

# Sexual harassment in Serbia

## **Sexual harassment in Serbia**

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All terms used in the text in the masculine grammatical gender include both the masculine and feminine genders of the persons to whom they refer.

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# Sexual harassment in Serbia

Analysis Based on the Data from  
the OSCE-led Survey on the  
Well-being and Safety of Women  
in Southeast and East Europe

## Introduction

The purpose of the analysis is to show the prevalence of sexual harassment as one of the most common forms of violence against women, based on the OSCE-led Survey on the Well-being and Safety of Women in Southeast and East Europe. The analysis should answer some crucial questions that describe the characteristics of sexual harassment:

- What are specific forms of the manifestation of sexual harassment?
- What are the most severe forms of sexual harassment and what is their prevalence?
- Who are the most common perpetrators of sexual harassment of women?
- In what contexts are women most often exposed to sexual harassment?
- Which women are more often exposed to sexual harassment and what factors increase the risk of exposure to sexual harassment?
- What are the consequences of sexual harassment on women's health and well-being?
- What strategies do women use to cope with sexual harassment? Do they report sexual harassment cases and to whom? And what are the barriers to reporting or reasons for not reporting a case of sexual harassment?
- If they have reported violence, or have sought help from an institution or organisation, to what extent are they satisfied with the support they have received?

The analysis was conducted on the basis of an OSCE survey conducted in 2018, covering 2023 women in Serbia in the age group 18-74. Bearing in mind that this is a regional survey, which, apart from Serbia, covers Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Moldova, Ukraine and Kosovo\*, comparative regional data are provided. In addition, thanks to the use of the same methodology as in the EU Survey conducted in 2012 by the European Union Agency for Funda-

mental Rights (FRA), the findings are comparable with EU countries.

## Sexual harassment as a form of violence against women

Sexual harassment is a form of gender-based violence that is used against women as an instrument to maintain power imbalances. Violence against women is a kind of social relationship that directly or indirectly, through interpersonal or structural violence,<sup>1</sup> establishes and restores control over the choices, roles and behaviour of women in the sphere of private relations or in public social life, by which the patriarchal gender regimes are reproduced<sup>2</sup>. Violence against women (and girls<sup>3</sup>) is defined by international human rights instruments as "violation of rights and fundamental freedoms that is a manifestation of historically unequal power relations between men and women"<sup>4</sup>.

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1 See more in Babović, M. (2015) Teorijski i istraživački pristupi u proučavanju strukturnog, kulturnog i direktnog nasilja, *Sociologija*, Vol. 57, br. 2, str: 331-352.

2 See more on gender regimes in Blagojević, M. (2002) «Žene i muškarci u Srbiji 1990-2000: urođjavanje cene haosa», u Bolčić, S, Milić, A. (ur.) *Srbija krajem milenijuma: razaranje društva, promene i svakodnevni život*, ISIFF, Beograd: 293-314; Connell, R.W. (1987) *Gender and Power*, Cambridge: Polity Press.

3 Violence against girls is an important form of violence against women, but it is not covered by this analysis because the data presented here refer to the adult population of women 18-74 years old.

4 UN Declaration on the Elimination of Violence against Women, 1994 <http://www.un.org/documents/ga/res/48/a48r104.htm>

## **Definitions of violence against women**

*“Gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated... This violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.”*

### **UN Committee on the Elimination of Discrimination against Women, Recommendation No. 35**

*“Violence against women is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.*

### **Council of Europe Convention on preventing and combating violence against women and domestic violence**



**Sexual harassment** is defined in the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter: the Istanbul Convention) as 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 (Article 40). The member states are required to take measures to ensure that these forms of violence are subject to criminal or other legal sanctions. Aiding and abetting the commission of or attempt to commit such forms of violence also constitute criminal offences (Article 41).

Sexual harassment in the OSCE-led survey is described as:

- 1) Unwelcome touching, hugging or kissing
- 2) Sexually suggestive comments or jokes that offend women
- 3) Inappropriate invitations to go out on dates
- 4) Intrusive and offensive questions about private life
- 5) Intrusive and offensive comments about appearance
- 6) Inappropriate staring or leering that a woman finds intimidating
- 7) Sending or showing sexually explicit pictures, photos or gifts that were offensive
- 8) Somebody indecently exposed themselves to a woman
- 9) Somebody made a woman watch or look at pornographic material against her wishes
- 10) Unwanted and offensive sexually explicit emails or SMS messages

## 11) Inappropriate offensive advances on social networking websites such as Facebook or in Internet chat rooms

The types of behaviour or actions listed under 1), 2), 7), 8), 9) and 10) are defined as the most severe forms of sexual harassment<sup>5</sup>.

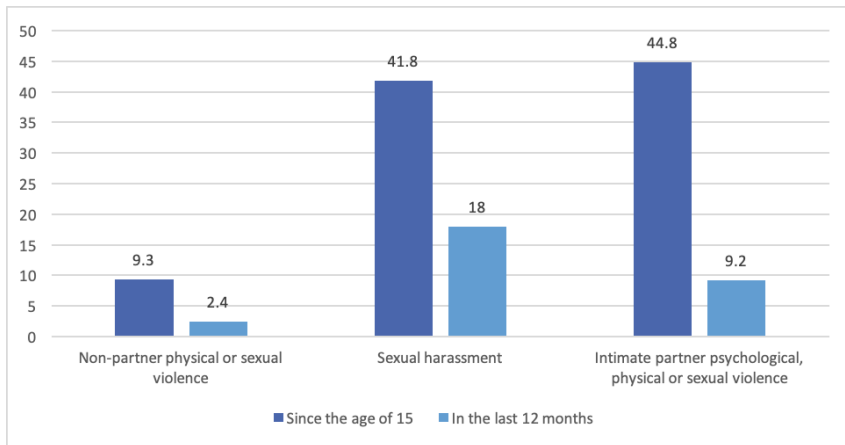
# Prevalence of sexual harassment in Serbia

Sexual harassment is one of the most common forms of violence against women in Serbia (Figure 1). It is significantly more prevalent among women in the age group 18-74 than physical or sexual violence perpetrated by persons who are not women's intimate partners, and only slightly less prevalent than violence that involves psychological, physical or sexual violence and is perpetrated by current or former intimate partners. In Serbia, 41.8% of women since the age of 15 (782 women in the sample) were exposed to sexual harassment, while in the 12-month period prior the survey, 18% of women (313 women in the sample) were exposed to this type of violence.

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5 OSCE-led Survey on Violence against Women. Well-being and Safety of Women (2019), pp. 29-30.

**Figure 1: Prevalence of various types of gender-based violence against women in Serbia, 2018, %**

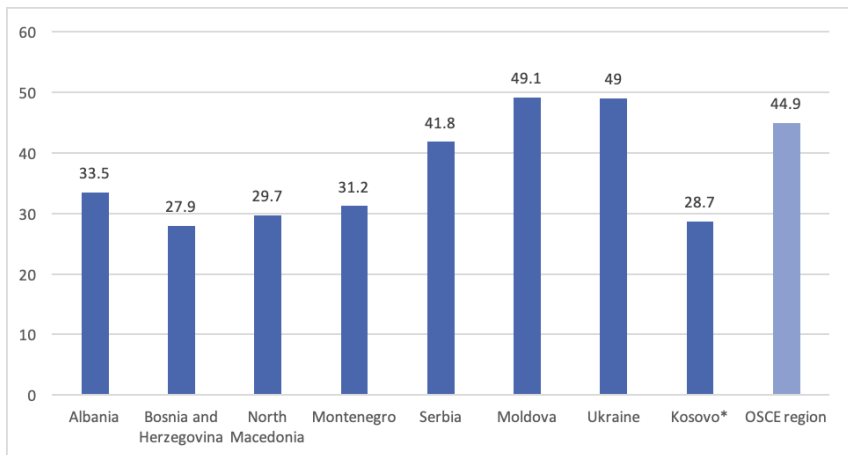


**Base: 2023 women in the age group 18-74 in Serbia**

**Projected to the population** of women in Serbia, 1,110,496 women in Serbia were exposed to some form of sexual harassment since the age of 15, while 479,174 women experienced some form of sexual harassment in the past 12 months.

Compared to countries in the region, Serbia has a lower prevalence rate of sexual harassment experienced by women since the age of 15 only than Ukraine and Moldova and a higher prevalence rate than all other countries and Kosovo\* (Figure 2).

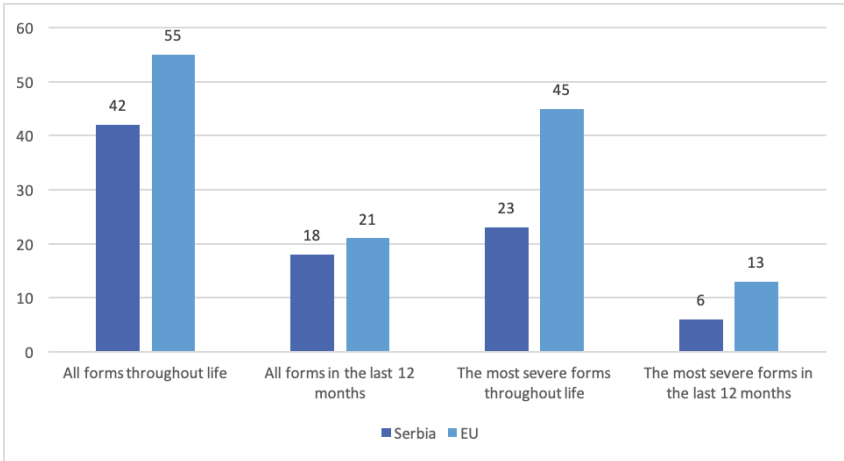
**Figure 2: Prevalence of sexual harassment in countries in the region, 2018, %**



**Base: Total number of women covered by national survey samples**

The prevalence rate is lower both in Serbia and in the entire region of Southeast and East Europe than the average in the European Union, which may indicate a lower willingness of women to report on these experiences during the survey because this topic is still a taboo in more patriarchal environments, as well as a lack of awareness of what constitutes sexual harassment, which is important for recognising and remembering such experiences. The prevalence of serious forms of sexual harassment is significantly lower than in the EU (Figure 3).

**Figure 3: Prevalence of sexual harassment in Serbia in 2018 and EU average in 2012, %**

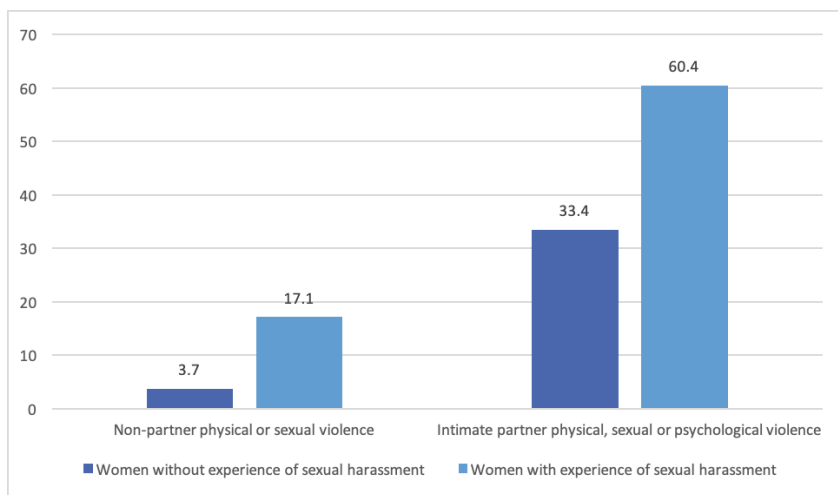


**Base: Total number of women covered by national survey samples**

The findings of the survey clearly show that sexual harassment is part of a complex syndrome of violence against women that actually keeps women in a subordinate position through various means of coercion and harm. Women who experienced sexual violence also experienced other forms of intimate partner or non-partner violence more often than women who did not experience sexual harassment. As can be seen in the following chart (Figure 4), women who experienced sexual harassment experienced also non-partner physical or sexual violence many times more often and some form of intimate partner violence nearly twice as often than women who did not report sexual harassment experiences. This can indicate two things. First, women who reported experiences of sexual harassment generally have a more developed awareness of violence and are more likely to perceive such

experiences and/or report them in the survey. Second, women who are exposed to sexual harassment live in structurally and culturally disadvantaged environments, networks of relationships with others or have characteristics that put them more at risk of various forms of violence (such as youth or other characteristics that will be discussed below).

**Figure 4: Women by experience of sexual harassment and other forms of intimate partner and non-partner violence, Serbia, 2018, %**



**Base: 2023 women in the age group 18-74 in Serbia**

The most prevalent forms of sexual harassment in Serbia are: inappropriate staring or leering that a woman finds intimidating; intrusive and offensive questions about private life; sexually suggestive comments and jokes; unwanted hugging and kissing; intrusive comments about appearance; and inappropriate invitations to go out on dates. These are the most common forms of harassment in the entire region covered by the survey. However, in comparing Serbia to the regional average, some "national specificities" in the patterns of sexual harassment can be noticed. In Serbia, more than the average in the region, there is intrusion in women's private lives and harassment takes place through digital media and the Internet. Although attacks through social media are not classified as the most serious forms of sexual harassment, according to the research methodology, it should be taken into account that these attacks can have very detrimental effects on the lives of women exposed to these attacks, with far-reaching consequences, especially when these are young women who are more sensitive to the pressures and opinions of others.

**Table 1: Prevalence of various forms of sexual harassment since the age of 15, Serbia and the average in the region covered by the OSCE-led survey, 2018, %**

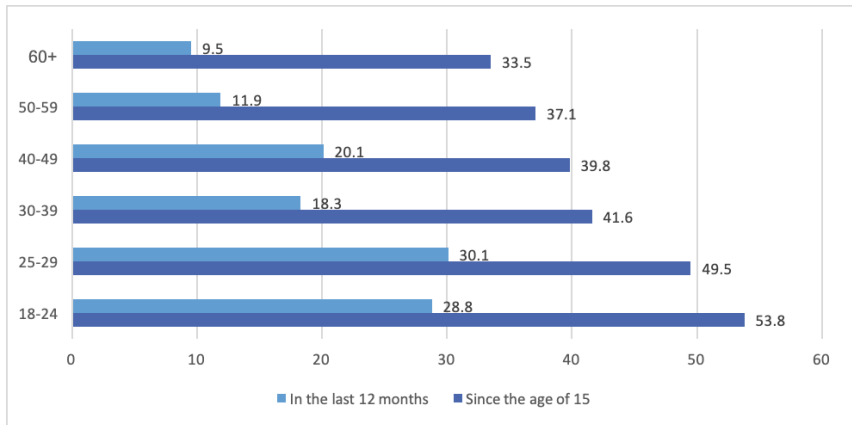
<b>Type of sexual harassment</b>	<b>Serbia</b>	<b>Region average</b>
Inappropriate invitations to go out on dates	11.3	12.3
Intrusive and offensive questions about private life	19.5	16.9
Intrusive and offensive comments about appearance	12.1	14.1
Inappropriate staring or leering that a woman finds intimidating	20.7	22.3
Inappropriate offensive advances on social networking websites such as Facebook or in Internet chat rooms	9.7	6.4
<b>The most severe forms</b>		
Unwelcome touching, hugging or kissing	12.1	18.9
Sexually suggestive comments or jokes that offend women	14.2	16.9
Sending or showing sexually explicit pictures, photos or gifts that were offensive	3.5	3.4
Somebody indecently exposed themselves to a woman	3.8	5.4
Somebody made a woman watch or look at pornographic material against her wishes	0.4	0.7
Unwanted and offensive sexually explicit emails or SMS messages	5.1	4.0

**Base: Total number of women covered by national survey samples**



Younger women, more often employed than unemployed and inactive women, and most often self-employed, face an increased risk of sexual harassment. Female pupils and students as well as women from urban areas are at a higher risk than women from rural areas. As can be seen from the chart below, the risks of sexual harassment decline with age. Most often such experiences are reported by young women. As regards exposure to sexual harassment since the age of 15, this decline in the prevalence of sexual harassment can be not only a consequence of the effect of a woman's age, but also a consequence of the lapse of time or the possibility that women have forgotten such experiences. It can also be a consequence of intergenerational differences in awareness of sexual harassment, or the fact that older women did not interpret their experiences as harassment because at the time such behaviours were not viewed as harassment but justified as "compliments" and were more socially acceptable. However, data on the prevalence of sexual harassment in the last 12 months indicate that there is also an effect of age, i.e. that young women are significantly more often exposed to sexual harassment than older women.

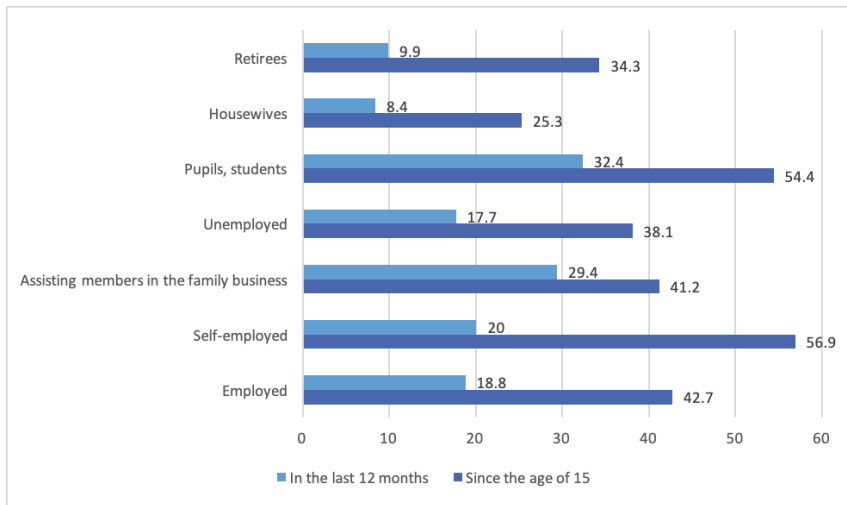
**Figure 5: Women with experience of sexual harassment by age, Serbia 2018, %**



**Base: 2023 women in the age group 18-74 in Serbia**

As regards economic activity as a factor of sexual harassment, there is a clear distinction between economically active and inactive women. Women who are not active in the labour market, such as retirees and housewives, are significantly less often exposed to sexual harassment than economically active women. This is primarily because they are less involved in the types of relationships within which sexual harassment takes place. Unemployed women or women seeking employment are more often exposed to sexual harassment, while employed women are even more often exposed. In addition, there is an effect of the type of employment. Self-employed women are at greatest risk. Also important is the effect of power, which, together with the effect of youth, gives an extremely high prevalence of experiences of sexual harassment among female pupils and students.

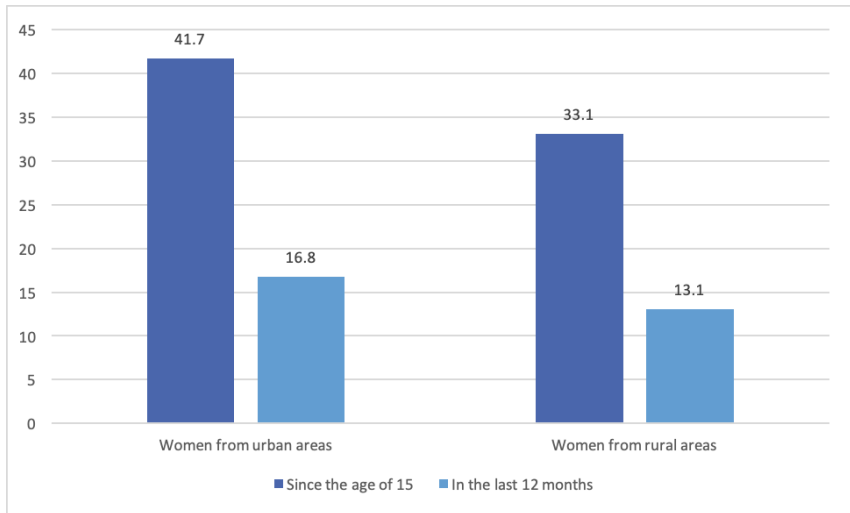
**Figure 6: Women with experience of sexual harassment by economic activity, Serbia 2018, %**



**Base: 2023 women in the age group 18-74 in Serbia**

The findings indicate that there is also an impact of the degree of urbanisation, i.e. that sexual harassment is more prevalent among women living in urban areas than among those living in rural areas.

**Figure 7: Women with experience of sexual harassment by place of residence, Serbia 2018, %**



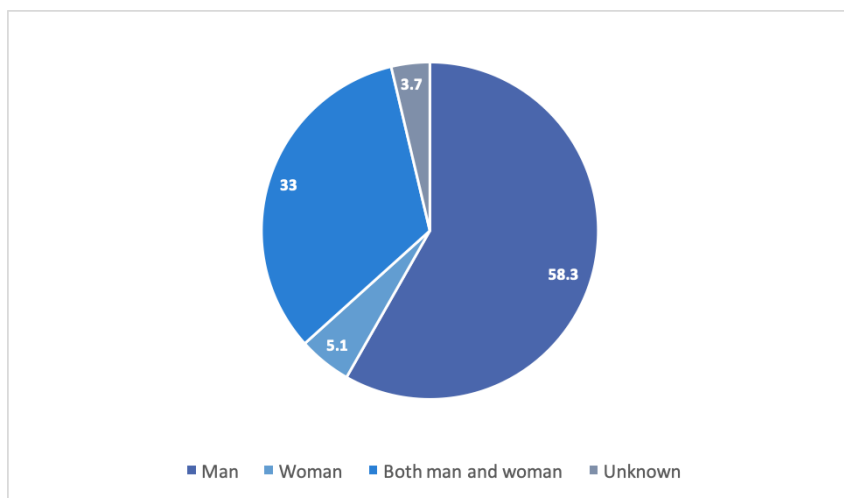
**Base: 2023 women in the age group 18-74 in Serbia**

The most serious incident of sexual harassment experienced by the majority of women was inappropriate staring or leering that women found intimidating (22.2% of women), intrusive and offensive questions about private life (21.1% of women who experienced sexual harassment), unwanted hugging or kissing (17.5%), sexually suggestive comments or offensive jokes (10.4%), inappropriate invitations to go out on dates (9.6%), intrusive and offensive comments about appearance (7.2%) and other (12%).

## Perpetrators of sexual harassment

Most perpetrators of sexual harassment are men (Figure 8), one-third of perpetrators are women, while in a small number of cases there are more perpetrators including both men and women.

**Figure 8: Perpetrators of sexual harassment by age, Serbia 2018, %**



**Base: 782 women who reported having experienced any form of sexual harassment**

The perpetrators vary somewhat depending on the type of sexual harassment. Thus, intimate partners are more frequently among the perpetrators in the context of coercion to watch or look at pornographic material against a woman's wish: in 16.4% of the cases these are current partners, in 21.4% of the cases these are former intimate partners, in 19.2% of the cases these are ex-boyfriends and in 19.2% of

the cases these are persons they have just started dating. In addition, former intimate partners are also perpetrators in 10% of the cases of unwanted hugging and kissing. In the case of all other forms of sexual harassment, friends and acquaintances, other persons known to women or strangers are the most frequent perpetrators. Strangers are most commonly found among the perpetrators of the forms that are associated with offensive attacks on social media, inappropriate staring or leering, indecently exposing oneself to a woman and sending or showing sexually explicit images or gifts. Acquaintances and friends are the most common perpetrators of the forms of sexual harassment that are associated with intrusive and offensive questions about private life, comments about appearance. Colleagues are perpetrators of intrusive and offensive questions about private life, as well as making sexually suggestive comments or jokes that offend women, more often than other types of harassment.

**Table 2: The most common perpetrators of sexual harassment, Serbia 2018, %**

<b>Type of sexual harassment</b>	<b>Acquaintance, friend</b>	<b>Colleague</b>	<b>Another known person</b>	<b>Stranger</b>	<b>Other</b>	<b>Total</b>
Inappropriate invitations to go out on dates	26.9	5.8	23.0	28.7	15.6	100
Intrusive and offensive questions about private life	38.0	12.6	14.3	6.8	28.3	100
Intrusive and offensive comments about appearance	30.2	8.0	10.4	22.8	28.69	100
Inappropriate staring or leering that a woman finds intimidating	13.5	5.0	9.2	52.4	19.9	100
Inappropriate offensive advances on social networking websites such as Facebook or in Internet chat rooms	7.9	2.3	9.4	55.0	25.4	100
<b>The most severe forms</b>						
Unwelcome touching, hugging or kissing	22.5	6.8	8.5	26.7	35.5	100
Sexually suggestive comments or jokes that offend women	22.7	11.0	13.5	25.6	27.2	100

Type of sexual harassment	Acquaintance, friend	Colleague	Another known person	Stranger	Other	Total
Sending or showing sexually explicit pictures, photos or gifts that were offensive	15.9	4.3	13.2	41.0	25.6	100
Somebody indecently exposed themselves to a woman	5.9	-	-	86.9	7.2	100
Somebody made a woman watch or look at pornographic material against her wishes	23.8	-	-	-	76.2	100
Unwanted and offensive sexually explicit emails or SMS messages	13.6	2.8	11.7	49.9	22.0	100

**Base: 782 women who reported having experienced any form of sexual harassment**

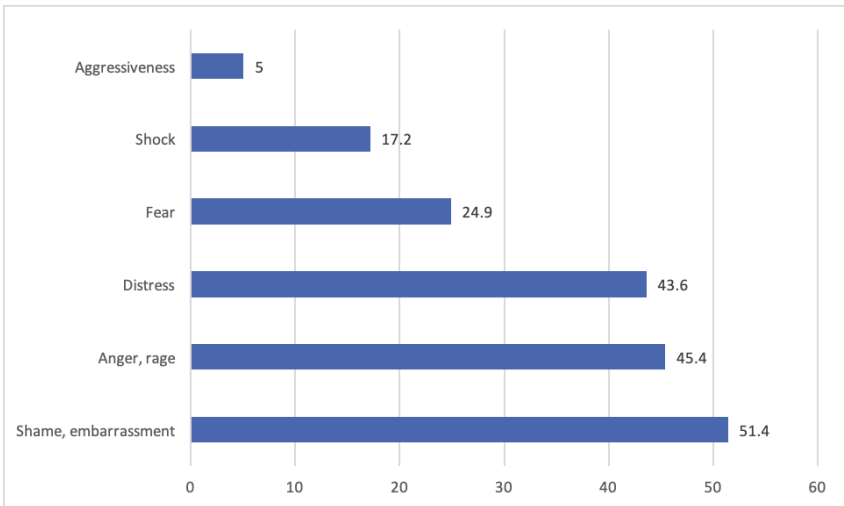
The perpetrators of the incident identified by women as the most serious incident of sexual harassment were most often strangers (28.7%), friends or acquaintances (26%), other persons known to women (13.9%), colleagues (8.3%) or others (23.1%). In most cases (73.3%), there was one perpetrator, but there were also cases where a woman was exposed to harassment by two (12.8%), three or more perpetrators (9.4%).



# Consequences of sexual harassment

Sexual harassment leads to different emotional responses and psychological consequences in women, especially if they are exposed to multiple and repeated patterns of harassment. The most common emotional responses to sexual harassment are feelings of shame, embarrassment, followed by anger and rage, anxiety and, in a slightly smaller number of women, fear, shock and aggressiveness (Figure 9).

**Figure 9: Women’s emotional responses<sup>6</sup> to the most serious incidents of sexual harassment, Serbia, 2018, %**

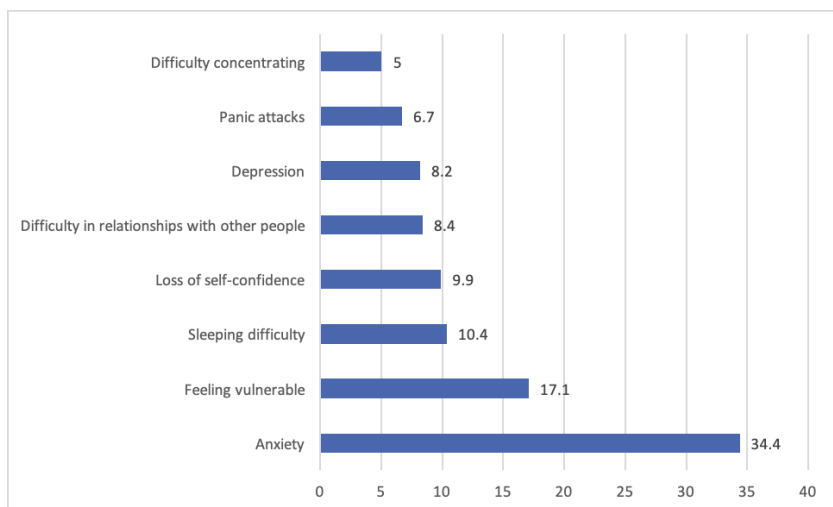


**Base: 782 women who reported having experienced any form of sexual harassment**

6 Multiple answers

The most common psychological consequences, which are long-term problems caused by sexual harassment, are anxiety - felt by more than a third of women exposed to sexual harassment, followed by the feelings of vulnerability, sleeping difficulty, loss of self-confidence, difficulty in relationships with other people, depression, panic attacks and difficulty concentrating.

**Figure 10: Women’s psychological consequences<sup>7</sup> to the most serious incidents of sexual harassment, Serbia, 2018, %**



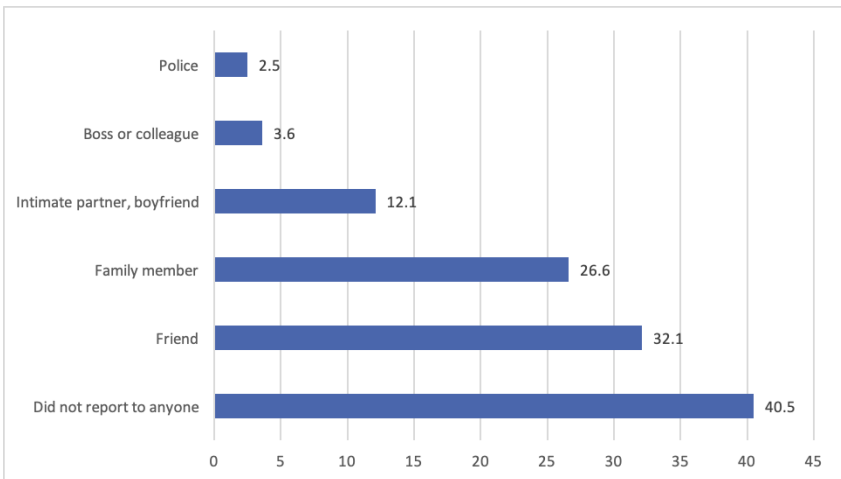
**Base: 782 women who reported having experienced any form of sexual harassment**

7 Multiple answers

# Reporting of sexual harassment

The survey shows that women often do not report sexual harassment to anyone, not even to people close to them, family members or friends. If they share the information with someone, these are mostly people from the woman's immediate environment, such as family members, friends or intimate partners. A very small number of cases are reported to the police (Figure 11), while reporting to other institutions or organisations is so rare that remains below the statistical significance level. The most common reason why women have not reported the incident to anyone is because they consider it to be a minor incident that they can handle on their own.

**Figure 11: Women with experience of sexual harassment by reporting and seeking help, Serbia, 2018, %**



Base: 782 women who reported having experienced any form of sexual harassment

Differences in reporting can be observed depending on the type of harassment, its context, perpetrators and form of manifestation.

**Sexual harassment related to employment** was experienced by 18.3% women, at work or outside of workplace, by their employer, boss or colleague. Only in 5% of cases they reported it to their employer and shared the information with colleagues in 3.3% of cases, 1.7% of women sought legal support, 2.5% addressed the police and 0.8% of cases were brought to court.

**Sexual harassment in the context of education** was experienced by 5.5% of women. In fact, 1.7% of women experienced sexual harassment by teachers or professors, and 4.5% by other pupils or students. The number of cases is small, and therefore no further statistical analysis can be performed. However, it is important to keep in mind that out of 28 respondents who were harassed by other students only one reported it to one of the professors, two sought the support of a legal advisor, and one reported the case to the police.

Sexual harassment by professionals or officials, such as professors, medical doctors, police officers, military staff, was experienced by 3.2% of women. This is again a very small number of cases (20), due to which no further analysis can be conducted. Only one of these women sought legal support and one sought protection from the police.

## Conclusion

Sexual harassment is one of the most common forms of gender-based violence against women. It is much more common than non-partner sexual or physical violence and only slightly less common than any form of intimate partner violence (physical, sexual or psychological). Sexual violence is only part of a complex syndrome of violence against women that is used as a means of maintaining power imbalances and reproducing patriarchal gender regimes. This is supported by the data showing that women who were exposed to some form of sexual harassment since the age of 15 were more often exposed to other forms of gender-based violence either by intimate partners or by other persons.

The most common forms of sexual harassment are: inappropriate staring or leering that a woman finds intimidating; intrusive and offensive questions about private life; sexually suggestive comments and jokes; unwanted hugging and kissing; intrusive comments about appearance; and inappropriate invitations to go out on dates. These are also the most common forms of harassment in other countries in the region. However, there are also some patterns that are more prevalent in Serbia than in other countries in the region, such as, first of all, intrusion in women's private lives and harassment through digital media and the Internet.

No group of women has been spared sexual harassment. However, some groups are at greater risk of harassment, primarily young women, women living in urban areas, women who are employed, especially women in more vulnerable forms of employment, such as self-employed women, and female pupils and students.

The perpetrators of sexual harassment are mostly men, although women may be found among the perpetrators, either alone or jointly with men in cases of group harassment. There are also differences between perpetrators, depending on the forms of harassment. Intimate partners are perpetrators more frequently in the context of coercion to watch or look at pornographic material against a woman's wish, or unwanted hugging and kissing. Strangers are most often the perpetrators of offensive attacks on social media and inappropriate staring, indecent exposure to a woman and sending or showing sexually explicit and offensive images or gifts. Acquaintances and friends are the most common perpetrators of the forms of sexual harassment that are associated with intrusive and offensive questions about private life, and comments about appearance. Colleagues are perpetrators of intrusive and offensive questions about private life, as well as making sexually suggestive comments or jokes that offend women, more often than other types of harassment.

Women often respond to sexual harassment with the feelings of shame, embarrassment, anger, rage, distress, fear and anxiety; they feel vulnerable and suffer from sleeping difficulty, lose self-confidence, have difficulty in social relationships and may feel depressed.

Women rarely share with others the information that they have been subjected to sexual harassment. If they do share such information, it is with someone from their immediate family environment, intimate partner or female friend. A very small number of cases are reported to the police, while addressing other institutions and organisations is extremely rare.

## Recommendations

Sexual harassment awareness activities need to be intensively implemented to equip women with the knowledge and information allowing them to recognise when they are exposed to some form of sexual harassment, and to inform men and women about unacceptable forms of behaviour to other women because they constitute forms of sexual harassment. Therefore, it is very important to design awareness-raising activities in such a way as to increase awareness from the perspective of both victims and perpetrators. Awareness-raising activities should be directed through a number of different channels towards different groups, including:

- Through peer protection mechanisms in primary and secondary schools
- Through social media campaigns, especially those used by the younger population
- Through traditional print and electronic media, especially those with the largest audience
- Through primary health care institutions that are in contact with a large share of the population, by displaying short and clear brochures, leaflets or posters in the waiting rooms

These activities should be performed systematically by the competent ministries, depending on the campaign channel. The messages should be clear; the forms of harassment should be clearly indicated along with the message that sexual harassment is prohibited by the Istanbul Convention and that all stakeholders, including citizens, have a responsibility to prevent and combat this form of violence against women.

Campaigns should encourage women to respond to harassment incidents by informing the perpetrator that the behaviour in question is a form of sexual harassment, and to take steps to seek protection from the existing mechanisms, depending on the context in which harassment occurs.

However, it is necessary to encourage the establishment of mechanisms for protection against sexual harassment, given that they have not been developed, including for harassment at work, in the institutions providing public services and even in educational institutions



since they have violence prevention mechanisms in place at primary and secondary level, but usually do not have such mechanism established at the level of higher education. These actions can be initiated by the Coordination Body for Gender Equality and implemented by the ministries responsible for the various areas in which harassment takes place. The Ministry of Education, Science and Technological Development, in cooperation with universities, could encourage initiatives to create mechanisms for protection against sexual harassment in the form of special rulebooks at universities and faculties. The Ministry of Labour, Employment, Veteran and Social Affairs should encourage public and private companies to set up such mechanisms. This Ministry, along with the Ministry of Health, the Ministry of Defence and the Ministry of Interior should also initiate the creation of mechanisms for protection against sexual harassment by officials and professionals.

Unions should play a more decisive role in protecting against sexual harassment at work. They can also be an important channel for raising awareness about forms of sexual harassment at work, but in parallel they must work to establish more adequate protection mechanisms and to inform and encourage unionised women to seek protection against harassment through unions, especially committed by their employers and managers.

Independent bodies, such as the Protector of Citizens and the Commissioner for Protection of Equality, should pay particular attention to this issue and review the conditions of protection against sexual harassment in different contexts and recommend to the state how to improve prevention and protection mechanisms.

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## Bio of Marija Babović

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# Sexual Harassment at Work in the Republic of Serbia

- Regulatory Framework and its  
Implementation

## 1. The notion of sexual harassment

Sexual harassment at work and related to work (hereinafter: sexual harassment<sup>1</sup>) is one of those phenomena that are easy to perceive but it is far more difficult to define the circumstances leading to sexual harassment. This has certainly been contributed by the confusion existing in the legislation of the Republic of Serbia for many years and deriving from the essential absence of a sense of the need to distinguish sexual harassment from other similar phenomena, as well as

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1 It should not be overlooked that sexual harassment is also possible in other areas of social life and ubiquitous in various non-work-related life situations.

the unplanned creation of legislation in the fields directly or indirectly related to sexual harassment. The very nature of sexual harassment is, at least, dual - which creates additional problems in the implementation of an already vaguely set legal framework.

As regards the terminology used, a few notes should be kept in mind. First, it is quite clear that different laws use a number of different terms, whose interrelationships (identity or difference) are not explicitly established.

Thus, in the Law on the Prohibition of Discrimination<sup>2</sup> (hereinafter: LPD), sexual harassment is considered to be a form of discrimination. Although there is no definition of sexual harassment, Article 20 of the LPD regulates discrimination on the grounds of sex, including “sex-based harassment”.

The Law on Labour<sup>3</sup> (hereinafter: LoL), on the other hand, clearly defines sexual harassment and determines it to be a form of discrimination. The LoL contains definitions of harassment and sexual harassment, as well as direct and indirect discrimination.<sup>4</sup>

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2 Law on the Prohibition of Discrimination, *Official Gazette of the RS*, no. 22/2009.

3 Law on Labour, *Official Gazette of the RS*, nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - CC Decision, 113/2017 and 95/2018 - authentic interpretation.

4 Articles 19 and 21 of the LoL.

The Law on Prevention of Abuse at Work (Mobbing)<sup>5</sup> (hereinafter: LPAW), however, contains the provision that defines sexual harassment as a form of abuse at work, but referring to the definition and determination of sexual harassment as a form of discrimination from the LoL.<sup>6</sup>

The Law on Gender Equality<sup>7</sup> (hereinafter: LGE) also contains the definition of sexual harassment, which is determined as: “unwanted verbal, non-verbal or physical act of a sexual nature, sex-based, committed with intention to offend or consequence of offending personal dignity, creating an intimidating, hostile, degrading or offensive environment”, as well as sex-based violence, which is defined as “behaviour that threatens bodily integrity, mental health or serenity, or causes material damage to a person, as well as a serious threat by such behaviour that prevents or restricts a person from enjoying the rights and freedoms on the basis of gender equality principle” and sexual blackmail, which is defined as “the behaviour of a responsible person who, with the intention of demanding services of a sexual nature, blackmails another person by doing something that may harm his or her honour or reputation in case of refusal to provide the requested services”<sup>8</sup>.

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5 Law on Prevention of Abuse at Work (Mobbing), *Official Gazette of the RS*, no. 36/2010

6 Article 3 of the LPAW: “The provisions of this law shall also apply to cases of sexual harassment, in accordance with the law governing labour.”

7 Law on Gender Equality, *Official Gazette of the RS*, no. 104/2009

8 Law on Gender Equality, Article 10 paragraph 1 points 1), 5) and 8)

Finally, the Criminal Code<sup>9</sup> does not contain the term of sexual harassment but uses the term “sex-based harassment”. Article 182a of the Criminal Code introduces a new criminal offence that goes far beyond the process of work.

This brief overview clearly shows that it is not easy to identify the legal nature of sexual harassment in Serbian law. The aforementioned laws were passed or amended without a proper plan, strategic approach to the problem or knowledge of the entire legal system. It is, therefore, possible to conclude, based on the interpretation of the LPHW, that abuse at work and discrimination at work are the same phenomenon. This is not only incorrect in its essence, given the specific nature of the above-mentioned prohibited behaviours, but also legally illogical since discrimination at work and abuse at work are regulated by different laws governing different mechanisms and protection procedures. However, legal deficiencies lead to the situations in practice where both citizens and courts confuse these two legal concepts to a large extent.<sup>10</sup> It should be kept in mind that the laws - though in a confusing and methodologically wrong way - reveal the undoubted closeness of these concepts. Whether something will constitute sexual harassment as a form of discrimination or as abuse at work usually depends on the circumstances of a particular case. This is why, on the one hand, it is necessary to harmonise the provisions on the protection of persons against sexual harassment in general, regardless of the type of

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9 Criminal Code, *Official Gazette of the RS*, nos. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

10 Mario Reljanović, *Studija o primeni Zakona o zabrani diskriminacije u Srbiji*, Beograd, 2017 (hereinafter: Reljanović 2017), pp. 21-24.



prohibited behaviour, and on the other hand, it is necessary to clearly divide and emphasise the crucial differences that separate discrimination from abuse at work in the cases of sexual harassment.

As regards the terms used in legislation, there is no uniformity and even when these are essentially the same manifestations of prohibited behaviour, the legislator had decided to call them differently or not to name them at all. So, the LPD contains only the general notion of harassment, while the LoL, LGE and LPHW use only the term “sexual harassment”. However, the LPAW refers to sexual harassment as a form of abuse at work and it seems that this terminological confusion has complemented the regulatory confusion, as abuse is, as a rule, a more serious form of harassment and can be very close to the criminal offence of abuse and torture<sup>11</sup>, while the LPAW practically equalises these two intensities of illicit actions. This is due to the very unfortunate choice of the term "abuse" to essentially define the behaviour that constitutes harassment. The LGE does not specify the legal nature of sexual harassment, that is, it does not refer either to regulations on

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11 The criminal offence of abuse and torture referred to in Article 137 of the Criminal Code: “(1) Whoever abuses another or treats such person in a manner that insults human dignity shall be punished with imprisonment up to one year. (2) Whoever causes severe pain or suffering to another, by using force, threat or in other illicit manner, with the aim to obtain from him/her or a third party the confession, statement or other information or to intimidate or punish illegally him/her or a third party, or whoever does it with some other motive based on any form of discrimination, shall be punished with imprisonment from six months to five years. (3) If the offence specified in paragraphs 1 and 2 of this Article is committed by an official in discharge of duty, such person shall be punished for the offence referred to in paragraph 1 herein by imprisonment from three months to three years, and for the offence referred to in paragraph 2 herein by imprisonment of one to eight years.” The first attempts to punish abuse at work have been linked exactly to criminal proceedings for the commission of this criminal offence, with variable success, since the actions do not necessarily coincide, and the criminal justice protection is, as a rule, reserved only for the most serious forms of abuse at work.

abuse at work or to those related to discrimination. The legislator has introduced additional inventiveness into the legal system by naming sexual harassment (*seksualno uznemiravanje*) as sex-based harassment (*polno uznemiravanje*) in Article 182a of the Criminal Code, although it is clear that it is very similar (essentially the same) prohibited behaviour. This confusion is certainly not helpful when it comes to the implementation of the legislative framework, which will be discussed further below.

What is then sexual harassment? It can be defined as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”<sup>12</sup> It is a generally accepted definition of sexual harassment in the European Union, which is later repeated in other documents and surveys. This definition is included in Article 40 of the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence), ratified by the Republic of Serbia in 2013, and is therefore part of the domestic legal system through the implementation of that international instrument.

As regards laws, it has already been said that the LPAW does not contain a definition but refers to the one given in the LoL. This definition is

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12 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, pp. 37–43 (hereinafter: Directive), Article 2 paragraph 1 point d).

practically the same as the European definition: “Sexual harassment, within the meaning of this law, is any verbal, non-verbal or physical conduct that aims at violating or violates the dignity of the person seeking employment, as well as an employed person<sup>13</sup> in the sexual sphere, which causes fear or creates hostile, degrading or abusive environment.” Characteristic differences from the previous definition relate to the explicit mention of an employee or job seeker, as well as the expression "in the sexual sphere" used instead of the term “of a sexual nature”. The definition given in the LGE is almost identical, although broader in nature because it falls outside the domain of work and can be applied to any situation. In addition, the LGE differentiates sexual blackmail as a particular form of prohibited behaviour.

The LPD does not contain the definition of sexual harassment either. However, this will change soon, as the Law on Amendments to the Law on the Prohibition of Discrimination provides that this definition will be added. At the time of writing this analysis, this regulation did not enter into the procedure for adoption by the National Assembly, nor is it publicly available. If the provision remains unchanged compared to the version that was publicly available in early 2019 and withdrawn from the adoption procedure after criticisms (not related to the definition of sexual harassment but to other proposed legal provisions), the definition of sexual harassment in the Law on the Prohibition of Discrimination should, after amendments, read as follows: “Sexual

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13 The used term “employee” denotes both male and female persons. According to the European Parliament survey, in about 90% of sexual harassment cases in the European Union, the victims are women (see: *Combating sexual harassment and abuse in the EU*, European Parliament resolution of 26 October 2017 on combating sexual harassment and abuse in the EU (2017/2897(RSP)), p. 3).

harassment, within the meaning of this law, is any unwanted verbal, non-verbal or physical conduct of a sexual nature that aims or violates the dignity of a person or his/her personal integrity, and which causes fear or creates intimidating, hostile, degrading, humiliating or abusive environment.” (The future Article 12, paragraph 2 of the LPD). It is therefore a definition which is in no way different from the one given in the Directive. Article 12 prohibits harassment and degrading treatment: “Harassment and degrading treatment that aims at violating or constitutes violation of the dignity of a person or group of persons on the basis of their personal property, especially if this creates a fearful or hostile, degrading and abusive environment, shall be prohibited.” As can be seen, this definition is based on the general definition of harassment, but without directly mentioning sexual harassment as a possible form. Article 20, which prohibits discrimination on the grounds of sex, prohibits also “sex-based harassment”, but without defining specifically or thoroughly what it means.

Definition of sex-based harassment referred to in Article 182a, paragraph 3 of the Criminal Code: “Sex-based harassment is any verbal, non-verbal or physical conduct that aims at violating or violates the dignity of the person in the sexual sphere, which causes fear or creates hostile, degrading or abusive environment.” This definition has a much broader scope because it does not refer only to the field of work, and the very essence of the crime is defined almost identically as in the European definition and the definition given in the LoL.

Based on the definitions given, characteristic elements of sexual harassment can be observed. They are significant primarily because

they can be very useful in recognising sexual harassment, regardless of its legal classification (abuse, discrimination, criminal offence) in specific circumstances.

Some of the basic elements of sexual harassment are:

- *The action of sexual harassment can be verbal, non-verbal or physical behaviour.* This refers to a very wide range of potential actions that require special attention. The breadth of determination of the actions of perpetration is directly linked to the policy of zero tolerance to sexual harassment (it cannot be justified by any objective or subjective circumstance) and to the desire to protect victims as much as possible, or to include as many prohibited activities as possible in the circle of potential actions of perpetration. *Verbal sexual harassment* can refer to sending messages and to direct contact (conversation) between employees. Despite the fact that our first association to *verbal contact* is giving unwanted, more or less vulgar, compliments, sexual harassment is actually just as common through the expression of negative emotions, insults, disrespect related to the victim's sexual life. Verbal sexual harassment can also be indirect - spreading rumours about the sexual life of a colleague can certainly be seen as a prohibited action that has all the characteristics of sexual harassment. *Non-verbal sexual harassment* refers to the employee's behaviour that offends the dignity of another employee without direct physical contact or written messages. These can be gestures, facial expressions, leering, sighs and other inappropriate sounds and voices (whistling), pantomime, and the like. Their common characteristic is being related to the victim's

sexual life or in the broadest sense, having a sexual connotation and meaning. Sexual harassment of this type will also exist when such communication takes place in such a way that a certain behaviour constitutes a violation of the sphere of intimate life that only the victim understands (not understandable to the wider community or not expressed through generally recognisable signs and movements<sup>14</sup>). Finally, *physical behaviour* that can constitute sexual harassment is behaviour that we most often notice and most easily characterise as prohibited. In this category there are also different modalities whose degree depends mainly on the aggression and invasion of the victim's private sphere. While there is absolutely no dilemma that prohibited behaviour expressed through physical contact with intimate parts of the body, the use of physical force for the purpose of physical contact, and any other use of force or attempt of inappropriate or indecent contact will be characterised as sexual harassment and possibly the criminal offence of sex-based harassment, there are also other, more subtle forms that can be equally uncomfortable and create a humiliating atmosphere, fear, and insecurity, especially if repeated and systematically directed toward creating discomfort for the victim. For example, this category may include hugs, caressing the neck, touching the hair, shoulders, holding hands, and the like. As a rule, they are accompanied with other, verbal and non-verbal actions of sexual harassment. Also, special

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14 For example, in one case, a victim found it extremely disturbing when the abuser imitated the smelling (of flowers) and head-patting gesture, because she experienced it in a direct contact indoors (elevator) when he smelled her hair and touched her head. Although these gestures cannot be considered disturbing *per se*, they had a completely different meaning to the victim ("you smell good", "I'll caress you again when you finish your workday").

actions that can be understood as complex (can be combined verbal, non-verbal and physical) are *actions that induce acceptance of sexual behaviour*, by promising a reward or sanction. They are performed in different ways that include various of these tactics, but they are mainly reduced to extorting sexual behaviour through the creation of an atmosphere of fear (from losing the job, but also from physical harm) or through the creation of a system of direct benefits to the employee. It is questionable whether the latter is sexual harassment because it is a behaviour consented to by both employees involved in it; nevertheless, the circumstances of such a consent should be examined in each individual case to determine whether there was a mutual desire (as a rule, such cases will be examined precisely when the blackmailed party ceases to accept such a relationship at the price of drastic deterioration of its position at work). It must be noted that such "consent" is also very easy to characterise as extortion, especially in situations where the parties are unequal (in terms of hierarchy and position with the employer, but also in terms of the character of their relationship regardless of their position in the work process).

- *It must be an unwanted behaviour.* This restriction should not be understood literally - there are behaviours that will obviously be unwanted and can be automatically characterised as sexual harassment, despite the fact that the targeted employee has not expressed dissatisfaction formally. For example, it is quite certain that sexual harassment exists if an employee shows his sex organ to his colleague. In other cases, we may discuss the requirement of express-

ing dissatisfaction or explicitly rejecting such behaviour by the targeted person. In such cases, only one rejection is sufficient and any subsequent action will be considered undesirable, even if it is not the same or similar action. For example, if an employee invites his colleague to a dinner and she refuses, any further insistence via SMS, e-mails or otherwise can create discomfort and be considered sexual harassment, regardless of the fact that it does not go beyond the bounds of decent addressing. Sometimes, undesirability of behaviour can be determined without an explicit refusal - if an employee does not respond to messages and e-mails of personal, sexual or explicit content, it cannot be considered that she or he has given permission for the continuation of such behaviour. This is especially important in situations where the addressee of such messages is clearly in a subordinate position with respect to the sender (for example, the director-employee relationship), as well as in situations where there is a relationship between employees in which the sender is in a dominant (physical, psychological) role in relation to the message recipient, regardless of the formal hierarchy in the work process. Therefore, the "desirability" of behaviour that eliminates the possibility of sexual harassment has to be explicit, while the "undesirability" can be assumed.

- *The consequences of prohibited behaviour are twofold - violation of dignity or creation of a bad working environment. However, these two consequences are closely correlated, even complementary. The violation of dignity certainly occurs through the commission of any of the actions of sexual harassment. It is completely irrelevant*



whether or not it was the goal of the employee who performed the action. According to the European definition, a gradation of consequences can even be made, but it cannot have any practical application (except perhaps to differentiate between minor and serious disciplinary offences in terms of labour law). In fact, if sexual harassment consists of a one-off or low-intensity action resulting in a violation of dignity, it can be said that it exists but is likely to be an isolated case that will not happen again (this is of course always a rebuttable presumption). However, if the frequency and intensity of the actions of sexual harassment are such that the victim is affected also by "secondary" consequences, referred to in the definition as intimidating, hostile, degrading, humiliating or abusive environment, it can be considered prolonged (or at least long-lasting) sexual harassment, which as a rule will not cease on its own, that is, it will not cease until the victim confronts and seeks help or uses an available protection mechanism. Although the consequence of sexual harassment depends on the targeted person and her or his way of interpreting or experiencing the harassment, it must be emphasised once again that the mere perpetration of the action of sexual harassment is sufficient to consider it non-compliance with work discipline (or some more serious offence). Therefore, although the targeted person was not intimidated, or even did not feel uncomfortable, she can report such a case and seek protection.

- *The motive for the behaviour is of a sexual nature or sex-related.* This element must also be viewed broadly. What is not of a sexual nature to someone, it will be to another person. Subjective experience and

the circumstances of the case may dictate how a behaviour can be characterised. For example, entering into a colleague's personal space and having a minor physical contact with a colleague during an intense work process can be interpreted quite differently than the same body movement and behaviour when, for example, these colleagues are in a moving elevator. While in the former case it is possible to imagine that there is some objective and reasonable justification for unintentional physical contact, in the latter case it is very difficult to imagine that such behaviour is not characterised as invasive and prohibited.

- Although this is not explicitly contained in the definition, it should also be noted that sexual harassment does not always have to be directed solely at one person. On the contrary, individual actions can be directed at multiple employees at the same time, even to all employees of one sex, or with some other personal characteristics.

The question is whether sexual harassment was committed by performing any of the actions that could qualify as such or is it necessary that any of the consequences listed above occur? As already pointed out, the answer seems to lie in the interpretation of the European definition. The use of the term "with the purpose" implies that it is sufficient for the action to be performed. Depending on the victim's personality, it may indeed cause one or more of these consequences, but it is not of primary importance. A person commits sexual harassment by performing one of the actions that may qualify as such, with the only exception that it will not always be the first such action if the express refusal of the targeted person is required to qualify an action as sexual harassment.

What will not constitute sexual harassment, although it may have a sexual connotation? This group can include various employer's decisions related to work discipline, wearing work uniforms, measures to improve occupational health and safety and the like. Objectively, there is a small number of such procedures, as will be explained below. However, it is debatable whether some other actions can be characterised as sexual harassment, especially if they were performed in the circumstances that may constitute (partly) an objective justification for the employee's behaviour - for example, pointing the middle finger during a quarrel between employees will be very difficult to qualify as sexual harassment, although there are seemingly all the elements of it. Of course, if such actions are part of repeated communication, then the circumstances under which they should be observed change as well.

## 2. Sexual harassment as a form of abuse at work

The most common form of sexual harassment in practice is certainly abuse at work. As already mentioned, the LPAW does not contain a definition of sexual harassment, but refers to the one contained in the LoL. It means that in order to qualify some behaviour as sexual harassment and a form of abuse at work, it has to meet cumulatively the requirements of both regulations. The LPAW defines abuse as “any recurrent active or passive behaviour toward an employee or a group of employees of an employer, which is aimed at violating or constitutes a violation of dignity, reputation, personal and professional integrity,

health and status of an employee, which also causes fear or creates a hostile, humiliating or offensive environment, deteriorates working conditions or leads an employee to isolate himself or herself or to terminate the employment relationship or employment contract or other contract on his or her own initiative”<sup>15</sup>. If this definition is compared to the notion of sexual harassment from the LoL, there is obviously a great deal of overlapping. However, the incompleteness of the LPAW leaves several very important questions open.

First of all, there is the problem of a recurring action. Although the law itself is very imprecise in determining the temporal continuity and the link between the duration and the intensity and frequency of abuse actions, the courts, as a rule, require the victim of the abuse to demonstrate that the abuser’s behaviour cannot be considered an isolated incident.<sup>16</sup>This is a pointless provision when applied to sexual harassment, because this kind of prohibited behaviour is of such nature that it can have significant adverse effects on the victim even if it happens only once. None of the observed definitions of sexual harassment include the relevance of time factor or repetition of the action - which is quite logical. However, in combining the provisions of the LoL and the LPAW, they become an integral part of the evidentiary procedure - in order to prove that sexual harassment occurred in a form of abuse at work, one must prove that it is a recurring action. It is even possi-

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15 LPAW, Article 6 paragraph 1

16 It should be noted that the judicial practice is not uniform, and even some courts adopted (completely erroneously) the theoretical assumption of a six-month reference period for abuse as legally relevant, although the law does not provide any guidance of that kind.

ble that this action creates the conditions for filing criminal charges against the perpetrator without fulfilling the conditions to apply the LPAW - this is an unacceptable situation that must be resolved by defining far more precisely what a “recurring action” is or by completely eliminating this element from the definition of abuse at work.

Another problem that opens up is the coverage of norms related to sexual harassment. In fact, pursuant to the LoL, Article 21 applies only to employed persons. Pursuant to the LPAW, all persons engaged in the process of work, regardless of the legal basis (type of contract) for engagement, are protected. A logical interpretation would be that the LPAW takes over the definition, the term of sexual harassment, but not the scope of the LoL - and therefore can be applied also in cases where the victim is not employed but is otherwise engaged to work. It must be noted, however, that there is a potential conflict of regulations that should be eliminated, while the scope of protection against sexual harassment referred to in the LPAW should be specified.

The scope of the LPAW can also appear as a special problem. This is a matter of the defect of legal text as such and can be applied to any case of abuse at work, and is therefore relevant also in cases of sexual harassment. It is about the relationship between the abuser and the victim. The LPAW uses explicitly the term “employee” or “group of employees”. Although in Article 2 of the LPAW this term is significantly extended compared to its content in the LoL (where legal drafting rules are very poorly applied), the legal text does not protect all persons engaged in participating in the joint work process, because it determines that all those involved in abuse, both abusers and victims,

must be engaged by the same employer. This is an extremely unfortunate solution, which cannot cover some situations that may be very common in the work process:

- Work in the mixed teams of employees with multiple employers, on a joint project or under one of the contracts on business cooperation. This relationship can last for months, even years, without employees being protected from abuse if perpetrated by the employees of other employers, even though they share the same working space and tasks with the victim.
- Administrative (book-keeping, legal), hygiene and other services provided in the employer's premises by the persons who are not employed by that employer, but are engaged under one of the contracts on business and technical cooperation, service provision or the like. These individuals are not employed by the employer in whose premises they work and usually work for more such employers who are formally and legally only their original employer's clients - which means that they will not be protected from abuse at work, and consequently from sexual harassment.
- Work of assigned employees (through temporary employment agencies) and workers hired through student and youth cooperatives. In both categories of individuals, the employer is someone else, although they do all their work with the employer to whom they are assigned or sent to work.
- Relationship with other persons who are users of employee ser-

vices and individuals found in the employer's premises in another capacity while performing their work tasks for another employer (for example, courier service, catering service). Unlike in the previous cases, this is a one-time or short-term contact, which certainly does not mean that sexual harassment cannot occur.

As can be concluded, there are significant gaps in regulating the scope of the provisions on abuse at work - and consequently sexual harassment in terms of abuse at work. For the first time until the law is amended, these gaps can be partly solved by creative judicial practice and extensive interpretation of existing provisions. In particular, it can be legitimately interpreted that the employer is required to provide employees with a safe work environment, regardless of where they perform their work. In case of failing to do so, the employer may be sued for abuse at work suffered by the employee, even if the abuser is not employed by that employer. But even if such a broader interpretation of the law is accepted, the problem of punishing the abuser remains - the employer that employs the abuser will have no opportunity to react even if the victim's employer is convicted of abuse at work.

Finally, there is a problem of the legal capacity of being sued arising from Article 29 of the LPAW, which regulates that an employee may file a claim for abuse against the employer but not against the abuser. Although the initial interpretation of this provision in judicial practice was uneven and there were also court decisions dismissing a claim against a person identified as abuser, the accepted interpretation now seems to be that both the employer and the abuser have the

legal capacity of being sued.<sup>17</sup> Any other interpretation would lead to very bad consequences for the purpose of judicial protection and for employees, regardless of whether they appear as victims or as alleged abusers.

Pursuant to the LPAW, the Minister of Labour adopted the *Rulebook on the Conduct of Employers and Employees Regarding the Prevention and Protection against Abuse at Work*<sup>18</sup> (hereinafter: the Rulebook). From the aspect of sexual harassment, the Rulebook is important primarily because it specifies some of the potential actions of perpetration. The Rulebook explicitly uses the definition of sexual harassment from the Law on Labour, and in that sense there are the same problems that have been described above. The list of prohibited behaviours is not exhaustive, but it is certainly referential for the perception of sexual harassment.

According to the Rulebook, sexual harassment exists in the following situations:<sup>19</sup>

- humiliating and inappropriate comments and actions of a sexual nature

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17 It seems that the minimum established by the court is that the employer must be indicated as the accused (see, for example, the Judgment of the Appellate Court in Niš, 9Gž1.1238/13 of 4 December 2013). However, it is not allowed that in addition to the employer the direct perpetrator of abuse is also the accused (in that sense, it is indicative that the Appellate Court in Niš reasoned completely different in its Judgment 18Gž1.403/13 of 22 March 2013, which means that in the early years of the implementation of the LPAW the practice was uneven, even within the same courts).

18 *Rulebook on the Conduct of Employers and Employees Regarding the Prevention and Protection against Abuse at Work, Official Gazette of the RS*, no. 62/2010

19 Rulebook, Article 12, paragraph 1, point 6)



- attempting to make or making indecent and unwanted physical contact
- inducing the acceptance of a sexual behaviour with the promise of reward, threat or blackmail
- other behaviours of the same kind.

Already at first glance, it is clear that the division of sexual harassment into verbal, non-verbal and physical actions has not been followed. Moreover, unlike some other categories of the actions of perpetration of abuse defined by the same Rulebook, there are no concrete examples of what sexual harassment exactly means. This certainly does not help clarify what sexual harassment is or is not. The terms used are not quite clear either, so it can be debated what constitutes indecent physical contact - it may be clearer in the context of sexual or sex-related sphere of life of the victim of sexual harassment, but it may also raise different doubts, i.e. the victim may doubt whether he or she has experienced sexually inappropriate contact and the court may doubt whether sexual harassment was committed. For example, can grabbing someone's hand, without other sexual connotations, be considered sexual harassment? When will the overall circumstances in which an action occurs be of utmost importance and when will sexual harassment exist independently of what the intent of the abuser was? The Rulebook does not answer these questions, although it is supposed to elaborate on (imprecise and insufficient) legal provisions.

If we examine more closely the actions classified as sexual harassment in the Rulebook, we can give some indicative examples that help identify sexual harassment:

- *Humiliating and inappropriate comments and actions of a sexual nature:* Both verbal and non-verbal actions fall into this category. It is important to note that not every humiliating act will be related to sexual abuse. For example, the employer's conduct was humiliating if he transferred an engineer with university education from the position of designer to the position of doorkeeper. This is humiliation that constitutes abuse at work but is not committed in the sphere of sexual or sex-related life of the employee. However, if the actions are related to the sex-related sphere, they will constitute sexual harassment - for example, humiliating actions may be touching one's own sex organs in front of a colleague. As regards comments, they are a typical example of verbal sexual harassment. It is not difficult to conclude when a comment is humiliating - any vulgar comment may be considered humiliating, but also various other lascivious comments or comments uttered in such a way as to presume or insinuate an insult in the sphere of sexual or sex-related life. However, the inappropriateness of comments will usually depend on the circumstances. A trivial comment (for example, commenting on a person's clothing or manner of speech) may be inappropriate if it creates an offensive or degrading atmosphere, that is, if the person being addressed experiences it as offensive, intrusive, indecent, etc., especially taking into consideration the circumstances in which it is said. In such cases, the boundary between

allowed and prohibited behaviour is very blurred - hence one of the rules of proof in court proceedings is that an alleged abuser must demonstrate that he or she did not commit sexual harassment, having regard to all the circumstances in which an action occurred. However, this will not be enough if his or her behaviour has led to sexual harassment.

- *Attempting to make or making indecent and unwanted physical contact:* These are physical actions of sexual harassment. They can be very diverse and cannot be reduced to direct physical contact with the victim. On the contrary, the threat of sexual violence with the demonstration of physical force not directed at the victim (destruction of office furniture or supplies) will also be considered sexual harassment. Besides inappropriate touching, the most common forms of this action are gestures of a sexual and abusive nature (showing the middle finger, abuser's grabbing his own genitals, pantomiming sexual acts, presenting sexual content - porn magazines or movies to the victim, etc.). Drastic examples of physical contact without direct contact are the display of the sexual organs, or undressing in front of the victim. When it comes to direct physical contact, it should be emphasised that any use of coercion and force is an example of sexual harassment in terms of labour law, but it is also a reason for filing a criminal charge for the offence of sex-based harassment or for some other crime against sexual freedom, depending on the circumstances.

- *Inducing the acceptance of a sexual behaviour with the promise of reward, threat or blackmail:* This group of actions is specific and it is very important that it is recognised in the Rulebook because it is a relatively common method of sexual harassment. As will be analysed in more detail below, this type of behaviour assumes both verbal and non-verbal and physical actions. The abuser does not have to make the threat (or the reward) objectively realistic - it is enough for the victim to consider it realistic. There are several offences that can certainly constitute the criminal liability of the abuser, especially in terms of creating the relationship of sexual exploitation with the victim. As regards labour law, it should be noted that the refusal to establish such a relationship or its subsequent termination, as a rule, lead to other forms of abuse at work, unlawfulness through the denial of labour rights to the victim and often to illegal termination of employment. Although given the nature of hierarchical superiority, it is logical that in most cases the perpetrator will be a person in the employer's management, but it can happen also that the perpetrator and the victim are (approximately) in the same positions. It should be emphasised that such situations are very likely to occur if the employees work for the same (or related) employers, but the reward, threat or blackmail has nothing to do with the employment status of those persons. In this case, the most commonly used methods are threatening with physical harm to the victim or a person close to the victim, and other mechanisms of physical or psychological coercion.

- *Other behaviours of the same type:* Anything that is not part of the previous considerations can be included in this group. The point of its existence is that different persons may react differently to certain behaviours - while one person will not even notice a prohibited action or characterise it as something wrong, in other person the same behaviour can cause serious and lasting consequences, especially in terms of the feeling of humiliation, fear and hostility or (physical and psychological) threat. Therefore, it is impossible to make an exhaustive list of potential actions of sexual harassment (and abuse in the broadest sense).

Some other actions of abuse, which are not explicitly listed as actions of sexual harassment, may constitute this type of prohibited behaviour in certain circumstances. Thus, for example, "unjustified, unreasonable use or overuse of cameras and other technical means to control employees" may escalate into invasion of privacy and the sex-related sphere of life (placing cameras in the toilet). "Assigning non-work-related tasks" can be done to isolate an employee in order to make him or her vulnerable and easier target for sexual harassment (examples where a director takes on a business trip or seminar with him a female employee who is not directly involved in the work performed on that business trip or seminar<sup>20</sup>). The same applies to being called derogatory names, verbal assaults, ridiculing, gossiping, fabricating stories, spreading lies about an employee in general and about his or her private life, and the like. Many actions of abuse may be in the function of

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<sup>20</sup> Although this construction of circumstances may be considered gender stereotyped, in practice it is one of the most common situations in which sexual harassment occurs.

sexual harassment, or may be the result of the victim's refusal to consent to sexual contact with the abuser. Although such cases are common in practice, the Rulebook does not recognise them.

The protection mechanisms provided by the LPAW are not fully adapted to sexual harassment cases. This applies in particular to the procedure of preliminary dispute resolution with the employer. In fact, this procedure is conceived as an alternative to litigation, which is always welcome because extrajudicial forms of dispute resolution are usually more efficient, less expensive and resolved by compromise, although the latter does not have to be the rule and depends on the model of amicable dispute resolution. The law provides for a mediation option as a way of settling a dispute over abuse. Mediation ends with the adoption of an agreement, which must be agreed upon by both parties to the dispute - there is no imposition of a solution or arbitrary decisions. The mediator may be any person chosen by the parties. Although this option may at first seem advanced, in practice it has led to a number of difficulties and stultification of the procedure. First of all, it was not intended to be applied in cases of continuous and systematic abuse. The LPAW, however, stipulates that it is obligatory always when the abuser is not a superior (responsible person with the employer), and that in this case it is a precondition for initiating a mechanism of judicial protection.<sup>21</sup> This very poor solution practically implies that the victim of sexual harassment has to go through this procedure in order to be able to file a lawsuit. Moreover, the fact

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21 LPAW, Article 14

that anyone can mediate (if the parties to the dispute agree)<sup>22</sup>, regardless of whether he or she has legal experience or any experience or knowledge of mediation, leads to the situation where these procedures are often conducted contrary to legal provisions or the purpose of standardising the procedure.<sup>23</sup>

However, none of the above is fundamentally wrong in this case, but the fact that in abuse at work (and especially in sexual harassment), there are no two parties to the dispute, but their relationship is more like that of the perpetrator and the victim. Being in dispute over the issue whether abuse (sexual harassment) has occurred does not put them in the same factual position of an employee and an employer who are, for example, in dispute over the calculation of overtime. This is a qualitatively different relationship; the nature of their dispute is such that it is difficult to see when the procedure of mediation may be completed satisfactorily for the victim. Instead, the victim is forced to go through the whole course of events once again, with (un)skilled mediation most commonly performed by a colleague who knows both employees (often the manager of employees). This can only be meaningful in cases where there has been miscommunication between employees, in cases of an isolated incident and where a party who has committed an act qualified as sexual harassment by another party is genuinely remorseful. Such cases are rare in practice. What happens when it is not like that? The victim must first go through the whole

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22 LPAW, Article 16

23 This applies in particular to non-compliance with statutory deadlines, respect for the principle of urgency, and also respect for the principle of independence and impartiality of mediator (who is very often under direct pressure from the employer).

event again, often under pressure by the abuser even during the procedure of mediation. Then, and this is especially absurd, the procedure can be completed only by reaching an agreement between the parties. It is completely unrealistic that the abuser will agree to the agreement in which he is indicated as such. This agreement is supposed to establish the principles of future communication between the abuser and the victim so that the abuse does not recur. In practice, however, it happens that the abuser considers a victory and proof of superiority, not only over the victim but also over the protection system, the fact that the agreement does not state that he has committed the abuse - on the contrary, the most commonly used formulations are those that may lead the victim to wonder if she is to blame for what happened to her. As a rule, the agreement envisages the duties that *both parties* have in order not to avoid the recurrence of abuse (sexual harassment). Although they are general (depending on the circumstances they may even be concrete - for example, one employee states that he or she will not visit another employee's workspace, except in some exceptional cases when the work process requires it), the very fact that the burden imposed on both parties is equal gives the abuser an impetus for further abuse. Therefore, it is not surprising that a small number of agreements are respected in practice, even when they essentially establish that the abuser (and the victim) only have to abide by the basic legal rules of conduct at work.<sup>24</sup> Therefore,

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24 The LPAW regulates the effect of the agreement in a very surprising way, essentially imposing no obligation of compliance or a sanction in case of non-compliance: "The effect of an agreement reached in the procedure of mediation depends on the will of the parties to the dispute, if the agreement covers the regulation of conduct in their mutual relationship." (Article 21, paragraph 2).



this entire procedure, except in exceptional cases where there is a will of both parties to resolve the conflict (which is usually a sign that it did not exist or was incidental), is completely meaningless and deprives the victim of the opportunity to initiate the judicial protection mechanism as soon as possible. As will be analysed by presenting a case from the practice, employers, when this procedure does not produce any results or the abuser does not adhere to the agreed, sometimes resort to other informal actions in order to solve the problem - these procedures are usually such that the abuser goes unpunished and the victim must make additional efforts to avoid further abuse at work. The employer very rarely uses his powers referred to in Article 23 of the LPAW, which provides that, if the procedure of mediation fails and there is a reasonable suspicion that abuse has been committed or the right to protection against abuse has been violated, the employer is obliged to initiate a disciplinary procedure against an employee for non-compliance with work discipline or breach of work duty.

As regards judicial practice in cases of sexual harassment as a type of abuse at work, the first impression is that it is almost non-existent. Very few cases indicate that victims rarely decide to initiate a mechanism for judicial protection of the right to dignity at work. In a large number of litigations initiated for abuse at work, there is an extremely small number of sexual harassment cases.

When the first final decision on abuse was pronounced by the Appellate Court in Novi Sad that qualified it as sexual harassment<sup>25</sup>, it

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25 Judgment of the Appellate Court in Novi Sad no. Gž1.3500/13 of 24 December 2013

seemed that the situation would be different. However, recent developments show that this is not the case.<sup>26</sup> This is why it is particularly important for the analysis, especially because it demonstrates several elements of good practice that could be developed in the future.

The sexual harassment case is related to the relationship of the director of a preschool institution in Novi Sad with an employee. The director began sexual harassment in meetings (usually only the two of them were present, always at his invitation) at which he commented on the appearance of the employee, and later continued with harassment through electronic communication (SMS). In the period of sexual harassment, he indirectly indicated that the employee could be fired if she did not consent to his actions, although she fulfilled all the conditions for the job she performed and was repeatedly praised for the quality of her performance. Sexual harassment culminated in physical contact at the director's office, after which she lost consciousness and spent a week on sick leave. Sexual harassment via SMS continued afterwards, and to any employee's resistance (and a warning that she would contact the authorities for protection), the director replied that he had too many political and other connections and that neither the court nor the police could do any harm to him. The actions of abuse had worsened over time, culminating again when the director's wife thought that the roles of her husband and the employee were reverse, due to which she reacted and threatened the employee.

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26 In the course of research for this analysis, it has been confirmed from several sources that only one final decision on sexual harassment at work as a form of abuse at work has been pronounced by each of the Appellate Courts in Belgrade and Novi Sad, and that a very small number of cases are pending the second-degree (final) decision.

The employee was then treated at the psychiatric ward and soon afterwards attempted suicide, but was prevented from doing so. After more than a year of sexual harassment, and after all the events described, the director transferred the employee to another organisational unit. At the time of the second-instance judgment (almost two years after the onset of sexual harassment), the employee was still undergoing psychiatric treatment and had been proposed to be granted a disability pension shortly before.

The court concluded that in that particular case, there was abuse at work, more precisely sexual harassment as one of its forms. It should be noted that the court paid full attention to electronic evidence (in this case SMS) because this form of communication prevails (no other written documents) and is often the only evidence if the abuse is committed without witnesses (or they are unwilling to testify). It is also important to mention the rationale that relates specifically to SMS communication, but also to the overall communication between the employee and the director/abuser, regarding the "relationship of closeness" between the two persons. Although the defence argued that there was no sexual harassment because the employee consented to such communication, the court established very precisely the boundaries of the employee's closeness with the colleague expressed in the context of business culture and what constituted inappropriate, offensive and degrading communication by the director. The court also took into account that the employee replied to some abusive messages, while she did not reply to most of them, but justifiably did not find in these replies an element of consent to this type of correspondence with the

abuser, and correctly deemed that the employee tried, in different ways, to end communication that was not pleasant for her and that led to the collapse of her health, as confirmed by medical documentation. The court also clearly stated that the employee refused this type of communication at the very beginning, as well as many times later, during the one-year period of sexual harassment.

Finally, this decision should be mentioned as an example of good practice and because of the unusually high (though objectively still low) amount of non-pecuniary damage compensation - a total of RSD 750,000 with default interest until the day of payment. According to the LPAW, this amount will be paid by the employer as defendant (the abuser is an intervener in the litigation), and it would certainly be a recommendation to the courts not to hesitate to adjudicate millions of non-pecuniary damage compensation in similar situations. However, according to the LoL<sup>27</sup>, the employer can claim this amount from the employee as compensation for the damage caused to the employer by his behaviour. In the statements given to the media after the final decision of the Appellate Court, the employer announced exactly such a course of events, and the director's employment contract was terminated.

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27 LoL, Article 163, paragraph 7: "An employee who, at work or in connection with work, intentionally or due to gross negligence caused damage to a third party, which has been compensated by the employer, shall compensate the employer for the amount of damage compensation paid." Given that abuse is always intentional, each employer may claim from the abuser the amount of compensation ordered by the court for the damage caused by committing abuse at work, and paid by the employer.

What is the cause of scarce judicial practice? First of all, we should specify general factors that influence a failure to seek judicial redress: lack of trust in courts, lack of resources, length of proceedings, inability to hire a lawyer. Further, although the implementation of the Law on Free Legal Aid<sup>28</sup> has (partly) begun, most citizens will not be able to obtain legal aid in that way; therefore, citizens often remain unaware of their rights, legal (or procedural) status and the possibility of seeking judicial protection. The employer also appears as a factor. The employer often discourages the victim, less often by promising a reward and more often by threats. Often the victim uncritically accepts what she hears from the employer, which misleads her into thinking that judicial protection is not possible at all, or that it is a waste of time and money. It also happens that victims are late informed of their rights when the statutory deadlines for initiating a protection procedure have passed. The next group of factors relates to the victim's personality and to his or her environment. Without the support of environment, the victim often feels lonely and isolated. In the end, the decisive thinking is that "this is just a job" and that it is far easier to find a new job than to go through a tortuous and painstaking litigation. The environment, on the other hand, often reacts with restraint, even negatively - due to the strong patriarchal patterns that are dominant in our society, the victim who speaks up is subjected to secondary victimisation by shifting responsibility to her ("she certainly con-

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28 *Law on Free Legal Aid*, Official Gazette of the RS, no. 87/2018 The law is effective as of 1 October 2019, but state bodies, public authorities and local self-governments that can provide free legal aid have a period of 12 months from that date to organise the provision of free legal support, i.e. to establish a legal aid service. Even when the full implementation of the law begins, it will not meet even a small part of the citizens' needs for free legal aid, mainly because of the restrictive eligibility criteria.

tributed to what happened to her by the way she dresses, speaks or behaves") - which is an additional deterrent to mentioning the suffered injustice to anyone.

If the court proceedings are initiated after all, proving seems to be the most difficult part. Specifically, although the law has shifted the burden of proof to the alleged abuser<sup>29</sup> or the employer, this rule is not applied at all, or is applied in a way that renders it meaningless. Sexual harassment usually occurs in privacy, without witnesses. If there are any, they are often intimidated or simply unwilling to interfere. Since sexual harassment can be committed in many ways and since it is not demonstrated with the employer's official documents, general and individual acts<sup>30</sup>, written evidence that can be used at court is rare. Private messages sent by the abuser to the victim, regardless of their format (SMS or other messages, emails, etc.) have certainly been significant in the judicial practice so far. They are accepted as valid evidence, like any other electronic evidence. In addition, the victim relies mainly on the testimony of witnesses, which is risky given their refusal to testify, change of testimony as well as other complications that may be due to the influence of the abuser, but also because the employer is, as a rule, always the one sued in the procedure for determining sexual harassment as a type of abuse at work.

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29 LPAW, Article 31: "If during the proceedings, the plaintiff demonstrates the probability that the harassment referred to in Article 6 of this law occurred, the burden of proving that there was no behaviour that constitutes harassment shall be on the employer."

30 Of course, there are exceptions, but only in terms of circumstantial evidence. For example, a travel order may be a proof that the victim of abuse really had to go on a business trip where she was sexually harassed.

It is therefore important to mention that cases of sexual harassment are often not brought to court, i.e. remain unrecorded in official statistics or surveys. This leads to the situation where cases of sexual harassment are quite rare in judicial practice, which creates a wrong perception of their frequency. The lack of confidence in courts and determination to solve the whole problem internally (and with the help of the employer) in order to get as little attention as possible and to reach a solution as quickly as possible, are the most common reasons for such victim's behaviour.

One of such characteristic cases is related to the experience of the Legal Clinic for Labour Law of the Faculty of Law, Union University in Belgrade<sup>31</sup>. It is a case of sexual harassment that has evolved into other forms of abuse at work. Sexual harassment was committed by an employee in a superior position who could directly influence the victim's advancement (or demotion) at work. The harassment began with invitations to go on a date, e-mails and SMS messages of lascivious content, and soon continued with "private" meetings usually focusing on sexual topics (although they were usually convened for other reasons). When the employee categorically refused offers of a sexual nature addressed to her, the abuser began to perform various actions of abuse, including particularly drastic ones, such as influencing other employees to cut off communication with the victim, preventing her from entering the premises where she worked (chang-

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31 All the cases presented in this study, which relate to the free legal aid provided at the Legal Clinic for Labour Law of the Faculty of Law, Union University in Belgrade, are anonymised and described in accordance with the rules on the protection of privacy and personal data. The author worked as Legal Clinic Secretary in the period 2009-2018.

ing the lock and prohibiting other employees to give her the key), not inviting the victim to joint meetings and other business activities and expressing the open animosity by insulting the victim whenever they met. Although these actions were obvious and could not be hidden from other employees, it is interesting that the abuser, in later proceedings, and in formal and informal conversations, emphasised that the victim had imagined all this and did not carry out her regular activities because she was lazy and negligent and not because she was prevented from doing so. The victim initiated an internal procedure for protection against abuse at work, since the abuser was the head of one of several organisational units of the employer's company and that another person was his direct supervisor (director). Upon learning of the initiation of the procedure, the abuser persuaded one of the female employees to initiate an identical procedure against the victim. However, this procedure never went further than addressing the director, as it was obvious that the right to protection against abuse had been abused. Neither the inspirer (the actual abuser) nor the doer (the employee who was allegedly abused) suffered any consequences from the employer.

The internal conciliation procedure at the employer had all the negative characteristics discussed above. A person chosen to be the mediator was hierarchically equal to the abuser and did not want to act against him. The abuser obstructed the procedure, which lasted for months, contrary to law. The tactic he used was already mentioned - he even denied the actions that were evident (for example, changing the lock of the victim's office). In the end, the mediator drew up



an agreement full of empty, declarative statements and inoperative phrases. The victim refused to sign it and announced a lawsuit.

At this point, the behaviour of the employer's responsible person/director should be mentioned; all the time he tried to achieve only two goals: to keep the procedure within the framework of the employer (it seems that the reason for this was to preserve the reputation of the employer, not to benefit the victim or solve the problem efficiently) and to avoid any consequences for the abuser. After a failed mediation attempt, the employer responded by increasing the pressure on the victim of abuse, saying that nothing else could be done and that the employer (or director as responsible person) would be sued in court and not the abuser, which, in the director's opinion, would be an unfair outcome. Also, the employee was informed that after the lawsuit she would not be able to continue working with the employer, regardless of the outcome of proceedings.

After a subsequent address to the director, in which she thoroughly analysed her procedural position, the evidence at her disposal, the responsibility of the employer to prevent exactly the behaviour she experienced, and the determination to inform the employer's management and supervisory board, the victim finally received an offer to be transferred to another organisational unit and thus to be physically and operationally separated from the abuser; the employer also offered to allow her the additional qualification period required for the different type of work she would perform. The employee agreed to this compromise, managed well in the new work environment and was promoted. The abuser did not suffer any sanction by the employer,

and continued to perform his role that involved the supervision of a larger number of employees. It is unknown whether he repeated his actions in the form of sexual harassment or other forms of abuse of subordinate employees.

If we analyse the implementation of the legal framework related to sexual harassment, it becomes quite clear that no legally prescribed potential solution to the dispute was applied or properly applied. What is particularly worrying, and very common in practice, is the employer's benevolent attitude towards abuse and even sexual harassment committed by his employees. The first reaction in such cases is the employer's self-protection, followed by the protection of the abuser. This happens even when the abuser is someone who is not high in the employer's hierarchy or otherwise close to the employer's management. It is probably due to the fact that the employer deems that it is far more important to end the uncomfortable situation as efficiently as possible at any cost and therefore joins the party in the position of factual superiority. The victim of sexual harassment, in the eyes of the employer, is a "threat" because she may initiate procedures that will publicly reveal the details of disturbed interpersonal relationships in the employer's company. The employer, therefore, supports the party that already has a factual advantage, practically approving the unlawful actions that have occurred. In such a situation, the most the victim can hope for, if she does not want to bring a dispute to court (and this is likely to happen in many cases for various reasons), is to succeed in physically separating herself from the abuser, as happened in the described case. This leads to the conclusion that victims need to

be further encouraged to seek judicial protection, and that it is necessary to make this type of dispute far more effective - otherwise, the described system of protection against sexual harassment as a type of abuse will not prevent such occurrences at work.

It should also be noted that the LGE contains special Article 18 that regulates the issue of sexual harassment (and sexual blackmail) at work and in connection with work. Since sexual harassment is defined as a breach of work duty that constitutes the basis for dismissing an employee and for initiating a dismissal procedure against the perpetrator, the concept of sexual harassment appears to be closer to the definition accepted in the LPAW than to the qualification of sexual harassment as a form of discrimination. This is also supported by paragraph 2 of the said Article, which provides that the employee shall notify the employer in writing of the circumstances of sexual harassment and sexual blackmail, and ask for an effective protection from the employer - this provision is somewhat similar to the preliminary procedure before the employer in the case of abuse at work.<sup>32</sup> Unfortunately, protection mechanisms are not further elaborated in the LGE, so this standard can be regarded as declaratory and - which is a logical conclusion of the previous interpretation and connection with the LPAW - complementary to the system of protection envisaged in relation to protection from abuse at work. Only in this way can it be oper-

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32 Article 20 of the LGE deals with protection from discrimination against persons seeking the employer's assistance in cases of sexual harassment and sexual blackmail. However, the two arrangements should not be confused - Article 18 does not explicitly determine sexual harassment as a form of discrimination, while the purpose of protection under Article 20 is only to prevent the victimisation of a victim of sexual harassment.

ationalised (Article 54 of the LGE also stipulates a misdemeanour punishment for an employer who disregards the information received from an employee regarding a problem of sexual harassment and/or sexual blackmail).

### 3. Sexual harassment as a type of discrimination in the area of work

as regards sexual harassment as a form of discrimination in the area of work, first of all it is important to distinguish it from sexual harassment as a form of abuse at work. This task is not an easy one, since discrimination and abuse at work, although two different phenomena, have many touch points and similarities. This has unfortunately also led to the incomprehensible confusion of the two legal concepts in judicial practice, as noted above. The actions of perpetration are similar and can be identical as well as the consequences. Although similar, discrimination and abuse at work are essentially different concepts, which are regulated by different laws and cannot be identified. Abuse at work is motivated by the personal relationship of the abuser and the victim; it is not perpetrated for any other reason but to satisfy negative emotions or strategically attack an individual. Discrimination, however, is motivated by different reasons - it is committed not because there is a negative attitude towards an individual, but because there is a certain attitude towards a wider group to which that individual belongs. That individual, in the eyes of the discriminator, is characterised only by a personal trait or characteristic that determines his or her

relationship with a broader group, more or less coherent, and towards which the discriminator has certain prejudices or stereotypes. That is why the personality of the victim of discrimination is not as important as that of the victim of abuse at work - the discriminator would repeat the unlawful actions even if the victim was another person who had the same personal trait towards which the perpetrator has animosity. For example, if one mistreats a work colleague because he or she is envious of his or her popularity, or because he or she knows that two of them are candidates for promotion to a better position - this is a typical case of abuse at work. However, if one mistreats a work colleague because he or she has learned that the colleague is gay, it is a case of discrimination.

In sexual harassment, this otherwise very clear boundary is rather blurred, due to the very nature of prohibited behaviour. It has already been noted that there is a very unfortunate solution in the legislation where the LPAW refers to the definition of sexual harassment from the LoL, although it is given in the chapter of the law prohibiting discrimination and not abuse at work. This is not accidental, because sexual harassment is defined exactly in the same way as abuse and discrimination. What makes them different is the motive for acting - this, unfortunately, is not well explained in the LPAW and inevitably leads to doubts and errors in judicial practice. An additional aggravating circumstance is that in cases of sexual harassment a person's sexual characteristics are always seen as a primary personal trait (regardless of whether the perpetrator and the victim are of the same or different sex).

However, differences do exist. In fact, sexual harassment as a form of discrimination will always exist when a person is treated differently for belonging to a particular sex. In this case, sex is a personal trait that determines the discriminator's behaviour - he or she will sexually harass a number of persons belonging to a particular sex, guided by the emotions and thoughts provoked in him or her by the victim's sex. The discriminator - as will be explained in the analysis of one of the cases from the practice - does not necessarily have the awareness that his or her behaviour is negative and that it causes negative reactions in the victim. On the contrary, it may be the case that a person commits sexual imposition believing that it is perfectly normal, permissible and acceptable. Most often, these individuals have a clear awareness of doing something that is impermissible and that creates discomfort or even more serious consequences for the victim. However, even if the element of awareness about the impermissibility of behaviour and the consequences does not exist, it does not mean that the law was not violated or that the perpetrator of that violation can defend or alleviate his or her position by claiming that he or she was not aware of doing something unlawful or that he or she believed that it was a normal behaviour (and it is precisely this invalid argument that is often the basis of the perpetrator's "defence", regardless of the procedure in which it is presented).

In any other case, it will be abuse at work. This understanding of sexual harassment is narrow and it is most likely the reason why there is

practically no judicial practice for this form of discrimination.<sup>33</sup> It also raises some questions: When can individual harassment be seen as behaviour related to a group that has certain personal traits? Although the answer to this question is sometimes obvious and arises from the circumstances of the case, it is very difficult to prove the intention that one wishes to sexually harass a larger number of persons with the same (same-type) characteristics. Therefore, this intention does not have to be demonstrated in cases of abuse at work and discrimination (because of the redistribution of the burden of proof, it is up to the defendant to demonstrate its absence). Does it have to be committed against all members of a group, or is it enough to be committed repeatedly against a smaller number of persons? For example, it is not realistic to expect that the director will sexually harass all employees. Even in smaller collectives, it is not reasonable to expect that sexual harassment must be repeated with the same intensity and actions towards more employees, in order to reach the conclusion that there is discrimination. Does this repetition have to be simultaneous or consecutive? Is it possible to commit sexual harassment as a form of discrimination against only one person if it is certain that the motive was discriminatory? The answers are not easy to give, especially considering the fact that the discriminator does not have to commit sexual harassment only against the persons with whom he works, and that it may be committed in a prolonged period in the companies of different employers (of which the victim will rarely be informed). If we add

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33 In the research of the implementation of the 2017 Law on the Prohibition of Discrimination, the author did not find a single litigation in case of sexual harassment as a form of discrimination. The additional research of recent judicial practice has not yielded results.

to this the fact that discrimination is a different treatment concerning a right at work and related to work, its perception through the prism of sexual harassment can be quite complicated.

All of the above leads to the victim's conclusion that this type of behaviour is abuse at work. However, discrimination will sometimes be more visible and obvious. In one recorded case<sup>34</sup> the employer required all female employees to dress more attractively when meeting with business clients. It was not the company dress code, nor were formal uniforms or other dress codes prescribed. The employer responded to the employees' complaints by prescribing the official way of dressing and treating clients only for female employees. Immediately after the intervention of one of the employees' attorneys, the concerned rulebook was withdrawn with the apology of the employer's management. Both of these cases are the cases of discrimination. It was first committed informally and then formalised through a general act. The rules related to dressing and behaviour in the presence of clients are discriminatory because they applied only to employed women. They are also deeply immoral and certainly constitute a form of sexual harassment because they have created an inappropriate atmosphere in which employees are treated solely as sexual objects.

As regards mechanisms of protection against sexual harassment as a form of discrimination, the two mechanisms should be separated.

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34 Case from the author's expert consultations with victims of discrimination.



The Commissioner for Protection of Equality (hereinafter: the Commissioner) has been established by the LPD, and anyone who believes that they have been discriminated against, including sexually harassed, can address this institution.

Probably the most famous case handled by the Commissioner is related to sexual harassment at the Military Academy in Belgrade.<sup>35</sup> In a conversation where further professional advancement of a junior colleague was supposed to be discussed, a lieutenant colonel from the Military Academy, made to a female colleague, sub-lieutenant, a series of humiliating and degrading statements and comments of a sexual nature, presenting details about his intimate life, inviting her to dinner and offering physical contact. What is symptomatic, and can be inferred from the available data, is a lack of greater (legal and psychological) support for the victim by the employer, although on the basis of the circumstances it was certain that sexual harassment had occurred (the perpetrator confirmed, among other things, the content of the conversation as stated by the victim, but categorically rejected the conclusion that he had thereby committed discrimination and/or sexual harassment). Since the victim filed a request for protection against abuse at work, the Military Academy (correctly) concluded that the abuse did not occur (the action was not repeated). Ironically, prior to this event, the discriminator was also appointed a support person in the case of abuse at work; he was removed from this position during the procedure before the Commissioner.

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35 Complaint of B.I. against P.J. for discrimination committed in the context of sexual harassment at work (Ref. No. 548/2011 of 6 May 2011) Source: Nevena Petrušić (ur.), *Zbornik mišljenja, preporuka i upozorenja Poverenika za zaštitu ravnopravnosti – diskriminacija na osnovu pola i rodnog identiteta*, Beograd, 2013, str. 26-31.

Other cases of sexual harassment at work can be found in the Commissioner's reports. The 2013 Annual Report describes the case of a social worker who sexually harassed the Roma beneficiaries of social welfare centre by inviting them to a coffee and inappropriately commenting on their physical appearance with sexual connotations.<sup>36</sup>

In both cases, the Commissioner found that sexual harassment as a form of discrimination had been committed and made recommendations that were implemented and the perpetrators apologised to the victims for their behaviour, with the obligation not to repeat it. There is no information on whether their employers initiated appropriate disciplinary actions in relation to these events.

The judicial protection against discrimination is rather well in place. The LPD, *inter alia*, provides for a rule on the redistribution of the burden of proof, as well as for the Commissioner's strategic litigation, situational testing, and the possibility of in-court representation of the victim by an organisation dealing with the protection of human rights or rights of a specific group of people. However, these rules are not sufficiently applied in practice, and there are very illogical interpretations in judicial practice, which are contrary to the existence of such legal provisions.<sup>37</sup> Considering the combination with other factors related to narrow scope and difficulties in proving sexual harassment as a form of discrimination, and taking into account the victim's potential life circumstances and way of thinking, as described in the part dealing

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36 2013 Annual Report of the Commissioner for Protection of Equality, p. 94.

37 Reljanović 2017, pp. 26-27.

with abuse at work - and which can be applied here analogously - it is not surprising that there is almost no judicial practice in this area.

## 4. Hidden sexual harassment

the cases of "hidden" sexual harassment constitute a specific problem with regard to sexual harassment in the area of work. These are situations where an employee who is a potential victim of sexual harassment has suffered some other type of unlawful action at work, the cause of which is precisely the prohibited behaviour of another employee, but the motive for the unlawful action is not the subject of litigation. For example, a company director treats unlawfully one of the employees by committing actions of sexual harassment (most often they involve unwanted conversations about sexual activity, sex life, and suggestions of that kind). The employee clearly rejects him, one or more times (most often such behaviour is repeated and lasts for some time). Sexual blackmail can also occur, as defined in the LGE. Thereafter, the director unlawfully dismisses the employee as a measure of retaliation for demonstrating integrity and refusing "courtship". She initiates a labour dispute, but the claim focuses primarily on reinstatement and other potential requests contained in the LoL<sup>38</sup>, as well as on proving the illegality of terminating the employment contract. The motives for such behaviour are often left unspecified, the parties to the dispute do not mention it, while the court has no interest

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38 Article 191 of the LoL - *Legal Consequences of Unlawful Termination of Employment*

in dealing with it - in a labour dispute over the unlawful termination of an employment contract, it is sufficient to establish the unlawfulness in the employer's behaviour at the time of terminating the employment contract, without determining the motive. The same happens in the case of some other unlawful activity by the employer (it may not always be an unlawful dismissal, it can be, for example, downgrading the victim to some other jobs below her qualifications). Only if the parties to the dispute indicate something, or - very rarely - if employees insist on presenting the circumstances that led to the employer's unlawful conduct, can the court decision include the consideration of those claims or evidence related to sexual harassment (which in that case occurs as a form of abuse at work). If the determination of sexual harassment is not one of the claims, the court will not react either (unless it is evident that the behaviour alleged by the employee constitutes a criminal offence).

What factors lead to the occurrence of such hidden sexual harassment cases?

First of all, it must be said that neither the employees nor the attorneys are thoroughly acquainted with this matter. This leads to two contrasting consequences - either they will refrain from instituting sexual harassment proceedings (fearing they are wrong) or there will be too many proceedings initiated, which will result in more rejected claims (thus creating a false picture of the abuse of this legal concept).

The influence of environment in general, family and friends, often boils down to wrong advice focused on finding a new job, forgetting what happened and not paying too much attention to the events that happened - even when they have proportions of physical abuse of the victim.

The influence of the work environment is also of great importance, for the reasons already presented. Not only is it difficult to provide witnesses to prohibited behaviour, but very often the work environment - male and female colleagues of the victim of sexual harassment - relativize or even approve of such behaviour. Regardless of the motives (fear, desire to be promoted, something else), such attitudes generally discourage employees from seeking protection of any right that is threatened or violated, even in cases of sexual harassment.

Another type of circumstances can affect the concealment of sexual harassment even when an employee decides to seek help and activates a judicial protection mechanism - and these are shame and unjustified transfer of guilt for everything that happened to the victim. Here we have both active disincentive and condemnation by the environment in which the victim works and/or lives, and the self-projection of responsibility resulting from the prevailing attitudes in the victim's environment.

## 5. Criminal offence of sex-based harassment

the offence of “Sex-Based Harassment” was introduced in the Criminal Code with its amendments in late 2016. Attempts have been made to criminalise such prohibited behaviour before, for example, when the criminal offence of "Sexual Abuse"<sup>39</sup> was introduced in the Criminal Code of the Republic of Serbia in 2003, but it was deleted as early as in the 2005 amendments without having taken effect in legal life.<sup>40</sup> The formulation of this offence was very vague, which is probably one of the reasons for its swift deletion. The concept of sexual abuse was not defined and other sources of law could not be relied on - since at that moment there was no definition of sexual harassment in the LoL, while the LPD and LPAW were adopted a few years later.

The formulation of this new criminal offence of “Sex-Based Harassment” is simple: "Whoever sexually harasses another person shall be fined or sentenced to imprisonment of up to six months." A more serious form of the offence exists when it was committed against a minor, and in such cases the imprisonment of three months to three years is imposed. This offence therefore (in both forms) is a minor criminal offence, for which it is possible to pronounce both an admonition and a suspended sentence.

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39 Criminal Code of the Republic of Serbia, Article 102a

40 See: Milan Škulić, *Krivična dela protiv polne slobode*, Beograd, 2019, str. 407.

However, the legislator, as already stated, went a step further and did not leave the “flexible provision” as in the case of the criminal offence of “Sexual Abuse” in 2003, but rather defined precisely what sex-based harassment meant. The definition of sex-based harassment, analysed in the introductory part of the text, reveals the similarity with the term sexual harassment. It can actually be said that the two concepts are identical, which makes it unclear why a different term was used to denote the prohibited behaviour. The criminal offence is defined quite broadly, which is uncommon in criminal law, but on the other hand, expected, given the argument that it is very difficult to anticipate all potential forms of sexual harassment. It is quite clear that it includes a far greater scope of potential actions of perpetration, which may relate to the field of work but certainly do not end there. However, there are no indications as to when a certain behaviour at work (or in general) will move from the sphere of labour law to the sphere of criminal law. It must certainly be assessed based on the circumstances of the individual case, the method of sexual (sex-based) harassment, and the resulting consequences. The perpetrator’s behaviour must have a sexual connotation, although Škulić correctly notes that many actions that would constitute the perpetration of this criminal offence are criminalised as offences against public order and peace.<sup>41</sup> This leaves a lot of room for the court’s discretion to assess when a certain behaviour will constitute a criminal offence and when there is no sufficient social danger to characterise it as such, which can lead to legal uncertainty and excessive uncertainty at the time of initiating criminal

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41 M. Škulić, *op.cit.*, str. 408-409.

proceedings. Although it has been noted that it is impossible to determine actions of perpetration more precisely, it could be important for the courts if the definition of sexual harassment as a "gross" violation of the dignity of a person in the sexual sphere would be changed.<sup>42</sup>

Based on the (scarce) judicial practice, it seems that the courts have taken the correct position that the consequence of perpetration or the action of perpetration should have additional weight in relation to the misdemeanour, or the behaviour that will result in the civil or labour liability of the perpetrator. Thus, for example, the court concluded that this offence had been committed by the use of physical force against the victim, i.e. by grabbing her by the crotch, nailing her to the door and tearing part of her clothing.<sup>43</sup> The courts also considered that the actions of perpetration of the criminal offence were the following: hand-grabbing and physical coercion to kiss, SMS or calls of a vulgar nature that are long-lasting and frequent, as well as calls or messages containing the threat of rape.<sup>44</sup>

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42 *Ibidem*, p. 422. It remains doubtful whether Škulic is right in stating that the person's intent to commit sexual harassment should be included in the definition of this criminal offence. While, from the aspect of criminal law, this would significantly clarify the legal provision in terms of its application (and in general, in terms of determining when a person's actions leave the sphere of non-compliance with work discipline and ethics, and misdemeanour law, and enter the sphere of criminal justice protection), it is quite clear that the intention of the legislator (and/or the creators of the Istanbul Convention at the time of drafting the definition of sexual harassment) was to make the element of intent irrelevant, because harassment as such is determined by the nature of things based on the consequence and not based on the abuser's desire, negligence or plans.

43 Judgment 30K. no. 371/18 of 8 June 2018

44 Since the judicial practice is still scarce, the above examples of the actions of perpetration include those that are not related to the field of work or have not occurred in the work process.



The prosecution for this criminal offence is initiated at the proposal of the injured party, which means that there is no prosecution *ex officio* (except in cases where the victim of sex-based harassment is a minor). This is significant because it requires the victim's proactive approach to the perpetrator and in accordance with the very nature of the offence related to the unwanted behaviour towards a person.

Statistics show an increase in criminal charges and convictions for this criminal offence, which is logical because it is a relatively recently introduced criminal offence related to which practice has yet to be formed and that the public has to become familiar with. While in 2017 there were only 25 criminal charges and two convictions of adults<sup>45</sup>, in 2018 there was a drastic increase of 105 criminal charges and 26 convictions against adult perpetrators of sex-based harassment.<sup>46</sup>

## 6. Conclusions and recommendations

This paper has discussed a number of shortcomings that make the regulatory framework insufficiently precise, efficient or sensitive to the victim's position.

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45 *Adult perpetrators of criminal offences in the Republic of Serbia, 2017 (charges, accusations and convictions)* - Bulletin No. 643, Statistical Office of the Republic of Serbia, Belgrade, 2018 In both cases, suspended sentences were pronounced.

46 *Adult perpetrators of criminal offences* - Statistical Office of the Republic of Serbia - Court Statistics, no. 192 of 16 July 2019 Out of 26 convictions, the sentence of imprisonment was pronounced only once, while in most cases it was a suspended sentence (16).

First, attention must be paid to the non-systematic approach to standardisation and conceptual confusion. While it is quite certain that the definition used in the Directive, and adopted in some form by the LoL and the Criminal Code, and in all likelihood soon to become part of the LPD, is quite good and sufficient to define the term of sexual harassment in a general sense, it remains the fact that there is no distinction between sexual harassment as a form of abuse at work and also as a form of discrimination. The LPAW would have to be significantly amended, first of all in terms of a special definition of sexual harassment that would, of course, keep all the characteristics of the general term, but which should clearly distinguish between sexual harassment as abuse at work and other forms of sexual harassment. The same can be said for the term of sex-based harassment, because its definition does not make it clear when a certain behaviour that can be characterised as sexual harassment in the sense of labour law becomes a criminal offence. It is quite clear that it is possible to establish the perpetrator's criminal and labour (disciplinary and material) liability at the same time, but the courts have a room for interpreting the degree of social danger of this criminal offence, which seems too broad. In such an atmosphere, and especially taking into consideration the mild criminal policy of the courts, it may easily be possible to establish over time a negative judicial practice in criminal proceedings, which will require far more serious consequences for the victim than originally intended by the legislator to establish the perpetration of this criminal offence.

The problem of terminological confusion remains, of course, since completely different terms are used to clarify the same or very similar legal concepts - abuse (LPAW), harassment (LoL, LPD, LPAW), sexual harassment (LoL, LPAW), sex-based harassment (Criminal Code).

As regards protection against sexual harassment in terms of labour law, one of the bigger problems identified are the situation where employees are not protected from the illegal actions of this kind. This is visible primarily in the LPAW, as described above. At this point, it should be reiterated that the complete absence of provisions regulating the relationship between employees and third parties is unacceptable<sup>47</sup>, in cases where actions are related to the work process and can be characterised as sexual harassment. Thus, no third party found at the employer's premises will be protected from sexual harassment, and vice versa - these persons can sexually harass employees without any consequences because they are not employed by the same employer. This shortcoming in the LPAW is unacceptable and must be

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47 Third parties include both persons who do not participate in the work process at all and persons who participate in the work process but are hired by another employer. The first case involves, for example, situations where the victims of sexual harassment are users of the services provided by the employer (but also when they are the abusers). Some other persons, associated with the service users (for example, parents of children attending school), may also be found at the employer's premises. There are also situations where more employers set up mixed teams to work on a joint project, where employers share office premises (although they may perform different types of work), where certain tasks (legal, accounting, hygiene maintenance) are entrusted to another employer and performed, entirely or partly, in the employer's premises or through the employees' contact with the employees of another employer. This includes the employees' contacts with couriers, suppliers, security staff and other persons whose work involves spending some time in the interaction with the employees at the employer's premises. In neither of these situations is the employer obliged to respond to the abuse committed by the employee, nor can the employer efficiently protect the employee from the abuse (sexual harassment) to which the employee is exposed.

eliminated if a more effective system of protection against abuse at work in general, including sexual harassment, is to be established.

In all these cases, the victim can only claim the criminal liability of the perpetrator, and the potential labour consequences depend only on the employer's "conscience". Specifically, the employer may indicate potential sexual harassment, if specified as a type of non-compliance with work discipline, as a reason for dismissal and, on that occasion, conduct a dismissal procedure that will end with the termination of the employment contract or the disciplinary measure provided for by the LoL<sup>48</sup> or the LPAW<sup>49</sup>. The employer may also use a conviction in the criminal proceedings for sexual harassment as a reason

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48 Article 179a of the LoL: "The employer may, for breach of work duty or non-compliance with work discipline in terms of Article 179, paragraphs 2 and 3 of this Law, if he considers that there are extenuating circumstances or that breach of work duty or non-compliance with work discipline is not of such a nature that the employee's employment relationship should be cancelled, rather than cancelling the employment contract, impose one of the following measures:

- 1) Temporary suspension from work without compensation of salary, for a period of one to 15 working days;
- 2) Fine of up to 20% of the base salary of the employee for the month in which the fine was imposed, for a period of up to three months, which is executed by deductions from salary, based on the decision of the employer on the measure imposed;
- 3) Warning with a threat of dismissal which states that the employer shall cancel the employee's employment contract without repeated warning under Article 180 of this Law, if within the next time period of six months he or she commits the same breach of work duty or non-compliance with work discipline.

49 LPAW, Article 23, paragraphs 2 and 3: "The employer may, in addition to the sanctions prescribed by law, impose one of the following measures to the employee who is responsible for non-compliance with work discipline or breach of work duty referred to in paragraph 1 herein: 1) warning; 2) measure of suspension from work from four to 30 working days without pay; 3) measure of permanent transfer to another work environment - to perform the same or different jobs, or work position, in accordance with the law.

If the employee on whom the measure referred to in paragraph 2 herein was imposed for abuse commits abuse again within six months, the employer may terminate the employee's employment contract or impose a measure of employment termination, in accordance with the law."

for dismissal, regardless of whether it is provided for by a general act or employment contract, since the LoL specifies the final conviction for a criminal offence at work and in connection with work as a reason for dismissal<sup>50</sup>, which sexual harassment at work embodied in the criminal offence of “Sex-based Harassment” certainly is. According to the LPAW, the employer cannot initiate any procedure on its own initiative, because Article 23 provides it only if the procedure of internal mediation has failed - and when it comes to sexual harassment of third parties, they do not have standing to commence an action before the employer, but it can only be done by another employee (with the same employer).

A particular deficiency in the scope of protection in terms of labour law is a latent conflict between the LoL and the LPAW, as described above - although the LPAW refers to the definition of sexual harassment contained in the section of the LoL dealing with discrimination at work; according to these provisions, only employees are protected from sexual harassment. On the other hand, the LPAW provides for the general protection of all workers, regardless of the legal basis of their engagement (or its absence). Persons engaged to work without being in employment relationship are not only not protected by the LoL provisions on sexual harassment, but cannot initiate a labour dispute as provided by the LPAW. Although this confusion may be resolved by interpreting the law in favour of workers (*in dubio, pro laboris*), it seems that in order to achieve general legal certainty, this problem needs to be adequately addressed in the announced amendments to

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50 LoL, Article 179, paragraph 1, point 2

the LoL (as announced by the competent ministry). The same applies to the LPD, which does not contain a definition of sexual harassment but includes a far greater scope of anti-discrimination provisions in the field of work than the LoL (this problem will also be resolved if the announced amendments to the LPD are adopted).

The preliminary procedure before the employer, as shown in the example from practice, will usually not be successful because it does not take into account the very nature of sexual harassment (we may say - abuse in the broadest sense). It is not realistic to expect an abuser to admit his prohibited behaviour in an agreement; on the other hand, any agreement that will impose obligations on both parties implies that the victim is also responsible for what happened to her, which is not only an inappropriate message but also deeply immoral one that in no way contributes to the solution of the problem, let alone punishing the prohibited behaviour. On the other hand, such an outcome can only encourage the abuser, who will intensify the actions of harassment or extend them to more persons. The fact that the procedure is conducted by unqualified employees who are not acquainted (through no fault of their own) with the legal procedure or do not fully understand the meaning of preliminary procedure before the employer, often trying just to formally fulfil the undertaken obligation, additionally makes the whole procedure meaningless. It basically serves to postpone court protection, a period in which sexual harassment is usually intensified instead of ending. Therefore, it would be necessary to consider at least a fundamental revision of this procedure, if not its abolishment. Additional changes should be introduced in terms of its optionality, regardless of who the abuser is.

There are no preventive activities by employers, with few exceptions (mainly in large private business systems and sporadically in the public sector). Employers are legally obliged to inform employees of their rights, obligations and responsibilities in relation to abuse at work (and therefore sexual harassment) prior to commencing work.<sup>51</sup> In practice, employees are provided with a general notification drafted by the employer's legal or human resources department, which contains basic information about what abuse is, how to recognise it and how to defend from it. All abuse prevention activities end there for most employers. There is a small number of employers that organise special training, seminars and other types of education, and there are hardly any such employers in the private sector - especially among small and medium-sized enterprises. The state has not systematically encouraged employers to engage in such activities.

The specified reasons for not reporting sexual harassment are the result of all of the above and must be considered as a very defeating fact. Where unions are stronger and more active, the victim of sexual harassment has a greater chance of publicly presenting her or his case and seeking some form of protection. It seems that the feeling of isolation and helplessness is the most common cause of voluntary "renouncement" of protection. Condemnation by the family, the wider environment and the work environment are also the factors that significantly affect the small number of proceedings instituted for sexual harassment. This is especially true of the systems - with a smaller or larger number of employees - where the "boss" is at the top of the

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51 LPAW, Article 7, paragraph 1

hierarchy, the employer's representative (responsible person in the employer's company, entrepreneur as a natural person - employer) who is known for avoiding his legal obligations to employees and who never sides with employees, especially in cases involving the violation of rights by the employer or another employee. In these situations, other described factors related to court proceedings come to light - it is difficult to prove the offence; it is particularly difficult to get witnesses to sexual harassment to respond to the calls of their colleagues to testify as they are exposed with threats of terminating the employment contract or even of having the similar fate as the victim of sexual harassment. Even if the case is brought to court, it is too lengthy and the victim is exposed to secondary victimisation due to the inability of judges to apply modifications in the manner of proving and their extreme slowness (although these cases are particularly urgent, in practice they do not get any preference in scheduling a hearing over other disputes).

All of this leads to the fact that there is almost no judicial practice of sexual harassment, which can create a wrong impression that it does not exist in Serbia. However, research reveals that the situation is completely different, and therefore it can be concluded that the problem lies precisely in the systemic deficiencies described, which must be eliminated so that everyone involved or in some way connected with the work process can be protected from sexual harassment.



## Bio of Mario Reljanović

Mario Reljanović is a Doctor of Legal Sciences and works at the Institute of Comparative Law in Belgrade as Assistant Research Professor. In 2011, he defended his doctoral thesis entitled “Prohibition of Discrimination in Employment as an International Human Right” at the Faculty of Law of the Union University in Belgrade. At the same Faculty, in the period 2008-2018, he worked as lecturer of Labour Law and some other subjects. In that period, he was also the Head of Legal Clinic for Labour Law that provided free legal aid to citizens in the area of labour and social rights.

He has published dozens of papers in the field of labour law and anti-discrimination legislation, including: *Alternative Labour Legislation* (2019); *Forms of Discrimination and Jurisprudence of the European Court of Human Rights* (2018); *Analysis of the Effects of Implementing the Amendments to the Law on Labour* (co-authored, 2016); *Judicial Reform in Serbia and Negotiating Chapter 23 – a Critical Outlook* (co-authored, 2015) and other.

He has participated in a number of national and international projects in the fields of labour law, justice and discrimination. He has been engaged as consultant by OHCHR, the International Labor Organization, the OSCE, the European Union.

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