

Sexual Harassment at Work: A European Experience

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Abstract

Unwelcome sexual advances, proposition or pressure for sexual activity, offensive flirtations, leering, whistling, making sexually suggestive gestures, sexual jokes, unwanted sexual looks, unwanted letters, telephone call, or materials of a sexual nature, unwanted physical contact, actual or attempting rape or sexual assault, this and more of this conduct if took place in the workplace would amount to a sexual harassment. The sexual harassment at work has become a serious issue of our time. It is an unjustified interference of integrity, dignity and well-being of workers, causing problems from headaches to depression, loss of confidence, panic attacks and perhaps suicide as the only way appearing to be the sole possible relief from the unremitting and frightening behavior. This article presents information concerning the sexual harassment at workplace, covering topics such as, the definitions for sexual harassment in both international and national context, a short history of sexual harassment, types of sexual harassment, effect of sexual harassment, measure to combat and prevent sexual harassment. It offers a short overview in sexual harassment legislation of some industrialized EU Member States and the legal remedies available against sexual harassment. The main purpose of this article is to provide a better understanding and prevention concerning the issue of sexual harassment in workplace.

Keywords: *sexual harassment, sexual blackmail, rape, sexual assault, discrimination.*

Introduction

The different forms of sexual harassment, from verbal to physical forms, make this concept difficult to understand and recognize. For this reason, the objective of this article is to provide information concerning the sexual harassment at workplace, definition of sexual harassment, types of sexual harassment, effect of sexual harassment, measures to combat and prevent sexual harassment. It offers a short overview of the legislation concerning sexual harassment in some industrialized EU Member States, such as France, Germany, Italy and United Kingdom which have been selected to provide a diversity of systems, in legal terms. This article is divided into eight parts, including introduction and concluding remarks.

History of Sexual Harassment

Sexual harassment is a new name describing an old problem. Generations of women have suffered from unwanted sexual attention at work and from offensive behavior based on their gender. But it is only in the last 20 years that this conduct has been given a name (ILO, 1992, 7). From a historical perspective, the phenomenon of sexual harassment at workplace goes a long way back. It reflects the subordinate position of women in the

hierarchy of work; they have often suffered harassment as the price of admission to working life (European Parliament, 1994, 5). According to Bularzik (1978), Sexual harassment was a problem faced by paid women workers in the United States from colonial days. Violence and sexual coercion did not originate with industrialization. However, the dynamic of these issues was different in a paid labor force in comparison to a pre-industrial economy. The family setting of work in colonial days makes the incidents of sexual violence part of the history of violence in family. In a capitalist industrial society, sexual harassment often became an interaction between strangers, not relatives or neighbors, which changed the psychological framework of the sexual violence.

Court records reveal many instances of servants being seduced by their employers. The male public opinion didn't distinguish between women workers, prostitutes and the criminal classes in the industrializing stages of the economy. This was due to a complex of factors such as the necessity for women from poor families to be in the labor force, the unusualness of women working outside the family, the analogy between the prostitute and the paid woman worker, both in some sense "escaping" from male control, and both "unprotected" and thus fair game for male lust. More thoughtful observers saw that low wages and poor working conditions in factories might have been the temptation for the better-paying job as a prostitute (or a logical choice from an economic point of view). This indicated an identification of the single working woman with the prostitute, and a refusal from some men to distinguish the woman willing to sell her labor with the woman willing to sell herself.

Another dilemma in 19th century, for working women was the conflict between labor force participation and the pressure to stay in the home. The way in which industry was organized required a source of cheap labor; in many cases this was furnished by women workers. But traditional masculine control in the family was threatened by waged women; thus the social pressure for women to stay in the home intensified along with early industrialization. The economic pressure to work, on the other hand, was stronger for working-class women, and from this group, for single, divorced, widowed women. Women were conflicted about being in the labor force however, for working-class women, this conflict was not simply competing "attitudes" about their place, but in many situations a "choice" between starvation if unemployed and attempted rape on the job.

Again, if sexual harassment was completely effective at driving women out of the workforce, it would have worked against the interests of management and capitalist societies as a whole.

In the late 19 and early 20th century, the increasing participation of women in the labor force went along with a pattern of segregation into low-paying jobs. If, as previously argued, women's occupational mobility was checked by sexual harassment, one would expect to find many instances of sexual harassment in this period. The most common description of the harassment victim at that time was – young, single, immigrant, uneducated, and unskilled. This is of course also the description of the typical woman worker. Furthermore, harassment victims could be found in a wide range of occupations. Not only waitresses and domestic servants, but also elevated railway cashiers, union organizers, garment workers, white-goods workers, home workers, doctors, dressmakers, shop girls, laundry workers, models, office workers, cotton mill workers, cannery workers, broom factory

workers, assistant foremen, stenographers and typists, soap factory workers, hop-pickers, shoeshine girls, barmaids, legal secretaries, actresses, sale demonstrators, art students would be harassment victims at employment interviews. The severity of abuse ranged from verbal suggestions, threats and insults, to staring, touching, attempted rape and rape. Women were propositioned; promised money, jobs and automobiles; and then threatened with loss of jobs and blacklisting.

In this period, the reactions of women subject of sexual harassment at workplace can be divided into individual and group responses. There are several components of this problem. Women may have seen sexual harassment as a social problem, or primarily as an individual problem (i.e., one's personal bad luck to have a lecherous boss). Seeing it as a social problem led to group responses in unions, settlement house organizations etc. Another possible response was legal action. The reunion of the group response with the attempt to achieve legal protection had as one motivating factor, the protection of women from sexual harassment. The initial move for protective legislation came before the Civil War. However, these laws were overturned, and a second wave of agitation for protective legislation for women began in the 1870s (Bularzik, 1978, 28-31).

Definitions for Sexual Harassment

According to Article 2 of the Directive 2002/73/EC, Sexual Harassment is defined as:

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.

Referring to European Commission's Council Resolution on the protection of the dignity of men and women at work, 1990: 'Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct' (Hespels, Kasim, Thomas & Mc Cann, 2001, 19).

According to Milczarek (2010), ILO defines sexual harassment as:

'although a single incident can suffice, sexual harassment often consists of repeated unwelcome, unreciprocated and imposed action which may have a very severe effect on the person. Sexual harassment may include touching, remarks, looks, attitudes, jokes or the use of sexually-oriented language, allusions to a person's private life, reference to sexual orientation, innuendos with a sexual connotation, remarks about dress or figure, or the persistent leering at a person or a part of her/his body'

Di Martino defines sexual harassment as 'unwanted conduct that is perceived by the targets as placing condition of a sexual nature or their employment, or that might, on reasonable grounds, be perceived by the targets as an offence, a humiliation or a threat to their well-being'.

The forms of sexual harassment can be physical (e.g. deliberate and unsolicited physical

contact), verbal (e.g. repeated sexually-oriented comments), gesture (e.g. repeated sexually-oriented gestures about a person's body), written, coercive behavior (e.g. threatening of dismissal if sexual favors are not granted) or a hostile environment (e.g. display of pornographic material) (Milczarek, 2010, 23-24).

Types of Sexual Harassment

Sexual harassment can take different forms, but we can categorize them in four types.

Verbal forms

Verbal conduct of a sexual nature may include unwelcome sexual advances, propositions or pressure for sexual activity; continued suggestions for social activity outside the workplace after it has been made clear that such suggestion is unwelcome; offensive flirtations; suggestive remarks; innuendoes or lewd comments. Such behavior defines women's role as sexual object rather than a work colleague. Within the verbal forms of harassment, 'sexual jokes' are the ones most frequently experienced. The 6 studies in Denmark, Germany, Luxembourg, the Netherlands, Sweden, and the United Kingdom show a similar tendency in the incidence rates of this conduct of around 60% (between 56%-81%). Only the Finnish national study has a lower rate of 27%, but in this study too, 'sexual jokes' are the most frequently experienced type of sexual harassment. The branch and occupation studies present the same tendency. Another frequently reported type of sexual harassment is 'remarks about figure and sexual behavior'.

Nonverbal forms

Non-verbal conduct of a sexual nature refers to the display of pornographic or sexually-suggestive pictures, objects or written materials; leering, whistling, or making sexually-suggestive gestures. These behaviors may make women feel uncomfortable or threatened and undermine the position of a woman who seeks to deal with her fellow employees with professional dignity.

Within the nonverbal forms of harassment 'staring and whistling' is the most frequently reported form of harassment. The incidence rate for staring and whistling in the German, Austrian, Luxembourg, Swedish, and UK research studies is between 50-85%, in contrast to the Finnish studies which have lower incidence rates of 13%. A majority of the branch studies show an incidence rate of between 50-90%.

Physical forms

Physical conduct of a sexual nature is commonly regarded as meaning unwanted physical contact ranging from unnecessary touching, patting or pinching or brushing against another employee's body to assault and coercing sexual intercourse. Much of this conduct if it took place in the street between strangers would amount to a criminal offence (ILO, 1992, 11-12).

Within the physical forms of harassment, the most commonly experienced form of sexual harassment is 'unsolicited physical contact, touching', although the incidence rates differ. A majority of the research studies found a high percentage of physical forms of sexual harassment between 60% and 90%. Only the UK study and in particular the Finnish one

had relatively low percentages of 20% and 7% respectively.

Quid pro quo

Further, a fourth category 'Quid pro quo harassment' was distinguished. Quid pro quo (meaning 'this for that') harassment refers to a demand by a person in authority, such as a supervisor, for sexual favors in order to obtain or maintain certain job benefits, a wage increase, a promotion, training opportunity, a transfer, or a job. It forces an employee to choose between giving in to sexual demands or losing job benefits. Because quid pro quo harassment can only be committed by someone with the power to give or take away an employment benefit, this form of sexual harassment constitutes an abuse of authority by the employer or by the employer's agent to whom authority over terms and conditions is delegated. This type of sexual harassment is also referred to as 'sexual blackmail'. Sexual blackmail is widely regarded as particularly reprehensible, since it represents a breach of trust and an abuse of power. Legally, the establishment of economic loss does not have to be shown – it must however bear some effect on the job or be intended to do so. It may also be the abuse of a position that makes the conduct actionable as this form is usually restricted to the conduct of a superior over a worker (Hespels, Kasim, Thomas & Mc Cann, 2001, 21-22).

Three national studies inquired about quid pro quo harassment: threats of disadvantage if sexual involvement was refused were experienced by 3% to 10% of the female employees, and promises or advantages as a result of sexual involvement were reported by 7% to 16% of the female respondents. In 3 studies quid pro quo harassment was also reported: the rates ranged between 1% and 11% (European Commission, 1998, 20).

Effect of Sexual Harassment

Sexual harassment is one of the most offensive and demeaning experience an employee can suffer (ILO, 1992, 9). According to Herbert (1999), harassment in the workplace affects not only recipients, but at the same time the harassers and the institution as a whole.

Recipients

Women and men who are harassed at work are unable to concentrate properly. Their health suffers and they may experience a range of physical problems, such as headaches, backaches, stomach and neck pains, high blood pressure, nausea and vomiting. They may also suffer a range of psychological problems, such as depression, loss of confidence, panic attacks, hysteria, paranoia, uncontrollable weeping or fits of anger. Many stress-related illnesses have other associated conditions. Some people turn to alcohol, cigarettes, tranquillizers, sleeping pills or anti-depressants. Their family life suffers as their emotional energy is drained by their daily efforts to cope at work. Husbands, wives or partners often do not know why their spouse has developed a low tolerance level or a short temper, or has become depressed, anxious or miserable. They just know that, over a series of weeks and months, this person has changed. Sexual harassment can result in the break-up of some relationships. Continued sexual harassment can have serious effects on a person's ability to do complex and dangerous jobs. Harassment may affect the concentration of

workers who operate complicated machinery and result in accident which could injure, maim or kill. Costly litigation can arise from workplace accidents involving cases of sexual harassment. Continuous harassment can lead to a general deterioration in employees' job performance, leading to complaints, close and intrusive monitoring, warning (both informal and formal) and threat of a disciplinary hearing or eventual dismissal. Recipients of harassment might decide long before this stage that their health and welfare are more important than the stress they are suffering, and resign. A person who has suffered from harassment and associated problems may not find it easy to pick up the pieces and move on. If the harassment has resulted in dismissal or resignation, it may be difficult to find another job. Loss of confidence, low self-esteem and a sense of blame for this condition may lead to depression or feelings of despair. A person being harassed may decide that suicide is the only way out, with death appearing to be the sole possible relief from the unremitting and frightening behavior. Typically, women who have been sexually harassed and have left their job as a result, tend to apply for a post with lower salary, status and career prospects than the one they have just left. Young women at the beginning of their career in law or medicine or another profession in which men still hold much power may decide to leave the type of work altogether and find something more traditional. This has obvious livelihood consequences in terms of career advancements, status, salary and life style. Unfortunately, some women believe that it is the employment context which brought on the harassment, rather than an individual male.

The harasser

A harasser whose behavior is condoned or supported by work mates will influence the general atmosphere at work. Onlookers who are not harassers themselves may be unable or unwilling to help a colleague. They might feel remorse or discomfort at the effect it is having on the victim, but feel powerless to do anything about it. The sexual harasser may serve as a role model for younger markers, setting the tone and the ethos in the workplace, and encouraging other to be disrespectful to their colleagues and subordinates. Harassers who have been behaving in this way for years may be resistant to change, but the workplace is changing and tolerance for harassment is on the decline. A company with a policy on sexual harassment would have few difficulties in getting rid of a perpetrator once the behavior was exposed. A person with 'sexual harassment' written on a reference would face great difficulties in finding a new job. So the potential consequences for the harasser have become quite serious.

The institution

Sexual harassment has a ripple effect in companies of all kinds. It stifles enthusiasm and engenders disappointment, disillusionment, dwindling loyalty, and even general apathy, which results in low productivity. Employees may feel that by not protecting them, not stopping the behavior, not caring about them or the particular victim, who is being targeted, the management is letting them down. This will bring more widespread discontent and loss as employees spend time complaining about the bosses and managers and discussing who is doing what to whom. Eventually people will leave, due to their dissatisfaction with the working environment. Staff turnover entails advertising costs,

recruitment expenditure, time and money lost while a new employee gets used to the job, expenses for induction and training, and other related costs. This investment will be to no avail if the perpetrator continues to harass colleagues who also decide to leave. Over time, as more and more staff leave and new members are recruited, rumor and gossip about the organization will spread. Badly treated staffs are not a good advertisement for an organization, and when they hand in their notice they take goodwill, previous customers, clients and business with them. The firm's reputation may suffer adversely, affecting business prospects and profits (Herbert, 1999, 25-27).

Measures to Prevent and Combat Sexual Harassment

Prevention is the most effective way for employers to address sexual harassment in the workplace (ILO, 2011, 11). Preventive measures include voluntary action and legal action.

Voluntary Action

The main aim to most victims of sexual harassment is not to sue their employer for damages but that the offensive behavior should stop, that it should not recur and that they should be protected against retaliation for having brought a complaint. Therefore, the most effective way to deal with sexual harassment is to develop and implement a preventive policy at enterprise level. A sexual harassment policy should include four main components: a policy statement, a complaints procedure, disciplinary rules, and a training and communication strategy.

If there is no policy statement which expressly proscribes sexual harassment, employees who have been harassed are likely to feel that they have no effective means of recourse. A policy statement should be issued by senior management prohibiting sexual harassment and stating that it will not be permitted or condoned in the workplace. The policy statement should make clear that managers and supervisors have a positive duty to implement the policy.

A complaints procedure in respect of sexual harassment is necessary, but experience suggests that the normal grievance procedure may not be suitable for this particularly sensitive issue. This is because grievance procedures usually require a complaint to be submitted in the first instance to the first line supervisor (or the shop steward or employee representative). Therefore, a procedure should provide for complaints of sexual harassment to be brought either through normal channels or to specially designate members of management. Those designated individuals should receive special training and instruction. Because the overwhelming majority of victims of sexual harassment are women, it is a matter of common sense to ensure that a woman is available to receive complaints.

A fundamental aim of a sexual harassment policy is to stop the offensive conduct from recurring, with minimum disruption to workplace relations. As noted above, sexual harassment often arises through misunderstanding between men and women. Although formal procedures are necessary, the victim of sexual harassment should be encouraged in first instance to make it clear to the perpetrator that the particular behavior is unwelcome. It is generally agreed that a victim of sexual harassment should be able to receive advice

and counseling on how to deal with it. This support role can be provided by trade unions, women's groups or advice centers. However, it can also be provided directly by employers. The European Commission Code of Practice on measures to combat sexual harassment recommends that "employers designate someone to provide advice and assistance to employees subjected to sexual harassment, where possible, with responsibilities to assist in the resolution of any problems, whether through informal or formal means".

If a policy to prevent sexual harassment is to be effective, it is essential that offenders be disciplined. Employers should make clear in their disciplinary rules that sexual harassment will be regarded as a disciplinary offence. The rule should set out the penalties to which the harasser will be liable if the offence is committed, and the penalties which harassers will face should be well publicized. Once sexual harassment is proven, it should not be regarded as a trivial offence or merely as a matter of "poor judgment" by the perpetrator. Finally, all employees should be notified of the enterprise's sexual harassment policy when it is adopted, and it should be included in employee handbooks and newsletters. In addition, the chances of minimizing the risk of sexual harassment will be greatly aided, if managers, supervisors and employees are provided with appropriate training both as to the enterprise's policies and procedures and as to what constitutes impermissible behavior at work.

Legal Action

Given the empirical evidence demonstrating how widespread sexual harassment is and how damaging it can be for its victims, it might be thought that the best approach would be simply to provide a legal remedy in respect of unwanted sexual attention or sex-based conduct such as described above. Instead, legal remedies are usually linked to the seriousness of the harassment and/or its consequences. There are a wide range of potential remedies for sexual harassment under civil and criminal law. Whatever their potential value in specific actual circumstances, most have serious defect as a primary legal remedy for sexual harassment at work. Penal sanctions have a number of disadvantages. The remedy is usually dependent upon enforcement by a government official, such as a labor inspector or prosecutor; a stricter standard of proof and stricter rules of evidence, which may apply in civil proceedings; employers are unlikely to be vicariously liable and the sanction will normally consist of a fine against the perpetrator rather than damages for the victim. In most industrialized countries, sexual harassment may also constitute grounds for the employee terminating the employment contract and claiming damages from the employer. The deficiency in this as a primary remedy is that it forces the victim of sexual harassment to give up her job in order to secure justice (ILO, 1992, 12-19). Twenty one EU countries stated that they had legal remedies in cases of sexual harassment. Estonia, Greece and Latvia stated that legal remedies did not exist and Slovenia did not provide a response. In France, the victim can summons the perpetrator of the sexual harassment directly to appear before the Tribunal Correctionnel. She may bring the case before the industrial tribunal to obtain reinstatement or nullity of the measure taken following a refusal of sexual harassment. The French trade union, Force-Ouvriere, indicate that under the Labor Code the harasser may face one year's imprisonment and a fine of 3,750 Euros (article L.12-1-1) and under the Criminal Code one year's imprisonment and a fine of

15,000 Euros (article 222-33). In Germany, in the first instance, the Labor Courts may be called upon to implement claims in connection with the employment relationship between the employer/employee(s). This is also true for claims for determination, restraint and damages in connection with sexual harassment in the workplace. With civil servants this task is handled by the administrative and/or disciplinary jurisdiction. Depending on the individual case, a criminal prosecution may also be considered. In Italy, although neither the Penal, nor the Civil Code explicitly mention sexual harassment, anyone who suffers harassment may complain to the competent judicial authority, (including through the competent equality counselor) of a breach of the Penal Code regarding violent indecent behavior, obscenity, offences against public decency or coercion. In United Kingdom where an employment tribunal finds that a complaint presented to it under the Sex Discrimination Act is well founded, it may make such provisions of the following as it considers just and equitable:

- a. A Declaratory Order (an order declaring the rights of the parties in relation to the act(s) complained of).
- b. Compensation (an order requiring the respondent to pay compensation to the complainant).
- c. A Recommendation (a recommendation that the respondent take action for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination complained of) (Department of Justice, 2004, 73-76).

Legal Approaches to Sexual Harassment in EU Country

The legislative framework covering sexual harassment is rapidly changing. Equal opportunity, labor and employment, and criminal laws may all be applied separately or in combination to deal with this behavior (Chappell, 2006, 159).

In France, the Law on the Reform of the general provisions of the Penal Code (1992) explicitly deals with sexual harassment, as acts instilling fear, conferring threats, imposing constraints or exercising undue pressure with the aim of asserting undue pressure. Law on Social Modernization (2002) and Law on sexually-oriented abuse of power within working relationships (1992) are both described as explicitly dealing with sexual Harassment/Harassment based on Sex; however the definitions contained in these laws are not provided. Information provided in relation to French Case Law indicates that very high standards are set as regards to the definition of acts of sexual harassment and that the compensation awarded to the victim by the courts is regarded by the respondents as insufficient.

In Germany, the Law to protect employees from sexual harassment in the workplace (Employee Protection Act, 1994; explicitly deals with sexual harassment in the workplace and defines it as consisting of “any intentional sexually-oriented behavior that violates the dignity of employees in the workplace”. This includes:

- Sexual acts and types of behavior that are penalized under criminal codes, as well as
- other sexual acts and demands for such acts, sexually-oriented touches, remarks of a

sexual nature, as well as showing and visibly displaying pornographic images that are clearly rejected by the party concerned.

Some forms of sexual harassment can be prosecuted under the Penal Code for example as (sexual) intimidation or insult, but there is no specific regulation. Under certain conditions sexual harassment may be deemed as discrimination because of sex under section 611 of Civil Law. The Federal Civil Servants Act prohibits sexual harassment implicitly as disloyal conduct that can be prosecuted as infraction of discipline. According to German Case Law the relative rarity of proceedings and problems include the burden of proof. In addition, the courts have had problems with the application of the legal definition of harassment. Case Law mostly refers to actions of the harasser for protection against unwanted dismissal or other sanctions taken by the employer.

In Italy, Act no. 903 of 9/1277 does not explicitly regulate Sexual Harassment/Harassment based on Sex. It does, however, provide that, "Any deed, pact or behavior which gives rise to a prejudicial effect, including discrimination indirectly against female or male workers because of their gender constitutes discrimination. Any prejudicial treatment resulting from the adoption of criteria which disadvantages a worker in a proportionally greater manner and regard requirements which are not essential for carrying out the working activity constitute indirect discrimination". The Italian Presidency of Council of Ministers indicated that this provision has been interpreted to cover sexual harassment. Other relevant legislation includes Act No.12 (1992) and Legislative Decree 196, 2000 both of which implicitly regulate sexual harassment. The manner in which this occurs is not described. In Italy, in general the employer is under an obligation to protect the moral sphere of the worker in the company and to ensure that the exercise of hierarchical power is informed by principles of correctness. The Italian respondents highlight the absence of specific regulations as being problematic but report judicial decisions to the effect that (Civil Court of Cassation, Labor Section, 19 December 1998 no.12717) on the spot dismissal is legitimate for Sexual Harassers; as well as a number of cases on remedies for Sexual Harassment (Court of Pisa, labor section, 10 April 2002, 80,000/00 euro); (Court of Forli, labor section 15, March 2001, 33,053.24 euro);. (Court of Pinerolo, labor section, 6 February 2003, n.30, 30,340.00 euro); (Court of Pisa, 3 October 2001, 15,493.71 euro). In United Kingdom, neither the Sex Discrimination Act (1975) nor the Employment Rights Act (1996) explicitly regulate sexual harassment, but many instances of sexual harassment will amount to sex discrimination for the purposes of the 1975 Act and the courts refer to the EC Codes or Practice on the Dignity of Women and Men at work (92/131/EC) or guidance on the definition of sexual harassment. The Protection from Harassment Act 1997 and, in Northern Ireland, the Protection from Harassment Order (1997) provide that:

"A person must not pursue a course of conduct – (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other. For the purposes of this section, the person whose course of conduct is in question ought to know that the amount to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other".

Furthermore, the Health and Safety at Work Act 1974, and the Management of Health and Safety at Work Regulations 1999, impose obligations upon the employer to safeguard the health and safety of workers. Similar material provisions apply in Northern Ireland. Subject to sexual harassment would not be consistent with these obligations. The sex discrimination provisions of domestic law do not expressly render sexual harassment unlawful. This gap has been partially filled by expansive interpretation of the concept of direct discrimination in the UK and, in EU law terms, by a European Commission Recommendation (EEC/92/131) and associated Code of Practice (92/131/EEC) on the Dignity of Women and Men at Work. The EC Recommendation adopts the following definition of sexual harassment. Conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work (which) in unacceptable if:

- a. such conduct is unwanted, unreasonable and offensive to the recipient;
- b. is used as a basis for an employment decision; and/or
- c. such conduct creates an intimidating hostile or humiliating working environment for the recipient.

The EC Code of Practice further defines sexual harassment as unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct. The EAT endorsed this definition in *Wadman vs Carpenter Farrer Partnership* (1993, IRLR 374) and *British Telecommunications plc vs Williams* (1997 IRLR, 668). The UK courts have accepted that sexual harassment can amount to unlawful direct sex discrimination if the harasser treats a woman less favorably than he would have treated a man and does so on grounds of her sex (*Porcelli vs Strathclyde Regional Council*, 1986, ICR 564) They have accepted that a single act, if sufficiently serious, may amount to sexual harassment (*Bracebridge Engineering Ltd vs Darby*, 1990) and the coarse remarks of a sexual nature may amount to sexual harassment (*Chief Constable of the Lincolnshire Police v Stubbs*, 1999, IRLR 81; *Reed and Bull Information Systems Ltd v Stedman*, 1999, IRLR 299). In *MacDonald vs Min of Defence* (2003) the House of Lords ruled that employers may be liable for acts of harassment committed by an employee on a colleague, but will not ordinarily be liable to acts of harassment committed against their 3rd parties (*Department of Justice*, 2004, 13-28).

Conclusions

All, women and men, in any country, in any time, can be subjected to sexual harassment. Sexual harassment at the workplace is an unjustified interference of integrity, dignity and well-being of workers, causing problems such as headaches, backaches, stomach and neck pains, high blood pressure, nausea and vomiting, depression, loss of confidence, panic attacks, hysteria, paranoia, uncontrollable weeping or fits of anger. Continued sexual harassment can have serious effects on a person's ability to do complex and dangerous jobs. It can lead to a general deterioration in employees' job performance, leading to complaints haring or eventual dismissal or resignation. A person being harassed may

decide that suicide is the only way out, with death appearing to be the sole possible relief from the unremitting and frightening behavior. For those reasons sexual harassment has been recognized as an important issue of our times.

The really first step of combating sexual harassment in the workplace is a better understanding of this phenomenon. It involves a better understanding of the phenomenon in all its various forms, physical, verbal, nonverbal and quid pro quo. Another tool in prevention and combating of sexual harassment is to develop and implement a preventive policy at enterprise level, including component such as a policy statement, a complaints procedure, disciplinary rules, and a training and communication strategy.

Finally, legal remedy is the very last step regarding of unwanted sexual attention or sex-based conduct. The approaches to the legislative framework covering sexual harassment in EU Countries, is rapidly changing, telling us not only that sexual harassment at work exists, but also that it is a problem.

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