

Violence (physical intimidation)

Bullying (Psychological intimidation)

Sexual harassment

Questionnaire 2014

- [1] Does your country have specific regulations to guarantee the protection of workers against violence, bullying and sexual harassment in the workplace?
- [2] What is the definition of violence, bullying and sexual harassment in the legislation in your country applicable to the workplace, if any?
- [3] Who has a legal obligation to refrain from all acts of violence and moral or sexual harassment at work? (private and / or public sector - employers, employees, third party?)
- [4] Is the employer required to put in place a policy to prevent violence, bullying and sexual harassment in the workplace?
- [5] 1. Does the employer have to conduct a risk analysis taking into account the nature of his activities and the size of his business?
- [5] 2. What are the minimum preventive measures that he has to provide?
- [6] How are employees informed of the risks, the preventive measures and the procedures applicable to the victims of violence and moral or sexual harassment at work?
- [7] Is the employer required to appoint persons with specific skills to deal with cases of violence and moral or sexual harassment at work?
- [8] What are the sanctions against the employer who doesn't adopt policies against violence and moral or sexual harassment at work?
- [9] What are the ways of actions available to the victims?

- a. Internal procedures in the enterprise?
- b. External procedures?
- c. Legal remedies before the court?
 - i. Civil?
 - ii. Penal provisions?

[10] Who can take an action (the worker and / or the employer, colleague workers of the victim, others persons in contact with the victim, the union representative or the agent of an organization of employers, etc.)?

[11] Who bears the burden of proof of the violent acts and moral or sexual harassment at work?

[12] In order to avoid reprisals at work is there special protection provided for the victim and the witnesses?

Specify the nature and duration of the special protection.

[13] What would be the consequences for a worker who has abused the procedure put in place to combat violence and moral or sexual harassment at work?

[14] Who is responsible for monitoring the measures put in place to combat violence and moral or sexual harassment at work?

[15] What are the sanctions applicable to perpetrators of violence and moral or sexual harassment at work?

* * *

Preamble

31 countries presented a report on the topic chosen in Yalta (Ukraine) last year.

24 reports were received in time and are included in the final report of the commission.

1. Australia
2. Belgium
3. Canada (Fr.En.)
4. Denmark
5. Finland
6. France (Fr.)
7. Former Republic of Macedonia
8. Georgia
9. Germany
10. Israël
11. Italie (Fr.)
12. Ivory Coast (Fr.)
13. Japan
14. Netherlands
15. Norway
16. Paraguay (Sp.)
17. Portugal
18. Senegal (Fr.)
19. South Africa
20. Spain (Sp.)
21. Sweden
22. Switzerland (Fr.)
23. United States
24. Taiwan

Two reports were in Spanish (Spain and Paraguay). We are very sorry that we could not include them in the final report since it was not possible to translate them.

Seven other reports came in late (after September 30th) : Kazakstan, Ireland, United Kingdom, Austria, Turkey, Greece and Brazil. That explains why they are not included in the final report. The representative from Greece explains that his report was sent on time to the IAJ but it was not received by the président and the vice-presidents before the annual meeting.

However, all countries had the possibility to explain their legal system on the topic during the two sessions. The final report will reflect their specificities.

Regarding Georgia, we only got the questionnaire but not the answers to it.

(7 reports in French, 22 in English and 2 in Spanish)

Laws and Regulations

- [1] **Does your country have specific regulations to guarantee the protection of workers against violence, bullying and sexual harassment in the workplace?**
- [2] **What is the definition of violence, bullying and sexual harassment in the legislation in your country applicable to the workplace, if any?**

All participating countries in this report have, in their legislation, a partial or complete definition of the three concepts.

We can summarize them as follows:

« Violence at work, bullying or sexual harassment can be defined as a series of behaviors [1] repeated, [2] unwanted (neither welcome or solicited) [3] real or perceived, [4] creating an intimidating, hostile, degrading, humiliating or offensive environment which can undermine the dignity or physical or mental integrity of the worker during the execution of his work, [5] with the consequence of jeopardizing the employment of the worker ».

Ivory Coast and Senegal will sanction such behavior only under criminal law (which will result in probation terms), while other countries have, concomitantly, civil legislation to address these situations who occur during the execution of the work.

The legislation of two countries, Portugal and Taiwan, consider that a person can be victim of harassment when she is hired, while other countries consider, at this stage, that it constitute a specific form of discrimination.

Scope of application

- [3] **Who has a legal obligation to refrain from all acts of violence and moral or sexual harassment at work? (private and / or public sector - employers, employees, third party?)**

The obligation to refrain from all acts of violence and moral or sexual harassment at work seems to be present in all countries:

- In the private and public sector;
- With respect to all stakeholders (employers, employees or third parties);

Depending on the country, the court that will be hearing the case will depend on whether the worker is under contract (private sector) or status (public sector).

The employer's obligations

[4] Is the employer required to put in place a policy to prevent violence, bullying and sexual harassment in the workplace?

In most of the countries, employers have the obligation to adopt that type of policy.

Certain countries only recommend to employers to adopt a policy or they have an obligation of means in their legislation to do so (Former Republic of Macedonia Germany, USA, Sweden).

However, Senegal does not impose any obligation regarding policies and, in Taiwan, the obligation only exist for sexual harassment.

[5] 1. Does the employer have to conduct a risk analysis taking into account the nature of his activities and the size of his business?

2. What are the minimum preventive measures that he has to provide?

With the exception of Ivory Coast and Senegal, who don't have this type of obligation, other countries have imposed an obligation, for the employer, to conduct a risk analysis (*sensu lato*) generated by the nature of its activities and the size of its business.

In Israel and Switzerland, this obligation only exist for sexual harassment.

The countries reports unfortunately do not specify the minimum measures that have to be taken.

However, it turns out « *globally* » that the following measures should be taken:

- Preventive measures and information or training to the workers;
- Support measures for victims (reception and management of the complaint, protection against retaliation, encouraging conciliation but with the guaranty for the victim that there will be compensation).

[6] How are employees informed of the risks, the preventive measures and the procedures applicable to the victims of violence and moral or sexual harassment at work?

With the exception of Senegal, where no obligation of information or training exists, all countries take the initiative, or pursuant to statutory or regulatory requirements, to inform stakeholders in the enterprise (Canada, Ivory Coast, Finland, Italy, the Netherlands, Portugal, Switzerland, Taiwan) or to train them only for the risks encountered (Germany), but more often to ensure that both the information and the formation of these stakeholders is provided (South Africa, Australia, Belgium, Denmark, USA, France, Israel, Japan, Norway, Sweden).

Means of information that are the most commonly used are direct delivery of information detailing the risks, the prevention measures and the procedures applicable to workers who are victims.

Regarding training, it must be provided by the employer and should include, at least, training workshops or seminars.

[7] Is the employer required to appoint persons with specific skills to deal with cases of violence and moral or sexual harassment at work?

Numerous countries have no legal or regulatory obligation for the employer to identify people with specific skills to deal with cases of violence or harassment (Germany, Australia, Canada, Ivory Coast, Denmark, USA, France, Italy, Norway, Portugal, Senegal, Switzerland, Sweden).

When the obligation is imposed on them (South Africa, Belgium, Finland, Israel, Japan, the Netherlands, Taiwan) or when employers take the initiative to do so, the person, the organization or the structure put in place for prevention must show a complete neutrality and independence.

The appointment of a competent person or the establishment of an adequate structure allows the employer to prevent his liability.

In Israel, the designated « *supervisor* » should preferably be a woman; in case of the appointment of several « *supervisors* », at least half must be women.

[8] What are the sanctions against the employer who doesn't adopt policies against violence and moral or sexual harassment at work?

For countries in which there is no formal obligation to implement a policy of prevention (Germany, South Africa, Australia, Ivory Coast, Denmark, USA, France, Italy, Portugal, Senegal, Sweden), the worker, victim of violence or harassment, can always sue his employer in order to obtain compensation for the material damages and / or moral damages.

If an inquiry by OSHA (USA) concludes that there was a violation of the moral or physical integrity of the worker, the employer will be sued in court within six months of the occurrence of the violation to be sentenced to a fine of \$7,000 (serious violation) to \$70,000 (intentional or repeated violation).

For other countries, the employer is subject to civil and criminal sanctions which generally consist of fines, but can also be an imprisonment for up to 2 years (Finland).

In a number of countries (Norway, the Netherlands, Sweden), control bodies may deliver injunctions to employers to ensure adequate working environment, injunctions can be combined (Norway) or not (Sweden) with a civil penalty or, in Norway, with criminal penalties (serious cases).

Remedies Available to Victims

[9] What are the ways of actions available to the victims?

- a. **Internal procedures in the enterprise?**
- b. **External procedures?**
- c. **Legal remedies before the court?**
 - i. **Civil?**
 - ii. **Penal provisions?**

The internal procedures in the enterprise normally only exist if the employer is legally or statutorily required to put in place a prevention policy that would prevent violence, bullying and sexual harassment in the workplace.

From the moment the employer is required by law or by regulation to consider such a prevention policy or has taken the initiative to adopt such a policy, the victim not only dispose of an internal procedure in the enterprise but also of an external procedure based on the civil liability of the perpetrator or his criminal responsibility.

The victim can also take action based on the civil or criminal liability of the employer when he is notified of the facts but did not take measures that put an end to the violence, bullying and sexual harassment in the workplace.

[10] Who can take an action (the worker and / or the employer, colleague workers of the victim, others persons in contact with the victim, the union representative or the agent of an organization of employers, etc.)?

In general, in civil matters, the action is mainly reserved for the victim. However, the representative organizations (such as a union to which it is affiliated or any other organization who has the right to represent the victim with or without her or his consent) may also take action.

The employer also has the right to take an action in the following countries: South Africa, Belgium, Norway, Sweden, Taiwan.

In Belgium, any person « who has an interest » (employer, workers, colleagues of the victim, third party in contact with workers during the execution of their services) may take an action.

In criminal matters, the action is usually reserved to the victim. However, some countries, such as Australia, Denmark, the Netherlands, reserve to the public prosecutor the decision to file a criminal complaint based on the seriousness of the allegations.

[11] Who bears the burden of proof of the violent acts and moral or sexual harassment at work?

In civil matters

Most countries (Germany, South Africa, Australia, Belgium, Canada, for moral harassment, USA, France, Israel, when harassment comes from a superior, Lithuania, Norway, the Netherlands, Portugal, Slovenia, Sweden) agree to consider that, as soon as the worker who says he was abused or harassed establishes the facts that permit to presume the existence of violence or harassment, the burden of proof is reversed and it is then up to the other party (other worker, employer or third party) to prove that there was no violence or harassment.

In Greece, the person who is accused has the burden of proof and, in Turkey, this is the case if the victim is a woman.

Other countries (Brazil, Canada, concerning sexual harassment and violence, Ivory Coast, Denmark, Finland, Israel, except for the superior, Italy, Japan, Senegal, Switzerland, Taiwan) impose the burden of proof on the worker victim of discrimination.

Only the Former Republic of Macedonia and Algeria impose the burden of proof on the employer.

In criminal matters

Under the principle that "the accused is presumed innocent," the burden to prove the culpability of the accused is on the public prosecutor or on the victim (Belgium) and "any doubt should benefit the accused".

[12] In order to avoid reprisals at work is there special protection provided for the victim and the witnesses?

Specify the nature and duration of the special protection.

Special protection is provided to the victim and the witnesses in the following countries:

Germany, Belgium, Canada, United States, Finland, France, Israel, Netherlands, Switzerland.

This special protection is granted to the victim by the following countries:

South Africa, Denmark France, Japan, Italy, Norway, the Netherlands, Portugal, Slovenia, Sweden, Taiwan.

No protection is provided in the following countries:

Algeria, Australia, Greece, Ivory Coast, Lithuania, Former Republic of Macedonia, Senegal (with the exception of the cleaning industry) Turkey.

Regarding the nature of the protection, it is not quantified by any country except in Belgium where

- *the victim when she/he files a complaint or take action in court;*
- *the witness as soon as she/he brings to the knowledge of the prevention counselor the disputed facts in a document signed and dated;*
- *the witness when she/he brings to the attention of his employer that she/he has been called as a witness in proceedings for violence or harassment,*

is protected against dismissal related to the problem of violence or harassment over a period of 12 months and until the third month after the final court decision (judgment or order) is rendered.

What about any improper use of the procedures?

[13] What would be the consequences for a worker who has abused the procedure put in place to combat violence and moral or sexual harassment at work?

It is appropriate to distinguish between sanctions to which the worker is exposed to:

- [1] within the enterprise,
- [2] outside the enterprise, whether in civil matters (damages) and / or in criminal matters (slander / libel).

Within the enterprise

All countries have provisions to allow an employer to take disciplinary action which can lead to dismissal (with or without severance pay).

Outside the enterprise

In civil matters, depending on the country, at the minimum the penalty extends to the amount of costs resulting from the trial and may be as much as the amount of damages assessed for the abuse of process.

In criminal matters, according to the legislation of each country and depending on the seriousness of a criminal prosecution, it may lead to a fine or even imprisonment.

Supervision and sanctions

[14] Who is responsible for monitoring the measures put in place to combat violence and moral or sexual harassment at work?

Monitoring arrangements put in place to combat acts of violence or harassment is:

- Under the responsibility of employers: Germany (internal structure when it exists), South Africa, Australia, Denmark, Italy (employer or delegates of the employer).
- Under the responsibility of external services: Belgium, Ivory Coast, France, Israel, Japan, Former Republic of Macedonia, Norway, Switzerland.
- Under the responsibility of employer or external services: USA, Finland, the Netherlands, Portugal, Sweden, Taiwan.

[15] What are the sanctions applicable to perpetrators of violence and moral or sexual harassment at work?

Like the worker who has abused the process in place to combat violence and moral or sexual harassment at work, the perpetrator of the violence or harassment in the workplace is exposed:

- if he/she is an employee or a member of the hierarchy, he/she is exposed to disciplinary sanctions that can lead to the termination of the employment without notice or compensation;
- if he/she is a third party or the employer, he/she could have to pay damages or even face criminal prosecution.

* * *

CONCLUSIONS

[1] Scope of application

For all the countries, the legislation on violence or harassment in the workplace apply to:

- Private and public sectors,
- The employer, the workers and others persons in contact with the company or its employees.

[2] Minimum preventive measures

All the countries recognise sexual harassment in the workplace whether by another worker, a third party or the employer, but some countries do not take preventive measures or measures to address the problem except in a case of sexual harassment, which seems to ignore the other two aspects of harassment which are bullying or violence.

[3] Burden of proof

Almost all the countries guarantee to the victim the right to take civil action in order to obtain compensation for his/her damages.

In certain countries, the victim who is able to establish harassment or violence *prima facie*, benefit from a reversal of the burden of proof.

It is then up to the alleged perpetrator to establish that there was no violence or harassment.

This reversal of the burden of proof is in favor of the victim.

Nevertheless, in a number of countries (Canada, except for moral harassment, Ivory Coast, Denmark, Finland, Italy, Japan, Senegal, Switzerland, Taiwan) the burden of proof is on the victim of discrimination who has to establish the harassment or the violence at work.

Finally, for countries that only have criminal prosecution for this matter, the complainant is in a worse position with regard to the burden of proof because public prosecutor has to establish [1] the facts and [2] the culpability of the accused). "Any doubt should benefit the accused" under the principle that "the accused is presumed innocent".

[4] Protection of the victim

With the exception of a few countries that do not provide specific protection for the victim and / or for a witness (Australia, Ivory Coast, Denmark, Former Republic of Macedonia, Senegal (with the exception of the cleaning industry), all countries provide at least protection for the victim (but without quantifying it), some providing protection to both the victim and the witnesses (Germany, Belgium, Canada, France, Netherlands, USA, Finland, Israel, Switzerland).

[5] The nature and the extent of this protection

To provide protection is very important but the nature of it should allow the victim to avoid retaliation from his/her employer, particularly in terms of job loss. It seems clear that only a

sufficient broad protection is likely to give both the victim and the witnesses the courage to report as soon as possible the facts to establish harassment.

[6] Sanctions for improper use of the procedures

If the nature and extent of the protection for the victim does not appear to have been the primary focus of the legislature of various countries, they seem to all agree on the measures that could be imposed in cases of abuse, whether at a disciplinary level (up to dismissal without notice or compensation), or in a civil action to get compensation or in a criminal trial for slander or libel.

[7] Employer's obligation regarding preventive measures

Most of the countries have a legal obligation for the employer to implement a prevention policy to avoid violence and harassment in the workplace.

Depending on the country, this obligation does not have the same requirements. Some countries (Germany, USA, Former Republic of Macedonia, Sweden) only recommend to the employer the adoption of a policy or have an obligation of means to do so, while other countries require the establishment of a real plan for risk analysis including the following requirements :

- Preventive measures, information and/or training to the workers;
- Support measures for victims (reception and management of the complaint, protection against retaliation, encouraging conciliation but with the guarantee for the victim that there will be compensation).

[8] Control and monitoring of the prevention measures

Finally, there is the question of monitoring arrangements put in place to combat acts of violence or harassment when the employer is the offender.

Some countries seem to ignore the fact that the employer may also be the main perpetrator of the harassment or that he can be involved in performing the acts of violence or harassment in the workplace.

Therefore, to ensure control, it seems more adequate to have an external service for the prevention and monitoring of these inappropriate behaviors. It provides neutrality and guarantee to the victim a more independent analysis of the facts that are reported.