

# SEXUAL HARASSMENT IN ACADEMICS: THE PARADIGM OF LEGAL EVALUATION IN LITHUANIA

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**Abstract.** *The article focuses on the insights` analysis of the nowadays relevant social problems, related to sexual harassment in the academics, its legal evaluation in Lithuania. It is discussed, whether sexual harassment situations, that could be faced or happened in academics, could be seen as the ethic, moral violations or even more – criminal deeds. The authors go into deep and analyse the relationships between culprit and victim as they are not equal as such in the academic community. They have vertical relations, for instance, a lecturer and a student, etc. Then the principal question is raised – whether the guilty of the culprit should be proved / argued using presumption of innocence or there is a converse – the words and emotions of a victim take the prior place to incriminate a culprit. Another one question should be seen as the relevant one – does the legal situation change if there are enough assumptions to say “a culprit intended to have intimate relations with the victim”? It is also argued, that one of the biggest problems to uncover the situation’s real face is time of victim’s keeping silence as a victim, usually, is depending on culprit’s will (for instance, the lecturer and the student still have educational relations).*

**Keywords:** *academic environment, criminal responsibility, ethic violation, sexual harassment, victim’s and culprit’s behaviour.*

## Introduction

Aspects of sexual harassment and its legal treatment are considered to be the most complex issues of public relations in the modern society. The reason for the complexity of these issues can be attributed to the fact that such relations are characterised not only by their latency, but also by the diversity, which often leads the treatment of such relations to a dead end, to a certain confusion of the identity of these relations. This is confirmed by scientific studies – “in society, the perception of sexual harassment behaviour is often confused with flirting, which is defined as a form of communicative interaction between two people in an effort to attract the attention of the person the other likes. Flirting, which is usually

enjoyable for both flirting parties, causes satisfaction, both parties feel good, flirting is based on equality, and cannot be equated with sexual harassment. In order to distinguish sexual harassment from friendly courtesy or favouritism, it is important to identify the attitude towards these acts. Sometimes <...> behaviour that has the characteristics of sexual harassment could be similar to compliments, but if they make a person feel uncomfortable, because they humiliate, insult, make someone unable to perform official tasks, study or engage in other activities, then it should be considered as sexual harassment <...>. <...> in the context of the organisation, various jokes, hints, chars, etc. are common but not always treated as unwanted behaviour or sexual harassment <...>” (Stundžė, 2021, p. 30)”. Other studies also reveal that “sexual harassment is defined as any unwanted conduct of a sexual nature. However, a legal definition of the phenomenon is not enough to ensure proper recognition of sexual harassment. <...> the recognition of sexual harassment can be significantly influenced by environmental factors, the demographic characteristics of the person and the peculiarities of the situation of sexual harassment. <...> studies have revealed that the recognition of situations of sexual harassment differs depending not only on the evaluator, but also on the gender of the victim and the culprit depicted in the situation and their status. <...> sexual harassment is best understood if it corresponds to the stereotypical perception that the victim is a woman, and the culprit is a man. <...> men attribute fewer forms of behaviour to sexual harassment than women and tend to view situations as less threatening” (Čeponytė & Žardeckaitė-Matulaitienė, 2018, p. 35).

So, it stands to reason that the problem of defining sexual harassment is highly relevant, especially in the specific environments, as academic institutions and etc. This actuality is even more highlighted by the expression of the analysed phenomenon in the academic environment, i.e., in higher education institutions, where the content of relations between students and teachers, mutual relations between lecturers, trainees and social partners leading the training, as well as other related persons is often unacceptable and having particular signs of harassment. Unfortunately, it is not always possible to recognise these relationships as sexual in their nature, and if it is possible to do so, not always in time. Ultimately, the problem of legal treatment of such issues also emerges – in a specific case, it is necessary to determine the intent of the culprit, the motives, the nature of the relationship between the culprit and the victim, as well as answer the question of whether the victim was dependent on the culprit or not, etc.

The objective of this article is to analyse the signs of sexual harassment in the academic environment and the diversity of legal treatment of such harassment.

Various methods are used to achieve this objective, such as generalisation, systematic analysis, criticism, comparative analysis, random screening and documentary analysis methods.

## **Sexual Harassment: The Diversity of Legal Treatment**

In the legal regulation of Lithuanian Republic, legal practice, and also in studies, considerable attention is paid to the concept of sexual harassment as a common issue. However, despite this fact, the legal definition of this phenomenon (to the extent that it is necessary to qualify the legal responsibility of the infringer, as well as to identify the legal protection of the victim) is not as clear as it may seem at first glance. This is important in differentiating sexual harassment as an ethical, disciplinary and, of course, criminal act. It is needed to overview the common understanding of legal treatment of sexual harassment.

This is what is provided for in Article 2 (7) of the Law on Equal Opportunities of the Republic of Lithuania: “Harassment means unwanted conduct related to the sex, race, nationality, citizenship, language, origin, social status, faith, beliefs or opinions, age, sexual orientation, disability, ethnicity, religion of a person that occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, humiliating or offensive environment” (Seimas of the Lithuanian Republic, 2003). The concept of sexual harassment is defined in Article 2(6) of the Law on Equal Opportunities for Women and Men of the Republic of Lithuania, where it is stated that: “Sexual harassment means any form of unwanted and insulting verbal, written or physical conduct of a sexual nature with a person, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, humiliating or offensive environment” (Seimas of the Lithuanian Republic, 1998).

Clause *d* of Article 2(1) of the Directive 2006/54/EC of the European Parliament and of the Council 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 provides for the description of a sexual harassment as the „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“ (European Parliament and of the Council, 2006). Sexual harassment is one of the forms of discrimination, which is recognised not only in Lithuania, but also in the world as a serious problem of gender equality, a manifestation of gender-based discrimination and a gross violation of human rights.

Thus, the provisions of Article 2(6-7) of the Law on Equal Opportunities for Women and Men of the Republic of Lithuania reproduce the provisions of the implementation of the principle of Directive 2006/54/EC of the European Parliament and of the Council consolidating the fact that sexual harassment means any form of unwanted and insulting verbal, written or physical conduct of a sexual nature with a person, with the purpose or effect of violating the dignity of a person,

in particular when creating an intimidating, hostile, humiliating or offensive environment, and the harassment means an unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, humiliating or offensive environment. The preamble to the above mentioned Directive states, *inter alia*, that harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex. Article 2(2) of the Directive 2006/54 provides for the fact that the discrimination includes harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct. Thus, sexual harassment (as well as each fact of such harassment individually) can also be considered as less favourable treatment of a person, i.e., as a direct discrimination. Legal acts additionally indicate that such behaviour is determined by the purpose or effect of violating the dignity of a person. In order to state a sexual harassment, unlawful intent must be proven.

For instance, the Constitutional Court of the Republic of Lithuania in its conclusion No. KT20-II/2017 as of 19 December 2017 regarding possible conduct of sexual harassment of a member of parliament has stated, that the (former) member of the parliament K. P. has humiliated the assistant with the conduct considered as harassment and sexual harassment on grounds of sex, as well as humiliated the assistant and the violated the dignity of those applying for this position, and violated the right to the inviolability of their person and private life, and the right not to be discriminated against, which are protected according to Article 21 (1, 2, 3), Article 22 (1, 4), and Article 29 of the Constitution of the Republic of Lithuania. In this conclusion, the Court expressed the opinion on other relevant issues, indicating that a harassment on the basis of sex or sexual harassment which is understood as unacceptable or unwanted behaviour expressed by a physical, verbal or non-verbal conduct (such as by touch, gesture, verbal, written conduct or image) and relating to the sex, that, among other things, occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, humiliating or offensive environment for the person treated in this way. Thus, sexual harassment, which is a form of a sex-based harassment, is characterised by unwanted sexual behaviour on the part of the person being harassed (Constitutional Court of the Republic of Lithuania, 2017).

The criminal laws of the Republic of Lithuania (Seimas of the Lithuanian Republic, 2002) (Article 152 of the Criminal Code) provide for the responsibility of those who seek sexual contact or satisfaction, harasses a person subordinate to him in office or otherwise by vulgar or comparable actions or by making offers or hints. The main value protected by this Law is the freedom of sexual self-determination. Such freedom is understood as a safety of a person from any coercion in sexual intercourse, i.e., the free will of each person to choose a sexual

partner, methods, time, place of sexual communication, etc. An additional value protected by this law is human honour and dignity, but the mere violation of these values does not make a person criminally liable according to Article 152 of the Criminal Code. These characteristic features show that criminal liability could be imposed when the nature of the conduct, the purpose, the form of addiction, and the dangerousness of the conduct is clearly determined.

Sexual harassment as a criminal behaviour appears as a vulgar or similar conduct, suggestions, or hints. Vulgar or similar conduct means unwanted, sexual physical contact with a person (touching, caressing, hugging, etc.). Vulgar or similar suggestions or hints mean a verbal or non-verbal sexual behaviour of a person that is clearly unacceptable to the victim, humiliating and insulting, insolent, clearly deviating from the standards of conduct (for instance humiliating conversations of a sexual nature, comments about appearance of a person related to a sex, various kinds of promises and suggestions related to sexual intercourse, demonstration of sexually explicit prints, video or audio recordings, gestures of a sexual nature, writing SMS messages, notes, letters and telephone conversations on sexual topics, buying intimate gifts, etc.). This conduct must take the form of active actions and they must be undesirable, unacceptable, and repulsive to the person against whom these actions are performed.

When determining the presence (absence) of the objective of the culprit, namely the desire to have sexual contact or sexual satisfaction, the behaviour of the culprit towards the victim (the way of sexual harassment, the extent of the physical actions performed and/or the content of the suggestions or hints made) shall be analysed in conjunction with the systematicity and intensity of behaviour of the culprit (repeatability, continuity), the environment in which the sexual behaviour of the culprit appears (place and time) and other circumstances that can confirm or deny the intent of the culprit. It is sufficient to prove the desire for sexual communication or sexual satisfaction for criminal liability to arise, and as explained in Court Practice, in criminal cases regarding violation of a person's freedom of sexual self-determination and inviolability, the facts of whether the culprit felt sexual satisfaction or pleasure are not necessarily established, because criminal liability for these actions arises after dangerous actions have been performed (formal composition) (Supreme Court of Lithuania, 2014, 2020).

Thus, the legal doctrine stipulates that, when determining the purpose of sexual harassment, the generality of the circumstances in which acts of sexual harassment may have been committed shall be assessed, and it is assessed whether the vulgar acts performed in such circumstances, the specific phrases or hints said could indicate the desire for sexual satisfaction. Actions, suggestions and hints of a sexual nature usually become sexual harassment when such behaviour by the culprit is not one-time but lasts for a certain period of time (is repeated or systematic) and when such an act of the culprit has been reacted to in an unambiguously negative way. Moreover, some scientific sources provide for the

opinion that the considered phenomenon can also occur in the online space – “the most common forms of risky behaviour the Internet are the disclosure of personal information and communication with strangers, as they often lead to other forms of risky behaviour, such as risky sexual behaviour or harassment” (Paluckaitė & Žardeckaitė-Matulaitienė, 2015, p. 34). Also, the term “sexual harassment” is largely a misnomer. Most sexual harassment entails disrespect, not desire, and certainly not romance. There are the occasional come-ons: unwanted sexual advances, touches, kisses, or bribes and threats used to coerce sexual activity” (Clancy, Cortina, & Kirkland, 2020, p. 22614).

It can be concluded that, according to Lithuanian legislation, acts of sexual harassment committed against another person do not impose criminal liability only if the culprit and the victim do not have any official, labour, or other dependent relationships. And what these relationships (especially in academic level) are like will be discussed in the next section of this article. So it means, if sexual harassment behaviour arises in the academic environment, this question is very close to whether it is criminal nature or not.

### **Dependence of the Victim of Sexual Harassment on the Culprit in Academia**

In common a necessary feature of the criminal offense established in Article 152 of the Criminal Code (Seimas of the Lithuanian Republic, 2002) is the dependence of the victim on the culprit.

Taking advantage of the dependency of the victim appears in the fact that the culprit, while committing a criminal act, abuses the existing dependency between him and the victim, which may arise due to kinship, labour relations, material dependency and other grounds. The analysed scientific sources states that „it is measured sexual harassment along three dimensions: gender harassment, unwanted sexual attention, and sexual coercion. Gender harassment involves negative treatment of women that is not necessarily sexual but may include things like a supervisor or co-worker making sexist remarks, telling inappropriate stories, or displaying sexist material. Unwanted sexual attention includes co-worker or supervisor behaviours such as staring, leering, ogling, or unwanted touching. Sexual coercion includes bribing or pressuring women to engage in sexual behaviour” (Johnson, Keplinger, Kirk, & Barnes, 2019).

Thus, the form of sexual harassment as a criminal conduct in academic environment includes two possible forms of dependency: 1) co-workers and 2) other dependent persons.

Dependency by labour relations means that the victim and the culprit are bound by office or labour relations, regulated by the provisions of the Labour Laws (Seimas of the Lithuanian Republic, 2016), the Law on the Civil Service of the Republic of Lithuania (Seimas of the Lithuanian Republic, 1999), etc. laws

that determine the rights and duties of the employer and the employee. However, as referred to in scientific sources, sexual harassment at work cannot be equated with bullying, mobbing because “bullying at work occurs in the workplace as a negative behaviour directed at the person(s) resulting in harmful consequences for persons and organisations. Negative behaviour is usually of a psychological nature, so sexual harassment and physical aggression are usually not included in this phenomenon”, “sexual harassment and physical aggression are part of the phenomenon of harassment, and in the case of bullying, these forms of aggressive behaviour are more often distinguished. Thus, <...> harassment is a broader, more encompassing phenomenon than bullying at work” (Astrauskaitė & Kern, 2013).

Other dependence on the culprit and at the same time the most important in the context of this study, because it concerns with relationships of student – student, student – lecturer, student – other academic staff etc., may appear in various forms. Even in this case, the relationship of dependence must have a certain objective basis, confirming that the culprit (for instance, lecturer) and the victim (usually – student) are connected by a certain relationship (usually during the academic session, but not after), which enables the culprit to significantly influence (affect) the position of the victim with his decisions. Here we have the significant factor, that makes an impact on the precondition of victim’s vulnerability. The possibility to affect the position of, for instance, student, should be considered regarding to objective basis.

Usually, the objective basis of dependence shall be considered the dependence of persons on the basis of civil law (contractual, obligatory, etc.), family relations (between spouses (cohabitants), children and parents, kinship, custody and care, etc.), as well as relations between separate groups of persons, the parties of which have certain opposing rights and obligations (for example, doctor-patient, teacher-pupil, lecturer-student, etc.) or which are related by material dependence. Other actual situations can also be recognised as the objective basis of dependency, when physical or psychological obstacles created by the culprit, limiting freedom of action of the victim, enable him to significantly influence the victim's position.

The dangerousness of sexual harassment to a victim dependent on the culprit depends on several aspects – on its continuity, intensity, permanence and on how this behaviour was perceived by the person who was harassed, because sexual harassment is an unwanted conduct. Generally, harassment (both sexual and gender-based) is determined by an economic, social, physical, or symbolic (e.g., related to patriarchal stereotypes) power disparity between the harasser and the person being harassed. Therefore, a person may be confused, scared, not know how to act. Considering this, to establish the facts of harassment, it is not necessary that the person who is being harassed clearly and categorically opposes such behaviour, when it is obvious that such behaviour was unacceptable and objectively offensive to this person. Consequently, all the actions, suggestions and

hints of a sexual nature become sexual harassment in the form of criminal conduct when such behaviour by the culprit is not one-time but lasts for a certain period of time (is repeated or systematic) and when such an act of the culprit has been reacted to in an unambiguously negative way. It is the repetition of unwanted vulgar or similar actions, suggestions or hints of a sexual nature that allows us to decide on the intensity and systematicity of such actions and to consider such an act as dangerous in the sense of criminal law. Nevertheless, it is discussed if these considerations are applied to situations of sexual harassment in academia. All the actions of a sexual nature become sexual harassment in the form of criminal conduct in academic environment when such behaviour by the culprit is even one-time. The level of gravity of such illegal behaviour is based on the following reasons. First, usually the student, who is dependent on the culprit, feels vulnerable due to the fact he/she is bound by the process of studying. Second, he/she is afraid of possible revenge (for instance, ploughing at the examination, etc.) as the culprit lecturer will be changed by other one. Third, a victim cannot even recognize / identify the behaviour manifestations which are certainly as sexual harassment.

As for the manifestations of sexual harassment (including the one in the academic environment) and their legal assessment, they can appear in the following forms: (a) unwanted physical contact; (b) verbal or written humiliation (laughter and jokes offensive to a person or a group of persons, constant comments, hate, denunciation, spreading rumours, slander, etc.); (c) demonstration of offensive pictures, notes or other material, offensive gestures; (d) deliberate isolation or lack of communication, separation from social activities; (e) obsessive intention to communicate, following a person or collecting information about him, when this is not related to the performed work functions; (f) threats or other intimidating behaviour aimed at restricting a freedom of self-determination of the person; (g) influencing a person to obtain certain conduct, services or sexual services not related to studies or the performance of work functions; (h) inconsistent deterioration of study, work or other conditions compared to other persons. Of course, this list of forms is not exhaustive – harassment, sexual harassment or chasing can also take other forms that are not obvious, but create an intimidating, hostile, humiliating or offensive environment. These forms of manifestation, if the victim's dependence on the culprit is determined during them, may lead to criminal prosecution of the culprit.

It also could be stated that cases of sexual harassment in academic environment may be distinguished by what the culprit is trying to achieve and whether the victim of the harassment is dependent on the culprit.

For example, the subordination content of the lecturer-student relationship should not be interpreted in a narrow sense. Alternatively, the content of such relationships should be interpreted depending on how formal and informal the lecturer-student relationship is. Usually, there are no major issues in explaining

the relationship between these persons during the study process, during the semester, during the session. Issues related to legal treatment arise when explaining cases of sexual harassment by a lecturer towards a student, when the lecturer and the student do not or no longer have a formal relationship – some time has passed, after the student has finished his studies, and only later the inappropriate behaviour of the lecturer towards the student became apparent. These issues are caused, among other things, by certain subjective reasons – sexist attitudes and myths of sexual harassment. The literature sources provides that “sexist beliefs not only create and support myths of sexual harassment – false but widely spread beliefs about sexual harassment in society – but are also related to the treatment of situations of sexual harassment” (Čeponytė & Žardeckaitė-Matulaitienė, 2018, p. 91).

Particular studies have shown that four main groups of false sexist beliefs can be distinguished: 1) exaggeration/imagining (the belief that women only excogitate experiencing sexual harassment or misinterpret actions of the harasser); 2) ulterior motives (the belief that sexual harassment complaints are filed for personal gain); 3) natural heterosexuality (assigning sexual harassment to romantic relationships); 4) women's responsibility (conviction that women themselves provoke unwanted sexual conduct and are responsible for preventing this behaviour) (Čeponytė & Žardeckaitė-Matulaitienė, 2018).

These misconceptions are also very common and propagating in cases of sexual harassment in the academic environment. The existence of such beliefs makes it extremely difficult not only to prevent such cases, but also to reveal them due to a delayed reaction, due to the closedness of the academic environment, due to the fact that the employees and students of the academic environment do not try to understand that the behaviour expressed in verbal form, writing or physical actions can cause unpleasant, unwanted, dignifying consequences, may disturb another person in the work or study environment, for instance: (a) a familiar way of greeting in the work environment; (b) compliments that are not related to the professional qualities and performed functions of the person; (c) comments about physical appearance or clothing, or person's identity; (d) unethical comments about a person's views, weaknesses or strengths, private life; (e) unethical addresses (for example, short names, nicknames, diminutive addresses); (f) jokes of a sexual nature, offensive or disrespectful; (g) physical touching of a person, causing physical or psychological discomfort without maintaining a respectful physical distance; (h) obsessive attention, gazing at physical appearance; (i) tone of voice, sounds and movements that may offend, humiliate a person or raise associations of a sexual nature; (j) the use of visual means degrading honour and dignity (e.g., posters, photos, pictures, objects, etc.); (k) sending messages of an offensive nature, humiliating honour and dignity, messages not related to work functions; (l) provocative, indecent clothing.

## Conclusions

The perception and description of sexual harassment in the academic environment as a phenomenon corresponds to the signs and criteria of the concept of sexual harassment stipulated in legal acts. However, at the same time, it should be noted that the definition of this phenomenon in the academic environment may also have specific characteristics, which are determined by the environment, participants in social relations and the content of their relations.

Cases of sexual harassment in higher education institutions are characterized by latency. This is preconditioned by the institutional atmosphere of the academic environment, internal informal politics, the solidarity mentality of the academic community (lecturers), as well as the moderation of students, perhaps even the lack of courage to make such cases public, other stigmatizations. This usually results in the discovery of cases of sexual harassment in higher education only after some time has passed.

The most severe legal liability that can arise for sexual harassment is criminal liability. This type of legal liability is possible only if the culprit and the victim are related by a service, work or other dependency relationship. In the academic environment, the relationship between lecturers and students can usually be equated to other relationships of dependence, which, once it is established, and at the same time as it is established that the lecturer sought sexual communication or sexual satisfaction with the student and thus performed acts of sexual harassment, there are all the prerequisites for initiating the criminal prosecution of the culprit when there is a complaint of the victim or a statement of his legal representative, and in the cases provided for by the law – and a request of the prosecutor.

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