

**CHALLENGING WORKPLACE HARASSMENT AND ITS LEGAL REGULATION IN  
ROMANIA**

*Ramona Birău*  
*Lecturer Ph.D*

*Constantin Brâncuși University of Targu Jiu, Faculty of Economics and Business  
Administration, Craiova, Romania  
Ramona.F.Birau@gmail.com*

---

*Abstract*

*The main objective of this research article is to investigate the general implications of harassment at work and its legal regulation in Romania. The implications of harassment at work include affecting human dignity based on a humiliating, discriminating, hostile, degrading, intimidating, abusive and/or offensive environment. Workplace harassment in Romania is a sensitive topic of great relevance. Harassment involves unlawful discrimination related to certain aspects such as age, race, disability, gender reassignment, nationality, ethnicity, religion or beliefs, sex, social category, financial condition, sexual orientation, chronic non-contagious disease, HIV infection and AIDS, belonging to a disadvantaged category and other similar criteria.*

**I. INTRODUCTION**

The workplace harassment is a form of employment discrimination with multiple negative implications. Moreover, the workplace harassment is a social and psychological phenomenon that affects the health, dignity, work efficiency, and even the life of the victim. A person harassed at work is primarily a victim and the outcome of this harmful, poisonous and very unpleasant phenomenon can often degenerate into suicide. However, sexual harassment is a very representative category of workplace harassment.

In Romania, moral harassment does not constitute a crime in the strict sense, namely to be punished by the criminal code. Moral harassment is a form of daily psychological violence with major implications for the health of the harassed person. Most people who are subjected to moral harassment at work are unaware of the abuses to which they are subjected and are blaming themselves. However, harassment at work has the potential to become a subject of great interest with a high span as subject of labour disputes in the courts of law. Unfortunately in many cases moral harassment degenerates into progressive psychic destruction and implicitly the psychic death of the victim. It is essential that employees know their rights in order to combat harassment at work. Employment discrimination involves issues related to workplace harassment and bullying.

Workplace harassment can be eradicated by the employee through lawsuits but in this case there is the basic disadvantage of significant emotional consumption. In Romanian legislation a special place is occupied by discrimination and sexual harassment as major categories of workplace harassment. Furthermore, in legal contexts especially, workplace harassment is a relatively new area without a very significant quantitative magnitude in the judicial practice. Consequently, discrimination and sexual harassment is part of the daily routine of many Romanian employees even if official statistics do not accurately provide the magnitude of the phenomenon. A multitude of factors contribute to concealing reality in the case of Romanian employees such as the fear of losing the job, shame, lack of adequate knowledge of their own civil rights, poor legal culture and distrust in legal authorities. In this field, Romanian legislation is incomparably less robust than that of developed countries that have a well-founded culture of harassment at work. For a better understanding of workplace harassment is essential to have in-depth knowledge of the relevant legislation based on laws, regulations, guidance and other relevant normative acts.

## **II. LITERATURE REVIEW**

The aim of a literature review is to provide an edifying framework on workplace harassment. In literature, the varied approaches of the authors form a highly documented theoretical conglomerate based on the statistics provided by the evidence based practice, official reports and legal documents.

Villar, Caputo, Coria and Messoulam (2012) investigated psychological/moral workplace harassment based on a contemporary Argentinean socio-cultural context and argued that this phenomenon generates significant negative consequences for employee health. Mueller, De Coster and Estes (2001) investigated sexual harassment in the workplace in order to provide a better understanding of the “relationship between harassment and the work outcomes of job satisfaction, job stress, and intention to quit an organization”. According to McDonald (2012) “individuals who experience workplace sexual harassment (SH) suffer significant psychological, health- and job-related consequences”. Mainiero and Jones (2013) investigated sexual harassment by comparison with workplace romance in order to highlight the “the boundaries of workplace romance versus harassment in the Internet age” considering the risks of social media spillover.

Bobbitt-Zeher (2011) has disseminated complex issues on gender discrimination at work and argued that “gender stereotyping combines in predictable ways with sex composition of workplaces and organizational policies, often through interactional dynamics of discretionary policy usage, to result in discrimination”. Middlemiss (2007) investigated the issue of legal regulation of harassment on the ground of age based on a comparison between the legal framework in the United States and United Kingdom and concluded that “the legal rules in the two jurisdictions are very different and the UK version is much more favourable than its US counterpart”.

Goldman, Gutek, Stein and Lewis (2006) discussed the research subject of employment discrimination in organizations and suggested that the “proportion of claimants filing under different antidiscrimination statutes differs by race”. Kim (2017) provided an original approach of workplace discrimination based on applying the antidiscrimination norm to data algorithms of workforce analytics and data mining techniques.

McMahon (2000) has analyzed issues on bullying and harassment in the workplace based on a

study grounded in the hospitality industry in the case of Republic of Ireland and Northern Ireland and argued that “in a majority of cases both North and South, women were the instigators of claims of harassment and an organisationally superior male employee was the alleged harasser”. O’Leary-Kelly, Paetzold and Griffin (2000) discussed the “effects of sexually harassing actions on the target’s perceptions, motives, and behavioural response choice” based on an original assumption that sexual harassment is perceived as a “form of behaviour an actor might choose for pursuing valued goals”.

### **III. AN EXHAUSTIVE ANALYSIS OF THE PHENOMENON**

The National Council for Combating Discrimination is the Romanian competent and autonomous state authority, under parliamentary control, but politically independent which operates in the field of discrimination in accordance with the national and international legislation. The National Council for Combating Discrimination is a very important national authority in terms of sanctioning discriminatory behavior in order to combat discrimination. The legislative status of the National Council for Combating Discrimination (NCCD) is based on the Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, subsequently amended in 2006. The Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination with subsequent amendments provides the legislative framework in the case of discrimination.

According to the European Commission, the Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination with subsequent amendments implements the Directive no. 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, as well as the Directive no. 2000/78/CE establishing a general framework for equal treatment in employment and occupation.

The European Institute for Gender Equality (EIGE) suggested that : “EU acquis certainly played a key part in the elaboration of political and administrative tools for gender equality” in Romania based on the main national structures with gender-equality responsibilities considering the fact that the principle of equality between the sexes is established in the Romanian constitution.

The Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination with subsequent amendments provides the definition of discrimination such as : “any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, membership of a disadvantaged group and any other criteria which has the purpose or the effect of restriction, elimination of recognition, use or exercise of fundamental human rights and freedoms or of rights recognized by the law in the political, economic, social or cultural field or in any other field of public life.”

The National Council for Combating Discrimination highlights its legal attributions in the following areas:

- preventing the acts of discrimination
- mediating the acts of discrimination
- investigating, detecting and sanctioning the acts of discrimination
- monitoring the cases of discrimination
- providing specialist assistance to victims of discrimination.

In another train of thoughts, the new Romanian Criminal Code (Law 286/2009) regulates the sexual harassment which is defined under Article 223 (crimes against sexual freedom and integrity). Sexual harassment includes behaviors on repeatedly claiming sexual favors in a working relationship or similar relationship if the victim was intimidated or put in a humiliating situation. Criminal action in relation to sexual harassment begins with the prior complaint of the injured person. Sexual harassment is punishable by prison from 3 months to 2 years or fine.

#### **IV. CONCLUSIONS**

Workplace harassment involves issues related to age, race, disability, gender reassignment, nationality, ethnicity, religion or beliefs, sex, social category, financial condition, sexual orientation, chronic non-contagious disease, HIV infection and AIDS, belonging to a disadvantaged category and other similar criteria. In Romania, there are no specific laws to protect employees against workplace harassment as a distinct offense. Indeed, there are laws or normative acts to protect employees against discrimination and sexual harassment. Despite repeated warnings, discrimination and sexual harassment often remain unpunished due to the lack of employees' knowledge of the workplace harassment. Dramatically there is a close connection between workplace harassment and suicide due to emotional consumption and very intense stress. Nevertheless, innate performance of employee's activity requires proper knowledge of civil rights and the means of legal reporting of any form of discrimination. Unfortunately, workplace harassment is not a recent problem, although legal liability in Romania is still very permissive. In Romania, the practice is still very limited considering legal regulation of harassment at work. However, in order to face criminal charges for workplace harassment is necessary a good knowledge of the significance of this social phenomenon, as well as how an employee can appeal to the court of law in this regard. However, a legal process with real chances of winning the case requires a very rigorous legal framework harmonized with European legislation. The inclusion in romanian legislation of very rigorous harassment law can provide an optimal solution for eliminating harassment at work.

#### **REFERENCES**

- [1] Bobbitt-Zeher, D. (2011) "Gender Discrimination at Work", *Gender & Society*, Vol 25, Issue 6, pp. 764 - 786, doi 10.1177/0891243211424741
- [2] Goldman, B. M., Gutek, B.A, Stein, J.H., Lewis, K. (2006) "Employment Discrimination in Organizations: Antecedents and Consequences", *Journal of Management*, Vol 32, Issue 6, pp. 786 - 830, DOI 10.1177/0149206306293544
- [3] Kim, P.T., (2017) "Data-Driven Discrimination at Work", *William & Mary Law Review*, Vol. 48, pp. 857-936, Washington University in St. Louis Legal Studies Research Paper No. 16-12-01, Available at SSRN: <https://ssrn.com/abstract=2801251>
- [4] Mainiero, L.A, Jones, K.J. (2013) "Sexual Harassment Versus Workplace Romance: Social Media Spillover and Textual Harassment in the Workplace", *The Academy of Management Perspectives*, vol. 27, issue 3, pp. 187-203, doi: 10.5465/amp.2012.0031
- [5] McDonald, P. (2012), "Workplace Sexual Harassment 30 Years on: A Review of the Literature", *International Journal of Management Reviews*, Vol. 14, Issue 1, pp. 1-17, doi: 10.1111/j.1468-

2370.2011.00300.x

- [6] McMahon, L. (2000) "Bullying and harassment in the workplace", International Journal of Contemporary Hospitality Management, Vol. 12, Issue: 6, pp.384-387, doi: 10.1108/09596110010343666
- [7] Middlemiss, S. (2007) "Legal Regulation of Harassment on the Ground of Age: Lessons from America?", International Journal of Discrimination and the Law, Vol. 9, Issue 1, pp. 57 - 65, Doi 10.1177/135822910700900104
- [8] Mueller, C. W., De Coster, S., Estes, S.B. (2001) "Sexual Harassment in the Workplace : Unanticipated consequences of modern social control in organizations", Work and Occupations, Vol. 28, Issue 4, pp. 411 - 446, DOI 10.1177/0730888401028004003
- [9] O'Leary-Kelly, A.M., Paetzold, R.L., Griffin, R.W. (2000) "Sexual Harassment as Aggressive Behavior: An Actor-Based Perspective", Academy of Management Review, vol. 25, issue 2, pp. 372-388, doi: 10.5465/AMR.2000.3312924
- [10] Villar, E.M.B., Caputo, M.C., Coria, S.E.A, Messoulam, N. (2012) "Psychological/Moral Workplace Harassment: Development of an Inventory in Argentina", Social Medicine (www.socialmedicine.info), Vol. 6, issue 4, pp.241-245
- [11] \*\*\* - the new Romanian Criminal Code (Law 286/2009)
- [12] \*\*\* - <http://cncd.org.ro/> - National Council for Combating Discrimination (NCCD)
- [13] \*\*\* <https://ec.europa.eu/> - European Commission - European Web Site On Integration - Migrant Integration Information and good practices
- [14] \*\*\* - <http://eige.europa.eu/> - European Institute for Gender Equality (EIGE)