

EUROPEAN LEGISLATION REGARDING THE SEXUAL AND MORAL HARRASMENT

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ABSTRACT: *A substantial body of research addressing the issue of sexual harassment in the workplace has been developed over the past decade. Sexual harassment has consequences. More than half of the employees reported negative consequences for their personal well-being; a third of the harassed employees described negative effects for their work situation such as resignation, reduction in tasks, change of workplace, and poorer working conditions. Also, the harassment had negative consequences for work satisfaction, the working climate and motivation.*

KEYWORDS : *sexual harassment, moral harassment, workplace, public sector, European administration*

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1. INTRODUCTION

A substantial body of research addressing the issue of sexual harassment in the workplace has been developed over the past decade.

The accumulated evidence from these research activities shows that sexual harassment is prevalent in organizations in all surveyed Member States and functions as a serious barrier to the integration of women in the labor market. Although percentages differ, partly due to differences in method and definition, the studies estimate that, overall, approximately 30% to 50% of female employees have experienced some form of sexual harassment or unwanted sexual behavior¹.

A few surveys studied men's experiences with sexual harassment. The research results suggest that about 10% of male employees have experienced sexual harassment or unwanted sexual behavior in the workplace. There are important differences between the sexual harassment experiences of women and men: in general men perceive harassment as

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¹ Karen J. Terry, “Sexual offenses and offenders”, Wadsworth, USA, 2006, pg 22-23

less offensive; men experience less negative consequences of harassment; men defined witnessing the sexual harassment of their female colleagues as sexual harassment.

Sexual harassment manifests itself in a variety of behavior. The most common forms are verbal forms such as 'sexual jokes' and 'sexual remarks about body, clothes and sex life; physical forms as 'unsolicited physical contact', and nonverbal forms such as 'staring and whistling'. Sexual harassment concerning threats of disadvantage for refusing sexual involvement or other forms of 'quid quo pro' harassment was experienced by 10% to 26% of the employees. The severe forms 'sexual assault or rape' were reported by 1% to 6% of the women.

There is no typical profile of harassers or harassed employees. However, in general male workers are the perpetrators of sexual harassment. In most cases the harassers are male colleagues (on average 50%) or supervisors (on average 30%). Clients and patients are mentioned to a lesser degree (on average 15%). However, in 'care' and 'service' professions where employees have contact with patients and clients more frequently, the clients and patients are more often the perpetrators.

Harassed employees are usually women. Young, aged between 20 and 40, single or divorced women are more likely to be harassed than other women. Also, several studies suggest that women with a lower education level and temporary workers are more exposed to sexual harassment. Further, women in male-dominated jobs experience more sexual harassment than in other jobs².

Most experiences with sexual harassment were reported in workplaces where the balance of power has changed, not to equality but towards a somewhat less uneven balance³. These findings predict that women will express their experiences with sexual harassment more openly with an increase in the number of women entering the labor market. This increase is a temporary effect of the integration of women in the workforce. As this integration continues and women gain more access to the labor market on all levels, it is to be expected that the problem of sexual harassment will decrease.

Sexual harassment has consequences. More than half of the employees reported negative consequences for their personal well-being; a third of the harassed employees described negative effects for their work situation such as resignation, reduction in tasks, change of workplace, and poorer working conditions. Also, the harassment had negative consequences for work satisfaction, the working climate and motivation.

When compared to the first research period covered more policy evaluation studies have been conducted over the last decade. These studies into sexual harassment policies show that countries differ with respect to the implementation of policies and procedures. In a few Member States (United Kingdom, Belgium, Norway, and the Netherlands) organizations have taken the first steps towards setting up a policy structure. These policies usually include information activities such as a policy statement or publication of the policy in staff manuals, the appointment of a confidential counselor, and the development of a complaints procedure. Generally speaking, organizations have few

² Denis Hanot , « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L'harmattan, Paris, 2008, pg 35-38.

³ Muriel Trémeur , Karim Douedar, « Fonctionnaires : Comment réagir face au harcèlement moral ou sexuel ? », éditions du Papyrus, 2008, 115-117.

training possibilities, few grievance commissions, and many firms do not feel responsible for incidences of sexual harassment.

The functioning of the confidential counselor is unsatisfactory. Few of the harassed employees contacted a confidential counselor. From the studies reviewed it appears that confidential counselors often lack the necessary facilities to do their work, are too close to management, and are relatively unknown or not trusted. It is also difficult for confidential counselors to work in organizations that lack an awareness of the problem.

In general, there is a large discrepancy between the high numbers of instances of sexual harassment and the low incidence of complaints. Important recommendations for a successful policy are⁴:

- a change of working culture, with the issue of sexual harassment being taken seriously;
- providing information about sexual harassment to the entire workforce on a regular basis, and training involved persons;
- management support;
- confidential counseling services and grievance committees with the necessary facilities, not directly related to the management;
- grievance procedures specifically related to sexual harassment;
- sexual harassment policy should be a part of equal opportunities policy.

Finally, although this review report presents the findings of research activities concerning a wide range of aspects, some topics have received little attention and assessment in the research:

- the sexual harassment of homosexuals and lesbians;
- the sexual harassment of women and men from ethnic minorities;
- quantitative and qualitative differences between the sexual harassment of men and women;
- the consequences for the organizations in terms of financial and economic costs;
- the influence of organizational culture and structure on the occurrence of sexual harassment;
- effects of policy measures.

2. THE SEXUAL HARASSMENT

The Commission definition, found in its 1991 Recommendation, is not known throughout Europe, especially in southern Member States. Furthermore, it is not accepted in all Member States and is not necessarily used in studies trying to measure sexual harassment⁵. The debate about what constitutes sexual harassment is still going on among researchers and at least one Member State (France) has concluded that the definition of sexual harassment as sexual discrimination is inadequate.

It should also be pointed out that the same conclusion can be drawn as regards people surveyed. Not surprisingly men tend to confine sexual harassment to its most

⁴ Karen J. Terry, "Sexual offenses and offenders", Wadsworth, USA, 2006, pg 24.

⁵ Muriel Trémour, Karim Douedar, « Fonctionnaires : Comment réagir face au harcèlement moral ou sexuel ? », éditions du Papyrus, 2008, pg 118.

serious forms (physical assault), but even among women there are varying perceptions of what constitutes sexual harassment.

Sexual harassment is measured by various instruments. Most studies measured sexual harassment by asking respondents about their experiences with actual behavior⁶. A complicating factor when measuring sexual harassment is that the perception of which behavior constitutes sexual harassment differs among respondents. The term sexual harassment usually seems to be applied to instances of sexual assault and other severe forms of inappropriate sexual advances. The studies examined have used different ways of coping with this complicating factor.

European Commission's definition of sexual harassment

The European Commission's (EC) Code of Practice defines sexual harassment as conduct affecting the dignity of women and men at work: "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 includes unwelcome physical, verbal or nonverbal conduct".

The EC definition is a comprehensive definition. It includes "unwanted conduct of a sexual nature" as well as gender harassment: "other conduct based on sex affecting the dignity of women and men at work".

The EC definition distinguishes 3 types of harassment: physical, verbal, and nonverbal sexual harassment. This is a very common subdivision used by many researchers.

Finally, the EC definition includes three conditions:

- a. unwanted, improper or offensive behavior;
- b. refusal or acceptance of behavior influences decisions concerning a job;
- c. the behavior in question creates a working climate that is intimidating, hostile or humiliating for the person.

First, almost all researchers used the term "unwanted" in their lists of behavior. The other terms "improper or offensive" were not referred to. The second condition was included frequently: almost half of the studies inquired about the effects of sexual harassment on the working conditions (dismissal, denied promotion or training, other tasks, preferential treatment). In a couple of studies the third condition was included in the general definition of sexual harassment⁷.

Directive 2002/73/EC of the European Parliament and of 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 seeks to harmonize the Member States laws regarding the equal treatment of men and women and must be transposed by Member States by October 2005.

Directive 2002/73/EC adds to Article 2(2) of Council Directive 76/207/EEC by providing definitions of "harassment" and "sexual harassment". It also makes

⁶ Denis Hanot , « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L'harmattan, Paris, 2008, pg 40.

⁷ Muriel Trémeur , Karim Douedar, « Fonction publique : prévenir et gérer le harcèlement moral et sexuel », éditions du Papyrus, 2008,pg 57-60.

provisions in relation to the prevention of sexual harassment (Article 2(5)), the establishment of procedures for enforcement purposes; the compensation for victims of discrimination and harassment, as well as providing for the putting in place of the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex (Article 8).

An employer could be liable for Sexual Harassment / Harassment based on Sex perpetrated by an employee. The organizations also provided details of the circumstances in which employers can be liable. In all countries where an employer is liable for sexual harassment by a worker's superiors, liability also applies to a worker's peers⁸. The situation in relation to sexual harassment perpetrated by a worker's clients is more varied.

Employer liability for sexual harassment outside the normal working hours / outside the workplace was also addressed with ten countries indicating that an employer could be liable in such circumstances. The responding countries stated that the time and place in which the activity occurred did not impinge on employer liability.

The Member States also stated that the harasser could be individually liable for acts of Sexual Harassment / Harassment based on Sex.

In the main, employers can be liable for Sexual Harassment / Harassment based on Sex when it occurs unless they have taken steps to prevent it. Where obligations are imposed on employers in connection with Sexual Harassment / Harassment based on Sex they relate to preventative actions including awareness raising, establishing explicit rules about conduct, establishing training for employees, establishing complaint procedures and imposing sanctions⁹.

Inevitably there is little consistency of practice across the EU Member States in relation to the bodies to which complaints of work-related sexual harassment can be brought and the associated support mechanisms and remedies.

However, Directive 2002/73/EC provides that "Member States shall designate and make the necessary arrangements for a body for the promotion, analysis, monitoring and support of Equal Treatment of all persons without discrimination on the grounds of sex." This will require the EU member states to regulate and monitor their legal complaints in a standardized manner which should lead to more consistency in the reporting and presentation of information in this area.

Broadly, grievance procedures usually involve the victim informing his or her supervisor/manager/boss/"trust person" whose role it is to determine what the next appropriate steps should be.

Written warnings, reprimands, suspensions and dismissals for gross misconduct are all stated as relevant sanctions although the type of sanction generally relates to the seriousness of the offence.

Overall, it was evident that there was a general absence of specific grievance procedures and sanctions for Sexual Harassment / Harassment based on Sex. This may be due to the fact that such complaints are made and dealt with under general grievance

⁸ Denis Hanot, « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L'harmattan, Paris, 2008, pg 47-50.

⁹ Eric Mathias, « La responsabilité pénale », Gualiano, LGDG, Paris, 2006, pg 123.

procedures and are subject to general sanctions¹⁰. However, this lack of specific procedures can give rise to particular difficulties where, for example, a union member makes an allegation against another union member, problems can arise as to who ought to be represented by the union.

In terms of employer responsibility for such initiatives the most frequently cited activities included creating an environment free of harassment, raising awareness and developing and implementing preventative measures¹¹. Trade union responsibilities, although similar in nature, tend to be more loosely defined because they are not generally prescribed by law. Trade unions are also reported to have an important supportive function in providing assistance to victims.

Sexual assault is one of the most severe and intrusive violations that can be committed against a person and it may have lasting effects on the victim physically, psychologically, and emotionally. Though less so now than in previous decades, there is a stigma attached to victims of sexual offenses. Whether real or perceived, it is this stigma that often keeps victims from reporting the offense to authorities¹². Because of feelings such as fear, embarrassment, or shame, sexual assault is consistently the most underreported of all violent crimes. When reported, the victim must endure a lengthy legal process in which he or she is “victimized” by the system. Through rape reform laws, victim advocacy groups, and improved knowledge about sexual offending, the system has attempted to reduce the level of victimization, though it remains fraught with problems.

Statutes are no longer specific, spouses are no longer exempt from sexual assault statutes, and rape reform laws require more of a focus on the offender instead of allowing for a demoralization of the victim. It is also since that time that the effects of victimization have begun to be understood¹³.

As with many crimes, the most common thread among victims of sexual offenses is vulnerability. Just as small percentage of the offender population commits the majority of offenses, small percentage of the offender population suffer a large percentage of victimization. Sexual offenders often seek out emotionally vulnerable victims, many of whom were abused previously. Other than this common thread of vulnerability, victims of sexual offenses are rarely chosen based on a particular set of static characteristics. In addition to heterogeneous physical attributes, victims respond differently to sexual assaults, which vary in type, length, and severity. When combined with a variety of personality characteristics and avenues of support, this produces varying effects of victimization on the victim population.

Employer organizations and trade unions were also required to provide details of the roles and responsibilities of managers and employees in respect of preventative initiatives. The roles of managers were described in much the same way as those of employers, with managers regarded as having a role in the creation and maintenance of a

¹⁰ Denis Hanot , « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L'harmattan, Paris, 2008, pg. 54-55.

¹¹ Muriel Trémur , Karim Douedar, « Fonction publique : prévenir et gérer le harcèlement moral et sexuel », éditions du Papyrus, 2008, pg 65.

¹² Karen J. Terry, “Sexual offenses and offenders ”, Wadsworth, USA, 2006, pg 111.

¹³ Karen J. Terry, “Sexual offenses and offenders ”, Wadsworth, USA, 2006, pg 113-115.

harassment free environment. The roles of employees¹⁴ in relation to sexual harassment were described in terms of avoidance and prevention.

With respect to the compensation for victims of discrimination and harassment; when unlawful discrimination has been proven, Directive 2002/73/EC prohibits limits on the compensation payable to the victim. Article 6(2) now requires Member States to introduce measures “to ensure real and effective compensation or reparation [...] for the loss and damage sustained by a person injured as a result of discrimination.”

Article 8 of Directive 2002/73/EC requires that “Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex.” These bodies will be required to be competent at providing independent assistance to victims of discrimination in pursuing their discrimination complaints; conducting independent surveys related to discrimination; and publishing independent reports and making recommendations on discrimination issues.

3. THE LEGISLATION OF EUROPEAN STATES MEMBERS

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.

The Law on Social Modernization (2002) and the 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.

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.

In Hungary:

The Labor Code (No. 22, 1992) makes a reference to the “Act on Equal Treatment and the Promotion of Equal Opportunities” (No. 125, 2003), which includes the following definition:

“Harassment is a conduct violating human dignity related to the relevant person’s characteristic, defined in Article 8, with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around a particular person”.

¹⁴ Denis Hanot , « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L’harmattan, Paris, 2008, pg 71-72.

Article 8 lays down the general prohibition of direct discrimination and refers to discrimination on sexual grounds.

In Ireland:

Section 14A (7) of the Employment Equality Act 1998 (as amended) explicitly deals with sexual harassment defining it as follows:

References to harassment are to any form of unwanted conduct related to any of the discriminatory grounds and references to sexual harassment are to any form of unwanted verbal, non verbal or physical conduct of a sexual nature, being conduct which in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Harassment / sexual harassment is prohibited in the workplace, by an employer, colleague, or a client, customer or other business contact of the employer "and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to prevent it".¹⁵ The Act also prohibits the differential treatment of an employee in the workplace for reasons connected with his or her rejecting or accepting the harassment.

In Italy:

Act no. 903 of 9/12/77 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 discriminating indirectly against female or male workers because of their gender constitutes discrimination. Any prejudicial treatment resulting from the adoption of criteria which disadvantage the workers in one or other sex 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. 125 (1992) and Legislative Decree 196 2000 both of which implicitly regulate sexual harassment. The manner in which this occurs is not described.

In Luxembourg:

In Luxembourg, the Law on Protection against Sexual Harassment within the relationships (2000) explicitly defines sexual harassment under Article 2 as follows:

"For the purposes of the present law, harassment within industrial relations shall be any conduct of a sexual nature or any other conduct based on sex for which the perpetrator knows or ought to know that it would affect the dignity of a person at work, and where one of the following three conditions is met:

- a) The conduct is improper, hurtful to and untimely for the person subjected to it.
- b) The fact that a person refuses or accepts such conduct from an employer, an employee, a client or a supplier is expressly or implicitly used as the basis for a decision affecting the rights of this person as regards vocational training, employment, continuation of employment, promotion, salary or any other decision concerning that

¹⁵ Karen J. Terry, "Sexual offenses and offenders", Wadsworth, USA, 2006, pg 120.

person's employment.¹⁶ Report on Sexual Harassment in the Workplace in EU Member States.

c) Such conduct creates an intimidating, hostile or humiliating environment for the person subjected to it. The conduct may be physical, verbal or nonverbal. The intentional element of the conduct is presumed.”

In addition, Article 10. 1 of the Law dated 16 April 1979, fixing the general status of government officials, as amended by the law of 26 May 2000 on protection against sexual harassment within industrial relations provides that the protection against sexual harassment is extended to civil servants.

4. MORAL HARASSMENT IN THE WORKPLACE

Harassment may involve a manager and subordinate, or workers on the same level. However, the term "moral harassment" must be applied very carefully to avoid the risk of confusing this phenomenon with normal work-related stress or attempts to destabilize management.

Several academic disciplines have investigated moral harassment in the workplace, but legal theorists have lagged behind, despite the importance of this phenomenon. Furthermore, in many cases, people affected by moral harassment think, mistakenly, that there are no specific legal provisions to deal with this phenomenon in the workplace.

However, since 2002, France has developed legal instruments specifically designed to combat moral harassment in the workplace, as well as in other contexts. Indeed, legal interpretation by judges has extended these measures to include other forms of suffering at work, even going so far as to recognize the right to the protection of mental health at work.

On the issue of moral harassment, besides the need for a clear definition of the concept, particularly with respect to potential overlap with other concepts, it is important to examine the way this phenomenon has been addressed in social law¹⁶. Since the Court of Cassation reinforced its control of the proper application of legislation on moral harassment by the lower courts, larger numbers of cases have been referred to the higher courts. All the facets of moral harassment at work have now been addressed by case law, which has gone beyond the 1998 definition which referred to "perverse violence." The case law now confirms that harassment exists even in the absence of malicious intent by the author of the incriminated acts, and sometimes attributes it to certain organizational factors of work.

This recognition of moral harassment has had a major impact on French law, as labor (prevention), social security (compensation), and penal law (penalties) are all concerned¹⁷.

¹⁶ Muriel Trémeur, Karim Douedar, « Fonctionnaires : Comment réagir face au harcèlement moral ou sexuel ? », éditions du Papyrus, 2008, pg 120.

¹⁷ Denis Hanot, « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L'harmattan, Paris, 2008, pg73.

Several of its specific provisions will thus be studied, including the legal definition of harassment and systems for combating this phenomenon, as well as the role of worker representatives and trade unions. Although this legal regime is widely considered to be too general in its definition, the courts have used it as a basis for their decisions and made significant contributions to the law by their interpretations of its provisions. As a result, France has a well developed legal regime and case law on moral harassment.

Consequently, French law on moral harassment is now relatively comprehensive. By way of comparison, Belgian law dealt with this issue during the same period, but already had a law on welfare at work, which makes the comparison all the more interesting¹⁸. Similarly, it is interesting to analyze the prospects offered by European law and its influence on the French system.

The Legal Definition of Moral Harassment in the Workplace according to article L. 1152-1 of the French Labor Code "Employees shall not be subjected to repeated actions constituting moral harassment, which intentionally or unintentionally deteriorate their working conditions and are likely to violate their rights and dignity, impair their physical or mental health, or jeopardize their professional future."¹⁹

An analysis of this provision shows that a situation must meet a certain number of conditions to be qualified as moral harassment in the workplace. First, the alleged facts must be "repeated." Second, these practices must have the effect of violating the victim's "rights" and "dignity."

Finally, the third condition necessary to meet the definition of moral harassment is divided into three distinct parts: impairment to physical health, mental health, or jeopardizing their career.

The last three factors need not be combined-except with the first two conditions-but one of them must be proven in combination with the first two conditions to meet the definition of moral harassment. An identical definition, but considered by legal theory as more general in scope, as we shall see below, was also inserted in the Penal Code (Article 222-33-2).

However, since 2002, following several cases for failure to comply brought by the European Commission, French law was obliged to apply several European directives that had only been partially transposed into national law, particularly in the area of Unofficial translation by author of article L.1152-1 of the French Labor Code.

The law dated May 27, 2008, included several provisions adopting European legal principles on combating discrimination and extended the scope of the concept of "discrimination" by implementing the European definition of this concept. Discrimination now includes "harassment" (sexual and moral), defined in article L 1132-1 of the French Labor Code as:

"Any action relating to one of the reasons mentioned in the first paragraph and any action with a sexual connotation, to which a person is subjected, with the

¹⁸ Muriel Trémeur, Karim Douedar, « Fonctionnaires : Comment réagir face au harcèlement moral ou sexuel ? », éditions du Papyrus, 2008, pg 121.

¹⁹ Bernard Bouloc, « La place du droit pénal dans la société contemporaine », Dalloz, Paris, 2000, 127-129.

purpose or effect of violating their dignity or creating a hostile, degrading, humiliating, or offensive environment."

However, this new definition did not result in the repeal of the previous definition. While both definitions remain in the French Labor Code, in addition to the one in the Penal Code, they are applicable in different circumstances²⁰. Indeed, the 2002 definition is based on repeated actions, whereas the 2008 law provides a legal remedy for discriminatory actions, which are not necessarily repeated.

Finally, the social modernization law is not restricted to the private sector, as the legislators expressly extended coverage to moral harassment in the public sector. It did not institute a specific system for combating moral harassment in the public sector²¹.

It is also essential to mention "mediation," a relatively little known innovation in the Social Modernization Act. Article L. 1152-6 of the French Labor Code provides for a mediation procedure initiated by any person in an enterprise who feels they have been a victim of moral harassment or by the person accused of that action.

The mediator is chosen by agreement between the plaintiff and the employer. The mediator examines the interpersonal relations of the parties, attempts to reconcile their differences and submits written proposals for ending the harassment. If mediation fails, the mediator informs the parties of any applicable penalties and the protection granted to the victim under the complaints procedure.

Mediation is a useful way of making health issues at work easier to address, particularly in the area of mental health, which is more difficult to assess objectively than physical health²². It is intended as a constructive approach to both interpersonal and collective relations at work, aimed at improving working conditions. Whether or not mediation is successful, it is of interest in that it leads to relevant discussions and proposals that are likely to have a positive impact.

The aim of mediation, therefore, is to foster respect for employee rights and healthy working conditions from the standpoint of prevention, rather than focusing narrowly on compensation for damages or after-the-fact medical care.

Workers who feel they have been victims of violence or moral or sexual harassment at work have three options.

They may choose the internal process, contact the relevant civil service department, or file a claim in the appropriate tribunal.

In the internal procedure, the victim contacts the firm's "trustworthy person" or the prevention adviser²³.

When a worker contacts the trustworthy person, this person takes the lead in dealing with the issue. She receives and listens to the complainant, gives advice, and provides the necessary assistance and support. On the worker's request, the

²⁰ Denis Hanot , « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L'harmattan, Paris, 2008, pg 80.

²¹ Muriel Trémeur , Karim Douedar, « Fonction publique : prévenir et gérer le harcèlement moral et sexuel », éditions du Papyrus, 2008, pg 67-68.

²² Bernard Bouloc, « La place du droit pénal dans la société contemporaine », Dalloz, Paris, 2000, pg 130.

²³ Muriel Trémeur , Karim Douedar, « Fonctionnaires : Comment réagir face au harcèlement moral ou sexuel ? », éditions du Papyrus, 2008, pg 125.

"trustworthy person" may attempt to reconcile the complainant and the alleged harasser. When the worker prefers to contact the prevention adviser or if there is no "trustworthy person" in the company or institution, the prevention adviser takes on the role of listener and arranges conciliation.

If conciliation does not settle the issue or seems impossible, the "trustworthy person" or the prevention adviser submits a complaint, providing the reasons on which it is based, at the complainant's formal request²⁴. If the complaint is prepared by a "trustworthy person" this person must submit the complaint to the prevention adviser having jurisdiction. This official complaint triggers specific legal protection for the complainant. The employer is then informed about the complaint by the prevention adviser and receives a copy of the document.

Appropriate measures that will put a stop to the acts constituting moral harassment must be determined.

The prevention adviser is in charge of examining the complaint and proposing suitable measures to the employer. If the moral harassment continues following implementation of these measures or the employer fails to take adequate steps, the prevention adviser, following consultation with the victim, contacts the competent civil servant appointed.

Daring to denounce or report that one has been a victim of moral harassment is not only difficult, but may also lead to reprisals of a professional nature against the complainant²⁵.

The protect measures are applicable to workers who submit a complaint within the enterprise or institution where they work, in application of current procedures, those who submit a complaint to the civil service department in charge of monitoring wellbeing at work, the police, a public prosecutor or examining magistrate, and those who institute legal proceedings or have proceedings instituted on their behalf, with the aim of ensuring that they are protected from moral harassment.

5. CONCLUSIONS

The Court of Cassation frequently invokes the concept of moral harassment to resolve situations not directly related to moral harassment, but that more broadly involve the relationship between mental health and work. This may seem surprising, as the courts could also rely, in particular, on the employer's general obligation to protect workers' health, implement the employment contract in good faith, or protect individual freedoms at work. It must be understood, however, that the Court of Cassation may only rule on the arguments presented by the appellant and is not authorized to consider any aspects of the case that have not been raised in the appeal itself.

²⁴ Muriel Trémur, Karim Douedar, « Fonction publique : prévenir et gérer le harcèlement moral et sexuel », éditions du Papyrus, 2008, pg 80.

²⁵ Muriel Trémur, Karim Douedar, « Fonction publique : prévenir et gérer le harcèlement moral et sexuel », éditions du Papyrus, 2008,pg 83-85.

The French courts have taken advantage of the full scope and extent of the definition of moral harassment, going so far as to utilize all legal means at their disposal to combat this phenomenon and extend it to cover all impairment to mental health at work.²⁶ However, if the courts wish to rule on cases concerning suffering at work, they must go beyond the concept of moral harassment and base their future rulings on the employer's general obligation to protect workers' health, an "obligation of result," or strict obligation to ensure health and safety, that requires that the employer not only take reasonable means to prevent harm, but rather ensure that, in fact, harm has been prevented.

These grounds are already used in cases of moral harassment and should be extended to other forms of suffering. In law, and in light of European law, health is considered globally, and it is no longer necessary to distinguish between "physical" and "mental" aspects²⁷. An employer who is unable to prevent a risk from occurring becomes liable.

This point cannot be challenged in law. It seems, however, that the scope of the general duty to protect workers' health and the strict "obligation of result" are not sufficiently effective, as these issues are generally only settled in court. It is, therefore, essential to find a way of improving the effectiveness of the law on health and safety²⁸.

The agreement dated March 26, 2010, is very important in this regard, as it explicitly recognizes the connection between harassment and certain management methods. It is also important to analyze how the social partners deal with the existing provisions on moral harassment and, more generally, mental health at work.

REFERENCES

- Karen J. Terry, "Sexual offenses and offenders", Wadsworth, USA, 2006.
- Bernard Bouloc, « La place du droit pénal dans la société contemporaine », Dalloz, Paris, 2000.
- José Delfont, « Responsabilité pénale et fonction politique », LGDJ, Paris, 2006.
- Denis Hanot, « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L'harmattan, Paris, 2008.
- Jean-Christophe Crocq, « Le guide des infractions » 12^{ème} édition, Dalloz, 2011.
- Eric Mathias, « La responsabilité pénale », Gualiano, LGDG, Paris, 2006.
- Muriel Trémeur, Karim Douedar, « Fonctionnaires : Comment réagir face au harcèlement moral ou sexuel ? », éditions du Papyrus, 2008.
- Muriel Trémeur, Karim Douedar, « Fonction publique : prévenir et gérer le harcèlement moral et sexuel », éditions du Papyrus, 2008.

²⁶ Bernard Bouloc, « La place du droit pénal dans la société contemporaine », Dalloz, Paris, 2000, pg 133.

²⁷ Denis Hanot, « Les sanctions du harcèlement au travail dans les secteurs privés et publics. Les sanctions pénales », L'harmattan, Paris, 2008, pg 83.

²⁸ Muriel Trémeur, Karim Douedar, « Fonctionnaires : Comment réagir face au harcèlement moral ou sexuel ? », éditions du Papyrus, 2008, pg 127.

Constanța Călinoiu, Verginia Vedinaș, « Teoria funcției publice comunitare, Lumina Lex, București, 1999.

Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC.

