



Report

on sexual harassment of a trainee attorney-at-law

Ms X. Y. (hereinafter also the “Complainant”) was employed for five years as a trainee attorney-at-law with independent attorney-at-law A. B. (hereinafter also the “employer”).

The employer’s law office also employed an assistant. Three women were successively employed in the latter position during the Complainant’s employment relationship.

The Complainant states that she was sexually harassed by the employer during the entire employment relationship, both verbally and physically. Fearing of losing her job, she decided to defend herself against this conduct only after the employment has terminated.

A. Summary

The Public Defender of Rights Act¹ has entrusted to me competence *inter alia* in the area of the right to equal treatment and protection against discrimination.² Therefore, I examined whether the Complainant had been discriminated against on grounds of sex, or in other words whether she had become a victim of sexual harassment and retaliation. Considering the competence of the Public Defender of Rights, I deliberately disregard the other labour-law³ and private-law⁴ aspects of the case, leaving it for the Complainant to decide whether she will take any further steps in this respect.

A.1 Discrimination in the form of sexual harassment and retaliation

The employer is obliged to ensure that all employees are treated equally and may not treat any of them less favourably than others.⁵

The Anti-Discrimination Act⁶ prohibits not only direct discrimination, i.e. placing at a disadvantage based on one of the prohibited grounds,⁷ but also sexual harassment⁸ and retaliation.⁹ In contrast to direct discrimination and bullying, it is not decisive in relation to discrimination in the form of sexual harassment the relevant question how other employees are treated but only whether the employee concerned was harassed and whether the harassment had sexual overtones. To classify as retaliation, the relevant

1 Act No. 349/1999 Coll., on the Public Defender of Rights, as amended

2 Section 1 (5) in conjunction with Section 21b of the Public Defender of Rights Act.

3 For example, the claimed failure to pay compensation for salary and the manner of termination of the employment relationship.

4 For example, protection of the Complainant’s dignity beyond sexual harassment

5 Section 16 (1) of Act No. 262/2006 Coll., the Labour Code, as amended

6 Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended

7 Section 2 (3) of the Anti-Discrimination Act

8 Section 4 (2) of the Anti-Discrimination Act

9 Section 4 (3) of the Anti-Discrimination Act



retaliatory measure must be taken following the exercise of a right under the Anti-Discrimination Act.

Given the limited options of the Public Defender of Rights as to taking of evidence, I concluded in this case that the underlying documents available did not make it possible to prove with certainty (with the exception of one incident) that the Complainant had actually faced sexual harassment or retaliation, mainly because it was impossible to sufficiently establish the facts of the case and to assess plausibility of the individual allegations.

The only exception is a situation when the employer demanded during the Complainant's birthday party that she undress and take a bath in a pool.¹⁰ When she refused, the employer said he would not raise her salary. This conduct has the elements of sexual harassment and retaliation.

Thus, I cannot rule out that in a potential lawsuit the court could reach different conclusions based on broader evidence. Therefore, this Report presents mainly possible legal assessment of the case based on facts proven in a potential lawsuit.

B. Findings

B.1 Allegations of the Complainant

In her complaint, the Complainant points out especially the following conduct of the employer that she found harassing: addressing in a degrading manner using the word "Babe"; demanding kisses on the lips; descriptions of the employer's sexual activities; physical inspection whether the Complainant wore underwear;¹¹ open suggestions of sexual intercourse;¹² the employer licking the Complainant's ear; shopping together for a vibrator for the assistant at the time, C. D. (hereinafter also the "former assistant"); holding the Complainant's knee and advising a client of this fact on the phone;¹³ undignified punishments for unsatisfactory performance of work.¹⁴

The above conduct, as well as using a vaguely obscene language, undignified insinuations and even physical contact occurred repeatedly, almost all the time during the Complainant's employment relationship. This coercion made the Complainant seek the services of the Q crisis centre.

10 The incident in question was the only one that took place in the presence of people who were not employed by the employer's law office.

11 Allegedly raising the Complainant's skirt. Sometimes the employer allegedly stepped to the Complainant from behind and held her by her breasts to check whether she wore a brassiere.

12 The Complainant describes monologues such as the following: *"Babe, you've been working for me for a whole year (two, three years – as time passed) and you still haven't let me get any; we've got to set that right!"*

13 The Complainant described a situation in which the employer held the Complainant's knee while calling a client in the car on the way back from the O prison. The employer told the client what he was doing; when the client wondered why the Complainant was not upset, the employer replied she liked him doing this.

14 The Complainant states that she and the assistant were repeatedly threatened they would have to suffer the imprint of a stamp on the buttocks if they did not perform properly at work. According to the Complainant, this actually happened once or twice.



The Complainant also pointed out the employer's periodically occurring hysterical scenes. During these emotional outbursts, the employer allegedly threw things around him, shouted that the Complainant and the former assistant were stupid and useless and insulted the Complainant because of her Slovak origin, disparaging the Slovak nation and its culture.

These disagreements resulted in termination of the Complainant's employment relationship in February 2016. The Complainant states that the employer first invalidly attempted to terminate her employment through summary dismissal at the end of 2015. Subsequently the Complainant terminated the employment relationship with immediate effect due to the employer's failure to pay her compensation for salary.

B.2 Witnesses' statements

The Complainant identified several witnesses who could support her testimony. These are former assistant C. D., Mr E. F. (hereinafter also "witness A") and Ms G. H. (hereinafter also "witness B"). The latter two are registered attorneys-at-law. I therefore contacted them, requesting that they describe the relationship between the Complainant and her employer. The witnesses replied they were prepared to provide their statements during administrative or court proceedings.

B.2.1 Statement of the former assistant

The former assistant noted in her statement that she had worked for the employer in the period from 2012 to 2014.¹⁵ She stated she had terminated her employment by notice, one of the reasons being the employer's obscene behaviour, fits of anger, aggression and attacks, often sexually motivated. This conduct had caused her health problems and she had decided to leave.

The former assistant stated that the employer had often described his sexual life and experience with women. In doing so, the employer allegedly used vulgar expressions, especially under the influence of alcohol, which usually occurred twice a week. The former assistant also stated that the employer had threatened her with undignified punishment for unsatisfactory performance at work, which he had actually done roughly on two occasions. The former assistant also stated that the employer had often violated the intimate zone of herself and the Complainant, sought physical contact by licking their ears, touching buttocks, placing his arm around their necks or holding the knee of the woman on the passenger seat. The employer allegedly also demanded kisses on the lips and physically inspected whether the Complainant wore underwear. The employer made sexual suggestions to the Complainant and the assistant according to his mood.¹⁶ In addition, the employer regularly sent pornographic photographs, anecdotes and videos to both women.

¹⁵ The Complainant worked for the employer in the 2010 – 2015 period.

¹⁶ The former assistant gives the example of offering to pay a hotel room where they would all enjoy themselves.



The former assistant and the Complainant tried to avert the sexual suggestions by pointing out the employer was married, trying to keep physical distance from the employer or looking for pretexts to leave when he was present.

In addition to the usual harassment, the former assistant received a vibrator as a gift for her 22nd birthday, which she found inappropriate. The employer then repeatedly offered to come to her place to test the vibrator together with her. He also offered to buy a similar vibrator to the Complainant.

B.2.2 Statement of witness A

Witness A noted in his statement that he had friendly relations with the Complainant. On the contrary, he did not know the employer. He saw the employer together with the Complainant only once, during the celebration of the Complainant's birthday. During the meeting, he did not notice any inappropriate behaviour on the employer's part. However, witness A was regularly advised by the Complainant that the employer had behaved inappropriately. The Complainant suffered from the employer's conduct but she tried to stay in the position until the bar examination.

B.2.3 Statement of witness B

Witness B stated that she was in a friendly relation with the Complainant, sometimes they also worked together. Witness B knows the employer and met him about three to four times in the Complainant's presence. One of the occasions was the Complainant's birthday party and another at the law office. According to witness B, the employer was immoderately jovial to the Complainant and his remarks were inappropriate even in the relaxed settings of a birthday party. The employer picked on the Complainant using obscene, double-meaning allusions. He subsequently asked the Complainant to undress at least to her underwear and take a bath in the nearby inflatable pool. When the Complainant refused to do this, the employer said he would not raise her pay. After the party, the employer demanded staying overnight at the Complainant and licked her ear during the conversation. During one of the visits to the employer's law office, witness B also noticed that the employer tapped the Complainant on her buttocks and demanded kisses from her. It was obvious from the Complainant's reactions that she found the employer's conduct extremely unpleasant and tried to keep distance from him.

Witness B stated that the Complainant had planned to stay at the law office until her bar examination and then she would leave. Witness B found the Complainant's statements and mental condition acute and convincing.

B.2.4 Statement of the employer

In his statement, the employer claims that the Complainant's allegations are false. According to him, he endeavoured to get along well with the Complainant but she was lazy and incompetent.

The employer claims that the Complainant promised upon termination of the employment relationship that he would be sorry to have met her and demanded that he pay severance pay and compensation for sexual harassment in the amount of CZK 100,000, later CZK



80,000, adding that she would file a criminal complaint against him if he did not pay. Current assistant I. J. (hereinafter also the “current assistant”) was present during this conversation. Since the employer did not pay the required compensation, the Complainant filed the criminal complaint.

The employer further states that the Complainant was arrogant and stubborn, made errors at work, lied, dealt with her private matters during the working time and opposed his reproaches. She also liked to discuss her romantic and sexual problems with the former assistant during the working hours. The employer stated in this respect that he had given the vibrator to the former assistant at the Complainant’s recommendation and with her financial contribution. The former assistant allegedly did not object to the gift at all.

The current assistant advised the employer that the Complainant did not pay full attention to work, constantly bothered her with stories about problems with her boyfriend and was unwilling to help her with anything in the new job.

After a bitter incident, the employer attempted to terminate the Complainant’s employment by summary dismissal. However, the employer was agitated and did not manage to dismiss the Complainant validly. This attempt at terminating the employment was preceded by an argument concerning the Complainant’s presence at a social event organised by the employer’s client. When the employer told the Complainant that she would not take part in the event, the Complainant called directly the client, demanding express invitation. The employer reproached the Complainant for this and demanded that she present the results of work assigned to her earlier. The Complainant did not present the results and responded arrogantly and aggressively. Therefore, still before leaving for the event, the employer prepared a notice of summary dismissal. The Complainant refused to accept the notice, advising the employer that the document prepared by him was unlawful. The **Complainant (employer – trans.)** ceased to control himself and shouted at the Complainant to “*get out in ten minutes*”. He decided to do this not just because of the alleged previous insults from the Complainant and bothering of the client, but also based on suspicion that the Complainant had stolen CZK 3,000 from the current assistant.

Together with his statement, the employer also presented the Complainant’s e-mail from December 2015, in which the Complainant asks for a meeting to resolve the situation amicably. The Complainant states in the e-mail that she had to attend a day-care psychiatric centre as a result of the employer’s conduct¹⁷. The Complainant further states in the e-mail: “*I am not accustomed to being shouted at vulgarly without any reason by someone I thought liked me and whom I liked as well.*” The Complainant also states in her e-mail: “*We have had many nice and funny moments together, as well as difficult times; now it is time to go on and I will be pleased to receive your best wishes and not threats that you will ruin my life.*”

17 Here the Complainant refers to alleged shouting, abusive insults and the false accusation that the Complainant verbally abused the employer and refused to accept the notice of dismissal.



C. The Defender's assessment of the case

Truthfulness of the Complainant's and employer's claims are of key importance in this case because they are mutually contradictory. However, the Public Defender of Rights has very limited powers to take evidence. Therefore, I was unable to verify the truthfulness of the individual allegations and sufficiently establish the facts of the case. **The underlying documents available do not provide sufficient proof (with one exception) that the Complainant faced sexual harassment or retaliation.** However, I cannot rule out that a court in a potential lawsuit could reach a different conclusion based on its broader options as to taking of evidence. Therefore, in this section I will address the aspects to be taken into consideration when assessing this case.

C.1 Sexual harassment

According to the Anti-Discrimination Act, **sexual harassment** is harassment that has a sexual nature.¹⁸ It consists in inappropriate conduct that is aimed at or results in diminishing the dignity of a person or that can be rightfully perceived as a condition for a decision influencing the position of the person being harassed, i.e. *quid pro quo*.¹⁹

Consequently, the defining elements of sexual harassment are **inappropriate conduct**, **intensity prejudicial to human dignity** and **sexual overtones**. Sexual harassment is deemed to exist only if all these three elements are present. I will now discuss these three conditions separately.

C.1.1 Inappropriate conduct

The Anti-Discrimination Act considers sexual harassment to be a special case of harassment.²⁰ This is one of the reasons why, in the context of sexual harassment, it is necessary to differentiate between the objective and subjective aspects of the claimed conduct.

Therefore, only conduct that an average person would regard as humiliating in the given situation (objective aspect) can be considered inappropriate in the sense of the Anti-Discrimination Act. In the light of the foregoing, not every subjectively perceived harassment constitutes sexual harassment in the sense of the Anti-Discrimination Act.

In addition, the subjective aspect must also be present – the alleged victim of sexual harassment must indeed perceive the claimed conduct as humiliating. As a rule, consent of the person concerned rules out unlawfulness of conduct that would otherwise amount to harassment.

¹⁸ Section 4 (2) of Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended.

¹⁹ Section 4 (1) of the Anti-Discrimination Act

²⁰ Cf. Section 4 (1) and (2) of the Anti-Discrimination Act.



The inner state of a victim of harassment can be established primarily based on the person's conduct and reactions to the criticised conduct.²¹ From this point of view, it is hence necessary to ask whether the victim of harassment had negative feelings and whether they could be noted by an external observer.

Since this is an inner condition, it is necessary that the person concerned express his or her disagreement also in an observable manner so that other persons, including the harassing person, can distinguish between conduct which is subjectively admissible for the person concerned and which is not. The requirement for external observability of inner aversion is inversely related to the intensity of the violation of dignity. In the event of conduct violating the very core of human dignity, such as torture, the victim of harassment need not express disagreement with the conduct as the latter violates an inherent right which may not be prejudiced even with the victim's consent. To the contrary, the more it is objectively questionable whether conduct is subjectively perceived by a person as humiliating, the more it is required that such a person express disagreement in a sufficiently obvious manner.²²

From this point of view, the criticised conduct can be divided into three groups.

The **first group** comprises conduct whose potential to prejudice dignity is objectively unclear and different people can respond to it differently. In such situations, it is necessary that the person concerned unambiguously object to the conduct and clearly show that (s)he considers the conduct undesirable. If this has not been done, the conduct, even if repeated, cannot be retrospectively assessed as sexual harassment.

In the case at hand, the employer allegedly described his sexual activities, told obscene anecdotes, sent vulgar pictures, used vulgar expressions, addressed the Complainant with a nickname or shopped together with her for a vibrator.²³ The Complainant does not state that she objected to this conduct or that the employer would continue to act in an inappropriate manner after she comprehensibly demonstrated that she found the conduct inappropriate.

The **second group** comprises conduct which, from the objective viewpoint, clearly violates dignity but is acceptable if it occurs with the consent of the person concerned, even if tacit. This conduct can be considered sexual harassment also if it occurs only once and the person being harassed later expresses disagreement through legal defence, for example by filing an action or demanding apology or financial satisfaction.

21 For more on the objective and subjective aspects of harassment in general and sexual harassment, see BOUČKOVÁ, Pavla; HAVELKOVÁ, Barbara; KOLDINSKÁ, Kristina; KÜHN, Zdeněk; KÜHNOVÁ, Eva; WHELANOVÁ, Markéta. *Antidiskriminační zákon (Anti-Discrimination Act). Commentary*. Prague: C. H. Beck 2016, pp. 240–242.

22 An example is holding doors open for women or telling sexist anecdotes. For some people this conduct is unobjectionable while others find it humiliating. Therefore, in situations of this kind, it is up to the person concerned to reasonably object to this conduct in such a way that the persons present have no difficulties in recognising the subjectively perceived inappropriateness of the conduct.

23 According to the employer's statement, the vibrator was even given to the former assistant at the Complainant's proposal and with her financial contribution.



The various forms of physical contact described in the case at hand fall in this group.²⁴ Depending on the context and atmosphere at the workplace, this category may also include the asserted disproportionate punishment for poor work results, demanding kisses on the lips, allusions directing the Complainant's sexual life and demanding sexual intercourse. The Complainant states that she endeavoured to avoid physical contact. However, it is unclear whether she unambiguously objected to these forms of harassment and whether all the forms of harassment occurred repeatedly. Accepting repetition of this type of conduct without comprehensible objections can be regarded as tacit consent because the conduct is so serious that the person concerned can be expected to express objections if (s)he finds the conduct harassing. To the contrary, if a certain form of inappropriate conduct occurred only once, the Complainant can claim protection against the conduct within the general limitation period unless the circumstances suggest that she agreed with that individual form of conduct.

The **third group** consists in conduct which must be regarded as sexual harassment in all circumstances, regardless of the manifestations of will of the person concerned. This conduct violates human dignity with such an intensity that it is inadmissible even with the person's consent.²⁵

Deciding whether certain conduct falls in this category, i.e. whether protection should be provided even if the person concerned makes no objections, depends on the circumstances in which the conduct occurs as the degree of violation of human dignity is defined by context. On one occasion, the persons involved may perceive conduct as harmless, although objectively inappropriate, while in other circumstances, the same conduct will be seen as utmost abuse and demonstration of dominance. Depending on the context, demanding sexual intercourse, asking for kisses on the lips and other body parts and inspecting whether underwear is worn could be placed in the third category.

The highest degree of protection is appropriate in situations where it is clear from the circumstances of the case that the victim did not oppose to sexual harassment because it was objectively impossible to do so. For example, because it was absolutely unacceptable for the victim to lose his or her job for fear of his or her very existence; because defence was physically impossible; because the psychological terror reached a level where the victim was no longer capable of making independent decisions. However, given my limited powers to take evidence, I was not able to explore these aspects.

To the contrary, relatively clear facts are available regarding the employer's conduct during the birthday party as described by witness B. The employer requested that the Complainant undress at least to her underwear. This conduct was capable of violating the Complainant's dignity particularly as it occurred in the presence of many people including those not employed at the employer's law office. **In this case, the employer committed sexual harassment.**

²⁴ From "accidental" touching to violation of a person's intimate zone to holding by the knee during a car ride and other very deliberate physical contact.

²⁵ In the same way as all human rights, human dignity is inherent and inalienable. Therefore, some kinds of conduct may violate human dignity even if they occur with the consent of the person concerned. As a rule, this involves torture or other forms of inhuman treatment, which are absolutely prohibited.



C.1.2 Violation of dignity

An individual is the cornerstone of the State. Therefore, human dignity is in the core of the concept of protection of human rights and all interpretation of human rights is subordinate to this generally valid rule. Human dignity is part of every individual's quality and a manifestation of his or her humanity. Therefore, protection of human dignity is one of the prerequisites for the full development of an individual's personality.²⁶

Thus, every conduct that reduces a person to a mere object and does not fully respect him or her as a personality is a violation of dignity. Sexual harassment is based on abuse of a dependent position and dominance based on a position of power.²⁷ Power may result simply from great physical strength or higher social status and need not necessarily involve hierarchical supremacy.

Dignity may be violated not only through an individual violation of a specific intensity but also through a series of minor actions which together create a hostile, humiliating environment.²⁸

Therefore, any inappropriate conduct should be assessed both individually and in the relevant context and taking account of the overall conditions of the employment relationship.

Assessment of the dignity aspect of the case, i.e. capacity of the employer's conduct to violate the Complainant's dignity, depends on the established facts of the case. In general, however, every conduct that makes a human being an object of sexual desire and places him or her in this position interferes with human dignity and is unacceptable in society respecting human rights. If the employer demanded sexual intercourse with the Complainant in the manner claimed by the Complainant, I consider his conduct unacceptable.²⁹

C.1.3 Sexual overtones

Sexual harassment differs from harassment in the concept of the Anti-Discrimination Act by its sexual nature. However, this is not to say that sexual harassment is always aimed at achieving sexual intercourse. Sexual harassment is a display of dominance of one group

26 Judgement of the Constitutional Court of 21 December 2005, File No. IV ÚS 412/04; available at <http://nalus.usoud.cz/Search/GetText.aspx?sz=4-412-04>

27 For more on this view, see KVASNICOVÁ, Jana, ŠAMÁNEK, Jiří *et al.* *Antidiskriminační zákon (Anti-Discrimination Act). Commentary.* Prague: Wolters Kluwer, a. s., 2015. pp. 191–193 and the references

28 On the aspect of intensity and extensity of harassment, see BOUČKOVÁ, Pavla; HAVELKOVÁ, Barbara; KOLDINSKÁ, Kristina; KÜHN, Zdeněk; KÜHNOVÁ, Eva; WHELANOVÁ, Markéta. *Antidiskriminační zákon (Anti-Discrimination Act). Commentary.* Prague: C. H. Beck 2016, pp. 240–243.

29 The Charter of Fundamental Rights and Freedoms conceives human beings as inhabitants of the Kingdom of Ends in Immanuel Kant's concept. Protection of human dignity is derived from this concept. See WAGNEROVÁ, Eliška *et al.* *Listina základních práv a svobod (Charter of Fundamental Rights and Freedoms).* Commentary. 1st edition. Prague: Wolters Kluwer ČR, 2012, pp. 56 ff.



over another, usually male over female. However, there are also cases where heterosexual men sexually harass homosexual men.³⁰

The key to distinguishing between harassment³¹ and sexual harassment³² is the presence of allusions – express or double-meaning hints regarding the sexuality of the person concerned or acting in a manner which has clear sexual overtones.

In this case, the Complainant claims that her dignity was repeatedly violated directly in connection with questions concerning her sexual life. At the same time, the alleged physical contacts of the employer with the Complainant can be described as erotic.

C.2 Retaliation

The Anti-Discrimination Act defines **retaliation** as unfavourable treatment, punishment or placing at a disadvantage in consequence of exercise of rights under the Anti-Discrimination Act. The substance of retaliation (similar to sexual harassment) is an abuse of a position of power and employee's dependence on the employer. Therefore, the decisive aspect is not whether the unlawful conduct occurred outside working time but that the employer abused his position.

The employer requested during a birthday party that the Complainant undress to her underwear and take a bath in an inflatable pool. The Complainant refused this and the employer threatened not to raise her pay. This was confirmed by witness B.

By objecting to sexual harassment, the Complainant exercised her right to equal treatment, which is reflected in the employer's duty to ensure equal treatment at the workplace.³³ The threat of no pay raise has the nature of a retaliative measure prohibited by the Anti-Discrimination Act.³⁴

C.3 Persisting doubts

In her pleading, the Complainant described a wide spectrum of conduct of the employer that she regarded as sexual harassment.³⁵ She claims to have perceived this conduct as humiliating and unpleasant. In addition, in her interpretation if she defended against the employer's inappropriate conduct more emphatically, this could have had an effect on the duration, or at least quality, of her employment relationship. This indeed occurred when she refused to undress and the employer informed her he would not raise her pay. Therefore, the Complainant further resisted merely by being evasive and attempting to keep physical distance.

30 BOUČKOVÁ, Pavla; HAVELKOVÁ, Barbara; KOLDINSKÁ, Kristina; KÜHN, Zdeněk; KÜHNOVÁ, Eva; WHELANOVÁ, Markéta. *Antidiskriminační zákon (Anti-Discrimination Act). Commentary*. Prague: C. H. Beck 2010, p. 182.

31 Section 4 (1) of the Anti-Discrimination Act

32 Section 4 (2) of the Anti-Discrimination Act

33 Section 5 (2) and (3) of the Anti-Discrimination Act

34 Similarly in the Public Defender of Rights' report of 13 August 2014, File No. 250/2012/DIS, available at: <http://eso.ochrance.cz/Nalezene/Edit/1634>

35 See Section B.1, Allegations of the Complainant.



However, given the limited options as to taking of evidence, I was not able to ascertain as to what extent the inappropriate nature of the employer's conduct perceived by the Complainant was also observable externally, including by the employer. The latter could believe that the Complainant did not perceive his conduct as a problem **and hence did not meet the subjective elements of harassment** and did not amount to sexual harassment.

Most of the Complainant's allegations were confirmed through the former assistant's statement. The statement of witness B, who was present at the Complainant's birthday party and considered the employer's conduct inappropriate, adds credibility to these claims. Also the statement of witness A, according to whom the Complainant often complained about the employer's conduct, seems to support her claims. However, witness A states he did not witness any such conduct. To assess the situation, however, it is necessary to know the broader context of the employer's conduct and the atmosphere at the workplace.

Without knowing these facts, it is impossible to objectively assess the case, which is the reason why my Report is limited only to interpretation of the legislation which prohibits sexual harassment.

D. Conclusions

The underlying documents available do not provide sufficient proof that the Complainant faced sexual harassment or retaliation. It was impossible to prove that all the asserted forms of sexual harassment actually occurred and how the Complainant responded to the harassment.

The only exception in this respect is the employer's request that the Complainant undress during her birthday party. By its intensity, this conduct in itself amounts to sexual harassment. The statement about not raising her pay after the Complainant refused to submit to the employer's will can be regarded as retaliation.

I cannot rule out that the Complainant may indeed have faced sexual harassment. However, the Public Defender of Rights has very limited powers to take evidence. Therefore, a potential lawsuit could lead to different conclusions.

In the proceedings, the court could take account of the fact that the Complainant was, given the specific labour-law relationship (between a trainee attorney and her trainer), "deprived" of the option to use the effective complaint mechanism guaranteed to her by the Labour Code.³⁶ It may also be relevant that in addition to legal regulations, the legal

³⁶ Section 276 (9), in conjunction with Section 278 (3) of the Labour Code: The employer is obliged to consult the employee or, at his or her request, a trade union or council of employees, or a representative for occupational safety and health protection, on any employee's complaint relating to the exercise of rights and performance of arising out of labour-law relationships. Consultation shall mean a negotiation between the employer and employees, exchange of opinions and explanations with the aim to reach agreement. The employer is obliged to provide for consultation in due time in advance and in a suitable manner so that the employees are able to express their opinions on the basis of the provided information and that the employer can take these opinions into account before the given measure is taken. In consultations, the employees have the right to receive a justified answer to their opinion.



profession is also regulated by the professional regulations.³⁷ Attorneys-at-law have an indispensable role in the exercise of justice, which places higher demands on integrity of the members of their profession. Thus, a general court could assess the conduct of an attorney-at-law as an employer more stringently than the conduct of some other employer.

However, in the litigation the Complainant would have to prove that the asserted sexual harassment indeed occurred, that she considered the conduct inappropriate and that her attitude was also sufficiently observable externally. This is the only way of fairly balancing the requirements placed on plaintiffs and defendants in examining sexual harassment by the legal regulations (Section 133a of the Code of Civil Procedure), the case-law and jurisprudence.³⁸

I will inform the Complainant and the employer of my findings and conclusions.

Brno, 6 April 2017

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights
(this report bears an electronic signature)

³⁷ I refer here to Resolution of the Board of Directors of the Czech Bar Association No. 1/1997 of the Bulletin of 31 October 1996, laying down the rules of professional ethics and rules of competition for attorneys-at-law in the Czech Republic (Code of Conduct).

³⁸ On the aspect of intensity and extensity of harassment, see BOUČKOVÁ, Pavla; HAVELKOVÁ, Barbara; KOLDINSKÁ, Kristina; KÜHN, Zdeněk; KÜHNOVÁ, Eva; WHELANOVÁ, Markéta. Antidiskriminační zákon (Anti-Discrimination Act). Commentary. Prague: C. H. Beck 2016, pp. 452–455.