

Harassment in professional life

Preliminary remarks

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Harassment in professional life within the law and soft law of the European Union is recognized in two ways:

1. as a discrimination, if harassment is an unwanted conduct related to the grounds mentioned in Art 13 of the European Treaty.¹
2. as a social risk at work²

Sexual harassment is the most researched form of harassment and therefore of great relevance for women at their workplace. The phenomenon of sexual harassment at the workplace reflects the subordinate position of women in the hierarchy of working life. In 1998 the European Commission ordered a study about this issue and the situation in the EU Member States³. The accumulated evidence from these research activities shows that sexual harassment is prevalent in organisations in all surveyed Member States and poses a serious barrier to the integration of women in the labour market. Although percentages differ, partly due to differences in methods and definition, the studies estimate that, overall, approximately 30% to 50% of female employees have experienced some form of sexual harassment for unwanted sexual behaviour. In Austria a study from 1988 showed that 80% of women at the workplace are confronted with sexual harassment.

In the new Directive 2002/73/EC⁴ harassment related to the sex of a person and sexual harassment are contrary to the principle of equal treatment between women and men.

Harassment and sexual harassment are defined as follows:

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. (*“Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States”*). Directive 2002/73/EC of the European Parliament and 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.

² Council Resolution of 3 June 2002 on a new Community strategy on health and safety at work (2002-2006); Official Journal C 161, 05/07/2002 P. 0001 – 0004.

³ Sexual harassment at the workplace in the European Union, European Commission, Directorate-General for Employment, Industrial Relations and Social Affairs, Unit V/D.5, 1998.

⁴ Directive 2002/73/EC of the European Parliament and 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

— 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,

— 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.

According to Article 2 No. 3 of the Directive, harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore be prohibited.

In Austria legal provisions against sexual harassment at the workplace exist since 1993. I have been working as an ombud for four years and my experience in this area as well as what I know from the other panellists shows us that women need very specific protection.

All women I have worked with longed for acknowledgement of what happened and what harassment – sexual or not sexual - did to them. They felt ashamed and insecure about their perception of the harassment against them. Often they somehow feel guilty for what happened to them. Therefore one of our first aims is to encourage women to take their feelings and their perception for serious.

The specifics in cases of harassment I will describe as follows:

- The frequency of occurrence (deliberations on sexual harassment are by far more frequent than on other issues concerning the law of equal treatment at the workplace)
- Embarrassment afflicted with this subject.
- Many women and men are not aware of these incidents, which they hardly perceive and immediately repress afterwards.
- Threat to be sued for libel
- Similar processes following the harassment
- Immediate formation of parties
- Loneliness of the women
- Feelings of guilt of the women
- Deficiency of legal measurements

In these cases conventional legal rules often fail.

In Austria you can apply to the so-called Commission for Equal Treatment or to the labour court. The commission offers a different proceeding strategy. It is not as formal and confrontative as at court. In terms of sexual harassment the sensitivity of the members of this commission has increased since there are a lot of applications in this area.

A kind of insensitivity still predominates at court. In short terms I agree with Barbara Degen⁵. She says: “Rights of women share the destiny of women themselves, they are ignored and not taken for serious”.

The council of the European Union also regards that effective implementation of the principle of equality requires adequate judicial protection against victimisation.

In Austria the offender and the employer have to compensate financially for damage to dignity and integrity. But money is not what these offended women want to get from them.

Women need the possibility to continue their job, pleasant atmosphere at the workplace and acknowledgement of the tort against them.

We often work as a mediator with the offender and the offended woman and sometimes the employer. Confidentiality and discretion are one of the main and essential principles of our work.

In my opinion it is necessary to assimilate these new principles into the conventional code of practice at court.

The danger is possible lack of justice due to somehow weaker but on the other hand more creative schemes. In my opinion we need both: a new form of debate concerning increased gender sensitivity, but also strictness of justice in the end.

⁵ Barbara Degen, Die Zweisprachigkeit der Normen – feministische Erfahrungen, in: Recht Richtung Frauen, St. Gallen 2001, 341.