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Burden of Proof in the Sexual Harassment Cases in Georgia

[Ciężar dowodu w sprawach o molestowanie seksualne w Gruzji]

Abstrakt

Molestowanie seksualne stanowi poważne wyzwanie na całym świecie, w tym także w Gruzji. Podczas gdy niektóre kraje postrzegają molestowanie seksualne jako formę dyskryminacji ze względu na płeć, inne definiują je odrębnie. Rozróżnienie to ma kluczowe znaczenie w kontekście prawnym, wpływając na oceny sądowe i wyniki spraw. Skuteczność regulacji prawnych dotyczących molestowania seksualnego zależy od solidnego mechanizmu ochrony.

W Gruzji ustawa o eliminacji wszelkich form dyskryminacji dostosowuje ciężar dowodu do międzynarodowych standardów – wymagając od oskarżonych rozwiania wątpliwości co do zarzutu działań dyskryminacyjnych. Jednak w praktyce sądy stają tu wciąż przed trudnymi wyzwaniami, gdyż to na powódkach lub powodach często spoczywa ciężar udowodnienia, że miało miejsce molestowanie seksualne.

Słowa kluczowe: molestowanie seksualne, ciężar dowodu, dyskryminacja.

Introduction

Nowadays, sexual harassment is recognized as a specific form of discrimination that violates the dignity of an individual.¹ In the realm of international law it is a very complex issue that transcends geographic boundaries, cultures, ethnicities, socio-economic backgrounds, or other backgrounds.²

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¹ Sexual Harassment and the Law: Guidance for employers, Equality and Human Rights Commission, 2017, pp. 2 and 3.

² M. D. Dewi, *Sexual Harassment in International Law*, "International Journal of Social Service and Research", 2023, 3, 11, p. 2746.

In the last twenty years, after the collapse of the Post-Soviet Union, Georgia has made great progress toward equality between men and women.³ The immense effort of the country was proven by the ratification of two important instruments: the Convention on the Elimination of All Forms of Discrimination Against Women in 1994⁴ and the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) in 2017.⁵ These led to positive changes in Georgian legislation, however, in burden of proof in sexual harassment cases continues to be a complex challenge.

Legal Definition of Sexual Harassment

In the Georgian legal realm, the regulation of sexual harassment primarily resulted from legislative reforms aiming at harmonizing national legislation with European Union standards.⁶ Prior to 2019, there was a lack of clarity on what constituted sexual harassment within the law, and sexual harassment was falling under the definition of discrimination. Thus, there was a presumption that establishing a case of sexual harassment necessitated the application of a discrimination test.⁷ Since then, significant progress has been achieved in administrative and labor legislation to protect people from sexual harassment. These essential rules were put in place to provide comprehensive protection against any type of sexual harassment, whether in the workplace or in public places.⁸

In 2019, the law on the Elimination of All Forms of Discrimination expanded its nondiscrimination clause to encompass sexual harassment; The current definition of sexual harassment reads as follows: “any unwanted verbal, non-verbal, or physical action of sexual nature aiming to violate a person’s dignity or create an intimidating, hostile, humiliating, degrading, or offensive environment.”⁹ The legal protection offered by the aforementioned antidiscrimination law covers workplace, educational institution, medical facilities, public spaces where sexual harassment may potentially occur.¹⁰ The

³ National Study on Violence Against Women in Georgia 2017, UN Women, 2018, p. 15.

⁴ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 Dec. 1979, United Nations, Treaty Series, 1249, p. 13, <https://www.refworld.org/docid/3ae6b3970.html> [accessed: 15.11.2023].

⁵ Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, November 2014, <https://www.refworld.org/docid/548165c94.html> [accessed: 19.11.2023].

⁶ Sexual Harassment in Public Space, The Young Lawyers Association of Georgia, 2021, p. 9.

⁷ Practical Guide on Sexual Harassment, Public Defender of Georgia, 2020, pp. 11 and 12.

⁸ Sexual Harassment in the Workplace in the Public Service of Georgia, Research Report, UN Women, 2021, p. 14.

⁹ Law on Georgia on the Elimination of All Forms of Discrimination, 2014, Art. 2 (32).

¹⁰ Sexual Harassment in Public Space, The Young Lawyers Association of Georgia, 2021, *ibid*.

law does not provide a clear list or definition of verbal, non-verbal, or physical actions that constitutes sexual harassment; however, it strongly emphasizes that such conduct must be of a sexual nature. This amendment to the law holds practical significance for two primary reasons: firstly, a precious legal definition is necessary for understanding sexual harassment and distinguishing it from other forms of discrimination; and secondly, sexual harassment, alongside all other forms of discrimination, is now prohibited in every aspect of human lives.

This means that the protection against discrimination, upheld by the court and ombudsmen, now encompasses sexual harassment cases. This enhancement empowers the ombudsman to petition the court and seek enforcement of their recommendations if the corporation fails to adhere to or acknowledge them.¹¹ Furthermore, both individuals and corporations are required to provide the Public Defender with all relevant records, papers, and materials requested for examination within a 10-day timeframe.¹² An important change has been the extension of the time frame for filing an appeal with the court, now extended to one year. This one-year period starts from the moment a person becomes aware, or reasonably should have become aware, of a discriminatory situation they believe has occurred¹³

Additionally, the Code of Administrative Offenses aims to address sexual harassment in public spaces, and the Ministry of Internal Affairs is tasked with implementing the necessary measures for its enforcement. For the effective enforcement of the law, the Code of Administrative Offenses provides monetary fines and administrative imprisonment.¹⁴

Burdens of Proof and Evidentiary Standards

Sexual harassment cases, due to their intimate and private nature, often unfold discreetly, involving primarily the alleged victim and perpetrator, thereby complicating the proves of evidence gathering. Recognized as a distinct form of discrimination, sexual harassment differs in allocation of burden of proof and examination of evidence, as it does not require a “comparator” to establish its wrongful and illegal nature. Unlike other time of discrimination, there is no need to demonstrate that the victim received less favorable treatment compared to o someone in an identical or similar situation. In sexual harassment cases, the emphasizes should unequivocally be on addressing the violation itself rather than placing the onus on the victim to

¹¹ Civil Procedural Code of Georgia, 1997, Art. 3632(4).

¹² Law on Georgia on the Elimination of All Forms of Discrimination, Parliament of Georgia, 2014, Art. 9(4).

¹³ Civil Procedural Code of Georgia, 1997, Art. 3632(2).

¹⁴ Administrative Offences Code of Georgia, 1984, Art. 1661.

prove unfavorable treatment. This complexity arises from the sexual nature of misconduct, which inherently aims to violate a person's dignity. Therefore, unlike other form of discrimination, sexual harassment cannot be justified for any legitimate purpose.¹⁵

In sexual harassment cases, drawing the line between acceptable and unacceptable behavior is quite difficult and simultaneously places the burden on the claimant to prove the "unwelcomeness" of the behavior.¹⁶ Considering that people express their dissatisfaction with sexual acts in different ways, there is no uniform rule dictating how a person ought to communicate their disagreement regarding such behavior. A sign of reluctance may not necessarily be an expressive rejection, but a more subtle indicator of expression.¹⁷ For example, a gesture, facial expression, body language, or other expression should be considered sufficient to demonstrate that the behavior is unwanted or situations where a person expresses reluctance with their body language, namely, by tensing the body and avoiding eye contact or trying to avoid situations where the defendant could touch, or comment should also be enough in expressing unwillingness of any act. The alleged victim is not required to leave the place to express the unwillingness of the action; rather, the body language is sufficient to demonstrate that the respondent's conduct is unwanted.¹⁸

Furthermore, with regard the evidence in sexual harassment cases, similarly to other legal disputes, evidence can be characterized as either direct or indirect. Although direct evidence is preferable, it is often unattainable due to the specific nature of sexual harassment which places too heavy burden on the plaintiff.¹⁹ Considering subjective evidence plays a significant role, strict scrutiny of evidence and a procedural approach could inadvertently foster the occurrence of these offenses and impede effective prevention efforts.

Standard of Proof

In the Georgian legal realm, the principle regarding the burden of proof is outlined in the Civil Procedure Code of Georgia. According to this law, each party is required to substantiate the circumstances forming the basis of their claim, and if further specifies the types of evidence necessary to substantiate such claims.²⁰ Nonetheless, the introduction of Article 363³ in the code aims

¹⁵ Special Report of the Public Defender of Georgia, On the fight against discrimination, its prevention and the state of equality, 2016, p. 18.

¹⁶ M. F., Radford, *By Invitation Only: The proof of welcomeness in sexual harassment cases*, "North Carolina Law Review" 1994, Vol. 72, 3, p. 504.

¹⁷ *Mahmoodi v. University of British Columbia and Dutton*, British Columbia Human Rights Tribunal, 1999.

¹⁸ *Practical Guide on Sexual Harassment*, Public Defender of Georgia, 2020, p. 20.

¹⁹ *Handbook on Investigating Sexual Harassment in the Workplace Using a Victim-Centered Approach*, UN Women, 2022, pp. 28 and 29.

²⁰ Article 102, Civil Procedure Code of Georgia, 1997.

to clarify the burden of proof in discrimination cases. Under this article, the claimant is responsible for presenting factual circumstances and establishing grounds to suggest that a discriminatory act has occurred. This results in burden of proof shifting to the defendant, who must demonstrate that no discriminatory action was taken against claimant. According to Georgian legislation, the plaintiff is not obliged to disclose all facts and evidence immediately to establish this presumption. Instead, it suffices for the claimant to provide evidence that constructs a logical chain suggesting discrimination against alleged victim.²¹ This article aims at a fair distribution of the burden of proof between the alleged victim and perpetrator; meaning it establishes that in cases of sexual harassment, the legal standards stipulate a burden of proof where the burden lies on the victim to establish the factual basis from which the alleged perpetrator's action can be inferred. Conversely, it is incumbent upon the accused to demonstrate convincingly that sexual harassment did not occur. However, in practice, sometimes, the burden of proof entirely rests with the plaintiff, as they are expected to do more than merely create a presumption of such an act. This means that the court does not impose the burden on the alleged perpetrator for sexual harassment to improve their innocence or demonstrate that they did not commit such an act.²² Such an approach not only contradicts Georgian law but also violates established international human rights norms. However, in one of the cases, the court adopted a victim-centered approach, where female athletes' testimonies and supporting evidence led the court to conclude that they were subject to unfavorable treatment. Consequently, the burden of proof shifted to the defendant. Upon evaluating the defendant's arguments, the court determined that the defendant failed to substantiate a compelling justification for the adverse treatment of women on professional grounds.²³

Given the complexities surrounding the substantiation of sexual harassment claims and the relatively limited legal precedents in this field, the role of the Public Defender assumes paramount importance. They wield the authority not only to advise companies and organizations on implementing preventive measures against sexual harassment but also to litigate as plaintiffs in instances where these entities fail to comply with recommendations.²⁴ Additionally, the Public Defender is empowered to submit *Amicus Curiae* to the court,²⁵ facilitating a comprehensive examination of sexual harassment

²¹ Handbook on Researching Sexual Harassment in the Workplace Using a Victim-Centered Approach, UN Women, 2022, p. 27.

²² The Judgment rendered by the Civil Chamber of the Supreme Court of Georgia on April 13, 2022 in case No. AS-358-2021, pp. 52 and 53.

²³ The judgment rendered by Tbilisi City Court, February 18, 2022 in case No. 2/21831-20.

²⁴ For more information see: Practical Guide on Sexual Harassment, Public Defender of Georgia, 2020.

²⁵ Article 22(e), Organic Law of Georgia on the Public Defender, Parliament of Georgia, 1996.; see also, The Public Defender of Georgia, *Amicus Curiae*, 17 March 2017, <https://idfi.ge/public/upload/IDFI/IDFI/Amicus%20Curiae%2057722.pdf> [last accessed: 8.08.2024].

issues. This includes guidance on case evaluation and securitizing the burden of proof allocation, aligning with international standards. In one of the cases,²⁶ the court relied on the Public Defender's *amicus curiae* that extensively discussed the definition of sexual harassment, the criteria for identifying such incidents, and the standards set by international institutions regarding the allocation of burden of proof in the adjudication of these disputes. The *amicus curiae* opinion examined the legal frameworks of England, Austria, France, The United States, Germany, and Iceland on this matter.²⁷ In *amicus curiae*, the Public Defender's assessment regarding the burden of proof highlighted that sexual harassment often manifests within workplace environment, underscoring the universal obligation of companies to develop decent employment policies that uphold the rights and dignity of all persons. In general, workplace sexual harassment occurs either by a colleague or the head of the company (or someone with significant power); if the perpetrator is a co-worker, the so-called triangular principle of responsibility will apply. As a result, an alleged victim can sue both because one is accountable for sexual harassment and the other for doing nothing to prevent it. However, if the alleged perpetrator also holds the position of head of company, the level of responsibility will escalate proportionally according to the dual status. Furthermore, sexual harassment as a specific category of discrimination does not require a person to provide evidence of the moral and psychological damage because these elements are inherently linked with the nature of such misconduct.²⁸ It can be established without demonstrating a specific motive, as the action itself is sufficiently offensive to the victim that motive does not need to be proven. The courts should acknowledge that challenges inherent in presenting evidence and afford due importance to the subjective testimony provided by the alleged victim. This necessitates recognizing the unique complexities faced by each victim, thereby establishing a presumption of sexual harassment through a more lenient standard of proof, which can facilitate fair and timely decisions.

“Ought to Have Known Standard”

The ought to know standard is strongly related to an unwanted component of sexual harassment. The reference to any behavior that “ought to be known

²⁶ The Civil Affairs Chamber of the Supreme Court of Georgia made an important clarification regarding the consideration of a secret audio recording of a conversation during a personal meeting as inadmissible evidence in a civil case (see No.as.115511012014).

²⁷ The Public Defender of Georgia, *Amicus Curiae*, 17 March 2017, <https://idfi.ge/public/upload/IDFI/IDFI/Amicus%20Curiae%2057722.pdf> [last accessed: 8.08.2024].

²⁸ The Public Defender of Georgia, *Amicus Curiae*, 9-10, <https://ombudsman.ge/res/docs/2019102911372525529.pdf> [last accessed: 21.11.2023].

to be unwanted” means that it is essential to consider the subjectivity and objectivity tests for sexual harassment. The subjectivity test assesses the attitude of the harasser regarding the acceptability of his behavior. In contrast, the objectivity test focuses on how a specific behavior would be accepted, within reasonableness, by a third party.²⁹ This standard is helpful because, in some cases, the perpetrator and alleged victim might be in contact where the alleged victim does not directly or openly express that certain conduct or comments are unwanted. There are different reasons for one to be silent about things that are not welcomed or desirable. The perpetrator might agree with all the information the alleged victim presents but still argue that the certain conduct or comment was desirable for the alleged victim, therefore, denies the assertion that the behavior or comment constituted any form of force. However, even if conduct was not forcefully committed, it still does not mean it was desired.³⁰ Thus, according to this standard, considering the relationship between the two, the environment, and all other factors, the perpetrator ought to have known that the specific sexual behavior would be unacceptable or unwanted to the person.

The “Reasonable Person” Standard

In sexual harassment cases, courts employed the standard of “reasonable man”. This concept was perceived as gender-neutral and applied universally to both men and women; however, in practice, it was heavily influenced by masculine perspectives³¹ and was thus considered inherently sexist. As a result, the American courts embraced the concept of the “reasonable person”, seemingly neutral in gender but ultimately prioritizing the expectation for women to conform to men’s perceived standards of reasonableness in practice.³² In 1991, the judiciary found it necessary to apply the “reasonable woman” standard, a criterion that has subsequently gained widespread application.³³ While not enshrined in legal doctrines, this standard facilitates the consideration of issues from a female perspective.³⁴ The Public Defender of Georgia, *Amicus Curiae* states that: “the “reasonable woman” standard acknowledges the varied perceptions of sexual harassment between male and female. This standard reflects a gender-sensitive approach to assessing the perception of sexual harassment from a woman’s standpoint. It emphasizes

²⁹ Practical Guide on Sexual Harassment, Public Defender of Georgia, 2020, p. 19.

³⁰ Handbook on Researching Sexual Harassment in the Workplace Using a Victim-Centered Approach, UN Women, 2022, pp. 27 and 28.

³¹ C. A. McGinley, *Reasonable Men?*, “Connecticut Law Review” 2012, Vol. 45, 1, p. 23.

³² *Ibid.*, pp. 23 and 24.

³³ *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991).

³⁴ S. A. Piefer, *Sexual Harassment from the Victim’s Perspective: The need for the seventh circuit to adopt the reasonable woman standard*, *Marquette Law Review* 1993, Vol. 77, 1, p. 98.

that sexual harassment cannot be universally defined and evaluated identically to other actions.³⁵ The judiciary eventually transitioned to adopting the “reasonable person” approach.³⁶ The Public Defender of Georgia referred to the “reasonable person” adopted by American courts as well. By applying this standard, the Public Defender of Georgia sought to highlight the societal context encouraging discrimination against women in Georgia. These common stereotypes frequently assign fault to women, suggesting they provoke men; for this reason, very often, society, friends, and colleagues accuse women of behavior deemed contrary to the moral norm. This circumstance contributes to women’s vulnerability, making victims of harassment frightened of additional victimization and contributing to the issue’s concealment.³⁷

Furthermore, the standard holds significance when the perpetrator acknowledges the factual circumstances presented in the case but subsequently rejects that the conduct was sexual or unwanted by the alleged victim. According to this standard, emphasis is placed on the differences between female and male perceptions, particularly how they view certain behaviors. This standard uses a gender-sensitive approach and thus intends to analyze, examine, and evaluate the case from a woman’s perspective, as she knows exactly how she feels about certain conduct or comments.³⁸ Therefore, it provides an avenue to evaluate what constitutes sexual harassment from a woman’s perspective and whether such behavior would be deemed acceptable based on the dynamics of their relationship. This approach ensures that sexual harassment cases are not treated uniformly and underscores the application of a gender-sensitive framework. Furthermore, achieving an impartial assessment of the case necessitates. Nuanced understanding of societal perceptions regarding discrimination and harassment, including entrenched “traditional” gender roles. Equally important is grasping societal attitudes towards relationships in questioned their perceptions of women who disclose incidents of harassment.

The “reasonable women” standard has garnered criticism from those contended that grouping women as a group may inadvertently marginalize them by implying fundamental differences from men.³⁹ Indeed, it is about the different perceptions that can exist in different people; sometimes what is considered normal for a man can be extremely insulting to a woman. Given the prevailing gender stereotypes, employing the “reasonable women” standard is an important tool for dealing with sexual harassment instances in a more

³⁵ ThePublicDefenderofGeorgia, Amicus Curiae, pp.5and6. <https://ombudsman.ge/res/docs/2019102911372525529.pdf> [last accessed: 21.11.2023].

³⁶ Harris v. Forklift Systems, Inc 510, U.S, 17 (1993).

³⁷ The Public Defender of Georgia, Amicus Curiae, *ibid.* <https://ombudsman.ge/res/docs/2019102911372525529.pdf> [last accessed: 21.11.2023].

³⁸ S. A., Piefer, Sexual..., *ibid.*

³⁹ Practical Guide on Sexual Harassment, Public Defender of Georgia, 2020, pp. 23 and 24.

comprehensive manner; yet it may be an indicator that the victims of sexual harassment are exclusively women which is too restrictive, because sexual harassment it is not linked to specific sex or gender. Although, it is already recognized as a form of gender violence against females, it is better if the courts employ more gender-neutral standards, such as “the reasonable person standard”. This will help the court be ready to look at sexual harassment cases from the perspective of the alleged victim, regardless of the victim’s sex, gender, or any other characteristics.

Admissibility of Evidence

Sexual harassment often manifests itself in hidden ways, and it becomes difficult to obtain evidence. For instance, the evidence provided to the court may include, but is not limited to, the following: audio or video recordings, the information provided by the parties, the information provided by third parties, and psychologists or psychiatrists give the official record etc.⁴⁰ Very often, during sexual harassment proceedings, the alleged perpetrator refutes all accusations and attempts to establish the acceptability of sexual behavior by presenting proof of a prior relationship or interaction. Moreover, the perpetrator may claim that the sexual conduct was initiated by the victim or, in some instances, may attempt to discredit the victim’s credibility by insinuating that the alleged victim’s behavior is indicative of promiscuity, thereby positioning themselves as the actual victim in the situation. That being said, courts should acknowledge that it is necessary to evaluate subjective evidence presented by alleged victim.⁴¹

Written Evidence

There is a wide range of written evidence, including e-mail, posts, social media, phone messages, correspondence, so-called “screenshots”. These are valuable pieces of evidence and often have the status of direct evidence that unambiguously reflects the facts; for instance, the Public Defender established sexual harassment where the victim presented “screenshots,” proving the messages of sexual nature sent by the perpetrator. In such situations, an alleged perpetrator may say that the conversation was just a “joke”. However, according to the Public Defender, labeling something as a joke does not negate the possibility of it constituting sexual harassment. Even a joke with

⁴⁰ Handbook on Researching Sexual Harassment in the Workplace Using a Victim-Centered Approach, UN Women, 2022, 26.

⁴¹ L. J. Krieger, C. Fox, *Evidentiary Issues in Sexual Harassment Litigation*, “Berkeley Women’s Journal” 1985, Vol. 1, 1, p. 116.

a sexual connotation that is unwelcomed to a person can be still considered sexual harassment.⁴² In one of the cases, the court did not address written correspondence and did not regard the recommendation provided by the Public Defender as definitive evidence of sex discrimination and sexual harassment.⁴³ In this instance, the court scrutinized the victim-based approach of the Public Defender's assessment into harassment allegations, noting that their decision was grounded not on indisputable evidence, but on subjective testimonies presented by the parties involved.⁴⁴

Photo, Audio, and Video Evidence

In terms of proof, photo, audio, and video evidence are some of the weightiest pieces of evidence. They can be of many types and can visually convey the specific behavior of the alleged perpetrator. In Georgian practice, audio or video recording is accepted as admissible evidence. In assessing the case of sexual harassment, the Tbilisi City Court relied on a secret audio recording, which was the main evidence.⁴⁵ According to the definition of the Supreme Court of Georgia, "When it comes to interfering with someone's private sphere, any interference must be fully justified and supported by a compelling public interest. In essence, assessing the legitimacy of such interference requires determining whether a paramount worthy of protection exists that surpasses the constitutionally guaranteed rights to privacy and personal communication."⁴⁶ When a record is the only way to safeguard one's rights because it is otherwise impossible to protect oneself, or when there is a real threat of eliminating evidence, the creation of evidence through a private record may be acceptable. However, where it is needed, the authenticity of the secret recording might be checked.

Explanation of Third Parties

The presence of witnesses is one of the important aspects to establish the fact of sexual harassment. These persons can be direct witnesses who have become eyewitnesses, as well as indirect witnesses who have been informed

⁴² The Public Defender of Georgia, Recommendation against Management Group of Hotels and Restaurants – M Group, 29 August 2022, <https://ombudsman.ge/res/docs/2022090812475640548.pdf> [last accessed: 15.11.2023].

⁴³ The Judgment rendered by the Civil Affairs Chamber of the Tbilisi Court of Appeal on December 9 2020 in case No.2b/318-20.

⁴⁴ *Ibid.*, par. 60.

⁴⁵ The Judgment rendered by Tbilisi City Court on 21 March 2017, in case No. 2/17158-16.

⁴⁶ The Civil Affairs Chamber of the Supreme Court of Georgia made an important clarification regarding the consideration of a secret audio recording of a conversation during a personal meeting as inadmissible evidence in a civil case (see No.as.115511012014).

about alleged sexual harassment by the victim or third parties.⁴⁷ Such a witness can be a colleague, doctor, friend, family member. In one of the cases, the Public Defender relied on the information provided by the victims, friends and/or third parties. In the cases of all three victims, the Public Defender interviewed their friends/third parties who had some information about the disputed factual circumstances. The public defender considered the information provided by the friend important, despite the fact that they were not direct witnesses of the fact. The fact that the applicants told their friends about their unwanted behavior demonstrates that these actions were unwelcomed.⁴⁸ In cases of sexual harassment, it is possible that the witness is also an expert with special knowledge. In the practice of the Public Defender of Georgia, a similar case took place in a case related to exceeding the competence of a doctor. The public defender used the expert knowledge of doctors in the same field to assess the extent to which it was within the doctor's competence to examine the patient's breast.⁴⁹

Conclusion

Sexual harassment is a very sensitive and complex issue that is at the core of human dignity. Sexual harassment as a specific form of discrimination manifests itself in unwanted sexual behavior and does not require an alleged victim to prove the existence of “a comparator” and a different treatment. Considering the secretive, sensitive, and sexual nature of sexual harassment, it often manifests itself in different hidden ways, making it impossible to acquire evidence. This must be acknowledged by Georgian courts and thus, the subjective evidence presented by alleged victim should be given reasonable weight. Otherwise, the burden of proof will always impose an unproportionally weight on the plaintiff. Given the country's prevalent social norms defining gender roles and stereotypes, the possibility of appropriately addressing and resolving sexual harassment will be undermined and consequently, less and less victims will find courage to raise their voices against discrimination and violence.

⁴⁷ Practical Guide on Sexual Harassment, Public Defender of Georgia, 2020, pp. 41 and 42.

⁴⁸ Recommendation of the Public Defender of Georgia, November 1, 2018, bit.ly/2WMnuMo.

⁴⁹ Recommendation of the Public Defender of Georgia of April 13, 2020, bit.ly/2Lg3Mn1.

Abstract

Sexual harassment presents a significant global challenge, including in Georgia. While some countries view sexual harassment as a form of sex discrimination, others define it separately. This distinction is crucial in legal context, impacting court assessments and case outcomes. The effectiveness of legal regulations addressing sexual harassment hinges on robust protection mechanism.

In Georgia, the Law on the Elimination of All Forms of Discrimination brings the burden of proof in line with international standards – requiring defendants to dispel doubts about the allegation of discriminatory actions. However, in practice, the courts here still face difficult challenges, as the plaintiffs often bear the burden of proving that sexual harassment took place.

Keywords: sexual harassment, burden of proof, discrimination.

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