

be!aware

BE AWARE

Strengthening competences to face
sexual harassment on the workplace

IO1 – SUMMARY RESEARCH PAPER
ON NATIONAL/CULTURAL ADAPTION
NEEDS FOR DEVELOPMENT AND
IMPLEMENTATION OF TRAININGS
AND ACCREDITATION

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1 INTRODUCTION

Be Aware suggests a systematic approach by providing different tools and methods to improve the professional development of HR Managers, VET trainers, teachers, mentors, workers' representatives.

The project outcomes will improve their capability to deal with the matter of sexual harassment at the workplace more effectively and to fulfil their role protecting the rights of the employees.

The objective of the research paper is to compile national information on detailed legal framework and support services. In particular these are of special interest. First of all, they can provide the information needed to analyse the state. Then these services have the knowledge concerning sexual harassment and how to raise awareness.

The National Report includes important information about the differences in the partner countries, about the legal framework and the approach of organisations including intercultural, gender and generation issues.

Being focused on the issue of sexual harassment at the workplace in each of the partner countries Austria, Bulgaria, Lithuania, Spain and Turkey is the first step towards the development of measures, grievance systems and other measures to change structures within organisations and change the view on the awareness of sexual harassment in the individual.

The definition of sexual harassment in every country which is part of the project Be Aware has the same meaning - one-sided, unwanted and unwelcome behaviour where sexuality and/or varied cultural consultations of sexuality are used as the means to oppress and position people and to produce or maintain vulnerability among them. All the countries provide definitions of sexual harassment under their civil legislation and only Turkey provides a definition under the Criminal Code as well. In general the definitions of sexual harassment in the five countries apply the international and European human rights standards in the area.

Under Austrian law sexual harassment at the workplace is not only considered a form of discrimination but can also be a criminal offense. The same is presented in the legislation of Spain. Under Turkish law sexual harassment at the workplace is not only considered a form of discrimination but can also be a criminal offence. In Bulgaria harassment and sexual harassment are explicitly forbidden in the civil legislation. Sexual harassment is not a criminal offence in the state. Lithuania follows the same example and has a civil legislation dealing with sexual harassment.

All the countries lack many examples of good practice and it is only in the case when big companies seek to guide the professional practice of their staff, highlighting guidelines that guarantee a healthy working environment, respectful and free from any situation of sexual harassment or harassment based on sex, examples of good practice appear. Additionally the police force in Spain is an example of good practice as well as some universities in Lithuania and Turkey. In Bulgaria no data is available on the matter.

As to the examples of bad practice it is stated that people usually do not complain in cases of sexual harassment at the workplace and simply change their working environment. In Bulgaria and Lithuania there is no data available on the matter.

All the five countries provide national statistics of cases of sexual harassment. They also rely on the data issued by the United Nations, the European Union and the Council of Europe. According to the figures, sexual harassment against women is a wide spread violation of their human rights as a form of gender based violence.

In Austria public, private and mixed services are provided to the victims of sexual harassment in general. In Spain NGOs provide support for victims of sexual harassment in general and at the workplace in particular. The Trade Union also provides such services. In Bulgaria are no support services for victims of sexual harassment at the workplace. Only the women's human rights NGOs dealing with gender based violence provide support to victims of sexual harassment in general. In Lithuania the Equal Opportunities Ombudsperson is mainly responsible to deal with such cases. In Turkey public and private services are provided to the victims of sexual harassment in general and at the workplace in particular. Despite the existence of the institutions and organisations dealing with cases of sexual harassment the victims of sexual assaults do not know how to react and where they can get the right support.

2 SUMMARY

The definition of sexual harassment in every country which is part of the project “Be Aware!” has the same meaning - one-sided, unwanted and unwelcome behaviour where sexuality and/or varied cultural constructions of sexuality are used as the means to oppress and position people and to produce or maintain vulnerability among them. All the countries provide definitions of sexual harassment under their civil legislation and only Turkey is providing definition under the Criminal Code as well. In general, the definitions of sexual harassment in the five countries apply the international and European human rights standards in the area.

Under Austrian law, sexual harassment in the workplace is not only considered a form of discrimination but can also be a criminal offense. The same is presented in the legislation of Spain. Under Turkish law, sexual harassment in the workplace is not only considered a form of discrimination but can also be a criminal offense. The Lithuanian Code of Administrative Offenses and the Criminal Code provides penalties for sexual harassment. In Bulgaria, harassment and sexual harassment are explicitly forbidden in the civil legislation. Sexual harassment is not a criminal offence in the state.

All the countries lack many examples of good practice and it is only in the case when big companies seek to guide the professional practice of their staff, highlighting guidelines that guarantee a healthy working environment, respectful and free from any situation of sexual harassment or harassment based on sex, examples of good practice appear. In addition, the Police force in Spain is an example of good practice as well as some universities in Lithuania and Turkey. In Bulgaria, there is no data available on the matter.

As to the examples of bad practice, it is stated that people usually do not complain in cases of sexual harassment in the workplace and simply change their working environment. In Bulgaria, there is no data available on the matter.

All the five countries provide national statistics of cases of sexual harassment. They also rely on the data issued by the United Nations, the European Union and the Council of Europe. According to the figures, sexual harassment against women is a wide spread violation of their human rights as a form of gender based violence.

In Austria, there are public, private and mixed services provided to the victims of sexual harassment in general. In Spain, there are NGOs providing support for victims of sexual harassment in general and in the workplace in particular. Labor union also provides such services. In Bulgaria, there are no support services for victims of sexual harassment at the workplace. Only the women’s human rights NGOs dealing with gender based violence provide support to victims of sexual harassment in general. In Lithuania, the Equal Opportunities Ombudsperson is mainly responsible to deal with such cases. In Turkey, there are public and private services provided to the victims of sexual harassment in general and in the workplace in particular. Despite the existence of the

institutions and organizations dealing with cases of sexual harassment the victims of sexual assaults do not know how to react and where they get the right support.

2.1 Austria

Under civil law, sex-related harassment is defined as unwelcome, inappropriate, insulting, degrading or offensive sex-related behaviour within the workplace with the purpose or effect of creating an intimidating, hostile and humiliating work environment for the harassed person. It is also defined as treatment of a person in a less favorable way because this person rejects or accepts acts of sexual harassment. All kinds of actions, verbal and non-verbal as well as physical, may fulfill the criteria.

Under Austrian law, sexual harassment in the workplace is not only considered a form of discrimination but can also be a criminal offense. Relevant provisions are found in the Equal Treatment Act (GlbG) for the private sector, the Federal Equal Treatment Act (BGlbG) for the public sector and the Criminal Code (StGB).

The law applies not only to harassment that takes place during the employment relationship but also before or after (e.g., during the recruiting process). The claim can be raised against the offender himself or herself, of course. But it can also be raised against the employer if he or she culpably refrains from taking appropriate actions to stop the harassment or to protect the employee from further harassment.

Austria does not really produce any success on good practices. The offender in sexual harassment cases have to pay indemnity most of the time. Nevertheless they keep their job positions in a lot of cases or just shift to another office. In most cases the victims terminate their employment contract because they are not able to work together with their offender anymore. So the only good practices are the cases where the victims get an indemnity paid by the offender.

The problem of the issue of sexual harassment on the workplace in Austria is the realization of sexual harassment as such and to entitle it. However, this is a requirement to prevent sexual harassment from the beginning or as quick as possible. As long as the issue sexuality and harm of the sexual sphere is not unmistakably addressed it is really hard to realize sexual harassment especially among minor breach. Due to the fact that at first sexual harassment does not take place obvious and significant the victims go along with supposed friendly collegial offers or a flirt. They permit “unintentional” contacts and have the feeling that they cannot turn back without being a “she-goat” or “spoiler”.

The longer those sexual assaults last, the harder it gets to say stop. This is aggravated by the fact that young victims of sexual harassment condone incidents as “normal” whereas elder realize it as an assault due to their personal maturity and life experience. Another reason why incidents are maintained secrecy is that youths do not reckon that they get internal labor support.

Most victims of sexual harassment believe that they won't get the right support to succeed in their fight against the delinquent.

Although the state provides a lot of support services for the area of education and workplace, a major problem is that a lot of the victims do not really know where they find the right support.

2.2 Spain

Sex-related harassment is any conduct conducted on the basis of a person's sex, with the purpose or effect of violating the person's dignity and creating an intimidating, degrading or offensive environment. (Art. 7.2 de la Ley Orgánica 3/2007, de 22 de marzo, para la Igualdad efectiva de mujeres y hombres).

The Spanish Constitution recognizes as fundamental rights the dignity of all human beings, the inviolable rights which are inherent, the free development of the personality, the respect for the law and the respect for the rights of others (article 10.1), equality and non-discrimination on the grounds of sex (art. 14) etc. In 1995, the regulatory setting in Spanish began to change in terms of protection against sexual harassment in the workplace, thanks to Law 31/1995 on Occupational Risk Prevention. After that, mention of sexual harassment was also included in Law 62/2003, on equality and non-discrimination on grounds of race, religion, gender and sexual orientation. To further develop the regulatory framework and effectively comply with the constitutional rights, the Spanish government passed Organic Law 3/2007, of 22 March 2007, for the effective equality of women and men. This law took a major step forward by expressly prohibiting sexual harassment and harassment on the basis of sex, as well as defining these behaviors (Articles 7, 8, 48 and 62).

Article 40.2 of the Spanish Constitution entrusts public authorities with the task of ensuring health and safety at work. This constitutional mandate entails the need to develop a policy to protect the health of workers through the prevention of occupational risks, and this prevention plan must include the prevention of sexual harassment and harassment based on sex. Therefore, the responsibility of developing these plans remains within the companies, which are in charge of designing the plan with the legal representative of the workers and in charge of following through, including the need of investigating any complaint brought to their knowledge.

In 2011 it was estimated that only 6% of the companies had implemented specific measures to prevent violence and sexual harassment at work; and only 14% of the companies had carried out evaluations regarding related psychosocial risks. However, there are a lot of examples of good practices in the workplace, some of them are:

An initiative launched by the Professional Union of Galicia (The goal of this initiative is to prevent sexual harassment in the workplace and protect victims in companies with fewer than ten workers);

The company Endesa, that has included a Code of Good Conduct that seeks to guide the professional practice of the staff, highlighting guidelines that guarantee a healthy working environment, respectful and free from any situation of sexual harassment or harassment based on sex;

The Spanish Arm Forces also created a Manual of Good Practices to ensure the equal treatment of men and women in the Armed Forces where they define sexual harassment, harassment based on sex, they state the responsibility of the management unit to oversee this, and they set preventive measures as well as mechanism for the early detection of sexual harassment in the Arm Forces;

The labour union CCOO has created a guide against sexual harassment at the work place where they define what is sexual harassment, they set the legal framework, they explain the code of conduct in the European Union and specifically in Spain and they propose several line of actions and activities to prevent this behavior in the workplace and raise awareness;

In recent time, progress has been made in terms of the visibility of sexual harassment. There is a wide range of regulations that regulate this phenomenon at national and European level, not so much at local or regional level. Despite the fact that the law requires that there be a protocol of action on sexual harassment in companies, the State does not have control over this issue and many of them do not comply with it. Companies can seek advice from public bodies for their creation, but this effort is not enough if there is no training available for employees.

The fact that the situation is denounced when it is already untenable leads to the creation of a stereotyped figure of aggressor and victim, which means that neither one nor the other really identifies with sexual harassment attitudes.

The precariousness of the labour market also makes it difficult for these situations to be denounced, whether they produce from boss to employee, or from employee to employee.

The media do not follow up on cases that are reported at first. There is a need for more training of the communication of the professionals to make an adequate informative treatment, but also of the justice and police professionals who are in contact with the victim at the first moment.

The feminist movement has helped to make situations of violence against women visible, and campaigns such as #MeToo facilitate solidarity between countries.

2.3 Bulgaria

The law explicitly recognizes sexual harassment as a form of discrimination and bans it. The EU definition of sexual harassment is fully recognized in the Bulgarian Law on Protection against Discrimination. Sexual harassment in general is not included in the country's criminal code. However, the Law on Protection against Discrimination may also be used to identify sexual harassment as a type of discrimination. That law defines harassment as, "any unwanted conduct on the grounds referred to in Article 4, Paragraph 1, expressed in a physical, verbal or any other manner, which has the purpose or effect of violating the person's dignity or creating a hostile, degrading, humiliating or intimidating environment, attitude or practice. Harassment and sexual harassment are explicitly forbidden and defined by the Law on Protection from Discrimination. According to Article 5 of the LPFD harassment and sexual harassment represent discrimination. The definition complies with the EU requirements. Nevertheless there are still gaps in the practical implementation, however: there are delays in proceedings and the application of the burden of proof by the Commission for Protection from Discrimination and by the courts which was not in full compliance with the EU standards until recently. In Bulgaria there is no information about good practices on this topic.

Sexual harassment at the workplace is an existing practice in Bulgaria. The problem is that employers, judicial authorities and observers (co-workers, relatives and acquaintances) don't take the problem very seriously and perceive the violence – verbal, psychological and physical – as a harmless, mutually accepted and normal practice. In the conditions of economic transition and increasing employment insecurity, women are identified as the more vulnerable group. Women do not know and cannot apply the legal provisions for protecting their rights, which already exist through the passed Anti-Discrimination Law. Bulgarian women face a number of obstacles in the workplace. They bear a disproportionate burden of the unemployment in the country - women are the first fired and last hired for jobs. They are frequently not considered for many high paying positions because of antiquated stereotypes of gender roles in Bulgarian society.

2.4 Lithuania

The law on Equal Opportunities for Women and Men of the Republic of Lithuania provides a definition „Sexual harassment means any form of unwanted and insulting verbal, written or physical conduct of a sexual nature with a person, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, humiliating or offensive environment.

In Lithuania, the main law on sexual harassment is the law on Equal Opportunities for Women and Men. Lithuanian Parliament adopted the Republic of Lithuania Law on Equal Opportunities for Women and Men on 1 December 1998. This law came into force on 1 March 1999.

Since 2008 year, The Republic of Lithuania Law on Equal Treatment also prohibits any discrimination on grounds of gender. Equal Opportunities Ombudsperson supervises implementation of mentioned legislation, established in 1999.

The Labor Code prohibits sexual harassment since 2017. The Labor Code enables individuals to report any violation of the Labor Code to the State Labour Inspectorate, including a violation of Article 26, which prohibits sexual harassment.

The Interinstitutional Commission on Equal Opportunities for Women and Men, established in 2000, monitors the National Program on Equal Opportunities for Women and Men, provides suggestions and recommendations on gender equality issues. The Commission on Equal Opportunities for Women and Men consists of one to two representatives from each ministry and four representatives from NGOs.

Examples of good practices in Lithuania could be found in the activities and some set of rules of universities: Kaunas university of Technology; Šiauliai University; Lithuania Business University of applied sciences; Panevėžys university of applied sciences; Vilnius University; Lithuanian University of Health Sciences.

In general, the problem of sexual harassment is being more examined in Lithuania and more attention is put towards it recently. Cases of sexual harassment led to some law amendments and new rules. For example, in addition to “MeToo” movement and exposed sexual harassment cases in the workplace, amendments to the equal opportunities laws have been (Law on Equal Opportunities for Women and Men and Law on Equal treatment) in 2017, which state that employer must take

care and protect his employees, public servant and those who are planning to self-employ from perpetrators. Also educational institution must protect its students or employees from sexual harassment. As well, from good practice examples provided in this report, it can be clearly seen that most educational institutions in Lithuania adopted the rules of sexual harassment prevention in their policy. So, there are some effort made on solving this problem in Lithuania.

However, the problem remains complicated, in some cases it is difficult to prove sexual harassment, some victims are afraid of speaking out loud about harassment, etc. It is seen that people are becoming more interested in the topic of sexual harassment, they become more aware of the problem and are encouraged to report harassment. Inquiries on sexual harassment or gender inequality are increasing in the Equal Opportunities Ombudsperson's office, so it represents the relevance of the topic and the need of specific institutions and trained people to work within it.

The training program on the topic of sexual harassment in the workplace is very actual and needed in Lithuania.

2.5 Turkey

In Turkish doctrine, sexual harassment considers as discrimination of gender. Although there is not a brief definition in the legislation, it is possible to define or interpret it from the provisions about sexual harassment from Istanbul Convention. In the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence), sexual harassment is defined as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”.

Turkey is one of the first countries signing and affirming the “Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” (the Istanbul Convention) on May 11, 2011 without any reservations. The Istanbul Convention has essential role on human rights in Europe as the first convention addressing violence (including sexual harassment) against women. The Convention entered into force on the date of August 1, 2014.

The law no 6284 with the title of Protection Family and which is based on combating violence against to women has been made into practice on 20th of May 2010. This law focuses on the responsibilities coming by Istanbul Convention which has been accepted during the creation of The Law no 6284. This law is being coordinated and its effectiveness is being monitored by Ministry of Family and Social Policies. The National Action Plan on Combating Violence and Harassment Against Women 2016-2020 is based on 5 primary goals including 31 different main activities:

- ◇ Legislative arrangements
- ◇ Creating awareness and transformation of mentality;
- ◇ Providing protective and preventive services and strengthening the victims of violence;
- ◇ Regulation and implementation of health services;
- ◇ Cooperation among institutions and policy-makers.

Examples of good practices in Turkey: *Business Against Domestic Violence* project and *More and Better Jobs for Women* project.

In a conclusion, sexual harassment is an outspread worldwide problem. It interferes with human rights in that those who experience it often suffer damaging physical and psychological effects, which prevent these individuals from achieving their rightful place in employment and educational setting. The process of finding a solution to sexual harassment against women is a priority issue for all societies in EU countries and the process of seeking a solution to this problem is a matter that civilian and public institutions recently pay attention in Turkey as well.

3 Conclusion

In a conclusion, sexual harassment is an outspread worldwide problem. It interferes with human rights in so far that those who experience it often suffer damaging physical and psychological effects, which prevent these individuals from achieving their rightful place in employment and educational setting.

The process of finding a solution to sexual harassment against women is a priority issue for all societies in EU countries and the process of seeking a solution to this problem is a matter that civil and public institutions recently pay attention in Turkey as well.

4 Partners

Frauen im Brennpunkt – Austria



Gender Alternative Foundation – Bulgaria



Magenta Consultoria S.L.U. – Spain



Samsun Aile ve Sosyal Politikalar İl Müdürlüğü – Turkey



Social Innovation Fund – Lithuania

