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Iva Petric

**SEXUAL HARASSMENT IN THE WORKPLACE**

Master Thesis

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## **Izjava o izvornosti**

Ja, Iva Petric, pod punom moralnom, materijalnom i kaznenom odgovornošću, izjavljujem da sam isključiva autorica diplomskog rada te da u radu nisu na nedozvoljeni način (bez pravilnog citiranja) korišteni dijelovi tuđih radova te da se prilikom izrade rada nisam koristila drugim izvorima do onih navedenih u radu.

Iva Petric

## **1. INTRODUCTION**

Sexual harassment is a complex issue that often goes unnoticed, and its consequences are frequently downplayed, creating fear and shame in the victim, preventing them from speaking out and sharing their experience. Sexual harassment in the workplace is also a pervasive issue that transcends cultural, legal, and geographical boundaries, posing a global problem that, despite being criminalized in many systems, continues to persist with the same intensity. It remains a major issue that affects individuals in a variety of industries and professions despite multiple laws and policies intended to eradicate it, which suggests that the persistence of this issue is a result of interplay of various factors. For the aforementioned reasons, the purpose of this paper is to emphasize the importance of factors that often remain overlooked when discussing this issue yet are decisive in the fact that it stubbornly persists.

Workplace sexual harassment persists not due to the absence of legal frameworks or organizational policies, which indeed exist at national, EU as well as international level, but because of societal attitudes and norms that foster to normalization of such behaviour. The persistence of sexual harassment in the workplace is primarily influenced by deeply ingrained gender stereotypes regarding the roles of women and men, and related to this, power dynamics that are at the very foundation of this behaviour. These societal attitudes and norms lead to the creation of an environment where measures introduced specifically for the purpose of combating sexual harassment are not adequately implemented, due to a lack of understanding of the aforementioned issue, both at the societal level and at the individual level. As a result, these deeply ingrained views and norms greatly contribute to the persistence of workplace sexual harassment despite the existence of laws and regulations intended to address it. Therefore, despite sexual harassment being adequately addressed in national legislation, the implementation of these norms in practice is often incomplete and flawed precisely due to the lack of understanding and awareness of the seriousness of this issue, which is caused by the social attitudes just described.

The aim of this paper is to answer the following question: what are the most effective measures and strategies for addressing the issue of workplace sexual harassment at its root, namely, how to influence the stereotypes and norms that lie at the foundation of this problem? For this reason, the paper will begin by explaining the multidimensional nature of this issue, as it is not only a legal issue but also a problem of psychological and social nature. In the same chapter, various forms this behaviour can take will be explored, as well as its consequences, as this is a problem that can have long-lasting and severe effects on the victim. Furthermore, trends, legal framework and judicial practices related to sexual harassment will be presented, both in the context of the European Union in general and specifically in the Republic of Croatia. Finally, possible solutions to the issue of sexual harassment will be proposed in the paper.

## **1. THE MULTIDIMENSIONALITY OF SEXUAL HARASSMENT AND ITS CONSEQUENCES**

Sexual harassment is a complex and layered issue that transcends legal frameworks. Sexual harassment in the workplace has psychological aspects and consequences that can be very serious, ranging from anxiety, insomnia, loss of motivation to work to post-traumatic stress disorder. Besides psychological, sexual harassment also has various social aspects and consequences, such as secondary victimization which may include isolation and rejection by other colleagues.

### **1.1. PSYCHOLOGICAL ASPECTS AND CONSEQUENCES OF SEXUAL HARASSMENT**

When considering sexual harassment in the workplace, the question arises as to what leads to it. There are several causes rooted in psychology that lead to sexual harassment. The most prominent factor is the feeling of power and control, as this feeling is at the very foundation of this behaviour.<sup>1</sup> In other words, sexual harassment is more about exerting power and control over another person than about actual sexual desire. Through this behaviour, the harasser asserts their dominance over the victim.<sup>2</sup> Another psychological cause of sexual harassment is the feeling of entitlement. Sexual violence generally as well as sexual harassment as its form, is based on the feeling of entitlement, meaning the perpetrator considers themselves entitled to the victim's attention or body, and they prioritize their own needs over the autonomy, well-being, and dignity of the other person. It is important to mention the lack of a sense of accountability among perpetrators, which can be based on psychological causes (their personality) or, more often, socially conditioned. A lack of accountability often exists in environments where sexual harassment is not taken seriously enough and where consequences for perpetrators often do not follow, creating a culture that facilitates the continuation of such behaviour.

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<sup>1</sup> MacKinnon, C. (1979) *Sexual Harassment of Working Women*, Yale University Press, p. 174

<sup>2</sup> Gupta, D. & Garg, J. (2020.) *Sexual Harassment at Workplace*, International Journal of Legal Science and Innovation, p.198

Sexual harassment can cause numerous severe psychological effects and consequences for the victim. Some of the emotional effects include anger, fear, humiliation, shame, guilt, feeling of powerlessness and loss of control.<sup>3</sup> Being constantly exposed to such emotions can easily lead to various psychosomatic effects such as increased stress levels, fatigue, sleep disturbances, and eating disturbances. This constant stress caused to the mind and body can lead to serious mental health effects.

Sexual harassment in the workplace can easily create anxiety in the victim, as they are constantly faced with the fear of facing their harasser and being harassed again, leading them to be generally anxious about work and social interactions at work.<sup>4</sup> Victims may also feel shame and guilt, leading them to internalize the harassment by believing they are at fault as if they did something to deserve the harassment.

Sexual harassment can have a significant impact on the victim's self-esteem and self-confidence, as it is behaviour that fundamentally consists of demeaning and humiliating the victim, which over time can profoundly affect their confidence and self-perception. The victim is deliberately made to feel unworthy of the respect deserved by a person who is recognized as an equal member of the community, ultimately resulting in dehumanization of victims.<sup>5</sup>

Sexual harassment is a particularly severe form of humiliation.<sup>6</sup> Sexual subordination in a particularly personal, direct, and effective manner expresses physical dominance over an individual, while also reducing the victim to a mere object serving to satisfy someone's desires.<sup>7</sup> By exposing the victim to this form of violence, their personal autonomy, freedom of choice, and personal self-determination are particularly oppressively denied.<sup>8</sup> Furthermore, sexual harassment can have psychological effects that are directly related to workplace productivity, such as loss of concentration and loss of motivation to work, which can ultimately result in the victim of sexual harassment losing their job.<sup>9</sup>

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<sup>3</sup> Ibid, p. 199

<sup>4</sup> Workplace sexual harassment victims admit having PTSD.

<https://www.hcamag.com/us/news/general/workplace-sexual-harassment-victims-admit-having-ptsd/314591>

<sup>5</sup> Vasiljević, S. et al. Diskriminacija i nasilje: lice i naličje ravnopravnosti spolova, p.29

<sup>6</sup> Ibid,

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Gupta, D. & Garg, J. op. cit. (n. 48), p.203



One of the most severe consequences that sexual harassment can leave on a victim is post-traumatic stress disorder (PTSD).<sup>10</sup> One study showed that as many as 17% of women developed PTSD because of sexual harassment in the workplace.<sup>11</sup> According to the same study, 58% of female victims suffered from emotional exhaustion, 36% developed anxiety, while 33% admitted to having sleeping problems.<sup>12</sup>

The psychological aspects of this issue can also be analysed through the lens of the definition of sexual harassment provided by the International Labor Organization (ILO). ILO defines workplace sexual harassment as “any behaviour of a sexual nature that affects the dignity of women and men, considered unwanted, unacceptable, inappropriate, and offensive to the recipient, creating an intimidating, hostile, unstable, or offensive work environment.”<sup>13</sup> From the definition itself, it is evident that this is a layered problem with several elements. As it can be seen from the mentioned definition, for behaviour to be considered sexual harassment, it must be unwanted, inappropriate, and offensive. Therefore, not every form of behaviour, such as sexual jokes, will be automatically deemed as sexual harassment if it lacks, for example, the element of unwantedness. Furthermore, for behaviour to be considered sexual harassment, it must create an intimidating, hostile, unstable, or offensive work environment. All the mentioned criteria are highly subjective and depend solely on the perception of the individual experiencing such behaviour. Thus, this issue encompasses a spectrum of nuances, and its nature is highly individual and subjective. In this context, individual differences are extremely significant. What may offend or threaten one person may not have the same impact on another, emphasizing the crucial role of the feelings a particular behaviour elicits in the affected person. Hence, the emphasis is on the psychological and individual aspect, which varies from person to person and from relationship to relationship.

## 1.2. SOCIAL ASPECTS AND CONSEQUENCES OF SEXUAL HARASSMENT

Sexual harassment in general, including in the workplace, is also culturally and socially conditioned problem. When questioning what leads to sexual harassment, it's noticeable that there are several social factors contributing to the emergence of this issue. Among them are gender stereotypes, social and cultural norms, and inadequate education and lack of awareness.

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<sup>10</sup> Workplace sexual harassment victims admit having PTSD.

<https://www.hcamag.com/us/news/general/workplace-sexual-harassment-victims-admit-having-ptsd/314591>

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> International Labour Organization, Sexual Harassment in the Workplace, p. 1

In this context, it is important to emphasize that workplace sexual harassment is not an isolated issue characteristic of specific countries or parts of the world but rather a pervasive, global problem.<sup>14</sup> Different cultures have different norms and values, which can influence the perception, as well as definitions of sexual harassment. Cultural differences are evident in the practice of comparative legal systems. For example, a study conducted in 2017 in Germany, Denmark, the United Kingdom, France, Sweden, Finland, and Norway showed that Danes and Germans were the least likely to characterize certain behaviour as sexual harassment.<sup>15</sup> Existing beliefs about what actually constitutes sexual harassment can also vary based on various criteria, such as time, gender, age, social groups, and ethnic backgrounds.<sup>16</sup> Given these variations, it is important to consider differences in addressing the understanding and definitions of sexual harassment, as this is crucial for developing effective strategies to combat sexual harassment, both in general and in the workplace, and promoting equitable and inclusive social response.<sup>17</sup> However, the fact that the definitions and tolerance towards certain behaviours may vary among different societies makes this problem extremely hard to eradicate on a global level.

There are numerous harmful gender stereotypes that favour different forms of gender-based discrimination, including sexual harassment. Women are often portrayed as weak and subtle and thus they are often given jobs that are considered inferior or unfit for a man.<sup>18</sup> In the context of sexual harassment, particularly harmful are those stereotypes that portray men as superior, aggressive, and dominant, while women, on the other hand, are depicted as submissive, obedient, gentle, and passive. Also, an especially harmful gender stereotype in this context is that boys are naughty and lively, hence their mischief should be overlooked, while girls are calm and shy. This gender stereotype is harmful precisely because it fosters a "boys will be boys" mentality, which ultimately leads to a lack of a sense of accountability in adult men, making them feel entitled to get what they want at that moment, expecting not to bear consequences for their behaviour. Such a mentality, based on the absence of consequences for behaviour that should be punished, contributes to the persistence of sexual harassment as a problem, since harassers, due to a lack of a sense of accountability, feel entitled to harass others.

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<sup>14</sup> Latcheva, R. op. Cit. (n. 1) p. 1825

<sup>15</sup> Grgurev, I. & Potočnjak, Ž. (2021) Pravna zaštita od spolnog uznemiravanja, p.40

<sup>16</sup> Latcheva, R. op. Cit. (n. 1) p. 1826

<sup>17</sup> Ibid

<sup>18</sup> Gupta, D. & Garg, J. op. cit. (n. 48), p.205

Gender stereotypes are often at the base of social and cultural norms that contribute to creating a culture in which behaviours constituting sexual harassment go unpunished.<sup>19</sup> Disregard for women's rights and dignity often stems from social norms that devalue women and contribute to perceiving women as objects or inferior. When such attitudes go unchallenged, they can manifest as sexual harassment. Objectification of women is an example of a social norm that contributes to the occurrence and frequency of sexual harassment.<sup>20</sup> It involves seeing and treating women primarily as objects of male desire rather than as equal individuals.<sup>21</sup> This norm is often perpetuated by the way women are portrayed in the media, movies, advertising, etc., through excessive sexualization and emphasis on their appearance, especially their bodies.

Men who speak out unabashedly for the sake of their own rights and interests are socially accepted and characterized as strong, brave, fearless, and dominant. On the other hand, in those same societies, women who behave in the same way are oftentimes demeaned. There often comes a grotesque distortion of such behaviour in women, where they are called various derogatory names and perceived as loud, bothersome, and crass. In such societies, there is a culture of silencing women who remain silent precisely because of fear of judgment and ridicule, which can lead to a decreased reporting of sexual harassment, ultimately favouring the persistence of this problem.

Consequently, the described social norms can easily lead to the normalization of sexual harassment. In environments where sexual harassment is normalized, sexual jokes and comments are seen as benign and just a normal part of social interactions at work. In such an environment, a victim may have a problem with even perceiving sexual harassment as such, not realizing that what is happening is indeed sexual harassment. Also, such an environment can deter a victim who understands what is happening from reporting such behaviour since it is normalized, and the victim, out of fear of judgment and being considered as exaggerating the problem, simply decides not to report it.

Inadequate education and lack of awareness regarding consent and gender equality can also contribute to sexual harassment. For instance, without a clear understanding of what constitutes consent, an individual may not understand that it must be explicit and can be withdrawn at any time. Such ignorance can result in situations where a person believes they have consent,

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<sup>19</sup> Latcheva, R. op. Cit. (n. 1) p. 1825

<sup>20</sup> Anđelić, H. (2022), Seksualno uznemiravanje, objektiviranje i catcalling - što potiče ljude da se upuste u uznemiravanje drugih?, p. 44

<sup>21</sup> Ibid

without actually having it, resulting in sexual harassment. Furthermore, studies have shown that information campaigns and various trainings regarding gender equality and sexual harassment raise people's awareness on this issue and help them recognize such behaviour as harassment.<sup>22</sup>

Since gender is a social construct, and this chapter examines social factors related to sexual harassment, it's important to note that there are gender differences related to perceptions of sexual harassment. Gender significantly correlates with experiences of sexual harassment, delineation of sexual harassment, and the reactions and options adopted in handling it. It is evident that women are more likely to experience sexual harassment in the workplace compared to men. When it comes to perception of sexual harassment, women also tend to perceive and define certain behaviours as sexual harassment more frequently than men.<sup>23</sup> Furthermore, men may be less likely to report or take action against sexual harassment in the workplace due to societal norms and expectations.<sup>24</sup> Women may face more negative consequences as a result of sexual harassment, such as decreased job satisfaction, productivity, and increased turnover.<sup>25</sup>

Sexual harassment in the workplace, besides numerous serious psychological consequences it can inflict on the victim, can cause social consequences as well.

One of the common consequences is the victim of sexual harassment being isolated by society, both generally and in the workplace. The Ombudswoman for Gender Equality of the Republic of Croatia highlighted that one of the problems related to sexual harassment in the workplace is the fact that commissioners for protection of workers' dignity, i.e., employers are still more inclined to side with the harasser rather than the victim, often perceiving the victim as a person who exaggerates the situation unnecessarily with their complaints.<sup>26</sup> Such siding with the perpetrator and diminishing the seriousness of their behaviour, along with an unfavourable attitude towards the victim, can often lead to the perception of the victim as someone who seeks attention, dramatizes, and creates uncomfortable situations. If the work environment is such that attitudes minimizing the seriousness of sexual harassment prevail, this can easily lead to the rejection of the victim who decided to speak out about their experience by other colleagues.

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<sup>22</sup> Latcheva, R. op. Cit. (n. 1) p. 1825

<sup>23</sup> Moradeke Fapohunda, T. (2014.) Gender differences in perceptions and experiences of sexual harassment in the workplace, p. 37

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ljubičić, V. op.cit. 37. p. 50

In other words, since the mentality of the group, which often targets those who are the most vulnerable, is often present in the workplace, it can lead to the rejection of the victim of sexual harassment by other colleagues, and such an environment can create additional trauma for the victim, causing them to feel isolated, ostracized, misunderstood, and unprotected.

Another social consequence caused by sexual harassment in the workplace is victim-blaming. In environments where there is a tendency to side with the harasser, there often exists a victim-blaming mentality. Such mentality includes the tendency to question what the victim did to "provoke" the harassment or why didn't the victim resist such behaviour more strongly. At the core of this mentality is shifting the responsibility onto the victim and imposing shame and guilt on them, as well as insinuating that the victim somehow sought and wished for what happened to them.

### 2.3. FORMS OF SEXUAL HARASSMENT

The multidimensionality of sexual harassment is also reflected in the various forms this behaviour can take. The following forms of sexual harassment exist verbal/written, physical, non-verbal and visual.

Verbal/written harassment manifests itself through making sexual comments about someone, asking questions of a sexual nature, making sexual jokes, inviting colleagues on dates, or asking for sexual services, spreading rumours about someone's sex life etc.<sup>27</sup> Furthermore, physical harassment involves inappropriate touching of another person, which includes caressing, pinching, hugging etc.<sup>28</sup> Non-verbal sexual harassment includes looking a person up and down, making derogatory gestures, frequently following or standing too close to a person, staring in a sexually suggestive manner.<sup>29</sup> Visual sexual harassment encompasses behaviours such as displaying images and videos of a sexual and explicit nature, sharing pornographic content with colleagues, etc. Furthermore, even though this could be categorized as written sexual harassment, due to the rise of social media and their omnipresence not only in private but also in professional life, it is important to emphasize digital sexual harassment, which is increasingly prevalent in today's context, taking on various forms.

Some forms of sexual harassment are quite explicit, making them relatively easy to detect (e.g., verbal/written and physical harassment). However, certain behaviours that constitute sexual

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<sup>27</sup> International Labour Organization, *Sexual Harassment in the Workplace*, p. 1

<sup>28</sup> Ibid

<sup>29</sup> Ibid

harassment are more implicit, making them harder to recognize as forms of sexual harassment, adding to the complexity of this problem. Implicit nature of some forms of sexual harassment can lead to additional confusion for the victim, who is already subjected to fear and shame, causing them to doubt their own experiences and downplay them. From all that has been mentioned, it is apparent that sexual harassment is an extremely complex problem, encompassing not only legal but also social, psychological, and ethical aspects.

The mentioned forms of sexual harassment can manifest in two ways: *Quid Pro Quo* and a hostile working environment. The *Quid Pro Quo* form exists when job benefits, such as a raise, promotion, or even employment or engagement, are conditioned on the victim providing some sexual service in return.<sup>30</sup> This form, due to its nature, is present in supervisor-subordinate relationships, in which the superior exploits their position of power over the subordinate to coerce them into unwanted behaviours, conditioning career advancement on compliance. The second form, a hostile working environment, is present in relationships among colleagues, where one creates conditions that are humiliating or even intimidating for the victim experiencing harassment.<sup>31</sup>

It is also important to emphasize that workplace sexual harassment does not only encompass harassment that occurs within the actual workplace but also extends to locations where work-related business takes place (business travels, conferences, social activities related to work, etc.).<sup>32</sup>

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<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid, p.2

### **3. TRENDS, LEGAL FRAMEWORK AND JUDICIAL PRACTICE IN THE EUROPEAN UNION**

In the following chapter, the focus will be put on the legislation of the European Union dedicated to combating sexual harassment. EU equality directives constitute legal foundation for harmonisation of Croatian law in the field of gender equality and non-discrimination. However, it's important to emphasize that today there is also a comprehensive set of international legal instruments defining and sanctioning sexual harassment.

In this context, it is important to mention that today, sexual harassment is recognized as a form of gender-based violence through the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, one of the most important legal documents for the protection of women's rights. Mentioned convention declares sexual harassment as a form of gender-based violence committed against women because they are women. This is of vast importance for several reasons. First and foremost, the Convention imposes a positive obligation on its signatories to collect data and support research on all forms of violence covered by its scope. Since sexual harassment is recognized as a form of gender-based violence, signatories are obliged to gather data on sexual harassment and monitor the situation concerning it, making this problem more visible, attracting more attention, and gaining importance. Additionally, defining sexual harassment as gender-based violence gives this behaviour a certain gravity, which should foster to raising awareness about the seriousness of this problem. It highlights that sexual harassment is not merely a matter of personal misconduct or an isolated workplace issue but a broader societal problem that disproportionately affects women due to their gender. Furthermore, the importance of the stated Convention lies within the fact that, according to it, every form of sexual harassment (verbal, non-verbal, or physical conduct) must be subject to criminal or other legal sanction. In addition

to that, it's important to emphasize that the scope of the Convention related to sexual harassment is not limited only to the field of employment. From this, it follows that sexual harassment is recognized as a broader issue, which can arise in a wide range of relationships and contexts, not just in the workplace, which allows victims of sexual harassment broader protection.

### 3.1. TRENDS IN THE EUROPEAN UNION

When it comes to trends in the European Union regarding sexual harassment, it is important to reflect on the results of a survey on violence against women in the EU which was conducted in 2014 by the Fundamental Rights Agency. This survey was the first of its kind as it was conducted in 28 EU member states. The survey was based on interviews with 42,000 women on their experiences with sexual, physical, and psychological violence.<sup>33</sup> The results of the survey showed that 43% of young women (aged 18-29) have experienced unwelcome touching, hugging, and kissing one year before the survey.<sup>34</sup> The results have also shown that 55% of all women in the EU have been sexually harassed since the age of 15.<sup>35</sup> Furthermore, it was discovered that for a third of all victims of sexual harassment (32%), the perpetrator was a boss, colleague, or customer.<sup>36</sup> Moreover, the survey revealed that the majority of women did not report incidents of sexual harassment due to the belief that the police would do nothing, combined with fear of further victimization and shame.<sup>37</sup> The results of the survey showed that the victims of sexual harassment in the workplace are more often younger women.<sup>38</sup> Specifically, the survey found that women aged 18-29 reported experiencing higher rates of sexual harassment compared to women in other age groups.<sup>39</sup> The reason for this is the fact that harassers perceive younger women as easy targets, due to a lack of life experience. Precisely because of the harassers' perception that younger women are more vulnerable, they expect that there is less chance of encountering direct resistance from such women, compared to older women with more life experience who are deemed more mature and less tolerant towards such behaviour. Another interesting piece of data obtained from the same survey concerns the fact that it showed that women with a university degree are at higher risk of sexual

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<sup>33</sup> Fundamental Rights Agency (2014) Violence against women: an EU-wide survey. Main results report, p.9

<sup>34</sup> Show harassment and violence against women a red card! <https://fra.europa.eu/en/news/2023/show-harassment-and-violence-against-women-red-card>

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Ibid

<sup>38</sup> EU Fundamental Rights Agency (2014), p. 108

<sup>39</sup> Ibid



harassment compared to women who do not hold such a degree.<sup>40</sup> The results have shown that sexual harassment is more experienced by women who hold a university degree and women in the highest occupational groups. In the top management category, 75% of women reported that they have experienced sexual harassment, similar to that, 74% of women in the professional occupational category reported the same, whereas in manual occupations, 44% of women stated that they had experienced sexual harassment.<sup>41</sup> Such significant disparities in the experiences of women in high positions and manual labourers can be the result of several factors, such as professional women being more alert and aware of what actually constitutes sexual harassment, as well as the exposure of such women to a work environment in which the risk of abuse is increased. Women in leading positions are quite often surrounded predominantly by men, as it is common for men to be in leading positions. Precisely for this reason, in their work environment, there is an increased risk of sexual harassment, which is evident from the data that as much as 75% of them working in such environments, reported experiencing sexual harassment at the workplace.

The findings of this survey illuminate the concerning reality of sexual harassment within the EU. The pervasive nature of this issue can be seen from the fact that over half of all women in the EU have faced sexual harassment from the age of 15. In one out of three cases, sexual harassment occurs in the workplace, perpetrated by individuals in positions of power or daily contact, such as bosses, colleagues, or customers, highlighting the workplace as a common setting for such violations.

The EU made a tremendous effort in combating gender discrimination generally, as well as in the context of sexual harassment. Through the Charter and directives, the EU has laid important foundations prohibiting gender discrimination, including in the workplace and it also raised awareness on the issues of sexual harassment. However, despite numerous efforts by the EU to encourage member states to combat and penalize sexual harassment, the results of the aforementioned survey make it abundantly clear that this is a deeply entrenched issue which stubbornly persists despite numerous legal mechanisms established to prevent and combat it.

### 3.2. LEGAL FRAMEWORK IN THE EUROPEAN UNION

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<sup>40</sup> Ibid, p.98

<sup>41</sup> Ibid, p.116

The most important legal acts of the European Union in the context of combating sexual harassment are as follows: the Charter of Fundamental Rights of the European Union, Directive 2002/73/EC amending Council Directive 76/207/EEC and Directive 2006/54/EC.

In the context of combating sexual harassment, the Charter of Fundamental Rights of the European Union is of immense importance within the sources of primary EU law. The Charter is also distinguished by the fact that, in some cases, it can have a direct horizontal effect, meaning that the norm can be applied in a dispute between private parties, unlike directives which only have a vertical effect. For a provision of the Charter to have a direct effect, such a provision must be sufficient in itself to confer a right, with no further elaboration or specification being necessary for its application.<sup>42</sup> The Court of Justice of the European Union (CJEU) has addressed the issue of the horizontal direct effect of Article 21 of the Charter, which prohibits discrimination on various grounds, in several cases.<sup>43</sup> In these cases, the CJEU confirmed that Article 21 of the Charter indeed has a horizontal direct effect, meaning that individuals can invoke it not only in disputes against states or public bodies but also in disputes against private individuals.<sup>44</sup>

The Charter, in its Article 21 mentioned above, prohibits discrimination based on various grounds among which is sex, which was put on the first place, giving it not only legal but also a symbolical value. The non-discrimination principle is applicable across various domains, including the realms of work and employment. Additionally, Article 23 of the Charter stipulates that equality between women and men must be ensured in all areas, and it explicitly mentions the areas of employment, work, and pay, as inequality between women and men is most evident in these particular areas.

Directive 2002/73/EC amending Council Directive 76/207/EEC plays a crucial role in this context as it distinguishes and defines two types of harassment: harassment related to sex and sexual harassment, declaring both as discrimination leading to a violation of the principle of equal treatment (Art.2 of the Directive 2002/73/EC). In this Directive, harassment is defined as unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Furthermore, the Directive defines sexual harassment as "unwanted

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<sup>42</sup> Prechal, S. (2020) Horizontal Direct Effect of the Charter of Fundamental Rights of the EU, Utrecht University

<sup>43</sup> Ibid, p.414

<sup>44</sup> Ibid, p.415

conduct related to the sex of a person occurring with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating, or offensive environment." From the provided definitions, it can be concluded that the main difference between these two types of harassment is the fact that harassment based on sex lacks the sexual element and nature, whereas in the case of sexual harassment, sexual nature is a key element of such behaviour. For instance, women in STEM fields frequently complain of experiencing gender-based discrimination in the workplace, which manifests in male colleagues being condescending towards them and treating them as if they are not capable enough to perform certain tasks.<sup>45</sup> Such behaviour is an example of harassment related to sex, since it insults the dignity of a woman being treated this way as well as creates an offensive environment for her.

Furthermore, the Directive declares harassment and sexual harassment as discrimination based on sex and prohibits them, also stating that a person's submission to or rejection of such behaviour cannot be the basis for a decision affecting that person (Art. 2. Of the Directive 2002/73/EC) In a series of articles, the Directive imposes various obligations on Member States for the purpose of combating discrimination based on sex. Among these obligations is the obligation to encourage employers to take measures to combat all forms of discrimination based on sex, particularly sexual harassment in the workplace. Furthermore, Article 6 of the Directive obligates Member States to ensure that judicial and/or administrative procedures, as well as appropriate conciliation procedures, for the enforcement of obligations under the Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them. In the same article, the Directive specifies the kind of compensation that Member States must prescribe in cases of discriminatory treatment. Thus, Member States must introduce into their systems measures that are necessary to ensure real and effective compensation or reparation for the loss and damage sustained by a person who is a victim of discrimination, which compensation shall be dissuasive and proportionate to the damage suffered. The Directive also obliges Member States to introduce measures to protect employees from adverse treatment by an employer as a reaction to a complaint or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Art. 7 of the Directive 2002/73/EC). The Directive also imposes an obligation on Member States to create and encourage social dialogue in the context of combating discrimination with

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<sup>45</sup> Women and Men in STEM Often at Odds Over Workplace Equity. <https://www.pewresearch.org/social-trends/2018/01/09/women-and-men-in-stem-often-at-odds-over-workplace-equity/>

appropriate non-governmental organizations (Art. 8c of the Directive 2002/73/EC). This Directive is also significant because it indirectly affects employers and their obligations as well. The Directive, in Article 8b, stipulates that Member States shall encourage employers to promote equal treatment for men and women in the workplace in a planned and systematic way, and in connection with this, they should be encouraged to provide information on equal treatment for men and women in the undertaking. Although the Directive directly binds only Member States, by imposing the obligation on Member States to do the aforementioned, it actually affects the obligations that will burden employers, which will be governed by national law.

Directive 2006/54/EC is also a significant anti-discrimination directive dedicated to implementing the principle of equal treatment of men and women in employment and occupation matters. In its preamble, this Directive declares harassment and sexual harassment as discrimination on the basis of sex, since it contradicts the principle of equal treatment of men and women.<sup>46</sup> These forms of discrimination do not occur only in the workplace, but also in relation to employment opportunities, vocational training, and advancement.<sup>47</sup> This directive tackles various forms of discrimination, including sexual harassment, with the goal of ensuring equal opportunities and protection for both men and women in the workplace. It defines sexual harassment in the same manner as Directive 2002/73/EC amending Council Directive 76/207/EEC, imposing obligations on Member States to take specific measures to prevent and address such behaviour (Art. 2. Of the Directive 2006/54/EC). Directive 2006/54/EC imposes on the Member States the same obligations as the directive mentioned in the paragraph above. A unique feature of the Directive 2006/54/EC, in the context of combating discrimination in general, including sexual harassment, is the provision of Article 19, which relates to the burden of proof. Paragraph 1 of Article 19 of the stated Directive reads: "Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment." This provision is particularly important because it partially shifts the burden of proof, which in legal proceedings traditionally lies on the plaintiff, onto the defendant. This provision strengthens

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<sup>46</sup> Vasiljević, S. & Vinković, M. (2019), *Temeljna prava i zabrana diskriminacije u praksi europskih i nacionalnih sudova*, p.63

<sup>47</sup> Ibid

protection for individuals who are potential victims of discrimination, making it easier for them to initiate legal proceedings, as they do not have to prove discrimination entirely by themselves. This is particularly important in cases of discrimination, where it could be quite challenging for victims to collect evidence of discrimination that is often subtle and implicit.

The equality directives set out above have approached tackling sexual harassment vigorously and they have had a significant impact on the development of anti-discrimination legislation in the Member States as well as in the Republic of Croatia. However, there are several problems related to their implementation in practice. First of all, the definitions found in these directives consist of a general statement about the behaviour that constitutes sexual harassment, but do not list any particular behaviours or classes of behaviour.<sup>48</sup> This generality and abstractness also make it difficult to form a shared understanding of what sexual harassment actually is, which then leads to difficulties in forming a shared social definition of such behaviour.<sup>49</sup> Since these are directives, Member States are certainly already left with a certain amount of discretion during their implementation, which may lead to differences in the implementation of the said directives in their national legislation, and the fact that the definitions are so abstract opens the door to even greater differences and unequal approaches by Member States in addressing this problem. Legal norms are abstract precisely in order to encompass as many specific cases as possible, but listing specific behaviors that can constitute sexual harassment, along with an open clause, could have beneficial effects. For instance, this could significantly contribute to creating a more uniform definition of sexual harassment among different Member States, which could then also lead to a more uniform level of protection provided by the Member States against such behaviour. Furthermore, although it is clear from the definitions of sexual harassment and harassment related to sex that the existence of a sexual element in sexual harassment, or the absence of that element in harassment related to sex, is a fundamental difference, difficulties may arise in distinguishing between them in practice. First and foremost, certain behaviours may initially appear to be non-sexual in nature but could be interpreted as sexual harassment depending on the context, the relationship between the individuals involved, and the perception of the recipient. Thus, this grey area can make it challenging to definitively categorize certain actions. Although definitions could not possibly cover all behaviours that represent sexual harassment and harassment related to sex, providing at least some examples of behaviours that represent each type of harassment would facilitate their identification. This

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<sup>48</sup> Latcheva, R. (2017) Sexual Harassment in the European Union: A Pervasive but Still Hidden Form of Gender Based Violence, *Journal of Interpersonal Violence* 32(12), p. 1824

<sup>49</sup> *Ibid*, p.1826

is especially important for harassment related to sex because its nature is quite vague and ambiguous, so providing at least a few examples could serve as a guide for recognizing other behaviours that represent harassment related to sex.

### 3.3. JUDICIAL PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

The role of the European Court of Human Rights (ECtHR) is significant in the context of combating workplace sexual harassment, as its judgments, despite formally binding only the state against which they are issued, influence the practices of national courts of all signatory states of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

Although the ECHR does not mention sexual harassment explicitly, the ECtHR has subsumed protection against such behaviour under Article 8 of the ECHR, which guarantees everyone the right to respect for private life.<sup>50</sup> In other words, the Court considers sexual harassment a violation of the conventional right to respect for private life. Several judgments of the ECtHR will be analysed below to illustrate the importance of its action in protection against sexual harassment in the workplace.

The case *C. v Romania*, considered a key case, involved an employee of a cleaning services company, assigned to work at a railway station in Romania.<sup>51</sup> This employee accused the railway station manager, C.P., of sexual harassment over a two-year period, including attempts to force her into sexual intercourse, as well as other sexually intrusive behaviour. The employee tried to avoid him, but C.P. continued with the mentioned behaviour, making her workplace extremely uncomfortable. Afterwards, the employee decided to lodge a criminal complaint against C.P., supported by witness statements and audio recordings of some of their interactions. However, after the investigation, the prosecutor's office decided not to prosecute C.P., concluding that the reported behaviour did not meet the legal criteria for a criminal offense. This decision was upheld by the Appellate court, which found that the evidence did not indicate the employee felt threatened or humiliated to the extent required by law to constitute a criminal offense, after which the employee, having exhausted the domestic legal path, filed a lawsuit with the ECtHR. In its judgement, the Court outlined the general principles for the protection of the right to respect for private life, emphasizing the need for signatory states to protect individuals against arbitrary interference by public authorities and to protect

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<sup>50</sup> The ECtHR has categorized sexual harassment suffered in the workplace as a violation of the right to respect for private life in the following cases: *C v. Romania* and *Vučković v. Croatia*.

<sup>51</sup> ECtHR, *C. v. Romania case*, Application No. 47358/20

individuals from acts of violence or harassment by private individuals. The Court highlighted that this includes ensuring adequate legal frameworks, both criminal and civil, are in place to address such acts and it further recognized that the signatories have a wide margin of appreciation in determining how to fulfil these obligations but must effectively protect individuals' physical and psychological integrity. Furthermore, the Court found deficiencies in the domestic authorities' response to a woman's complaints against her superior colleague. Despite her efforts to report the harassment through appropriate channels and the existence of an internal company policy against such behaviour, little was done by the company or the State authorities to address her allegations. The victim's claims and the power dynamics and psychological effects of the harassment were not fully taken into account during the criminal investigation or the judicial proceedings. Without carefully reviewing the facts or the consequences of the harassment on her, the prosecutor's office and the court concentrated on whether the victim felt humiliated, which is a prerequisite under domestic law for the acts to constitute sexual harassment. The Court criticized the authorities for not conducting a more comprehensive investigation, which may have included a psychological evaluation of the victim, and for incorporating irrelevant and dehumanizing information about the victim's personal life into the prosecutor's decision. The Court further observed that there was no protection against secondary victimization provided to the victim. Ultimately, the Court determined that the applicant's complaints were not adequately investigated and that this violated the State's positive obligation under Article 8 of the ECHR to respect her right to private life. This judgement emphasizes how crucial it is for State authorities to respond to claims of sexual harassment in a considerate and thorough manner while also shielding victims from additional harm.

In the case of *Vučković v. Croatia*, which is also considered a key case, the applicant was a nurse who claimed she was subjected to sexual harassment at work by her colleague M.P., an ambulance driver.<sup>52</sup> The applicant claimed that M.P. locked her in a room, trying to coerce her into performing a sexual act and that he also inappropriately touched her while driving the ambulance. After the complaint was filed, M.P. was questioned and then transferred to another town for work. Following the initiation of criminal procedures, M.P. was found guilty of conducting lewd acts. However, the original conviction was replaced with community service. The applicant suffered from post-traumatic stress disorder as a result of the harassment she endured. In this case, the ECtHR ruled that there was a violation of Article 3 of the ECHR,

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<sup>52</sup> ECtHR *Vučković v. Croatia*, Application No. 15798/20

which prohibits torture, inhumane and degrading treatment, as well as a violation of the aforementioned Article 8, which guarantees everyone the right to respect for their private life. The Court criticized the domestic appeal court's decision to replace the harasser's ten-month prison sentence with community service as excessively lenient and out of proportion to the nature of the offenses. Furthermore, the Court emphasized the inadequacy of the appeal court's justification for this commutation, especially in view of the harasser's serious criminal liability and strong intent.

In one of its most recent cases, the case of *Cedh, Affaire Alée v. France* from January of 2024, the ECtHR condemned France to compensate a female employee with €12,750 for a violation of her freedom of expression.<sup>53</sup> The case revolved around an employee who was convicted in France of public defamation for sending an email claiming she was sexually harassed by the vice-president of the association she worked for. The Court found that the French domestic courts had violated Article 10 of the ECHR, which guarantees freedom of expression. The Court stated that the email, since it was sent to only a limited number of people, had limited effects on the reputation of the alleged harasser. Furthermore, the Court stated that the potential victims of psychological or sexual harassment would be deterred from reporting such acts by the possibility of a criminal conviction. The Court also highlighted that this deterrent effect may make it more difficult for other European laws intended to protect employees from sexual harassment at work to be properly applied.

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<sup>53</sup> ECtHR *Allée v. France*, Application No. 20725/20



## **4. TRENDS, LEGAL FRAMEWORK AND JUDICIAL PRACTICE IN THE REPUBLIC OF CROATIA**

### **4.1.TRENDS IN THE REPUBLIC OF CROATIA**

The most recent indicator of trends in the Republic of Croatia regarding workplace sexual harassment are the results of a survey conducted by the State Bureau of Statistics.<sup>54</sup> This was the Gender-Based Violence survey designed by Eurostat, and it's the first such survey conducted in the Republic of Croatia. The survey was conducted from September 2022 to February 2023 on a sample of 23,000 women aged 18 to 74.<sup>55</sup> The questions in the survey pertained to violence suffered from a partner, non-partner, and family perpetrator, and to sexual harassment experienced at work.<sup>56</sup> The results of this survey showed that as many as 36% of the respondents experienced sexual harassment in the workplace.<sup>57</sup> For comparison, the results of the same survey conducted in other countries that carried it out are also concerning. For instance, 27% of the respondents in Austria, 32% in Slovenia, 41% in the Netherlands, and even 46% in Denmark confirmed they had experienced sexual harassment at work.<sup>58</sup> When comparing the results of the survey conducted in the Republic of Croatia with the results of the survey carried out by the Fundamental Rights Agency in 2014, which showed that 32% of women experienced sexual harassment by a boss or colleague, i.e., at the workplace, it is evident that the level of sexual harassment women in the Republic of Croatia experience at work is higher than the European average by 4% (since in the Republic of Croatia, 36% respondents reported that they have experienced sexual harassment at the workplace).

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<sup>54</sup> Dosad najveće istraživanje u Hrvatskoj. Svaka treća žena doživjela nasilje od partnera ili seksualno uznemiravanje na poslu. <https://www.novilist.hr/novosti/hrvatska/dosad-najvece-istrazivanje-u-hrvatskoj-svaka-treca-zena-dozivjela-nasilje-od-partnera-ili-seksualno-uznemiravanje-na-poslu/>

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

The Ombudswoman for Gender Equality is an institution that examines cases of violation of gender equality principles, and citizens can submit complaints in this regard. Among other things, the Ombudswoman monitors trends and main indicators concerning sexual harassment in the workplace, making her reports a source of information on this issue in the Republic of Croatia.<sup>59</sup>

The report of the Ombudswoman for 2022 showed a certain decrease in complaints on sexual harassment. However, the report emphasized that this decrease should be considered in the context of a significant increase in complaints in 2021, which was caused by numerous victim testimonies across the region.<sup>60</sup> Furthermore, the Ombudswoman's report highlights that citizens most commonly complain about ineffective protection by employers and commissioners for the protection of workers' dignity. Commissioners for protection of dignity of workers are still more inclined to protect the employer or the perpetrator.<sup>61</sup>

During the reporting period, the Ombudswoman received 40 complaints related to sexual harassment, mainly from the field of work and employment. In two cases, complaints were submitted by men.<sup>62</sup> In one of the two mentioned cases of complaints by men, it was about the victimization of a person who witnessed discrimination, since the employer issued a dismissal to the employee who supported and testified in favour of a colleague who filed a complaint for sexual harassment. In another case of a complaint submitted by a man, there was no basis for the Ombudswoman to act since the man filed a complaint because he believed he was unjustly accused of sexual harassment by a colleague.<sup>63</sup>

The Ministry of the Interior recorded a decrease in the number of reports for the criminal offense of Sexual Harassment under Article 156 of the Criminal Code, with a total number of 68 reports for the mentioned criminal offense in 2022.<sup>64</sup> However, the Ombudswoman emphasizes that only a few cases of this offense are criminally prosecuted each year, and convictions are very rare.<sup>65</sup>

Furthermore, in 2022, the trend of enhanced regulation of this matter continued through internal acts of many institutions, companies, and organizations, some of which had not even had

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<sup>59</sup> Ljubičić, V. (2022), Izvješće o radu Pravobraniteljice za ravnopravnost spolova za 2022. godinu, p.50

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Ibid, footnote at the end of the p. 50

<sup>64</sup> Ibid, p.51

<sup>65</sup> Ibid

prescribed procedures for the protection of workers' dignity and disciplinary punishment of perpetrators in cases of sexual harassment.<sup>66</sup>

Judicial practice continues to record extremely low numbers of proceedings for this type of discriminatory behaviour, and those that are initiated are conducted mostly without the necessary understanding of gender discrimination and sensitivity towards the victims.<sup>67</sup>

When it comes to specific cases in the work of the Ombudswoman, case PRS-01-01/22-2 is an example of a case in which the Ombudswoman dealt with a complaint submitted precisely because of sexual harassment in the workplace.<sup>68</sup> In the mentioned case, the Complainant reported experiencing sexual harassment at work by her superior, but the employer did not find grounds for protecting her dignity after the procedure, claiming that the Complainant had consented to such a relationship with the superior, i.e., that the element of unwanted behavior was missing. After receiving the complaint in question, the Ombudswoman filed a criminal complaint against the reported person directly, on suspicion that the reported person, as a superior, sexually harassed a subordinate employee, i.e., the complainant. In addition, the Ombudswoman also gave recommendations to the employer on handling cases of sexual harassment with sensitivity and consideration. After filing the complaint, the Complainant experienced pressures and unfavourable treatment, and the employee who supported her and testified to the sexual harassment she suffered was given an extraordinary dismissal, prompting the Ombudswoman to file an additional complaint against the employer. From the described case, the importance of the role of the Ombudswoman and the means at her disposal for combating and protecting against sexual harassment can be clearly seen.

In another case related to sexual harassment, case number PRS-01-02/21-18, the Ombudswoman requested that the Health Centre, as the employer, respond to the complaints of three nurses due to the alleged ineffective protection from years-long sexual harassment they were subjected to by ambulance drivers.<sup>69</sup> Based on the received statement, the Ombudswoman concluded that the employer had taken reasonable measures to protect its workers from sexual harassment. Specifically, the employer immediately conducted a dignity protection procedure for the workers, issued pre-dismissal warnings to the accused drivers, filed a criminal complaint against them, and even amended the Work Regulations concerning the dignity protection

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<sup>66</sup> Ibid, p. 52

<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> Ibid, p. 53

procedure, all with the aim of providing more effective protection. The importance of this case lies in the fact that it shows how an employer should act for such actions to be considered adequate and sufficient in the area of protecting the dignity of its workers, namely their protection from sexual harassment experienced in the workplace.

From all the information presented, it is evident that despite the existence of numerous legal mechanisms outlined in a number of laws, as well as a detailed elaboration of the procedure concerning the protection of workers from sexual harassment, the statistics regarding workplace sexual harassment remain quite alarming. Statistical data from a recently conducted survey in the Republic of Croatia indicate that more than a third of women (36%) have experienced some form of sexual harassment at work. From this, it can be seen that awareness on the seriousness of this issue is still too low, and victims are approached with insufficient sensitivity and understanding, which often leads them to remain silent about the harassment they endured.

#### 4.2. LEGAL FRAMEWORK IN THE REPUBLIC OF CROATIA

In the Republic of Croatia, the protection of workers from sexual harassment is regulated by several laws. These include the Criminal Code, the Labour Law, the Gender Equality Act, and the Anti-Discrimination Act.

The Criminal Code, in Article 156, stipulates the following: "Whoever sexually harasses another person who is subordinate to them, or who is in a dependent relationship with them, or who is particularly vulnerable due to age, illness, disability, addiction, pregnancy, severe physical or mental disturbance shall be punished with imprisonment for up to two years." Thus, the Criminal Code declares sexual harassment a criminal offense, particularly focusing on sexual harassment in the workplace. However, the Criminal Code covers only cases of sexual harassment in the workplace that often concern the *Quid Pro Quo* form of sexual harassment, stating that a person who harasses a subordinate will be punished with imprisonment for up to one year. This way, the Criminal Code criminalizes only sexual harassment suffered from bosses, i.e., superiors, not addressing the hostile work environment form of sexual harassment, i.e., sexual harassment suffered by a colleague who is on the same level or even subordinate to the person being sexually harassed. Thus, the legislator has failed to include an entire form of sexual harassment that can exist in the workplace, which is harmful and humiliating just as much as harassment suffered from a superior. For establishing criminal liability according to Article 156 of the Criminal Code, it is necessary that the perpetrator acted with intent, both in

terms of their own actions and other characteristics of the act, as well as in terms of the consequence.<sup>70</sup> It is not necessary for the intent to be direct; indirect intent is also sufficient, that is, the perpetrator's awareness of the characteristics of the act and that their behaviour can cause such consequences, and consenting to that. Furthermore, given that the Anti-Discrimination Act and the Gender Equality Act prescribe sexual harassment as an offense, while the Criminal Code criminalizes it, the question also arises regarding the demarcation between sexual harassment as a criminal offense and sexual harassment as a misdemeanour. Up until recently, two cumulative conditions were required to be fulfilled for sexual harassment to constitute a criminal offense.<sup>71</sup> The first condition related to persistence, meaning that harassment must have a persistent nature to constitute a criminal offense.<sup>72</sup> The second condition is that the perpetrator is superior to the victim or that she finds herself in a relationship of dependency on the perpetrator, or that she is particularly vulnerable due to age, illness, disability, dependence, pregnancy, severe physical or mental distress.<sup>73</sup> In practice, these criteria for demarcation, particularly the one related to repetition, has led to unequal application of the law.<sup>74</sup> For instance, an analysis of verdicts from the Municipal Criminal Court in Zagreb indicated unequal practices and different interpretations of the repetition criterion even within that court itself.<sup>75</sup> The repetition criterion did not clearly emerge from the legal text and it was not justified from a criminal-policy standpoint.<sup>76</sup> This criterion could have led to absurd situations where milder forms of sexual harassment (for example, a sexist joke) if repeated, would be qualified as a criminal offense, while more severe, but one-time forms (for example, conditioning passing of an exam on sexual acts) would remain within the misdemeanour sphere.<sup>77</sup> Today, the condition related to persistence is no longer required. In practice, only the fulfillment of the second condition, which clearly stems from the legal text, is now sought. Hence, behaviour can constitute the criminal offense of sexual harassment even if the act occurred only once, without the need for repetition and recurrence. The fact that repetition is no longer required allows a much larger number of cases to now be treated as the criminal offense of sexual harassment, rather than as a misdemeanor. This contributes to the understanding of seriousness of the issue of sexual harassment and gives it much more gravity.

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<sup>70</sup> Grgurev, I. & Potočnjak, Ž. (2021), op. Cit. (n. 10), p.128

<sup>71</sup> Grgurev, I. & Potočnjak, Ž. (2021), op. Cit. (n. 10), p. 129

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> Ibid, p. 131

<sup>76</sup> Ibid, p. 134

<sup>77</sup> Ibid

This way, the effect of general prevention is much better achieved because it sends a message to the broader public that they may receive a serious punishment if they decide to engage in such behavior, even just once.

In its Article 7, the Labour Law, as the fundamental act regulating labour relations in the Republic of Croatia, prescribes the fundamental obligations and rights arising from the employment relationship. The obligation to protect the dignity of the worker while performing their job from the conduct of superiors, associates, and persons with whom the worker regularly comes into contact in the performance of their duties, if such conduct is unwanted has been defined as a fundamental obligation of the employer. It is important to emphasize that sexual harassment of workers for which the employer is responsible can also be committed by a person who is not in an employment relationship with the employer.<sup>78</sup> This arises from the above cited Article 7, paragraph 5 of the Labour Law.<sup>79</sup> This provision protects workers from the actions of people with whom they regularly come into contact in the performance of their duties, regardless of the employment status of these individuals.<sup>80</sup> In this context, the regularity of contact should be interpreted as contact in the regular course of things, not that such contacts that offend the dignity of the worker happen regularly.<sup>81</sup> Furthermore, in its Article 134, the Labor Law thoroughly outlines the procedure for protecting the dignity of workers. This procedure for the protection of workers' dignity specifically relates to the protection of workers from harassment and sexual harassment. The law stipulates that the employer, depending on the number of employees, is required to appoint a person or persons who, besides them, are authorized to receive and resolve complaints related to the protection of workers' dignity. Furthermore, the law prescribes that the person appointed as the commissioner for protection against harassment is required to investigate received complaints no later than 8 days from their receipt, as well as to take all appropriate measures to prevent sexual harassment if they determined it indeed exists. The law protects the worker by giving them the right to stop working if measures to provide protection against sexual harassment have not been taken or if the measures taken are inadequate, until protection is ensured, provided that they notify the court within a further period of 8 days. It is important to mention that the law also stipulates that behaviour of a worker that constitutes harassment represents a breach of obligations from the employment relationship, which is significant in the context of

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<sup>78</sup> Grgurev, I. & Potočnjak, Ž. (2021), op. Cit. (n. 10), p. 92

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Ibid

termination since breaching obligations from the employment relationship constitutes a reason for dismissal conditioned by the worker's culpable behaviour. Furthermore, the law emphasized that a worker's opposition to behaviour that constitutes sexual harassment cannot be a reason for dismissal or discrimination. By such detailed regulation of the procedure aimed at protecting workers from sexual harassment, the legislator has recognized the seriousness of the mentioned problem and demonstrated determination to provide maximum protection to workers in case they are affected by described behaviour.

The Gender Equality Act, in Article 8, declares sexual harassment as discrimination and provides a definition of sexual harassment as unwanted verbal, non-verbal, or physical behaviour of a sexual nature, which aims or constitutes a violation of personal dignity, especially if it creates an unpleasant, hostile, humiliating, or offensive environment. The legal definition emphasizes how actions of a sexual nature can be of a physical, verbal, or non-verbal character.<sup>82</sup> This indicates that such a broad spectrum of sexual behavior that leads to a violation of dignity only reflects the prevalence of this phenomenon in everyday life.<sup>83</sup> Furthermore, it is important to emphasize that it is not necessary for the unwanted behaviour of a sexual nature to be carried out with the intention or aim of violating dignity; it is sufficient that it represents an actual violation of a person's dignity.<sup>84</sup> Article 32 of the Gender Equality Act defines sexual harassment as a misdemeanour for which it prescribes monetary fines, the amount of which varies depending on the perpetrator of such an offense.

The Anti-Discrimination Act contains almost the same definition of sexual harassment and regulates that offense in the same manner as the Gender Equality Act does.<sup>85</sup> The difference between the definition of sexual harassment contained in the Anti-Discrimination Act and that contained in the Gender Equality Act is that the definition in the Anti-Discrimination Act, when describing the environment, also adds adjectives "frightening and belittling", while omitting the adjective "unpleasant," which is contained in the definition from the Gender Equality Act. Hence, it is evident that the definition contained in the Gender Equality Act is broader, as "unpleasant" is a rather broad term and a fairly wide range of behaviours can lead to "unpleasant environment". This implies that a broader spectrum of behaviours that constitute sexual harassment could be classified as such under the definition from the Gender Equality Act. In any case, definitions of sexual harassment contained in the Gender Equality Act and

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<sup>82</sup> Vasiljević, S. et al., op. Cit. (n. 5), p.33

<sup>83</sup> Ibid

<sup>84</sup> Grgurev, I. & Potočnjak, Ž. (2021), op. Cit. (n. 10), p. 93

<sup>85</sup> Anti discrimination Act (Official Gazette no. 85/2008, 112/2012), Article 3&26

Anti-Discrimination Act are quite similar, so when applied in practice, any behaviour that can be subsumed under any of the given definitions should be considered sexual harassment.<sup>86</sup> Anti-discrimination laws shall always be interpreted broadly, and limitations strictly.<sup>87</sup> This is supported by the decision of the Constitutional Court of Croatia from 2018, in which it took the position that the fundamental social rights of workers should be interpreted broadly, and that domestic regulations governing the protection of workers' dignity should be interpreted in accordance with interpretations from the practice of the Court of Justice of the EU.<sup>88</sup> In the mentioned decision, the Constitutional Court highlighted that the dignity, health, and safety of workers should be protected not only from discriminatory behavior at work and in relation to work but from all undesirable and harmful behaviors that can damage personality rights.<sup>89</sup>

Additionally, it is important to mention that in a labor dispute relating to gender discrimination and sexual harassment, Article 3 paragraph 3, of the Anti-Discrimination Act can be applied.<sup>90</sup> This article implies that the provisions of the Anti-Discrimination Act related to discrimination are appropriately applied to sexual harassment. This means that, just like a discriminated person, a person subjected to sexual harassment has the right to protection afforded to discriminated persons.<sup>91</sup> Such protection includes filing a lawsuit to establish discrimination, a lawsuit for prohibition or removal of discrimination, and a lawsuit for compensation for damages (Art. 17 of the Anti-Discrimination Act).<sup>92</sup> Therefore, if it is established that harassment has occurred in the workplace and if the severity and circumstances of the case justify it, the employee has the right to compensation for the violation of rights from the employment relationship, in which case the general provisions of the law of obligations apply.<sup>93</sup>

From the foregoing, it is evident that there is a number of legal mechanisms aimed at combating sexual harassment that have been established in the Republic of Croatia. Such mechanisms address the mentioned problem at several levels, starting from the Criminal Code which criminalizes such behaviour, then the Labor Law which specifically deals with the protection of workers from sexual harassment to the Anti-Discrimination Act and the Gender Equality

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<sup>86</sup> Grgurev, I. & Potočnjak, Ž. (2021), op. Cit. (n. 10), p. 93

<sup>87</sup> Ibid

<sup>88</sup> Vasiljević, S. & Vinković, M. (2019), op. Cit. (n.50), p.68

<sup>89</sup> Ibid

<sup>90</sup> Vasiljević, S. (2023) Rodna ravnopravnost: Pravo i politike, p.257

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> Vasiljević, S. & Vinković, M. (2019), op. Cit. (n.50), p.67



Act that provide a definition of sexual harassment, declaring it discrimination as well as misdemeanour.

#### 4.3. JUDICIAL PRACTICE IN THE REPUBLIC OF CROATIA

As previously mentioned, courts play a vital role in addressing the issue of sexual harassment, as they, being the enforcers of the law, give weight to the words written in it. Moreover, through their quality and stringent judgments, they can deter potential perpetrators and generally raise awareness on the seriousness of this issue.

At the given moment, the large amount of media attention that this problem has received in the last few years has not resulted in a higher number of legal disputes.<sup>94</sup> It should also be emphasized that the amounts of damages awarded to victims of sexual harassment should have a deterrent effect, i.e., they should be sufficiently high.<sup>95</sup> Currently, this is not the case, which means that it is necessary to raise awareness in this area, especially among judges, that unless these amounts are increased, society will not take the problem of sexual harassment seriously.<sup>96</sup> From disputes in which perpetrators of sexual harassment seek to have the termination of their employment by the employer deemed unlawful, it is evident that employers are inclined to make decisions on extraordinary termination of the employment contract when they determine that sexual harassment has occurred.<sup>97</sup> The fact that employers are prone to issuing extraordinary terminations indicates that reactions often occur only when extreme excesses happen, while "milder" attacks on the psychological and physical integrity of another person are generally tolerated. Victims often fear retaliation (termination, further harassment), being blamed for inviting or provoking the harassment, as well as that they will not be able to prove that the harassment occurred.<sup>98</sup> It is precisely for these reasons that there are many unreported cases of sexual harassment, as well as a small number of legal proceedings regarding this issue.

Although legal doctrine distinguishes between sexual harassment and harassment based on sex, this distinction is not particularly emphasized or explained in judicial practice, since

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<sup>94</sup> Grgurev, I. & Potočnjak, Ž. (2021), op. Cit. (n. 10), p. 93

<sup>95</sup> Ibid, p. 94

<sup>96</sup> Ibid

<sup>97</sup> Ibid

<sup>98</sup> Ibid

harassment based on sex and sexual harassment once they are established, are sanctioned equally.<sup>99</sup> In such disputes, it is determined whether certain actions constitute harassment based on sex or sexual harassment, after that, the harasser is ordered to cease the harassing actions and the employer is ordered to compensate the employee for the harm suffered due to the harassment.<sup>100</sup>

In the following part of this chapter, several judgments of domestic courts will be analysed. Analysed judgements are examples of good practice and in which the courts have shown an understanding of the seriousness, complexity, and the nuanced nature of this issue. The following judgments should serve as examples to domestic courts on how to approach disputes related to sexual harassment.

An example of such a judgment is the case *Pr-4366/05*.<sup>101</sup> In this case, the court awarded the victim of workplace discrimination a compensation of 400,000 HRK (53,092.65 EUR) for non-material damage. By doing so, the court deviated from the Orientation Criteria of the Supreme Court of the Republic of Croatia, which are normally used to decide on compensation for non-material damage. The court considered that the amount of compensation calculated by applying such criteria would be too low in relation to the humiliation and damage the victim suffered due to her employer's behaviour. The court justified its actions by stating: "...precisely for this reason, in relation to the employer, this court determined the compensation amount to be paid of 400,000 HRK, which represents a deterrent compensation, and this deterrent compensation is in line with European practice... this is to show the wider public the importance of equal and careful treatment towards everyone, and that anyone who decides on a certain discriminatory action has a clear idea of the consequences that arise from such action." The court made it quite clear in the explanation of its judgment that it brought such judgment, among other things, to raise public awareness about the consequences of such behaviour and the importance of treating everyone with respect. This is one of the examples of good judicial practice that follows European standards and truly contributes to combating sexual harassment in the workplace.

In the second case, case *U-III/3519/2018*, the petitioner experienced workplace harassment, and the courts rejected compensation due to a lack of evidence regarding the causal link between harassment and psychological distress.<sup>102</sup> Consequently, the petitioner filed a

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<sup>99</sup> Vasiljević, S. (2023) op. Cit. (n. 91), p.257

<sup>100</sup> Ibid

<sup>101</sup> Municipal Civil Court in Zagreb (2010), judgement Pr-4266/05

<sup>102</sup> Constitutional Court of the Republic of Croatia (2020), judgement U-III/3519/2018

constitutional complaint, hoping for protection from the Constitutional Court. The Constitutional Court concluded that the actions that violated the Petitioner's dignity were severe, and she had the right to legal protection. The Constitutional Court stated that the stance of national courts in previous legal proceedings regarding proving lasting consequences complicates the legal protection of dignity. The Court concluded that there has been a violation of the Petitioner's dignity and ordered a retrial to examine the infringement of personal rights and to determine fair monetary compensation.

The following example of good judicial practice concerns the procedure for protecting the dignity of workers described earlier in this work.<sup>103</sup> In the case *Gž R 119/2020-2*, the Plaintiff sued her employer for making a decision on extraordinary termination of the employment contract without any basis. Specifically, the plaintiff was sexually harassed at work, which she subsequently reported to her employer in accordance with Article 134 of the Labor Law, which gives the worker the right to stop work in case of sexual harassment until adequate protection is provided. The employer did not take adequate measures, which he was obliged to take within 8 days of the notification, so the Plaintiff was forced to seek court protection. Four months after the Plaintiff's notification, the employer transferred the worker who sexually harassed her to another facility of his company. The court found that transferring the worker to another facility does not provide security for the Plaintiff from harassment as a form of discrimination and that Plaintiff's decision not to work until adequate protection was provided was indeed justified. The court highlighted the following in its judgment: "...by the provision of Art. 134, para. 10 of the Labor Law, it is prescribed that opposition by a worker to behaviour that constitutes harassment or sexual harassment (as in the specific case), does not constitute a breach of obligations from the employment relationship nor may it be a reason for discrimination, thus the plaintiff, using the right to stop work, did not commit a serious breach of obligations from the employment relationship, nor was there a justified reason for making the decision on extraordinary termination of the employment contract."<sup>104</sup> This judgment is important precisely because the court emphasized that measures such as merely transferring a worker who sexually harassed another worker are not and cannot be considered a solution, i.e., an adequate measure providing protection to another worker.

Unfortunately, three analysed judgments that serve as examples of good judicial practice are more the exception than the rule, especially when it comes to the amounts of compensation

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<sup>103</sup> County Court in Osijek (2020), judgement Gž R 119/2020-2

<sup>104</sup> Ibid

awarded to victims of sexual harassment. As mentioned in the introduction of this subsection, extremely low amounts of damages awarded to victims when it is established that sexual harassment has indeed occurred, remain a significant problem in judicial practice of national courts. The amounts of damages range from a few thousand to several tens of thousands of kunas, but very rarely in amounts greater than 100,000.00 HRK (13,272.28 EUR).<sup>105</sup> This trivializes sexual harassment and the consequences suffered by the victims. Moreover, this indicates the fact that domestic courts generally do not follow the practice of the European Court of Human Rights, which emphasizes that compensation must be deterrent, to ensure general and special prevention.

For instance, in the case *Gž R-113/20*, the County Court in Osijek, awarded the victim of sexual harassment compensation in the amount of only 10,000 HRK (1,327.23 EUR).<sup>106</sup>

Furthermore, there was a case of verbal sexual harassment by a superior, in which the complaint of the sexually harassed person within the dignity protection procedure was decided by the very superior who committed the sexual harassment, forcing the worker to opt for a mutual termination of the employment contract. This case was handled by the County Court in Zagreb under number *Gž R-2056/16*. In this case, the court determined that sexual harassment at the workplace indeed occurred, and on that basis, it awarded the victim of sexual harassment a relatively low amount of damages considering all the circumstances (amounting to 30,000.00 HRK, or 3,981.68 EUR).<sup>107</sup>

In a case handled by the County Court in Zagreb under the number *Gž R-2018/16*, the sexual harasser was the director of an institution who was convicted of the crime of harassment and was also dismissed from the director's position.<sup>108</sup> The worker had suffered permanent health consequences due to the harassment and was forced to leave the work environment because of everything she had endured, yet the court awarded her only 50,000.00 HRK in compensation (6,636.14 EUR).<sup>109</sup>

Furthermore, an analysis of existing judicial practice in the area of the prohibition of discrimination on grounds of sex and sexual harassment indicates that workers as plaintiffs in anti-discrimination disputes still “lose” disputes to a much greater extent than they succeed in

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<sup>105</sup>Vasiljević, S. (2023) op. Cit. (n. 91), p. 281

<sup>106</sup> Ibid, p. 275

<sup>107</sup> Ibid, p. 276

<sup>108</sup> Ibid

<sup>109</sup> Ibid, p.277

proving the violation of their rights in those disputes.<sup>110</sup> In this regard, the question arises as to how effective the transfer of the burden of proof from the employee to the employer really is in practice. The employee needs to prove the primary facts on which their claims are based, after which the court assesses whether these facts are sufficiently relevant to result in the presumption of discrimination, and if the court deems they are, the burden of proof shifts to the employer who needs to prove the absence of discrimination. The position of the employee is facilitated by the fact that they only need to present *prima facie* evidence, but the reality is such that sometimes even such evidence is extremely difficult to present. For instance, verbal sexual harassment is significantly easier to make probable than non-verbal sexual harassment because, in the case of non-verbal sexual harassment, there might be a misconception that a person is being non-verbally sexually harassed.<sup>111</sup> In judicial practice, verbal and physical sexual harassment are most commonly proven.<sup>112</sup> Verbal sexual harassment that occurred in common areas where there are witnesses, for example, a canteen, corridor, as well as harassment for which there are written traces (emails, messages, etc.) are most often proven.<sup>113</sup> Physical sexual harassment, if it has not left marks on the victim's body, is most commonly proven with the help of witnesses.<sup>114</sup> However, in some cases, the act constituting sexual harassment is committed in isolation, meaning there are no witnesses, raising the question of how can an employee present a *prima facie* evidence that harassment has occurred at all, in such circumstances. Furthermore, even if there are witnesses, difficulties in proving the case can arise for a variety of reasons. For instance, if an employer is accused of sexual harassment, it can be expected that the employee will be afraid to testify against them, which could affect the quality of their testimony. Moreover, employers, workers' dignity protection officers, i.e., persons from the work environment, are still more likely to condemn the victim rather than the perpetrator, which can lead to bias in their statements. It is evident that even regarding those forms of sexual harassment that are normally easier to prove, difficulties in proving them can still occur.

In order to determine that sexual harassment has occurred, it must be proven that certain behavior was unwanted and that it aimed or resulted in the violation of a person's dignity.<sup>115</sup> If the plaintiff proves discrimination on a *prima facie* basis, the defendant is left to challenge such

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<sup>110</sup> Ibid, p.252

<sup>111</sup> Ibid, 256

<sup>112</sup> Ibid

<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> Vasiljević, S. & Vinković, M. (2019), op. Cit. (n.50), p.64

prima facie presumption by proving that the determination that a specific act occurred is not true, that such behavior was not unwanted by the plaintiff, or that it involved sporadic actions that, although inappropriate in their intensity, still do not reach the threshold of dignity violation.<sup>116</sup> In this regard, courts should take possible claims by the defendant about the unwelcomeness of the determined sexual behavior with particular care and caution.<sup>117</sup> Given the highly subjective nature of this issue, which is manifested in the differences in individual perceptions and the differences in relationships between different individuals, problems have in practice occurred when determining the element of unwantedness. Thus, in one case in which the court of first instance ruled that an extraordinary dismissal decision was admissible, the court of second instance declared that decision inadmissible.<sup>118</sup> As a reasoning for such a decision, the court of second instance pointed out that, since the plaintiff and the worker regularly talked about sex, joked and laughed, it can be concluded that conversations and jokes about sex were the usual way of communication between the plaintiff and the said worker who accused him of sexual harassment, for which the plaintiff received an extraordinary dismissal.<sup>119</sup> Thus, the court of second instance concluded that the employer's decision to give an extraordinary dismissal to the plaintiff was unjustified in the present case, precisely because the element of unwantedness that is an integral part of the definition of sexual harassment itself was missing.<sup>120</sup> The court of first instance held otherwise in the same case, which indicates that there may be issues in determining this element precisely because of its highly subjective nature and the difficulty in determining the criteria which courts should use in determining whether or not certain conduct was indeed unwanted. In cases of harassment, the unwanted behaviour does not have a specific character, and it can be concluded that harassment is unwanted in itself due to the manner in which it occurs (verbally, non-verbally, or physically) and because of its potential effect (violation of human dignity).<sup>121</sup> Difficulties regarding determination whether the contested behaviour was wanted are extremely present in quid pro quo cases of sexual harassment, specifically in situations where the facts of the dispute indicate that the plaintiff and defendant were in some kind of intimate relationship.<sup>122</sup> These situations should be approached extremely dilligently, considering that due to the dependency relationship towards the perpetrator, victims are often not in a position to refuse the perpetrator due to the fear of

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<sup>116</sup> Vasiljević, S. et al., op. Cit. (n. 5), p.34

<sup>117</sup> Ibid

<sup>118</sup> Vasiljević, S. & Vinković, M. (2019), op. Cit. (n.50), p.65

<sup>119</sup> Ibid

<sup>120</sup> Ibid

<sup>121</sup> Ibid

<sup>122</sup> Vasiljević, S. et al., op. Cit. (n. 5), p.35

negative consequences that this could have for the victim and their life situation.<sup>123</sup> In such situations, the focus should be on the fact that the defendant must have been aware of the impact carried by their position of superiority towards the specific individual and yet engaged in intimate relations with them despite knowing that in the event of an intimate conflict with that person, it would be nearly impossible to maintain the professional objectivity that, as a superior, one must have towards individuals whose interests and rights they decide upon.<sup>124</sup>

In addition to the element of unwantedness, a violation of dignity must also be established in order to recognize a certain conduct as sexual harassment. For the disputed conduct towards the plaintiff to be determined as sexual harassment, it must reach a level of seriousness or harm that can be qualified as a violation of a person's dignity.<sup>125</sup> However, in practice, the violation of dignity is a legal standard that is extremely vague in its content and as such depends on being concretized through specific decisions made based on the concrete facts of each case individually.<sup>126</sup> Moreover, at the given moment, there is no developed practice at the level of the Court of Justice of the EU that would more closely define the condition regarding violation of dignity, meaning that national courts are left to their own devices when interpreting this standard, which can lead to significant inconsistencies and deviations in practice, not only between Member States, but also within the States themselves.<sup>127</sup>

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<sup>123</sup> Ibid

<sup>124</sup> Ibid

<sup>125</sup> Ibid, p.30

<sup>126</sup> Ibid

<sup>127</sup> Ibid

## **5. POTENTIAL SOLUTIONS FOR COMBATING SEXUAL HARASSMENT IN THE WORKPLACE**

Although sexual harassment in the workplace is an issue that stubbornly persists and eradicating this problem is far from reality at the present moment, there are still mechanisms and tools suitable for combating this issue.

To advance gender equality and prevent sexual harassment in the workplace it is necessary to adopt regulations mandating the implementation of various educational programs. Such programs include diversity and inclusion training for new employees, as well as anti-harassment training which would be aimed to prevent and address workplace harassment and to create a culture that promotes reporting and addressing complaints promptly.

It is also important to educate judges, prosecutors, and police officers on handling cases involving sexual harassment, with the aim of increasing sensitivity towards the victim in order to protect them from secondary victimization and further deepening of the trauma they have already endured.<sup>128</sup>

Education and raising awareness among young people is of vast importance in this context. For that reason, adequate educational programs need to be introduced into educational institutions, all for the purpose of familiarizing young people with issues of gender inequality, gender-based violence, and relatedly, sexual harassment.<sup>129</sup> When equipped with such knowledge, young individuals will be better prepared to navigate the workplace in the future and to recognize behaviour that constitutes sexual harassment as well as to respond to such behaviour and report it.

It is of vast importance to constantly raise awareness about sexual harassment in the workplace. Raising awareness about this issue contributes to breaking the taboo surrounding this problem and destigmatizing the victims. In addition, raising awareness makes it easier for victims, as well as those who witness harassment, to recognize such behaviour and oppose it. To this end,

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<sup>128</sup> Ljubičić, V. op.cit. (n. 37) p. 53

<sup>129</sup> Ibid



it is necessary to continuously design and implement campaigns aimed at educating the public and raising awareness.<sup>130</sup> Such campaigns can significantly help victims to feel seen and heard, encouraging them to report such behaviour. The #MeToo movement was precisely an example of such an awareness campaign against various forms of sexual violence, including sexual harassment, particularly in the workplace.<sup>131</sup> The movement gained major momentum in October 2017, when actress Alyssa Milano promoted the usage of the hashtag #MeToo on social media in order to highlight the pervasiveness of sexual assault and harassment in the workplace.<sup>132</sup> Indeed, within a few days of Milano's post, the hashtag was used millions of times on social media. Thousands of stories from people of all walks of life as well as from celebrities were made public by the movement, illustrating the scope and prevalence of sexual harassment and assault. The #MeToo movement's impact is ongoing, as it continues to foster conversations about gender equality, consent and power relationships.

The #MeToo movement inspired a regional movement in 2021 named #NisamTražila (translated: I did not ask for it), when Serbian actress Milena Radulović accused the esteemed actor Miroslav Aleksić of rape.<sup>133</sup> This triggered an avalanche of reactions across the region, leading to a significant increase in the number of reports related to sexual harassment recorded by the Ombudswoman for Gender Equality in 2021.<sup>134</sup> The examples of these two campaigns clearly show how significant an impact the testimony of just one person can have, and how such a testimony can inspire and encourage a whole series of other victims to come forward with their experiences and report their abusers. Victims, inspired by testimonies of other victims, are encouraged to share their painful experiences, which creates a dialogue and culture where sexual harassment is less likely to go unpunished. For this reason, promoting such campaigns is vastly important.

The Ombudswoman, in addition to receiving complaints, also provides recommendations to improve the institutional, judicial, and legislative framework for combating sexual harassment.<sup>135</sup> To this end, the Ombudswoman has recommended establishing clear legal and substantive frameworks for intersectoral cooperation at all levels, especially between the

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<sup>130</sup> Ibid

<sup>131</sup> Me Too movement. <https://metoomvmt.org/>

<sup>132</sup> Anđelić, H. (2022), p.41

<sup>133</sup> Priče žena s Balkana šire se Twitterom, pišu zašto nisu prijavile zlostavljanje. <https://www.index.hr/vijesti/clanak/price-zena-s-balkana-sire-se-twitterom-pisu-zasto-nisu-prijavile-zlostavljanje/2328258.aspx>

<sup>134</sup> Ljubičić, V. op.cit. (n. 37) p. 50

<sup>135</sup> Ibid, p. 53

police, the prosecutor's office, the judiciary, and health and social institutions in cases of sexual violence.<sup>136</sup> Furthermore, it was recommended to involve men in actively combating discrimination and gender-based violence, as well as to strengthen all existing national preventive mechanisms.<sup>137</sup>

## **6. CONCLUSION**

From everything presented in this paper, it is evident that the protection of women from sexual harassment in the workplace is still at very low levels. Despite the protection of women from sexual harassment being regulated by numerous legal instruments on international, EU as well as national level, practice shows worrying statistics. In practice, it is crucial to apply laws consistently and in accordance with their spirit, which in cases related to sexual harassment at the workplace often is not the case. In such cases, judges often act with insufficient sensitivity and understanding of the seriousness of the problem, as evidenced by the small number of convicting verdicts, and relatively lenient condemnations for perpetrators (with the exception of a few examples of good practice).

It is necessary to destigmatize victims and develop dialogue, otherwise, the words contained in the law itself will not have sufficient weight. Therefore, it is necessary to encourage and create social changes that will be widely accepted, so that the protection of women from sexual harassment in the workplace can be at a satisfactory level. For such social changes to occur at all, education at all levels is urgently needed in order to raise awareness on this issue. Indeed, the lack of awareness and insufficient education, and thus a lack of knowledge about sexual harassment, its manifestations, and consequences, have led to the fact that sexual harassment stubbornly persists as an issue in the workplace.

Sexual harassment, as described in the paper, is behaviour based on various psychological and social factors. It is necessary to act precisely on these factors to eradicate it. Therefore, it is essential to dismantle gender biases, social and cultural norms, and incorrect beliefs that are based on centuries of oppression against women. This can only be achieved through thorough, well-designed, and lifelong education because only such education can lead to awareness on the fact that all people deserve respect for their dignity and integrity, regardless of their gender.

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<sup>136</sup> Ibid

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