

**WEAKNESSES OF SEXUAL HARASSMENT REGULATION AND LEGISLATION  
IN FRANCE AND LITHUANIA VIS-À-VIS EU**

by Aušra Gedminaitė

LL.M. SHORT THESIS  
COURSE: EU Constitutional Law  
PROFESSOR: Petra Bárd, S.J.D.  
Central European University  
1051 Budapest, Nador utca 9.  
Hungary

## **Abstract**

This paper analyses sexual harassment in the setting of the EU and in France and Lithuania. The aim of the paper is to bring a better legal understanding of sexual harassment while identifying strengths and weaknesses of its legal regulation. Additionally, it aims to support the debate whether sexual harassment should be criminalized. By reviewing the EU legislation from a historical perspective, it identifies how the approach to sexual harassment has been changing from no legal recognition to regulation in legally binding Directives and national laws. The strengths and weaknesses are identified in the paper when implementing the EU law in France and Lithuania and when enforcing the national legislation. The paper also compares sexual harassment as sex discrimination within the non-discrimination law with sexual harassment as a misdemeanor in criminal law and distinguishes the advantages and disadvantages of these approaches.

# TABLE OF CONTENTS

Abstract.....	i
TABLE OF CONTENTS.....	ii
INTRODUCTION .....	1
1. LEGAL ORIGINS AND EVOLUTION OF LEGAL-SOCIAL UNDERSTANDING OF SEXUAL HARASSMENT.....	7
1.1. General concept of sexual harassment .....	7
1.2. Legal instruments and their influences: chronological review .....	12
2. STRENGTHS AND WEAKNESSES OF LEGISLATION ON SEXUAL HARASSMENT .....	19
2.1. Legislation and definition of sexual harassment in France and Lithuania .....	19
2.2. Legislation in Lithuania and France vis-à-vis the EU .....	28
2.3. Constitutional Council of France on sexual harassment .....	32
3. SEXUAL HARASSMENT IN DIFFERENT BRANCHES OF LAW .....	38
3.1. Sexual harassment as misdemeanor in criminal law and as a form of non-discrimination in EU law .....	38
3.2. Data and perspectives of the legislation on sexual harassment .....	42
CONCLUSION .....	44
Bibliography .....	46

## INTRODUCTION

*“When the “founding fathers” signed the 1957 Treaties of Rome, no one imagined that by 2002 the European Union would enact a law addressing such a highly controversial issue as sexual harassment.”*  
Kathrin Zippel

Sexual harassment in the workplace is widespread and legally a broadly acknowledged phenomenon which was relatively comprehensively researched in the United States (hereafter: the US), however, in the European Union (hereafter: the EU) it was not directly defined till 2002 and the legal literature is still not as rich as in the US.<sup>1</sup>

The phenomenon of sexual harassment has existed for centuries, although it was not recognized either as a social or as a legal problem till the 1970s, therefore there was no explicit term to describe such harmful and unwanted behavior. After creating the term, sexual harassment became a well-known topic in public discussions, and in publications in social and legal spheres.<sup>2</sup>

The EU started its promotion of equal opportunities for men and women with the Treaty of Rome of 1957 when it introduced the equality principle with regard to equal pay and equal treatment for men and women. However, there was no definition of equality or discrimination by then, so there was a long way till these definitions and direct definition of sexual harassment were established by EU law. By now, there is a noticeable lack of activists

---

<sup>1</sup> Although there is a lack of comprehensive literature on sexual harassment in the domain of the EU, there is some valuable literature, e.g. Kathrin Zippel, *Gender Equality Politics in the Changing European Union: The European Union Anti-Discrimination Directive and Sexual Harassment; The European Union 2002 Directive on Sexual Harassment: A feminist success?*; Abigail Saguy, *Employment Discrimination or Sexual Violence? Defining Sexual Harassment in American and French Law; National Specificity in an Age of Globalization: Sexual Harassment Law in France*; Loic Lerouge, Camille Hébert, *The Law of Workplace Harassment of the United States, France, and the European Union: Comparative Analysis After the Adoption of France's New Sexual Harassment Law*; Camille Hébert, *Divorcing Sexual Harassment from Sex: Lessons from the French*; Paulius Veršekys, *Some Regulation Problems of Criminal Amenability of Sexual Harassment in the Republic of Lithuania*; Vidmantas Dvilaitis, *Sexual Harassment and Legal Liability for It*.

<sup>2</sup> Greetje Timmerman, Cristien Bajema, *Sexual Harassment in Northwest Europe. A Cross-Cultural Comparison*, University of Groningen; The European Journal of Women's Studies, SAGE Publications, London, Thousand Oaks and New Delhi, Vol. 6, 1999, pp. 419-439.

or lawyers who would build up the doctrine of sexual harassment by contributing to legal literature.

In 2002, when Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions<sup>3</sup> entered into force, sexual harassment was finally directly defined and seen as discrimination<sup>4</sup>: where the conduct is understood as unwanted verbal, non-verbal or a physical act of a sexual nature violating the dignity of a person and which creates an intimidating, hostile, degrading, humiliating or offensive environment.<sup>5</sup>

The elaboration of the legal regulation on sexual harassment in the EU was very slow and not legally binding for twenty years after the first recognition of this phenomenon in the US. The legal approach in the EU was formed by the Recommendations of the European Commission<sup>6</sup> and not by case law as happened in the US.<sup>7</sup> However, originally EU Treaties were silent on human rights and merely had an economic purpose.<sup>8</sup>

In modern times the law focused on equality of women and men as one of the essential factors in solving not only equality problems, but also demographic, economic, social and legal issues. Even nowadays it is often thought that sexual harassment involves no significant

---

<sup>3</sup> Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

<sup>4</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity*, Equal Treatment Legislation, European Network of Legal Experts in the Field of Gender Equality, European Commission, 2012.

<sup>5</sup> Council Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 Amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ EC L 269/15.

<sup>6</sup> The European Commission Recommendation 92/131/EEC of 27 November 1991 on the protection of the dignity of women and men at work OJ L 49 of 24 February 1992.

<sup>7</sup> Paulius Veršekys, *Some Regulation Problems of Criminal Amenability of Sexual Harassment in the Republic of Lithuania* [Baudžiamosios atsakomybės už seksualinį priekabiavimą reglamentavimo lietuvoje problemos], Teisė, No.68, 2008.

<sup>8</sup> See Grainne de Burca, *The Road Not Taken: The European Union as a Global Human Rights Actor*, American Journal of International Law, Vol. 105, No.4, 2011.

(economic, psychological, legal, etc.) harm for the victims, since it is considered to be only innocent jokes, flirting or distinguished as a misdemeanor, *kavaliersdelikt* or harmless crime.<sup>9</sup> Since the beginning of industrialization when women entered the labor market, it became more and more clear that sexual harassment indeed has a considerable impact on the society in labor, education, and other spheres. In the 1970s, it was finally recognized as a sex/gender<sup>10</sup> problem and based on this the attitude started to change and thereby the need for analysis and improvement of legal regulation emerged. Ever since the term “sexual harassment” was introduced, it is a matter of great relevance in society but the gap between the established definitions and provisions on sexual harassment and how they are perceived in the society and in the case law is large.

Recognizing the negative influence of sexual harassment to the victim, some countries have criminalized it and added the provision into their penal/criminal codes (e.g. France, Lithuania, Austria, Italy, Portugal, Hungary, Belgium, etc.). However, so far it is not clear whether criminalization is more effective in eliminating sexual harassment and balancing gender equality in spheres of employment and education as much as leaving it as the matter of civil or labor law.

This topic is very difficult from the victims’ perspective who do not always have the proper idea how to legally protect themselves.<sup>11</sup> The topic may be problematic from the perpetrators’ perspective, as it might happen that their actions were misinterpreted. It is also difficult from the legal perspective, as it is not always clear in which domain to look for answers in practice – ombudsperson, civil or criminal court. Understanding this is also very relevant and important in order to observe and guard fundamental human rights. Therefore,

---

<sup>9</sup> Kathrin S. Zippel, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006, pp. 186-198.

<sup>10</sup> See Penelope Eckert, *The whole woman: Sex and gender differences in variation, Language Variation and Change*, Cambridge University Press, 1990, pp. 245-267.

<sup>11</sup> Kathrin Zippel, *The European Union 2002 Directive on Sexual Harassment: A feminist success?*, Palgrave Macmillan, Comparative European Politics, Vol. 7, No. 1, 2009, p.151.

the development of legal basis and doctrine, and identification of what improvements are still needed by analyzing the legislation and case law on sexual harassment both in the national legal systems and in the domain of the EU are necessary.

In light of the above, this paper will review the concept of sexual harassment in the domain of the EU by analyzing the developments in France and Lithuania, and by reviewing the legislation - including French Constitutional Council's (hereafter: *Conseil Constitutionnel* or *Conseil*) vital decision on sexual harassment. I will also address the issue of which branch of law should be responsible for protecting against sexual harassment, problems with the definition and what improvements are needed in the Lithuanian and French national legal systems and also in the EU law setting.

It is important to state that this paper will not address the issues of harassment related to the sex of a person or moral harassment,<sup>12</sup> or other human rights related to it. The paper will mainly focus on sexual harassment in general and in the specific jurisdictions with a short review of the US approach which is unavoidable. France is a logical choice, as its legal traditions are much older, as it is one of the founding EU member states. The principle of equal pay for equal work was introduced in the Treaty of Rome at the behest of France<sup>13</sup> which was an interesting turn for the whole EU towards non-discrimination legislation, it also legally regulated the matter before it was directly regulated by the EU which later influenced its national laws. France also has introduced sexual harassment in its Penal code. However, in

---

<sup>12</sup> Based on art. 2(2) of Directive 2002/73/EC „harassment: where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.” Based on the art. L. 11521 of the French Labor Code, moral harassment: “no employee may be subjected to repeated acts of moral harassment the purpose of or effect of which is a diminution of her or his working conditions susceptible to damage her or his rights or her or his dignity, to affect her or his physical or mental health or compromise her or his professional future.”).

<sup>13</sup> Noreen Burrows, *Equal pay for work of equal value*, Academy of European Law, School of Law, University of Glasgow, 2010.

2012 the *Conseil Constitutionnel* ruled it as unconstitutional.<sup>14</sup> Nevertheless, a new provision was passed in the same year.<sup>15</sup>

I have chosen Lithuania, as it is a relatively quickly developing post-Soviet country which soon after re-gaining its independence adopted the Law on Equal Opportunities between Women and Men<sup>16</sup> and also the Equal Opportunities Act,<sup>17</sup> and later introduced sexual harassment in its new Criminal code which came into force in 2003. Even though after joining the EU Lithuania was implementing EU laws in respect to sexual harassment, the provision in the Criminal code remained ineffective in practice for numerous reasons. One of the obstacles is proof as an element of the crime which is necessary in criminal cases of sexual harassment, as “Lithuanian law requires proving the sexual nature of the purpose.”<sup>18</sup> Moreover, the aforementioned Acts, regulating equal opportunities, might cause the issue of double coverage.<sup>19</sup>

Encountering problematic issues in these states, it is interesting to analyze and compare the legal approach of France and Lithuania towards sexual harassment as a violation of fundamental human rights and criminal misdemeanor, and what the problems are in the definition of sexual harassment.

The paper consists of three main chapters: legal origins and evolution of legal-social understanding of sexual harassment; strengths and weaknesses of legislation on sexual harassment; sexual harassment in different branches of law. The first chapter reviews the concept of sexual harassment and evolution of legal instruments in general and in the EU,

<sup>14</sup> Conseil Constitutionnel Decision no. 2012-240 QPC of 4 May 2012, Mr Gérard D. [Definition of the offence of sexual harassment].

<sup>15</sup> French Penal Code, version of 14 February 2015 [Code Pénal, version consolidée au 14 février 2015].

<sup>16</sup> Law on Equal Opportunities of Women and Men, State Gazette No. 112-3100, 1998, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478625](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625) (last accessed 25 March 2015).

<sup>17</sup> Equal Opportunities Act, State Gazette No. 114-5115, 2003, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=454179](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179) (last accessed 25 March 2015).

<sup>18</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity*, Equal Treatment Legislation, European Network Of Legal Experts In The Field Of Gender Equality, European Council, 2012.

<sup>19</sup> Ibid., p. 175.



also in France and Lithuania from a comparative perspective. The second chapter reviews and evaluates the legislation on sexual harassment, the implementation of the EU legislation and enforcement of national laws, and assesses the French Constitutional Council's approach on sexual harassment. The third chapter compares sexual harassment as a criminal misdemeanor and as sex discrimination, evaluates the effectiveness of the legal instruments and introduces perspectives and criticisms.

# **1. LEGAL ORIGINS AND EVOLUTION OF LEGAL-SOCIAL UNDERSTANDING OF SEXUAL HARASSMENT**

“Sexual harassment serves as a vivid example of heated struggles over sexuality, power, and gender equality on both sides of the Atlantic because it fuses the issues of violence against women <...>”.<sup>20</sup> It took a long time to recognize sexual harassment as a widespread phenomenon and regard it as a social problem and later to look at it from a legal perspective as well. This chapter will review the development of the concept of sexual harassment and legal instruments regulating it, and possible reasons for the delay for its legally binding recognition and how it feasibly affected its contemporary understanding in the EU.

## **1.1. General concept of sexual harassment**

In order to efficiently introduce the creation and evolution of the concept of sexual harassment in Europe, I will shortly review its development firstly in the US and proceed by reviewing how the concept of sexual harassment emerged in the EU and also in France and Lithuania.

Sexual harassment firstly derived as a social and moral gender problem. When it started to be recognized as negative, it was not considered that it could cause any serious economic or psychological harm; therefore no remedies could be guaranteed. In the 1970s feminists were very active in promoting women’s rights and the right to the workplace without sexual

---

<sup>20</sup> Kathrin S. Zippel, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006, p. 11.

harassment was one of them. So, after sexual harassment was recognized as a social problem, the need for its legal regulation occurred.<sup>21</sup>

Sexual harassment in the workplace is a relatively new phenomenon, as the term was created only in the 1970s in the US, although it was recognized as harmful and highly pervasive already since the beginning of industrialization when women started to participate in the labor market. The phenomenon and the term itself was formulated due to active feminists and feminist lawyers of the second wave movements: they not only recognized the harm of sexual harassment, but also persisted in introducing it as a legal as well as moral issue, and were trying to find what would be the best remedy. To be able to talk about this phenomenon and especially to reach out for legal and legislative actions, it had to have a name. The feminists decided to deliberately create a term which could be wide spread and used in social and legal matters and after suggestions like “sexual intimidation”, “sexual coercion”, and “sexual exploitation on the job” it was finally named – “sexual harassment.”<sup>22</sup>

The US was the first state in the world which acknowledged that sexual harassment is a form of discrimination in respect of sex and today it probably is the state which has the most developed and complicated legal and institutional apparatus and legal system which regulates complaints on sexual harassment.<sup>23</sup> It was very important that definition of sexual harassment was decided to construct from a victim’s perspective and in relate the matter to sex discrimination,<sup>24</sup> as it was established that sexual harassment occurs because of a person’s sex, i.e. sex discrimination. „The issue cuts across several important fault lines of gender inequality, and two different policy dimensions intersect on it: violence against women and

---

<sup>21</sup> Susan Brownmiller, *In Our Time: Memoir of a Revolution*, New York: The Dial Press, 1999, pp. 279-294.

<sup>22</sup> Ibid, p. 281.

<sup>23</sup> Reva B. Siegel, *Directions in Sexual Harassment Law*, in Catharine A. MacKinnon & Reva B. Siegel, *A Short History of Sexual Harassment*, (eds.), Forthcoming Yale Press, 2003, pp. 1-28.

<sup>24</sup> Kathrin Zippel, *The European Union 2002 Directive on Sexual Harassment: A feminist success?*, Palgrave Macmillan, Comparative European Politics, 2009, Vol. 7, No. 1, pp. 140-141.

gender discrimination at work.”<sup>25</sup> Sexual harassment can be manifested as a single or multiple encounters at work of a sexual condition (Quid pro Quo type) or as pervasive or continuing condition which makes the work environment unbearable (hostile environment type).<sup>26</sup> This way the elements of sexual harassment as an unlawful act were created and they always are a part of its definition. This was a very important undertaking in shaping the legal background on sexual harassment.

Meanwhile in the EU, there was no direct notion of sexual harassment as a separate negative phenomenon. Although, the principle of equal pay for equal work for men and women was a weak, almost unnoticeable standard from the human rights perspective, it still was a very important start for the recognition and protection of fundamental human rights by EU law. Initially equal opportunities and non-discrimination were also promoted through so-called soft-law measures. “Community intervention was always tangential and rested on the shaky foundation of the provision for equal pay contained in Article 119 [of the European Economic Community Treaty (hereafter: EEC Treaty)], inserted at the behest of the French, afraid of unfair competition from Member States with less generous provisions. On this slender foundation the Commission has been able to build by successive Community programmes.”<sup>27</sup> The equality of opportunity became the EU’s fundamental social policy.<sup>28</sup>

In the beginning the EU non-discrimination law was developing mainly through case law, as the Court of Justice of the EU (hereafter: CJEU) gradually “cajoled the main political actors into accepting human rights as a key element of the EU constitutional framework.”<sup>29</sup> Consequently, determination that human rights are the forefront policy of the EU was an

---

<sup>25</sup> Ibid, p. 141.

<sup>26</sup> Catharine A. MacKinnon, *Sexual Harassment of Working Women: A case of Sex Discrimination*, New Haven and London, Yale University Press, 1979, pp. 32-47.

<sup>27</sup> Carol Harlow, *A Community of Interests? Making the Most of European Law*, *The Modern Law Review*, Vol. 55, Issue 3, 1992, p. 344.

<sup>28</sup> Evelyn Ellis, Philippa Watson, *EU Anti-Discrimination Law*, Second Edition, Oxford University Press, 2012, p. 24.

<sup>29</sup> G. de Burca, *The Road Not Taken: The European Union as a Global Human Rights Actor*, *American Journal of International Law*, 2011, vol. 105, no.4, p. 650.

important step towards acknowledging that sexual harassment is a socially important problem and distinguishing it as a human rights violation, as discrimination on the grounds of sex, as a labor discipline violation, as a misdemeanor, and finally – as illegal conduct across the EU. Albeit at first EU adopted only non-binding recommendations, it still succeeded in influencing several member states to implement laws protecting against sexual harassment.<sup>30</sup>

For a long time it was debated how to distinguish sexual harassment: whether it should be regarded as a violation of a person's dignity, or as violent sexual offence, or as workplace discrimination, etc.<sup>31</sup> However, in the EU sexual harassment was initially defined as the violation of dignity. Notwithstanding this, the nature of sex discrimination in a sexual harassment act is clear<sup>32</sup> and it also was later embedded in the Directive that sexual harassment is sex discrimination.

In 2002, sexual harassment was finally directly defined within the EU by the Directive **2002/73/EC**:

*“sexual harassment: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”*<sup>33</sup>

Later, in the Recast Directive 2004/113/EC, the definition of sexual harassment remained unchanged.<sup>34</sup> The concept that sexual harassment is a violation of dignity is considered a “particularly “European” notion.”<sup>35</sup> What is also important, this Directive

<sup>30</sup>Kathrin S. Zippel, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006, p. 82-86.

<sup>31</sup>Paulius Veršekys, *Some Regulation Problems of Criminal Amenability of Sexual Harassment in the Republic of Lithuania* [Baudžiamosios atsakomybės už seksualinį priekabiavimą reglamentavimo lietuvoje problemos], Teisė, No.68, 2008.

<sup>32</sup>Ibid, pp. 186-198.

<sup>33</sup>Council Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

<sup>34</sup>European Parliament and Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

<sup>35</sup>Kathrin S. Zippel, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006, p. 82-86.

established that sexual harassment is to be “deemed to be discrimination on the grounds of sex and therefore prohibited.”<sup>36</sup> Violation of men and women’s equality is considered to be gender-based discrimination which is a violation of the fundamental human rights. Thus, in every occurrence of sexual harassment, gender equality and dignity is infringed. “Linking sexual harassment to sex discrimination was crucial”,<sup>37</sup> as it helped to link sexual harassment not only to individual manifestation, but also as a systematic discrimination of mainly women as a group.

It is consequential to note that the definition of sexual harassment in this Directive requires the result – “creating an intimidating, hostile, degrading, humiliating or offensive environment.”<sup>38</sup> Such requirement shows that to prove the gravity and negative conduct of sexual harassment has to be systematic.

Establishing legal understanding and regulation on sexual harassment in the EU was important for three main reasons. Firstly, establishing the definition of sexual harassment was important, as it defines the scope of the conduct in the workplace or in education institution. Secondly, it may prevent a possible perpetrator from sexually harassing another person knowing that crossing these boundaries is illegal. Thirdly, legal acts usually reflect the conduct which is socially and legally not acceptable or there is a need for legal regulation certain social relationships.

Notwithstanding all the positive influences brought by bringing up the concept of sexual harassment and defining it as a legally binding provision, the problems of

---

<sup>36</sup> Council Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, art. 2(3).

<sup>37</sup> Kathrin S. Zippel, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006, p. 51.

<sup>38</sup> Council Directive 2002/73/EC Of The European Parliament And Of The Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, art. 2(2).

effectiveness and lack of clarity in the definition or to some extent not agreeing on the scope of the definition remain. What is more, there are no reliable statistics on sexual harassment within the EU,<sup>39</sup> as it is highly latent offense.<sup>40</sup> Thus, “[r]esearch on sexual harassment is still in its infancy”<sup>41</sup> even today. These and other problems will be discussed in more detail in the subsequent chapters.

## 1.2. Legal instruments and their influences: chronological review

Once the term “sexual harassment” was coined, the law on this negative phenomenon started to also develop in Canada, Australia and a few separate European countries like the United Kingdom (hereafter: the UK) in the 1980s. However, the first legal issues particularly on sexual harassment in the EU literature were raised only in the end of the XX cent., after the European Commission announced the official results of the research in 1987, where it was concluded that sexual harassment in the workplace is a wide spread problem.<sup>42</sup> Based on this, the European Commission initiated a few laws in 2000, however, the legal development process was very slow and the results were very minimal, as the first legal acts on sexual harassment by the EU were only of a recommendation nature.<sup>43</sup>

Notwithstanding this, when the term sexual harassment was being coined and the first case law emerged in the US, the first legislation on sex discrimination was passed in the EU

---

<sup>39</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity*, Equal Treatment Legislation, European Network Of Legal Experts In The Field Of Gender Equality, p. 7.

<sup>40</sup> European Union Agency for Fundamental Rights, *Violence against women: an EU-wide survey. Results at a glance*, Publications Office of the European Union, 2014, <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-results-glance> (last accessed 25 March 2015).

<sup>41</sup> Sandy Welsh, *Gender and Sexual Harassment*, Annual Review of Sociology, Vol. 25 (1999), pp. 169-190.

<sup>42</sup> James Morgan, et al., *Sexual Harassment in the European Union: the Dawning of a New Era*, S.A.M. Advanced Management Journal, 2004.

<sup>43</sup> Ibid.

in 1976 without direct notion of sexual harassment. As a starting point towards equal treatment, the EU Council adopted the Directive **76/207/EEC** promoting and regulating the equal treatment for men and women, banning any direct or indirect discrimination on the grounds of sex, establishing women protection and the principle of working conditions.<sup>44</sup> Along with this Directive, quite a few judgments by the European Court of Justice (hereafter: ECJ; currently CJEU) were issued which started to elaborate the equality and non-discrimination question.<sup>45</sup> Although there was still no direct definition or specific approach on sexual harassment, it was the first step towards it.

This first EU legislation can be seen as a foundation for the EU to have a focus not only on the “market integration model”, but also start giving some tribute to the “social citizenship model”<sup>46</sup>, which pushed the EU and the CJEU in particular to have more focus on human rights. It also influenced the adoption of the Social Action Programme in 1974<sup>47</sup> which contributed to the EU’s social policy. The EU was developing its non-discrimination approach gradually. Adoption of the Community Charter of Fundamental Social Rights of Workers (hereafter: Social Charter of Workers)<sup>48</sup> after 1986 Single European Act (hereafter: SEA) had become a platform of human rights protection in the workplace, since it was “seen as a political instrument containing “moral obligations” whose object is to guarantee that

---

<sup>44</sup> Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

<sup>45</sup> Sarah Haverkort-Speekenbrink, *European Non-Discrimination Law. A Comparison of EU Law and ECHR in the Field of Non-Discrimination and Freedom of Religion in Public Employment with an Emphasis on the Islamic Headscarf Issue*, School of Human Rights Research Series, Intersentia, Cambridge-Antwerp-Portland, Vol. 59, 2012, pp. 32-33.

<sup>46</sup> See Sarah Haverkort-Speekenbrink, *European Non-Discrimination Law. A Comparison of EU Law and ECHR in the Field of Non-Discrimination and Freedom of Religion in Public Employment with an Emphasis on the Islamic Headscarf Issue*, School of Human Rights Research Series, Intersentia, Cambridge-Antwerp-Portland, Vol. 59, 2012, pp. 30-33.

<sup>47</sup> Council Resolution of 21 January 1974 concerning a social action programme, OJ C 13 of 12 February 1974.

<sup>48</sup> The Community Charter of Fundamental Social Rights for Workers. European File 6/90, May 1990, <http://www.eesc.europa.eu/resources/docs/community-charter--en.pdf> (last accessed 5 February 2015).



certain social rights are respected in the countries concerned”.<sup>49</sup> It still did not contain a separate notion of sexual harassment, but it promoted a non-discriminative working environment by “[ensuring] equal treatment, [...] [combatting] every form of discrimination, including discrimination on grounds of sex [...]”.<sup>50</sup>

Reviewing the EU documents above, it can be sensed that the EU was getting closer to establishing the legal direct definition of sexual harassment. In fact, “in 1987, Michael Rubenstein wrote for the European Commission a report on “The Dignity of Women at Work” and encouraged the adoption of a European Directive that would define sexual harassment.”<sup>51</sup> Subsequently, in 1988 the Council adopted a Resolution by the Advisory Committee on Equal Opportunities between Women and Men which acknowledged the gravity of sexual harassment and “unanimously recommended that there should be a recommendation and code of conduct on sexual harassment in the workplace covering harassment of both sexes [...]”.<sup>52</sup>

As a follow up to the Resolution, the European Commission adopted the Commission code of practice on sexual harassment.<sup>53</sup> This was distributed to the employers in the public and private sectors, trade unions and employees in the Member States as recommendations on how to prevent sexual harassment, guarantee faster procedures to solve this problem, etc.<sup>54</sup> The addressees of this document are not only employers, but also employees, i.e. working men and women who were encouraged to respect one another on the basis of gender equality and human integrity.

<sup>49</sup> The EU Official website Europa, [http://europa.eu/legislation\\_summaries/glossary/social\\_charter\\_en.htm](http://europa.eu/legislation_summaries/glossary/social_charter_en.htm) (last accessed 05 February 2015).

<sup>50</sup> The Community Charter of Fundamental Social Rights for Workers. European File 6/90, May 1990, <http://www.eesc.europa.eu/resources/docs/community-charter--en.pdf> (last accessed 5 February 2015).

<sup>51</sup> Michael Rubenstein, *The Dignity of Women at Work: A Report on the Problem of Sexual Harassment in the Member States of the European Communities*, Office for Official Publications of the European Communities, 1988.

<sup>52</sup> Council Resolution of 29 May 1990 on the protection of the dignity of women and men at work, OJ C 157 of 27 June 1990.

<sup>53</sup> Commission code of practice on sexual harassment OJ L 49 of 24 February 1992].

<sup>54</sup> The EU Official website EUR-Lex for Summaries of EU legislation, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:c10917a> (last accessed 5 February 2015).

Going further, the EU adopted the Commission Recommendation **92/131/EEC**,<sup>55</sup> which finally introduced the direct notion and definition of sexual harassment taken from the aforementioned Resolution by recommending to the Member States “to take action to promote awareness that conduct of a sexual nature or other conduct based on sex and affecting dignity, is unacceptable.”<sup>56</sup> The Recommendation defined sexual harassment as an “unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work (1). This can include unwelcome physical, verbal or non-verbal conduct.”<sup>57</sup>

The aim of this Recommendation was to seek a deeper view on the problem of sexual harassment and its negative effects. Based on the Recommendation, the employers in the public and private sectors, trade unions and employees were informed what kind of conduct can be described as sexual harassment and it provided them with its definition. It was also recommended to add certain provisions related to sexual harassment in work related documentation, e.g. collective agreements.

It should be noted that the Recommendation was not legally binding and therefore not mandatory for the Member States. However, Member States were still obliged to inform the European Commission through communications in 1996 and 1997 about the measures taken in order to promote the idea of sexual harassment as unacceptable behavior that violates a person’s dignity and that should be considered as an obstacle for effective work environment based on the aforementioned Recommendation.<sup>58</sup> Even though the EU policies and measures

---

<sup>55</sup> The European Commission Recommendation 92/131/EEC of 27 November 1991 on the protection of the dignity of women and men at work OJ L 49 of 24 February 1992.

<sup>56</sup> The EU Official website Europa for Summaries of EU legislation, [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/c1\\_0917a\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c1_0917a_en.htm) (last accessed 5 February 2015).

<sup>57</sup> The European Commission Recommendation 92/131/EEC of 27 November 1991 on the protection of the dignity of women and men at work OJ L 49 of 24 February 1992.

<sup>58</sup> Commission communication of 24 July 1996 concerning the consultation of management and labor on the prevention of sexual harassment at work,

taken in the period between 1990 and 2002 were not directly binding, and “that sexual harassment was perceived as an “American import,” most member states did adopt some laws against sexual harassment.”<sup>59</sup>

The Treaty of Amsterdam of 1997 which came into force in 1999 was a turning point for sexual harassment in the EU domain. It extended the EU competence in the sphere of non-discrimination by including several provisions<sup>60</sup> in the European Community (hereafter: EC) Treaty with the intention to fight the discrimination on the grounds of sex.<sup>61</sup> The Treaty of Amsterdam was also a platform for the Directive which was legally binding and directly protecting against sexual harassment – **2002/73/EC**.<sup>62</sup> This Directive was the first EU binding law which directly embedded the provision on sexual harassment. The aim of this Directive was to harmonize the national legislation of the Member States concerning gender equality and had to be implemented by 5 October 2005.

After the Treaty of Nice of 2001 which came into force in 2003, it was decided to adopt a Directive that would promote gender equality not only in the areas of employment and professional life but also include other areas.<sup>63</sup> This is how Directive **2004/113/EC**<sup>64</sup> implementing the principle of equal treatment between men and women in the access to and supply of goods and services – so-called goods and services Directive – was adopted. Based on this Directive, sexual harassment was prohibited not only in the workplace but also when

---

[http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/c1\\_0917a\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c1_0917a_en.htm) (last accessed 5 February 2015).

<sup>59</sup> Kathrin S. Zippel, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006, p. 83;

<sup>60</sup> European Union, *Treaty on European Union (Consolidated Version)*, Treaty of Amsterdam, 2 October 1997, <http://www.refworld.org/docid/3dec906d4.html> (last accessed 5 February 2015), art. 13.

<sup>61</sup> Sarah Haverkort-Speekenbrink, *European Non-Discrimination Law. A Comparison of EU Law and ECHR in the Field of Non-Discrimination and Freedom of Religion in Public Employment with an Emphasis on the Islamic Headscarf Issue*, School of Human Rights Research Series, Intersentia, Cambridge-Antwerp-Portland, Vol. 59, 2012, p. 34.

<sup>62</sup> European Parliament and Council Directive 2002/73/EC of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

<sup>63</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, para (7).

<sup>64</sup> Ibid.

accessing to and supply of goods and services in the public and private sectors. However, the scope of this Directive is narrowed down, as it cannot be applied to the content of media and advertising or to education.<sup>65</sup>

After adoption of the Recast Directive **2006/54/EC** in 2006,<sup>66</sup> the principle of equal treatment of men and women and the notion of sexual harassment was extended, as it was prohibited not only in the scope of the workplace but also access to employment, vocational training and promotion, and working conditions.<sup>67</sup> The aim of this Directive was to combine EU Directives on equal opportunities into one single instrument at EU level.<sup>68</sup> It also introduced that certain sanctions should apply for sex discrimination and sexual harassment. Therefore, the Member States could implement these provisions in their legal systems with the wider understanding of sexual harassment. In France, the transposition of this Directive was combined with the implementation of other equality directives.<sup>69</sup> In Lithuania, transposition of this Directive increased the lack of transparency at the national level.<sup>70</sup>

Ultimately, Directive **2010/41/EU** was adopted in 2010 which expanded the scope of the previous directives embedding the equal opportunities for men and women by including the prohibition of sexual harassment for self-employed workers, including spouses and life partners of self-employed workers.<sup>71</sup> However, the definition of sexual harassment remained unchanged.

---

<sup>65</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, art. 3(3).

<sup>66</sup> European Parliament and Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

<sup>67</sup> Ibid.

<sup>68</sup> Susanne Burri, Sacha Prechal, The Transposition of Recast Directive 2006/54/EC, European Network Of Legal Experts In The Field Of Gender Equality, European Commission Manuscript, 2009, p. 7, [http://ec.europa.eu/justice/gender-equality/files/2009reportrecastdirectivefinal\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/2009reportrecastdirectivefinal_en.pdf) (last accessed 5 February 2015).

<sup>69</sup> Ibid, p. 5.

<sup>70</sup> Ibid, p. 7.

<sup>71</sup> European Parliament and Council Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180.

The EU binding legislation influenced the Member States to accelerate the implementation and development of the national legislation on sexual harassment. However, there are several specific problems due to implementation or national legislation and general approach concerning sexual harassment. They will be discussed in the subsequent chapters.

## 2. STRENGTHS AND WEAKNESSES OF LEGISLATION ON SEXUAL HARASSMENT

Directive 2002/73/EC was an important step in turning the private matter of the behavior with sexual connotations into a public and political one which also raised public awareness and policy making in the EU and its member states.<sup>72</sup> In addition, it constructed the definition of sexual harassment in a binding legislative act which strengthens the position of the EU to control the member states in legislating sexual harassment. However, since it was left to the member states to deal with prevention, implementation and enforcement of the law on sexual harassment,<sup>73</sup> it has caused several problems in separate member states. These key problems in France and Lithuania and vis-à-vis the EU will be discussed in this chapter.

### 2.1. Legislation and definition of sexual harassment in France and Lithuania

Both France and Lithuania can be named as states that have a quite strong legal basis protecting the legal opportunities of men and women and human rights, including sexual harassment. However, even though the legal instruments establish non-discriminative notions, there is still a number of weak points in implementation of such laws which should be improved. This section will point out the key weaknesses and strengths of French and Lithuanian legal instruments, and the understanding of the sexual harassment definition.

As with any other harassment, sexual harassment affects the quality of life of the victim, and the sexual nuance means that it is even more difficult to talk about it. This reason suggests that the victims of sexual harassment are quite passive in lodging complaints

---

<sup>72</sup> Kathrin Zippel, *Gender Equality Politics in the Changing European Union: The European Union Anti-Discrimination Directive and Sexual Harassment*, Minda de Gunzburg Center for European Studies, Harvard University, Working Paper Series No 134, 2007, p. 3.

<sup>73</sup> Ibid, p. 1.

because they do not trust the about the objective investigation and that she or he will receive remedies, the victims are also not well informs how to protect themselves. What is more, there is an immense tolerance for such behavior in the society. Sexual harassment often is not perceived as a form of sex discrimination but is lost behind other norms preventing victimization.<sup>74</sup>

Equality between women and men is enshrined in the top laws of democratic countries. Under art. 1 of the French Constitution, all citizens are equal before the law.<sup>75</sup> In Lithuania, the equality is enshrined in art. 29 (2) of the Lithuanian Constitution which also states that all persons are equal before the law.<sup>76</sup> Apart from the Constitution, France was among the first countries in Europe to adopt laws directly prohibiting sexual harassment in the workplace. As an EU member state at the time, France included and integrated the direct notion of sexual harassment in its Penal and Labor Codes in 1992 after the Recommendation of the European Commission of 1991 was passed.<sup>77</sup>

The notion of sexual harassment as one of the recourses for victims was art. L. 122-46 of the French Labor Code, which was enforced by Law 92-1179 of 2 November, 1992 on the abuse of power in sexual matters in employment relationships and modification of the labor code and code of criminal procedure. Its wording was as follows:

*No employee shall be sanctioned or dismissed for having submitted or having refused to undergo the acts of harassment from an employer, from its representative, or from any person who, by abusing his or her authority conferred by his or her duties, has given orders, made threats, imposed force, or exercised pressure of any nature on the employee with the*

---

<sup>74</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity*, Equal Treatment Legislation, European Network of Legal Experts in the Field of Gender Equality, 2012, pp. 1-6.

<sup>75</sup> French Constitution of October 4, [1958 Constitution française du 4 octobre 1958].

<sup>76</sup> Constitution of the Republic of Lithuania [Lietuvos Respublikos Konstitucija], State Gazette, 1992, No. 33-1014.

<sup>77</sup> Joelle Hannelajs, Thierry Gillot, *Sexual Harassment Law In France*, International Journal of Discrimination and the Law, Academic Publishers, Great Britain, Vol. 7, 2005, p. 187.

*goal of obtaining favors of a sexual nature for his or her benefit or the benefit of a third party.*<sup>78</sup>

Even if France introduced sexual harassment provision based on the Recommendation of the European Commission, the definition and understanding of it was not taken from the EU. Camille Hébert even called it “Divorcing Sexual Harassment from Sex”. In the above French Labor Code definition, the purpose of the perpetrator specified in the article is to obtain favors of a sexual nature while abusing his/her authority but it does not amount to the sex discrimination.<sup>79</sup>

The other significant change for the purposes of regulation of sexual harassment was enforced, as an outcome of the 2002 “*loi sur la modernization sociale*”, i.e. Social Modernization Act.<sup>80</sup> The wording of the provision on sexual harassment was modified by enforcing Law 2012-954 of August 6, 2012,<sup>81</sup> and the definition laid out in art. L. 1153-1 of the French Labor Code with shortened wording: “*Harassing conduct of any person for the purpose of obtaining sexual favors for him or herself or for a third party is prohibited.*”<sup>82</sup> Art. L. 1153-2 of the French labor code describes the acts of sexual harassment as follows:

*No employee shall suffer acts:*

*1. Either of sexual harassment by words or conduct that is repeated with sexual connotation undermining person’s dignity because of their degrading or humiliating character, or creating an intimidating, hostile or offensive environment;*

---

<sup>78</sup> Camille Hébert, *Divorcing Sexual Harassment from Sex: Lessons from the French*, Duke Journal of Gender Law and Policy, Vol. 21:1, 2013, p. 8.

<sup>79</sup> Ibid, p. 5.

<sup>80</sup> Law 2002-73 of 17 January 2002 [Loi no. 2002-73 du 17 janvier 2002 de modernisation sociale], Journal Officiel de la République Française, 18 January, 2002.

<sup>81</sup> Law No. 2012-954 of 6 August 2012 Concerning Sexual Harassment [LOI no. 2012-954 du 6 août 2012 relative au harcèlement sexuel (1)], art. 7, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026263463&categorieLien=id> (last accessed 19 March 2015).

<sup>82</sup> French Labor Code, Title V: Harassment, Chapter III: Sexual Harassment [Code du travail, Titre V : Harcèlements, Chapitre III : Harcèlement sexuel], Article L1153-1, [http://www.legifrance.gouv.fr/affichCode.do?sessionId=3FF9012EA89EA476AFE6E271BD48602E.tpdila17v\\_1?idSectionTA=LEGISCTA000006177846&cidTexte=LEGITEXT000006072050&dateTexte=20080529](http://www.legifrance.gouv.fr/affichCode.do?sessionId=3FF9012EA89EA476AFE6E271BD48602E.tpdila17v_1?idSectionTA=LEGISCTA000006177846&cidTexte=LEGITEXT000006072050&dateTexte=20080529) (last accessed 24 March 2015).



2. Or similar sexual harassment, consisting of all forms of serious pressure, even non-repeated exercised in the real or apparent purpose of obtaining sexual favors for the benefit of the perpetrator or to a third party.<sup>83</sup>

As Camille Hébert notes, this change of the wording was aimed to broaden the definition of sexual harassment and to harmonize the notion with the French Penal Code, which was impacted with several changes as well.<sup>84</sup> The aim of sexual harassment is emphasized as in the original wording; however, it is important that it does not refer to abuse of authority as the mandatory element and the attempt to obtain favors of a sexual nature is enough to constitute sexual harassment.<sup>85</sup> This is an important improvement concerning the understanding of sexual harassment, as in the previous version the abuse of power was always an obligatory criterion.<sup>86</sup>

Based on the above, there were two main modifications of art. L. 122-46 concerning sexual harassment in the French Labor Code. The original wording of 1992 was modified after the Social Modernization Act by enforcing Law No. 2002-73 of 17 January 2002, when it had to be harmonized with the changes in the French Penal Code, and later it was repealed by the Ordinance No. 2007-329 of 12 March 2007, which came into force on 1 March 2008 and was part of the Constitutional reform of 2008 in France.<sup>87</sup>

---

<sup>83</sup> Sabine Haddad, *Redefinition of Sexual Harassment: an offense under large since Law No. 2012-954 of 6 August 2012* [Redefinition du harcèlement sexuel : un délit au sens large depuis la Loi N°2012-954 du 6 août 2012], Legal Article, published 17 August 2012 <http://www.legavox.fr/blog/maitre-haddad-sabine/redefinition-harcèlement-sexuel-délit-sens-9251.htm#.VQhwO47F9H4> (last accessed 18 March 2015).

<sup>84</sup> Camille Hébert, *Divorcing Sexual Harassment from Sex: Lessons from the French*, Duke Journal of Gender Law and Policy, Vol. 21:1, 2013, p. 8.

<sup>85</sup> Joelle Hannelajs, Thierry Gillot, *Sexual Harassment Law In France*, International Journal of Discrimination and the Law, Academic Publishers, Great Britain, Vol. 7, 2005, p. 188.

<sup>86</sup> Ibid.

<sup>87</sup> French Labor Code, Former legislative part, Book I on work-related Conventions, Title II on Employment contract, Chapter II on Specific Rules Work Contract, Section 8 on Harassment [Code du travail, Partie législative ancienne, Livre Ier : Conventions relatives au travail, Titre II : Contrat de travail, Chapitre II : Règles Propres au Contrat de Travail, Section 8 : Harcèlement] <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006646188&cidTexte=LEGITEX T000006072050&dateTexte=20040626> (last accessed 14 March 2015).

After sexual harassment was criminalized in France by enactment of Law no. 92-684 of 22 July 1992,<sup>88</sup> the country reformed the provisions of the Penal Code on the punishment of offences against the person. It was then amended by two other laws of 17 June 1998 and 17 January 2002.<sup>89</sup> Here the definition of sexual harassment described acts by which it is committed and the perpetrator who has authority over the victim. By that time the French Penal Code defined sexual harassment as “[t]he act of harassing another person by using orders, threats or force with the goal of obtaining favors of a sexual nature by a person abusing the authority granted by their duties.”<sup>90</sup> Later this provision was amended introducing a new sexual harassment definition by Law no. 98-468 of 17 June 1998 on the prevention and punishment of sexual offences and the protection of minors. The new definition amended the wording of acts by which sexual harassment is committed (“by issuing orders, uttering threats, using force or exerting serious pressure”). It did not strengthen the definition and did not make it clearer. Even though the direct binding regulation of sexual harassment in France was ahead of such EU regulation, the definition is quite imprecise. As Abigail Saguy points out, neither of the definitions provided in the French Labor and Penal Codes recognized the so-called ‘hostile environment sexual harassment’, i.e. sexual harassment among colleagues who are at the same level or position at work, the mention of the employer liability is vague as well.<sup>91</sup> The restrictive notion of sexual harassment in France also reduces the protection of victims from sexual harassment in the workplace when such behavior occurs between colleagues in non-hierarchical relationships.

<sup>88</sup> Loi 92-684 of 22 July 1992 portant réforme des dispositions du code pénal relatives à la répression des crimes et délits contre les personnes [Law 92-684 of July 22, 1992 concerning the reform of the penal code relative to the prosecution of crimes against persons], Journal Officiel de la République Française 23 July, 1992.

<sup>89</sup> Sabine Haddad, *Redefinition of sexual harassment: an offense under sarge since Law No. 2012-954 of August 6, 2012* [Redefinition du harcèlement sexuel : un délit au sens sarge depuis la Loi N°2012-954 du 6 août 2012], Legal Article, published 17 August 2012 <http://www.legavox.fr/blog/maitre-haddad-sabine/redefinition-harcèlement-sexuel-délit-sens-9251.htm#.VQhwO47F9H4> (last accessed 18 March 2015).

<sup>90</sup> Conseil Constitutionnel Decision no. 2012-240 QPC of 4 May 2012, Mr Gérard D. [Definition of the offence of sexual harassment].

<sup>91</sup> Abigail Saguy, *National Specificity in an Age of Globalization: Sexual Harassment Law in France*, Contemporary French and Francophone Studies, Vol. 8, No. 4, 2004, p. 429.

The definition of sexual harassment was once again amended by Law no. 2002-73 of 17 January 2002 on social modernization. This amendment introduced the definition which was challenged in the *Conseil Constitutionnel* case<sup>92</sup> with the wording “*The act of harassing another person with the goal of obtaining favors of a sexual nature shall be punished by a term of one year's imprisonment and a fine of 15,000 Euros.*”<sup>93</sup>

After re-introducing the notion of sexual harassment in the French Penal Code, the French Parliament adopted a new law – Law No. 2012-954 – giving a new definition to sexual harassment as a criminal offence, which increased the sanctions against it and prescribed new preventative and protective measures on the issue.<sup>94</sup> Sexual harassment currently is split into two offenses and re-defined as:

*I. Sexual harassment is an act imposing on someone, in a repeated way, behaviors or remarks with a sexual connotation which denigrate the dignity of the person because it is degrading and humiliating, or by creating an intimidating, hostile or offensive situation.*

*II. It, the use of any kind of serious pressure, amounts to sexual harassment, even if unrepeated, with the real or apparent goal to obtain sexual favors, no matter if this act is for the perpetrator's benefit or for a third person's benefit. The mentioned facts are punished by 2 years of jail and EUR 30,000 fine.*

*III. These sentences can be extended up to 3 years of jail and EUR 45,000 fine if acts are committed.*<sup>95</sup>

The evolution of the definition of sexual harassment in France shows the direct relation between its Penal and Labor Codes, as the Labor Code was amended in order to stay in correlation with the Penal Code. The definition became shorter and less descriptive, including only the act of sexual harassment and its goal, but not adding the “how” and “who” commits

<sup>92</sup> The case of *Conseil Constitutionnel* on the constitutionality of the provision of sexual harassment will be discussed in the subsequent section.

<sup>93</sup> Conseil Constitutionnel Decision no. 2012-240 QPC of 4 May 2012, Mr Gérard D. [Definition of the offence of sexual harassment].

<sup>94</sup> Bryan Cave, *A New Law on Sexual Harassment in France*, Labor & Employment Client Service Group, Briefing, Client Bulletin, Paris, 2012, <http://www.bryancave.com/files/Publication/674affd9-55b3-4ac5-b253-0dd3d1d27cda/Presentation/PublicationAttachment/6cbd179d-3b28-4f1c-abce-1a56e96fc5d8/ClientAlertHarc%C3%A8lementENG.pdf> (last accessed 18 March 2015).

<sup>95</sup> Law No. 2012-954 of 6 August 2012 Concerning Sexual Harassment [LOI no. 2012-954 du 6 août 2012 relative au harcèlement sexuel (1)], art. 1, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026263463&categorieLien=id> (last accessed 19 March 2015).

it. However, the strength of it is that it broadens the possibility to interpret the notion of sexual harassment as it loses its obligatory criteria of abusing authority. Also the influence of the EU approach is obvious – French Penal Code provision explicitly enshrines dignity as protected value.

Several years later than France, following the re-gaining of independence, Lithuania established the Office of the Equal Opportunities Ombudsperson in 1999, whose legal basis stems from the Law on Equal Opportunities between Women and Men<sup>96</sup> passed in 1998 and which came into force in 1999. It directly prohibited sexual harassment for the first time. Subsequently, the Equal Opportunities Act<sup>97</sup> was adopted in 2003. These two statutes on equal opportunities are the main laws which define sexual harassment (directly by the former Act and indirectly but as one of the grounds of discrimination in the former) and consider it as a form of discrimination.

There are also other national laws in Lithuania regulating sexual harassment either establishing a direct provision on sexual harassment (Criminal Code,<sup>98</sup> Labor Code,<sup>99</sup> Military Discipline Statute (art. 88)<sup>100</sup>) or leaving it as a form of discrimination on the grounds of sex (Civil Code,<sup>101</sup> Code of Administrative Offences<sup>102</sup>). I will compare the differences and similarities of the notion and definition of sexual harassment established in

<sup>96</sup> Law on Equal Opportunities of Women and Men [Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas], State Gazette No. 112-3100, 1998,

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478625](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625) (last accessed 25 March 2015).

<sup>97</sup> Equal Opportunities Act [Lietuvos Respublikos Lygių galimybių įstatymas], State Gazette No. 114-5115, 2003, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=454179](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179) (last accessed 25 March 2015).

<sup>98</sup> Criminal Code of the Republic of Lithuania [Lietuvos Respublikos Baudžiamasis kodeksas], 2000, No. 89-2741, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493995](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493995) (last accessed 12 March 2015).

<sup>99</sup> Labor Code of the Republic of Lithuania [Lietuvos Respublikos Darbo kodeksas], 2002, No. 64-2569, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493843](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493843) (last accessed 15 March 2015).

<sup>100</sup> Military Discipline Statute of the Republic of Lithuania, [Lietuvos Respublikos Kariuomenės drausmės statutas], 1999, No. 51-1635, <https://www.e-tar.lt/portal/lt/legalAct/TAR.2690D2FE2A35> (last accessed 12 March 2015).

<sup>101</sup> Civil Code of the Republic of Lithuania (Lietuvos Respublikos Civilinis Kodeksas), State Gazette, 2000, No. 74-2262, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493999](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493999) (last accessed 12 March 2015).

<sup>102</sup> Code of Administrative Offences of the Republic of Lithuania [Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas], Government Gazette, 1985, No. 1-1, i. k. 0841010KODE00X-4449, Latest Editing Bulletin of 1 January 2015 [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493978](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493978) (last accessed 12 March 2015).

France to Lithuania's main statutes: Law on Equal Opportunities between Women and Men, Labor Code and Criminal Code.

Conversely to France, the Lithuanian Labor Code neither defines sexual harassment, elaborates the acts which constitute sexual harassment, nor does it explicitly provide how the employer is responsible if an employee was sexually harassed in the workplace. Under art. 235 of the Lithuanian Labor Code, sexual harassment is considered to be a grave breach of Rules of Procedure.<sup>103</sup> The Law on Equal Opportunities between Women and Men and Equal Opportunities Ombudsperson recommendations provide some guidelines how an employer should guarantee equal working conditions for men and women without sexual harassment.

Lithuanian Law on Equal Opportunities between Women and Men defines sexual harassment as *“unwanted offensive verbal, written or physical conduct of a sexual nature towards a person when such conduct is with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”*<sup>104</sup>

Similarly to the French sexual harassment definition in its Labor Code, the main aspect of this article is the perpetrator's purpose to violate the dignity of the sexually harassed person or the conduct has such an effect. Based on the definition, the conduct of the perpetrator has to create a hostile and degrading environment for the victim, as also reflected in the French definition; the conduct has to be unwanted and offensive in order to constitute sexual harassment. In Lithuania, sexual harassment is discrimination on the grounds of sex with the aftermath of the violation of a person's dignity.<sup>105</sup> Based on the Lithuanian approach

<sup>103</sup> Labor Code of the Republic of Lithuania (Lietuvos Respublikos Darbo Kodeksas), State Gazette, 2002, No. 64-2569, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493999](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493999) (last accessed 12 March 2015).

<sup>104</sup> Law on Equal Opportunities of Women and Men, State Gazette No. 112-3100, 1998, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478625](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625) (last accessed 25 March 2015).

<sup>105</sup> Laima Vengalė-Dits, *Methodical recommendations on sexual harassment and sex-based indication to discriminate prevention* [Metodinės rekomendacijos dėl seksualinio priekabiavimo dėl lyties bei nurodymo diskriminuoti prevencijos], Ombudsperson's Office Publication Supporting the State Women and Men Equal Opportunities Program of 2010-2014, 2012.

and definition of sexual harassment, the sexual conduct by the perpetrator has to be unwanted. In France it is not as clear.

In Lithuanian Criminal Code defines sexual harassment as “1. *A person who pursues sexual contact or satisfaction by vulgar or similar conduct, suggestions or hints and this way sexually harassed a person who is by employment or otherwise subordinate, shall be considered to have committed a misdemeanor and shall be punished by a fine or by restriction of liberty or arrest. 2. The liability for the conduct described in the first part for the person shall occur only when there is a complaint lodged by the victim or a statement by the victim’s legally authorized representative or at the request of a prosecutor.*”<sup>106</sup> While the Lithuanian equal opportunities laws do not require the victim of sexual harassment be anyhow subordinate or dependent, i.e. the abuse of authority is not one of the constituent elements; the Criminal Code requires this element in order to amount to this misdemeanor. However, only legally binding subordination or dependency has the legal value on the purpose of this article.<sup>107</sup>

Consequently, I would stress that the main attributes of illegal conduct helping to distinguish sexual harassment which is implemented nationally in France and Lithuania from the universal definition in the Directives, are (1) unwanted behavior, (2) the behavior has to be verbal, non-verbal (written) or physical, (3) the behavior has to be of sexual nature, (4) the behavior must have purpose or effect to violate the dignity of a person, (5) it has to create intimidating, hostile, degrading, humiliating or offensive environment. The element of abusing authority has been left out in the French Penal and Labor Codes while in Lithuanian

---

<sup>106</sup> Criminal Code of the Republic of Lithuania [Lietuvos Respublikos Baudžiamasis kodeksas], Government Gazette, 2000, No. 89-2741, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=494077](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=494077) (last accessed 24 March 2015).

<sup>107</sup>Paulius Veršekys, *Some Regulation Problems of Criminal Amenability of Sexual Harassment in the Republic of Lithuania* [Baudžiamosios atsakomybės už seksualinį priekabiavimą reglamentavimo lietuvoje problemos], Teisė, 2008, No.68, p. 190.

Criminal Code there is the requirement that a victim is subordinate on the perpetrator either by labor relation or any other relation.

The main difference on the understanding of the notion of sexual harassment in France and Lithuania is that in France the approach to sexual harassment is not related to sex discrimination but with the purpose to protect a person from sexual violence, and protecting a person's dignity.<sup>108</sup> In Lithuania, on the other hand, the definition of sexual harassment relates to sex discrimination as well as the harm to person's dignity.<sup>109</sup> However, in France, after introducing the new sexual harassment definition in 2012, the hierarchical status between the victim and perpetrator was dropped in both Labor and Penal Codes and include the "hostile environment" approach between persons in the same position or level at work.<sup>110</sup>

## **2.2. Legislation in Lithuania and France vis-à-vis the EU**

Sexual harassment laws are a great success of the feminists not only in the US but also in Europe. Various women's organizations focused on gender equality issues and sexual harassment in particular were pushing the national governments and even at the EU level to adopt laws prohibiting sexual harassment in the workplace. In France, the European Association against Violence towards Women at Work (hereafter: AVFT) even "employed a

---

<sup>108</sup> Abigail Saguy, *National Specificity in an Age of Globalization: Sexual Harassment Law in France*, Contemporary French and Francophone Studies, Vol. 8, No. 4, 2004, p. 429.

<sup>109</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity*, Equal Treatment Legislation, European Network of Legal Experts in the Field of Gender Equality, 2012, pp. 174-176

<sup>110</sup> Bryan Cave, *A New Law on Sexual Harassment in France*, Labor & Employment Client Service Group, Briefing, Client Bulletin, Paris, 2012, <http://www.bryancave.com/files/Publication/674affd9-55b3-4ac5-b253-0dd3d1d27cda/Presentation/PublicationAttachment/6cbd179d-3b28-4f1c-abce-1a56e96fc5d8/ClientAlertHarc%C3%A8lementENG.pdf> (last accessed 18 March 2015).

strategy that not only pressured its government to reform both its penal code and labor laws but also seek legal reform in the EU.”<sup>111</sup>

Understanding the definition of sexual harassment in France and Lithuania and all the differences and similarities of approach to how to legally deal with it, we can now see how the implementation and enforcement of the laws is also subject to different national influences even though both states currently are member states of the EU. Unavoidably both states exist within the context of the EU law and are obliged to comply with it. Directive 2002/73/EC and later the Recast Directive 2006/54/EC with all their strength to introduce a universal and strong definition have an important limitation – it was left to the EU member states to prevent, implement and enforce the laws covering sexual harassment.<sup>112</sup>

As for France, it had its own approach other than in the EU but over time it was highly influenced by EU law in respect to discrimination, but it established the approach and definition of sexual harassment from a different perspective than the EU.<sup>113</sup> In Lithuania, as mentioned above, there are two statutes covering sexual harassment as an illegal conduct – the Law on Equal Opportunities between Women and Men of 1998 and the Equal Opportunities Act of 2003 – concerning equality between women and men and other grounds of discrimination. This might cause issues of double coverage, clarity and legal certainty.<sup>114</sup> Having two parallel non-discrimination statutes could be perceived positively, however double coverage can be problematic when it comes to lodging complaints and examining them. It is also important to note that in the Lithuanian definition of sexual harassment

<sup>111</sup> Kathrin Zippel, *Transnational Advocacy Networks and Policy Cycles in the European Union: The Case of Sexual Harassment*, Oxford University Press, Social Politics, Vol. 11, No. 1, 2004, p. 69.

<sup>112</sup> Kathrin Zippel, *Gender Equality Politics in the Changing European Union: The European Union Anti-Discrimination Directive and Sexual Harassment*, Minda de Gunzburg Center for European Studies, Harvard University, Working Paper Series No 134, 2007, p. 1.

<sup>113</sup> Loic Lerouge, Camille Hébert, *The Law of Workplace Harassment of the United States, France, and the European Union: Comparative Analysis After the Adoption of France's New Sexual Harassment Law*, Comparative Labor Law & Policy Journal, Workplace Prof, Vol. 35:93, 2013, p. 102.

<sup>114</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity*, Equal Treatment Legislation, European Network of Legal Experts in the Field of Gender Equality, 2012, p. 175.



established in the Law on Equal Opportunities between Women and Men being identical to the definition provided in the Directives 2002/73/EC and 2006/54/EC, is interpreted differentially because “Lithuanian law requires proving the sexual nature of the purpose but not the sexual nature of the conduct.”<sup>115</sup>

As Kathrin Zippel correctly points out, Directives are differently implemented and it depends whether a state will choose the approach to sexual harassment “as a gender-specific injustice that happens to women as women, based on sex [or it is possible that] [t]he notion of violation of dignity is not gender-specific and can encompass violations [as France originally enforced] of health and safety regulations or criminal and penal codes ... [w]hen laws apply gender-neutral concepts [as France did until the latest modification of law in 2008] they can ignore gender differences in perceptions and reactions to sexual harassment.”<sup>116</sup>

When reviewing the national legislation of France and Lithuania, a tendency to follow EU legislation and implement it in Lithuania is noticeable, and there is rather reluctant attitude in France. Either way, “... EU-wide definition [of sexual harassment] is useful because it works across (national) cultures.”<sup>117</sup> Such a definition, according to Kathrin Zippel, is binding more strongly to member states, as while not outlawing specific behaviors that differ in different cultures (in one country touching can be perceived as normal behavior and insulting in another), it is applicable widely. Therefore, the EU’s definition applies two criteria: it takes the victim’s perspective to tell which behavior is not acceptable and

---

<sup>115</sup> Ibid.

<sup>116</sup> Kathrin Zippel, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006, p. 20.

<sup>117</sup> European Commission Directorate-General for Justice Unit, Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity, Equal Treatment Legislation, European Network of Legal Experts in the Field of Gender Equality, 2012, p. 11.

unwanted, and sexual harassment has to create an environment which is negative to the victim.<sup>118</sup>

Generally there are issues when implementing EU Directives on discrimination and particularly on sexual harassment – Directive 2002/73/EC, Directive 2004/113/EC, and Recast Directive 2006/54/EC – into the national law. Also, “[m]ost countries have implemented the rules through specific anti-discrimination legislation, often with a broader scope than the provisions of the Directives.”<sup>119</sup>

The attributes of the acts which constitute sexual harassment are transposed to the Lithuanian definition of sexual harassment basically word for word. Although the definition in Lithuanian Criminal Code is influenced more by the national understanding of sexual harassment and approach that the criminal law should deal only with the more restrictive notion. The French definition seems to resist the exact wording. The French notion of sexual harassment originates with the legislator’s purpose to protect and ensure health and safety in the workplace,<sup>120</sup> as it was not defined as sex discrimination.<sup>121</sup> But it could be interpreted that the protection of safety and health in the workplace stems from the Treaty of Lisbon (art. 151) where it states that “... the Member States ... shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, proper social protection,

---

<sup>118</sup> Kathrin Zippel, *Gender Equality Politics in the Changing European Union: The European Union Anti-Discrimination Directive and Sexual Harassment*, Minda de Gunzburg Center for European Studies, Harvard University, Working Paper Series No 134, 2007, p. 5.

<sup>119</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity, Equal Treatment Legislation*, European Network of Legal Experts in the Field of Gender Equality, 2012, p. 1.

<sup>120</sup> Loic Lerouge, Camille Hébert, *The Law of Workplace Harassment of the United States, France, and the European Union: Comparative Analysis After the Adoption of France’s New Sexual Harassment Law*, *Comparative Labor Law & Policy Journal*, Workplace Prof, Vol. 35:93, 2013, p. 111.

<sup>121</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity, Equal Treatment Legislation*, European Network of Legal Experts in the Field of Gender Equality, 2012, p. 101.

dialogue between management and labor, the development of human resources with a view to lasting high employment and the combating of exclusion.”<sup>122</sup>

Subsequently, implementation of EU law into the national law takes several issues to be dealt with. Originally, sexual harassment was not related to discrimination in the French national law,<sup>123</sup> what is more it took two formal notices and a reasoned opinion issued the EU Commission in order to induce France to change its approach to a more EU approach friendly and correctly implement the EU Directives on discrimination and equal treatment (2000/78/EC and 2000/43/EC).<sup>124</sup>

Implementation of the EU’s definition and approach on dealing with sexual harassment in the workplace is bringing several other problems, as the existing weaknesses of the Directives are taken over as well. Even though the EU left member states to decide whether to criminalize sexual harassment, France and Lithuania have included this provision in their Penal/Criminal Codes. It shows acknowledgement that the problem of sexual harassment as a conduct in the workplace is negative and should be eliminated.

### 2.3. Constitutional Council of France on sexual harassment

4 May 2012 was a fatal day for sexual harassment provision in the French Penal Code after the *Conseil Constitutionnel*’s decision to declare it unconstitutional and revoke it altogether. The vague nature of the provision of sexual harassment was challenged in front of

---

<sup>122</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ EU C 306, art. 151.

<sup>123</sup> Camille Hebert, *Divorcing Sexual Harassment from Sex: Lessons from the French*, Duke Journal of Gender Law and Policy, Vol. 21:1, 2013, p. 16.

<sup>124</sup> Loic Lerouge, Camille Hébert, *The Law of Workplace Harassment of the United States, France, and the European Union: Comparative Analysis After the Adoption of France’s New Sexual Harassment Law*, Comparative Labor Law & Policy Journal, Workplace Prof, Vol. 35:93, 2013, p. 103.

the *Conseil* in 2012 when the *Cour de Cassation* (Cassation Court, criminal chamber) turned to the *Conseil* for a preliminary ruling regarding the compatibility of the Penal Code, art. 222-33 (offence of sexual harassment: “*The act of harassing another person with the goal of obtaining favours of a sexual nature shall be punished by a term of one year's imprisonment and a fine of 15,000 Euros*”) with the French Constitution.<sup>125</sup>

The issue was whether the French Penal Code’s provision on sexual harassment violates the rights and freedoms guaranteed in the Constitution and therefore was unconstitutional. After reviewing the compatibility of the article in the Penal Code with the Constitution, also considering other relevant Acts and observations, the court held that art. 222-33 was unconstitutional and was to be revoked upon publication of the decision in the *Journal Officiel* of the French Republic.<sup>126</sup>

There are two main arguments regarding the challenged provision: the violation of certain legal principles and lack of clarity. Firstly, the arguments brought up in this case stated that the principles that the offences and punishments should be regulated by law, the principles of clarity and precision of the law, and the legal foreseeability and legal certainty were infringed. Secondly, it was argued that this provision does not provide a precise definition of sexual harassment in the Penal Code and lacks the constituent elements which should be the basis for the punishment. As for the clarity principle, based on French law, the *Conseil* in its decision, as a part of the reasoning, pointed out that the legislator has the obligation to both determine the scope of a criminal provision and define the criminal offences in terms that are adequately clear and precise.

The *Conseil*’s decision declaring the definition of sexual harassment unconstitutional and revoking the provision shows, and in a way confirms, that it was not only unclear and

---

<sup>125</sup> Conseil Constitutionnel Decision no. 2012-240 QPC of 4 May 2012, Mr Gérard D. [Definition of the offence of sexual harassment].

<sup>126</sup> Ibid, art. 3.

vague but also ineffective. What is more, challenging the Penal Code's provision regarding sexual harassment reveals that due to missing clarity and constituent elements, the punishment of a perpetrator might be either too harsh or the guilt might not be found at all. Likewise, it seems from the reasoning of the *Conseil* that it might also be harder to protect the fundamental rights of the victim or even of the perpetrator. Thus, it becomes hard to prove guilt or innocence. Both the victim and the perpetrator have a right to know what the crime is. A clearer provision might also act as a preventative measure, i.e. the perpetrator might restrain from committing the crime if he or she knows the elements of it and the possible risks and the victim might get more courage to lodge a complaint with more material proof.

The imprecision of the law and vague provisions might cause the problem of their wrong interpretation in court. Particularly taking into consideration that criminal punishment for committing an offence is the ultimate and most drastic measure and the Criminal Code is the ultimate instrument. Therefore, the law - especially criminal law - should be as precise and clear as possible, so that the punishment is as proportional to the committed criminal offense as possible. There is also a risk that the courts will reproduce the traditional views, myths and stereotypes when interpreting sexual harassment provision and identify wrong elements and issues that are at stake and the impact on court decisions might vary not based on the legal word, but on public or personal opinions.<sup>127</sup> The reasoning and judgement of the court might also vary due to its composition with men as a majority. Thus, there should be no place for imprecise terms in law.

In addition to the above, the *Conseil*'s decision was also criticized for its outcome – art. 222-33 of the Criminal Code was recognized as unconstitutional and therefore immediately inapplicable in ongoing and future sexual harassment cases. Therefore, the consequences of the decision were felt, as it abolished a piece of legislation that was about to be applied in

---

<sup>127</sup> Kathrin S. Zippel, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006, pp. 68-70;

numerous pending cases, including some cases where guilty verdicts had been announced, but the appeal period had not expired. It also led to negative reactions by sexual harassment victims, victims' rights associations and feminists throughout France.<sup>128</sup> During this period when there was no criminal provision on sexual harassment, ongoing or new cases had to be re-qualified as crimes other than sexual harassment where possible.

Moreover, some feminist groups criticized the *Conseil's* decision by calling it a message of impunity aimed at harassers.<sup>129</sup> Even though art. 222-33 of the Criminal Code was not frequently used by victims of sexual harassment, as they generally prefer to litigate in a labor court to get damages, in criminal litigations the prosecutors were forced to continue the cases on other grounds (e.g. intentional violence, attempts to commit sexual offences, etc.).<sup>130</sup> Consequently, the legal void was not unnoticed.

However, the significant impact of the *Conseil's* decision was probably quite unexpected, and in order to make sure that the perpetrators of sexual harassment would not be left unpunished, on 6 August, 2012, the French Parliament adopted a new law (Law No. 2012-954<sup>131</sup>), giving a new definition to the criminal offence of sexual harassment, which increased the sanctions against it and prescribed new preventative and protective measures on the issue.<sup>132</sup> As mentioned in the previous section, sexual harassment in French Penal Code currently is split into two offenses and re-defined as:

---

<sup>128</sup> The Connexion, *Protests as sex pest law scrapped*, France's English-language Newspaper, posted on 7 May, 2012, <http://www.connexionfrance.com/Protest-Conseil-Constitutionnel-sexual-harassment-13671-view-article.html> (last accessed 20 March 2015).

<sup>129</sup> Agnes Aknin Erovic, *Sexual Harassment Criminal Code Provision Repealed for Vagueness*, International Labor & Employment Law Committee Newsletter, Jeantet Associates, Paris, France, 2012 [http://www.americanbar.org/content/newsletter/groups/labor\\_law/int\\_newsletter/ilel\\_news20121/july2012/1207\\_ilelc\\_fra02.html](http://www.americanbar.org/content/newsletter/groups/labor_law/int_newsletter/ilel_news20121/july2012/1207_ilelc_fra02.html) (last accessed 20 March 2015).

<sup>130</sup> Ibid.

<sup>131</sup> Law No. 2012-954 of 6 August 2012 Concerning Sexual Harassment [LOI no. 2012-954 du 6 août 2012 relative au harcèlement sexuel (1)], <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026263463&categorieLien=id> (last accessed 19 March 2015).

<sup>132</sup> Bryan Cave, *A New Law on Sexual Harassment in France*, Labor & Employment Client Service Group, Client Bulletin, Paris, 2012, <http://www.bryancave.com/files/Publication/674affd9-55b3-4ac5-b253->

*I. Sexual harassment is an act imposing on someone, in a repeated way, behaviors or remarks with a sexual connotation which denigrate the dignity of the person because it is degrading and humiliating, or by creating an intimidating, hostile or offensive situation.*

*II. It, the use of any kind of serious pressure, amounts to sexual harassment, even if unrepeated, with the real or apparent goal to obtain sexual favors, no matter if this act is for the perpetrator's benefit or for a third person's benefit. The mentioned facts are punished by 2 years of jail and EUR 30,000 fine.*

*III. These sentences can be extended up to 3 years of jail and EUR 45,000 fine if acts are committed.*<sup>133</sup>

In the light of the above and with regards to the *Conseil's* decision and the new sexual harassment provision in the French Penal Code, several questionable issues remain. As for the legal effect of the *Conseil's* decision, and based on art. 62 of the French Constitution,<sup>134</sup> the *Conseil* has the authority to “decide to alter the effects of the decision of unconstitutionality by giving the Parliament a time limit to correct the unconstitutionality ... [and] suspend the unconstitutionality of the statutory provision (meaning that it can still apply) until the unconstitutional statutory provision has been replaced.”<sup>135</sup> In this way the jeopardy of the ongoing cases at the time when the sexual harassment offence was repealed would have been avoided, especially because Law No. 2012-954 cannot be applied retrospectively. Another questionable issue is whether the currently applicable criminal offence of sexual harassment completely satisfies the principles of clarity, precision in the law, legal foreseeability and legal certainty, as the provision still leaves space for incorrect interpretation. On the other hand, the new definition enumerates the fundamental right that has to be violated (dignity) and the outcome of this violation – degrading, humiliating,

---

[0dd3d1d27cda/Presentation/PublicationAttachment/6cbd179d-3b28-4f1c-abce-1a56e96fc5d8/ClientAlertHarc%C3%A8lementENG.pdf](http://0dd3d1d27cda/Presentation/PublicationAttachment/6cbd179d-3b28-4f1c-abce-1a56e96fc5d8/ClientAlertHarc%C3%A8lementENG.pdf) (last accessed 25 November 2014).

<sup>133</sup> Law No. 2012-954 of 6 August 2012 Concerning Sexual Harassment [LOI no. 2012-954 du 6 août 2012 relative au harcèlement sexuel (1)], art. 1,

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026263463&categorieLien=id> (last accessed 19 March 2015).

<sup>134</sup> French Constitution of October 4, [1958 Constitution française du 4 octobre 1958].

<sup>135</sup> Xavier Philippe, *Constitutional Review in France: The Extended Role of the Conseil Constitutionnel Through the New Priority Preliminary Rulings Procedure (QPC)*, Article, University Paul Cézanne (Aix-Marseille III), 2012.

intimidating, and/or a hostile or offensive situation for the victim and this way brings it closer to the EU approach.



### 3. SEXUAL HARASSMENT IN DIFFERENT BRANCHES OF LAW

One of the harshest violations of the fundamental human rights is violence against a person. Sexual harassment is a type of violence against a person which is based on discrimination on the grounds of sex. It infringes a person's sexual self-determination and dignity, and constitutes sex discrimination. In harsher manifestation it can constitute an offence of sexual harassment, when it amounts to all necessary constituent elements of misdemeanor in a criminal code. In the sense of criminal law it is important to distinguish what level of violence is considered to be a criminal offence. This chapter will compare sexual harassment as a misdemeanor and sex discrimination and to provide some data on its extent.

#### 3.1. Sexual harassment as misdemeanor in criminal law and as a form of non-discrimination in EU law

In this section I will compare the acts constituting sexual harassment in terms of criminal law and EU non-discrimination law in France and Lithuania. Only current and valid definitions will be discussed.<sup>136</sup> Generally in the EU, sexual harassment is perceived as sex

---

<sup>136</sup> Directive 2006/54/EC: 'sexual harassment': where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment; French Penal Code: I. Sexual harassment is an act imposing on someone, in a repeated way, behaviors or remarks with a sexual connotation which denigrate the dignity of the person because it is degrading and humiliating, or by creating an intimidating, hostile or offensive situation. II. It, the use of any kind of serious pressure, amounts to sexual harassment, even if unrepeatd, with the real or apparent goal to obtain sexual favors, no matter if this act is for the perpetrator's benefit or for a third person's benefit. The mentioned facts are punished by 2 years of jail and EUR 30,000 fine. III. These sentences can be extended up to 3 years of jail and EUR 45,000 fine if acts are committed. Lithuanian Criminal Code: 1. A person who pursues sexual contact or satisfaction by vulgar or similar conduct, suggestions or hints and this way sexually harassed a person who is by employment or otherwise subordinate, shall be considered to have committed a misdemeanor and shall be punished by a fine or by restriction of liberty or arrest. 2. The liability for the conduct described in the first part for the person shall

discrimination which also harms dignity. Criminal law on the other hand treats sexual harassment as a misdemeanor which is criminally punishable. Legal liability for sexual harassment occurs when the acts have a significant after-effect to the victim and to public interest; also the motives, intent and circumstances of the situation. Criminal liability is *ultima ratio*, it is the most severe type of legal liability for the harshest criminal offences.<sup>137</sup> Therefore it is necessary that the laws bring clear and straightforward constituent elements.

France and Lithuania are two of not many European states which have criminalized sexual harassment in their Penal/Criminal Codes. Based on the EU non-discrimination law, specifically art. 19(1) of the Recast Directive 2006/54/EC and art. 9(1) of the Goods and Services Directive 2004/113/EC, the burden of proof is reversed and the perpetrator is the one who has to prove that sexual harassment did not take place or that there was no such intent.<sup>138</sup> Such notion of burden shift has to be implemented by the Member States. In the case of criminal law, the victim of sexual harassment not only has to suffer the more extreme acts of sexual harassment but needs to have enough of proof. In addition, “... criminal law systems become effective in those cases where sexual harassment and/or dignity harm more generally are categorized as misdemeanors.”<sup>139</sup>

When women entered labor market dominated by men, there was an attitude that they are the “housewives in the office” and have the duty to be caregivers because they are women

---

*occur only when there is a complaint lodged by the victim or a statement by the victim's legally authorized representative or at the request of a prosecutor.*

<sup>137</sup> Arnoldas Abramavičius, Gintaras Švedas, *Some Regulation Problems of Criminal Responsibility for the Crimes of Child Sexual Self-determination and Personal Inviolability* [Kai kurios baudžiamosios atsakomybės už nusikaltimus vaikų seksualinio apsisprendimo laisvei ir neliečiamumui reglamentavimo problemos] Law Journal Teisė: Mokslo darbai, No. 66 (1), 2008, p. 9.

<sup>138</sup> European Parliament and Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), art. 19(1).

<sup>139</sup> European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity, Equal Treatment Legislation*, European Network of Legal Experts in the Field of Gender Equality, 2012, p. 18.

and therefore were not perceived as equal with men.<sup>140</sup> Men also perceived women's sexuality differently.<sup>141</sup> This way it was accepted that sexual harassment is firstly sex discrimination. Based on the Catherine MacKinnon's explanation, "[s]exual harassment is discrimination "based on sex" within the social meaning of sex, as the concept is socially incarnated in sex roles."<sup>142</sup> In the EU context it is not as strict and there is always "dignity harm" approach is involved. As women are victims of sexual harassment more often than men,<sup>143</sup> the main argument to consider it sex discrimination is that "sexual harassment violates the equality principle, in that a woman is treated differently from a man, and [for her sex]."<sup>144</sup> However, even sexual harassment is explicitly considered as sex discrimination in the EU, the harm of dignity is imbedded in the definition and not discrimination.<sup>145</sup>

When criminal law is involved there is always the issue of criminal of intention, culpability, and accountability. It is important to prove the intent for the correct qualification of sexual harassment as misdemeanor which is stated in the disposition of the Penal/Criminal Code. The Lithuanian definition of sexual harassment in its Criminal Code is less explicit than the French one. According to Vidmantas Dvilaitis, the perpetrator should understand from the victim's expressions, facial mimics, and other reactions whether the conduct is not acceptable and intimidating and discontinue the acts otherwise the conduct might constitute criminal culpability. He also states that in criminal law, it is a mandatory condition that perpetrator is capable of perceiving the outcome of such behavior (pursue sexual

---

<sup>140</sup> See Catharine A. MacKinnon, *Sexual Harassment of Working Women: A case of Sex Discrimination*, New Haven and London, Yale University Press, 1979.

<sup>141</sup> See William E. Schweinle, Carol Cofer, Sandra Schatz, *Men's Empathic Bias, Empathic Inaccuracy, and Sexual Harassment*, Springer Science and Business Media, Sex Roles, Vol. 60, 2009.

<sup>142</sup> Catharine A. MacKinnon, *Sexual Harassment of Working Women: A case of Sex Discrimination*, New Haven and London, Yale University Press, 1979, p. 178.

<sup>143</sup> European Union Agency for Fundamental Rights, *Violence against women: an EU-wide survey. Results at a glance*, Publications Office of the European Union, 2014, <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-results-glance> (last accessed 25 March 2015).

<sup>144</sup> Linda Clarke, *Sexual Harassment Law in the United Kingdom, and the European Union: Discriminatory Wrongs and Dignitary Harms*, Common Law World Review, Vol. 36, No. 2, 2007, p. 82.

<sup>145</sup> James Whitman, Gabrielle Friedman, *The European Transformation of Harassment Law*, Yale Law School, Faculty Scholarship Series, Paper 647, 2003, p. 242.

favors/satisfaction or creating intimidating environment), as this helps to show the intent and aim of the perpetrator when proving his or her intent.<sup>146</sup> However, the intent is not the only difficulty. In criminal law, the main shortcoming is the difficulty to prove the fact of sexual harassment itself.<sup>147</sup> What is more, the victims of sexual harassment are afraid to lodge complaints, as it might cause losing their job, damage the relationship with the employer, etc.; it is very rare to have witnesses in such cases.<sup>148</sup>

Most importantly, when distinguishing the differences in sexual harassment as discrimination and as a misdemeanor, the outcomes have to be considered. Two are the most important: the deterrent or preventive effect to the perpetrator, and victim's empowerment. Sexual harassment could be considered as "power relation" between the perpetrator and the victim no matter whether there is a legal subordination or not. Invoking criminal law in the picture of sexual harassment act requires to consider it as type of violence and harming person's dignity.

Based on what has been stated above, the perpetrator of sexual harassment can be legally liable for his or her conduct within the frame of non-discrimination law or criminal law. However, after evaluating the differences between the discrimination and criminal approaches it might be not evidently clear which one should dominate in sexual harassment cases. Criminal punishment should serve as deterrent method to a perpetrator; however, sexual harassment as a conduct is too often very controversial that the criminal punishment for sexual harassment might lose its deterrent effect. Using the sex discrimination approach often is more effective, as in the EU it always goes along with the harm of a person's dignity.

---

<sup>146</sup> Vidmantas Dvilaitis, *Sexual Harassment and Legal Liability for It* [*Seksualinis priekabiavimas ir teisinė atsakomybė už jį*], Law Journal Jurisprudencija: Mokslo darbai, 2004, Nr. 60(52), p. 110.

<sup>147</sup> Paulius Veršekys, *Some Regulation Problems of Criminal Amenability of Sexual Harassment in the Republic of Lithuania* [*Baudžiamosios atsakomybės už seksualinį priekabiavimą reglamentavimo lietuvoje problemos*], Law Journal Teisė, 2008, No.68, p. 194.

<sup>148</sup> Ibid.

Moreover, sexual harassment could be attached to the freedom to sexual self-determination, i.e. a person should be able to choose sexual relationships and not to be forced. Sexual harassment should be seen more as a social problem when legal liability focuses on victim empowerment.

### 3.2. Data and perspectives of the legislation on sexual harassment

Summarizing the latest survey results of more than 42 thousand women aged 18-74, executed by the European Union Agency for Fundamental Rights (hereafter: FRA) on violence against women, it is evident that the occurrence of sexual harassment is very widespread and pervasive – 55% of surveyed women claim they have experienced some form of sexual harassment. In the same survey, 32% of all the victims reported that the harasser was either their boss, a colleague or a customer.<sup>149</sup> The data by the United Nations (hereafter: UN) also confirms that between 40% and 50% of women in the EU Member States undergo unwanted sexual advances, physical contact or other forms of sexual harassment in the workplace.<sup>150</sup>

What is more, the results of the FRA survey revealed that “sexual harassment against women involves a range of different perpetrators and can include the use of ‘new’ technologies.” The survey showed that unwelcome touching, hugging or kissing is experienced by 1 in 5 women, since they were 15, and 1 in 10 women has undergone inappropriate attention

---

<sup>149</sup> European Union Agency for Fundamental Rights, *Violence against Women: Every Day and Everywhere*, Report of the Survey on Violence against Women, published in March 2014, <http://fra.europa.eu/en/press-release/2014/violence-against-women-every-day-and-everywhere> (last accessed 21 March 2015).

<sup>150</sup> United Nations Entity for Gender Equality and the Empowerment of Women, *Fast facts: statistics on violence against women and girls*, <http://www.endvawnow.org/en/articles/299-fast-facts-statistics-on-violence-against-women-and-girls-.html> (last accessed 21 March 2015).

through social media, emails or text messages.<sup>151</sup> In addition, according to the latest information collected by FRA, in France women are more likely to be sexually harassed than in Lithuania.<sup>152</sup>

Nowadays professional women should be seen as highly emancipated but still a large number of them experience sexual harassment in comparison with other women: “Between 74% and 75% of women in a professional capacity or in top management jobs have experienced sexual harassment in their lifetime, and 1 in 4 of these women have been confronted with sexual harassment in the 12 months prior to the survey.”<sup>153</sup>

These numbers highlight the need for more effective measures to protect victims of sexual harassment. “In response, employers’ organizations and trade unions should promote awareness of sexual harassment and encourage women to report incidents.”<sup>154</sup> It is striking how much sexual harassment affects young and professional women.

A victim of sexual harassment must know their rights when they are sexually harassed, and they also need to know the elements of the acts that could constitute sexual harassment when they encounter such conduct. The need for more clear definition and effective ways to protect themselves should be strengthened across the EU and in its Member States.

---

<sup>151</sup> European Union Agency for Fundamental Rights, *Violence against Women: an EU-wide survey. Results at a Glance*, Report of the Survey on Violence against Women, published in March 2014, <http://fra.europa.eu/en/press-release/2014/violence-against-women-every-day-and-everywhere> (last accessed 26 March 2015).

<sup>152</sup> Niall McCarthy, *Where sexual harassment is most prevalent in the EU*, Statista, 2015, <http://www.statista.com/chart/3345/sexual-harassment-in-the-eu/> (last accessed 26 March 2015).

<sup>153</sup> European Union Agency for Fundamental Rights, *Violence against Women: an EU-wide survey. Results at a Glance*, Report of the Survey on Violence against Women, published in March 2014, <http://fra.europa.eu/en/press-release/2014/violence-against-women-every-day-and-everywhere> (last accessed 26 March 2015).

<sup>154</sup> Ibid.

## CONCLUSION

This paper illustrates how the principle of equal treatment from no legal regulation became an important and topical issue in the EU domain and how it influenced national legal systems in France and Lithuania in particular.

The main aim of this paper was to analyze and compare the changes in the legislation of sexual harassment in the workplace in France and Lithuania vis-à-vis EU. It also aimed to identify the strengths and weaknesses appearing in the EU legislation and national laws of France and Lithuania. In addition, it also sought to compare sexual harassment as sex discrimination in non-discrimination law and as a misdemeanor in criminal law with the purpose of determining whether sexual harassment should be criminalized.

France started to legally regulate sexual harassment in the workplace by establishing a direct notion of sexual harassment in its Labor and Penal Codes before the EU. However, when comparing the changes in legal regulation of sexual harassment it became clear that the EU highly influenced France's approach in the matter. Lithuania took the EU sex discrimination and dignity harm approach and also criminalized sexual harassment by adding sexual self-determination as the main protected value in its Criminal Code.

After the analysis of France, Lithuania and the EU in general it became evident that sexual harassment is a very topical issue and its legal regulation is necessary. However, the legal system in France and Lithuania still needs to improve by making it more clear for the victims of sexual harassment what is the most effective way to protect themselves, and which institution is to be informed. And criminalization of sexual harassment not necessarily means that victim is properly legally protected and it does not mean that the perpetrator will not repeat the conduct of sexual harassment.

As the EU-wide FRA survey confirms, sexual harassment is a pervasive and common problem in the workplace which is too much tolerated in society. Therefore, the increased focus on sexual harassment's legal regulation at the EU level and by national legislation in France and Lithuania is important. France and Lithuania need to develop the scope of their existing legislation on sexual harassment, recognizing that it can occur not only in the workplace but also in public places which should be more legally protected as well.

To sum up, it can be said that the legislation in France, Lithuania and in the EU in general is rich, but the policy of prevention and protection from sexual harassment has to be improved and the victims of sexual harassment should be better informed about the institutions where they can report sexual harassment manifestations. Victims also should be able to receive appropriate information how to protect themselves and/or where to turn to for legal help, receive support and protection after sexual harassment occurred. And it does not matter if the sanction for the perpetrators is increased – it is more important in society to understand what impact sexual harassment makes and induce the values of communication where the sexuality is not used to discriminate and intimidate.



## Bibliography

### Books

1. Catharine A. MacKinnon, *Sexual Harassment of Working Women: A case of Sex Discrimination*, New Haven and London, Yale University Press, 1979.
2. Rubenstein, Michael, *The Dignity of Women at Work: A Report on the Problem of Sexual Harassment in the Member States of the European Communities*, Office for Official Publications of the European Communities, 1988.
3. Brownmiller, Susan, *In Our Time: Memoir of a Revolution*, New York: The Dial Press, 1999.
4. Siegel, Reva, *Directions in Sexual Harassment Law*, in Catharine A. MacKinnon & Reva Siegel, *A Short History of Sexual Harassment*, (eds.), Forthcoming Yale Press, 2003.
5. Zippel, Kathrin, *The Politics of Sexual Harassment. A Comparative Study of the United States, the European Union, and Germany*, Cambridge University Press, 2006.
6. Ellis, Evelyn, Watson, Philippa, *EU Anti-Discrimination Law*, Second Edition, Oxford University Press, 2012.
7. Haverkort-Speekenbrink, Sarah, *European Non-Discrimination Law. A Comparison of EU Law and ECHR in the Field of Non-Discrimination and Freedom of Religion in Public Employment with an Emphasis on the Islamic Headscarf Issue*, School of Human Rights Research Series, Intersentia, Cambridge-Antwerp-Portland, Vol. 59, 2012.

### EU Publications / Journals

8. Eckert, Penelope, *The whole woman: Sex and gender differences in variation, Language Variation and Change*, Cambridge University Press, 1990.
9. Carol Harlow, *A Community of Interests? Making the Most of European Law*, The Modern Law Review, Vol. 55, Issue 3, 1992.
10. European Commission Directorate-General for Employment, Industrial Relations and Social Affairs, *Sexual harassment in the workplace in the European Union*, Manuscript, 1998.
11. Timmerman, Greetje, Bajema, Cristien, *Sexual Harassment in Northwest Europe. A Cross-Cultural Comparison*, University of Groningen; The European Journal of Women's Studies, SAGE Publications, London, Thousand Oaks and New Delhi, Vol. 6, 1999.
12. Saguy, Abigail, *National Specificity in an Age of Globalization: Sexual Harassment Law in France*, Contemporary French and Francophone Studies, Vol. 8, No. 4, 2004.

13. European Commission Directorate-General for Justice Unit, *Harassment related to Sex and Sexual Harassment Law in 33 European Countries. Discrimination versus Dignity*, Equal Treatment Legislation, European Network of Legal Experts in the Field of Gender Equality, European Commission, 2012.
14. Aknin Erovic, Agnes, *Sexual Harassment Criminal Code Provision Repealed for Vagueness*, International Labor & Employment Law Committee Newsletter, Jeantet Associes, Paris, France, 2012.
15. European Union Agency for Fundamental Rights, *Violence against women: an EU-wide survey. Results at a glance*, Publications Office of the European Union, 2014.
16. European Union Agency for Fundamental Rights, *Violence against Women: Every Day and Everywhere*, Report of the Survey on Violence against Women, 2014, <http://fra.europa.eu/en/press-release/2014/violence-against-women-every-day-and-everywhere> (last accessed 21 March 2015).
17. Welsh, Sandy, *Gender and Sexual Harassment*, Annual Review of Sociology, Vol. 25, 1999.
18. Whitman, James, Friedman, Gabrielle, *The European Transformation of Harassment Law*, Yale Law School, Faculty Scholarship Series, Paper 647, 2003.
19. Morgan, James, et al., *Sexual Harassment in the European Union: the Dawning of a New Era*, S.A.M. Advanced Management Journal, 2004.
20. Kathrin Zippel, *Transnational Advocacy Networks and Policy Cycles in the European Union: The Case of Sexual Harassment*, Oxford University Press, Social Politics, Vol. 11, No. 1, 2004
21. Dvilaitis, Vidmantas, *Sexual Harassment and Legal Liability for It* [*Seksualinis priekabiavimas ir teisinė atsakomybė už jį*], Law Journal Jurisprudencija: Mokslo darbai, Nr. 60(52), 2004.
22. Hannelajs, Joelle, Gillot, Thierry, *Sexual Harassment Law In France*, International Journal of Discrimination and the Law, Academic Publishers, Great Britain, Vol. 7, 2005.
23. Zippel, Kathrin, *Gender Equality Politics in the Changing European Union: The European Union Anti-Discrimination Directive and Sexual Harassment*, Minda de Gunzburg Center for European Studies, Harvard University, Working Paper Series, No. 134, 2007.
24. Clarke, Linda, *Sexual Harassment Law in the United Kingdom, and the European Union: Discriminatory Wrongs and Dignitary Harms*, Common Law World Review, Vol. 36, No. 2, 2007.
25. Abramavičius, Arnoldas, Švedas, Gintaras, *Some Regulation Problems of Criminal Responsibility for the Crimes of Child Sexual Self-determination and Personal Inviolability* [*Kai kurios baudžiamosios atsakomybės už nusikaltimus vaikų seksualinio apsisprendimo laisvei ir neliečiamumui reglamentavimo problemas*] Law Journal Teisė: Mokslo darbai, No. 66 (1), 2008.

26. Veršekys, Paulius, *Some Regulation Problems of Criminal Amenability of Sexual Harassment in the Republic of Lithuania* [Baudžiamosios atsakomybės už seksualinį priekabiavimą reglamentavimo lietuvoje problemos], Law Journal Teisė, No.68, 2008.
27. Zippel, Kathrin, *The European Union 2002 Directive on Sexual Harassment: A feminist success?* Palgrave Macmillan, Comparative European Politics, Vol. 7, No. 1, 2009.
28. Schweinle, William, Cofer, Carol, Schatz, Sandra, *Men's Empathic Bias, Empathic Inaccuracy, and Sexual Harassment*, Springer Science and Business Media, Sex Roles, Vol. 60, 2009.
29. Burri, Susanne, Prechal, Sacha, *The Transposition of Recast Directive 2006/54/EC*, European Network of Legal Experts in the Field of Gender Equality, European Commission Manuscript, 2009, [http://ec.europa.eu/justice/gender-equality/files/2009reportrecastdirectivefinal\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/2009reportrecastdirectivefinal_en.pdf) (last accessed 22 March 2015).
30. Burrows, Noreen, *Equal pay for work of equal value*, Academy of European Law, School of Law, University of Glasgow, 2010.
31. Burca de, Graine, *The Road Not Taken: The European Union as a Global Human Rights Actor*, American Journal of International Law, Vol. 105, No.4, 2011.
32. Haddad, Sabine, *Redefinition of Sexual Harassment: an offense under large since Law No. 2012-954 of 6 August 2012* [Redéfinition du harcèlement sexuel : un délit au sens large depuis la Loi No. 2012-954 du 6 août 2012], Legal Article, published on 17 August 2012 <http://www.legavox.fr/blog/maitre-haddad-sabine/redefinition-harcèlement-sexuel-délit-sens-9251.htm#.VQhwO47F9H4> (last accessed 18 March 2015).
33. Cave, Bryan, *A New Law on Sexual Harassment in France*, Labor & Employment Client Service Group, Client Bulletin, Paris, 2012, <http://www.bryancave.com/files/Publication/674affd9-55b3-4ac5-b253-0dd3d1d27cda/Presentation/PublicationAttachment/6cbd179d-3b28-4f1c-abce-1a56e96fc5d8/ClientAlertHarc%C3%A8lementENG.pdf> (last accessed 25 November 2014).
34. Philippe, Xavier, *Constitutional Review in France: The Extended Role of the Conseil Constitutionnel Through the New Priority Preliminary Rulings Procedure (QPC)*, Article, University Paul Cézanne (Aix-Marseille III), 2012.
35. Vengalė-Dits, Laima, *Methodical recommendations on sexual harassment and sex-based indication to discriminate prevention* [Metodinės rekomendacijos dėl seksualinio priekabiavimo dėl lyties bei nurodymo diskriminuoti prevencijos], Ombudsperson's Office Publication Supporting the State Women and Men Equal Opportunities Program of 2010-2014, 2012.
36. The Connexion, *Protests as sex pest law scrapped*, France's English-language Newspaper, posted on 7 May, 2012, <http://www.connexionfrance.com/Protest-Conseil-Constitutionnel-sexual-harassment-13671-view-article.html> (last accessed 20 March 2015).

37. Lerouge, Loic, Hébert, Camille, *The Law of Workplace Harassment of the United States, France, and the European Union: Comparative Analysis After the Adoption of France's New Sexual Harassment Law*, Comparative Labor Law & Policy Journal, Workplace Prof, Vol. 35:93, 2013.
38. Hébert, Camille, *Divorcing Sexual Harassment from Sex: Lessons from the French*, Duke Journal of Gender Law and Policy, Vol. 21:1, 2013

## EU legislation

39. Council Resolution of 21 January 1974 concerning a social action programme, OJ C 13 of 12 February 1974.
40. Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 039.
41. Council Resolution of 29 May 1990 on the protection of the dignity of women and men at work, OJ C 157 of 27 June 1990.
42. The Community Charter of Fundamental Social Rights for Workers, European File 6/90, May 1990, <http://www.eesc.europa.eu/resources/docs/community-charter--en.pdf> (last accessed 5 February 2015).
43. The European Commission Recommendation 92/131/EEC of 27 November 1991 on the protection of the dignity of women and men at work OJ L 49 of 24 February 1992.
44. Commission code of practice on sexual harassment OJ L 49 of 24 February 1992.
45. Commission communication of 24 July 1996 concerning the consultation of management and labor on the prevention of sexual harassment at work [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/c10917a\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10917a_en.htm) (last accessed 5 February 2015).
46. European Union, *Treaty on European Union (Consolidated Version)*, Treaty of Amsterdam, 2 October 1997.
47. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180.
48. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303.
49. Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ EC L 269/15.
50. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373.

51. European Parliament and Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204.
52. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ EU C 306
53. European Parliament and Council Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180.

### **French national legislation**

54. French Constitution of October 4, [1958Constitution française du 4 octobre 1958].
55. French Labor Code, [Code du travail,].
56. French Penal Code, version of 14 February 2015 [Code Pénal, version consolidée au 14 février 2015].
57. Law No. 92-684 of July 22, 1992 concerning the reform of the penal code relative to the prosecution of crimes against persons [Loi 92-684 of 22 July 1992 portant réforme des dispositions du code pénal relatives à la répression des crimes et délits contre les personnes], Journal Officiel de la Republique Française 23July, 1992.
58. Law No. 2002-73 of 17 January 2002 [Loi no. 2002-73 du 17 janvier 2002 de modernisation sociale], Journal Officiel de la Republique Française, 18 January, 2002.
59. Law No. 2012-954 of 6 August 2012 Concerning Sexual Harassment [LOI no. 2012-954 du 6 août 2012 relative au harcèlement sexuel (1)], Journal Officiel de la Republique Française, 7 August, 2012.
60. Conseil Constitutionnel Decision no. 2012-240 QPC of 4 May 2012, Mr Gérard D. [Definition of the offence of sexual harassment].

### **Lithuanian national legislation**

61. Constitution of the Republic of Lithuania [Lietuvos Respublikos Konstitucija], State Gazette, 1992, No. 33-1014.
62. Labor Code of the Republic of Lithuania [Lietuvos Respublikos Darbo kodeksas], 2002, No. 64-2569, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493843](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493843) (last accessed 15 March 2015).
63. Criminal Code of the Republic of Lithuania [Lietuvos Respublikos Baudžiamasis kodeksas], Government Gazette No. 89-2741, 2000, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=494077](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=494077) (last accessed 26 March 2015).

64. Law on Equal Opportunities of Women and Men [Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas], State Gazette No. 112-3100, 1998, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478625](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625) (last accessed 25 March 2015).
65. Equal Opportunities Act [Lietuvos Respublikos Lygių galimybių įstatymas], State Gazette No. 114-5115, 2003, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=454179](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179) (last accessed 25 March 2015).
66. Military Discipline Statute of the Republic of Lithuania, [Lietuvos Respublikos Kariuomenės drausmės statutas], 1999, No. 51-1635, <https://www.e-tar.lt/portal/lt/legalAct/TAR.2690D2FE2A35> (last accessed 12 March 2015).
67. Civil Code of the Republic of Lithuania (Lietuvos Respublikos Civilinis Kodeksas), State Gazette, 2000, No. 74-2262, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493999](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493999) (last accessed 12 March 2015).
68. Code of Administrative Offences of the Republic of Lithuania [Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas], Government Gazette, 1985, *No. 1-1, i. k. 0841010KODE00X-4449*, Latest Editing Bulletin of 1 January 2015 [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=493978](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=493978) (last accessed 12 March 2015).

## Websites

69. The EU Official website Europa for Summaries of EU legislation, [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/c10906\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10906_en.htm) (last accessed 5 February 2015).
70. The EU Official website Europa for Summaries of EU legislation, [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/c10917a\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10917a_en.htm) (last accessed 5 February 2015).
71. United Nations Entity for Gender Equality and the Empowerment of Women, *Fast facts: statistics on violence against women and girls*, <http://www.endvawnow.org/en/articles/299-fast-facts-statistics-on-violence-against-women-and-girls-.html> (last accessed 21 March 2015).
72. McCarthy, Niall, *Where sexual harassment is most prevalent in the EU*, based on the report from the European Agency for Fundamental Rights, Statista, 2015, also published in the Independent, <http://www.statista.com/chart/3345/sexual-harassment-in-the-eu/> (last accessed 26 March 2015).