European Union Kosovo

ERAC
EQUAL RIGHTS FOR ALL COALITION

HANDBOOK ON SEXUAL HARASSMENT IN THE WORKPLACE

October 2019



Lead NGO for publishing the report

Kosovar Gender Studies Center (KGSC) (www.kgscenter.net)
KGSC has been contributing to gender mainstreaming since 2002 and continuously makes efforts to achieve gender equality in Kosovo. It has been pioneering changes to the discriminatory system, social norms, and double standards within Kosovar society, and is very active in monitoring public institutions. KGSC's mission is to integrate gender-sensitive analysis, programs, and policies in all sectors of Kosovar society by increasing gender awareness and focus on gender issues, developing gender studies and ensuring the inclusion of gender-sensitive policies through research, policy development, advocacy, and lobbying.

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Equal Rights for All Coalition

ERAC brings together seven (7) NGOs that work in the domain of ***rule of law*** and ***fundamental rights*** that will work together with an additional ***nineteen (19) grass root NGOs***, with a particular focus on the establishment of a sustainable network of NGOs that are active in the protection and promotion of the fundamental rights of vulnerable and/or marginalised groups. The project's special focus are the following groups: ***all minority communities*** in Kosovo, ***women, youth*** and ***LGBT community***. Although working on similar topics and issues, these NGOs are often divided on the basis of the particular target groups they are working with or the region they are active in. By establishing structural cooperation between selected NGOs and providing formal opportunities for continuous learning, the action generates the sharing of knowledge and experience between NGOs, strengthens their capacities for advocacy with relevant central and municipal institutions, and increases their visibility.

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INTRODUCTION

The rights to work and to a dignified life without any regard to identity are the fundamental rights guaranteed by the Constitution to every citizen of the Republic of Kosovo. These rights, guaranteed and specified by a variety of laws, are fundamental principles on which the rights of the citizens of the Republic of Kosovo are protected. However, in the Kosovo context, the labor market remains deeply gendered. The number of women employed is worryingly low, with women making only 12.6% in the total labor force.[1] Moreover, even when women are employed, they are mostly employed in the informal economy and hold less paid positions than men usually. As a consequence, this causes greater poverty amongst women than amongst men.

The low percentage of employed women suggests that the labor market in Kosovo remains discriminatory and masculine. This unfavorable situation for women is caused because of the systematic discrimination women still face in the labor market due to the poor education they receive, the social status they enjoy in society, and the gender stereotypes rooted in public-private dichotomy, and the patriarchal mindset that leaves women in the private sphere. As a consequence, this situation is directly manifested in their limited access to employment. Despite the many inequalities and injustices women face in advance, even when they enter the labor market and create employment, they face multiple discrimination, manifesting amongst others, in sexual harassment.

Sexual harassment is gender-based discrimination. As such, it appears in many relations, manifesting itself as a form of exercise and abuse of power by attacking individuals based on gender. In principle, sexual harassment can occur in various forms and relationships and affects all genders. However, in practice, women are sexually harassed and attacked significantly more than men.[2] The patriarchal mindset and objectification of women's bodies as sex objects often serve as the foundation on which sexual harassment occurs. Consequently, the cause is found in gender identity that is closely linked to social culture, and also in the perception of the sexes and the socio-economic status that sexes occupy/represent in society. Based on this reason, the link between gender and acts of sexual harassment revolves around the oppressive perception of women as sexual objects that ends up leaving them inferior and more exposed to discriminatory practices. Therefore, sexual harassment is closely linked to masculine power which is a typical trait of patriarchal societies. Then, it produces inter-gender relationships built on power relations. This presupposes a priori the superiority of men in society and the inferiority of women.

1. Kosovo Statistics Agency, Labour Force Survey, 2018, fq. 10., http://ask.rks-gov.net/media/4473/anketa-e-fuqis%C3%AB-pun%C3%ABtore-afp-tm3-2018.pdf.
2. June B (2003), The Economics and Law of Sexual Harassment in the Workplace

This construction of unequal social relations, manifested in many spheres of social organization, reflects thereby on the social position that genders have and which is discriminatory and unfair. This results in the abuse of power, done mainly by men. Patriarchalism and the patriarchal norms that uphold it give men power as subjects by sexualizing women, making them more often victims of multiple forms of discrimination that often take the form of sexual harassment and assault. Sexual harassment is a gender-based problem that manifests itself in various social and contractual relationships. It occurs in families, institutions, workplaces, and other public and private spaces.

Sexual harassment in the workplace is a serious problem and constitutes a violation of the fundamental rights of workers. However, nowadays, it poses a potential danger that may affect anyone. Its spread is pandemic and today it represents a global challenge. Despite the efforts to promote gender equality and to guarantee the rights and freedoms of all, the workplace remains unsafe for women and men. The rights at work are a topic that is increasingly being discussed at the global and local levels, with particular emphasis on equal treatment of all individuals, regardless of their identity. Recent decades have shown a marked increase in women in the labor market focusing on the conditions they are offered and the environments that surround them. However, it is a serious crime that violates fundamental human rights and as such is legally punishable.

Sexual harassment, as a widespread phenomenon across various social and work relationships, remains problematic because it is rarely reported. Due to the dominant norms, fear of re-victimization, victim-blaming culture, the institution of family, social stigmatization, poor institutional support and fear of poverty, these acts are scarcely reported in the respective mechanisms. According to a report of the Kosovo Women's Network, sexual harassment is not reported to the responsible institutions, a practice that reflects a culture of non-reporting of such cases.[3] Cases of sexual harassment usually remain silent, producing multiple consequences for the victims of these harassments. On the other hand, awareness and knowledge of what constitutes sexual harassment are often lacking. In general, there is a lack of information on identifying sexual harassment, the forms in which it can be presented and the ways it can be prevented or reported. However, sexual harassment can be prevented or reported by following the steps guaranteed by law, which are presented in this handbook.

3. KWN (2019), Gender Based Discrimination and Labour in Kosovo

WHO IS THIS HANDBOOK FOR?

This handbook is designed to provide basic information on what constitutes sexual harassment in working relationships in the workplace (and during employment) and how to prevent or respond to such cases. The information presented in this handbook provides the parties involved in working relationships and other relevant stakeholders' key material on what sexual harassment is in order to prevent and prevent the emergence of these forms of discrimination.

The content of this manual consists of a basic compilation of information that can help individuals involved in employment avoid and prevent acts of sexual harassment and identify them as acts if they appear in the workplace. This handbook will serve as a reference for victims of sexual harassment to know, in addition to basic information, where to go and how to respond when faced with such cases. Besides to employers and employees, the manual can also serve as a facilitator for other institutional stakeholders when dealing with cases of this nature.

The structure of the handbook

This handbook is divided into four parts. The first section provides a general framework on what sexual harassment is and the forms in which it can appear in the workplace. This section provides some guidance on how to distinguish acts of sexual harassment by listing some practical examples of what can be considered sexual harassment.

The second section presents the legal basis that sanctions sexual harassment and provides information on laws that protect the fundamental rights of each individual, prohibit discrimination, guarantee gender equality and protect the integrity of the victim.

The third section lists the relevant institutions where complaints can complain or report the cases on the mechanisms and institutions responsible and provided with a legal basis on which victims of sexual harassment can be invoked.

The fourth part sets out the obligations of employers towards their employees to ensure a safe and appropriate working environment. This section lists some practical guidelines on the basic actions that employers should take to prevent the manifestation of sexual harassment at work, as well as punishment for these offenses if they occur. Also outlined are some of the steps to be taken by third parties who may be witnesses of sexual harassment.

The fifth section deals with collective responsibility towards fair treatment of sexual harassment cases, with emphasis on the dignified treatment of damaged parties.

CONCEPTUALIZATION OF SEXUAL HARASSMENT

Sexual harassment is any form of verbal, nonverbal, or physical unwanted conduct of a sexual and/or psychological nature, with the intent or effect of touching or violating the dignity of a person, and creating an intimidating, hostile, degrading, derogatory or offensive environment.[4]

Sexual harassment is always a **one-sided act**. As such it represents **an unwanted act.** Sexual harassment can manifest itself in different ways and in different relationships and can affect individuals of any identity background. In the context of labor relations, it can appear in the form of favors that are always built on power relations and which can be manifested in the creation of uncomfortable spaces for the worker. Sexual harassment is a form of gender discrimination that is expressed as abuse of power and authority, requiring sexual favors for employment or promotion. However, sexual harassment in the workplace is not limited to acts that may occur within established contractual relationships or that occur only in the workplace since it may occur also before getting employed. In this case, it may appear as a form of conditionality. Sexual harassment can also involve third parties.

Respectively, the harasser may also be someone outside of collegial / labor relations, such as a client, a visitor, etc. However, sexual harassment in the workplace often happens during employment, promotion or change of work. These situations offer greater opportunities for abuse of power.

Despite the tendency for sexual harassment to be exercised by persons with power within the workplace, it is not always related to the position/power that the harasser holds within the workplace. This is because harassment can be exercised by other colleagues, subordinates or third parties (eg clients), in addition to other senior officials. The harasser can be a person of equivalent or lower position than the victim and still harass. In these cases, harassment is more related to the social power that gender carries and that in patriarchal societies that reflects a power matrix that is unjustly focused on men.

4. Criminal Code No. 06/L-074, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413

FORMS OF SEXUAL HARASSMENT

Generally, sexual harassment in the workplace refers to two forms of inappropriate behavior that can be caused in the workplace:

- **Quid Pro Quo** (this for that) which refers to any direct or indirect promise of preferential/harmful treatment in employment, where refusal to perform sexual favors may result in non-employment, non-promotion, salary increase, non-payment.[5]

- **Hostile environment** - the creation of an intimidating or degrading environment that can be manifested through abusive sexual language that can make workers feel humiliated and discriminated against.[6]

  These two forms of sexual harassment can be manifested in various ways including but not limited to:

- **Physical harassment** - physical touching of the body, kissing, caressing and rubbing the body; constant shaking, hugging and rubbing with the body of the other worker, or touching their clothes;

- **Verbal harassment** - Sexually degrading / offensive words to describe the individual; unwanted comments about appearance, jokes, provocative questions, sexual comments, insulting expressions, derogatory epithets, derogatory statements or other verbal abuse, repeated comments about the person's body or appearance, inappropriate questions, suggestions or comments related to the person's sex life, sending harassment letters, including emails, harassing and disturbing phone calls, including SMS messages via mobile phones;

- **Nonverbal harassment** - provocative gestures with provocative movements and touches of different parts of the person's body that provokes the other person's body; Forced sexual attention;

- **Visual harassment** - watching, displaying and / or printing of pornographic advertisements, photographs and signs or having sexually suggestive or offensive colorings, drawings or sexual comments on an individual's clothing, ornaments or body.

- **Psychological harassment** - invitations to have physical sexual intimacy. Pressures to accept social invitations, private meetings and sexual intercourse, questions, inquiries or discussions about sexual activities; searches and persistence / blackmail for sexual favors accompanied by apparent threats or

5. June B (2003), The Economics and Law of Sexual Harassment in the Workplace
6. Ibid

conditionality on the workplace, unwanted social invitations with sexual hues that often appear as flirting; Indirect Request for Sexual Purposes; Misrepresentation of one's work or de-evaluation of one's work, denial of training or promotion.

How to distinguish acts of sexual harassment?

Because of their nature, often acts of discrimination are difficult to identify. Discrimination is often indirect and is camouflaged after other behaviors that in principle cannot be easily identified. Victims of discrimination, especially in the case of sexual harassment, are set in unfavorable positions and face multiple difficulties in the process of identifying and documenting discrimination. Moreover, the sensitive nature of sexual harassment makes the awareness process that harassment is even more problematic. Victims of sexual harassment are faced with an uncomfortable environment that directly affects their psychological health and consequently their performance. Also, often sexual harassment occurs in forms and spaces where there are no witnesses who can testify. This puts the burden on the damaged party to identify and respond to the harassment.

However, given the sensitive nature of sexual harassment in the workplace and the reports of the power exercised, the damaged party may identify and know when such a case occurs. As sexual harassment **is a personal** and consequently **a subjective experience**, it is the victim itself who can and should assess whether an act constitutes a case of sexual harassment or not. This is also recognized by the Law on Protection from Discrimination, which takes into account the perspective and the experience of the damaged party. Furthermore, the law recognizes that the burden of proof is on the harasser who should prove that they did not commit the offense.[7]

Given the subjectivity of experiencing such acts, a certain behavior of a sexual nature can become harassment at the moment when it brings an unpleasant sensation to the party to which it is addressed. In this context, **it is fundamental that feeling this behavior bring is unpleasant for that person**. Such behaviors, which can be disguised as "flirting", can become harassment when acts of this nature are one-sided, repeated and make the other party feel uncomfortable. A further step in identifying harassment is whether it begins to develop manifesting in gestures, behaviors, or actions that are visible (see: forms of sexual harassment). Furthermore, harassment can go further in cases where the harasser does not withdraw but continues to repeat those actions even when the harassed party tells him / her that he / she is feeling harassed.

Consequences of sexual harassment

Sexual harassment as such, in addition to causes rooted in patriarchal mentality, causes serious consequences for the lives of those affected. Causing stressful

[7] Law on Protection from Discrimination No. 05/L -021

situations for the victim, uncomfortable and unsafe work environment, violation of personal (emotional and / or physical) integrity and violation of fundamental freedoms are some of the consequences such acts cause to the harassed persons. Because of sexual harassment, women, who have a greater tendency to be victims of this form of gender discrimination, suffer psychological health and social consequences. In cases when harassment comes from supervisors or officials that hold higher positions, victims are also at potential risk of being fired or not promoted, which burdens the victims even more. All these effects that are caused to victims have a significant impact on their psychological well-being, affecting their daily lives and health. Additionally, these acts often affect women's performance at work, their social status within the collective and in society as it reinforces the stereotype of women as sexual objects.

The culture of victim-blaming, especially in the cases of sexual harassment aggravates even more the victims. When sexual harassment occurs, especially when women are the victim, they tend to be justified by placing victims at a disadvantage. This practice does not recognize the victim's experiences and suffering but puts them in the position of the accomplice. However, **victims of sexual harassment are never guilty for being sexually harassed.** This because the lack of consent from both sides turns any tendency of behavior/act of sexual nature into a one-sided, undesirable act and a violation of one's integrity. This is protected and sanctioned by law that defines harassment as unwanted conduct and a grave breach of personal integrity and consequently sanctions it as a punishable offense.

Legal instruments

Kosovo has a number of laws in place that protect fundamental human rights, economic rights and the right to equal treatment. Furthermore, the legislation in force that fall within the domain of gender equality and protection from discrimination is in line with European directives. In addition to guaranteeing fundamental rights in the constitution and issuing laws, regulations and bylaws that regulate labor relations on the principle of non-discrimination, the constitution of the republic of Kosovo has integrated eight international agreements and instruments that guarantee the protection and respect of human rights. They apply directly and have priority in case of conflict with the provisions of other laws and acts applicable in Kosovo:

1. Universal Declaration of Human Rights
2. European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols
3. International Covenant on Civil and Political Rights and its Protocols
4. Council of Europe Framework Convention for the Protection of National Minorities
5. Convention on the Elimination of All Forms of Racial Discrimination
6. Convention on the Elimination of All Forms of Discrimination Against Women

7. Convention on the Rights of the Child
8. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[8]

Considering the factic gender-based discrimination and unequal treatment exist in Kosovo society, important legal steps have been taken over the past two decades to reduce the likelihood of these cases happening. In this context, based on the constitutionally guaranteed rights and freedoms, a number of laws and acts have been enacted that strengthen and specify the rights and freedoms of everyone to a dignified life. The gender aspect, the principle of equal treatment and the sanctioning of discrimination are part of the constitution, the law on gender equality, the labor law and lately these acts have been criminalized with the new criminal code of Kosovo. However, the fact that some women in Kosovo are employed in the informal economy leaves them vulnerable to the law and more prone to discrimination in employment.

Sexual Harassment by Law

The Law on Gender Equality sets out the basic principles that constitute a gender equitable society. This law sanctions the gender-equitable organization of every sphere by invoking the fundamental rights of equality and equal treatment. In line with this, the Law on Gender Equality defines also with certain provisions the economic rights and fundamental freedoms of everyone. Under this principle, laws are very specific in recognizing the types of inequalities and discrimination that may occur on an identity basis. A number of articles cite sexual harassment as a prohibited offense. Moreover, the law on gender equality recognizes a matrix of power that can be built on an equal footing. "Harassment and sexual harassment are forbidden. The refusal or surrender of a person to such conduct may not be used as a basis for a decision affecting that person."[9] "This law expressly prohibits "the re-victimization of persons involved in the filing or processing of complaints of discrimination, harassment or harassment. sexual offenses filed under this Act".[10]

According to the Law on Gender Equality "The employer is obliged to provide a work environment in which none of the workers is subject to undesirable treatment of a sexual nature by the employer, supervisor, or colleagues, including unwanted physical treatment, verbal or nonverbal or other sexual behaviors that create relationships and an environment of intimidation, hostility or humiliation at work and which violate the dignity of women and men at work; do not place themselves in an unfavorable position or take disciplinary action against an employee who complains or complains of discrimination, sexual harassment, or of an employee who testifies to discriminatory acts, or sexual harassment, committed by employers or other employees."[11]

8. Constitution of the Republic of Kosovo, Article 22
9. Law on Gender Equality No. 05/L -020, Article 4.3
10. Law on Gender Equality No. 05/L -020, Article 4.6
11. Ibid

The new Kosovo Criminal Code, which entered into force in January 2019, explicitly recognizes harassment as a separate criminal offense. Respectively, the Criminal Code states that "Sexual harassment means any form of verbal, nonverbal, or physical unwanted conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. Moreover, the Criminal Code recognizes and punishes the abuse of power in cases of sexual harassment by imposing heavier sentences for those who misuse power. Respectively, the Criminal Code states that "when the offence provided for in paragraph 1. of this Article is committed by a perpetrator who is a teacher, a religious leader, a healthcare professional, a person entrusted with such person's upbringing or care or otherwise in a position of authority over the person, the perpetrator shall be punished of imprisonment of six (6) months to three (3) years".[12]

Sexual harassment as a form of discrimination is also recognized by the Law on Protection from Discrimination, which serves as the basis on which a number of laws and other acts falling under this domain refer. The Law on Protection against Discrimination sanctions any form of discrimination and forms of sexual harassment. This law is specific in protecting the integrity of the victim as it clarifies that "the burden of proof falls on the respondent, which must prove that there has been no violation of the principle of equal treatment."[13]

On the other hand, labor law provides basic protection for workers by sanctioning any kind of discrimination. Labour law prohibits any form of direct or indirect discrimination. The law specifies that "Discrimination is prohibited in employment and occupation in relation to recruitment, training, employment promotion, employment conditions, disciplinary measures, termination of employment contract or other matters of employment regulated by this law and other applicable laws.[14] "The law also obliges employers to treat all their employees on the principle of equal treatment. However, Law on labor does not explicitly specify sexual harassment as a form of discrimination that may occur in the workplace. However, this law stipulates that the provisions of the anti-discrimination law apply directly when it comes to the employment relationship between the employee and the employer.[15]

The applicable legal basis in Kosovo, which encompasses all of the aforementioned legal mechanisms, provides the basis for victims to exhaust legal instruments that are legally sanctioned and to respond to sexual harassment.

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[12] Criminal Code, No. 06/L-074, Article 183

[13] Law on Protection from Discrimination No. 05/L -021, Article 20.2

[14] Law on Labour, No. 03/L-212, Article 5

[15] Law on Labour, No. 03/L-212, http://www.assembly- kosova.org/common/docs/ligjet/2010-212-alb.pdf

WHAT CAN YOU DO IF YOU ARE A VICTIM OF SEXUAL HARASSMENT?

The right to a comfortable working environment and equal treatment in the workplace are rights guaranteed by law to everyone. Therefore, any eventual violation of these rights should be confronted with appropriate measures. In this context, any act of harassment in the workplace that represents a violation of basic human rights must be dealt with by law. Women and men who experience any acts of sexual harassment may turn to the institutions and mechanisms below to submit the case.

Often, cases of sexual harassment go unreported. Because these cases are often difficult to identify, workers lack accurate information about what is considered harassment, what are the ways to report the case and what legal protection does the worker enjoy in these cases. However, victims of sexual harassment are recommended several steps to document and report the harassment. Victims of sexual harassment must invoke their rights and respond to sexual harassment. In the case of sexual harassment, victims have three options that they can pursue.
The first step to be taken by the harassed party is to respond to harassment, confront the harasser, and let him/her know that his / her behaviors are undesirable and disturbing. After dealing with the harasser, the damaged party should consult and exhaust all the internal tools that exist within the work such as reporting to the internal structures of the workplace (supervisor, employer or other official) by invoke labor rights and a code of ethics if applicable.

Internal procedures

When harassment occurs in the workplace, victims should invoke their rights and take steps, in accordance with internal regulations (if any).

In these cases, the victim should consult the employment policy (code of ethics) and see if sexual harassment is involved to act on it. In this case, the victim should note how sexual harassment within the workplace is regulated, what are the measures provided by the code of ethics or other regulation as applicable in the workplace. After consulting the legal basis that regulates the ethical aspect of the work, the victim is recommended to begin to document harassment in written form, including all possible details that explain the situation (place, time, behavior and potential witnesses). Once the harassment regarding the above specifics has been identified, the victim should report the case to the supervisor, human resources officer and / or employer and ask that concrete punitive measures be taken against these acts.

Reporting the case

Another possibility is to report the case to the police. The law sanctions that cases that violate the anti-discrimination law and are of a gender nature can be reported to the police even without exhausting all internal remedies.

WHERE TO REPORT? RESPONSIBLE MECHANISMS AND INSTITUTIONS

This section examines the institutional actors responsible for preventing and / or treating cases of sexual harassment. Below are listed all relevant mechanisms and institutions that are required by law to handle cases of sexual harassment.

In accordance with the legal framework that sanctions acts of sexual harassment and designates responsible authorities / institutions, damaged parties may refer to the below listed institutions to file a complaint if they are victims of sexual harassment in the workplace. Responsible institutions and bodies are the police, prosecution, court, labor inspectorate, ombudsman office and existing mechanisms / entities within labor collectives such as trade unions.

Police
If an employee faces sexual harassment in the workplace, he / she can report this case to the police station. By law, the Kosovo Police is an address that is called to investigate/deal with any criminal act that may violate the rights and freedoms of all persons, protect the fundamental rights and freedoms of all persons; prevent and detect offenses and their perpetrators; investigate criminal offenses and their perpetrators.[16] On suspicion of being a criminal offense of sexual harassment, the Police may initiate investigations and alert the prosecution to initiate criminal proceedings.

Prosecution
According to the Code of Criminal Procedure, police investigations may be initiated by a police officer in accordance with sections 69-83.2. Criminal proceedings are initiated only by a decision of the state prosecutor when there is a grounded suspicion that a criminal offense has been committed. The State Prosecutor may initiate criminal proceedings pursuant to paragraph 2 of this Article after receiving information from the police, other public institutions, private institutions, citizens, media, from information obtained in another criminal proceeding, or upon appeal or proposal of damaged.[17]

Basic Courts (Division of Crimes)
Basic Courts are competent to adjudicate all cases, unless otherwise provided by law.[18] After the state prosecutor initiates a criminal procedure, and considering that the offense has been made, cases of sexual harassment are sent to court. By law, criminal offenses that include sexual harassment in principle are not brought by individual to the courts, but are initiated by the prosecution.

16. Law on Police, No. 04/L-076, Article. 10, https://gzk.rks-gov.net/ActDetail.aspx?ActID=2806
17. Criminal Procedure Code No. 04/L-123, Article 6, https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861
18. Law on Courts No. 03/L-199, Article. 11.1 https://www.kuvendikosoves.org/common/docs/ligjet/2010-199-eng.pdf

Labour Inspectorate

The labor Inspectorate supervises the implementation of the labor law and addresses any complaints or requests by workers regarding any potential violations of workers' rights. The law on labor Inspectorate sanctions that if the labor inspectorate finds that there are violations that endanger the health, safety or dignity of employees, it can report and address the case. Also, if the inspectorate notices irregularities or violations, it is mandated to notify the Ministry of labor and Social Welfare or any other body competent for any deficiency or abuse in the applicable law.[19] Along this line, the Inspectorate can monitor whether there are forms of discrimination in the workplace, such as sexual harassment or other forms of discrimination recognized by the Law on Protection of Discrimination, which is applicable to labor law when there are cases of this nature.

Ombudsperson

The Ombudsperson has the power to investigate complaints received by any natural or legal person regarding allegations of human rights abuses, including acts or omissions that constitute an abuse of authority.[20] The Law on Protection against Discrimination and the Law on Gender Equality sanction that the Ombudsperson Institution is responsible for addressing any gender discrimination case at work.[21] Based on this, the Ombudsman can investigate violations and make recommendations to prohibit these forms of discrimination.

[19] Law on Labour Inspectorate No.2002/9 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2581

[20] Law on Ombudsperson No. 05/L -019 https://gzk.rks-gov.net/ActDetail.aspx?ActID=10922

[21] Law on Protection from Discrimination No. 05/L -021, Article 9; Law on Gender Equality No. 05/L -020, Article 13

WHAT CAN BE DONE?

Employer obligations in relation to sexual harassment at work

Employers are responsible to provide workers a comfortable and safe working environment and guarantee their rights to equal treatment and non-discrimination.

As sexual harassment represents a direct violation of workers' rights, employers need to be cautious about their approach to these potential cases. Respectively, employers should be careful to sanction sexual harassment in the code of ethics and provide written measures against it. A formal written policy is the basis on which workers can use to prevent or respond to such cases. Namely, employers should foresee measures that prevent sexual harassment in the workplace and, where appropriate, clear measures to be taken.

Employers should consider incorporating sexual harassment as a punishable offense in the code of ethics and provide a basis where harassment is defined, which would help workers identify sexual harassment when it occurs. Employers should also clearly state in which code of ethics or harassment cases which harassment is occurring and clearly state the consequences. Employers in this case should also sanction the instruments that are called to handle these cases (board, HR officer or any other department that deal with cases of this nature). Also, code of ethics, with the sexual harassment integrated, should be introduced to all contracting parties (employees) and hold a workshop or to inform them regarding the acceptable and unacceptable workplace behaviors.

If harassment cases occur, employer should provide support to the damaged party and take internal punitive measures against the harasser. Also, in accordance with the damaged party, the employer may assist in the prosecution of the case with the relevant authorities. If the victim agrees, the employer / supervisor can assist in articulating the denunciation even without exhausting the means, which is guaranteed by law.

FOR THIRD PARTIES (WITNESSES)

Colleagues who may be witnesses of sexual harassment should be empathetic to the harassed person and help them with as much human competence and collegial ethics as possible. In cases of sexual harassment, victims often prefer not to talk about harassment. However, third parties can help the victim overcome the feeling of potential stigmatization from their peers and social circle and advise the victim to respond or take appropriate action on the case. In these circumstances, witnesses should show a willingness to assist the victim in the process of identifying the harassment by providing appropriate information and support to proceed with the case and to testify about the offense committed to the authorities / institutions concerned.

INSTITUTIONAL RESPONSE

Officers called upon to deal with cases of sexual violence must be qualified and well trained in order to respond to such cases fairly and effectively, always having in consideration keeping the integrity of the victim. While cases of sexual harassment require, in addition to professional skills, empathy and specific professional preparation to handle cases of this nature. Also, responsible officials need to be aware of the power relations that can be created in the workplace, which is vital in the objective processing of the case/lawsuit. In line with this, responsible officials should have adequate training in order to properly approach persons who report cases of sexual harassment.

Given the fact that in patriarchal societies and with a weak judicial system, victims are stigmatized and tend not to report cases of sexual harassment, institutions need to work to build staff capacity. This is in order for victims not to be re-victimized by the responsible institutions and to gain trust in the institutions which will encourage reporting. To this end, persons dealing with cases of gender discrimination / sexual harassment should be aware of gender discrimination and prioritize these cases. The handling of these cases should be done by respecting the personal integrity of the damaged party and dealing with the rights guaranteed by law. As the cultural norms of Kosovar society usually blame the victim if harassment cases occur, the institutions, with particular emphasis on the Kosovo police, must be careful and respect the confidentiality of the damaged party.

COLLECTIVE RESPONSIBILITY

Sexual harassment in the workplace, despite the aforementioned consequences, is a serious gender problem. As such it must be treated and detained. This requires accountability to each stakeholder involved to contribute to providing a comfortable working environment for all. At the central level, responsible institutions must work to ensure a safe and equal workplace for all. Also, the responsibility being collective is also individual, which consists in respecting the freedoms and rights of everyone.

Despite the widespread measures and numerous legal efforts to intervene in providing a fairer labor market for all genders, sexual harassment remains a serious problem that aggravates workers, especially women, and discriminates against them by leaving them in their positions unfavorable and with personal and professional consequences. This situation requires not only individual but also collective responsibility to prevent and stop sexual harassment. One of the most effective ways besides the above mentioned steps is to report and punish these offenses.

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