



**XIXth Meeting of European
Labour Court Judges
19-20 September 2011, Sevilla, Spain**

Sex Discrimination at Work: Judicial approach to sexual harassment cases

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Sex Discrimination at Work

■ Gender equality and sex discrimination

- various aspects (gender pay gap, recruitment, promotion, dismissals)
- sexual harassment as a form of violence at work

■ Sexual harassment in the modern world of work

- Topical issue in mass media
- Differences in cultural approaches
- Growing number of labour law reforms
- Increasing case law worldwide





Sources of Regulation on Sexual Harassment

■ International and regional sources

- ILO standards, CEDAW and European Union Directives

■ National sources

- Constitution – general principle of equality
- Laws on gender equality or sex discrimination
- Laws on equality or equal opportunities
- Provisions in the labour codes
- Laws on sexual harassment
- Collective agreements
- Codes of good practices





Case Law on Sex Discrimination

■ Main topics of complaints on sex discrimination in civil and labour courts

- recruitment and job announcements
- promotion
- pregnancy/maternity
- selection for redundancies
- gender pay gap
- right to dignity





Case Law on Sex Discrimination

Percentage of complaints on sexual harassment

-  no statistics available
-  very limited number of cases (Belgium, Germany, Italy)
-  around 1-5% (Finland, Spain, Sweden)
-  15% (Israel)
-  37% of discrimination cases in Venezuela (14 cases on sexual harassment)
-  case law mainly in specialised equality bodies (Australia)
-  cases on sexual harassment often related to other issues such as dismissals (Slovenia)
-  800 discrimination claims a year (Ireland) : 40% on gender



Case Law on Sex Discrimination

■ Categories of workers concerned

- mainly women
- various economic sectors
- less skilled workers are more vulnerable

■ Recent trends in case law

- increasing (Australia, Finland, Israel, Slovenia, Venezuela)
- stable (Belgium, Ireland)
- no specific statistics (Germany, Norway, Spain)



Legal Definition of Sexual Harassment

■ Twofold definition

- *quid pro quo* and hostile environment
- Comments of the ILO Committee of Experts on application of Convention 111 on discrimination at work

■ Detailed definition in most countries under review

- Influence of the European Union legislation
- *unwelcome (undesired)* verbal, non-verbal or physical conduct of a sexual nature
- sexual harassment and harassment based on gender

■ No problems of interpretation in the judicial practice



Examples of Cases on Sexual Harassment

- **Disrespectful attitude (comments, jokes etc)**
- **Emails and posters with pornographic content**
- **Physical touching and assault**
- **Sex relations with the supervisor not to lose the job**
- **Dismissal of a harasser/perpetrator**
- **Declaration of love or love letters?**





Bringing Complaints on Sex Discrimination

Main Channels

-  At the enterprise level (Belgium, Israel, Germany, Spain)
-  Labour and civil courts (Belgium, Italy, Spain, Sweden, Venezuela)
-  Specialised body on equality, ombudsperson (Belgium, Denmark, Finland, Germany, Norway)
-  Human rights bodies (Australia), Equality Tribunal (Ireland)
-  Agency of conciliation and mediation of labour disputes
-  Labour inspection (Belgium, Slovenia, Venezuela)

Complaints procedure

-  time framework
-  legal representation (by a trade union or an NGO)



Proving Complaints on Sex Discrimination

■ Reversal of the burden of proof

- provided by law in most countries under review
- not in case of sexual harassment (Switzerland)

■ Examples of evidence

- litigants' statements and behaviour
- letters, emails
- similar incidents with other people
- witnesses, testimonies
- documents, medical reports
- recordings on mobile phones



Employer's Liability

■ General Duty of the Employer

- “all reasonable steps” of prevention, investigation and elimination of harassment and discrimination
- occupational safety and health
- protection of workers' dignity

■ Measures to be taken by the employer aware about harassment cases

- disciplinary proceedings
- dismissal of the perpetrator
- transfers of employees
- internal regulations and training for employees



Compensation for Victims

■ Financial compensation for victims

- free definition by the judge
- countries' examples: 700-5'000 EUR in Denmark 2'500-24'000 EUR in Belgium, min. 3'240 EUR in Finland, 13'000 EUR in Israel, 20'000-45'000 \$ in Australia, 4'000-12'000 EUR in Slovenia, 3'500 USD in Venezuela, 15'000 EUR in France, 2-year salary in Ireland

■ Punishment for perpetrators

- Order to cease an illegal behaviour
- Imprisonment (Finland, France)



Case Law on Sexual Harassment

■ **Protection of witnesses**

- explicit in law in most countries under review
- general rule of law (Denmark)

■ **Victim or harasser external to the enterprise**

- statutory specific or general protection
- harassers are clients of the enterprise
- case of temporary work agencies

■ **New cases on the basis of sexual orientation**



Moral Harassment

■ **Definition of moral harassment (mobbing)**

- Definition by law in most EU countries under review
- No statutory definition (Australia, Israel)
- Discriminatory harassment (Spain)
- General reference to respect of person's dignity
- Not a singular act (Belgium, Germany)

■ **Legal parallel between sexual and moral harassment**

- Yes: in most EU countries under review
- No: Israel, Venezuela (but the same procedure)



Conclusions

- **Comprehensive policy approach for eliminating sexual harassment at work and in the society**
 - Public awareness campaigns
 - Adequate legal frameworks on sexual harassment
 - Several channels at the disposal of victims
- **Role of the judiciary in combatting sex discrimination**
 - interpretation of statutory rules
 - primary importance in promoting respect for decent work and human dignity



Thank you for your attention!

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