Harassment, in a broad sense—*moral and sexual*—and its consequences on labor relations

Answers: Estonian Association of Judges

Although sexual harassment is consistently in the news today, the topic of workplace misconduct is much broader. It encompasses general harassment and other misconduct typically experienced by employees at the hands of their managers, including judges, as well as their peers. Harassment is broadly defined as unwelcome physical, verbal, non-verbal, and psychological behavior that interferes with work performance or the work environment. Examples of harassment include offensive jokes, name-calling, disparaging comments, displaying inappropriate images, unwelcome sexual advances, and inappropriate touching.

Workplace misconduct is a universal problem that causes serious harm to those subjected to it. There is much to be gained by exploring what causes such misconduct to persist, what actions can prevent such misconduct, and what consequences violators should bear. Discussing how to break down barriers to reporting this misconduct, such as limitations on confidentiality, is also paramount.

Questions:

1. Does your country have laws or regulations that cover workplace harassment? Is harassment defined separately or is it incorporated within other provisions of the labor code?

The Equal Treatment Act as general act has the purpose to ensure the protection of persons against discrimination on grounds of nationality (ethnic origin), race, colour, religion or other beliefs, age, disability or sexual orientation.

The Civil Service Act (§ 13) establishes, that the authorities shall have to ensure the protection against discrimination of the persons who apply to take up the service and of those who are employed in the service, follow the principle of equal treatment and promote equality.

According to the § 8 of the Courts Act The Public Service Act applies to court officers unless otherwise prescribed by this Act.
Employment Contracts Act § 3 covers also the principle of equal treatment in labour contract relationships and establishes, that an employer shall ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the Equal Treatment Act and Gender Equality Act.

2. What remedies exist for victims reporting workplace misconduct? What penalties or ramifications do offenders face? Do you have examples of court cases/judgments or administrative proceeding involving harassment?

An official who is unlawfully released from service has the right to demand that the administrative act on his or her release from service be declared unlawful and to demand amendment of the basis for the release from service and compensation in the amount of the three months' average salary of the official. The court may amend the amount of compensation taking account of the circumstances of the termination of the service relationship and considering mutual interests (Civil Service Act § 105 subsection (1)).

The limit to the compensation specified in above mentioned subsection shall not apply if an official was released from service violating the principle of equal treatment specified in § 13 of this Act. In this case court has the wide space of discretion deciding the amount of compensation.

3. Do you have examples of judicial misconduct related to harassment or bullying?

4. Does the judiciary have rules, ethics codes, or legislation relating to harassment by judges and judicial staff? What are the procedures for reporting misconduct and enforcing the rules? What sanctions can be imposed against a judge?

According to Estonian Courts Act § 47 subsection (1) p 3, a person may be appointed as a judge if he or she is of high moral character. A judge shall behave impeccably in service and outside service and refrain from acts which may damage the reputation of court (Courts Act § 70 subsection (2)). These regulations cover also the cases of harassment by judges.
An indecent act of a judge is also a disciplinary offence in the meaning of Courts Act § 87 subsection (2). Disciplinary proceedings shall be commenced if elements of a disciplinary offence become evident. The following disciplinary punishments are established: 1) a reprimand; 2) a fine in an amount of up to one month’s salary; 3) a reduction in salary; 4) removal from office.

Estonian Judges’ Code of Ethics (adopted by the Estonian Court en banc – i.e. all Estonian judges in corpore) includes the next provisions:

Art. 6: A judge shall avoid indecency in all his or her actions and statements. Being under public scrutiny a judge shall accept personal restrictions that may seem encumbering for an ordinary citizen. First of all a judge shall behave in a manner compatible with the dignity of the judicial office.

Art. 9: A judge shall point out to a colleague his or her indisputably indecent behaviour and the violation of the rules established in this Code and shall try to put an end to such behaviour. If need be, he or she shall inform the general assembly of Estonian judges or the Chairman of the court of the incident.

Art. 31: A judge shall behave properly and with dignity and shall avoid activities that may discredit the profession and administration of justice.

There isn’t legal mechanism of enforcement the rules of the code of ethics.