and causation) is generally sought, in cases of sex-related harassment and sexual harassment, several additional elements are required to be satisfied. Such element are: the determination that the conduct of which complaint is made is *unwanted*; has the purpose or effect of violating the dignity of the complainant and creates an "intimidating, hostile, degrading, humiliating or offensive environment".[56] In any case, a general rule deriving from the European Equal Treatment Directives concerning the procedure for protection against discrimination, including harassment and sexual harassment, is that once

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that the harasser's comments were not unwelcome even though she told the harasser (a pilot) to leave her alone". However, the court of appeal, put a partial limitation on evidence of the plaintiff's past conduct, noting that where the alleged harasser was not exposed to the plaintiff's past conduct, such conduct could not form a basis for waiving legal protection against unwelcome harassment.

[50] Juliano (1992).

[51] Smith and Williams (2002).

[52] See, e.g., *Harris v. Forklift Sys*., Inc. (1993).

[53] See Goldman (2013).

[54] Lerouget and Heber (2013).

[55] Bernardt (2012).

[56] Ellis and Watson (2012).

the claimant has established facts from which an act of discrimination can be presumed to exist, the burden to prove that there is no breach of the principle of equal treatment falls on the respondent.[57] It means that, in the event of a dispute for protection against harassment or sexual harassment in the workplace, the claimant (i.e. the employee) must first present specific evidence, sufficient to establish a *prima facie* case, i.e. to indicate the existence of harassment, i.e. sexual harassment (e.g. through witness statements, medical certificates, notes, etc.), after which, the burden of proof shifts to the defendant, who has to prove that the contested conduct does not constitute harassment, i.e. that it is based on legitimate reasons that are subject to the test of proportionality.[58] Eventually, the decision is made by a competent court or other competent body, taking into account the facts established by the claimant and the defense presented by the defendant.[59]

3 Gender-Based Harassment in the Field of Employment and Work in the Legislation of North Macedonia

The issue of harassment at work has been the subject of gradual legal regulation in North Macedonia for approximately 15 years. The chronology of the regulation of harassment at work (including gender-based harassment) may be structured in three phases, in particular: first phase (2005–2009), second phase (2009–2013) and third phase (2013-present day). The first phase (2005–2009) started with the first attempt for more concrete recognition and regulation of harassment at work in North Macedonia within the frames of the 2005 Labour Relations Law[60] (hereinafter: LRL). Within this phase, *harassment and sexual harassment* were defined exclusively as forms of discrimination, i.e. discriminatory harassment. The second phase (2009–2013) covers the period of expansion of the meaning and context of harassment and results in amendments to the LRL from 2009 which established the term *psychological harassment – mobbing,* again defined as discriminatory harassment. The third phase (since 2013) marked the beginning of the cross-cutting legislative approach to harassment, under which harassment, on one hand, started to be regulated independent of the existence of any prohibited discrimination ground (primarily through the enactment of the Law on protection against workplace harassment, hereinafter: LPAWH[61]), while, on the other, it persisted as a form of discrimination (within the framework of the LRL), but also as a subject matter of the equality of treatment and non-discrimination regulations, such are the Law on equal

[57] Directive 2006/54/EC, Art.19; Council Directive 2000/78/EC, Art.10; Council Directive 2000/43/EC, Art.8.

[58] See Graser et al. (2003).

[59] See Sophie Robin-Olivier (2010).

[60] Official Gazette of the Republic of Macedonia no. 62/05.

[61] Official Gazette of the Republic of Macedonia no. 79/2013.

opportunities of women and men of 2012[62] and the Law on prevention and protection against discrimination of 2020.[63]

In Macedonian legislation, the term 'harassment', generally appears in two forms: first, as discrimination, i.e. discrimination-based harassment and second, as non discrimination-based harassment, i.e. harassment in the workplace.[64] While the former is regulated by one set of legislative acts (LRL, Law on equal opportunities of women and men and Law on prevention and protection against discrimination), the letter is governed by the LPAWH, which contains an indicative list of behaviours and activities that are not considered harassment at the workplace and among which is discrimination.[65] This division is further reflected in the 'legal channels' of protection against harassment at work. Compared to the legal channel of protection envisaged in the LRL (which only provides rules regarding the shifting of the burden of proof to the employer[66] and protecting persons who have initiated proceedings or testified during a procedure for legal protection against psychological harassment[67]), the LPAWH, establishes a more comprehensive system for reporting and resolving disputes for protection against harassment, which, despite numerous weaknesses, has emerged as the main and most important legal channel. Anyway, despite the substantial and procedural differences between the two legal regimes for regulating harassment, in practice, the line between them is very thin, or virtually inexistent. This is so because in the procedures for court redress against harassment at work, the courts are tolerating claims based both on LPAHW and LRL, and in the judgments passed they rarely belabour the existence or inexistence of discrimination in the context of the existence or inexistence of harassment at the workplace.[68] Gender-based harassment in the Republic of North Macedonia is not a separate and distinct concept of harassment, but it is regulated and developed within the broader term 'harassment' at work, which includes sexual harassment. In the last few years, the first more significant researches aimed at identifying sexual violence and harassment, including sexual harassment, have been conducted.[69] However, despite the slow but gradual development of the regulation of violence and harassment at work

[62] Official Gazette of the Republic of Macedonia, no.6/2012.

[63] Official Gazette of the Republic of North Macedonia no. 258/2020.

[64] See Каламатиев (2013).

[65] See LPAWH, Art.8, para 1, point 1.

[66] LRL, Art.11, para 2.

[67] LRL, Art.11, para 3.

[68] See: Judgments of the Appelate Court in Bitola (dated 09.10.2019, ROZH no. -834/13; dated 23.04.2020, ROZH no. -604-19;) Judgment of the Appelate Court in Skopje (dated 15.10.2014, ROZH no. -219/14; dated 15.09.2016, ROZH no. -316/15; dated 10.10.2013, ROZH no. -834/13; dated 24.10.2013, ROZH no. -775/13).

[69] According to a research conducted as part of a Study on the scope of various forms of sexual violence in the Republic of Macedonia from 2017, the following forms of sexual harassment in the workplace were recognized: abuse of position (demonstration of power); sexual blackmail (job loss); comments and jokes with sexual connotations; unwanted touches; issues of intimate life; sexually connoted proposals; exposure to pornographic material; employment based on

(including gender-based violence and harassment) and the raising of awareness of these phenomena, the impression is that they are still not sufficiently recognized by people in the country.

3.1 Defining the Term Gender-Based Harassment in the Context of Macedonian Legislation

Principally, gender-based harassment at work in North Macedonia, on the one hand, can be subsumed into harassment related to sex, i.e. gender, sexual harassment and/or psychological harassment- mobbing (as forms of discriminatory harassment), but on the other hand, it can also be encompassed by the concept of harassment in the workplace (which can appear in the forms of psychological and sexual harassment, regardless of the existence, or inexistence of a discriminatory basis, i.e. motive). While in the first case, 'gender-based harassment' is primarily regulated by the LRL in the second case, it is subject to regulation by the LPAWH.

The definition of gender-based harassment as harassment related to sex, i.e. gender, implicitly emanates from the general definition of the term 'harassment' within the LRL, which refers to any unwanted behavior caused by any of the grounds of discrimination (including sex) that aims at or constitutes violation of the dignity of the job candidate or the employee, and which causes fear or creates hostile, humiliating or offensive behavior'.[70] It is important to note that the LRL does not determine 'gender' as a separate ground of discrimination, different from sex.[71] The term 'sexual harassment' is defined in an identical manner, both in the LRL and the LPAWH. This term is defined by the abovementioned laws as 'any verbal, non-verbal or physical behavior of a sexual nature that aims at or constitutes violation of the dignity of the job candidate or employee, and which causes fear or creates hostile, humiliating or offensive behavior'.[72] Macedonian labour legislation defines the term sexual harassment in a partial way, envisaging only the so-called hostile work environment, but not the equally important quid pro quo form.[73] The need for regulating the 'quid pro quo' form of harassment, i.e. sexual harassment in the context of employment and work, is continuously indicated by the ILO

physiognomy; comparison of physiognomy between colleagues with a detailed description; ambiguous comments, etc. See Dimusevska and Trajanovska (2017).

[70] LRL, Art.9, para 3.

[71] See Kalamatiev et al. (2011).

[72] LRL, Art.9, para 4 and LPAWH, Art.5, para 2.

[73] The 'quid pro quo' form of sexual harassment in North Macedonia, is implicitly regulated under criminal law as a crime against sexual freedom and sexual morality, that is, as sexual assault by position abuse. See Association for Emancipation, Solidarity and Equality of Women in the Republic of Macedonia (2011).

supervisory bodies.[74] Compared to Directive 2006/54/EC, i.e. the Gender Recast Directive (Article 2, paragraph 1, d) and ILO Convention No. 190 (Article 1), the omission of the qualification of sexual harassment as 'unwanted/unacceptable' behavior, is also evident. The biggest dilemmas in defining the term harassment, including gender-based harassment in the field of employment and work in general, stem from the legal qualification of the term 'psychological harassment in the workplace'. This term is found in the two different legal regimes for regulating harassment at work (i.e. LRL and LPAWH), and the differences in its definition within the two laws are evident. In addition to the main *differentia specifica*, which is the status of discrimination attached to psychological harassment according to the LRL there are at least two other significant differences between the aforesaid laws. The first difference refers to the *period of time* within which the negative behaviour is recurring, that is necessary to qualify such behaviour as psychological harassment (where LRL provides for a period of at least 6 months,[75] LPAWH notes that should be recurring continually and systematically,[76] without specifying a period of time). Macedonian case law usually inclines to the qualification laid down in LRL, under which the prerequisite for the existence of psychological harassment is that the plaintiff suffered psychological harassment for a period of at least 6 months.[77] *Argumentum a contrario*, the chances of a one-off negative behaviour violating the dignity, integrity, reputation and honour of the employee being qualified as psychological harassment, notwithstanding the extent of the adverse effects it has caused, are very slim, since neither the legal framework, nor the Macedonian jurisprudence recognize such behaviour as psychological harassment. The second difference relates to potential consequences, i.e. the ultimate goal of psychological

[74] In the last 10 years, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has sent several Observations and Direct Requests to the Government of North Macedonia on the alignment of the national regulations with international standards on equality and non-discrimination. In the most recent Observation dated in 2019 in the context of the implementation of the Discrimination (Employment and Occupation) Convention no. 111, the Committee of Experts reiterated its request to the Government of North Macedonia to clarify the dilemma whether the Law on Equal Opportunities for Women and Men includes the two forms of sexual harassment in the workplace, i.e. 'quid pro quo' and 'hostile work environment'. Furthermore, the Committee of Experts, in the Direct Request dated 2020, once again requested from the Government of North Macedonia to submit information concerning: (i) the measures adopted by the labour inspectorate to prevent and address sexual harassment; (ii) the number of complaints filed and of cases detected; and (iii) the remedies available, and the sanctions imposed.

[75] LRL, Article 9-a, para 1.

[76] LPAWH, Article 5, para 1.

[77] For instance, such position has been taken by the Appellate Court in Skopje, which, in its Judgment dated 08.11.2018 (ROZH-1422/18) states that '*the plaintiff has worked at the job from the time of appointment of the defendant as the new director of the institution until the time of filing the lawsuit at hand less than six months, which is the minimum requirement for establishing the existence of psychological harassment in the workplace'*. In another case, the Appellate Court in Bitola, in its Judgment dated 03.10.2017 (ROZH-529/17), stated that '*the harassment activities should be very intensive at least once per week or should occur in the course of a longer period of time of at least six months'*.

harassment. While under LRL the ultimate goal may be termination of employment or resignation of the employee, under LPAWH, in addition to termination of employment or resignation, the ultimate goal of psychological harassment may also be causing harm to the physical or mental health and compromising the professional future of the employee. The jurisprudence, restrictively sticks with the consequences of psychological harassment laid down in LRL. In a number of litigations for protection against psychological harassment, the courts are implicitly making the qualification of certain behaviour as psychological harassment contingent upon the prior decision on termination of employment of the plaintiff (employee).[78]

3.2 *Prevention and Protection against Harassment*

The existing legal framework for prevention of harassment (including gender-based harassment) at work is regulated in a superficial way. Primarily stems from the general obligations that the LRL assigns to the employer to protect and respect the personality, dignity and privacy of the worker and ensure that no worker is a victim of harassment and sexual harassment.[79] A more specific operationalization of these principles cannot be found neither in the Law on occupational safety and health of 2007,[80] which in no provision explicitly addresses the dangers and risks that may lead to violence and harassment (including gender-based violence and harassment) at work.[81] The LPAHW provides certain general rules for the conduct of the employer and the employee at work, as well as certain general obligations and responsibilities of the employer and the employees, which are important for prevention and protection against harassment. However, the LPAWH does not oblige the employers with any provision: to adopt policies (internal acts) for protection against harassment in the workplace; to inform and consult the workers' representatives in the adoption of such policies; to train individuals exercising the authority, duties or responsibilities of an employer, to properly manage human resources and deal with requests from employees for protection against harassment; to appoint a person (employee) tasked with hearing, counselling, assisting and supporting the person who has initiated a procedure or is a victim of gender-based violence or harassment in the workplace, or the perpetrator of the harassment.

The procedure for protection against harassment in the workplace, according to LPAWH is carried out in two instances: at the employer (i.e. internal procedure) and

[78] See the following Judgments of the Appellate Court in Skopje: Judgment dated 10.10.2013 (ROZH no. -834/13); Judgment dated 15.10.2014 (ROZH no. 219/14); Judgment dated 15.09.2016 (ROZH no. 316/15).

[79] LRL, Article 43.

[80] Official Gazette of the Republic of Macedonia, no. 92/2007.

[81] LPAWH, Article10 and Article 11.

before the competent court (i.e. external procedure). The procedure for protection against harassment in the workplace at the employer (i.e. internal procedure), principally consists of two stages: a preliminary procedure and a procedure at a request for protection against harassment in the workplace (i.e. mediation procedure). The first stage, or the so-called preliminary procedure, requires submission of a written warning, i.e. addressing of the perpetrator of the harassment by the harassed person, that the harasser's conduct is disturbing,[82] or that it is inappropriate, unacceptable and unwanted.[83] The aim of the preliminary procedure is to resolve the dispute in such a manner that, following the warning, the perpetrator of the harassment shall forthwith stop the unwelcome behaviour, and the harassed person shall not instigate further procedure upon a request for protection against harassment in the workplace at the employer.[84] If the preliminary procedure fails, it is deemed that the harassed person can initiate the second stage, i.*e*. procedure at a request for protection against harassment in the workplace, which is, actually, a procedure that provides the basis for the start of internal mediation as a mechanism of peaceful settlement of the dispute at the employer (mediation procedure).

The mediation procedure is conducted by mediators appointed by the employer from its employees.[85] There are two possible outcomes of the mediation procedure. The first is that the parties agree on the selection, i.e. appointment of a mediator, and the second is that the parties fail to agree on the selection, i.e. appointment of a mediator who would conduct the mediation procedure. In case of the first outcome, the mediator should complete the procedure within 15 days.[86] The procedure may end with successful mediation (if the parties agree on the end of the harassment, recommendations and manner for removal of possibilities for further harassment), where the employer is obliged to act upon the recommendations of the agreement, and with unsuccessful mediation (where the parties fail to reach an agreement). The Law does not specify the content of the recommendations, i.e. actions that would arise therefrom. In case of the second outcome, the employer, i.e. the person authorized by the employer, is obliged, within 8 days, to deliver written notification to the person who filed the request for protection against harassment that no mediator has been selected,[87] whereupon the person who filed the request shall be entitled to legal recourse within a period of 15 days.[88] The mutual relationship and causality of the two stages (the preliminary and the mediation) of the procedure for protection against harassment at the employer (i.e. internal procedure) and their relationship and causality with the procedure for protection before the competent court (i.e. external procedure) are regulated in a vague manner. In practice it is usually

[82] See LPAWH, Article 5, para. 3.
[83] See LPAWH, Article 17.
[84] See LPAWH, Article 17.
[85] See LPAWH, Article 12.
[86] See LPAWH, Article 24, para. 5.
[87] LPAWH, Article 22, para. 2.
[88] LPAWH, Article 22, para. 3.

deemed that the preliminary procedure (written warning, i.e. address) is not a prerequisite for initiating the procedure upon request for protection against harassment in the workplace (mediation procedure) or exercising legal recourse against harassment in the workplace before the competent court. The establishment of an appropriate and effective mechanisms and procedures for internal protection against harassment in the workplace is also hampered by the superficial and underdeveloped system of mediation, which fails to determine the competences and criteria for the appointment of mediators by the employer and prescribes no obligation for the employers to provide training to the mediators.

The judicial protection against workplace harassment (i.e. external procedure) is exercised by bringing a lawsuit to the competent court. The dispute has the character of a labour dispute[89] and the provisions of the Law on civil procedure[90] apply accordingly. The courts with jurisdiction to rule on labour disputes in the first instance are the Basic Courts with general jurisdiction (i.e. the courts adjudicating in the first instance in civil law disputes).[91] The Appellate Courts have the jurisdiction to rule in the second instance, i.e. in the procedures of appeal against the decisions of the basic court.[92] Finally, in the third judicial instance, the Supreme Court of the Republic of North Macedonia has the jurisdiction to decide on extraordinary legal remedies against effective decisions of the courts and the decisions of its panels when it is stipulated in law.[93] The extraordinary legal remedy (review) of second instance judgments may be exercises in any case of labour disputes on termination of employment, notwithstanding the value of the dispute.[94] If the labour dispute does not relate to termination of employment, or if the value of the dispute is not exceeding MKD 1,000,000, the review shall be dismissed as impermissible. Such restriction also applies to disputes relating to protection against harassment in the workplace.[95] The LPAWH does not regulate the periods for bringing a lawsuit for protection against harassment to the competent court in a clear and coherent manner. The only case where the Law provides for a preclusive period of 15 days for bringing a lawsuit and initiating court proceedings is the case where the parties concerned fail to reach an agreement on the appointment of a mediator.[96]

The Law fails to settle the dilemma relating to the period for filing a lawsuit in the case when the mediation procedure has been initiated and completed unsuccessfully, i.e. the parties have failed to reach an agreement. In the procedure before the

[89] See LPAWH, Article 31.

[90] Official Gazette of RM No. 79/05.

[91] See Law on Courts (Official Gazette of R. Macedonia no. 58/06), article 30, paragraph 2, indent 9.

[92] See Law on Courts, article 33, paragraph 1, indent 1.

[93] See Law on Courts, Article 35, para. 1, indent 4.

[94] See Law on Civil Procedure, Article 372, para. 3, indent 3.

[95] For example, the Supreme Court dismissed the motion for review of a second instance judgment in a case of discrimination and psychological harassment in the workplace with a value of MKD 610,000.00, (Rev 3. no. 105/2014). See Macedonian Association of Young Lawyers (2014).

[96] See LPAWH, Article 22, para. 3.

competent court, the burden of proof is on the defendant, if the plaintiff, in the course of the procedure, has rendered likely the existence of the harassment.[97] However, it appears that the rules on the burden of proof do not play a significant role in the court's decision-making, since, in some judgments, courts shift the burden of proof expressly to the plaintiff (i.e. the alleged victim of harassment), stating that the plaintiff has failed to prove the existence of the grounds, i.e., failed to prove that he or she has been subjected to workplace harassment.[98] When the procedural anomalies are added to the substantial ambiguities in defining and determining the concept of harassment at work, the epilogue is that judicial protection against harassment at work in North Macedonia is still very weak.[99] In addition to the evident need to improve the legal framework against harassment at work, what is also evident is that there is still room to improve the level of training and sensitise the judges in the cases of protection against harassment in the workplace and discrimination.[100]

3.3 Legal Remedies and Sanctions

Macedonian legislation provides for several legal remedies for protection against harassment (including gender-based harassment). Such are: the interim measures for protection (issued by the employer or the competent court), compensation for damage (adjudicated by the court in favor of the victim of harassment) and the right to resignation by the employee due to exposure to violence at work with indemnification by the employer. The interim measures are reduced to temporary redeployment to different work premises, i.e. environment (if issued by the employer)[101] or a restraining order instructing the harasser not to get close to the workplace of the employee and prohibiting the harasser not to make phone calls or communicate (if ordered by the court) in order to prevent violent behaviour or remove irreparable damage.[102] In both cases (when they are imposed by the

[97] See LPAWH, Article 33.

[98] See: Judgment of the Appellate Court Skopje (ROZH 316/15), Judgment of the Appellate Court in Bitola (ROZH 589/18).

[99] It is considered that the first judgment finding psychological harassment-mobbing in the country was adopted only in 2016. By Judgment of 2016 (RP-215/14), the Basic Court Skopje II Skopje found that the plaintiff was psychologically harassed by two persons (defendants), who, through their actions, caused him mental anguish, fear, degradation and violated his dignity, honour, and reputation, with the ultimate goal of making him resign his employment. In a procedure upon an appeal by the defendants, the Appellate Court in Skopje adopted the Judgment (ROZH-86/18) reversing the judgment of the Basic Court Skopje 2 and dismissing the claim. However, in a review procedure, in February 2020 the Supreme Court of RNM, by a Judgment in Review (Rev. 3, no. 15/2018) reversed the judgment of the Appellate Court and upheld the judgment of the Basic Court Skopje 2.

[100] See Macedonian Association of Young Lawyers (2014).

[101] See LPAWH, Article 27.

[102] See LPAWH, Article 34.

employer and by the court), the LPAWH does not stipulate clearly for whom are such temporary measures intended (whether the harassers or the harassed). The protection that may be provided by the court, may also include compensation for pecuniary and nonpecuniary damage caused by the harassment in the workplace.[103] Finally, the employee who is facing insults and violent behaviour by the employer, or whose employer, despite the warnings by the employee that he or she is exposed to insults and violent behaviour by other employees, fails to prevent such behaviour, shall be entitled to certain legal remedies arising from the LRL In the case referred to above, the employee may terminate the employment contract with the employer without a notice, acquiring a right to compensation in the amount of at least the salary lost (as if he or she has worked during the notice period) and severance pay (as if his or her employment has been terminated due to economic reasons).[104]

The legal framework against harassment in the workplace also governs the matter of the sanctions, i.e., disciplinary liability of the perpetrator of harassment. In the selection of disciplinary measures against the perpetrator of the harassment, LPAWH initially refers to systemic laws governing labour relations (primarily, the LRL as well as other special laws in the field of civil servants). However, one should take into account the fact that the LRL (as a *lex generalis*) does not govern the matters of disciplinary procedure and disciplinary sanctions in a systematic manner. Currently the only disciplinary measure that arises implicitly from LRL is the monetary fine for violation of the work order and discipline or work duties. The LPAWH itself stipulates the possibility for issuing a disciplinary measure—termination of employment of the perpetrator of harassment. Yet, LPAHW makes such a disciplinary sanction a subject of the fulfilment of two cumulative conditions, in particular: firstly, the employer has previously issued another, alternative disciplinary sanction against the harasser, laid down in the laws referred to above, and secondly, the harasser has repeated the harassment within a period of 6 months upon the time when he or she has been issued the disciplinary sanction.[105] In practice, the manner in which disciplinary liability and disciplinary sanctions against the harasser are established raises several dilemmas. One of the dilemmas is whether the initially issued disciplinary sanction for harassment in the workplace, always has to be more lenient than termination of employment, independent of the gravity of the harassment and its effects on the victim, including victims of sexual harassment? Another relevant dilemma is whether the prerequisite for repeating the harassment within a period of 6 months, which may result in termination of employment, is a period of time that is too short concerning the protection of the victim against harassment, i.e., what would happen if the harasser repeats the harassment following the expiry of the 6 months upon the issuing of the prior, alternative disciplinary measure, i.e. whether the harasser would be sanctioned by termination of employment or by another more lenient sanction?

[103] See LPAWH, Article 32.

[104] See LRL, Article 100.

[105] See LPAWH, Article 29, para. 2.

4 Conclusion

Violence and harassment in the world of work is a violation or abuse of human rights. It threatens the integrity and dignity of workers, and as such, is incompatible with the universally recognized concept of decent work. Rooted in unequal gender power dynamics and gender stereotypes, gender-based violence and harassment in the world of work (as a narrower concept compared to the general concept of violence and harassment in the world of work) particularly affects women, impeding their access to and progress in the labour market, and at the same time affecting the sustainability of the economy as a whole. Regulation of gender-based violence and harassment at work has been the subject of gradual and continuous development on a universal, supranational and national level for several decades now. Today, almost 150 countries have adopted national regulations addressing harassment and sexual harassment in the workplace.[106] In addition to pursuing modern social, cultural and normative achievements aimed at establishing equal opportunities and treatment between women and men in all spheres of life, countries decide to regulate gender-based violence and harassment at work also due to the need to reduce the economic and social costs that such phenomenon causes. Workers (overwhelmingly women) victims of gender-based violence and harassment at work face health problems, reduced productivity, limited employment and labour market opportunities, gender wage differences and the like. Therefore, employers see to increase occupational safety and health and reduce absenteeism, high turnover and other negative effects on employees morale and productivity by taking measures to prevent and protect them from hostile work environment. Depending on different approaches in different countries, normative responses directed against gender-based violence and harassment at work can be found in the regulations on equality and non-discrimination, labour relations (including occupational safety and health), tort and criminal law. The legal approaches can also be classified in terms of whether they are inclined to the concept of treating harassment, solely as a form of discrimination (which is predominant in the United States) or to a combined concept which in addition to discrimination, emphasizes the aspect of protection of dignity and integrity (which is predominantly represented in the EU and the European countries in general). By adopting the first international labour standards (ILO Convention No. 190 and Recommendation No. 206 concerning the Elimination of Violence and Harassment in the World of Work) which envisage an integral, inclusive and gender-responsive approach to regulating violence and harassment in the world of work, it seems that the conceptual differences in addressing gender-based violence and harassment at work are becoming less important. The most important thing is that everyone has the right to a world of work free from violence and harassment.

By ratifying relevant international and regional instruments and aligning national legislation with EU law, North Macedonia has been shaping its legal framework for protection against violence and harassment at work, including gender-based

[106] World Bank Group (2019).

violence and harassment, for more than 15 years now. Gender-based violence and harassment at work in North Macedonia (acknowledged as harassment related to sex, i.e. gender and sexual harassment), is generally addressed through two legal regimes that govern harassment in the field of employment and work. The first legal regime derives from the LRL and regulates harassment (including psychological harassment - mobbing) as discrimination. The second legal regime derives from the LPAWPH and regulates harassment as psychological and sexual harassment in the workplace, without it being defined as discrimination. In practice, not only is the difference between the two concepts of protection against harassment (including gender-based harassment) ambiguous, but it is also unclear, which of them, would be more adequate to seek protection from. It seems that with the adoption of the LPAWPH in 2013, the Macedonian legislator is inclined towards more thorough and comprehensive protection from violence and harassment in the workplace (including gender-based violence and harassment). However, this law contains several systemic weaknesses in regards to prevention and protection, legal remedies and sanctions. Fortunately, the social partners represented in the Economic and Social Council of the Republic of North Macedonia (i.e. the representatives of the Government and the representative organizations of workers and employers), in March 2021, unanimously supported the initiative for ratification of the Violence and Harassment Convention, No. 190 of the ILO. At the same time, a new Law on protection against workplace harassment is being drafted, as well as a new Law on labour relations. This increases the optimism that the future legal framework for protection against gender-based violence and harassment at work will be more harmonized and improved, while the awareness of recognizing and reporting such a workplace behavior will be increased.

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