

## Romanian and European legislative notions regarding sexual discrimination and the sexual harassment of women

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### **Abstract:**

*The following paper presents two deviation forms identified in the contemporary society: sexual discrimination and sexual harassment as well as the social reaction in the legal domain both on an international and national level regarding the social protection of women.*

*The material approaches the issue of defining the concepts previously mentioned as well as the presentation of legal provisions referring to the social protection of women and the community acquis. There will also be treated the system of proving the sexual discrimination cases.*

*The final part of the material will approach the legal issues of sexual discriminations and sexual harassment of women.*

**Keywords:** *sexual discrimination, sexual harassment, social protection of women, equality of chance.*

### **Sexual harassment and sexual discrimination**

The modifications made over time in what concerns the social position of women has brought in the contemporary period a series of transformations regarding the relation between femininity and masculinity. One of these is constituted by a broadly generalized attitude that allows men certain privileges related to power and prestige. Along with other forms of socio-sexual deviation such as abuse, rape or prostitution, sexual harassment appears on the grounds of the existence of some complex elements determined by psychological and sociologic factors.

Sexual harassment consists of threatening, constricting, intimidation, humiliation behaviour that a person has towards another person. Harassment can appear anywhere. In the organizational environment, the individuals are more aware of their rights therefore, he feels more injured, the mental pressures is felt stronger. Usually, the one who harasses is, hierarchically superior or equal.

The harassed person strongly feels frustration, on one side, the discomfort of coming to work and endure embarrassing situations and the impossibility to express themselves, on the other side, having a fear of being fired or promoted.

The legal provision clearly differentiates harassment, sexual harassment and sexual discrimination: sexual harassment [1] is the situation when an unwanted behaviour with sexual connotation occurs, expressed physically, verbally or non-verbally, having as object or effect the damage of a person's dignity and, particularly, creating an intimidating, hostile, degrading, humiliating or offending environment; sexual discrimination is the direct and indirect discrimination, harassment and sexual harassment of a person by another person at the work place or in other place where the person performs the activity [2].

Sexual harassment is understood by the majority of the subjects as being the attempt to have sexual relations by force, through threats or promise of a reward, love affairs in exchange of employment/promotion, behaviour or language with sexual connotation, without the consent of the person : kisses, inappropriate touches, hugs, sexual language.

The subject of sexual harassment is one that allows the existence of prejudice, stereotypes, misconceptions. Most of the time they are not circulated in bad faith but they are information received through different sources, generalized and not verified, unfiltered by every person, that are strengthened by repeated hearing and reproducing. There are many myths about sexual harassment that are not found in real life and that influence our behaviour and the way in which we relate to the sexual harassment situation. It is important to know that the person responsible for harassment is only the one who does it. Harassment acts, contrary to common prejudice, do not take place because of the exterior appearance of a person but from the harasser's desire to exercise power and control over that person .[3]

### **Legal notions referring to the social protection of women**

Women's condition in the modern society is a subject intensively debated both by sociologists and the civil society. The desire of women to be present in the social and political life and in the business environment without being considered a secondary citizen has been supported by the legislative frame both national and international.

A historic step in this direction was the adoption by the General Gathering of the Organisation of the United Nations on 10th of December 1948 of the Universal Declaration of Human Rights. Within its content, there have been consecrated fundamental principles of labor law and there has been materialized the desideratum regarding the free access to employment and equality of chance and treatment.

The promotion of the equality of chance principle between men and women has been officially stated by many declarations or international treaties, the importance granted to this principle growing over the last decades, mostly in the last years. On an international level there have been signed the following declarations or treaties.

On an international level:

- The Universal Declaration of Human Rights (1948);
- The convention about the political rights of women(1952);
- The convention about the citizenship of the married woman (1957);
- The convention no. 111 regarding employment and profession execution discrimination'
- The convention regarding the marriage consent, the minimal age for marrying and the registration of marriages (1962);
- The international pact regarding economic, social and cultural rights (1966);
- The international pact regarding the civil and political rights (1966);

- The declaration regarding the elimination of women discrimination (1967);
- The convention about the elimination of all forms of discrimination towards women (CEDAW) (1979);
- The declaration containing the engagements of all participant countries and the Platform for Action of the Conference of Beijing (1995).

On a european level [4]:

- The European convention for the protection of human rights and fundamental liberties (1950) and additional protocols;
- The European Social Charter (1961);
- The revised European Social Charter (1996).

Equality of chance and treatment between men and women is also found in the Treaty establishing the EU (The Treaty of Maastricht in force since 1993) as well as in the secondary legislation -10 community directives regarding equality between men and women as well as the jurisprudence of the Court of Law of Luxemburg.

Along with the coming into force of the Treaty of Amsterdam (1999), the European Union has decisively engaged in promoting equality between men and women and to include gender equality on all levels and in all community activities. Thus, the promotion of equality between men and women is found as a specific object in the content of the treaty, beeing provided in part 1 – Principles, on art. 3 point 2, and by art. 13 there is established the necessity to take concrete actions for fighting sexual discrimination.

The member states of the EU have adopted the European social Agenda which has the main objective to constitute the modernisation of the European social model. A fundamental element of it is the promotion of equality of chance and treatment between men and women.

The Community Strategy for Gender Equality (2001 – 2005) wants to combine the integration of the gender perspective in all politics and programmes of the European Union, at the same time with the promotion of specific actions in favour of women.

### **The communitary aquis regarding sexual discrimination and sexual harassment**

- The Recommendation 99/131/CEE of 11.27.1991 regarding the protection of the dignity of men and women at the work place. The conduct code regarding the measures for fighting sexual harassment;
- The Resolution of 12.13.1991 regarding the application of the third Council Directive referring to the progressive application of the Principle of equality of treatment between men and women regarding social security (79/7/CEE of 12.19.1978);
- The Declaration of the Council of 12.19.1991 regarding the application of the Recommendation of the Committee referring to the protection of the dignity of men and women at the work place, including the practical code designed to fight sexual harassment;
- The Directive 97/80/CE of the Council of 12.15.1997 regarding the Frame Agreement to the proof duty in the sexual discrimination cases.

### **Bringing proof in sexual harassment cases**

The Council Directive 97/80/CE of 15th of December 1997 regarding the proof of the sexual discrimination cases has taken into consideration the opinion of the European Court of Justice according to which the establishment of some rules regarding the duty of proof is needed when there is an apparent discrimination and that, when this situation is confirmed, the application of the principle of equality of treatment is done if the proof duty comes to the convicted part.

The directive is applied to the situations covered by article 119 of the CEE Treaty and by directives 75/117/CEE, 76/207/CEE and, if there is sexual discrimination, by directives 92/85/CEE and 96/34/CE. It also operates within every civil and administrative procedure regarding the public or the private sector that provides appeal according to national law, while applying the stated dispositions, with the exception of amiable procedures, of voluntary nature or provided by national law.

On the grounds of art. 4 of the directive the member states, according to their law system, must take the necessary measures in order to, when a person is considered injured by not keeping the principle of equality of treatment and presents to the justice facts that allow the presumption of the existence of a discrimination, direct or indirect, be able to devolve upon the convicted to prove that there was no violation of the principle of equality of treatment. [5]

This inversion of the proof duty is specific, as known, to the labor law.

The indirect discrimination appears when a disposition, criterion or practice, seemingly neutral, affects a higher proportion of people, with the exception of the cases when this dispositions, criterion or practice is not necessary and cannot be justified by objective factors, independent of the gender of those interested. [6]

Furthermore, The Directive 97/80/CE does not prevent the member states from imposing rules of evidence that are favorable to the plaintiff.

The provisions of the directive do not apply to criminal procedures, apart from the cases when the member states state otherwise [7].

### **The sexual discrimination and the sexual harassment of women**

Being a detriment brought to the dignity of the person, within the European Union, it is considered that sexual harassment is an obstacle for the good functioning of the labor market. Certain groups are especially vulnerable, namely divorced women, the women that are new on the labor market, the ones with difficult socio-economic status, the disabled ones, the ones coming from racial

minorities etc. The victims of sexual harassment at the work place can be employees representing both sexes.

Yet by the Resolution of 29th of May 1990 of the European Union Council there has been wanted the establishment of some direction lines for employers, unions and workers, in order to prevent sexual harassment.

Also, in order to acknowledge the problem of sexual harassment at the workplace and the consequences of this abnormal behaviour, the European Committee has adopted the Recommendation 131/CEE/92 regarding the protection of the dignity of men and women at the work place. According to it, sexual harassment is defined as being:

- any abusive behaviour that injures the abused person;
- the fact that a person, by refusing to accept such a behaviour from an employer, hierarchically superior or co-worker, explicitly or implicitly justifies a decision that influences the rights of the person concerned regarding professional training, employment, maintaining a job, salary etc;
- Any kind of behaviour that can create an intimidating, hostile, humiliating environment towards the abused person.

Law no. 202/2002 introduces for the first time in Romanian law the notion of sexual harassment at the work place, being regarded as a form of sexual discrimination.

However, it would have been more appropriate if in the text of law there would have been a broader notion of harassment, as it is included in community acts, especially in Directive 2000/78/CE of the Council, regarding the creation of a general frame in favour of the equality of treatment in the employment domain which, unfortunately, has not been taken into account by the Romanian legislator. We remind that the community directive considers harassment as being a form of discrimination when an inappropriate behaviour related not only to sexual orientation but also to religion, convictions, disabilities

or age has as object or effect denigrating a person or creating a hostile, intimidating, degrading, humiliating or offensive environment.

The incrimination of sexual harassment in Romanian law is an evident progress as the implementation of the employers' obligations regarding the inclusion in the internal order regulations of disciplinary punishments meant to abolish such manifestations from the workplace.

The Romanian labor code, in its turn, has included as a fundamental principle of work relations the principle of equality of treatment towards all employees and employers, prohibiting any form of discrimination, direct or indirect [9].

On an international level, Romania has already assimilated through ratification the standards adopted by the Organisation of the United Nations, of the International Organisation of Labor or of the European Council.

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