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HUNGARY

SEXUAL HARASSMENT

Questionnaire

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1 CONCEPT: THE SUBSTANTIVE NOTION OF "SEXUAL HARASSEMENT"

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

YES

1.2 If so, since when has this existed?

Naturally the sexual harassment is a real problem in Hungary like in other countries. The concept of sexual harassment has appeared in the media, and in legal circles in the last years. Some American movie films also influenced the public opinion, so the sexual harassment is recognized at the commonsense.

Unfortunately the victims, and the harasser (or employer) don't realize this kind of behavior as cause of action. The victims don't know much about the legal provisions, which ensure their rights for defense, compensation etc.

Nowadays Hungary stands just front of the European Union's door. So the legislators start to deal with this problem. They order studies in this subject, but the other participants of the labor relations (trade union etc.) don't mind this issue. We can't find Code Practice at the corporation, which the Franc, German proprietors mostly have.

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

NO

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)?

1.5 Please state what is that definition:

1.6 In your country is there any supplementary/complementary guidance as to what constitutes "sexual 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?

We haven't legal definition, but some provisions can apply by the court in such cases.

The Labour Code

Obliges the parties (employees, employers, trade unions) to cooperate with one another;

Orders the rights and duties prescribed in this Act shall be exercised and fulfilled in accordance with their intended purpose;

Prohibits the discrimination;

Binds the employers

- to ensure proper conditions for occupational safety and health;**
- to organize work so as to allow the employees to exercise the rights and fulfil the obligations originating from their employment relationship;**
- to provide the employees with the information and guidance necessary for the performance of work;**

obliges the employees to cooperate with their co-workers and perform, work and otherwise proceed in a manner without endangering the health and safety of others, without disturbing their work and causing financial detriment a damaging to their reputation.

The Civil Code contains certain rules concerning the rights of personality and the consequents if the rights are violated. The penal Code ensure for the government, and some cases for the victims to start the penal proceeding.

The Labour-safety Code fundamental purpose is to regulate the personal, material and constitutional condition for occupational safety and healthy. It's aim prevent the accident and illness.

The government should control the application of these provisions. So the Code of Petty Offence and Code of Labour Investigation give rights to punish the employer, as the legal body or the person, who leads the corporation.

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

The Labour-safety Code doesn't mention the sexual harassment, but this action can be justified by this Code, too. The provisions of Labour Code are enough to justify the sexual harassment, as the offence against the rights for safety and healthy employment.

2. CAUSE OF ACTION AND PROCEEDINGS IN RESPECT OF "SEXUAL HARASSMENT"

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 "sexual harassment"?

YES

2.2 Do proceedings in respect of "sexual harassment" 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 "sex discrimination")?

The employees can bring proceeding against the employer the labour court (Which is exists separately at first instance for the labour cases). The plaintiff can refer these provisions of Labour Code which provide the safety, health, dignity of employees and the free from discrimination. The action be aimed at the establishing the unlawfulness, or condemnation in money. According in the Labour Code employer shall be subject to full liability for damages caused to employees in connection with their employment, regardless of accountability. Employees shall also be compensated for damages, which are not of financial nature. In this cases the plaintiff can refer to the Civil Code, too. So she/he can claim to publishing the begging etc.

The employee has possibility to bring proceedings before the local court (it handles the civil and criminal cases) against the harasser (the person, who commits the sexual harassment) refer to the Civil Code, or Penal Code. The victim can take a private prosecution: slander or attack of honor charge.

2.3 Does there exist in your country any "parallel" or comparable form of action (e.g. a cause of action in respect of "racial harassment")?

Every other discrimination action are allowed by the same provisions. The "racial harassment" isn't named, as a special form of action.

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 "public" body, as opposed to a private individual or body"

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 "sexual harassment"?

The employees can bring the proceeding against the employer before the labour court, refer to the Labour Code, or against her/his harasser (the person) before the local court, refer to the Civil Code or Penal Code

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

The employer is responsible for the healthy, safety and non-discriminative employment B as the quotation provisions from the Labour Code are ordered. So the possible circumstances aren't limited. If the employee recognize some gestures, statements, behavior etc. of the co-worker (even if the harasser isn't her/his boss) this is enough for claim.

2.8 Who is formally entitled to bring such an action?

Only the victim (employee) is entitled to bring such an action.

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

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 "sexual harassment"?

NO

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

3. DISPUTE RESOLUTION FORUM AND STRUCTURES

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

"Sexual harassment" action can be brought in labour court against the employer (we name it action for declaration, action for damages etc.) in local court against the harasser (we name it action for slander, action for rights of personality etc.)

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

This action can be brought in local court. But if the harasser was the client, who commits the sexual harassment against the employee at the workplace, the employer is responsible too. So the employee has chance to step against the employer before the labour court.

3.3 Who will adjudicate on a complaint relating to alleged employment-related "sexual harassment"?

Professional Judge (s) How many

The labour court trial in panel: two lays and one professional judge.

With what background? No special, as other professional judges

**Lay (e.g. trade union Members) How many?. Two in each panel
With what background The lays are elected by the local government from the local residents. The trade union has special right to nomination.**

"Specialist "assessor (s)" How many?.....NO

With what background?....NO

Other Howany?..... NO

Please specify:.....NO

3.4 Is any particular experience or qualification required of those who will adjudicate on a complaint relating to alleged employment-related "sexual 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 "sexual 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 "SEXUAL HARASSEMENT"

4.1 In relation to the procedures which are adopted during the course of adjudicating upon a complaint of alleged employment related "sexual 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? YES
If so, what rules apply here?

According to the Code of Civil Procedure the court (the judge) can order hearing some or all of the evidence in camera, the reason of provide the public moral. The parties can claim in camera, the reason of provide his/her/its rights of personality. The court has to decide about the claim (yes or no).

4.1.3 Placing restrictions upon the freedom of the Press to report such proceedings?

YES

If so, what rules apply here?

The main rule is the above mentioned provision. Over and above that, the participants of the trial can forbid to take a photo, video or to record the sounds for the journalist, or the audience.

4.1.4 The manner in which cross-examination (or questioning in general) of an alleged "victim" can take place (e.g. reflecting criminal procedure rules for sexual offences)?

YES

If so, what rules apply here?

The judges (lays too) defendant, legal assistants of the parties have be right to question. But the leader (moderator) of the trial is the professional judge. His/her task to care for the trial, it mustn't expand circumstances, which haven't connection with the case. So he/she forbids the question, if it isn't relevant or suitable for influence the witness.

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

_ The plaintiff has to declare in claim name and address of the defendant,

- 2 the rights of action (which rights was injured B the quotation of the provisions isn't necessity), the fact and evidences
- data for the competition of the court
 - exact claim for decision.

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

The Code of Civil Procedure names some evidences (the witness, the documents etc.), but the evidences are free, depending the parties' motion.

There isn't any order of importance.

At the end, the panel balances the evidence. Failure of proof B depends the burden of proof B means the loosing or winning for the plaintiff.

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

The Code of Civil Procedure ordered burden of proof on the plaintiff. But the Labour Code exchange it in certain cases.

The burden of proof is on the employer concerning non-discrimination. But the plaintiff has to assert what kind of discrimination she/he suffered, which and whose conduct realized the discrimination, or what event showed the discrimination.

At the action for damages the plaintiff has to prove the damages and its connection with employment.

The employer shall be relieved from liability if able to prove that the damage was caused by an unavoidable event outside his field of operations or only by the unavoidable conduct of the aggrieved party.

This is an objective responsibility, it isn't depend from the guilt. The employer has to pay even if the claim.

The conduct of employee (as harasser) will be qualified as the fact which belongs to the employer's field of operations. This element B whether the harassment wasn't unavoidable by employer B is enough for recognizing responsibility.

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

NO

If not, in what way (s) do the rules differ here?

The Labour Code changes the burden of proof in certain cases.

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 offence?

YES

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

According to the Code of Civil Procedure the witness have right to refuse answer if he/she is a close relative of any of the parties; would accuse him/herself or his/her close relatives.

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

NO

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)?

YES

4.10 If so, what rules apply here?

The parties have right to motion some evidence (whether they want), but the court decides about the motion whether it is relevant or not.

The court has to give the reason of its decision at the judgment.

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 "sexual harassment", will statements or other evidence obtained in the course of that investigation be admissible in relation to the alleged employment-related "sexual harassment" proceedings?

YES

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

The court has to use this evidences to according to Code of Civil Procedure (the main rule is the directness, the verballity, the prohibition of official evidence (without parties' motion) and the free evidence.

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

YES

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

The evidence would be easier, if there are some special "guidance". But without guidance, code of practice, the provisions of Labour Code are enough to justify the employer's responsibility for the sexual harassment.

5. ADJUDICATION, REMEDIES AND CONSEQUENTIAL MATTERS

5.1 In your country will the judgement/decision in relation to proceedings concerning alleged employment-related "sexual 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 "sexual harassment" be made public?

NO

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)?

The court has to pronounce sentence, but it couldn't send to the Press or other organ. Except when the parties (together) agree the publishing. The court has to ask the parties opinion, if the journalist wants to publish the judgment. Of course the parties can publish the judgment.

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

Probably the remedies will be the compensation in money, or to obligation for the employer to do something or abstain from action.

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

NO

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

5.8 Is there a recognized cause of action in your country for "victimization" 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 "sexual harassment"?

YES

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

The victim try to slander, attack of honor on the false accuse charge against the complaint, or the false witness.

The alleged harasser, or the employer can take an action for their rights of personality (good reputation) against the employee or other person (some association etc.), who accused them by sexual harassment.

5.10 What remedies are available to a successful party who has complained of "victimization" relating to alleged employment-related "sexual harassment"?

There aren't any special provisions. The remedies can be the compensation, begging etc.

5.11 Is it possible in your country to appeal against a judgment/decision in proceedings relating to alleged employment-related "sexual harassment" or alleged "victimization" 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 parties of action (plaintiff and defense) can apply against the judgment.

They have to write what change they want and why they want to modification of the judgment.

They can't refer to new fact, evidences except they are noticed after the judgment and these facts, evidences promise preferable decision for the applicant.

5.13 Is it possible in your country for a party who has brought proceedings relating to alleged employment-related "sexual harassment" or alleged "victimization" 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?

The right of action isn't limited. One asserts (before others) from somebody or spread from certain facts, which is suitable for slanderous, the offence is committed.

5. SUPPLEMENTARY

6.1 Please indicate your (personal) impression of the extent to which the notion of "sexual harassment" in your country depends upon the subjective response of the alleged "victim" 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 "sexual harassment"

I think the concept of sexual harassment can't be defined exactly. It depends the feeling of victims. Of course the customs are important too. Lack of cases the objective criteria can't identify.

I suppose the court will use the European examples, EU recommendations etc., as guidance when the first case comes.

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

In Hungary there aren't any data either from court, neither from workplace. I have been judge for ten years but I've never met such cases at the court.

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

There aren't.

6.4 Please furnish a copy of any "guidance" or "Code of Practice" in relation to dignity at work which touch upon the phenomenon of "sexual harassment".

There aren't.

6.5 Is there in your country any experience in the use of "alternative dispute resolution" mechanisms in relation to circumstance in which allegations of employment-related "sexual harassment" have been made?

NO

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

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