

**Ninth Meeting of European Labour Court Judges
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FINLAND

SEXUAL HARASSMENT

Questionnaire

General Reporter: Professor Alan Neal

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1 CONCEPT: THE SUBSTANTIVE NOTION OF ASEXUAL HARASSEMENT

1.1 In your country is there a recognised concept of Asexual harassment?

Yes

1.2 If so, since when has this existed?

At least since the 1980ties. The issue is mentioned in a number of studies and in the preparatory works of the 1986 Sex Equality Act.

1.3 Is there in your country a legal definition for the notion of Asexual harassment?

Yes

1.4 If so, is that definition provided by statute, and/or through case-law development, and/or by reference to a relevant definition existing elsewhere (e.g. in a European Union or other international instrument)?

The definition, or rather a provision where the phenomenon is mentioned and regulated but not defined in detail, is included in an amendment made in 1995 to the Equality Act.

1.5 Please state what is that definition:

In Sec. 6(2) of the Equality Act it is provided that the employer is under a duty to ensure as far as possible that no employee is subjected to sexual harassment or derangement.

What is meant by sexual harassment or derangement is further described in the relevant Government Bill (No. 90/1990). The conduct may take different forms, but a common feature is that it entails sexually orientated behaviour which is always offensive and undesirable to its object.

1.6 In your country is there any supplementary/complementary guidance as to what constitutes Asexual harassment (e.g. A Code of Practice or other guidance on dignity at work)?

Yes

1.7 If so, what is the nature of that supplementary/complementary guidance?

The www pages of the Office of the Equality Ombudsman contain brief guidance on what sexual harassment is, how it is treated under law, and what an employee who is subjected to harassment can do to cope with the situation.

In addition, several large companies or public institutions have published codes of practice on the subject. For instance, the University of Helsinki has issued such guidance, both on-line and as a paper version, as part of the new zero tolerance policy against all kinds of discrimination..

1.8 Are there any circumstances where Asexual harassment⁰ is (or could be) regarded as a matter falling within the regulation of health and safety at work in your country?

There are no specific provisions on the matter in the 1958 Labour Protection Act. However, as we are dealing with a risk to the mental and physical well-being of employees at the work place, sexual harassment is covered by the general provisions of the Act. Accordingly, it falls within the competence of the labour inspection authorities.

2. CAUSE OF ACTION AND PROCEEDINGS IN RESPECT OF ASEXUAL HARASSMENT⁰

2.1 In your country is it possible to bring proceedings before a court (a labour court or any other judicial instance) in respect of alleged employment-related Asexual harassment⁰?

Yes

2.2 Do proceedings in respect of Asexual harassment⁰ stand as a cause of action in its own right, or do such proceedings fall within a broader category of dispute (e.g. in the guise of Asex discrimination⁰)?

The claim would normally be based on the rules of the Equality Act. In Sec. 8 of the Act it is provided that the employer's failure to fulfill his duty to prevent sexual harassment is one of the forms of sex discrimination. So the cause of action would be sex discrimination.

2.3 Does there exist in your country any Aparallel⁰ or comparable form of action (e.g. a cause of action in respect of Aracial harassment⁰)?

Not at the moment. However, the implementation of the EC discrimination directives 2000/43 and 2000/78 is under way and will probably lead to the introduction of such parallel regulations.

2.4 Is there any significant difference in respect of the relevant cause of action or the procedures involved if the alleged harasser is a Apublic⁰ body, as opposed to a private individual or body⁰

No

2.5 If so, what will be the applicable situation in relation to each of those? -

2.6 Against whom can an action be taken in relation to alleged employment-related Asexual

harassment@?

The employer.

2.7 If action can be taken against the employer of an alleged harasser, please indicate in what circumstances that will be possible?

In case of breach of Sec. 8 of the Sex Equality Act, as explained above in 2.2.

2.8 Who is formally entitled to bring such an action?

The alleged victim.

2.9 If a body other than an alleged victim of alleged employment-related Asexual harassment@ (e.g. an Aequality commission@, an Aombudsman@, or similar) is entitled to bring such an action, please indicate in what circumstances this will be permitted:

As regards discrimination cases handled in courts, the alleged victim alone is entitled to initiate the proceedings. However, there is also an administrative body, the Equality Board, which has the power to forbid anyone who has violated the anti-discrimination provisions of the Equality Act to continue or repeat the violation. This procedure, which is seldom used, can be initiated by the Equality Ombudsman.

2.10 Is public legal aid, advice, or other assistance available to a party who wishes to bring an action in relation to alleged employment-related Asexual harassment@?

Yes

2.11 If so, what is the nature of that legal aid, advice, or other assistance, and in what circumstances will it be available?

Under law, the Ombudsman for Equality may assist a person who has been subjected to discrimination in the protection of his or her rights. This means in practice that the Ombudsman's team gives advice and instructions and prepares statements for cases in contravention of the Equality Act. The Ombudsman handles about 200 written discrimination cases annually, but only a small percentage of these concern sexual harassment.

If the Ombudsman considers the matter to be of considerable importance with regard to the application of the Equality Act, he (or and officer ordered by him) may also assist the alleged victim in judicial proceedings relating to indemnification or compensation under the Equality Act. This option, however, is not often used. It is much more common that the Ombudsman gives a statement at the request of the employee in question, and the statement is then used by the litigant in support of his or her case in the court.

The right to public legal aid, guaranteed by the general rules of civil procedure, apply in discrimination cases as well. Also trade unions assist their members in such court proceedings.

3. DISPUTE RESOLUTION FORUM AND STRUCTURES

3.1 In what forum can an action be brought in your country relating to alleged employment-related Asexual harassment@?

Jurisdiction lies with the regular courts. Regarding the Equality Board, see above in 2.9.

3.2 Where relevant, in what forum can an action be brought in your country relating to alleged non-employment-related Asexual harassment@?

Such cases can be brought to court only in the event that a sexual offense has been committed. Criminal procedure in a regular court would then be available.

3.3 Who will adjudicate on a complaint relating to alleged employment-related Asexual harassment@?

Professional Judge (s) ✕♣✕ How many 3
in general; no special requirements With what background? *That of a judge in regular court*

Lay (e.g. trade union Members) (No) How many? *In criminal cases the composition of the court is one professional judge and three laymen appointed by the council of the municipality. The laymen must be 25-63 of age and have a decent reputation. They are often members or supporters of the political parties represented in the council.*

A With what background?.....

ASpecialist Aassessor (s)@ No How many?.....

A With what background?.....

Other ✎★ How many?.....

A Please specify:.....

3.4 Is any particular experience or qualification required of those who will adjudicate on a complaint relating to alleged employment-related Asexual harassment@?

No

3.5 If so, what is the nature of that requisite experience or qualification?

3.6 Is any special training provided for those who will adjudicate on a complaint relating to alleged employment-related Asexual harassment@?

No

3.7 If so, what is the nature of that training?

4. PROCEDURE IN RELATION TO EVIDENCE AND THE ADJUDICATION OF COMPLAINTS OF EMPLOYMENT-RELATED ASEXUAL HARASSMENT@

4.1 In relation to the procedures which are adopted during the course of adjudicating upon a complaint of alleged employment related Asexual harassment@, are there in your country any special rules relating to:

4.1.1 Anonymity of any or all of the parties? No
If so, what rules apply here?

4.1.2 Hearing some or all of the evidence in camera? No
If so, what rules apply here?

4.1.3 Placing restrictions upon the freedom of the Press to report such proceedings?
No
If so, what rules apply here?

4.1.4 The manner in which cross-examination (or questioning in general) of an alleged Avictim@ can take place (e.g. reflecting criminal procedure rules for sexual offenses)?
No
If so, what rules apply here?

4.2 In terms of making out a case, what elements does a party who complains of employment-related Asexual harassment@ in your country have to establish?

Basically, the complainant has to establish that he or she has been subjected to sexual harassment at the workplace. The complainant's position is facilitated by Sec. 10 of the Equality Act which provides that the employer must upon demand and without delay give an explanation to any one who is of the opinion that he or she has been discriminated against on the basis of gender. In case of sexual harassment this explanation should state what measures the employer has taken to prevent harassment from taking place.

The remedy in cases of sex discrimination is a pecuniary compensation under Sec. 11 of the Act. The compensation is ordered for the immaterial violation of the victim's personal dignity, so that no proof of actual damage incurred is required.

4.3 What is the standard of proof required in such cases (e.g. shown on a balance of probabilities, etc.)?

The court can freely decide when it considers sufficient proof to be shown. In general it could be stated that reasonably convincing proof is considered sufficient in civil cases. The standard of proof may, however, vary between different types or categories of cases. If the nature of the case is such that it is difficult for the complainant to provide indisputable proof, the threshold may be lowered. Whether this is the case as regards sexual harassment, is hard to say because there's so little court practice on the matter.

4.4 What are the rules in your country concerning the burden of proof in such cases?

Contrary to other (traditional) cases of sex discrimination where the burden of proof is reverted, in harassment cases the normal rules apply, meaning that the burden of proof rests with the litigant. A shift may take place due to the circumstances of the case, for instance if the employer has failed to provide the explanation mentioned above, or if the explanation is not convincing etc.

4.5 Is this consistent with the normal rules in your country concerning the burden of proof in civil cases?

Yes

4.6 Is there any right in your country for a witness or a party to refuse to answer a question during the course of proceedings relating to alleged employment-related sexual harassment on the ground that the answer given might be self-incriminating in respect of a criminal offense?

Yes

If so, what is the basis of that right to refuse an answer?

As stated in the question, a witness or a party may refuse to answer if the answer might incriminate the person in question or a close relative. An explanation to such refusal must, however, be given.

4.7 Do witnesses in proceedings relating to alleged employment-related sexual harassment give evidence under oath?

Yes

4.8 Is this consistent with the normal situation for witnesses giving evidence in civil proceedings in your country?

Yes

4.9 Will any aspect of evidence be excluded in proceedings relating to alleged employment-related sexual harassment (e.g. the sexual history of the alleged victim, or instances of previous allegations made against the alleged harasser)?

No

4.10 If so, what rules apply here?

Any aspect of evidence deemed useful and relevant for deciding the case is admissible.

4.11 If there has been a criminal (e.g. by the police) or other investigation into the circumstances under adjudication in proceedings relating to alleged employment-related Asexual harassment®, will statements or other evidence obtained in the course of that investigation be admissible in relation to the alleged employment-related Asexual harassment® proceedings?

No

4.12 If so, under what conditions will such evidence be admitted?

The only exception to the rule is that a witness cannot be heard again in the court (he is missing, dead etc.)

4.13 Will a failure by the employer of an alleged harasser to observe any Aguidance® or ACode of Practice® provisions on dignity at work be taken into account during the course of adjudicating in proceedings relating to alleged employment-related Asexual harassment®?

Yes

4.14 If so, in what way will this come about, and what might be the consequences of such non-observance?

Should there be an in-company code of practice on the matter, non-observance would certainly weaken the employer's defense.

5. ADJUDICATION, REMEDIES AND CONSEQUENTIAL MATTERS

5.1 In your country will the judgement/decision in relation to proceedings concerning alleged employment-related Asexual harassment® be given with a full statement of the reasons underlying the outcome of those proceedings?

Yes

5.2 Is this consistent with the normal situation for judgments/decisions in civil proceedings in your country?

Yes

5.3 In your country will the judgement/decision in relation to proceedings concerning alleged employment-related Asexual harassment® be made public?

Yes

5.4 If so, will the whole of the judgment/decision be made public, or may portions of it not be made available (e.g. the names of parties)?

As long as we are dealing with a civil case, the whole judgment will be made public.

5.5 What remedies are available to a successful party who has complained of employment-related Asexual harassment@?

Sec. 11 of the Equality Act provides for a pecuniary compensation up to 8,700 EURO to be paid to the wronged party. If warranted by the nature of the offense and by the circumstances, the amount may be doubled. In addition to this compensation, the court may order the actual damages of the victim to be compensated by virtue of the general rules on liability for damages.

5.6 In addition to Adirect@ remedies for a successful party in such proceedings, is it possible for the adjudicating body to make Arecommendations@ or similar (e.g. to bring about an investigation into, or monitoring of, an employer's practices)?

Yes

5.7 If so, what is the potential scope of any such Arecommendations@ (or the like)?

The observance of the Equality Act is monitored by the Equality Ombudsman. When observing that the obligations laid down in the Act are not complied with, the Ombudsman shall in the first place provide advice and counseling so as to prevent the continuation or recurrence of such unlawful practice.

5.8 Is there a recognized cause of action in your country for Avictimization@ in relation to a person who has brought a complaint concerning, assisted a person who has made a complaint, or been involved with proceedings concerning alleged employment-related Asexual harassment?

Yes

5.9 If so, what conditions must be satisfied in order to succeed in a claim alleging such Avictimization@?

Sec. 8(2) subparagraph 4 of the Equality Act is applicable to these cases. Under the provision, sex discrimination prohibited in the Act is deemed to be materialized if an employer impairs the working circumstances or employment terms of an employee after the latter has had recourse to the rights or duties provided for in the Act.

Job protection regulated in Chapter 7 of the Employment Contracts Act (2000) is also relevant here. Sec. 2(2) contains a list of grounds for individual dismissal which in no event can be regarded as lawful. One of the items enumerated is an employee's resort to means of legal protection available to employees.

5.10 What remedies are available to a successful party who has complained of Avictimization@ relating to alleged employment-related Asexual harassment@?

The regular pecuniary compensation under Sec. 10 of the Equality Act is available also here (see above in 5.5). If the employer's measure constitutes unlawful dismissal under the Employment Contracts Act, the employee is entitled to a normalized indemnity amounting to twenty-four months' wages at most. The two forms of compensation explained here do not exclude one another.

5.11 Is it possible in your country to appeal against a judgment/decision in proceedings relating to alleged employment-related Asexual harassment@ or alleged Avictimization@ arising out of any such allegation?

Yes

5.12 If so, to whom does any such appeal lie, and on what grounds can such an appeal be made?

The appeal is made to the Court of Appeal on the ground that the decision of the court of first instance is contrary to law. The appellant employee may thus claim that the appeal was dismissed illegally or that he or she is entitled to higher compensation. Correspondingly, the employer may appeal that the decision of the court of first instance be set aside.

5.13 Is it possible in your country for a party who has brought proceedings relating to alleged employment-related Asexual harassment@ or alleged Avictimization@ to be open to litigation in respect of (e.g.) defamation, perjury, or the like?

Yes

5.14 If so, in what circumstances might this arise?

If the accusation turns out to be overtly ill-founded.

1 SUPPLEMENTARY

6.1 Please indicate your (personal) impression of the extent to which the notion of Asexual harassment@ in your country depends upon the subjective response of the alleged Avictim@ and to what extent it has proved possible in your country to develop objective criteria for identifying action of circumstances which can be said to amount to Asexual harassment@

Court rulings in this area are very rare. According to information obtained from the Office of the Equality Ombudsman, two cases altogether have been brought to court. Thus the objective criteria are in the main to be found in the statements of the Equality Ombudsman. They reveal that some significance is given to how the victim in question has subjectively experienced the conduct of the harasser. In other words, there are sensitive persons, and persons with a tougher nature. Also, there are varying work place cultures depending on the industry in question. The language used in construction sites differs from that used in banks and offices. In my understanding these factors may to a certain extent be taken into consideration, at least if the harasser is aware of them.

6.2 Please provide any available data relating to statistics for cases involving allegations of employment-related Asexual harassment@ in your country.

According to a statistical survey conducted by The Finnish Institute of Occupational Health, two per cent of Finnish women had experienced sexual harassment in 2000.

Another study concerning the situation in 1995 at the University of Helsinki revealed that during the course of the academic career 10,8 percent of the staff and 5.5. per cent of the students had been subjected to sexual harassment. The figures covering the two last years were 6.8 and 2.7 per cent correspondingly. 70 per cent of the victims among students were female, and among the staff the share of women was even higher. One third of the cases were reported to have involved serious harassment.

6.3 Please furnish a copy of any legislative provisions in your country which deal specifically with the phenomenon of Asexual harassment@.

*See the web site of the Office of the Equality Ombudsman:
<http://www.tasa-arvo.fi/www-eng/index.html>*

6.4 Please furnish a copy of any Aguidance@ or ACode of Practice@ in relation to dignity at work which touch upon the phenomenon of Asexual harassment@.

See the web site of the Office of the Equality Ombudsman.

6.5 Is there in your country any experience in the use of Aalternative dispute resolution@ mechanisms in relation to circumstances in which allegations of employment-related Asexual harassment@ have been made?

Yes

6.6 If so, please indicate the nature of the Aalternative dispute resolution@ mechanism(s) and give a brief description of its (their) operation:

One prominent case can be reported here. The managing director of a large Finnish company had according to the biggest newspaper in the country made himself guilty of sexual harassment already for many years, and the victims were many. The names of the MD and the company were not made public at first, but then the journalist in question revealed them (in 2000). This led to a scandal, especially because the company was in public ownership, and the MD was a former minister and Member of the Parliament. The MD denied all accusations, and the board of the company found itself in a difficult situation. The solution was to invite Ms. Pirkko K. Koskinen, formerly Ombudsman of the Parliament (and retired professor of labour law) to conduct an investigation in the matter. Her report brought into daylight a history of what she described as mild sexual harassment. Two victims were identified, an employee and an independent worker of the company. On the basis of the report the Company Board was able to dismiss the MD.

The case never went to court, neither on the basis of harassment nor as a dismissal case. Instead, the fired MD, supported by his very active wife, has in numerous newspaper articles and TV programs explained how his behavior had been misunderstood etc. Undoubtedly he has also drawn much sympathy - and voters for the next elections.

In addition, codes of practice applied in some companies and institutes may include procedures for dealing with harassment cases, maybe with the aid of an equality representative of the institute or by some other means.

6.7 Have there been developments in your country in the direction of applying any of the provisions dealt with in this questionnaire to alleged same sex harassment?

No

6.8 If so, please indicate how these developments have progressed to date: