

REPORT

The situation with sexual harassment and violence at work in Bulgaria

As one of the focus group participants, a member of the non-governmental organization against domestic violence Animus, did share ” It is strange to note that the recent high-profile cases of sexual harassment in the media and in politics and in the #MeToo campaign all of which had happened abroad have raised the debates about gender-based violence at work. Statistics show that over the years the number of complaints filed with the Discrimination Commission is negligible and BGN 4,500 is the largest fine imposed on sexual harassment in the working place in Bulgaria.

Introduction

This report, produced under the Atrapi Project, was prepared on the basis of a study of the legal framework concerning sexual harassment at the workplace, of developments in the state's policies planned and implemented with the assistance of the trade unions.

As part of the preparation of the report, four interviews were conducted with union leaders, trade union activists and NGO representatives active in the fight against sexual and domestic violence in the workplace.

A meeting was also held in the form of a focus group in the town of Haskovo with representatives of NGOs and trade unions - CITUB and Podkrepa. Eight people participated in the group.

What are the legal foundations for combating social harassment at workplace?

A large number of respondents and focus group participants did cite decision No.13 of 27 July 2018 of the Bulgarian Constitutional court as a crucial event in the field of combating domestic violence and sexual harassment. The Court stated that the Council of **Europe Convention on Prevention and Combating violence against women and domestic violence**, drawn up on 11 May 2011 in the city of Istanbul and signed by the Republic of Bulgaria on 21.04.2016, does not comply with the Constitution of the Republic of Bulgaria. Thus the Bulgarian Parliament voted

against the Convention and Bulgaria remains the only country on the Balkan Peninsula that has not ratified the Convention.

The participants did state the great importance of the Istanbul Convention, because according to one of them its main objective is “to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence; design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence; provide support and assistance to organizations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence”. In fact the Convention underlines the basic developments which have to be realized in order to combat the domestic violence and social harassment at the work place: - policies which „place the rights of the victim at the center of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organizations; allocation of appropriate financial and human resources for the adequate implementation of integrated policies, measures and programs to prevent and combat all forms of violence covered by the scope of this Convention; as well the ” parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention”.

The successful campaign against the ratification of the Convention, which used the argument that the Convention legitimizes “the third sex” in the country, showed how far Bulgarian society is from understanding and combating violence against women and sexual harassment in the workplace.

As declared by the representative of Animus in the focus group (one of the few NGO’s fighting the domestic violence) the Convention is the highest and most reliable regional standard for protection against all forms of violence against women and the only document that offers a holistic approach to preventing and tackling violence against women and domestic violence.

Another important event in the field for Bulgaria is the adoption of **ILO Violence and Harassment Convention 190(2019)** with active Bulgarian participation. The President of the Union of Transport Unions in Bulgaria Ekaterina Yordanova was among the initiators and creators of the Convention. This is the first ILO convention since 2011 and the first international standard to directly address violence and harassment in the workplace.

As stated in the interviews and in the focus group, the importance of this Convention is that it directly relates to violence and harassment in the workplace.

The Constitution of the Republic of Bulgaria (1991) lays down the principles of equality and non-discrimination. **The Labor Code (1986)** strictly forbids all forms of discrimination, privileges, restrictions based on gender and introduces the principle of equal pay for labor of women and men. As Jane Pillinger puts it “according to the provisions of the Labor Code the employer is required to comply with these provisions in the workplace and establish safety and health committees with representation of workers, provide annual training, and monitor employee’s take up of medical services consequent of workplace risks. However, the Labor Code does not provide redress mechanisms for victims of sexual harassment, who are reliant on the Criminal Code (Art.150), the provisions of which are general and do not refer specifically to sexual harassment, and have rarely been used”. Gender anti-discrimination provisions are contained in the **Employment Promotion Act (2001), the Social Assistance Act (1998)**.

The Law on protection against discrimination (2003) prohibits all forms of discrimination based on age, gender, ethnic group, national origin, education, family status, and property status.

Art.5 states that harassment on the grounds of sex and sexual harassment, “shall be deemed discrimination.” Art.17 requires employers who receive “a complaint from an employee, considering him/her-self a victim of harassment, including sexual harassment, at the workplace must immediately carry out an investigation, take measures to stop the harassment, as well as impose disciplinary sanctions in cases where the harassment has been committed by another worker or employee. ”It recognizes sexual harassment as a form of discrimination and incorporates the EU definition of sexual harassment in law. Sexual harassment is defined as:

“Any unwanted conduct of sexual nature expressed physically, verbally or in another way offending the dignity and honor and creating a hostile, offensive, humiliating or impending environment and, in particular, where the refusal or compulsion to accept such conduct may have influence in making decisions affecting the person”.

The Commission on Protection against Discrimination is charged with ensuring that the principle of equal opportunity is applied in practice and enforcing the law by investigating complaints, issuing rulings and imposing sanctions. In the interviews and in the focus group

the respondent several times pointed that there appears to be little knowledge or awareness of these anti-discrimination provisions in Bulgaria and that victims of sexual harassment have the right to make complaints and have their complaints investigated.

The Code of Civil Procedure and Criminal Code provide protection for victims of violence where there are threats of violence, coercion or abuse of power; however, there are no provisions specific to protection of victims of violence at the workplace and these general provisions apply.

Equality Act between Women and Men (2016) aims to "promote the achievement of equality between women and men by creating the conditions for building an institutional environment and designating the bodies and mechanisms for the implementation of the state policy on equality between women and men". National Council on Gender Equality, which is a body for consultation, cooperation and coordination between central and territorial executive bodies and civil society structures, has been created. Up to now there is not a substantial activity of the Council – it does not forward legal initiatives neither acts strategically.

Every two years, a "**National Action Plan for the Promotion of Gender Equality**" (current is for 2019-2020) is developed, and priority area N4 of the current Plan states: "Combating gender-based violence and protecting and supporting victims - which includes improving the legal framework in the field of violence against women and domestic violence, ensuring adequate and comprehensive legal protection against all acts of violence against women, incl. mental and physical abuse".

The general assessment of the legal acts by the focus group members was that the laws do not regulate the specific issue of violence at workplace, including sexual harassment and fail to provide adequate protection against violence.

Protection against sexual harassment in the workplace is based on Law on protection against discrimination adopted in 2003.

According to the Law, the employer, while exercising his or her employer power (regulatory, managerial, disciplinary), is obliged not to perform and to prevent acts of discrimination against employees in his enterprise.

The law obliges the employer, in cooperation with the trade unions, to take effective measures to prevent discriminatory acts.

It is the responsibility of the employer and the trade union organization to take effective measures to prevent labor discrimination - direct and indirect, ethnic, sexual, etc.

Every employee also has a legal obligation not to engage in any form of act of discrimination against another employee in the enterprise.

According to Art. 5 of the Law the harassment based on the signs under art.4.1 and sexual harassment are considered discrimination. These are manifestations of a discriminatory act, expressed in undesirable behavior by the person concerned, motivated by the actual or alleged presence in him of one or more discriminatory features under Art. 4.1, and ultimately leading to the adverse treatment of the discriminated person. The terms used in the law are "bullying" and "sexual harassment".

The last legal obligation of the employer under Art. 17 of the Law is for imposing disciplinary liability on the employee who committed the discriminatory act.

The Commission for Protection against Discrimination (Art.50), which may initiate administrative criminal proceedings and, if it finds that an administrative violation has been committed, punish the guilty worker with a penal decree (Art.84).

Collective bargaining and policies on sexual harassment at workplace

The sexual harassment at workplace should be effectively treated under the collective bargaining process which is realized at three levels according to art.4 of the Labor Code - national, sectorial and firm/municipality.

Unfortunately the data on workplace violence are scarce for a number of reasons - yet sexual harassment in the workplace has not come to light, dominant stereotypes make victims of sexual harassment not to share it. Secondly, the statistics themselves do not provide information on cases of violence - national statistics use data from the Ministry of the Interior, which is scarce and does not differentiate between domestic violence and workplace violence, and no studies of the problem are made - with the exception of studies in health and transport sectors. Even in those studies the respondents are not sharing their experience - thus, in the field of health care, only 2% of survey respondents said they were victims of sexual harassment.

The Confederation of the independent trade unions in Bulgaria for years participate in the long process of elaboration of an agreement between the social partners concerning the joint actions **European framework agreement on work-related Stress (2004 r.) and Framework**

agreement on harassment and violence at work (2007 r.). The employers still do refuse to sign that agreement.

The draft agreement proposes dialogue and partnership at national, sectorial and regional level as well as the development of common policies and joint implementation of appropriate consultations and measures to prevent stress, harassment and violence in the work environment. Reference is made to protecting workers in precarious work and in the grey economy. Awareness raising, training and annual campaigns are also proposed. The draft proposes joint organization of annual national campaigns on stress, harassment and violence in the workplace under the slogans "healthy workplaces, stress management, no harassment and workplace violence", and "gender equality and protection from violence in the workplace".

In the draft agreement is paid special attention on the need for ‘‘coordinating their efforts on an accrual basis, independently of each social partner experience to raise awareness and understanding of employers, employees and unions of problems to detect possible unacceptable decisions, actions and behavior of workplace bullying, violence and stress’’.

Expanding dialogue and partnership at national, sectorial and regional level and developing common policies and joint implementation of appropriate consultation / measures / actions to prevent stress, harassment and violence in the work environment.

National social partners believe that the adaptation and appropriate application of European agreements will contribute to improving the working environment for the development of labor relations, increase productivity and competitiveness of enterprises and increase job satisfaction and dignity of workers. And in order to full awareness and understanding of these issues and providing employers and employees and their representatives on the frame - criteria and approaches to detection and prevention, through adequate specific conditions collective and individual measures and they express their willingness to conduct comprehensive policy to prevent and combat stress and against harassment and violence in the work environment.

In the last 10 years most sectorial agreements have included clauses either on non-discrimination and/or prevention of violence and harassment, although few specifically define and set out measures to combat sexual harassment at work.

The 2012–2014 collective agreement in the transport sector includes a special chapter on ‘Protection against violence at the workplace and gender equality’, where there are provisions

for joint actions by employers and trade unions to prevent violence and harassment within a zero-tolerance approach. The relevant clauses specify that:

- The employer together with the trade unions shall take effective measures to prevent from all forms of physical and psychosocial abuse, and ensure working conditions that help to prevent workers from chronic stress, physical and mental disabilities in the workplace;
- The employer is obliged to pursue a policy of zero tolerance against discrimination and workplace violence in its various manifestations - physical, mental and sexual;
- The parties shall develop training plans to raise awareness of managers and employees in order to identify signs of abuse and workplace violence, and to initiate preventive or corrective actions. These measures should be applicable to a third party violence;
- The Employer shall develop procedures to be followed in cases of bullying or violence, which must contain: (1) Immediate and fair internal investigation; (2) Statistics; (3) Feedback; (4) Adequate disciplinary measures against the perpetrators to be taken if they are employees in the same establishment; (5) Support for the victim and if necessary psychological help on the reintegration process;
- The employer may decide to ensure appropriate treatment the injured employee.
- The main activities and developments in the field of combating violence and social harassment in the workplace are shown to be realized through the trade unions and the possibility of implementing concrete measures through its inclusion in collective bargaining. It is also important to note that collective agreements also protect non-union workers.

Challenges the unions have to face

A special part of the focus group work, as well as of the interviews, was devoted to the challenges that trade unions in Bulgaria face.

- First challenge concerns the fact that the problem of social harassment in the workplace, has been ignored both by employers and by the workers themselves. More generally, the respondents emphasized that it is a cultural feature that requires much and long work to change.
- From this perspective, the challenge is how to find ways of questioning and changing the attitudes about sexual harassment in the workplace. Respondents spoke, but too broadly

about the need to draw up new and different ways of tackling the issue and to encourage workers to talk about sexual harassment and violence.

- Changing essential cultural elements is a very difficult process to accomplish.
- Another challenge for the trade union members of the focus group is how to make the problems of sexual harassment and violence at work to become part of each sectorial collective bargaining agreement.
- The challenge is also how to deal with sexual harassment and violence given that in many industries working conditions are very bad and the payments extremely low – the union members see strong connection between bad working conditions, low salaries and violence at workplace.

Recommendations concerning the fight with sexual harassment and violence at workplace

It is important to note that the participants themselves directed the recommendations to the goals declared by the Istanbul Convention, which in their view outline the most important developments. In Bulgaria according to the participants in the focus group there is not enough elaborated teaching materials and educational programs on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.

- The participants shared that still there is not a consistent system of the training of professionals who deal with victims or perpetrators of all acts of violence, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimization.
- Another important objective of the Istanbul Convention which is far from being realized, namely that ‘the parties shall take the necessary legislative or other measures to set up or support preventive, intervention and treatment programs as well as programs aimed at teaching perpetrators of domestic violence to adopt non-violent behavior in interpersonal

relationships with a view to preventing further violence and changing violent behavioral patterns”.

- Almost all interviewed mentioned that it is important for unions to continue to press employers to sign and implement the draft national agreement on violence, harassment and stress at work, and also to give priority to implementing existing sectorial agreements that deal with violence and harassment. It is particularly important to get private sector employers to sign and adhere to the Agreement on social harassment and violence.
- As regards awareness-raising, good practices should be used and replicated like the campaigns realized in the transport sector and in health care. The campaigns themselves should be organized in cooperation with civil society organizations and sought and included in the media.
- When running awareness raising campaigns particularly important is the role of social media. This is an area unknown by trade unions and non-governmental organizations in spite of the fact that much of the opinion and attitudes are formed through social media.
- One of the recurring topics to be discussed was how to develop trade union expertise and skills necessary for providing help and support to the victims of violence and sexual harassment, including the skills to help women open up and discuss their needs, and also how trade unions can raise awareness in the workplace and develop policies and procedures to prevent and address workplace violence.
- The respondents pointed out that it is of utmost importance employers to be trained to address violence at the workplace, particularly in how to draw up and implement procedures for preventing violence, making complaints and addressing the consequences violence.
- The need for joint training of trade unionists and employers to help build effective cooperation in this area was emphasized.
- The concrete measures at the level of the enterprise and the municipality were to introduce additional provisions on issues such as: definition of stress, harassment and violence; ways to identify and overcome the stressful working conditions related to work organization and agreed changes in this direction; measures to reconcile work and

family life and the responsibility of employers; gender equality; arrangements for the implementation of projects or training programs to recognize the symptoms of stress and violence, stress management and stress management for managers and workers; negotiation procedures for internal communication that take account of stress at work, and others.

- The respondents proposed the training in each of the big enterprises of conflict management mediators. These and other similar measures were designed to improve the apparently not-well-functioning scheme to tackle sexual harassment in the workplace. Participants questioned the effectiveness of decisions to be taken at the level of the Anti-Discrimination Committee, but could not agree on exactly what structure could take this role.