

SEXUAL HARASSMENT BECOMES PUNISHABLE

A package of bills, providing for the introduction of regulations prohibiting sexual harassment, has been initiated with the Parliament of Georgia.

LAW, INITIATOR

Law: *On Amendment of the Organic Law of Georgia - Labour Code of Georgia and draft amendments to related laws*

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ESSENCE OF THE DRAFT LAW

- The Law provides for the definition of the term: “sexual harassment”
- Sexual harassment is subject to regulation both in private and public space;
- The authority of the Public Defender is expanded with regard to discrimination related issues;
- Pecuniary sanctions are introduced for sexual harassment.

1. DEFINITION OF “SEXUAL HARASSMENT”

► DEFINITION OF SEXUAL HARASSMENT IN LABOUR CODE

CURRENT VERSION	PROPOSED AMENDMENT
Is not aware of the term “sexual harassment”, contains general stipulation about discrimination.	<ul style="list-style-type: none"> • Definition of discrimination contains specific reference to sexual harassment; • Sexual harassment is defined as unwelcome sexual behaviour against an individual, which aims or/and results in his/her degrading and creates intimidating, hostile, humiliating or offensive environment.

► DEFINITION OF SEXUAL HARASSMENT IN PUBLIC SPACE

CURRENT VERSION	PROPOSED AMENDMENT
Is not defined.	Definition offered in the Code of Administrative Offences: <ul style="list-style-type: none"> • Any unwelcome sexual behaviour against an individual, committed in public places and aiming at or/and resulting in his/her degrading and creating intimidating, hostile, humiliating or offensive environment, will be regarded as sexual harassment.

2. EXPANSION OF THE AUTHORITY OF THE PUBLIC DEFENDER

► OBLIGATION TO INFORM THE PUBLIC DEFENDER ABOUT DISCRIMINATION CASES

CURRENT VERSION	PROPOSED AMENDMENT
Natural and legal persons, also the other entities of private law are not required to provide information, requested by Public Defender.	Natural and legal persons, also the other entities of private law are required to provide the following information on request of Public Defender either immediately or not later than within a period of 10 days: <ul style="list-style-type: none"> • All the certificates, documents and other materials, necessary for inspection; also the written explanation about the issue under scrutiny.

► RIGHT TO ISSUE RECOMMENDATIONS

CURRENT VERSION	PROPOSED AMENDMENT
Is not provided for.	Public Defender is entitled to issue a recommendation with regard to sexual harassment cases offering a natural or legal person, also the other entities of private law, committing a discriminatory action, to implement measures for the suppression of discrimination.

► RIGHT TO OFFER PROPOSALS AND RECOMMENDATIONS

CURRENT VERSION	PROPOSED AMENDMENT
Natural and legal persons, also the other entities of private law are not required to provide information, requested by Public Defender, also to discuss the recommendations of the latter.	Public Defender addresses persons with proposals and recommendations, who are required to review them and inform the Public Defender in writing about the outcomes of the review within a period of 20 days.

► RIGHT TO APPLY TO THE COURT OF LAW

CURRENT VERSION	PROPOSED AMENDMENT
The option for Public Defender to apply to the court of law in the case of sexual harassment is not provided for.	The Public Defender is authorised to apply to the court of law in the capacity of a claimant if a legal person or other entity of private law has not responded to his/her recommendation or has not agreed to this recommendation and there are sufficient evidences proving discrimination.

► SEXUAL HARASSMENT CASES IN PUBLIC DEFENDER'S REPORTS

CURRENT VERSION	PROPOSED AMENDMENT
Is not provided for.	In his/her reports the Public Defender provides information about those natural and legal persons, and also the other entities of private law, who violated human rights and freedoms in discrimination cases, amongst them through sexual harassment, and took no account of the recommendations of the Public Defender.

3. SEXUAL HARASSMENT IS AN ADMINISTRATIVE OFFENCE

► ENFORCEMENT MECHANISM - FINES

CURRENT VERSION	PROPOSED AMENDMENT
Is not provided for.	According to proposed amendment to the Code of Administrative Offences: <ul style="list-style-type: none"> • Sexual harassment of an individual in public places is punishable by fine in amount of 300 GEL; • Commitment of such an action against a minor, pregnant woman, helpless person or a person with disabilities, or in the presence of a minor - will result in fine in amount of 500 to 800 GEL; • A revealed case of sexual harassment is addressed by the Ministry of Internal Affairs.

ASSESSMENT/RECOMMENDATION

Harassment is a challenge and problem in current legal space. The need for changes in this direction is repeatedly stressed in various surveys.¹

Regulation of sexual harassment is contained in many international acts. According to Annex XXX of the Association Agreement, Georgia is required to fulfil Directive 2006/54 of the European Parliament and of the Council within a period of four years from the entry of the Agreement into force, which Directive ensures the implementation of the principle of equal opportunities for men and women and their equal treatment with regard to employment and work. Specifically, the EU Directive 2006/54/EC explicitly states, that harassment of an individual, sexual harassment amongst them, is the breach of the principle of equal treatment of men and women. The European Council Directives compel a state to adopt or improve legislative rules, allowing for application of sanctions against a responsible entity, that ensures the imposition of relevant liability upon an violator.²

Georgia has ratified Istanbul Convention 2017, Article 40 of which obliges Parties to take the necessary legislative or other measures to ensure that asexual harassment is subject to criminal or other legal sanction both at workplaces and in public space.³ Based on the Convention civil sector repeatedly referred to the necessity of regulation of this problem.

Sexual harassment has been the point of agenda of the Parliament of ninth convocation quite a number of times. Women’s Movement has filed a petition demanding the prohibition of this action in 2017. The question was first discussed by the Committee for Human Rights and Civil Integration and then by Gender Equality Council. Furthermore, Gender Working and Council of the Action Plan.⁴ This question was discussed in the format of the working group operating with the Council. Ultimately, the package of bill was initiated by the Members of the Parliament in early 2019.

It is important, for the Parliament of Georgia to support the proposed initiative. Punishability of sexual harassment in public space and labour relationship should be regarded as a positive step forward. It is also important, for the regulations proposed by law to be efficiently enforced in practice.

1 For details see: Gender Equality in Georgia: Barriers and Recommendations - Part I, <https://goo.gl/dFZBxe> ; International Transparency - Georgia; Assessment of the performance of Gender Equality Council, 07 December, 2018, <https://goo.gl/aBoEs8>.

2 Explanatory Note to the Draft Law, <https://goo.gl/Rda3BQ>.

3 Explanatory note <https://goo.gl/hWSKba>

4 Target 2 of the Action Plan of the Gender Equality Council 2018-2020 <https://goo.gl/zMhQSe>